Public Document Pack

WIRRAL

Health and Well Being Overview and Scrutiny Committee

	Special Meeting
Date:	**Monday, 6 February 2012**
Time:	**5.00 pm**
Venue:	Council Chamber, Wallasey Town Hall

Contact Officer: Andrew Mossop
Tel: 0151 691 8501
e-mail: andrewmossop@wirral.gov.uk
Website: http://www.wirral.gov.uk

AGENDA

1. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST / PARTY WHIP

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.

Members are reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they are subject to a party whip in connection with any item(s) to be considered and, if so, to declare it and state the nature of the whipping arrangement.

2. ANNA KLONOWSKI ASSOCIATES LTD (AKA) REPORT - INDEPENDENT REVIEW OF THE COUNCIL'S RESPONSE TO CLAIMS MADE BY MARTIN MORTON (AND OTHERS) (Pages 1 - 250)

3. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

This page is intentionally left blank

Independent Review of

Wirral Metropolitan Borough Council's

Response to Claims Made by

Mr Martin Morton (and Others)

Final Report

Prepared for Wirral MBC

By Anna Klonowski

09 January 2012

Table of Contents

List of Annexes

1. Introduction

1.1. Anna Klonowski ("the consultant") was commissioned by Wirral Metropolitan Borough Council to undertake an independent review of the whistle-blowing complaints raised by Mr Martin Morton, together with any other issues of concern that were raised by the review. A summary of the nature of the issues that were the subject of the review is set out at paragraph 5.1 below.

Whilst the names of individuals and companies have been anonymised in the report to the Council at its request, the name of the whistle-blower in this matter, Martin Morton, is already in the public domain. For this reason only, Mr Morton's name has not been anonymised as it would be obvious from numerous references within this report which person the consultant is referring to.

1.2. Employee 1 added two additional requirements to the scope of the review:

A. A consideration of the First Improvement Plan which has been developed in response to the Care Quality Commission Inspector's Report.
B. The issue of whether or not the Council had breached the Disability Discrimination Act and a consideration of the letter the Council had received from the Equalities and Human Rights Commission in this regard.

1.3. It should be noted that during the course of the review the Council changed political control. The consultant is aware of concerns that:

A. There has been political interference in the review itself and/or the production of the report; and
B. The change of control may have impacted upon the timing and delivery of the report.

There is no evidence to substantiate these concerns. In carrying out the review the consultant only had contact with Senior Officers of the Council when she has needed to interview them or seek their assistance for the purposes of the investigation. In respect of Members the consultant had limited contact until the publication by the Council of the consultant's supplementary report "Corporate Governance Arrangements, Refresh and Renew". Since this time the consultant has been supporting the Council in the development of its response to this report's findings and this has had no bearing on the contents or publication of this report.

1.4. The review commenced in late September 2010 and by September 2011 a preliminary draft report had been prepared. After seeking external legal advice it was agreed with the Council that the consultant should undertake a Right to Reply process. As a result Legal Rep 5 reviewed the report with a view to identifying those who had been criticised and should be provided with the "right to reply" opportunity. Letters accompanied by appropriate sections of the preliminary draft report where either hand delivered or posted to the subjects of the right to reply during September 2011. These sections of the preliminary draft report were provided under strict confidentiality requirements. Those subject to the right of reply were given a time period to respond, in some instances this required an extension of the initial time period and formally not all responses were received until early January 2012.

1.5. A lengthy review was required due to the complexity and breadth of subject matter, the number of issues to be addressed, the volume of emails and other documentation, the lack of wider evidence due to the significant changes in DASS senior and middle management tiers, poor record keeping and new information received largely from the whistle-blower.

1.6. Despite the time taken to deliver the review it has not been possible to conclude on all matters, in particular the charging regime at Balls Road and some other supported living establishments. The issues in relation to charging at Balls Road etc are dealt with in some detail later in this report. In addition, during the right to reply process Service Provider 3 highlighted an unresolved matter with DASS which related to payments following CCAs (CCA). This too is detailed later in the report and the consultant has been advised that the Council will make contact with Service Provider 3 during January 2012.

1.7. The allegations regarding the breach of the Discrimination Act will be dealt with in an addendum to this report.

1.8. The terms of reference for the review (see Appendix 1 to Annex A) were wide ranging and therefore required the consultant to devise a methodology which would enable her to undertake the review without:

A. Becoming a hindrance to the Department of Adult Social Services' (DASS) progress in delivering the CQC improvement plan and operational delivery more generally.
B. Spending most of her time within DASS observing practices etc.
C. Duplicating the role of the CQC and/or other external agencies.

1.9. As a result the consultant sought to:

A. Crystallise the issues/allegations raised by the whistle-blower and other parties.
B. Note hearsay and other allegations, following-up where possible to test/verify the existence of evidence.
C. Meet with those raising issues against the Council and DASS and also Council employees.
D. Review documents and evidence where available.

1.10. As stated above this has been a complicated case which, due to the significant period of time that the claims relate to (1997 – 2011), relies in many instances upon an opinion formed by the consultant (on the balance of probabilities) as the passage of time made a factual assessment of evidence impossible. Perhaps due to the passage of time, and the time it has taken to bring the reimbursements of overpayments to conclusion, further allegations have developed.

1.11. It should also be noted that, prior to this review, Miscellaneous 8 was commissioned via Miscellaneous 19 to undertake a review into allegations of Bullying and Abuse of Power, in so far as this impacted upon Mr Martin Morton (the whistle-blower). Miscellaneous 8's review (which took over 12 months to complete) was reported to Cabinet on 14 April 2011 and this investigation has sought not to duplicate it; the two reports should instead be interpreted as two parts of the same picture, and it is this overarching picture that the Council must now consider very seriously.

1.12. It is the opinion of the consultant that from the outset the allegations/concerns/ issues raised by the whistle-blower were not always clearly and succinctly articulated/documented and, as a result, may have been misunderstood by the HR team (both departmental and corporate), Social Services management, and legal services team when supporting the subsequent investigations and formal processes. The consultant suggests that this report demonstrates, at least to some extent, that given the appropriate mind set it was not beyond any of the Council Officers involved to achieve an understanding of Mr Morton's concerns, had sufficient time been made available to ensure that there was a shared understanding of the serious allegations being made, and then acting upon them in a timely and appropriate manner. This lack of understanding has, in the consultant's view, inevitably led to a situation where suspicions of conspiracy and/or cover up have continued to develop, which via the regular use of local press and blogs has led to a significant mistrust of DASS and the Council more generally by some Council employees and service users and their families. The Council's reputation has further deteriorated because, in relation to DASS at least, it has in some areas been either unable or unwilling to accept these serious failings and to address them.

1.13. Miscellaneous 8's report has most helpfully stated that there was a failure on the part of the Council Officers in relation to the use of its grievance and whistle-blowing procedures. The consultant completely supports Miscellaneous 8's findings and trusts that the Council will now address his/her recommendations.

1.14. In respect of the concerns raised by the whistle-blower, the consultant has summarised the issues she has considered during her review in paragraph 5.1 below and confirmed the content of this paragraph with the whistle-blower who is (in the main) the key complainant.

1.15. Appendix 2 to Annex A includes an anonymised table outlining the number of Council employees and external parties the consultant had meetings with during the course of the review. The names of the individuals who have/have not participated will not be released, because in order for people to be prepared to speak with the consultant she often had to agree that their involvement would remain anonymous, even if the information obtained was used in the report.

It is the consultant's opinion that nothing could or should be concluded by the fact that some people/organisations approached to participate in this review declined. There will be many reasons for this which the consultant suggests will range from a view that this process is a waste of tax payers money to simply having moved on both in terms of work and life generally.

It must also be noted that the consultant is not acting under any statutory power and no-one was therefore under any legal obligation to speak with the consultant or answer her questions and as a result, after seeking legal advice, she is of the view that it is not appropriate to list within this report those people who have/have not agreed to be interviewed.

1.16. Appendix 3 to Annex A includes examples of the documentation reviewed by the consultant as part of this review, including legal judgements where appropriate and relevant. It should be noted that the documents supplied to the consultant extend to:

A. 17 x lever arch files.

B. 6 x A4 files.
C. 1 x box file.
D. Various other documents etc supplied during the right to reply process.

1.17. It must be noted that, in the consultant's opinion, although a considerable quantity of documentation was provided, it has by no means been comprehensive from the Council side (in particular DASS). During the investigation interviewees have referred the consultant to minutes of meetings and other audit trails of activity which unfortunately due to office moves, retirement and/or redundancy of various employees and poor document management have not always been forthcoming. This statement does not infer any reluctance or avoidance on the part of the Council but is rather a mere statement of fact, for it appears to the consultant that DASS did not have comprehensive document retention procedures embedded across the department. Indeed, there is some evidence to suggest that this may still be the case, although it appears that the position is improved. Comments made during meetings suggest that employees within the department may not recognise the essential nature of an audit trail, including simple issues such as documenting decisions and retaining files, taking notes of meetings etc, and of course storing these documents and electronic files so that they can be retrieved. In the consultant's opinion, this goes some way to explaining why some of the complainants, when making "Freedom of Information" (FoI) requests, did not receive the information they were seeking. This subject will be returned to later in this report.

As a consequence, the consultant has found that Mr Morton, Service Provider 3 and other complainants have very often been better able to provide documentary evidence than perhaps some of those Council employees interviewed (who were continuing with their day jobs throughout this review). This is problematic and must be noted by the reader. However, the consultant has undertaken all reasonable endeavours as a result of the Right to Reply process to reflect the many and conflicting views within the report and when forming her opinions.

To assist this understanding, and to ensure Officers who have "inherited" this position are not unfairly "damaged" by the submission of this report to the Council, Annex Q includes an anonymised list of employees mentioned in this report and highlights their period of employment. This is not necessarily an exhaustive list but should be sufficient to differentiate from those employees who are relatively recent recruits. There have also been a number of structural changes within the organisation of the Council. In particular, it should be noted that during the timescales covered by this report various responsibilities have changed including:

- Responsibility for the Payroll function moved from Finance to Human Resources in November 2008
- Reporting lines for Employee 28 to the Head of Human Resources and Organisational Development in July 2010
- Prior to August 2008 the post of Director of Law, HR and Asset Management did not exist, previously the Head of Legal and Member Services performed the role of Monitoring Officer

In particular Employee 22 has submitted the following

"*Throughout the investigation I have had to rely on my recollection of events and processes which happened up to 10 years ago. As part of the investigation I was sent 2 large ring binders about 2 organisations, Service Provider 2 and Service Provider 3, with over a hundred specific questions in each about the organisation. To do these questions justice, I estimate that approximately 200 hours would have been needed in order to give comprehensive answers, backed up by written evidence. I had to take time away from the work place to complete these questions. However, I was unable to devote anywhere near 200 hours to this process.*"

1.18. Having put into context the number of individuals interviewed during this investigation and the significant amount of documentation read, it is important to note that there are some key individuals who are no longer Council employees who have not been prepared to participate in this review. There are a number of issues that flow from this, including, but not limited to, the following:

A. The ability of the consultant to fully investigate the roles and responsibilities of the management hierarchy within DASS to whom Mr Morton first raised his concerns.
B. The ability of the consultant to verify the robustness of the statements given by Mr Morton and/or management as to the extent to which these issues were or were not addressed
C. The need to rely upon copies of documents and/or emails that have been supplied where it is possible that only partial exchanges of information were made available (NB; the consultant did seek to review ICT archives in order to verify these email trails, but the review period largely covers periods prior to the introduction of automatic archiving).
D. The inability to use the ICT archives to search for further emails/responses to emails that were provided, due to the age of the concerns and the implementation dates for archiving.

It must also be noted that during the course of this review there have been many and sometimes varied views and positions held by the various participants and often these views have been at completely opposite ends of the spectrum. The lack of conclusive evidence, and significant passage of time, together with the opposing views has led to the consultant resorting to the balance of probabilities, or being unable to determine the "truth".

1.19. In addition, within this report the consultant has made a significant number of comments about past practice, but it was not the role of this investigation to identify the position in relation to current practice for DASS. The Council has separately agreed that this should be undertaken by a peer review. Employee 21 has confirmed during the right to reply process that the issues the consultant has identified have not been resolved, and he/she is of the view that to fully address such issues will require a lengthy period. The consultant agrees with this. Employee 21 has stated, however, that improvements have been made and this will continue.

1.20. Finally, it must be noted that this is neither a disciplinary report nor a disciplinary investigation. It is a matter for the Council to determine what, if any, action it may wish to take in light of this report and its findings.

2. Acknowledgements

2.1. The consultant wishes to thank both Officers and Members of the Council for their support during this review and to those who attended interviews and provided supplementary papers. She particularly wishes to thank the following:

A. Employee 4.
B. Employee 5.
C. Employee 6.
D. Employee 3, who provided some of the initial legal advice to the consultant. Subsequently Legal Rep 5 provided the legal advice to support the consultant in the production of the report.
E. Employee 7, for making his staff available to support this process.
F. Employee 21 for providing support to the consultant's requests for provision of information.

Employee 8 deserves a particular vote of thanks as she has been seconded to this review for almost its full duration and has operated in an independent and professional manner throughout, whilst ensuring that the confidentiality of the review was maintained at all times.

3. Background

3.1. It may be useful to have regard to the context in which DASS was operating during the period of time covered by the concerns raised by the whistle-blower. An analysis of papers reported to committees prepared by the Council's committee services section for the consultant is set out below to assist the reader:

A. An inspection [of Social Services] was undertaken in January 1999 and Special Measures were applied in December 1999. The period in Special Measures was 1999 – 2002. Although Special Measures was not reported to Committee as an item, inspections were reported to Social Services Committee.

Social Services Committee 09/09/1998 - Implications of National reviews and Policy Developments for Social Services Departments

B. The Director of Social Services reported on three key papers which had significant implications for ways in which Social Services Departments operated. The report also made a number of recommendations based on recent Social Services Inspectorate inspections and indicated how Social Services Departments could deliver new Government policies.

Social Services Committee 21/07/1999 – S.S.I report on The Inspection of the Registration and Inspection Unit of Wirral Social Services Department – January 1999

C. The Committee gave consideration to the recently published S.S.I report which had been prepared following an inspection of the Council's Registration and Inspection Unit carried out in January 1999.

Social Services Committee 01/02/2000 – Best Value & Performance Assessment Framework

D. The Director of Social Services reported on the progress to date in relation to best value fundamental service reviews and the performance assessment framework.

Social Services Committee 19/06/2000 – Performance Management

E. The Director of Social Services reported on the Department of Health's current approach to the appraisal of Social Services departments' progress in meeting national priorities and their performance in delivering continuous improvement.

3.2. It should also be noted that until April 2006 the Children's and Adults Social Services departments were combined and under a single Director and this was known as the Social Services Department. From 1 April 2006 however, the Children and Young People's Department came into effect and as a result the Department of Adult Social Services was also created. This will have caused disruption possibly compounding the problems already apparent in the Department with staff and budgets moving etc.

The consultant has not distinguished this change in the department elsewhere in this report and refers generically to DASS or Social Services.

The consultant has not sought to verify the levels of improvement being reported by external bodies during the period of the review, but she has been advised that at least during Employee 11's tenure this was the case.

4. Methodology Used for the Review

4.1. The methodology used by the consultant is set out below. It should be noted that members of staff (both past and present) and other interviewees were reluctant to participate in the investigation unless the consultant could provide assurances that their contributions would remain anonymous. On that basis the notes of each meeting are not included in the report, and the individuals involved have not been named in the report. It was also necessary to reassure interviewees that the consultant would maintain strict confidentiality concerning the details of the allegations and the investigation into them. The interviewees all confirmed that they too would comply with these terms of engagement.

4.2. In relation to a specific question raised by an interviewee about the possibility of a Freedom of Information (FOI) Act request being made to obtain the interview notes that were prepared by Employee 8, the consultant advised, after consulting with Employee 2, that the Council would vigorously defend any such request. This advice was provided because it was and is Employee 2's opinion that the FoI Act exemption relating to investigations conducted by public authorities is likely to apply, subject to the public interest test being considered.

4.3. Employee 2 further advised that in relation to the public interest test there is an important principle at stake here.

4.4. *The consultant had been commissioned to undertake an independent investigation into issues that stretch back to 1997 and which have been the*

subject of DASS and corporate enquiries since at least 2007. It is critical to the robustness of the investigation that the consultant has access to all available evidence. If the witnesses interviewed are inhibited by concerns of possible repercussions the consultant's enquiries would have been frustrated. Given the history of this matter – a whistleblower leaving his job under a compromise agreement, then subsequently having his concerns about unlawful charging vindicated - it is likely that witnesses may have a number of possible motives for being hesitant about engaging with the investigation. In these circumstances, it seems reasonable that all interviews are conducted under terms of strict confidentiality.

4.5. Employee 2 concludes that, *"If your interview notes are disclosed under a FoI request it would be likely to inhibit future independent investigations, not just in Wirral, but by any local authority in the United Kingdom."*

4.6. During the course of the investigation however, the consultant has been able to review emails and other documents that have been provided by Employee 2 and other interviewees, and review files held across the Council. To illustrate the issues, discussions, concerns and elapsed time in implementing actions/reaching resolutions, the consultant has found it necessary to quote from these emails in the body of her report and include as appendices to the report a selection of these documents which she has concluded best illustrate the issues raised by Mr Morton. This does not mean that she has taken all of their content i.e. the issues being raised as factual unless, during interviews, searching Council files etc. further information was provided to corroborate their content. The reader is asked to bear this in mind when reading the report.

4.7. It must be noted that this Report has been prepared in the context of a non-statutory inquiry. As a result there has been no ability to compel witnesses to give evidence. Instead, steps have been taken to avoid any conflict between assurances provided to interviewees concerning privacy and confidentiality and the Council's intention to publish the report. The Council has confirmed that it will only publish an anonymised Report and as a result the final report was anonymised before submission to the Council. Where appropriate and necessary, names and details have been removed from the Report including the names of people who sent emails, drafted reports or attended meetings. Separately and in compliance with the rules of natural justice, any party that has received apparent criticism within the Report has been sent the relevant sections of the Report prior to its finalisation in order that such parties are given a right to reply. The consultant has considered any responses received during that right to reply process before finalising the report. It was necessary for some sections of the report to be sent out to those parties being criticised without the report having been anonymised, in order that the recipients could fully consider the context of the criticisms being made against them and respond. Such sections were sent out under strict terms of confidentiality.

4.8. The report does, where it is judged relevant to do so, contain comments or criticisms of third parties obtained from documentation reviewed or from speaking with witnesses. It should be stressed in this context that the consultant has carried out an internal review within the Council based on evidence made available from within the Council and has not spoken with these external third parties unless they made contact with her as part of the right to reply process. The criticisms and comments recorded therefore reflect the views identified from documentation or expressed to the consultant from within the Council and are

not the views of the consultant and the consultant does not seek to reach any conclusions in relation to them other than in the context of the Council's dealings with them. The consultant has simply reported the evidence she has identified. Nonetheless, such third parties have been presented with a copy of the relevant sections of the report in order to be provided with a right to reply to criticisms prior to the report being concluded, and where they have chosen to comment account has been taken of those comments. In a minor number of cases there were refusals to participate or the provider was no longer in business.

4.9. The consultant adopted the following methodology throughout the review process:

A. Ascertained the facts of Martin Morton's allegations by reference to the core documents available, reports submitted by Mr Morton and Complainant 3 together with supporting emails and other documentation they and others have made available.
B. Interviewed appropriate people, where they consented to participate. Either Employee 8, Employee 5 or Miscellaneous 12 (from AKA) were present at each of these meetings as note taker. In each case the note taker then prepared a draft note of each of the interviews, which was shared with the consultant and each interviewee for agreement as an accurate record of the meeting. In most cases this was achieved – see later.
C. The consultant established her findings based on these agreed statements or alternatively on subsequent submissions, documents, emails etc.
D. Employee 5 and Employee 8 undertook searches of hard copy files held in legal services and Supporting People.
E. Employee 5 and Employee 8 undertook searches of files in DASS and reviewed archived files for further information.
F. Employee 8 contacted the IT Section to determine whether the archives would provide access to the full email trail of certain emails submitted – to no avail.
G. The consultant used the above to draw her conclusions.
H. Recommendations were then made based on those conclusions.
I. A preliminary draft review report was prepared setting out the outcome of the above review and shared with an agreed number of Councillors and Council Officers on a strictly confidential basis to enable comments.
J. The "Right to Reply" process was undertaken.
K. The consultant considered the "Right to Reply" submissions and where appropriate and consent was given shared relevant sections with relevant parties. Where consent was not given the consultant drafted questions for consideration by relevant parties.
L. A copy of the complete anonymised review report was sent to Employee 2 for consideration.

4.10. Sources of Allegations

4.10.1. The range and nature of Martin Morton's allegations, as they were presented initially to senior managers at DASS and then to the Appeals Subcommittee, are wide, complex and varied. Miscellaneous 8 has investigated and separately

reported upon the accusations of bullying and abuse of power as they relate to Mr Morton. The sources of these original allegations (it should be noted that Mr Morton has subsequently made further allegations) are to be found principally in the following documents:

A. Martin Morton's original grievance complaint submitted to DASS on 18 September 2006.
B. The notes of the informal problem solving meetings set up to discuss Martin Morton's original grievance held between 6 to 28 November and 18 December 2006, and a formal grievance hearing held on 5 February 2007.
C. Martin Morton's 10 questions submitted as requested to DASS on 17 January 2007.
D. Martin Morton's written submissions to the Appeals Subcommittee set up to hear his *grievance* and held on 23 May 2007 and 2 July 2007, i.e. Martin Morton's 'bundle of papers' and his written presentation.
E. Notes of the Appeals Subcommittee meetings as above held on 23 May and 2 July 2007.
F. Correspondence between officers, e.g. DASS/Corporate HR and Martin Morton in the period following his grievance appeal hearings.
G. The notes of an informal problem solving meeting set up to consider Martin Morton's subsequent grievance complaint held on 28 November 2007 and a formal grievance hearing held on 20 February 2008.
H. The notes of the consultant's discussions with Martin Morton.
I. Martin Morton's paper entitled "Independent Review – Service Provider 3".
J. Martin Morton's paper entitled "Independent Review – Service Provider 2".
K. Martin Morton's paper entitled "IR Options".
L. Martin Morton's paper entitled "Independent Review – OS context".
M. Various email exchanges with Martin Morton.
N. Complainant 3's submissions entitled "Inland Revenue 1, Inland Revenue 2, Inland Revenue Intelligence, Safeguarding Referral, The Chief Constable".
O. Complainant 1's email correspondence to the consultant, containing a letter from the Equalities and Human Rights Commission regarding alleged breaches of the Disability Discrimination Act (see Annex B).

5. The Key Issues for the Review

5.1. The following paragraphs summarise the consultant's interpretation of the key issues that have been raised with the consultant as part of her review. These issues comprise Mr Morton's concerns and those of other concerned parties:

A. With regard to the charging policy applied in West Wirral (the 3 Moreton properties):

   i. Was the charging policy in place at the time (the 1997 policy) legal?
   ii. Was the charging policy within Social Care transparent and applied consistently?
   iii. If the application of the 1997 policy is determined to have been inconsistently applied, has this resulted in the Council acting in a discriminatory manner?
   iv. Whether the application of the 1997 charging policy left vulnerable adults in financial hardship.
   v. Whether the Council has the legal power to retrospectively apply a different, albeit lower, level of charges to the group of vulnerable adults

in West Wirral. If it does have the legal power, was the use of this legal power discriminatory in nature?

vi. In consideration of all the above, has the Council breached the requirements of the Disability Discrimination Act 1997 – 2005?

B. An estimation of the income foregone to the Council as a result of DASS' failure to roll out the 1997 charging policy.

C. Whether the charging policy in place in West Wirral set the tone by which some external providers set their charging policies.

D. Whether Council Officers knew that the Council charging policy in West Wirral did not comply with Fairer Charging, and if they did, why they did not resolve the issue in a shorter period of time. Whether this was reported to Members in a clear and transparent manner.

E. Whether the level of reimbursements made to current and previous residents of the 3 West Wirral properties have been calculated correctly, and why the Council did not include an element of 'interest' in the calculation. Whether the schedules provided by Wirral Council are sufficient for tenants or their advocates to agree the amounts that are being reimbursed.

F. Whether the Council contacted the Office of the Public Guardian and in what regard.

G. Whether in the case of Relative 1 and his/her sibling, Service User 1, the Council attempted to circumvent the involvement of family members in the West Wirral reimbursement process.

H. Whether the Council recognises that DASS should have assessed the need for support/advocacy for the vulnerable adults before they allowed DASS to sign the original tenancy agreements and support arrangements.

I. How Miscellaneous 21 was appointed to act as advocates for service users affected by the reimbursement processes and whether the prior relationship with the Council has caused any concern in terms of conflict of interest. Also, the date upon which the advocacy support was actually commissioned in practice and the length of delay between the Cabinet decision and implementation.

J. Why the Council has not funded independent legal advice for the service users affected by the reimbursement processes. What was the 'brief' given to Legal Rep 6 Solicitors in relation to the reimbursement process? Did the Council seek to explain to any of the family members that in many cases they would not be able to secure Legal Aid for independent legal advice because they, as family members, had not been appointed as the Deputy by the Office of the Public Guardian?

K. Whether Service Provider 1 / Service Provider 2 and perhaps other organisations were singled out during the procurement (accreditation) process and whether as a result inconsistent evaluation of tenders occurred. Whether any motive for the manner in which the tender evaluation was undertaken can be established.

L. If the above is not proven, whether there was sufficient evidence available to the evaluation team to justify not continuing with providers of learning disabilities and mental health services against whom significant concerns had been raised etc.

M. To determine what tenants at Balls Road were charged for and the basis of this charge.

N. The extent to which the complaints raised by Mr Morton and others in relation to Service Provider 1, Service Provider 2 and others were acted upon (in particular Adult Protection concerns) and whether there is evidence to suggest Mr Morton's concerns were legitimate

O. Whether in the case of Service User 2 the Council acted properly when it investigated a complaint from Complainant 3 on his/her behalf relating to the cessation of 'top-up' support.

P. Whether Internal Audit have acted professionally and with integrity when undertaking the investigatory work supporting the review of the whistle-blowing claims made under the Public Interest Disclosure Act within the confines of the terms of reference and time available. This includes an assessment of the quality of the work undertaken which supported the findings reported to Cabinet.

Q. Whether the manner in which the minutes of Audit and Risk Management Committees and other formal Council meetings truly reflect the discussions of the meetings and are compiled in accordance with best practice.

R. A consideration of the First Improvement Plan (see Annex C), which had been developed in response to the CQC Inspector's Report (see Annex D).

S. The circumstances leading to the significant and protracted delays in making the outstanding payment to HMRC associated with Mr Morton's compromise payment.

T. In respect of where things 'went wrong' an assessment as to whether conspiracy or poor management/mistakes/negligence were the underlying cause. If poor management' is deemed to be the general theme an assessment as to whether such continued mistakes lead to any concerns about Corporate Governance, Capacity, Capability etc.

U. The conduct and culpability of individual officers in any and all aspects of the above issues.

V. It must be noted that the consultant has not investigated the outcome of the disciplinary processes, nor has she investigated the allegations of bullying as they relate to Mr Morton as this has been investigated separately by Miscellaneous 8.

5.2. Mr Morton also asked the consultant to consider the issues relating to referrals to the General Social Care Council, Chartered Institute of Public Finance and Accountancy etc. in relation to past and present employees. Having considered this carefully and taken advice from Council Officers, the consultant believes this does not fall within her terms of reference and would more appropriately need to

be considered by the Council on receipt of this report. In addition, questions have been raised with the consultant as to the delays and errors made by the Council in respect of the standards complaints. These issues clearly fall outside of the terms of reference of this review and have been considered by Standards for England.

6. Findings

6.1. Before addressing the findings of the review in detail, the consultant wishes the following points to be noted:

A. A significant amount of concern has been caused by this review. Many individuals from DASS have been reluctant to come forward for fear of reprisal; some have even sighted the impact upon Mr Morton's career and life more generally as something that might happen to them if they were to speak out against management. This is something that must be addressed if Wirral is to achieve its true potential as a place shaper and commissioner of local high quality services.

B. Some Council employees are still aggrieved by the lack of action on the part of DASS management both in middle and senior management roles during the period covered by this review, but in particular 1997 - 2008. This stems from their concerns for vulnerable adults, which they believe were unheard by DASS senior management. Such is the concern of some of these individuals that they now believe they failed these vulnerable adults because they did not follow a whistle-blowing route. This concern from some highly regarded and long standing employees needs to be rectified as a matter of priority.

[N.B. Points A and B above are findings identified early on in this review and have not been re-verified. It could be that, with Employee 21's leadership and the support of other senior colleagues, progress has been made in this area.]

C. All of the conclusions that follow have been developed in the absence of any ability to question many of the senior leaders and middle managers who have either retired or moved on to new roles. This has been a serious weakness in the process and, therefore, the consultant has had to rely upon the statements of those who were prepared to participate and documentation that was made available to her which, as previously stated whilst copious is less than comprehensive in all regards.

6.2. The Charging Policy in West Wirral

6.2.1. The key questions for this element of the consultant's investigations were as follows:

A. Was the charging policy in place at the time legal?
B. Was it morally appropriate for the Council to have singled out West Wirral service users for charges when others were not assessed?
C. Did the charge leave vulnerable adults in financial hardship?
D. Was it morally appropriate for the council to have retrospectively applied a different, albeit lower, level of charges to this group?
E. Was it legal to do the above given Employee 2's comments regarding retrospective charging?
F. Did the Council lose significant income by not applying the charge across all relevant properties?

6.2.2. During the course of her investigations the consultant has sought to determine who authorised the charges for the properties in West Wirral. As she understands the background, the Council took a decision to close Esher House (as it would have failed to meet the required standards for ongoing registration as a residential home) and as a result placed many of the residents in supported living establishments. The move to supported living establishments was in line with Government policy at the time and many other councils would have been seeking to place adults with learning disabilities in environments where they could develop more independence and control over their own lives. Accepting that this move from residential homes to more independent living would require assistance, the Council's Social Services Department would, where the individual met the criteria contained within the Department of Health's guidance "Fair Access to Care" (FAC), commission a "support package" from either the Council's in-house provider or an external organisation. All of the ex-residents of Esher House would have qualified under Fair Access to Care for a support package because in effect they had 'pre-qualified', having been transferred from residential accommodation to supported living.

6.2.3. Paperwork (a PB11) should have been completed to support the move of each of the individuals, probably by the staff at Esher House, which notified the DASS finance team to stop charges in Esher House and raise new charges for residents in their new accommodation in West Wirral. Despite requests, copies of the PB11's could not be found.

6.2.4. This was a time of significant change, however, as Mr Morton, who until this time had been the manager for Esher House, was seconded to work on a specific project in the 'centre' of Adult Social Care – supported living development. As a result two colleagues were asked to take on the day to day running of Esher House and some of the start-up activities for the properties in West Wirral.

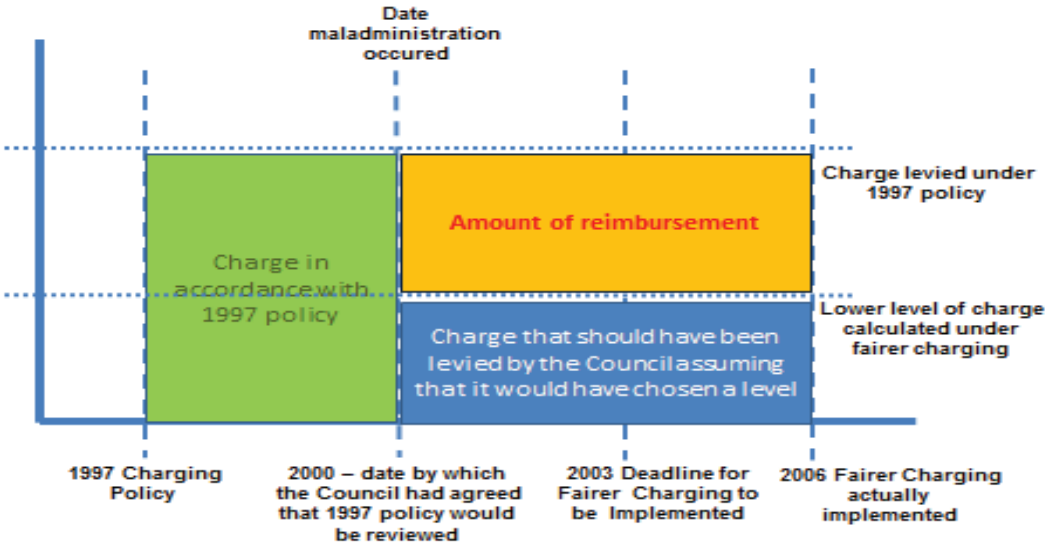
6.2.5. Whilst the Mental Capacity Act 2005 was not yet on the statute books, it should have been normal practice for the Adult Social Care team to consider whether or not the persons proposed for transfer had the capacity (ability) to understand the ramifications of their each taking on a tenancy agreement. No evidence of such assessments has been forthcoming during the course of this review, although one of the acting managers recollects that they were not undertaken. Nevertheless, it is the opinion of the consultant that this was a flaw in the process.

6.2.6. The consultant has found no evidence to contradict the position outlined by Employee 2 in so far as the Council minute book confirms that on 3 September 1997 the Council approved the policy used to charge the residents at the 3 West Wirral properties. As such, Officers were legally permitted to implement charges in accordance with the policy from 1997 for all Supported Living establishments where placements under FAC were made by DASS.

6.2.7. In hindsight however, the Council needs to ask whether it was appropriate to charge one group of service users in supported living environments for 'support' services provided by the in-house team, when others were not charged or were charged different amounts, e.g. Balls Road and Fellowship House (NB this issue is developed further at paragraph 6.2.14 below; see also Annexes E and F).

6.2.8. The next question is the date from which charges under the 1997 policy should cease.

6.2.9. Employee 2 has concluded that the reimbursements should be made from 2000. Employee 2 makes this judgement because the Council could quite properly have continued to charge under the 1997 policy until such time as it was required to comply with the Fairer Charging Guidance which took effect from 1 April 2003, but for the fact that the Council had when approving the 1997 Policy also agreed to review the Charging policy by 2000. This review of the 1997 policy did not take place, therefore should the matter have been investigated by the Local Government Ombudsman there would quite legitimately have been a finding of maladministration. Employee 2's view was that if the Local Government Ombudsman had been involved, he/she would have instructed the Council to reimburse the difference between the actual charge levied and that due under the Council's policy at that time. Unfortunately the Council did not gain approval and implement an alternative charging regime until it implemented Fairer Charging and therefore the reimbursement calculation was the difference between the charges levied under the 1997 policy and those (lesser charges) levied under the Fairer Charging regime. This thought process is summarised in the following diagram:



6.2.10. Whilst the above position is a reasonable one, it did not explicitly consider the issue of whether the application of legislation restricted the ability of the Council to retrospectively charge social care clients for charges. By way of example, a care worker may arrange for a package of care to be implemented immediately, but for whatever reason the paperwork which raises the need for a financial assessment to be undertaken, and therefore a charge levied, is delayed and does not arrive with the relevant team for 4 weeks. Under these circumstances the Council is then precluded from recovering the charge for the 4 week period of delay.

6.2.11. Mr Morton and others suggest that the reimbursement scenario outlined above is a similar situation where the "no backdating" rule should be applied.

6.2.12. Having put this point to Employee 2 he has given the situation further consideration:

"I confirm that I have considered further the question of the legality of the Council's charging arrangements at the three Moreton properties in Bermuda Road, Curlew Way and Edgehill Road.

The Policy was approved by Social Service Committee in 1997 and, to my knowledge, was never subject to any legal challenge. It is my understanding that from its introduction the level of charging was at the high end of the spectrum, when compared with other local authorities, and I am not aware of any council charging at a higher level. However, being the highest charging authority does not automatically mean that the Policy was unlawful: some council has to be the highest charging.

The Policy was not applied consistently. As has been reported to Audit and Risk Management Committee, whilst the Policy was applied at the properties in Moreton, large numbers of other service users were not assessed for charging, let alone subject to charging in line with the Policy. I have not seen any evidence to suggest that this inconsistency arose deliberately (or amounted to discrimination against the vulnerable service users). In my judgement it was symptomatic of a Department in disarray; it was incompetent.

With the benefit of hindsight, it is clear that the Policy was crude and had no obvious regard to individuals' personal needs, or their personal financial position.

It is also clear that, by 2000, the Council recognised that the policy needed reviewing (although it clearly failed to do so). This failure to review the Policy has (rightly) been accepted as maladministration by the Council.

The proper remedy for maladministration is to place the victims in the position they would have been in but for the Council's failure/s. In this case, what would their position have been IF, in 2000, the Council HAD reviewed the 1997 policy? That is a hypothetical exercise and, ultimately a matter of opinion. In my opinion when advising Members in 2009, it was appropriate to assume that charging levels would have fallen. How far they would have fallen is a further matter of opinion.

As the post 2006 charging arrangements under Fairer Charging are generally accepted to be, as the name suggests, 'fair', that again seemed a reasonable benchmark of reasonableness. I still stand by that judgement call. As part of

that thought process I also had regard to the Council's fiduciary duty to all Council tax payers. I remain of the view that that is reasonable.

I emphasise that these views as to the appropriate remedy for maladministration are judgemental in nature, and I accept that other, equally reasonable, people may take a different position. However, having reflected on matters, I still consider the advice I gave in 2009 was appropriate."

Whilst the consultant does not disagree with the logic of Employee 2's analysis, she would ask the Council to consider whether this position is fair given that it was just these 3 Council run supported living properties where this policy was applied. It is her view that it is not and that further reimbursements should be made to pay back all charges levied from 1997.

However, the payment of further reimbursements will directly impact upon (reduce or in some instances negate) the benefits received by these individuals and, the consultant believes that the Council should seek external legal advice as to whether there is a mechanism by which an imaginative solution might be sought, to minimise the impact upon benefits receivable.

6.2.13. To address any of the remaining questions, it is important to set out the information that has come to light during the course of this investigation.

6.2.14. Appendix 4 to Annex A sets out details of the Internal Audit reviews undertaken across many of the DASS establishments run internally over the period 1994 to 2006. There is a consistent theme flowing throughout these reports relating to the charging regimes, in that Internal Audit believed that there was an absence of approvals from Members in relation to the charges levied. Two extracts from these reviews are reproduced below as examples:

Fellowship House

Date of Review	Recommendations Made
19/12/94	• Financial assessments should be undertaken for clients at this establishment.
19/09/96	• A review of charges is required This was raised at the last audit dated 19/12/94 which also requested financial information concerning financial assessment for this type of client.
12/11/97	• The Charging Policy should be reviewed and presented to Committee for approval. (reported by IA in most reports since 1989 the latest dated 4 October 1996 and 19 December 1994 – The Action Plan dated 8 December 1996 indicated that it was currently under review) • Residents should be financially assessed to complement the review of the Charging Policy and maintain equity across groups and income maximisation. (Please see my Memorandum dated 19 December 1994 and 24 January 1995 and your reply dated 13 January 1995) • A register of Residents detailing their payments for rent, food and fuel should be reinstated and maintained. (This was reported following the audit on 24 November 1989 and reiterated at the

	audit in February 1992) The charges made to clients, i.e. the contribution of £25.00 made weekly by the residents for food and fuel, have not been reviewed for some considerable time. This has been reported by Internal Audit in most reports since 1989, the latest being 4/10/96 and 19/12/94.
9/12/98	• The Charging Policy in relation to the weekly contribution made by the residents for food and fuel should be reviewed and presented to Committee for agreement. • The residents of the unit should be financially assessed in line with other residential units to ensure that contributions to the running costs of the unit are maximised.
25/09/01	• Within the review of the contribution paid by clients a clear policy should be included for when clients should be charged.
30/07/02	• The Charging Policy for Residential Accommodation at fellowship House and other similar establishments should be reviewed and agreed in accordance with the Authority's Constitution. • A Financial Assessment of each resident at Fellowship House should be undertaken and assessed charge implemented to ensure the correct income due to the authority is received. It should be noted that this matter was first reported in 1989 and in subsequent audit reports over the past thirteen years (the potential loss of income to the Authority from residents at Fellowship House could exceed £7,500 per annum).
10/08/04	• The Charge Policy for residential accommodation at Fellowship House should be reviewed and agreed in accordance with the Authority's Constitution. Audit should be informed when the review has been completed. This has been reported in previous reports, but had not been actioned at the time of the audit. However, Employee 10 has informed that the implementation of a policy is currently in progress. We intend to follow up this action later in 2004
16/02/05	Follow-up Audit of report dated 10/08/04 • It was noted that the Charging Policy was currently under review – The Manager should contact Headquarters to ascertain the current situation of the review and inform audit when the review has been completed.
01/08/06	• The £25 'food and fuel' charge should be reviewed and approved in accordance with the Authority's Constitution. Internal Audit should be informed when the review has been completed. • It should be ensured that a re-assessment is undertaken through Adult Social Services H.Q. and that service users are charged in accordance with the approved charging policy. This charge has not been approved and has not been reviewed for a number of years – it has been reported at each audit since 7/12/94

Balls Road

Date of Review	Recommendations Made
10/02/98	• The Establishment should obtain and apply an up to date Charging Policy for the clients' contribution to their rent. Changes to the Charging Policy should be presented to Committee for approval. • Register of Residents detailing their rent payments and balances should be drawn up and maintained. This would provide a management trail and ensure that all clients are paying their rent regularly.
11/08/99	• The charging policy in relation to the weekly contributions should be formally approved by Committee.
06/08/02	• The Charge Policy should be reviewed and approved in accordance with the Authority's Constitution. The charges at other similar establishments should be included in the review to ensure consistency. • The weekly accommodation charge of £35 per week should be collected from tenants each week. Consideration should be given to calculating and collecting the outstanding amounts from each tenant. There appears to be an inconsistency between the charges made at this unit and those charged at Fellowship House, which was also the subject of a recent routine internal audit visit.

Employee 4 has advised as part of the right to reply process that, he would have discussed these audits with the Chief Internal Auditor as part of the audit review process. No evidence has been supplied to confirm this. He is unaware as to whether either of these reports were raised with the then Assistant Director of Finance by the then Chief Internal Auditor.

6.2.15. It is, therefore, imperative that the Council verifies the legal position in relation to the charges levied at other in-house supported living environments as soon as is practicably possible. They do not appear to have complied with the 1997 policy, nor is there any evidence (based upon the internal audit recommendations above) that the charges raised were legal in the sense that they were based upon any Member approval.

6.2.16. In the light of the outcome of 3.2.19 the Council should reconsider its position in relation to the date for reimbursement of charges levied at the 3 West Wirral properties, for there would appear to be a lack of natural justice if these 3 properties were to be the only in-house supported living properties where, due to Mr Morton's diligence, the 1997 charges were implemented in accordance with Council policy.

Conclusions

6.2.17. Was the charging policy within Social Care transparent and applied consistently?

Employee 2 has advised as follows:

"*If "transparent" is interpreted as "not secret", then the policy was approved at a meeting of the Social Services Committee, which considered the matter in public. However, if "transparent" is interpreted more in the sense of "fair", then the inflexibility of the policy and the high level of charging lead me to believe that the policy, with the benefit of hindsight, can be criticised for lack of transparency.*

Second, the question has been raised as to whether the charging policy was "applied consistently". The answer, unequivocally, is that it was not applied consistently. As has been reported to Audit and Risk Management Committee, it is quite apparent that whilst the 1997 Policy was applied at three properties in Moreton, large numbers of other service users were not even assessed for charging; let alone subject to charging in line with the 1997 Policy."

The consultant agrees with Employee 2's assessment.

6.2.18. The consultant has not seen any evidence that proves that this inconsistency arose deliberately. As explained later in this report, the consultant believes that the fundamental flaw arose when having set a charging policy for Supported Living (in 1997), DASS failed to recognise that a) it needed to roll this out across all internal and externally provided services and financially assess the service users accordingly, and b) it needed to use this charging policy as the basis upon which it changed its contractual relationship with providers such that all funding discussions were directed at the Council via HB (for rent), Supporting People Grant/Transitional Housing Benefit (for low level housing support) and DASS for funding of support arising from CCAs.

If this had been effected correctly, direct tenant charges or "top ups" would have been less likely to occur in privately run establishments (provided CCAs had been undertaken by DASS and therefore clients were in receipt of DASS rather than just Supporting People funding) and, the claims of financial abuse would, in the consultant's opinion, have been reduced.

6.2.19. In relation to Balls Road and other similar properties, the consultant has not within the time available been able to categorically conclude the nature of the charges here. Whilst originally described as "rent" Employee 64 has confirmed in a letter to Members that the charge was not rent (for this was covered by HB) and was for the recovery of other costs. The consultant is unclear as to whether what is being described amounts to a "service charge" and she believes that there are specific requirements that need to be adhered to in order to be able to raise such a charge, including an audit trail of the make-up of the charge and of course approval to raise the charge. DASS officers could not provide the latter as it appears to be a long standing charge. The issue here is that Employee 2 has advised that in a previous scheme of delegation Chief Officers had delegated authority to set fees and charges and therefore, if this were to be the case, it is entirely possible that the charges were approved and the records lost. If this were the case however, why did the Internal Audit reports go unchallenged, and where is the audit trail with calculations to support this charge being levied?

6.2.20. The consultant has been advised that certain managers at Balls Road asked questions as to why the service users were being charged "rent" when they were in receipt of Housing Benefits and the consultant therefore believes that the confusion about these charges was known to some DASS officers before being brought to Members' attention.

6.2.21. The consultant is of the view that the Council must determine whether this charge and other similar charges have any validity in law as a matter of urgency.

6.2.22. Further, the consultant believes that the Council should favourably consider the issue of further reimbursements together with interest upon those reimbursements as set out in her findings above and, seek external legal advice as to whether there is any opportunity to minimise the impact upon the clients level of benefits received.

6.3. Whether the Implementation of the Charging Policy in West Wirral Led to the Financial Hardship of Service Users

6.3.1. The consultant has sought to investigate the matter of financial hardship by interviewing two of the managers of the West Wirral properties during this period. Unfortunately there appeared to the consultant to be a difference of opinion, because one of the interviewees gave a statement to the effect that the service users in West Wirral were, comparatively speaking, better off. He went on to say that applications made on behalf of the service users to the Independent Living Fund were not necessarily as a result of hardship but, more likely, an act on the part of the care manager to maximise disposable income of the service users.

6.3.2. As a result the consultant decided to use the level of savings held by the service users as a proxy test for hardship, and asked the Council to identify the level of savings available to each service user prior to leaving Esher House and after moving to the respective property in West Wirral. This analysis has been set out in Appendix 5 to Annex A.

6.3.3. As can be seen from this table, if it is accepted that the level of savings available to each service user is deemed to be a fair proxy for financial hardship, then there is no evidence to prove this allegation.

Conclusions

6.3.4. Based upon the proxy test for financial hardship set out above the consultant does not believe that the application of the 1997 charging policy left vulnerable adults in financial hardship. The consultant does believe, however, that this should have been identified as a potential risk; there should have been a risk assessment presented to the Committee at the same time as the proposed policy and thereafter there should have been an assessment of the situation in practice and an evaluation as to the impact of the policy at an early stage after its introduction. The consultant has seen no evidence to indicate that such a review took place prior to the work that eventually (and very belatedly) led to the introduction of Fairer Charging in Wirral in 2006. This issue fundamentally links to the weaknesses in corporate governance mentioned in this report and in the separate supplementary report.

6.4. Income Foregone

6.4.1. Mr Morton has alleged that as a consequence of the Council not rolling out its 1997 charging policy DASS and the Council has foregone or lost a significant level of income.

6.4.2. The consultant, agreeing that this must be the case, commissioned an exercise via Employee 7 to estimate this income foregone. Appendix 6 to Annex A sets out this calculation and the underpinning assumptions.

6.4.3. It should be noted that this is only an estimate and must have a number of caveats, or "health warnings" attached, for due to the passage of time the ability to calculate this income forgone with any accuracy is problematic to say the least.

Conclusion

6.4.4. Mr Morton was correct to highlight that the Council had lost a significant amount of income, which the calculation outlined at Appendix 6 suggests could be almost £3.3 million.

6.5. The Role of the Committee Services Section in Following-Up Implementation of Decisions

6.5.1. Whilst not a specific allegation, it is important to consider the role of the committee clerk in following up the implementation of decisions. Page 287 of Knowles on Local Authority Meetings (a Manual of Law and Practice) includes the following:

"12.50 It is ordinarily the committee clerk's responsibility to see that committee decisions are implemented either by ensuring that the appropriate officer is advised of the action to be taken or by himself performing certain of the executive work. Reference has already been made to the importance of taking urgent executive action immediately after a committee meeting and to the practice of some authorities in circulating an action sheet (see 12.2 and Chapter 7). On many items, however, action will need to be delayed until the committee's recommendation has been accepted by the council or, prudently until the minute has been written up.
12.51 Practice varies widely in this respect. In some case a memorandum is circulated to chief officers indicating the action that is expected of them; in other it is well established that officers will automatically take action on the minutes as soon as they are promulgated and on the basis, say, of any action sheet already circulated. The latter is probably the ideal situation, provided the committee clerk chases those items that may be required.
12.52 It is not usual for the committee clerk to go to the length of satisfying himself that a particular chief officer has done what is expected of him. Most officers do not appear to think that the arrangements for ensuring that action is taken on council and committee minutes constitute a problem."

6.5.2. During discussions with colleagues from Internal Audit and Supporting People (to name but two sections), the consultant has become aware that, perhaps, concerns about the ability of Adult Social Care to improve its services to its client group were not progressing as one might have expected during the period under review. One would have expected, therefore, that the Committee Services section would have considered it necessary to undertake some form of check (in conjunction with Internal Audit if necessary), to ensure good governance in the form of implementation of committee decisions and/or the application of the Council's constitution.

Please also refer to paragraphs 6.6.21 and 6.6.22.

Conclusion

6.5.3. Given the weaknesses in the corporate governance environment within the Council identified in this report, it is essential that the role, function, structure, skills and capacity of the Committee Services Section is reviewed to enable the adoption of best practice and support to the Council's improvement agenda.

6.6. The Role of Internal Audit

6.6.1. Whilst the Internal Audit section (part of the Finance Department) should be commended for spotting and raising the issues outlined in 6.2.14, one must reflect upon two key questions:

A. Why was this not acted upon at the highest levels of DASS management?
B. Why did the Internal Audit section and Chief Internal Auditor not raise such important matters at the highest levels, including Director of Finance (who is also the Council's Statutory Finance Officer), Chief Executive and Leader of the Council, as set out in CIPFA guidance?

During the right to reply process Employee 4 stated that from when he joined Wirral in 1998 and for a long time afterwards, possibly into the late 1990's, a copy of each audit report was placed into a basket for the Assistant Director of Finance and he had assumed that the Assistant Director would have briefed the Director on the issues in Social Services/DASS. He is unaware of whether issues/reports of importance were differentiated in any way or whether important issues were discussed with the Assistant Director of Finance. Both members of staff have been retired for many years and were not approached by the consultant as a result of the right to reply process.

This question was put to Employee 7, who explained that at the time he joined Wirral in 1984 Mr David Spenser was the interim Deputy Director responsible for Audit and Technical services in Finance and it would have been he who looked through this basket. Employee 7 believed Mr Spenser to be a very good officer and does not recall him ever raising any concerns regarding charging issues in social services as a result of any document left in this basket.

In addition Employee 7 explained that by circa 1997 the department had grown significantly with many documents being issued electronically, without prior approval and that there was no longer a full record of documents being placed in the basket and indeed there was no time to read what was being placed in there, which resulted in the process being scrapped.

Employee 16 joined the authority in 2001 and by this time the "basket" had been dispensed with.

However, as the consultant has been advised that the Internal Audit section produces/has produced circa 300 reports per annum it would seem to the consultant to be unrealistic to assume that placing a document in a basket would be sufficient to escalate a concern and ensure it was being dealt with.

6.6.2. During the course of the investigation no clear answers in relation to 6.6.1.A. above were forthcoming, because as mentioned above many of the senior managers were unavailable due to change of employment, retirement etc. As will be illustrated later however, the Internal Audit section was given some assurances that recommendations would be implemented.

6.6.3. The Internal Audit section was raising, and continued to raise, very serious matters relating to charging, Member authority for the charge and, most fundamentally, the legal basis of the charge during the employment of circa 3 different Directors of Adult Social Services. Employee 7 has advised that he was not made aware of all of these reports until the consultant's review was

underway and indeed issues relating to charging in DASS were not raised with him until the PIDA review.

6.6.4. Between 1989 and some time prior to 2005 (from when the consultant has been given an email showing that Employee 81 was responsible) there is no evidence to suggest that Adult Social Care employed the use of any central register of at least the high risk audit recommendations to be addressed, nor whether these high risk areas were discussed during senior management meetings and one to one supervision meetings. What is clear is that the recommendations were not acted upon.

6.6.5. During the course of this investigation however, it has been established that Employee 4 has had meetings with DASS management in relation to outstanding audit recommendations since the 1990s and has formally been invited to attend DASS Senior Leadership team meetings since 2006 to discuss the following agenda items:

2010	Agenda Item
6 January	Internal Audit Plan
28 April	Audit Report
26 May	Internal Audit Initial Update
28 July	Audit Activity
2009	
28 January	Internal Audit Plans
25 February	Internal Audits
29 April	Internal Audit Activity Report
14 October	Internal Audit Report
2008	
15 January	Updated internal audits processes and identified planned audits and outstanding action plans
24 June	Employee 4 attended SLT to update.
2007	
9 January	Q3 Audit Report
16 January	Audit Plan 2007-2008
10 April	Q4 Internal Audit Activity
26 June	Audit Report
3 July	Q1 Audit Report
21 August	Internal Audit Quarterly Review
2 October	Q2 Audit Report
2006	
3 January	Audit Reports
7 February	Audit Reports (Direct Payments)
10 October	Q2 Report - Internal Audit Activity

This demonstrates that:

A. Employee 4 was sufficiently concerned about the number of internal audit recommendations that had previously remained unimplemented for him to make significant attempts to draw this to the DASS Management team's attention on a regular basis.

During the right to reply Employee 31 has advised that Employee 4 was instructed to follow-up outstanding recommendations and bring them to the attention of the DASS Departmental Management team (presumably by him/herself), but has provided no evidence to substantiate this.

B. The Director of Adult Social Services was sufficiently concerned about his department's performance to invite Employee 4 to his management team on a regular basis.

Employee 31 has also advised during the right to reply process that Employee 4 was instructed by the Chief Internal Auditor after discussion with Employee 16 to arrange with the Director of DASS to meet with the DASS Management Team on a regular basis. Employee 16 does not recall any specific instruction although he is aware that Employee 4 attended the DASS management team meetings.

C. This action had insufficient impact to improve the control environment and certainly did not address the charging policy issues.

Employee 4 has advised that at the DASS Senior Management team meetings he would have made it clear to those in attendance that:

(i) Action plans were not being returned promptly, if at all,
(ii) The findings and recommendations had been accepted by the auditee at the closing meeting
(iii) It was the Department's responsibility to implement the recommendations and not the Internal Audit section

However, he has not provided any evidence to substantiate this.

6.6.6. The consultant has also had sight of various letters where either the Director has stated that internal audit matters will be addressed and/or where the Internal Audit section have followed up some items which are outstanding. This is summarised in the table in Appendix 7 to Annex A. One of the letters (13 March 1996), however, states that:

"I have received 2 written replies from the 33 listed. To make progress in this matter I will assume that the recommendations have been actioned unless I hear otherwise."

Employee 31 has advised during the right to reply that *"the audit approach at the time, as approved by Employees 7 and 16, was to escalate audit reports to the Departmental Director if appropriate responses had not been received, as he/she was considered the person responsible for managing or accepting risks. In the case of DASS, this was done after discussion with Employee 16."*

Employee 16 has no recollection of such discussions.

After taking into account Employee 31's right to reply response the consultant is of the view that:

- It was entirely appropriate to escalate reports to the Departmental Director, but;
- This does not obviate the Internal Audit section's responsibility to follow-up especially when the charging issues had such serious consequences.

6.6.7. The consultant has also had sight of a letter to the Director of Social Services dated 22 October 1997, which raised concerns about Transport Charges in that the actual charges being levied appeared to be based on something other than that approved by Committee on 1 July 1997, or any delegated authority to allow the Director to introduce such a variation.

6.6.8. On 2 July 1998 Employee 4 wrote to Employee 11 (he had already sent a memo dated 21 May 1998 and had a subsequent telephone conversation with Employee 12) because he was *"awaiting replies to 13 of the 14 audit reports."* Again, however, the stance is taken that *"to make progress in this matter I will assume that the recommendations have been actioned unless I hear otherwise."*

However, Employee 4 does go on to say that "a*t the next visit, the report recommendations will be reviewed and any non-compliance will be reported direct to you".*

Employee 7 agrees with the consultant's opinion that Internal Audit should not have assumed that the recommendations in 6.6.6 had/would be implemented. He has also advised that "*since 2005 it is the Audit and Risk Management Committee where any high or medium risk Internal Audit recommendations which are not agreed in writing by the relevant Chief Officer are now reported. Therefore the inaction which greeted those Audit reports referred to in the review would not now occur."*

6.6.9. On 10th July 1998 Employee 11 replied, *"Thank you for your memo on 2nd July and for making me aware of the outstanding replies. I assume Employee 12 will know which reports are outstanding, and that being the case I will press for an early response."* As a result, the Internal Audit section assumed that the Director had ensured that the recommendations had been implemented.

As a result of questions raised by Employee 4 during the right to reply process the consultant asked Employee 8 to determine whether any evidence could be found within Employee 4's monitoring records to confirm whether any action plans were received for the 13 outstanding as detailed above but she could find no such evidence.

However, Employee 8 has uncovered the following:

A memo dated 22 July 1998 from Employee 31 thanking Employee 11 for his/her memo of 10 July and it refers to a meeting with Employee 11 on 17th July to discuss other aspects of financial control. Employee 31 details a number of issues he/she wished to draw to Employee 11's attention.

A response dated 24 July 1998 from Employee 11 thanking Employee 31 for his/her memo of 22 July. Employee 11 refers to the issues raised and states he/she will arrange a discussion with his/her management team and as a result will respond to some of the specific points. Employee 11 also referred to an operational management group meeting in which he/she would invite Employee 31 to attend to discuss issues with a wider group of managers.

It should be noted that where a Chief Officer agrees to implement recommendations then a follow up audit is now performed after six months to ensure that action is taken.

6.6.10. Whilst the consultant does not agree with the position taken, in that she would have wished to see such a high risk department receive some sort of follow-up, she has been advised that the resources within the team at that time were not sufficient to enable such an approach to be implemented. Clearly, history must not be repeated and the Council must ensure that the level and quality of resources made available to Internal Audit are sufficient to meet the peculiar challenges to be found within Wirral Council, and simply benchmarking the level of resources available with other councils will not achieve this.

A review of Internal Audit will be taken forward by the Deputy Director of Finance as part of the programme of activities being overseen by the Council's Corporate Governance Committee.

6.6.11. It appears that around 2005, and perhaps before, Employee 81 was responsible for maintaining a register of Internal Audit reports. Employee 81 at that time held a Business & Performance role within the Care Services Division. This Division was responsible for all directly provided services including Fellowship House and Balls Road. It is believed that Employee 81 had responsibility for maintaining the register because most of the Audits at that time related to in-house services. Employee 81 sent the following email in 2005:

From: *Employee 81*
Sent: *02 November 2005 18:20*
To: *Employee 83; Employee 84; Employee 85; Employee 86; Employee 10; Employee 87; Employee 60; Employee 88; Employee 89; Employee 91; Employee 92.*
Cc: *Employee 55*
Subject: *Routine Audit Reports - Action Plan Responses*

The following arrangements are to be followed

Audit will provide 3 copies of each report to Employee 93

One copy will be filed for reference. Employee 93 will maintain a spreadsheet of all audit reports received recording date of receipt, Responsible Officer and deadline for action plan response etc. Broadly Audit work to an 8 week timescale for a response after which they will chase us and advise the Director. If a response has not been received within 6 weeks Employee 93 will email a reminder to the Team Manager and the Service Manager to confirm that the response is in hand and that the deadline will be met. If not Internal Audit will be advised by the Service Manager using email and confirm any new deadline extensions agreed. The monitoring sheet will be updated..

The second copy will be sent to the Team Manager to draft a response.
The draft response will be sent to the Service Manager, discussed in supervision, amended if required and approved. Sometimes the response will be departmental and beyond the remit of the Team Manager involving advice from other managers for example Employee 13 and these need to be clearly explained and consistently recorded.

The Service Manager will forward 2 copies of the approved Action Plan response to Employee 93. One copy will be filed and the other sent to Internal Audit. Internal Audit will email confirmation to Employee 93 that the response has been received. The monitoring spreadsheet will be updated.

Employee 81

Employee 14 also advised that Employee 81 also presented a quarterly report to the Departmental Management Team (DMT) to update them on Internal Audit activity and outstanding Action Plans.

It is believed that Employee 13 may have decided to move responsibility to the Adult Social Services Finance team because not all Internal Audits related to the Care Services Division. Employee 14 was asked by Employee 13 to take on responsibility for this in 2007. Employee 14 has advised that he/she was provided with a copy of the register, an excel spreadsheet, that was already in existence and was asked by Employee 13 to continue to maintain this and report quarterly into DMT.

Employee 14 has advised that he/she was not provided with copies of previous Audit reports or Audit recommendations and was not made aware of any issues that were outstanding at that time. He/she has also advised that he/she was not given any further instructions regarding a process for following up implementation of Audit recommendations and was not asked to create a process for following up implementation.

6.6.12. In addition, the consultant has looked to other documents to determine the level and type of concerns produced by either the District Auditor or the Finance Department, including the Internal Audit Section, and with whom they were shared. Whilst the Finance focus would not by definition identify issues relating to adult protection, they do provide Members and the Chief Executive with some significant pointers:

1999/2000 Management Letter to Members (issued December 2000). The document highlights the following key issues:

- *The demand led pressures on Social Services budgets are being addressed in the current year and in preparing the Council's 2001/2002 budget.*
- *Review and improve arrangements for managing the Social Services Department budget.*
- *Corporate support for the Director of Social Services and his staff in developing better use of performance information is essential to improving service management in the department.*
- *Continue to develop the effectiveness of Social Services in working in partnership with other agencies to deliver health and care services.*

Statement on Internal Control 2005/6 (included within the statement of the accounts) includes the following section:

- *A significant number of weaknesses within systems for assessing and collecting income in the Adult Social Services Department, formally known as Social Services, that are potentially contributing to a projected shortfall in budgeted income were identified during an investigation in 2005/06. Audit reports were prepared for the relevant Chief Officer and Members and an action plan to improve systems and alleviate identified weaknesses agreed with management, this is scheduled to be implemented within the agreed timescale during 2006/7. Members and Chief Officers will continue to be notified of progress.*

Statement on Internal Control 2006/7 (included within the statement of the accounts) includes the following section:

- *Work has been undertaken during the year to evaluate the progress made by the Adult Social Services Department to address a number of significant issues identified during a previous internal audit review concerning the systems in operation for assessing and collecting income by the department. Many of the issues identified in audit reports have either been addressed or are in the process of being addressed in accordance with the agreed action plan, however, it is noted that whilst the control environment has improved and systems are more robust, collection rates have not increased in line with projections and the outstanding debt owed to the department is still significant. This has been identified in reports to Chief Officers and Members and recommendations made in the action plan regarding actions required to try and address these issues. The action plan has been agreed with management and we are assured will be implemented during 2007/8.*

Report to ARM committee 28 June 2007 - Internal Audit Work: March to June 2007:

- Paragraph 3.4 states: *Action Plans in respect of audit work undertaken on the Recruitment and Selection Systems in operation across the Council have not yet been returned for the following departments:*

    - *Corporate Resources - Human Resources*
    - *Adult Social Services*
    - *Children and Young People*
    - *Finance Merseyside Pension Fund*

Follow up audits are scheduled for the next quarter.

Report to Finance and Corporate Management Select Committee 21 June 2002 entitled Internal Audit Work March to May 2002 paragraph 3.2:

- *Following a routine audit of the Direct Payments Scheme it was recommended that a financial monitoring programme of service user records should be initiated by the Social Services Department to comply with national guidelines.*

6.6.13. From the Internal Audit paperwork and Committee reports made available during the investigation the consultant has noted that despite Employee 13's appointment, with responsibility for all aspects of financial strategy and management together with charging policies and income collection, the Internal Audit recommendations relating to charging remained outstanding until 2006 when the project being led by Employee 13 belatedly implemented the Department of Health policy/guidance in relation to Fairer Charging.

It should be noted that the Personal Finance Unit of the Department of Adult Social Services was transferred to the Finance Department in early 2011.

6.6.14. In fact, the Council received a number of reports relating to the implementation of Fairer Charging, as follows:

A. 26 July 2000 – Special Social Services Committee – Charging Policy Review Report (report author Employee 12 and Fiona Hide)

At paragraph 4.24, it is made clear that the report does not address charging arrangements for service users residing in Supported Living Accommodation. It was stated that a further report would be submitted to the Social Services Committee, outlining charging arrangements for this client group. The need for this further report was not mentioned in either the recommendations contained within the report, or within the resolution of the Special Social Services Committee.

It was this failure to submit this further report which the Council (in 2009) recognised as maladministration when it decided to backdate reimbursements to 2000.

Both Employee 2 and the consultant believe that the need for this further report should have been picked up in the recommendation. Employee 2's view is that "*had this happened, it would probably have been incorporated in the Committee's decision and might have been more likely to have been actioned. I fully accept the need for Committee Services to be proactive in ensuring that Committee decisions are not just allocated to officers but are actually monitored. Where Committee Services are not satisfied that decisions have been implemented they should take the necessary action to escalate their concerns".*

B. 19th April 2001 – Cabinet – The Council's charging policy for non-residential services for adults – update (report author Employee 12).

The executive summary states: *"The Department of Health has issued draft guidance "Fairer Charging Policies for Home Care and other non-residential Social Services". This report informs Members of how the draft guidance compares to the Council's current charging policy."* This report clearly states at paragraph 3.1 that "*a detailed response to the consultation was not submitted as the proposals are broadly in line with the Council's current policy"* and *"in line with the national response it is expected that there will be a loss of income to the Council."*

C. 22nd April 2002 – Social and Health Services Select Committee – Fairer charging policies for home care and other non-residential social services (report author Employee 15).

The executive summary states: *"This report draws Members' attention to the above guidance and outlines the main actions that the Council needs to carry out to implement the guidance by the required dates. It also describes its potential impact on current charging arrangements on Wirral."*

At sections 3 and 4 of the report the author clearly states what will be achieved by 1 October 2002 and 1 April 2003. Section 4 clearly states that the implementation needs to be fully completed by 1 April 2003.

Section 5 of this report states: *"The current Wirral charging policy does not fully meet the requirements of the new guidance."*

Section 6 states: *"…..A Steering Group…..will be to develop a project plan for the implementation of the Fairer Charging Guidance……that will report to the Department's Financial Management Group. It is intended to report to Members at a future meeting of progress being made."*

D. 20 March 2003 – Cabinet – Implementing the Fairer Charging policies for home care and other non-residential social services (report author Employee 15).

The executive summary states: *"This report provides Cabinet with information about implementing the guidance, progress to date and the potential financial impact upon the Social Services Department. The report calls for a "key decision" under the Council's constitution, of which notice was given in the Forward Plan dated 1 September 2002."*

Paragraph 1.4 states: *"However, the Council's current charging policy is broadly compliant with the guidance."*

Paragraph 2.2 states that: "*Councils are not allowed to collect income until the user has been informed of the charge."*

Paragraph 6 states that: *"The implementation of the Fairer Charging Policy is proving to be a challenge. It requires local changes to current practice and charging arrangements to ensure timely professional delivery for service users."*

Paragraph 15.2 states that: *"Cabinet is requested to confirm the weekly level of the DRE at £30 and percentage excess income charge at 50% as an interim measure pending more detailed modelling."*

In the consultant's view this report does not provide Members with an explicit and simple assessment of what the challenges were, or indeed the extent to which Social Services had met (or not) the requirements of the Fairer Charging guidance.

During the right to reply process Employee 15 disagreed with the consultant's views stating that when both of the reports he/she authored are taken together they do provide a simple and explicit assessment. He/she recalls the national implementation of the Fairer Charging regime and how difficult it was for Councils, not just the Wirral, to assess and calculate what the impact of decisions that the Council might take on both its residents and its budgets might be. He/she believes that his/her reports were structured to provide members with information on the current state on their Charging Policy and its readiness/compliance with the national Fairer Charging Policy and where he/she felt the gaps were. Looking back Employee 15 is not clear what other information it would have been possible to include for he/she did acknowledge that the Trojan system that Wirral and a number of other Councils used was not able to financially model the impact of decisions - hence a sample was taken and calculated. He/she also states that he/she highlighted that the Council had more work to do to become fully compliant and in understanding fully the potential impact - hence recommending a further report when this had been completed. He/she adds that the consultant *"may have preferred to see information presented in tables rather than written throughout the report"*, where financial impact and numbers of users affected were stated in relation to changes as a result of adopting the Fairer Charging Policy.

Having considered Employee 15's submission the consultant maintains her opinion, in that (a) Members are unlikely to have had both reports to hand at the meeting in March 2003; (b) there were differing statements as to whether or not the Council's charging policy was/was not compliant in each report, and (c)

statements such as "broadly compliant" do not allow the reader to assess what the remaining risks were.

It should be noted, however, that Employee 15 had taken a new role at another Council by September 2003.

E. 10th September 2003 – Social Care and Health Select Committee – Fairer charging policy for non-residential care services (report author Employee 13).

The executive summary states: *"The report provides the Select Committee with an options analysis based on the impact of Fairer Charging with the potential to generate sufficient income to meet current budget pressures and to generate additional income in 2004-05."*

Paragraph 2.2 states: *"Due to the interim nature of the charging policy agreed by Cabinet in March 2003, the Council is not fully compliant with the principles of the "Fairer Charging" guidance in two areas:*

i. Disability Related Expenditure
ii. Consultation"

Paragraph 2.3 states: *"Ensuring full compliance with the Guidance and remaining "within budget" the Council needs to consider areas within the policy to vary charges to compensate for the shortfall in income of £87,000 (para 2.1.), and the potential impact of further refinements outlined in this report."*

Whilst section 3 provides an options analysis, the report focuses upon the amounts of income to be lost and/or gained from certain options and the likely level of opposition flowing from each option. The consultant could find no reference to any urgency to resolve these matters, or indeed any reference to the fact (determined during the PIDA investigation) that the Learning Disability charges in West Wirral were non-compliant.

F. 9 October 2003 – Cabinet – Fairer charging policy for non-residential care services (report author Employee 13).

The executive summary states: *"The report updates the Cabinet on proposals to amend the charging policy parameters for non-residential care services following implementation of Fairer Charging guidance in April 2003. It is also sets out a framework for consultation, which the Social Care and Health Select Committee would wish to see before making its recommendations to Cabinet. The report calls for a "key decision" under the Council's constitution, of which notice was given in the Forward Plan dated 1 May 2003."*

Section 1 – Background - focuses on the achievement of *"a required level of income taking into account current budget pressures and options for savings in 2004-05."*

Section 2 – Implementing the Guidance – reminds Members that there had been no specific consultation on Fairer Charges as the current scheme was broadly compliant within the guidance. It is the consultant's opinion that this paragraph (when read in conjunction with Section 1) implies that the only remaining action to

ensure compliance with the Fairer Charging Guidance is consultation. As a result the report establishes the "Charging Policy Consultation Working Party."

Again, there is no mention of Learning Disabilities at West Wirral etc.

6.6.15. The consultant has found no further reports on this matter from Social Services until:

> 14 February 2005 - Social Care and Health Select Committee – Budget proposals – charging policy (report author Employee 13).

The executive summary states: *"The report provides information on a range of policy options for the community care charging policy and provision of community meals to be considered by Members as for the budget setting process for 2005-06."*

Section 1 states that: "*Members of this Committee agreed a process to review charges by establishing a Charging Policy Review Working Group to consider a range of options that would achieve an additional income target of £150,000, whilst remaining complaint with Fairer Charging Guidance. It has proved difficult to formally establish this Group within the budget setting timescales and Members are reminded that decisions to vary the charging policy should be subject to further consultation during the implementation phases."*

6.6.16. When Employee 13 was questioned about the delay in the implementation of the Fairer Charging guidance, he/she advised the consultant that it had proved difficult to establish the Member Working Group, which appears to be borne out by the report dated 14 February 2005. This, however, does not obviate Social Services responsibility to raise the issue of the outstanding recommendations on a monthly/weekly/daily basis with the Member leads and if necessary escalate the matter through the Council's Monitoring Officer (at this point this would have been the Head of Legal and Member Services rather than a Director level position) and Chief Executive.

6.6.17. In addition, the consultant has not been privy to any report either public or private where Officers explicitly spelt out the risks of delayed/part implementation of the Fairer Charging Guidance, nor the issues identified in previous Internal Audit reports for consideration by the Chief Executive or Members. However, this does not mean that the discussions were not being held and indeed, it could have been that the Officers were attempting to encourage Members from all parties to participate in the proposed working group without success.

6.6.18. Clearly this is an unacceptable position and the Council may wish to consider what it needs to do to strengthen the performance of Chief Officers in this area. As part of any strong corporate governance framework including a robust performance management framework, issues relating to Member reporting, implementation of key decisions and Internal Audit recommendations would form a key element of a Chief Officer's appraisal and quarterly/half yearly formal reviews with individuals and management teams. The consultant was not made aware of any such arrangements being in place at Wirral during the period the review covered, or indeed now. This needs to be rectified urgently.

6.6.19. The Council may also wish to consider further why no committee reports highlighting the risks and issues were forthcoming even if this meant highlighting any possible non co-operation/delay on the part of Members.

6.6.20. The consultant also notes that none of the reports mentioned above have a legal comments section, where she would have expected the relevant legal officer to highlight for Members the legal risks and issues of adopting the approach recommended by Social Services. If this approach had been adopted it is hoped (but not guaranteed) that the legal officer and/or Monitoring Officer would have been able to question Social Services as to the actual level of compliance with the Fairer Charging guidance.

Employee 7 has advised that since the beginning of 2011 all Committee reports have contained a paragraph outlining the risks.

6.6.21. In addition, the consultant is concerned that the Committee Services team did not follow-up the outstanding reports from Social Services between 2000 and 2005, and as a result did not feedback to the Monitoring Officer that there was a delay in bringing together the Members of the Working Group.

6.6.22. No explanation has been forthcoming from Employee 13, DASS, Legal Services or Internal Audit as to why such a significant delay to an important piece of mandatory guidance was not flagged up through the Council's normal Committee Services reviews, Corporate Governance or Corporate Risk regimes; this is especially important given that reports were being presented to Members that stated interim arrangements had been put in place without any evaluation of risk or indeed gap analysis. It should also be noted that the consultant has been advised and has seen email evidence that concerns relating to the charges at some of West Wirral properties were raised with Employee 13 directly, but the consultant can find no record of action other than Employee 13's engagement with the Charging Policy Working Group.

6.6.23. More fundamentally however, the absence of action in DASS in relation to Internal Audit recommendations suggests a lack of management understanding of the Council's constitution and that the power to "act or do" must either flow from the constitution or an alternative right embedded in statute, which empowers the Council and through the scheme of delegation to act or not.

6.6.24. In addition, this situation demonstrates a weakness in the horizon scanning and business planning arrangements of the Council as a whole and as determined by the corporate functions, particularly Legal services, Policy and Performance and the Internal Audit section. Firstly, the introduction of Fairer Charging was a key piece of guidance and significantly altered the boundaries for charging for social care in local government. Members of the Legal services team should have known of its impact and have been in a position to advise senior Officers and Members when interim policy documents were forthcoming, in terms of legal input and/or committee decision. Secondly, a strong policy unit should have been aware of the changes via its normal horizon scanning arrangements, no evidence of such arrangements have been brought to the consultant's attention. Finally, as part of the risk assessment processes undertaken to develop the rolling 3 year Internal Audit plan, it would be normal practice for changes in legislation and policy to feature. Again, no evidence has been presented to this effect.

During the right to reply process Employee 2 has agreed with the consultant's judgement set out above stating that "*the Council's chronic failure to introduce Fairer Charging amounted to a Corporate failure, as well as to a failure within the Department of Adult Social Services. I think that it is right that you identify Legal Services and Internal Audit as being Corporate Council functions which should have done more to alert the Chief Executive and Members to the failure, within DASS.*

Employee 2 has also highlighted that the Policy Unit was not formed until 2004 and therefore they are less culpable than the Legal Services and Internal Audit sections. The consultant accepts this.

6.6.25. Turning now to the role of the Chief Internal Auditor and his team (see 6.6.1.B above). The consultant has been advised that the Chief Internal Auditor's position is a semi-autonomous role in that Employee 7 is responsible for the post from a management perspective, but he does not line manage the Internal Audit function through the Chief Internal Auditor. This semi-autonomous position is reinforced by the following facts:

A. The Chief Internal Auditor post is not a member of the Finance departmental management team;
B. The internal audit plan is not approved by Employee 7, although he may from time to time provide advice as to his view of strategic risks;
C. The Chief Internal Auditor has the right to investigate any/all issues without recourse to Employee 7 and to raise concerns with the Chief Executive and/or Members directly.

Employee 31 has, however, raised the following issues during the right to reply process:

"The Chief Internal Auditor is line-managed by the Deputy Director of Finance who conducts Key Issue Exchange discussions which are documented and are now formal appraisals. The Chief Internal Auditor is no more "semi-autonomous" than any other Section Head, which he is, or even an Assistant Director.

A. The Chief Internal Auditor is a Section Head and not of Assistant Director rank. He is graded lower than the 3 Chief Accountants and most other Section Heads in the Finance Department, so there is no question of the post being a Departmental Management Team one.

B. The Annual Internal Audit Plan is submitted to Employee 7, the Chief Executive and the Deputy Director of Finance who questions its content in detail and specifies items for inclusion.(see minute 65 ARMC, 31 March 2009.)
The CIA relies on the DoF, Deputy DoF and CEO to provide assistance in compiling the Annual Plan, and maintaining it up to date in reflecting current corporate risks and issues as they have detailed knowledge of the Authority's business daily, and meet other Directors regularly and formally at the Chief Officers Group, as well as meeting political Leaders and attending Council Committees and Cabinet.

C. The Chief Internal Auditor has reported to the Audit and Risk Management Committee in his own name since only 29 June 2009, following a report by the Audit Commission. Previously all reports were in

the name of the Director of Finance to the ARMC and its predecessor; the Finance and Corporate Management Select Committee , All draft reports to Audit and Risk Management Committee in the name of the Chief Internal Auditor have not been accepted by the Director of Finance for submission until their contents have been approved by the Deputy Director of Finance, thus the Chief Internal Auditor is no more independent than other staff of whatever rank, in the Finance Department.

There has been no instruction that the Chief Internal Auditor has authority to contact Members directly without the approval of the Director or Deputy Director of Finance and the Chief Internal Auditor was not briefed. or advised in any way concerning how he should conduct himself differently when ARMC reports were presented in his own name. It should be noted that this is a unique position in this authority, for a section head to have committee reports presented in his own name. All other reports to all committees are in the name of a Chief Officer even if the author attributed in the report is a "junior" one.

The concept of ARMC reports in the CIA's own name was not queried or discussed by the Deputy DoF or even by ARMC Members or the CEO. The first instance was during the DASS PIDA enquiry."

Employee 16 and Employee 7 were separately questioned about Employee 31's comments outlined above and they responded to the following effect:

- Employee 16 manages the Chief Internal Auditor on a daily basis in respect of "pay and rations". He/she has no line management responsibilities for the Internal Audit section and does not have any direct input into professional audit matters. Employee 7 does not have the capacity to line manage the Chief Internal Auditor, nor does he believe it would be appropriate to do so.

- The Chief Internal Auditor has direct access to the Chief Executive, the Chair of the Audit and Risk Management Committee and other Members of the Committee without reference to Employee 16 or Employee 7. This is a crucial difference from any other Head of Service within the Finance Department and is in accordance with CIPFA guidance. Furthermore the Chief Internal Auditor is not a Member of the Finance Departmental Management Team and has no departmental responsibilities: this is to reinforce his unique and independent role in the organisation.

- Neither Employee 16 nor Employee 7 have had any input into the meetings with the Chief Executive or Chair of Audit and Risk Management Committee and/or other Members of the Committee. They only become aware of matters discussed should the Chief Internal Auditor or his Deputy raise them with them.

- Employee 16 does not recall a specific instruction being given in relation to contact with Members but, given his/her understanding of the role of the Chief Internal Auditor he/she would not expect such an instruction to be necessary. Employee 7 confirmed that he/she had explained his/her expectations to Employee 31 directly, in that he/she had direct access to Members. The consultant is of the opinion that a direct instruction should not be necessary as CIPFA guidance is clear on this matter.

- Employee 7 has stated that there had been and is still some resistance from the Chief Internal Auditor and his/her Deputy with regards to writing the reports for the Committee meetings in that he/she believed that they wished for the reports to be in Employee 7's name. Employee 7 has made it clear that the Chief Internal Auditor has the freedom to write reports as he/she (or his/her Deputy) see fit. Employee 7 and Employee 16 continue to hold the view that reports should be written by the Chief Internal Auditor to reinforce the independence of the Internal Audit Section in accordance with CIPFA guidance.

- Employee 7 or Employee 16 clear reports before they are presented to Committee, but this is to ensure consistency of style and presentation and factual accuracy for there have been issues in this regard previously. In accordance with CIPFA guidance neither believe it is their role to change the Chief Internal Auditor's opinions.

- Both Employee 7 and Employee 16 are clear that it is the Chief Internal Auditor's responsibility to develop the Internal Audit Plan and that he/she does or should develop this on a risk assessment basis. Clearly Chief Officers and others have an input into this process and as such Employee 7/Employee 16 would feed into the process. However, the development of the Plan is the responsibility of the Chief Internal Auditor – this is in accordance with CIPFA guidance.

- Employee 16 has advised that he/she does receive quarterly reports, but that he/she believes he/she requested these in the light of the discussions around the PIDA report. Any case issues of serious concern, in these reports, are not specifically highlighted to him/her. The consultant believes this to be a failure on the part of the Chief Internal Auditor.

The consultant must confess to some surprise at the content of Employee 31's response above, given that CIPFA has for some time now published guidance and thought pieces on his/her role. She has not pursued this further for two key reasons: (a) it would in her view have delayed the production of this report, and (b) this is in her view a management issue which needs to be resolved perhaps via a review of the Internal Audit section being commissioned by Employee 16.

6.6.26. It is disappointing to note that neither the Chief Internal Auditor nor his team utilised the PIDA investigation or the further reports to Members as an opportunity to raise awareness of the historic charging issues, either initially to the Director of Finance (or his Deputy) during the report drafting process, or as part of his report to the Audit and Risk Management Committee in November 2008. Indeed, when this item was discussed with the consultant it was not seen to be relevant contextual information for Members.

During the right to reply process Employee 4 has advised that he did mention the history of charging issues (mentioned above) to senior staff during discussions on the PIDA. Employee 7 has confirmed that issues relating to charging were bought to his attention at the time of the PIDA and not before, but not to the extent that has been highlighted in this report. Employee 16 has also confirmed this to be the case.

The suggestion from Employee 4 is that he had escalated issues to Employee 31 and/or to Employee 32 and this is to some extent at least substantiated by the correspondence from Employee 31 to Employee 11 mentioned above.

However, there is no evidence to suggest that Employee 31 or Employee 32 had escalated these issues to Employee 16 or Employee 7. In fact Employee 7 has confirmed that as soon as the issues relating to DASS charging were brought to his/her attention following the PIDA he/she commissioned a review of charges across the whole Council. Employee 16 has confirmed that such issues were not brought to his/her attention either and that he/she first became aware of the DASS charging issues as a result of the PIDA circa October 2009.

6.6.27. It is of significant concern that, for whatever reason, Employee 31 did not raise these important issues directly with Employee 7, or his Deputy, and as a result it was in the main left to only middle management graded Internal Audit Officers (with the occasional intervention from Employee 31) to raise concerns with the Director of Social Services and his staff.

{It should be noted that the Deputy Chief Internal Auditor post was not created until 2003}.

Employee 31 has advised that *"all internal reports relating to governance and corporate issues were particularly brought to the attention of the Deputy Director of Finance at his instruction, and copied to the Director of Finance. All reports are then summarised to them quarterly".*

Employee 31 has provided no evidence to support this statement nor has he/she advised of when he/she allegedly did this.

Neither Employee 7 nor Employee 16 have any recollection of any of the issues identified in this report being brought to their attention other than when the PIDA investigation, or the follow-up audits were undertaken. As stated elsewhere in this report the quarterly reporting is only a relatively recent occurrence following the PIDA investigations.

Employee 31 has also advised that the "*relevant Group Auditors, including the one responsible for DASS, were instructed to raise concerns with Departmental Directors. The Group Auditors were encouraged to take responsibility to aid their development as they were and are, all senior members of Internal Audit as Group Auditors. Advice, support and monitoring was always provided by the Chief and Deputy Internal Auditor who were available to assist the Group Auditors at meetings with Departmental Directors if assistance was deemed necessary."*

Employee 31 has provided no evidence to support this statement. However, the consultant sees legitimacy in the attempt to develop Group Auditors, but believes that the issues in DASS were of such significant concern that they warranted considerably more involvement from the Chief Internal Auditor.

6.6.28. The consultant has been advised that since circa January 2003 the Chief Internal Auditor and his Deputy held meetings with the Chief Executive on approximately a bi-monthly basis. The handwritten notes of these meetings have been reviewed by Employee 8 at the request of the consultant, and there are no specific references to any relevant recommendations discussed with the Chief

Executive, and therefore no evidence available as to which issues and agreed actions were raised (see Appendix 8 to Annex A, which summarises the findings from a review of the meeting notes). Both Employee 7 and Employee 16 have confirmed that the Chief Internal Auditor is not required to provide specific feedback as a result of each of these meetings. Employee 7 has requested that either Employee 31 or Employee 32 provide him/her with feedback where they might discuss an issue of importance, for there had been occasions where the Chief Executive had raised an issue with Employee 7 that had been discussed with Employee 31/Employee 32, but they had neglected to inform him/her of it. Employee 16 has advised that he/she has no recollection of Employee 31 or Employee 32 advising him/her of any issues discussed with the Chief Executive.

6.6.29. However, it is the consultant's opinion that the Internal Audit reports also need to be "tightened up"; the recommendations are in some places less than clear and could perhaps be open to interpretation. Based on the reports etc available to the consultant, the team does not appear to have been "professionalised" or invested in, such as through the use of modern tools for recommendation tracking and escalation, risk profiling and training and skills mapping/matching. This is in hand however, and Employee 16 is in the process of defining a more robust and evidence based approach to audit, which requires rather than seeks compliance. This in turn will promote the need for the organisation as a whole to understand that good governance flows from the proper use of the Council's constitution and legal powers.

Employee 31 has stated that "*all audit reports, as verified by Audit Commission reviews, are evidence based audit. The Audit Plan is constructed on the basis of a detailed risk assessment following discussion with Directors by the Chief Internal Auditor, Deputy Chief Internal Auditor and appropriate Group Auditor and consideration of items included in the Risk Register.*

Audit reports are supported by files of documentary evidence which are reviewed by levels of management in Internal Audit.

Employee 31 did not supply any supporting evidence with this statement. However, the consultant, based on her review which admittedly relates only to Adult Social Services, is still sufficiently concerned with the performance of Internal Audit to endorse Employee 16's proposal to undertake an external review of the Internal Audit Service.

6.6.30. There have also been views expressed "off the record" which, whilst not a statement of fact and must therefore be viewed with caution, suggest that culturally any team that recommended/required more evidence of decisions having been taken or recommendations having been implemented would have been seen detrimentally outside of perhaps the Housing and Regeneration and Finance Departments. If true, this is obviously an inappropriate element of Wirral's Culture and Governance Frameworks that must be addressed.

Because these statements were made "off the record" the consultant cannot divulge the precise nature of the concerns nor name those who made them, however, the consultant considers them to be of such importance that she has chosen to refer to them above.

Employee 31 has stated in his/her right to reply that *"all recommendations were and are followed up and evidence is required that they have been implemented,*

as specified in the Audit Manual and verified by supervision documented in audit files. This applied to all departments without exception.

During the right to reply Employee 4 stated that he/she did not believe these views accorded with his/her own in respect of his/her area of work and he/she gave examples of the audit processes he/she would have followed.

6.6.31. Such a view links directly to other comments made by a number of largely middle ranking (3rd/4th tier and below) employees across the various departments who were interviewed as part of this investigation. For the purpose of this report the consultant has termed this a "reluctance to put your head above the parapet for fear of reprisal". As a consequence, culturally it is likely that notifying somebody of a problem once or twice is deemed sufficient to absolve oneself of responsibility should at some later date the issue come to fruition, or alternatively be as far as one could “push the point” without fear of reprisal. However, it should be noted that Employee 22 suggests that his/her experience was that generally third tier officers from DASS at least believed their responsibility began and ended with the identification of the problem rather than bringing forward any solutions. He/she believes that DASS made real progress where third tier officers and below took responsibility for their areas or work and helped to drive the solutions. It is of concern, but such comments are alleged by those interviewed to be indicative of the culture in DASS, and sometimes attributed to being part of the wider Council culture as a whole. This is not seen as a particularly historic issue and as such needs to be addressed firstly by the Leader, supported by the Chief Executive, the Director of Finance and the Director of Law, HR and Asset Management, for it presents a negative picture of an organisation that, if it is not addressed, will continue to fail to learn from problems and mistakes and certainly will not develop a corporate “one Council” approach, which will be required to improve services during perhaps one of the most challenging periods for the public sector.

6.6.32. The investigation has also identified that perhaps the role of Internal Audit has been weakened by a number of factors:

A. The value of Internal Audit appears to have been measured anecdotally by the organisation in that perhaps there was an over reliance upon the views of the customer in the service departments, i.e. the managers who Internal Audit will inevitably be criticising from time to time. This approach has perhaps blurred the purpose of Internal Audit’s role; it must be seen as a valuable resource by Senior Members and Officers because it has been, or will be, able to proactively identify problems, risks and issues, make specific and if necessary “hard-nosed” recommendations and follow up on these recommendations in a transparent manner. This will provide valuable information for senior Leaders as to the risks, weaknesses and concerns, both in terms of governance and controls. In some areas of the team there appears to have been concern that clients needed to have been “satisfied” at all times, perhaps forgetting that Senior Leaders could/would be “satisfied” in a different way.

During the right to reply Employee 31 has advised that *“the value of internal audit is measured by several parameters in accordance with CIPFA and CIIA guidelines and as approved by the Audit Commission:*

a. *customer satisfaction questionnaire results are documented and reported to Audit and Risk Management Committee. The questionnaires are sent to Directors and Managers audited.*
b. *the completion of the Audit Plan.*
c. *the opinion of the Audit Committee in annual and triennial review, all of which have been satisfactory and any recommendation arising being implemented.*

During the right to reply process Employee 16 was asked about the above and it is his/her view that these are some of a number of indicators of effectiveness which need to be considered together, with the various items of data being triangulated for verification purposes. He/she also suggested that consideration needs to be given to other measures, such as the appropriateness of the audit plan and the nature of the reports.

There is also a need to consider an important difference between delivering the 'regulatory minimum' (opinion on the effectiveness of internal control) and adding further value to the organisation. It was Employee 16's view that those indicators identified by Employee 31 speak only to the regulatory minimum. The consultant agrees with this.

Employee 16 has advised that it is for reasons such as these that, in Employee 7's report to Corporate Governance Committee on 26 October 2011, he/she requested the Council to consider commissioning an external review of Internal Audit, which will advise on 'how to provide a fit for purpose Internal Audit Service - both in terms of planned work and skills availability'.

B. The need to provide "added value" should be a key objective for Internal Audit, but must not detract from the basic service that is outlined in 6.6.32.a. above and is a "must have". Added value is provided when, during implementation of the recommendations, internal auditors provide the benefit of their experience, options, assistance and advice.

C. The lack of rotation of internal audit staff across at least the team leaders may have created a "closeness", which is excellent in terms of achieving customer care, understanding the services and their issues and where to look for information etc, but needs to be balanced against the ability to remain completely objective and avoiding the acceptance of the way things are done in their client department.

Employee 31 has stated during his/her right to reply that *"Team Leaders were not rotated across duties as it was considered more beneficial to rotate junior staff for them to get experience, together with graduate trainees and others under professional training who regularly are seconded from the section. Because of this aspect of the Finance Department's training policy it was considered unwise to move Group Auditors as stability would be severely adversely affected. In 2011/12 the responsibilities of Team Leaders have been realigned to respond to changes in the Council and the Section arising from the severance and other exercises and issues. This has involved rotation of most of the staff's duties."*

D. A concern about outsourcing and/or a significant reduction in the service provided by the Internal Audit function may also have contributed to a culture

where perhaps the delivery of "bad news" in a direct and transparent manner may have been avoided.

During the right to reply Employee 31 also advised that "*Internal Audit have completed 300 reports in 2010/11 and made 500 high priority recommendations, all of which were reported to Audit and Risk Management Committee for their consideration, which is a direct and transparent avenue of reporting 'bad news'.*"

E. During the early years covered by this investigation, there was no Audit and Risk Management Committee, this being implemented in 2005 at the request of the Director of Finance. This Committee now provides a forum for the Chief Internal Auditor, with the support of Employee 7 and his Deputy (who generally both attend), to support the work of Internal Audit and assist Members in the direction of their investigations towards high risk areas and improvements in corporate governance. It also provides some "force" to Internal Audit's follow-up and escalation when recommendations remain unaddressed.

6.6.33. It is the opinion of the consultant that Members and Officers of the Council should ask themselves the following questions:

A. Is the nature of the service offered by Internal Audit right for this time, given the concerns about corporate governance?
B. Is Internal Audit seen as a tool to be valued by the most senior Members and Officers across the Council? If the answer is no, why not?
C. Have the Council's organisational and/or departmental cultures impacted upon the ability of Internal Audit to perform its role to the best of its ability?

6.6.34. Dealing with the latter first; Internal Audit's role is defined as follows:

A. The Accounts and Audit Regulations 2006 specify that a local authority should "maintain an adequate and effective system of internal audit of its accounting records and its system of internal control in accordance with the proper practices in relation to internal control".

B. The 2006 CIPFA Code of Practice for Internal Audit in Local Government defines Internal Audit as "an assurance function that provides an independent and objective opinion to the organisation on the control environment (comprising the systems of governance, risk management and internal control) by evaluating its effectiveness in achieving the organisation's objectives. It objectively examines, evaluates and reports on the adequacy of the control environment as a contribution to the proper, economic, efficient and effective use of resources."

C. The guidance accompanying the relevant legislation, quoted above, states that "proper internal control practice for internal audit are those contained within this Code of Practice". This code defines the way in which the internal audit service should undertake its function. CIPFA states that "principal local government organisations should comply with the requirements set out in this Code. Exceptionally, where local circumstances prevent full compliance, the organisation should give clear reasons why and be able to demonstrate that equivalent safeguards or measures are in place." Consequently, this Charter has been prepared in accordance with CIPFA's Code and its specified Standards.

D. The consultation draft issued by the Chartered Institute of Public Finance and Accountancy on the role of the Head of Internal Audit (HIA) states that: *"Internal audit is one of the cornerstones of effective governance. The HIA is responsible for reviewing and reporting on the adequacy of their organisation's control environment, including the arrangements for achieving value for money. Through the annual internal audit opinion and other reports the HIA gives assurance to the Leadership Team and others, and makes recommendations for improvement.*"

i. The HIA's role is a unique one, providing objective challenge and support and acting as a catalyst for positive change and continual improvement in governance in all its aspects. The role is particularly important when organisations are facing uncertain or challenging times. Fulfilling the role requires a range of personal qualities. The HIA has to win the support and trust of others, so that he/she is listened to, and the HIA's role as a critical friend means that sometimes difficult messages must be given and acted on.
ii. It is these expectations, combined with the professional, personal and leadership skills needed for them to be met, that have shaped the CIPFA Statement on the role of the HIA in public service organisations.

Employee 31 has advised in his/her right to reply that "*the staffing structure of the Internal Audit section has not changed since the requirement for it to review and report on corporate governance and all the non-financial risks to the Council."*

The consultant's view is that the responsibility falls to Employee 31 to keep this under review.

6.6.35. One would also expect that Internal Audit would have a strong relationship with departmental finance teams, the finance department (including the procurement team) together with the legal services team, to ensure that there is compliance with the constitution, schemes of delegation and Member approvals e.g. in the procurement and award of contracts etc.

In Employee 31's right to reply he/she states that *"Internal Audit has a strong relationship with the Departmental Finance Teams, the Finance Department itself as a whole including procurement and the Department of Law, HR and Asset Management, Group Auditors attend Departmental Management teams quarterly to report audit findings and issues, and ask for information on current and emerging risks to enable consideration to be given to amending the Audit Plan to address changes of risk profile. This needs a positive and enthusiastic contribution by Departments."* He/she provides no evidence for his/her statement and the consultant is pleased to note that Employee 16 is to test this statement (amongst other matters) via an external review of Internal Audit,

6.6.36. However, in a high performing authority with a strong performance, compliance, governance and control environment the nature of internal audit's role becomes more assurance based. If the organisation has long standing weaknesses in this area, which is the case in Wirral (as reflected in historic use of resources scores, Audit Commission reports in the public interest and PIDA reports) then, internal audit's role must change. It must reflect the needs of the organisation which, in the consultant's opinion, should see internal audit as a highly prized resource.

6.6.37. Finally, the consultant has noted that the level of independence demonstrated by each department from at least a financial perspective but, perhaps also from a legal services perspective in terms of requests for advice, seems to be significant and perhaps more than a Council with Wirral's challenges and issues would expect to find. Whilst during the course of this investigation the consultant has noted that there has been some change of balance in respect to DASS, this is not, in her opinion, significant, and Members may wish to consider this further.

Conclusions

6.6.38. There is a need to review the structure, skills and capacity of the Internal Audit team. This is a matter already under consideration within the Finance Department, with a view to the adoption of best practice. There is no reason in the consultant's view to relocate Internal Audit as the Director of Finance is, in accordance with CIPFA guidance, the right place to locate this function.

6.6.39. In respect of Internal Audit, The Councillors' Guide to Local Government Finance (fully revised edition 2009) states on page 300:

"The responsibility for maintaining an adequate and effective system of internal audit should be that of the finance director.....

In order to ensure that statutory duties are discharged effectively, the finance director should be able to control and influence both the work programme of internal audit in support of those duties and the quantity and quality of staff made available to undertake the relevant internal audit projects."

CIPFA's standards of professional practice define the personal responsibilities of CIPFA members in carrying out their professional duties. These standards include matters such as ethics and auditing.

6.6.40. Notably the document also states at page 210:

"The organisation is responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements. Internal audit plays a vital role in advising the organisation that these arrangements are in place and operating properly."

The consultant would therefore conclude that Internal Audit needs to be given an opportunity to report more robustly on these matters as part of the improvements in corporate governance. Management need to recognise that they are responsible and as part of a strong corporate governance framework they, not finance or internal audit, need to be held accountable for addressing weaknesses. This was clearly not the case in DASS during the period of this review.

Employee 7 has confirmed that the issues outlined above will be considered as part of the planned review of Internal Audit.

6.7. Corporate Governance

6.7.1. The fact that this report has been commissioned by the Council and that there has been a whistle-blower and family members of service users who have had to utilise attendances at the Audit and Risk Management Committee to raise concerns that they believe have gone unheard or had been ignored, suggest serious weaknesses in the Council's corporate governance framework. This has been reinforced by some, if not all, of the matters identified above, some of the issues outlined in Miscellaneous 8's earlier report and the remainder of this report.

6.7.2. If this is then considered in the context of the Council having previously received:

A. A Public Interest Report;
B. Two reports under the Public Interest Disclosure Act;
C. Concerns raised by the Council's external auditors, and;
D. A number of issues raised by Employee 7 in the Council's own corporate governance statements;

then the consultant must conclude that the Council has not yet learned the necessary lessons to enable its corporate governance arrangements to become more robust and fit for purpose.

Conclusion

6.7.3. The Council should consider the creation of a Corporate Governance Team, in order to bring together Internal Audit, Performance Reporting and Management (at service and national KPI level), and in turn integrate financial reporting, and compliance with Standing Orders and Financial Regulations and key change programmes.
{NB Corporate Governance issues are dealt with separately in a supplementary report entitled 'Wirral Metropolitan Borough Council's Corporate Governance Arrangements: Refresh and Renew'.}

6.8. The Charging Policy Working Group

6.8.1. As identified above Cabinet approved the recommendation that a Charging Policy Working Group should be established.

6.8.2. Appendix 9 to Annex A sets out notes of a meeting entitled Charging Policy Consultation which took place on 22 August 2005. This appears to be notes of a meeting of the Charging Policy Working Group in accordance with the Cabinet decision outlined at paragraph 6.8.1 above. This group consisted of the following individuals:

A. Miscellaneous 1 (older people's representative)
B. Miscellaneous 2 (service user/carer representative)
C. Miscellaneous 3 (service user/carer representative)
D. A representative of Miscellaneous 21 (who gave apologies)
E. Miscellaneous 4 – Advocacy Services
F. Councillor 1 (Lib Dem)
G. Councillor 2 (Lab)
H. Councillor 3 (Con)
I. Employee 13
J. Employee 17
K. Employee 18

6.8.3. A separate standards complaint had been submitted to Wirral Council's Standards Committee in relation to certain Member conduct issues associated with this group and was referred to Standards for England.

6.8.4. Whilst this matter was being investigated by Standards for England the consultant was specifically instructed by the Council not to prejudice the investigation, therefore matters relating to the conduct of Members in relation to this matter were deemed outside the terms of reference for this review.

6.8.5. During the writing of this report the consultant was advised that Standards for England had concluded its investigations and determined that it will take no further action; the decision notices are attached at Annex G and include the following:

> *"'… I am mindful that substantial public funds have already and continued to be expended in investigating the factual context of your concerns. It is my view that in all the circumstances, including the lack of supporting evidence included with the complaint and the time that has elapsed since many of the alleged incidents occurred, the allegations made do not currently justify even further expenditure of public funds. I would comment that it may be for the Council's Monitoring Officer and Standards Committee to examine the findings of the investigation into the charging policy when it concludes and then consider the role of individual members."*

6.8.6. The consultant would refer Members to responses given by Employee 13 at the meeting outlined in paragraph 6.8.2 above. In relation to Section 3, which states:

"Employee 13 reported there were some groups, and service types not being charged in the same way. These were (1) Adults with Learning Disability who attend Day Centres, and (2) Adults living in Supported Living services – previously classed as residential care."

"Employee 13 reported the existing policy had not been changed for 5 years."

In relation to Section 5, which states:

"Charge people in Supported Living"
"The Group felt people receiving these services should be assessed to pay charges in the same way as other service users. Employee 13 reported up to 80 people would be affected."

"The other group not currently charged is Adults with Learning Disability who only receive day care. Up to 100 users may be affected and Employee 13 reported potential collection difficulties."

6.8.7. It is the consultant's opinion that this is inconsistent with the formal reports previously submitted to Members.

Conclusion

6.8.8. The conduct of Members has been the subject of the Standards for England investigation, and as such it was outside the terms of reference for this review.

6.8.9. The Charging Policy Working Group appears to have been provided with information that had not been reported to Committee. The documents reviewed do not, however, detail the implications of the statements being made for historic charging purposes.

6.9. Whether Council Officers knew that the Council Charging Policy in West Wirral did not comply with Fairer Charging. If they did, why did they not Resolve the Issue in a Shorter Period of Time? Whether this was Reported to Members in a Clear and Transparent Manner

6.9.1. From the reports listed previously in Section 6.6, it is clear that Senior Council Officers were aware that the Council had not complied with the requirements of Fairer Charging. Indeed, the impression given to the consultant by Officers has left her with the view that it was also known that this would lead to a reduced level of charges.

6.9.2. When questioned about the delays to the implementation, Employee 13, being the only remaining Senior Officer with involvement and responsibility for this area, did not provide the consultant with any real reasons for the delay other than problems he/she encountered in setting up the Charging Policy Working Group. This has not been verified with evidence but could be feasible given the cross-party nature of the group.

6.9.3. As set out in Section 6.6, the consultant's opinion is that the reports to Members were not clear and transparent, and did not have an associated risk assessment. This needs to be addressed as part of a number of actions to improve corporate governance.

Conclusions

6.9.4. On the balance of probabilities the consultant believes that Council Officers did know that the Learning Disabilities element of the charging regime within DASS did not comply with fairer charging, because of the manner in which the reports were constructed and because, quite simply, the new (compliant) charges for this area had not been raised. The further evidence for this is contained within the minutes of the Charging Policy Working Group. The consultant does not believe this was reported to Members in a clear manner, such that Members were aware of the risks and issues.

6.9.5. Based on interviews (email evidence and in particular the minutes of the Charging Policy Working Group in 2005) the consultant is of the opinion that issues in relation to charging were raised with Employee 13 and that he/she knew that this needed to be addressed.

6.9.6. It is not clear, however, whether Officers realised the extent to which the charging regime within DASS needed to be addressed, in terms of validity, standardisation, historic issues etc. The consultant has seen no evidence to suggest that they did, other than the old Internal Audit reports that were uncovered as part of this investigation.

6.9.7. The consultant remains unable to conclude the reasons why the introduction of Fairer Charing was so delayed. However, this situation cannot be allowed to reoccur and at the time of evidence collection and interviews the consultant was unable to point to a significant change in culture or process that would prevent this (either corporately or in DASS). DASS had, in the consultant's opinion, many challenges and seemingly conflicting priorities of budget reductions and improvements in operational services and control. However, based upon the consultant's experience of turnaround situations of this type, it is normal to expect to have to invest at the outset to "fix and stabilise" whilst improved

services and control will in time deliver improved value for money and reduced cost. The judgement as to when these returns can be made is from the consultant's perspective dependent upon a brutally honest diagnostic at the outset and, clear, open and honest reporting arrangements to Members and Senior Officers as to achievements, issues and delays. Not all of these appear to have been present in DASS.

6.9.8. As for the allegation that Internal Audit did not contact the Police, Internal Audit has advised that they did attempt to follow this up with the Police and the consultant believes that Mr Morton will be aware of email correspondence between Councillor 7 and Employee 32 to this effect.

Email 13 November 2008 between Employee 32 and Councillor 7:

"Having re-checked the handwritten notes taken of the meeting, they do actually identify Police Officer 2; the typed ones merely identify the Police. Sorry to have misled you. I'm not sure of the relevance of this as all we had established was that the Police would not talk to us about the case and would not take any questions regarding why they had decided not to proceed with it. At the time we were concentrating our resources on attempting to establish the exact nature of the allegations made by Complainant 3 on the night of the Audit and Risk Management Committee as the Police wouldn't talk to us we didn't feel that this was directly relevant to this."

6.9.9. The position relating to the Police investigation was also referred to in The Queen on the application of Broster and Others v Wirral MBC and Service Provider 3, where at paragraph 19 reference is made as follows:

"Equally roundly rejected, though on the other hand, was a complaint to the police forwarded by Wirral which it had received from, it said, six former tenants of Service Provider 3. This alleged Service Provider 3 had been guilty of financial mismanagement and irregularity. After investigation the police determined that there was insufficient evidence to suggest even a prima facie case."

6.9.10. The consultant is of the opinion that if the Police had attempted to pursue the case there would have been difficulties because:

A. DASS had not applied its charging policy properly.
B. DASS record keeping and files were poor and providing evidence would therefore be difficult.
C. DASS had been allowing "top up" charges to continue for some years.

The Council has confirmed, however, that investigating why the case was not pursued by the Police is beyond the remit of this review.

6.10. Whether the Level of Reimbursements Made to Current and Previous Residents of the 3 West Wirral Properties Have Been Calculated Correctly. Why the Council did not Include an Element of "Interest" in the Calculation. Whether the Schedules Provided by Wirral Council are Sufficient for Tenants or Their Advocates to Agree the Amounts that are Being Reimbursed

6.10.1. To assess whether or not the level of reimbursements has been calculated correctly, the consultant has relied upon the work of Internal Audit. The methodology used by Internal Audit and the statement of the Chief Internal Auditor as to the appropriateness of the methodology is set out at Appendix 10 to Annex A.

6.10.2. The payment of interest issue as to whether or not interest should have been included within the calculation does not appear to the consultant to have been discussed internally, with the focus being on ensuring that the calculation could be verified. In fact the consultant has not been made aware of any decision to either include or exclude interest from the calculation. Consequently no interest has been paid in relation to any reimbursements. The interest payments that may be due on these reimbursements, and the methodology used by Wirral MBC Accountancy Section to calculate them, can be seen at Appendix 11 to Annex A.

6.10.3. The consultant's understanding is that, the objective was to adopt a fair and proportionate approach/methodology with regards to how the reimbursement sums would be calculated, having regard to relevant factors and circumstances at the material time. The Council considered the basis upon which the sums were calculated to be consistent with that objective.

6.10.4. As the consultant understands things, the legal position is that any aggrieved person has a prima facie right to pursue a claim for interest where a decision has been made to reimburse an accepted financial liability and time has passed between the date the liability arose and its subsequent discharge. By way of analogy, a monetary claim issued in the county/high court entitles the claimant to pursue interest and the Court will exercise its discretion as to whether it should be paid having regard to all the relevant facts.

6.10.5. The Council's position is that it calculated the reimbursement on a basis that it believed compensated those persons affected by the application of its charging policy over the period in question.

Conclusions

6.10.6. Having listened to Mr Morton and others and having had regard to Employee 2's advice to committee, the consultant is of the opinion that the Council should have included an element of interest when calculating the reimbursement amounts.

6.10.7. In relation to the date from which the reimbursement was calculated, from a moral perspective the consultant personally believes that this should have been from 1997 because no other in-house units were charged under this policy. She has not been made aware of any legal precedent for this however, and would therefore ask Employee 2 and the Council to think again.

6.10.8. Ultimately, if the complainants disagree with the Council's position on this point then it will be a matter for the Courts to decide.

6.11. Whether in the Case of Relative 1 and His/Her Sibling, Service User 1, the Council Attempted to Circumvent the Involvement of Family Members in the West Wirral Refund Issue

6.11.1. The consultant has met with Relatives 1 as part of this investigation, has reviewed correspondence sent by DASS and discussed the matter with Officers of DASS. As a result of which, she can confirm that in her opinion there was no attempt on the part of DASS to circumvent Relative 1's involvement. The initial dealings with Relative 1 and other service users' family members were cautious, but DASS officers acted in accordance with legal advice which was focussed on protecting those perhaps less fortunate than Service User 1 who, in the consultant's opinion, appears to have a caring family who only wish to achieve the best for him/her. DASS has, rightly in the consultant's view, been concerned to ensure that the involvement of family members has not been motivated by the receipt of the reimbursements.

6.11.2. However, it is not clear to the consultant that this was simply and clearly articulated to the family members, in that when the consultant explained this herself to Relatives 1 they appeared to be reassured.

6.11.3. In the consultant's opinion DASS should have held group meetings with family members and carers to explain the issues, for example:

A. The reasons why DASS had decided not to share financial information.
B. The approach to the appointment of advocacy for the service users and the role the advocates would take.
C. When and how the family members would be involved and why this approach had been taken.
D. Why DASS had taken appointeeship in respect of benefit payments via DWP.
E. When DASS planned to involve the Office of the Public Guardian.
F. How and where independent legal or other advice could be sought, including access to Legal Aid.

6.11.4. Because DASS did not address the issues outlined above "up front" some DASS employees appear to have given the impression that they were being purposefully difficult, thus raising suspicions as to why they could not be given information. In mitigation however, the consultant notes that these were and are most unusual circumstances and that a precedent for the process was probably not available.

6.11.5. The attempt by Councillor 4 to organise his/her own meeting without officer support was, in the consultant's opinion, unconventional and the Officers have advised the consultant that the action on their part to post his/her letters rather than leave them at the service users' properties for family members at the weekend was an attempt on their part to be helpful. There is no evidence to prove otherwise, although it would have been more appropriate for this to have been discussed with Councillor 4.

6.11.6. In future if Members are unhappy with the actions of Officers, then this is a matter which should be taken up with the relevant Chief Officer and the Chief Executive, to avoid such events occurring again.

6.11.7. The consultant will comment however, that not all of the correspondence from DASS to family members has been easy to understand and indeed the schedule sent out explaining the reimbursement is difficult for any family member to agree without access to financial records which, of course, cannot be made available due to the restrictions contained within the Data Protection Act. In addition, there have been errors in addressing some of these letters and consequently the letters were sent to the wrong addresses.

6.11.8. The consultant is firmly of the view that some of Relative 1's concerns have arisen from a lack of trust of the Council and its employees which, in the circumstances, is completely understandable. This lack of trust led to Relative 1 requesting Mr Morton as his/her sibling's advocate in the reimbursement process. This was deemed inappropriate by DASS and under the circumstances the consultant agrees with this conclusion. Relative 1's sibling was, however, supplied with an alternative advocate (see Annex H).

6.11.9. The consultant has been advised that a mental capacity assessment was completed, which confirmed that an application to the Court of Protection to appoint a deputy was required. Relative 1 took on this role. The DASS financial protection team supported Relative 1 in this process. The Council does have a statutory duty to legitimately act as deputy for people who use services. The financial protection team assist with this work.

6.11.10. The offer from DASS, of independent advocates has been maintained for the individuals for as long as they require it, which includes assistance with how they want to spend their reimbursement money.

6.11.11. It is also understood that DASS have attempted wherever possible to minimise the impact on benefits and take best legal and welfare rights advice and have been successful in some respects but, in view of the sums of money involved, the affected service users' benefits have been affected in some cases.

Conclusion

6.11.12. On the balance of probabilities the consultant's view is that this was driven by a desire to avoid anything further going wrong. In hindsight, the engagement and communication processes with family members and external stakeholders could have been more frequent, clearer and expectations managed better; more face to face engagement would have best achieved this. In addition, briefings for local ward Members (ever mindful of data protection issues etc) and consideration of a greater role for these ward Members may also have assisted. During her review, however, she has not received or uncovered any evidence to suggest that either the advocates or legal advisors have acted inappropriately or that their involvement was intended to cause delay.

6.12. Misrepresenting the Facts in Relation to DASS' Contact with the Office of the Public Guardian

6.12.1. An accusation has also been made by external sources during the investigation that Employee 19 in his/her report dated 17 January 2011 to ARMC misrepresented the position in relation to the engagement with the Office of the Public Guardian (OPG).

6.12.2. The external stakeholder has alleged that the first time that the OPG was aware of the issues in relation to reimbursements was when she had made contact.

6.12.3. However, the consultant has investigated this accusation and her findings are as follows

A. The OPG wrote to DASS on 11.5.2010
B. DASS advises that it responded through its personal finance team (see email exchanges in Appendix 12 to Annex A).

6.12.4. It is therefore inaccurate to say that Employee 19 was misleading members of the ARMC in his report of 17 Jan 2011 (paragraph 3.1) which stated:

> *"Where issues of capacity have arisen in relation to making payments for reimbursements, the department has liaised with the Compliance and Regulation Unit of the Office of the Public Guardian to agree the actions to be taken on those cases. They advised to complete capacity assessments on all individuals and where they do not have capacity an application should be made to the Court of Protection. If they do have capacity then the reimbursement can go ahead to the individual."*

Conclusion

6.12.5. The consultant has found no evidence to substantiate this claim.

6.13. How Miscellaneous 21 Was Appointed

6.13.1. In relation to the advocacy and reimbursement arrangements, again, the consultant does not believe there to have been anything sinister in the approach adopted by DASS, and in particular the work of Employee 19.

6.13.2. The question raised by Mr Morton and other stakeholders is simply, “How can Miscellaneous 21 be independent when funded by the Council?” Firstly, it is not unusual for independent advice and support to be commissioned by an organisation which is actually paying for it. Indeed, these are the precise circumstances under which many/all consultancies or advocates operate on a day to day basis. The question should be, is the independence compromised by the activities that are being commissioned and what arrangements can, or more accurately, need to be put in place to ensure that conflicts of interest do not arise.

6.13.3. In the case of Miscellaneous 21, DASS sought to achieve this by setting out a specification of requirements. Appendix 13 to Annex A sets out the letters of appointment and specification of duties that were required of Miscellaneous 21.

6.13.4. However, these questions prompted the consultant to investigate the procurement arrangements that the Council had operated in relation to Miscellaneous 21. Appendix 14 to Annex A sets out a short report commissioned by Employee 16 in relation to the Council’s contractual relationship with Miscellaneous 21. In summary, there is a requirement for the Council to procure such services in open competition using the appropriate procurement processes.

Conclusion

6.13.5. The consultant has found a need for the Council to refresh its contractual arrangements with Miscellaneous 21 in the context of EU procurement requirements.

During the right to reply process the consultant has been advised that a review of the contractual arrangements for all voluntary, community and faith organisations is being undertaken.

6.14. The Role of Legal Rep 6

6.14.1. As the consultant understands matters, Legal Rep 6 were originally appointed to provide the necessary legal advice to support DASS firstly in the Judicial Review proceedings that were brought by Service Provider 3, and more recently in relation to the reimbursement process. In relation to whether there is any potential for conflict of interest in its role the consultant has been advised by Employee 3 as follows:

"The issues arising in the Service Provider 3 case are different to the issues arising in relation to the reimbursement process. I am not aware of any information which I consider gives rise to a conflict of interest."

The consultant agrees with this position.

6.14.2. In relation to a follow-up question as to whether Legal Rep 6 provided the service users and/or their families with advice as to how to access Legal Aid, Employee 3's response was:

"Where there is potential maladministration (or indeed an acceptance of maladministration) the Council does not have a policy of offering to pay for independent legal advice to any affected person(s). Each case is of course looked at on its own merits and in this case arrangements were made with MISCELLANEOUS 21 to provide advocacy services to the users and their families.

Any advice in respect of Legal Aid would be provided by the advocates appointed by the users/users' families. It would not be appropriate for the Council to advise on Legal Aid eligibility in the circumstances, and in any event officers would not be sufficiently familiar to provide such advice.

Conclusion

6.14.3. In these circumstances the Council should have specifically considered the need for independent legal advice to the service users and/or their families at the outset of the process and clearly communicated the manner in which this could be accessed.

6.15. The Accreditation of Learning Disability Providers

6.15.1. Mr Morton also raised concerns as to whether the process for accrediting Learning Disabilities providers was appropriate to support DASS clients.

6.15.2. The consultant in undertaking this element of the review has not found similar amounts of email or documentary evidence to that available for say the Service Provider 3 or Service Provider 2 elements. As a result she has had to rely on statements made by individuals, an Internal Audit review and a short review of the myriad of applications for this accreditation process now in storage to ascertain if any paperwork held by the Council supports the statements made by individuals. As a result her opinions are formed on the balance of probabilities and assumptions that documents found are representative.

6.15.3. The context for this accreditation process is important for at that time there were no formal proactive contract monitoring processes in place for Supported Living and therefore no framework or standards which could be used for the accreditation process (indeed, there were no written contracts with Supported Living providers at the time). This lack of contractual framework may have occurred in other local authorities at the time but, the consultant has not sought to determine whether this was/was not the case. The consultant has been advised that the accreditation process was established in an attempt by DASS to address these weaknesses. The consultant is advised that this had been raised by Employee 20 with Employee 13 and other senior managers a number of times, but as there were no additional resources forthcoming to take on this role it was not addressed (see Annex I). Employee 23 has also advised that there was a lack of resources in the contracts team and that the accreditation process was not limited to providers for Learning Disability services although many of the providers did deliver these services.

The consultant has been advised that since circa late 2008 a monitoring framework for Supported Living has been introduced, which brings together the DASS contractual service standards and Supporting People quality assessment framework, and that by June 2011 25 of the 29 providers had been subjected to a 2 day inspection.

6.15.4. It should also be noted that the accreditation process was undertaken before the creation of the corporate procurement team located in the Finance Department. However, the consultant understands that there is still no mandatory requirement for Departments to engage with the team or take its advice. This is unacceptable in Corporate Governance terms and needs to be addressed.

6.15.5. Mr Morton states that he had long held the view that this accreditation process should be undertaken. Employee 22 also wished for this accreditation process to be undertaken. From interviews it is clear that a number of colleagues in DASS also believed that something needed to be done to bring the LD providers within some form of contractual framework. The fact is it did not commence in earnest until circa December 2005. However, as stated above Employee 20 and Employee 22 have both advised that this was in large part due to a lack of resources to focus upon the project.

6.15.6. From interviews there appears to be confusion as to whether this was a tender process originally established in accordance with standing orders and advertised as an official tender requesting sealed bids or some other form of process to

enable the determination of a preferred supplier list. Employee 23 has advised that this was a new process and that the only guidelines that seemed to be available were those relating to tendering – hence the sealed bids. However, it is believed that an advert was placed and that returns were submitted to Wallasey Town Hall as would have been the case for a procurement process. Employee 22 has advised that the process was not a tender process. Other members of staff advised that the process seemed to follow a tender process of sorts at least at the outset.

Employee 23 has also advised that it became apparent during the process that the use of the tendering process was "*possibly not the best way to proceed. With the benefit of hindsight, this issue should have been thought through…..If this process were to be repeated today, I am sure that it would have been conducted very differently but……there would be more capacity and expertise available".*

Employee 23 also drew the consultant's attention to the fact that this process was being led from within the LD Service rather than by the Contracts team, both teams being accountable to different Heads of Service.

Employee 22 drew the consultant's attention to the input, or more accurately the lack of input, from the contracts team to this process, and whilst acknowledging that there may have been a shortage of resources there was no proposal forthcoming to downgrade other work so that supported living could be given the assistance it required.

The consultant's summary of the objective for the process based upon interviews was to secure a list of preferred suppliers who would adhere to a standard contractual framework.

6.15.7. A panel was set up to look at the submissions, this panel comprised of:

A. Employee 23 (who led the process)
B. Employee 24
C. Martin Morton
D. Employee 25
E. Employee 67 (replaced by Employee 26 circa March 2006)

6.15.8. In a formal tender process the submission date is final and late submissions are ignored. However, it appears that Employee 23 accepted late submissions from the outset.

6.15.9. The first stage of the process was a desk top review of submissions. This process used a questionnaire to enable a standard set of questions to be answered and scored based on the paper submissions. The consultant is advised that there were over 100 providers who submitted a bid, all of whom had to submit copious paperwork around policies and procedures and 4 references etc. For such a small team who largely seemed to retain some, if not all, of their day jobs this was a huge undertaking.

6.15.10. This review identified a number of companies who had not submitted all of their policies and procedures as required. In the consultant's experience if a procurement/tendering framework had been used then, it is highly likely that the provider would have been discounted. However, due to the lack of clarity as to the procedure being followed this was not the case.

6.15.11. It appears from the files that a number of organisations were sent letters of reminder seeking copies of missing documents, and there appears not to have been any firm and consistent deadlines applied to all organisations.

6.15.12. The consultant has been advised that DASS may not have been clear itself as to whether this was a tendering or accreditation process and that some of the structure used emanated from a tendering process as it appeared to Employee 23 to be a useful framework to follow. Employee 23 has also advised that he/she recalls an internal discussion with senior management suggesting it was not a tendering process. This appears to have caused concern to a number of staff, including members of the contracts team who raised concerns about the process being followed.

6.15.13. An internal audit review of the process was undertaken after the event which highlighted weaknesses in the process. An extract of the "overview of the system" documentation produced by Internal Audit as part of its internal audit review of the process is set out below:

"System: Adult Social Services – Accredited List for Support Services"

	Narrative
1.	*Decision taken to undertake a tendering exercise for companies to provide support services covering under 65's with learning, mental and physical disabilities.*
2.	*Advert placed in Trade Journal and local papers with a deadline by noon on 3 February 2006.*
3.	*No record kept to whom application packs were issued to (a spreadsheet is now maintained for any new requests). Original tenders were not requested to confirm in writing that they had received the documents.*
4.	*Fifty applications received and decision taken to treat as an Accreditation exercise rather than a tendering procedure. Tenders not contacted to advise that the procedure had been changed.*
5.	*Applications opened within Adult Social Services. A list of late tenders was retained.*
6.	*Current service providers who had not submitted an application were contacted to confirm their interest and to see if they wished to submit an application.*
7.	*Desk top evaluation undertaken to decide shortlist for interview. All validated by Employee 23. A number of potential providers deemed 'politically sensitive' at this stage.*
8.	*Any applications received which were incomplete or had missing documentation; the company was contacted for further information.*
9.	*Two professional and two service user references required along with the last two years audited accounts, business plan, constitution, documentation regarding ownership of buildings, list of members of the management committee, policies listed in question A15 of the application form, complaints book and details of registration with CSCI.*

10.	*Potential providers, shortlisted during the desktop evaluation, were invited in for an interview. The interview panel consisted of two members, one of which was Employee 23. The evaluation criteria was based on similar exercises conducted by DASS e.g. domiciliary care. The questions were approved by the Head of Service and the same questions were asked of each. A 2nd interview was arranged for a number of applicants in order for specialist staff to be included on the panel.*
11.	*The members of the panel were not consistent throughout the process. However, Employee 23 was involved throughout.*
12.	*Each question was scored from 0-2 and the threshold for inclusion on the list was 11.2, maximum scoring being 16. All interview sheets 'signed off' by Employee 23.*
13.	*All successful and non-successful applications were notified in writing and feedback provided where requested.*
14.	*A General Service Agreement has been issued to all successful providers for signing and returning, however there are a number yet to be returned. This is being monitored by Employee 26.*
15.	*The monitoring of the services provided is currently re-active but the Department is keen to drive forward a more pro-active approach.*
16.	*The Accredited List has been approved by the Head of Service but not by Cabinet/Committee.*
17.	*No provider has been removed from the list. However should this be requested then evidence would be sought to substantiate the removal and authorisation obtained from the Head of Service.*

6.15.14. It has been alleged by Mr Morton, and some staff have confirmed, that at least two companies had been singled out in the accreditation process namely Service Provider 3 and Service Provider 2. As a result the consultant referred back to the original files and found that paperwork had been marked to highlight these two companies.

6.15.15. It is suggested by Mr Morton and others that these two companies in particular should not have been accredited as there was a long history of problems (see separate section of the report) and staff believed that this alone should have ruled them out. Employee 22 has advised the consultant that he/she did not disagree with this statement, but states that this was a matter for the team of officers putting together the evaluation methodology to resolve.

It appears that the desk top review for these two companies was undertaken by Employee 23, Employee 39 and Employee 24 without input from the rest of the team. One viewpoint put to the consultant was that this may have been because of the disagreement as to the approach and inclusion of Service Provider 3 and Service Provider 2 which had led to Mr Morton refusing to participate further in the accreditation process.

Employee 23 has acknowledged that the perception on the part of Mr Morton and some other members of the LD team was that Service Provider 3 and Service Provider 2 were marked as a special case with the assessment for the accreditation process being put to one side to be undertaken by a special team.

However, this is not his/her recollection as all providers would have been included in the process despite the concerns raised about safeguarding and there was no special case made for Service Provider 3 or Service Provider 2.

Employee 23 also explained that it was agreed that the panel chosen to undertake the desk top reviews, interviews and make the final decision as to whether to accept these "contentious" organisations should not be left to more junior members of staff – hence the change of personnel.

It appears to the consultant that the issue here centres around how the process had been established. If at the outset the evaluation criteria had not been developed to take into account internal safeguarding concerns that had been proven then, the ability to take this into account half way through the process was impossible in that it would have invalidated the whole process. In addition, exclusion from the process on the basis of unproven safeguarding issues would, in the consultants opinion, have led to challenge from the providers.

Employee 23 is adamant that he/she had no agenda to put the two providers through the process. However, he/she acknowledges in retrospect that the process used may well have been fundamentally flawed. In hindsight he/she "might agree" that either he/she did not explain his/her actions properly or that they were misunderstood, or that legal advice should have been sought (although he/she has no recollection of whether he/she did or did not seek legal advice).

Employee 22 has commented that if he/she were running this process again things would be done differently and he/she would ensure that the staff involved would have been able to focus upon the delivery of a robust accreditation process.

Conclusions

6.15.16. The investigation has shown that the process as designed did not allow the evaluation panel to take into account information known to the Council about existing suppliers, and did not ask specific questions of referees (e.g. Councils) as to Adult Protection issues and referrals. Whilst the consultant does not rule out the use of service users as references, the issue of how such references are obtained and the ability of those vulnerable adults chosen by each provider to submit anything other than a positive reference needs to be considered very carefully e.g. to ensure that the service user has knowledge and understanding of the consequences.

6.15.17. As a result of the process, which in the main those involved now see in hindsight was flawed, the known issues could not be taken into account. In addition, any process which had attempted to take these factors into account could have been deemed to be prejudicial given the circumstances surrounding the issues and investigations.

6.15.18. It is unclear from interviews or the paperwork reviewed whether legal advice was sought before embarking upon this process. If it had been, and had DASS been entirely open about the context and circumstances, the consultant believes that a more robust process would have been developed.

6.15.19. The consultant believes that the singling out of at least the two companies mentioned, not only brought the process into disrepute internally, caused further bad feeling amongst those staff involved but potentially could have led to a legal challenge in relation to a flawed process.

6.15.20. Whilst not directly within the terms of reference for the review, questions were raised as to the capacity of the contracts monitoring team outside of the supported living context. Given that DASS has run a major procurement process to increase the use of the private and voluntary sector in provision, Senior Officers and Members must assure themselves of the capacity available to undertake both reactive and planned routine contract monitoring and quality assurance visits.

6.16. The Circumstances Leading to the Delays and Subsequent Inaccurate Payment of Mr Morton's Compromise Payment

6.16.1. Mr Morton's compromise agreement was approved internally and signed by Employee 27. Employee 27 has advised that the compromise agreement was approved by Employee 64, in consultation with Employee 76. Employee 7 had no involvement in the approval of the compromise agreement.

6.16.2. Under normal circumstances this process should have triggered the requirement to make a payment to Mr Morton which could have been paid directly to him or via his solicitor. In these circumstances the consultant has been advised that the payment was to be made to Mr Morton's bank account directly but, for some reason was sent to his solicitor. This payment should have been made after the deduction of National Insurance and personal taxation contributions to HMRC at the appropriate rate and was in the consultant's opinion the responsibility of Employee 28 to ensure that the process worked smoothly. Employee 28's explanation is that this was an error and not a deliberate act in that perhaps the Finance Team did know how to make these payments. Employee 28 also advised that in all other respects the payment was made in accordance with normal practice. The payment net of deductions was made to Mr Morton but the payment was not made to HMRC and that he was not aware of this until 2010.

During the right to reply process Employee 28 has stated that he/she was not at that time and is still not aware that it is his/her responsibility to ensure that these payments to HMRC were made.

6.16.3. Employee 2 has acknowledged during the right to reply process that with the benefit of hindsight, the wording of the Compromise Agreement in relation to the financial arrangements should have been clearer. Employee 2's reading of the agreement is that it was intended to ensure that Mr Morton would receive £30,000 without any deductions for tax or national insurance, but that the remaining £15,000 would be subject to deductions for tax and national insurance.

Employee 2 has advised that "*I am clear that the payment was not a redundancy payment and I am advised by Employee 27 that the phrase "by way of ex gratia payment" was requested by Mr Morton's solicitors. It is a payment in consideration of Mr Morton agreeing to the termination of his contract of employment.*

6.16.4. When it became apparent to Complainant 3, who has been supporting Mr Morton, that his payment had been made via supplies/accounts payable rather than through payroll, however, he/she became concerned.

6.16.5. As a result Complainant 3 commenced the submission of a number of Freedom of Information (FoI) requests in his/her attempts to understand what had happened. Complainant 3 advises that this commenced in late 2008.

6.16.6. On 22 January 2009 Complainant 3 was informed that the whistle-blower's figures were not available as they were part of an ongoing investigation. This was clearly not the case and therefore on 23 January 2009 Complainant 3 queried this but received no response.

6.16.7. On 23 September 2009 Mr Morton "went public" announcing that he was the whistle-blower and as a result Complainant 3 submitted another FoI request.

6.16.8. On 22 October 2009 Complainant 3 was advised that the request was with Legal and that the FoI request had run out of time. He/she was advised that he/she could make a complaint to the Information Commissioner Office which he/she did on 23 October 2009.

6.16.9. By 22 December 2009 Complainant 3 had received two letters, the first from Employee 2 stating that he/she had asked Employee 27 to review his/her FoI request and a second from a DASS employee stating that he/she had put the paperwork to the FoI request in the post.

6.16.10. The paperwork was received on 23 December 2009 but, it contained accounting codes for which no explanation had been provided. Complainant 3 sought an explanation immediately. On 29 December 2009 Complainant 3 clarified his/her request to minimise the opportunity for misunderstanding.

6.16.11. By 26 January 2010 Complainant 3 had reminded the Council that he/she had not received a response.

6.16.12. On 23 February 2010 Complainant 3 was advised that while the amount shown in the document supplied on 23 December 2009 was correct the coding was wrong and that the amount deducted would be sent to Central Government. In the consultant's opinion this was an inappropriate response; what had occurred was an error and the Council should have said so. In addition, the Council's HR section should have immediately written to Mr Morton to apologise and to explain what it would do next.

6.16.13. On 24 February 2010 Mr Morton gave his permission for information to be released and on 28 February 2010 Complainant 3 explained again what information he/she required.

6.16.14. By 1 March 2010 Complainant 3 had received an acknowledgement to his/her request, but also realised that Employee 28 had been given responsibility within the Council for responding to his/her FoI.

Employee 28 has during the right to reply process clarified that he/she had been asked to supply information to Employee 18/Employee 78 rather than take responsibility for the response to the FoI request.

6.16.15. On 11 March 2010 the DASS Information Manager advised Complainant 3 that he/she was waiting for information from the DASS HR team.

6.16.16. When the information arrived Complainant 3 wrote back to the Council on 31 March 2010 advising that it was merely the annual budget and did not include any actual expenditure. Complainant 3 also made a complaint to the Information Commissioner and advised Wirral that he/she was following this course of action.

6.16.17. It was not until 15 April 2010 that Complainant 3 was notified that Wirral had not paid the amounts deducted from Mr Morton's compromise agreement to HMRC. Complainant 3 requested that DASS confirm that the amounts deducted from Mr Morton's compromise agreement matched the amounts shown on the manual

payments form (Complainant 3 calls this the ex gratia payment form) which he/she had previously been given.

6.16.18. On 19 April 2010 DASS sent Complainant 3 an email correcting his/her understanding of ex gratia payment form and figures.

6.16.19. On 28 June 2010 HMRC sent Mr Morton a self-assessment form because of the payment he had received from Wirral Council. As a result Complainant 3 asked DASS for evidence of the amount paid to HMRC in respect of Mr Morton's compromise agreement, the date on which the payment was made and all correspondence relating to it. Complainant 3 was sent a copy of a letter dated 12 April 2010, to HMRC from the Finance Department's Tax Compliance Manager which incorrectly stated that Mr Morton's payment had been made in 2009/10.

6.16.20. There is an unresolved "bone of contention" in that the letter from the Tax Compliance Manager stated that the payment was in respect of redundancy. The consultant believes that this information must have come from DASS.

During the right to reply process Employee 28 has clarified that there were email exchanges between Employee 79 and him/herself dated April 2010, 2 years after Mr Morton left the Council, where Employee 28 explains to Employee 79 that Mr Morton's departure was a combination of both redundancy and compromise in that Mr Morton's post was deleted as part of the DASS reorganisation. However, Employee 28 goes on to explain that at the time Mr Morton left the Council's employ his post had not been made redundant.

Given that Mr Morton's post had not been deleted at the point he left the Council the consultant does not agree with Employee 28's assessment that the situation was a combination of redundancy and compromise agreement.

6.16.21. The consultant has seen a series of email exchanges involving a number of DASS and Finance Department personnel that are included at Appendix 15 to Annex A and in the consultant's view they demonstrate that:

A. DASS did not know how to make this payment;
B. DASS was very concerned about the deadline to make the payment;

6.16.22. The matter was then brought to Employee 7's attention on 28 June 2010 with a view to resolving the errors.

6.16.23. On 6th July 2010 Complainant 3 requested a copy of the second letter to HMRC expecting this letter to state that Mr Morton had not been made redundant and that the payment did not relate to 2009/10 but to 2008/9. In reality, the second letter from the Tax Compliance Manager still stated that Mr Morton had been made redundant. The consultant has seen copies of email exchanges between Employee 28 and the Tax Compliance Manager which show that the former advised that Mr Morton was made redundant, but that his payment was uplifted via a compromise agreement.

During the right to reply process Employee 28 has advised that the letter did not say that Mr Morton was made redundant, it was asking what the background to the payment was.

6.16.24. Whilst Employee 14 states that he/she received conflicting advice on the telephone from the finance department, the only email trail that has been available during the investigation does not substantiate this position. There is an email which clearly sets out the position as follows:

Quote from email (the full exchange is set out at Appendix 15 to Annex A):

"We have made a few further enquiries. Employee 29 in the Pensions Team says that he/she usually liaises with Employee 28 when this type of payment is made and that generally he/she organises payment."

Unfortunately this advice was not heeded by DASS and Employee 14 made the payment by cheque, on the instructions of Employee 28. DASS should have ensured that the Pensions team were given instructions to make the payment.

6.16.25. Employee 28 has advised that DASS had always made compromise agreement payments in this manner and this may well be true but it does not make it right. However, this could perhaps have been because DASS did not seek the advice of the Finance Department/seek the advice early enough and/or, perhaps because the central HR team were unaware of the correct procedure. However, the payment was made with tax and NI having been deducted without processing through the pensions payroll. This is where the second error occurred.

6.16.26. As a result of the instruction to proceed with the payment by cheque, Employee 14 delegated the task of completing the paperwork to raise the cheque to a member of his/her team. It is evident from this paperwork that this team member was attempting to deduct National Insurance and tax from the payment but clearly was not able to complete the transactions. As a result Mr Morton's payment was made on the basis that amounts had been paid to HMRC which clearly was not the case. This is where the third error occurred.

6.16.27. As an aside, during the course of this investigation, the Council has implemented a severance scheme as part of its measures to achieve its budget reductions and has corporately driven the mechanism by which these payments were made, thus ensuring the advice from the finance department was adhered to and the appropriate procedure was followed.

Conclusion

6.16.28. DASS mishandled the payment of Mr Morton's compromise agreement from start to finish through a number of compounding errors. There is no evidence to demonstrate that this was a deliberate act.

Employee 28 has advised during the right to reply process that he/she did not and does not believe that it was the responsibility of DASS to ensure that the payments to HMRC were made. The consultant asks how they could be anybody else's when clearly the correct procedures were not followed.

6.17. Whether in the Case of Service User 2 the Council Acted Properly When it Investigated a Complaint from Complainant 3 on His/Her Behalf Relating to the Cessation of "Top-Up" Support

6.17.1. One of the issues the consultant was asked to investigate by Complainant 3 and Spouse was the effectiveness of the Council's complaints procedure in relation to an official complaint made by Complainant 3 on behalf of his/her son/daughter, Service User 2, a service user with a learning disability who has qualified for support from DASS. Service User 2 was originally a tenant of Service Provider 3, which was at that time a provider of both accommodation and support services to vulnerable adults.

6.17.2. Service User 2, being dissatisfied with the "support" he/she was receiving, and having some concerns as to alleged coercion from staff and management from Service Provider 3 in relation to claims for benefits at perhaps a higher level than was entitled, raised concerns with members of DASS in particular Mr Morton. In effect Service User 2 was a whistle-blower.

6.17.3. After some involvement from the Police, other external agencies and internal teams, it was agreed that Service User 2's position had become untenable at Service Provider 3 and that he/she needed to seek an alternative tenancy in another property.

6.17.4. Unfortunately perhaps, this search led Service User 2 to settle upon a property where the rent was above that level considered to be appropriate by the Rent Officer (part of the Valuation Office Agency, an external body). The property was chosen because the locality was known to Service User 2 and therefore would contribute positively to his/her ability to live independently with continued support.

6.17.5. Given that the Rent Officer had limited/restricted the rent upon which Housing Benefit could be paid by the Council, Service User 2 was left with the need to make a contribution to his/her rent from his/her own funds, a situation likely to place him/her in hardship, given his/her reliance upon benefits.

6.17.6. His parent Complainant 3 brought this situation to the attention of Employee 11 and it appears that he/she agreed that DASS would fund the top up because of Service User 2's involvement in the investigations relating to Service Provider 3.

6.17.7. Unfortunately, there are no written records of this agreement with DASS other than copies of correspondence between Employee 11 and Complainant 3, held by Complainant 3.

6.17.8. For a period Service User 2's rent was paid by the Council in two ways. Firstly via Housing Benefits. Secondly, by DASS via a "top up".

6.17.9. This situation continued until, an Officer in DASS finance was reviewing payments which did not appear to be for care packages. This officer, without referring to anyone else within DASS decided to stop the payment (at this point Employee 11 had left the Council).

6.17.10. Complainant 3 became aware of the situation when Service User 2's new landlord began proceedings for rent arrears. He/she made a formal complaint

and was eventually advised that Discretionary Housing Benefits would be paid instead of the "top up" being paid by DASS.

6.17.11. Whilst this resolved the issue of any financial detriment to Service User 2, it did not and does not take into account the personal and behavioural impact this solution has caused.

6.17.12. Housing Benefit is awarded only after an assessment of income and the award of Discretionary Housing Benefit requires a separate assessment for, it is not subsidised in the same manner by Government. As a result, I have been advised that Service User 2 has to complete two separate application forms to ensure that his/her rent is paid in full. In addition, the discretionary element of the benefit is by its very nature subject to change and cannot therefore be guaranteed. Complainant 3 has advised that this uncertainty has caused, and continues to cause Service User 2 distress.

6.17.13. Complainant 3, believing that he/she had agreed an arrangement in perpetuity with Employee 11 in relation to his/her son/daughter's rent "top up", used the Council's complaints process to challenge this situation. The complaints were submitted to DASS and the last, the stage 3 formal complaints process, involved an independent 3rd party. His/her complaint was not upheld.

6.17.14. Complainant 3 also referred the matter to the Local Government Ombudsman and his/her MP, Councillor 5. The Ombudsman did not find in his/her favour, stating that:

"Employee 11's letter did not include any timeframe for the award of the top up."

Conclusions

6.17.15. Having reviewed the documentation and spoken with the Adult Social Services Integrated Communities & Wellbeing Branch, Quality Assurance & Customer Care team, the consultant has established that at no point through the complaints processes or Ombudsman referral were the investigating team made aware of the particular circumstances in which Service User 2 found it necessary to move. At this stage Employee 11 had left the Council's employ and was therefore unavailable to advise further. Having put the wider context to the Principal Manager of the Adult Social Services Integrated Communities & Wellbeing Branch, Quality Assurance & Customer Care, the consultant was advised that should the matter be investigated now it is highly likely that a different outcome would ensue.

6.17.16. The consultant is therefore of the view that Complainant 3's complaint should be re-opened and the matter of the DASS "top up" payment be reconsidered in the light of the wider context, both in terms of the reasons for Service User 2's tenancy change and the impact upon his/her health and well-being.

6.18. Whether the Manner in Which the Minutes of Audit and Risk Management Committees and Other Formal Council Meetings Truly Reflect the Discussions of the Meetings and are Compiled in Accordance With Best Practice

6.18.1. The minutes of the Audit and Risk Management Committee (ARMC) are taken by Employee 30.

6.18.2. The process Employee 30 follows to develop a draft set of minutes is as follows:

A. At the meeting the taking of long hand notes – not verbatim notes.
B. Development of a first draft of minutes using the long hand notes and anything additional from his/her memory. This draft largely provides a shortened version of the hand written note which does not attempt to provide a verbatim note but merely a summary of the salient points/issues raised at the meeting.
C. The notes remain in draft to allow Employee 30 to continue to work on them until he/she is satisfied that they reflect fairly the salient points and issues raised at the meeting. Employee 30 does not save the various versions of the development of his/her notes, for they are his/her work in progress until this stage is completed.
D. Once Employee 30 is satisfied with the quality of his/her draft notes, he/she circulates the draft to key officers within the Council for comment. This will depend upon the issues discussed at the meeting but, for ARMC is highly likely to include Employee 2, Employee 7, Employee 31, Employee 32 and Employee 4.
E. Should one of these key colleagues suggest an amendment to Employee 30's draft minutes, he/she would not automatically accept the suggestion. Employee 30 advised that he/she would refer back to his/her hand written long hand notes to determine whether the suggested amendment was acceptable to him/her in the context of his/her notes or recollection. If unacceptable the suggested amendment would be rejected by Employee 30.
F. The draft minutes are circulated with the agenda for the next meeting (in this instance of the ARMC) and remain draft until such time that the Councillors who are members of the ARMC approve them as an accurate record of the meeting. It is at this stage that Employee 30 destroys the hard copy of his/her hand written notes.

6.18.3. Given the allegation made regarding the accuracy of the minutes the consultant questioned Employee 30 further as to whether he/she had during his/her employment at Wirral Borough Council, received any pressure or undue influence to amend a draft set of minutes in an unreasonable manner that would change the points/issues raised and therefore amend the focus of the meeting. Employee 30 was adamant that this had not occurred and that he/she would not accept any such pressure as it would undermine his/her professional standing.

6.18.4. Employee 30 further explained that the IT system in use within the Committee Section does not allow the saving of earlier versions of the committee clerk's drafting of the notes. The version saved within the system was the latest version and therefore he/she could not provide the consultant with copies of his/her drafts for her to review and consider the changes. The system also provides for comments on the drafts to be sent back (and therefore saved) within the system. However, Employee 30 advised that there was (across the Council as a whole), an inconsistent approach to the use of this function and, it was therefore

impossible for him/her to provide the consultant with copies of the comments provided by the key officers consulted. This is an unacceptable position for the Committee Section and needs to be addressed by the Director of Law, HR and Asset Management.

6.18.5. As a result of the interview with Employee 30 the consultant was satisfied that he/she could and would be robust if any inappropriate requests were made of him/her and his/her understanding of the legal framework within which he/she is operating when minute taking.

6.18.6. The consultant is however concerned that the allegations may arise because there is a misunderstanding as to the use of the term "minutes" in relation to the notes of the meeting. Generally unless the term "verbatim" precedes the term "minutes" the accepted understanding of the document that follows could be described as "a note which typically describes the events of the meeting, starting with a list of attendees, a statement of the issues considered by the participants, and related responses or decisions for the issues". However, Knowles on Local Authority Meetings (a Manual of Law and Practice) on page 272 includes the following:

"12.13 Minutes can be kept brief by being selective: a minute is not a verbatim record but a summary of the proceedings that includes only the essence of the discussion – not always that – and the decision. It is rarely necessary to reproduce, however summarily, what a particular speaker said; but helpful, as a rule, to pick up the main threads of the discussion that led to the conclusion: indeed there is danger in recording the individual contributions since all members are likely to want the same treatment. To be self-contained does not mean that a minute cannot properly refer to supporting material, e.g. an officer's report incorporated as an appendix, a plan, deed or other significant document that cannot physically be made part of the minute book. But a minute must not rely on extraneous material for its understanding or interpretation; the actual resolution should always be understandable on its own. Some authorities now choose to sound-record their meetings, which means that the committee clerk has an accurate record from which to transcribe the minutes."

"12.14 Minutes collectively should be complete in the sense that they include at least a brief reference to every item of business dealt with, so that it may safely be assumed that any matter not mentioned was not discussed at the meeting."

6.18.7. Knowles also provides guidance at page 287 as to the destruction of the committee clerk's notes as follows:

"12.53 Once the minutes have been confirmed the committee clerk's notes should be destroyed. The reason for this is that there should be no other record, however informal, that might cast doubt upon the correctness of the official record".

Conclusions

6.18.8. In light of the above and the consultant's experience of minute drafting and approvals in other local authorities, she is satisfied that the process followed by Wirral Borough Council is the norm and indeed follows legal guidance.

6.18.9. It is impossible for the consultant to comment upon the accuracy of the minutes of the ARMC meeting which has led to this compliant as she was not present but, given that the complainants raised their concerns with the Councillors who were members of the committee and that they did not see any need to make amendments to the minutes one can only assume that they did not believe there was any need to do so.

6.18.10. The consultant would, however, advise Councillors who attend Council meetings (e.g. select committees, Cabinet or full Council meetings) to pay particular attention to key points discussed, actions agreed and resolutions passed to ensure accuracy of minutes in the future.

6.19. Transitional Housing Benefit / Supporting People Grant and Processes / Supported Living Services

6.19.1. The consultant believes that before the reader moves on to consider the issues relating to Supported Living Providers, it would be helpful to set out some background relating to Transitional Housing Benefit (THB) which was the precursor to the Supporting People Grant. The former was operated by the Finance Department and the latter by the Regeneration Department.

6.19.2. In March 2001 a Housing Benefit Circular was issued by the then Department of Social Security to assist local authorities in the administration of the THB scheme and in particular *"provide an additional tool when dealing with providers who are reviewing their rent and support charges to ensure that the breakdowns are accurate and the process has been transparent".* This was not the first guidance, there had been much before, but the consultant believes this may be useful as previous guidance has recognised it has been difficult for many providers to provide accurate breakdown of their charges.

This circular also identifies the following:

"The Department of Health have defined personal care as 'care, which includes assistance with bodily functions where such assistance is required'. There is a practical distinction between the provision of personal care which entails physical help, and the provision of support which entails enabling, reminding and non-professional counselling (which has a dictionary definition of advising) with the aim of achieving greater independence or maintaining sufficient independence, for example a tenancy....."

Thus physical assistance with personal hygiene is 'personal care'; but informal day-to-day advice on personal hygiene, which may enable the user to maintain a degree of independent living, is eligible (for THB) under general support and counselling.

In a similar way, 'personal care' is taken to include administering medicine (which might also be excluded on the grounds of being a medical service); but day to day, non-professional 'reminding' to take medication is a function legitimately undertaken by support staff.

Having read through this guidance, it would appear to the consultant that the HB team acted reasonably.

6.19.3. Section 32 of this circular also states (in the context of social services departments being the landlord):

"There has been concern expressed about charges being made under Transitional Housing Benefit that should be funded under other statutory powers of Social Services Departments, for instance in relation to the National Health and Community Care Act 1990. It is not and never has been the intention of the Supporting People Programme or the THBS to replace these functions. However, in many instances the service that is provided includes the provision of housing support and not services in relation to Community Care or other related provisions. It is legitimate for these housing support charges to be a condition of the tenant's occupation, and for these charges to be eligible for THB."

6.19.4. Section 35 of this circular relating to private landlords states:

"Private landlords can charge for support costs where they are a condition of tenancy, where the landlord or someone acting on behalf of the landlord provides the support, and where the local social services department has issued a community care assessment for the purpose of THB."

6.19.5. Section 36 states:

"The type of provision that may be eligible for transitional housing benefit includes:

A. Supported lodgings schemes where the landlord provides the services themselves directly to the tenant. Charges cannot include any personal care charges.
B. Private landlords that contract with an outside agency to deliver the housing support; this may include floating support provision to assist rehabilitation."

6.19.6. A further HB/CTB Circular A5/2003 (Revised) stated that *"from April 2003 the Transitional Housing Benefit Scheme will cease and be replaced by the Supporting People Scheme funded by ODPM in England..... Therefore from 1 April 2003 support costs will no longer be included in benefit assessments and cases will be reassessed to reflect these changes."*

6.19.7. Employee 22, believing that the context of services at the time had not been fully explored, provided the following:

"Supported Living was the smallest part of the independent sector market. It did not receive legal regulation through the CSCI that domiciliary and residential providers received, and there was little internal regulation by the Department. Supporting People was managed by another Department [Housing and *Regeneration], and therefore those providers which also supplied services to social care clients, were regulated only by Supporting People……...many of the people who lived with Service Provider 2 and Service Provider 3, would have found it very difficult, if not impossible, to find accommodation with mainstream housing providers. Obviously this would have been the preferred option. However, unless accompanied by a supported living scheme, landlords were, and still are, very reluctant to have people with mental health needs or with learning disabilities, who may well present with challenging behaviour or behaviour that is seen as anti-social by others, as their tenants. This severely limited the choices available to the Department. In many cases people would have been either homeless or left in hospital. There are examples of successful supported living schemes where the landlord is a registered social landlord and support provided by either the Department, or by another organisation. The whole sector was not poor quality or exploitative."*

During the right to reply process Employee 22 highlighted a parallel with the processes, which would be used if there were concerns about the quality of a residential provider. She suggested that the process of investigation, and possible suspension of the provider if the concerns are sufficiently serious, would require liaison and could take as long as 9 months to complete, during which time DASS would make no further placements although private paying clients can still take up residence.

6.20. Service Provider 1 / Service Provider 2

6.20.1. Mr Morton and others have raised allegations as to the inadequate response of Adult Social Services to adult protection concerns and issues relating to a number of companies who provided "support" to service users who occupied supported living accommodation as either part of the commissioning process by DASS or as part of a package of support commissioned by the Housing and Regeneration Department under Transitional Housing Benefits and later Supporting People grant.

6.20.2. In addition, it should be noted that Employee 22 has advised that:

"There has never been any question about the truth of the allegations made by Mr Morton, or by other staff, about the exploitation of individuals living in Service Provider 3. The exploitation has been financial. There was never any question about the validity of allegations or concerns expressed about the poor quality of care and support and living conditions for people using the services of Service Provider 2. I personally, have never been in any doubt about this. I believed what I was told by Martin Morton and by others, and have never had any reason to doubt what I was being told.

6.20.3. Whilst the introductory paragraphs that follow have been included under the heading of Service Provider 1/Service Provider 2 they could in practice have been included within the sections for Service Provider 3, Service Provider 4 and many others. Documents relating to Service Provider 2 can be seen at Annex J.

6.20.4. The consultant has been advised that when the original ODPM proposals were circulated the role for establishing THB and SP was passed to the Adult Social Care team (most probably the Director who would have been expected to delegate this one of his/her staff). However, the consultant has been advised that due to the lack of action on the part of Adult Social Care, the responsibility passed to Employee 33 who, through the auspices of Employee 34, established a team and developed the Council's response etc. No evidence has been made available to substantiate this course of events and, as this pre-dates Employee 22 he/she could provide no comment. Employee 22 has suggested, however, that when the team was being established he/she made the offer to establish a joint team and second Mr Morton, but he/she received no response (this has not been verified by the consultant). However, statements from individuals in both departments suggest that the working relationship between the two departments was not good, with, both teams largely blaming the other. In addition, the Housing Benefits team (Finance Department) would have worked with both departments, in establishing the scheme and there appears, based upon comments from individuals, to have been a better working relationship between Supporting People and Housing Benefits than between DASS and Housing Benefits.

6.20.5. There was good cause for this to be an important issue for Wirral Council, in that this offered an opportunity for Low Level Housing Support Services which had previously been funded from the social care budget and/or the housing benefit budget to, potentially, be funded via THB/Supporting People a new source of funding. Given that the Adult Social Care budget was overspending at the time, this was a real opportunity provided that contracts with external providers were negotiated downward to reflect the fact that they were in effect receiving the same level of funding but now via 2 sources, i.e. Adult Social Care budgets and

THB/Supporting people. Providers on the other hand wanted to maximise their income levels and, it was therefore, for the Council to manage this effectively to ensure that the public purse was not detrimentally affected by these changes. A point that shall be referenced again later in this section of the report.

Whether it is the fact the Housing and Regeneration rather than DASS that led to the alleged friction between departments or whether there were personality clashes is unknown but, what is clear is that there was little/no co-ordinated action between the 3 departments concerned (Housing and Regeneration, Finance (Housing Benefits) and DASS. Employee 22 has suggested that there was no joint approach at Chief Officer level between the 3 departments but that there were positive and helpful relationships at operational levels.

The consultant has found no evidence of co-ordination at Chief Officer levels, interviews have suggested that there were some positive relationships but these were largely at middle rather than senior manager levels.

The consultant has received conflicting views as to the cause of the difficulties, more often than not DASS has been singled out as root of the problem.

6.20.6. Service Provider 1 (as was the first incarnation) began providing "support" services to service users placed in independent living accommodation. The term of the word "placed" in this context must be viewed differently to other placements made by DASS. Unlike service users in residential accommodation, service users with learning disabilities who were deemed by DASS as appropriate for this type of support, found themselves becoming tenants of the accommodation provider. Sometimes this was the same or a related company to that providing support, sometimes it was not.

Service Provider 5 has advised that Service Provider 1 had been formed as a partnership between him/herself as the clinical lead and another colleague (who is now deceased) who was a solicitor and therefore took the administrative lead. It was a comparatively small organisation and became destabilised as a result of the death of his/her partner which lead in late 2004 to discussions and subsequent transfer of business to a new company Service Provider 2 which was formally established in early 2005. Whilst Service Provider 5 was originally a Director in this business he/she left in 2006 before it went out of business.

For ease the consultant has referred to Service Provider 1/Service Provider 2 generically without clarifying the above throughout the report. The reader is asked to note the change of company from 2005.

6.20.7. On signing a tenancy agreement, the service user, should have been protected by all the rights and obligations to be found in landlord and tenant legislation and case law. This is also an issue that the consultant will return to in a later section of this report.

6.20.8. Because the support provider was deemed not to be providing care services (as defined in law), but a lesser level of service termed support (i.e. support to live independently and further develop the skills required to continue to do so without or with less support), the support provider was not required to undergo the registration processes required for say residential homes. As a result a new unregulated group of providers began to develop which had undergone no formal assessment process to appear on an approved supplier list. It is unknown how

these companies originally became providers to Adult Social Services; there appears to be no clear audit trail of this, nor any committee approvals for each supplier despite the amounts payable being outside of the delegated authority for any officer.

6.20.9. From the emails reviewed and interviews held, it is apparent that there were no written contracts (there was undoubtedly an implied contract) or performance management arrangements in place between DASS and any of the external Supported Living providers. From meetings held there appears to have been a lack of capacity to take on the performance management aspects of the supported living providers within the contracts team which had been raised with senior management but remained unaddressed. It would appear that at the time the contracts unit was focussing on residential and domiciliary care which was already regulated.

Service Provider 5 has agreed with the consultant's assessment and adds that many of the care managers lacked awareness of Transitional Housing Benefits, Supporting People and the inter-relationships with DASS.

During the right to reply Employee 22 raised the issue of why the Contracts team did not provide further support to Learning Disabilities? The consultant has received no evidence to explain this lack of investment in the Contracts team but Employee 22 has suggested that its priorities were not refocused from the already regulated to the non-regulated area of supporting people, which meant that this important performance/contract management function was not taken forward as a result of budget constraints.

However, it is entirely possible that this short term saving actually cost the Council because a number of independent living providers underperformed and therefore valuable operational officer time from the operational service area was spent investigating the issues and concerns etc.

6.20.10. Unfortunately a continuing theme throughout the investigation relates to the apparent lack of awareness of care managers (in particular those making placements) as to the workings of Transitional Housing Benefits and the form and function of the supported living placements (and therefore contracts) that they were making. As a result the consultant has some concerns that perhaps these care managers were not always in the lead and may have found themselves in a position where perhaps some of the providers were not working collaboratively when drafting or helping to draft the care plans.

6.20.11. By February 2003 Mr Morton coordinated a review with two other colleagues to ascertain the extent to which his concerns (summarised above) were valid. Employee 35 reported that:

"Different properties have a mix of different users from different service user groups. No consultation by Service Provider 1 about individuals moving properties and no apparent understanding of the impact of mixed service groups.

Issues over the payment of utilities. Service users asked to pay more of a contribution without evidence or anything in writing.

Costings are haphazard. Care managers have to negotiate to reduce costings to realistic levels. Not always clear what we are paying for. Costings need to be

more transparent. Would be better if we had some sort of banding so that we are clear what we are commissioning.

Service Provider 1 have contracted out for care and it has been provided by an agency that is not a preferred provider. This is not a problem in itself but we need to know. There are some agencies that the local authority would not commission with for justified reasons so we would not wish them to be used by others.

Care staff are not always aware of the care plans for the people they support. If the staff team changes proper induction should take place for new staff. They are not aware of information they should be passing onto us. Staff should know when they need to contact the local authority with concerns or if events have happened, i.e. links to the vulnerable adults policy.

During the right to reply process Service Provider 5 has stated that there was only one property where there was a mix of clients as suggested above, and that all other clients had a mental illness or a dual diagnosis of mental illness and learning disability. He states that the local consultant psychiatrist at the time had praise for Service Provider 1.

Service Provider 5 also stated that service users were taken to pay their own bills and that until 2004, when a request was made to complete a charging matrix by the Mental Health Commissioning Manager, the hours of support were agreed with the care managers, but they would often be reduced. He/she stated that he/she wanted the calculation of the number of hours support granted to be more transparent.

Finally, Service Provider 5's recollection in relation to the above was that at this time Service Provider 1 did not sub-contract care to any other organisation.

Service Provider 5 has provided no documentary evidence to support this position.

6.20.12. At this point it is important to note that the consultant has not been provided with any audit trail as to legal advice being sought, either to protect the Council and/or to protect the service users. They were after all tenants with legal rights and, should have been afforded all the legal protection afforded by the law. It is questionable whether all/any of the service users would have had the mental capacity to understand the circumstances in which they found themselves and/or the consequences of these circumstances and actions. The consultant has not during the course of her investigations been presented with any evidence to suggest that advocacy support was commissioned by the Council to support these service users and their families.

During the right to reply Service Provider 5 has confirmed that some of Service Provider 1's clients had very complex needs, and in his/her view the service users did not have the mental capacity to understand the circumstances they found themselves in. He/she did however state that Service Provider 1 worked with Wirral Advocacy Services. No documentary evidence has been provided to the consultant to support Service Provider 5's statements.

6.20.13. Service Provider 1's business with Wirral Council appears to have continued, and by October 2003 Employee 11 had received perhaps his first but certainly not his last enquiry as to issues and behavioural problems emanating from

Service Provider 1's properties, with a growing number of other potential and actual adult protection concerns being brought forward by a number of parties including Service Provider 1's employees, social care staff and the Supporting People team.

During the right to reply a difference of opinion has occurred regarding the number of people under Service Provider 1's care, which will be a theme throughout the remainder of this document.

Service Provider 5 had said that his/her business with Wirral Council did not continue to grow but would have remained at 17 people in total because it had limited number of placements available due to a limited number of properties. However, when the business transferred to Service Provider 2 in 2005 the number of properties and placements grew because two of the new Directors ran a property management business.

During the right to reply Service Provider 5 also stated that he/she was not aware of any of Service Provider 1's employees having made comments about adult protection concerns and was unaware of any such issues, except one staff member who was found to be drunk on duty and was dismissed as a result.

The consultant was advised by a former Director that a lot of incidents happened after ALS took over, however.

6.20.14. By July 2004 it was also becoming apparent to DASS that Service Provider 1 did not have the capacity (largely staff resource) required to deliver the agreed support plans and were as a result being paid for services it was not delivering to service users.

Service Provider 5 also stated that he/she was constantly advising DASS that Service Provider 1 did not have sufficient staff to deliver the support plans and that this was a direct consequence of the number of hours commissioned by DASS i.e. there was a direct relationship between the number of staff that Service Provider 1 could afford and the income received from DASS.

6.20.15. Staff from Service Provider 1/Service Provider 2 were also concerned and raised a number of issues and concerns with DASS about practices, which included but were not limited to:

A. Lack of support from management.
B. Inappropriate on call arrangements which could be difficult for staff to access.
C. Lone working arrangements.
D. Induction and support for new staff.
E. Training of staff generally.
F. Concerns about treatment of service users e.g. moving service users between properties despite tenancy agreements being in place.
G. Use and management of service users' funds.

During the right to reply process Service Provider 5 commented on the above paragraph stating that:

- He felt (A) was a matter of opinion

- He felt (B) was incorrect as in his opinion Service Provider 1 did have a robust out of hours system
- He stated that Service Provider 1 was not moving service users around (F)

No evidence has been provided to the consultant to support Service Provider 5's position outlined above.

6.20.16. The consultant has not had the opportunity to interview the staff concerned regarding these issues, although it should be noted that statements from the Supporting People team and email exchanges involving DASS staff appear to verify that Service Provider 2's staff were raising such concerns.

6.20.17. By November 2004 Mr Morton had made a number of requests for a joint meeting between concerned colleagues with DASS and colleagues from the Supporting People team in an attempt to develop a joint plan of action. Mr Morton has advised that at the time Employee 22 agreed to such an approach DASS were funding 28 service users at a cost of circa £11k per week.

Service Provider 5 did not recall the above figures during the right to reply process as it is his/her recollection that there were only 17 clients and that the £11k per week was inflated. He/she has provided no documentary evidence to support this.

6.20.18. The first strategy meeting appears to have been held on 7 December 2004, and was chaired by Employee 22. The purpose of this meeting was documented as:

"To look at and co-ordinate the concerns raised by various professionals, service users and relatives to Service Provider 1."

Documentation issued by Martin Morton to summarise the concerns.

It notes that *"Supporting People have 11 contracted units with Service Provider 1 at £273.98 per week at the above properties. These 11 are also funded by Social Services."*

"20+ other service users are also funded by Social Services to receive support from Service Provider 1."

During the right to reply process Service Provider 5 also disputes the statement above, and has stated that Service Provider 1 could not have supported 20+ service users as it did not have the capacity to achieve this.

6.20.19. The concerns were summarised as:

A. Finances:
- *i. Withholding money from service users*
- *ii. Indiscriminate charging*

B. Management of challenging behaviour:
- *i. Absence of plans*
- *ii. Absence of risk assessments*
- *iii. Lack of training*
- *iv. Mismanagement of volatile situations*

C. *Administration of medicine*

D. *Assessment of planning*

E. *Health and safety*

F. *Staffing levels*

G. *Eligibility criteria: Some establishments were running as if they were residential homes*

H. *Recruitment and selection:*
   i. *Staff completing application forms after appointment*
   ii. *Staff starting work on the same day as the interview*
   iii. *No CRB checks*
   iv. *No reference checking*

I. *Staff support:*
   i. *Allegation of verbal abuse by management*
   ii. *Lack of supervision*
   iii. *Lack of appropriate training*
   iv. *No risk assessments in relation to lone working*

J. *CSCI registration. Service Provider 1 provide personal care but are not registered with CSCI. They would also need to be registered with Social Services as a commissioner that provides personal care.*

Actions:

A. *Supporting people recommend Service Provider 1 should have their contract terminated. This information will have to be forwarded to the Supporting People Commissioning Board.*
B. *….will look at the criminal evidence with the police from the FSU to determine as to whether any criminal prosecution can take place.*
C. *… will monitor the required work being done to the properties and progress.*
D. *Social services need to address the commissioning issue. Currently Social Services have stopped placing with Service Provider 1.*
E. *Dependent on the view of the joint commissioning meeting to be held on 21st January, the need to actively seek alternative accommodation will need to be addressed.*
F. *….. to provide an accurate breakdown of the funding of placements with Service Provider 1. This will need to include the named care manager for each case, the funding involved and a breakdown of the support being provided.*
G. *The Police. CSCI, Borough Solicitor and Job Centre Plus to be forwarded minutes.*

During the right to reply process Service Provider 5 disagreed with the above points, and in relation to item B above there was a service user who was a very challenging case who was referred from hospital with the instruction that two people would need to be in the flat at all times for the support officers' own protection, due to the frequency and types of accusations that would be made (allegedly this service user had made a number of sexual abuse claims). Service Provider 5 alleges that Mr Morton insisted on meeting with this individual alone,

despite being advised that it contravened his/her care plan. The consultant is not in a position to comment on this point and it is simply raised because Service Provider 5 has referred to it in his/her submissions. As a result it is alleged that the service user "blackmailed" members of staff stating that he/she would call Mr Morton directly. Service Provider 5 further added that when this individual became violent they would take a "hands off" approach and call the Police because this is what Service Provider 1 had been instructed to do. He/she further advised that this service user was eventually sectioned for treatment.

Service Provider 5 has not provided any documentary evidence to support this.

6.20.20. Around this time the business of providing support to service users in independent living accommodation appears to have been transferred (or sold) from Service Provider 1 (a partnership) to a new company called Service Provider 2. The consultant has not been provided with any reasons explaining the transfer of business to this company nor any evidence of discussion/consultation with the Council, in particular Adult Social Care or Supporting People teams. If there had been written contracts in place it would have been necessary for the contracts to have been novated and this would have required express consent.

During the right to reply process Service Provider 5 clarified that the transfer to Service Provider 2 did not occur until January 2005 and that he/she had written a letter to Employee 22 advising him/her of the proposals etc, but he/she had not written to Supporting People as he/she assumed that Employee 22 would notify them. Service Provider 5 stated that he/she would try to locate this letter but it should be noted that it has not yet been made available to the consultant.

6.20.21. The Council actually became aware of the transfer from Service Provider 1 to Service Provider 2 circa January 2005 as a result of a Supporting People visit. The consultant can find no evidence of DASS having sought legal advice as to whether the assumption on the part of Service Provider 1/Service Provider 2 that the work would automatically continue to flow to them could be challenged in the context of significant concerns about services and/or the fact that DASS had no written contract with either company.

6.20.22. As such Service Provider 2 went unchecked and the consultant has not been provided with evidence of a management instruction being given to reduce/stop placements with this company whilst an adult protection investigation was commissioned and/or while the contractual position was resolved.

6.20.23. There are of course a number of potential reasons why this was so and listed below are some speculations:

A. A lack of awareness of the options open to the council
B. An inability to take on the additional workload that would may have ensued should the Council have sought to either terminate the implied contract or performance managed the contract better
C. A need to make placements to reduce the number of service users who had been assessed but were not yet in receive of support.
D. Insufficient understanding of the contractual position
E. A reluctance to seek legal advice as it was likely to expose the Department and certain individuals to criticism.

Employee 22 agrees that points A – D could have been the potential reasons but does not agree with E.

However, there is nothing that has been brought to the consultant's attention which verifies or explains what the underlying reasons were for lack of resolution other than the lack of assistance from the contracts team.

6.20.24. However, the Lead officer from the supporting people team did seek legal advice from Employee 27 on 14 January 2005, in relation to his concerns regarding the ownership of the company and assignment of the supporting people contract and other concerns including:

A. Inadequate staff numbers, which *"do not justify the level of resource being paid into this company from SP, and even more so in relation to the high level of resources being paid by Social Services"*.
B. Inadequately trained and experienced staff (staff have been interviewed and have confirmed the lack of training etc).
C. Lack of health and safety procedures and inspections (again, confirmed by staff), which leaves both staff and residents at risk and staff will go on record about this.
D. These issues alone would mean that the company would be unable to comply with even the basic requirements of the accreditation criteria and the quality assessment.

During the right to reply process, Service Provider 5 advised that the paperwork required for the Supporting People frameworks was not being completed properly and that as a result a manager was disciplined. Service Provider 5's recollection is that Employee 34 was present at a meeting where this was discussed.

6.20.25. It should be noted that unlike DASS the Supporting People team did have contracts in place with all providers that they had inherited via the THB scheme because they were providing housing related support services. These contracts reflected the ODPM standard contract and included a provision to the effect that each provider would attain and maintain the ODPM standards set out in its quality assessment framework. As a result the Supporting People team had evidence to justify why it believed consideration should be given to termination of the contract with Service Provider 2. It is understood that the Supporting People team was bound by the ODPM standard termination clause of 12 months and had sought advice from legal services.

Employee 22 has highlighted that both Supporting People and CQC had regulatory frameworks which should have enabled them to resolve issues more quickly than DASS which had no regulatory framework for Supported Living.

6.20.26. On 18 January 2005 Employee 27 confirms that *"if Service Provider 5 (the previous owner) has assigned the contract, without seeking the prior consent of the Council, then that would be a fundamental breach of contract entitling the Council to bring the contract to an end."*

However, Service Provider 5's earlier comments outlined above about the submission of a letter to Employee 22 regarding this matter and not having received a response, which suggested to him/her that the Council had no issues, needs to be considered here also, although as stated earlier he/she did not

submit a copy of this letter to Supporting People. The consultant has not had sight of this letter.

6.20.27. Employee 34 subsequently held 2 meetings with senior individuals from Service Provider 2 where he/she set out the supporting people team's concerns. Service Provider 2 responded by committing to address the issues outlined in an agreed action plan. As a result Employee 34 instructed the legal services team to assign the contract.

Things did not improve, however.

Service Provider 5 has advised that it was as a result of these meetings and the need to meet the Supporting People Quality Assessment Framework that Service Provider 18 was employed by Service Provider 2.

6.20.28. From the email exchanges and interviews, the consultant is led to believe that the complaints and concerns referred to DASS continued.

6.20.29. By March 2005 concerns were raised about the potential redundancy of circa 11 people and the impact such a reduction in staff would have on the quality of support available to service users and sustainability of the company.

During the right to reply Service Provider 5 has stated that there was a dispute with DASS over the finances, i.e. the level of income received by Service Provider 2 from DASS in relation to support packages. He/she advised that as Clinical lead he/she was not aware of administrative issues or involved but speculated that perhaps Service Provider 18 had written to DASS along the lines of, 'pay at the appropriate level or Service Provider 2 will have no choice but to make 11 people redundant.'

Service Provider 5 also alleges that in early 2005 he/she had a meeting with Employee 22 where he/she advised that there were issues that needed to be looked at and that DASS were watching . Soon after this meeting Service Provider 5 states that the charging matrix was issued by DASS.

Whilst Service Provider 5 has provided no evidence of this meeting it appears to the consultant to accord with the email below from Employee 22.

6.20.30. Mr Morton had advised that around this time he was of the view that an exit strategy was required although there is no evidence to demonstrate that he had raised this with Employee 22. Mr Morton advises that Employee 22 instructed him in an email to:

"Hold fire on this! We are working through the process of clarifying the hours and levels of support with Service Provider 2 and other providers. This is being done at a strategic level."

However, the consultant has sought during the course of the investigation to understand what the "strategy" or "battle plan" was. Employee 22 has advised that the strategy had three distinct areas:

- *"To look at the organisational arrangements in place and ensure that the Department was not paying more than it needed to for the services that it was receiving.*

- *To vigorously pursue any adult protection investigations on behalf of individuals.*
- *To move people on successfully, where possible.*

Unfortunately, none of the other interviewees who have made themselves available to the consultant for this process have been able to confirm that they were aware of this strategy, nor has any written documentation been made available. It should be noted, however, that the consultant has not interviewed everyone connected to this case (see introductory sections to the report) and in any event the consultant was not made aware of this strategy until the right to reply process. As such the consultant did not re-interview those who had participated in the review, believing any further delays in publication to be contrary to the public interest.

6.20.31. On the same day that Mr Morton was instructed to "hold fire" the police contacted Mr Morton. Mr Morton was advised that two managers had been suspended by Service Provider 2 due to a CID investigation into allegations of financial abuse - theft of service users' money. Mr Morton shared this information with colleagues although Employee 22 has no recollection of this information having been shared with him/her.

During the right to reply process Service Provider 5 explained that it is true that these managers had been suspended (without his/her knowledge) and arrested by the Police on suspicion of theft of service users' money. Service Provider 5 has advised, however, that they were later exonerated but resigned from Service Provider 2 as they felt that these allegations had been malicious.

Service Provider 5 has advised that it was about this time that the relationship between him/herself and the other owners of Service Provider 2 began to deteriorate which subsequently led to his/her leaving the company circa May 2006.

6.20.32. Notably Councillor 6 contacted Mr Morton on 15 April 2005 to investigate a complaint from a constituent regarding Spenser Lodge. Mr Morton responded in a manner which, in the consultant's view, was helpful but constrained, in an attempt to give Councillor 6 some limited insight into the challenges faced by DASS. However, it is understood that Employee 11 responded to Mr Morton cc Employee 22 as follows:

"We need to discuss please Employee 22 how this was agreed before response sent."

6.20.33. By April 2005 Mr Morton has advised that between 55 – 66 people were supported by Service Provider 2, 11 of whom were also in receipt of Supporting People funding and Mr Morton estimated that expenditure could, at its height have exceeded £1m. The consultant understands that this was undertaken on a "spot purchase" basis without any written contracts or procurement process to secure a place on an approved list. In addition there does not appear to have been any guidance as to how many service users could be "placed" (or money spent) with each provider.

Service Provider 5 has advised during the right to reply process that he/she believes Mr Morton's assessment of the number of service users to be incorrect in that they are too high and that he/she believes the number to be closer to 26.

Mr Morton has reviewed his documents and refers to the following as evidence:

- An email from Employee 20 to Mr Morton asking how many service users Service Provider 2 has. Mr Morton has stated and Employee 36 verified that they kept a spreadsheet which identified 66 service users at this time
- Employee 22 indicated in an email to Mr Morton that he/she had a spreadsheet with 55 service users on it and that this would need to be checked against a spreadsheet held in DASS Finance. Mr Morton recalls reviewing this (and this is confirmed by an email) and identifying "a couple of dual entries and 5 tenants who had moved on or were funded by the Youth Offending Team. He therefore suggests that the figure of 55 was "about right".
- The Service Provider 2 business plan from May 2005 stated "Service Provider 2 provides domiciliary care to some 50 clients with mental and learning disabilities in the Wirral area……..Wirral Social Services constitutes the major purchaser of Service Provider 2's services on a spot purchase basis"
- A list of 47 service users from May 2006. He states that weekly charges were £17225.90 from DASS plus £5044.86 admin costs plus £1602.78 from supporting people which is how he has estimated the total annualised cost of £1.27m at this point in time.
- A document Mr Morton assumes to be a Members briefing note prepared by DASS but author unknown states "there were 46 people being supported by Service Provider 2 as at 14 July 2006…..The Department currently pays £17,723 per week to the organisation for support and care"

Mr Morton further advises that the properties at which Service Provider 2 supported clients (rather than Service Provider 1 and therefore this will be post 2005) were:

- 187,l 193,195, 217 Bedford Road, Rock Ferry
- 81, 83, 97 Woodchurch Road
- 44 Euston Grove
- 12, 16 Mallaby Street
- 24/26 Rock Lane West
- 50 Bebington Road
- 25 Kirkland Avenue
- Spenser Lodge, Spenser Avenue

6.20.34. The previous concerns continued but now also included:

A. The "rent" top-up being charged to service users by Service Provider 2 (i.e. money was being taken from service uses for no apparent reason).
B. Not following proper procedures when a rape allegation was made by a service user.
C. The insistence on the part of Service Provider 2 that for service users to remain in their tenancy they must receive a care/support service from them.

During the right to reply Service Provider 5 stated that he/she was unaware of points (A) and (B) above. He/she advised that he/she did recall two allegations of rape. For the first incident he/she believes the correct procedures were followed in that he/she was examined and the Police informed. Service Provider 5

advised that the Police could find no evidence. In relation to the second incident, he/she believes that this referred to a service user who he/she described as psychotic and refused his/her medication and had a long history of making allegations such as this, and again he/she believed that the correct procedures were followed.

In relation to point (C) Service Provider 5 believed that he/she may have been in possession of a letter written by one of the other Directors, but in hindsight he/she now believed that it was a mistake for Service Provider 2 to insist that service users must receive care/support from it in order to remain in their tenancies.

6.20.35. Mr Morton advised Employee 22 in April 2005 that this latter item appeared to him to flout "DP, CSCI regulations, tenancy agreements and green paper recommendations and is a further example of the difficulties reconciling a supported living specification with a provider who operates in such a way."

6.20.36. On 9th May 2005 Employee 22 responded stating that "*This was discussed at the meeting. Service Provider 2 is the managing agent and therefore people accept the service from Service Provider 2 as a condition of this.*"

6.20.37. On 12 May 2005 Employee 20 challenged Employee 22's response by email arguing that was not a legitimate position because his/her understanding of the legislation was that *"if the provision of a service is a condition of residence that means that the purpose of the establishment is the provision of care and support and therefore the establishment should be registered. To avoid registration the two functions must clearly be separate, the tenant of a sheltered housing block is free to refuse admission to anybody and this is surely the same?"*

6.20.38. Employee 22 responded, *"I am now putting a stop to this discussion. I note your comments Employee 20 and these will be picked up with Service Provider 2. At the moment we have slightly higher priorities to resolve, such as the supported living accreditation and any AP issues that are emerging."*

6.20.39. The consultant has been advised by Employee 22 that he/she had asked for increased resources for the Learning Disabilities function for at least 3 years, but his/her requests were refused by the Director. The consultant has not been able to verify this but it is possible given the financial performance of the Department. It may be, therefore, that the reply was written in the knowledge that the limited resources in this team were already fully utilised.

6.20.40. However, "parking" the possibility that Service Provider 2 should have been registered is not in the consultant's opinion an appropriate response from such a senior manager within the department. In addition, she has not been provided with any evidence that this was in fact raised with Service Provider 2. Employee 22 has advised that in his/her opinion the registration process was not as important as tackling the Adult Protection concerns in the short term or the accreditation in the longer term.

6.20.41. The issues continued and in May 2005 after Employee 22 supported by other colleagues had met with representatives from Service Provider 2 Mr Morton enquired as to progress in resolving matters and in particular the issue of "rent top-ups". Employee 22 responded on 22nd May 2005, *"….weren't mentioned in*

the last meeting. Can you give me some more information as to the nature of these."

6.20.42. Mr Morton produced and circulated another briefing note on 25th May 2005, which highlighted the following concerns:

A. Poor staffing levels.
B. Abusive practices by some Service Provider 2 staff against service users.
C. Poor living conditions.
D. High risk recruitment and selection procedures e.g. an allegation of a member of staff having a conviction for assault with a deadly weapon, validity of references.
E. Financial abuse, e.g. top up rents, which appeared not to have any “real” basis.

During the right to reply, Service Provider 5 explained that as funding to Service Provider 2 was reduced by DASS the company had to reduce the amount of support provided. There was a direct correlation between the two. He/she also alleged that the care managers were going to the DASS internal panel to ask for more hours but it was being refused.

Whilst Service Provider 5 does not provide documentary evidence of this, this does seem to support Employee 22’s statements about his/her strategy to destabilise Service Provider 2 via the reduction in funding.

6.20.43. At this point the consultant wishes to highlight that from reviewing all of the supporting documentation there is in her opinion, a pattern that emerges, in that during the timeframe concerned there are repeated requests for updates/briefing notes. Having read those documents made available, the consultant has formed an opinion, that they are repetitive in nature, because, little or no change occurred on the part of the service provider perhaps because, based on the documents made available, there is little evidence of decisive action being taken on the part of DASS.

6.20.44. In June 2005 a visit by the supporting people team demonstrated a failure by the company to comply with the action plan which led to the issue of a serious default notice for the interim Supporting People contract. The basis of the default notice covered many if not all of the issues raised by Mr Morton and others previously and included:

A. Inadequate money handling procedures
B. Protection of vulnerable adult procedures
C. Assessment/risk assessment
D. Lone working policy and procedures
E. Support planning
F. CRB checks for staff
G. Lack of training
H. Rent top ups
I. Inadequate health and safety checks
J. Absence of tenant information notably concern here included medication information and administration being misfiled i.e. the wrong for the wrong service user(s)
K. Personal monies
L. Storage of medicines

M. Removal of service users by the Police

Service Provider 5 has confirmed that Supporting People did visit Service Provider 2 in June 2005 and that the issues listed above were voiced to two of the other Directors. Service Provider 5 confirmed that he/she agreed with some of the above points but not others but that he/she was not going to argue about them as he/she was not at the meeting.

However, Service Provider 5 also stated that in relation to item (M) above, he/she believed this demonstrated a lack of understanding on the part of those raising the concerns, in that in some circumstances this was an entirely legitimate and appropriate action on the part of Service Provider 2.

Service Provider 5 has also commented that it seems to him/her that DASS were engaging with Service Provider 2 on the basis of those issues identified by Supporting People.

Service Provider 5 has not supplied any documentary evidence to support any of the above statements.

6.20.45. Despite all of the above, and based upon the email evidence the consultant has been given it appears that Employee 22 was concerned about the implications of engaging Service Provider 2 in what the consultant would call a performance management arrangement which identified a clear series of consequences in terms of continuing to do business with Service Provider 2. This is perhaps demonstrated in Employee 22's email to Mr Morton dated 31 May 2005:

"We have to try to resolve any issues as we cannot afford to lose another provider, or if we do, it has to be decommissioned in an organised and planned fashion. Can Martin pull together a list (bullet points) of the top ten concerns for me. I will discuss this at the management team meeting prior to the meeting so that I am fully briefed. "

Employee 22 has suggested that this email should not be viewed negatively, for he/she has advised that DASS literally did not have alternative supported living providers where those living with Service Provider 2 could be placed. In addition, he/she believes that the legal advice provided then and now would reinforce the need to demonstrate that attempts had been made to resolve issues before termination of business is pursued.

6.20.46. By 9 June 2005 Mr Morton found it necessary to advise Employee 22:

"I actually don't know where to start with this as I am getting calls from staff, carers and Care Co-ordinators/managers on a daily basis (3 calls before 9.30am today!). It has reached such a deluge that I understand there is a staff group who are requesting to come in and make statements about the company and I think it would be a good idea so that we get a clear understanding of exactly what we are dealing with here and what's more I haven't got the capacity to be responding effectively to all concerns raised." He then went on to make an extensive list of the major concerns with included those raised by Supporting People.

6.20.47. Employee 22 agreed with Mr Morton's recommendation and a meeting took place on 16 June 2005 with 10 people in attendance representing relatives and

friends of service users and Service Provider 2's staff past and present. The meeting appears to have confirmed the concerns that had been raised and shared by Mr Morton with Employee 22 previously.

Service Provider 5 has also alleged that about a year or so after this meeting took place he/she was advised by an ex-Service Provider 2 employee that some "disgruntled" ex-Service Provider 2 employees had met with Mr Morton and that this individual had been contacted by Mr Morton to help build a case against Service Provider 2. Service Provider 5 believes, based on this conversation, that there were no relatives/friends present at the above meeting. Service Provider 5 also voiced a concern during the right to reply alleging that perhaps Mr Morton had taken things at face value and had either not sought to or not been able to verify the veracity of the statements/allegations. No documentary evidence has been provided to prove this.

6.20.48. When Employee 22 asked the group what they wanted there appeared to be at least 4 clear themes:

A. Support to be able to perform one's job effectively (Service Provider 2 employee)
B. Facilitation to enable friend/relative to employ own carers
C. To improve the living conditions (no further squalor)
D. Stop the constant threats of eviction

6.20.49. The meeting was reassured that concerns would be investigated further.

6.20.50. Further allegations/evidence continued to surface via Mr Morton who by now had become the link into DASS for those raising concerns including an allegation of the involvement of an individual who had previously been investigated by the Police for drug money laundering and 4 men arriving at one unit equipped with baseball bats to secure money from one of the Service Provider 2 senior managers.

6.20.51. On 7th July 2005 a service user under Service Provider 2's care was found dead in his room. This and other matters appear to have been "wrapped up" in a large scale investigation which was allocated to one individual and took approximately 9 months to resolve. The consultant has not been given a copy of this report.

6.20.52. Mr Morton was continuing to raise concerns, e.g. a 16 year old boy *"trashing his flat and setting it on fire".*

6.20.53. However, in July 2005 Mr Morton had allegations of bias raised against him by Service Provider 2 in relation to his dealings with them.

Service Provider 5 has stated that he/she was unaware of any allegations being made against Mr Morton by Service Provider 2.

6.20.54. Whilst the consultant can understand the need on the part of DASS to investigate these allegations, the consultant would have expected DASS as Mr Morton's employer to provide him with some support and assistance and consider more carefully the exclusion of Mr Morton as the alerter of the adult protection issue, when Service Provider 2 staff were allowed to attend as the alleged abuser. This is evidenced by an email from Employee 22

"Martin has anything been done as a result of your email (dated 28th June!). How do you know all this information? If staff are ringing you up they should be advised to take their concerns to the police. We need to be clear about which aspects are client related and which are organisational".

6.20.55. Mr Morton's response is simple and quite reasonable:

"They trusted me to help do something about abusive practices."

6.20.56. Employee 22 did on 22 July 2005 email Mr Morton: *"I will be writing to Service Provider 2 next week to ask them to substantiate or withdraw any allegations."* The consultant has seen no letter within these timescales.

6.20.57. On 7 September 2005 Mr Morton wrote:

"Employee 36 and myself are still being approached by Service Provider 2 staff (past and present) with allegations about the above. I have not entered discussion because of ongoing investigation into my conduct with this organisation but I am aware that there are serious concerns.

I am under the impression that Service Provider 2 were to be investigated by a team from SSD can you let me know who these people are so I can direct enquiries to them"

During the right to reply process, Service Provider 5 has suggested that he/she believed that Mr Morton was initiating the contact. He/she has provided no evidence to prove this.

6.20.58. Circa mid September 2005 Mr Morton was allocated the task of clarifying and making recommendations to resolve DASS financial arrangements with Service Provider 2. He wrote to Employee 22 and others

".....I would suggest that somebody from SSD (obviously not me!) attempts to clarify our financial responsibility to which particular service user."

6.20.59. Employee 22 responded:

"What a mess! Meet with SP and clarify who they are funding and at what level. Draft me a letter….. This should then help us sort out what we should be paying for."

"Can you also impress upon SP that any discussions which have repercussions for SSD should take place with providers with our presence."

"I can't believe that Service Provider 2 *will want less money from SP so therefore, it should even itself out."*

6.20.60. This seems a curious statement for Employee 22 to make when Supporting People funds required compliance with a quality assurance framework, but at that time there was no written contract and no resources allocated (or possibly available) within DASS to undertake contract monitoring. Therefore, it seems logical to the consultant that it was "easier" for a learning disabilities provider to comply with the requirements of DASS.

6.20.61. On 21 November 2005, four months after the allegations had been made against Mr Morton, Employee 22 sent a letter to Service Provider 2 that concluded:

"The acrimony between Service Provider 2 staff past and present is colouring judgement and it appears that unfortunately Martin Morton has been appointed the sacrificial lamb to deflect the infighting between all."

6.20.62. Whilst this statement confirms Mr Morton's view that he had done nothing other than try to protect vulnerable adults, the consultant's view is that this should have been resolved in a much shorter timescale and, if this had meant sourcing additional staff to investigate the large scale review, then this is what should have occurred despite the budget consequences. If this is all that prevented the appropriate resourcing of the review then, this should have been discussed at the highest levels. There will always be a tension between the fiduciary duties of Chief Officers and Members and the delivery of services but, this cannot in the consultants opinion override the requirement to protect vulnerable adults or children. The Council's Officers and Members therefore need to ensure that this tension is managed appropriately, seeking advice from the Chief Executive, Monitoring Officer and Director of Finance.

In addition, the consultant would recommend that the Council considers the manner in which it manages large scale investigations in the future, for it appears to her that including new issues as and when they arise may not sufficiently protect the individuals at risk.

6.20.63. From copies of emails made available to the consultant there is evidence to suggest that there were other concerns about Service Provider 2, which were exposed when it made an application to be registered as a domiciliary care agency. CSCI contacted the authority for an emergency meeting with DASS on 9 December 2005. After this meeting the representative from CSCI was advised to contact Mr Morton as it appears the concerns were at best unresolved or at worst heightened including a need to investigate whether or not Service Provider 2 was operating illegally, i.e. providing services which required them to be registered.

6.20.64. In January 2006, Mr Morton was still raising concerns, this time in relation to a service user who had been issued with an eviction notice because she had refused to pay the "rent top up" which even at that point had not been legitimised. The consultant has not been presented with any evidence that DASS had sought legal advice in relation to the rent top ups on behalf of its service users by this point. Indeed, it appears to the consultant that DASS may have taken the stance that this was a matter to be resolved between the service user and Service Provider 2. The consultant finds this a difficult stance to accept given that this may have fallen into the definition of financial abuse of vulnerable service users which, from her perspective, quite clearly requires an Adult Protection intervention. In addition she finds this unacceptable because at least some of the tenants had been "placed" there by DASS. At the very least a joint project plan should have been devised between DASS and supporting people.

6.20.65. It is also important to note that the Council's Housing Benefit team were also raising concerns in relation to the accuracy of Service Provider 2's tenancy agreements etc; see Appendix 16 to Annex A.

6.20.66. On 10 January 2006 Mr Morton sent an email to one of the DASS Managers Employee 37 which states:

"Service Provider 6 (the owner of the properties from which Service Provider 2 operate) *charges £1880 per month EACH for the properties 24 and 26 Rock Lane West – monthly total = £3670*

HB currently pays £1382.36 per month for these properties, which covers 5 tenants (the sixth tenant has not been in payment since August because Service Provider 2 has not provided requisite information to HB.

Total shortfall to Service Provider 2 each month = £2377.64!

Accordingly how is this financially viable? And therefore is it any wonder that Service Provider 2 want to charge "top-ups". But I would argue based on Rent Officer assessments that vulnerable tenants should not be picking up the tab for voids, staff room, gross mismanagement and poor business arrangements (& HB have confirmed (once again) that Service Provider 2's business practices are woeful".

During the right to reply Service Provider 5 has advised that the Supporting People team were extremely slow in processing payments, but accepted that at the same time Service Provider 2 were not notifying them of things sufficiently quickly and therefore he/she believed that both were at fault.

Service Provider 5 has also stated that by this time the internal relationships amongst the other Directors and him/herself were strained.

6.20.67. However, Adult Protection concerns and issues continued to be raised and, there appears from here on in an even greater disconnect between the views of the Supporting People team and DASS.

Service Provider 5 has stated during his/her right to reply that he/she was not aware of the adult protection concerns as mentioned above.

6.20.68. On 2 February 2006 Mr Morton attended a professionals meeting at Clatterbridge Hospital to discuss the circumstances which led to a service user under Service Provider 2's care being sectioned. It would appear that having to pay "rent top-ups" were prominent in her concerns. The consultant has been advised that the minutes of this meeting were sent to Service Provider 2.

6.20.69. This caused an email exchange where Service Provider 2 alleged Mr Morton was "confused" and "unprofessional" and where Mr Morton, responded in his own defence.

This exchange of letters led to an intervention by Employee 22 when, on 10 March 2006, he/she sent an email containing the following:

"Would you like to come and talk to me about this?

I am due to see Service Provider 2 next week and would welcome any comments you have."

Service Provider 5 has advised during his/her right to reply that two of the other directors "banned" him/her from the above meeting with Employee 22.

6.20.70. Mr Morton's response includes the following:

"Where to begin….? I could do with some time (where from I don't know) to collate all of mine and colleagues' concerns."

6.20.71. On the same day, a colleague from the leaving care team requested that an alternative placement be sought for a 17 year old boy:

"We are far from impressed with the service or lack of it….and am keen to find an alternative provider…..however, such is the dire nature of his current placement we do need to move him as quickly as possible".

6.20.72. By April 2006, Mr Morton was also involved in an accreditation process being run by DASS to assess providers for future contracts to provide supported living services (a subject which is dealt with elsewhere in this report). However, on 28th April at the request of Employee 22 after an exchange of emails which the consultant considers demonstrates a relationship which was at the least strained, Mr Morton submitted a further report on Service Provider 2 which concluded:

"*Service Provider 2 (previously Service Provider 1) are an organisation that historically have prompted a high volume and wide range of serious concerns from a broad range of individuals and organisations. At a time when Service Provider 2 are seeking to be accredited by Social Services Department as a support services provider, their supporting People action plan is due to be reviewed and they are seeking registration as a Domiciliary Care Agency with CSCI I think it is necessary to bear in mind the history outlined above and consider whether this is an organisation that is capable of the profound change required to enable the Local Authority to do business with in the future".*

Service Provider 5 has advised that he/she went on holiday during April 2006 and did not return to Service Provider 2, with his/her formal leaving date being May 2006.

6.20.73. On 4 May 2006, the person undertaking the large scale investigation had returned from sick leave and informed Employee 22:

"I have held further interviews with staff at Woodchurch Rd property yesterday which has highlighted some serious concerns….One of the main problems that seems to be emerging is a lack of any clear lines of responsibility between Service Provider 2's management or the landlords. Staff themselves report to me that they have made numerous complaints regarding problems with the management support, with two staff members having effectively been punished for raising issues of real concern.

One staff member has disclosed her views that the management operate a veiled policy of intimidation and bullying.

Two members of staff have also been the victims of racist abuse either from direct assaults by residents or by the use of inappropriate offensive language by a manager…"

Employee 22 has reflected that in hindsight it took too long for the investigation to be completed, but it is his/her recollection that this was caused by a lack of co-operation on the part of Service Provider 2. However, in his/her view Mr Morton's conclusions had been derived from his observations, whereas the investigation had been evidence based. No evidence of this has been supplied by Employee 22.

6.20.74. On 4 May 2006 Employee 22 sought legal advice. Employee 22 was prepared to act upon the findings of the officer undertaking the large scale review but not those of Mr Morton or any other colleague. At this time Mr Morton advises that Service Provider 2 had been allowed by DASS to increase its market share to around 50 service users, costing DASS circa £1m per annum. This was all without a written contract and formal performance and quality management arrangements being in place.

6.20.75. Employee 22 has also advised that he/she personally advised the Managing Director, Service Provider 18, and the owner that unless they co-operated we would be seeking to terminate the relationship with them. Again, no evidence has been supplied by Employee 22.

6.20.76. On 11 May 2006 Employee 22 wrote to Service Provider 2 informing them that they had been suspended from Stage 2 interviews (of the accreditation process), his/her letter stated:

"As you are aware the department cannot accredit any organisation whose contract is in default with Supporting People".

6.20.77. However, there were further discussions (led by Employee 22) with Service Provider 2 following the despatch of this letter which appeared to focus on saving money via the challenge of an administrative charge that Service Provider 2 had been making in excess of £1000 per week. Employee 22 has qualified his/her focus on the costs to DASS stating that this was part of the overall strategy in that "*operational practitioners with vast experience were responsible for taking cases down the adult protection route. My energies were best employed in looking at the organisational aspect. I also knew that a reduced amount of money going into the organisation would severely weaken and de-stabilise it."*

Employee 22 has additionally advised that the operational strategy included actions which led to a reduction in the number of service users who were under the "care" of Service Provider 2 but that this could only occur where the service user requested it. This is a particularly important point as each service user had their own tenancy and had previously been judged to have capacity. No evidence has been provided to verify this.

Employee 22 has also advised that he/she discussed Service Provider 2 with his/her Director on a regular basis including the role of the contracts team. No evidence of this has been provided.

6.20.78. Accepting that DASS was under significant pressure to find savings and bring its budget under control it is understandable that its senior officers would pursue all avenues to reduce cost. However, the consultant finds it troubling that both DASS senior management and legal services focused its actions perhaps to a greater extent upon the reduction of costs and less so the Adult Protection concerns.

6.20.79. On 9th June 2006, a further visit by the supporting people team showed that Service Provider 2 lacked adequate needs and risk assessments, and adequate health and safety procedures. In addition, the supporting people team had identified and gained evidence that there were discrepancies in the contents of the tenancy agreements which either showed incompetent administration or an intention to present a false picture to the tenants and possibly housing benefit section and the commission for social care inspection.

6.20.80. The Supporting People team also had significant concerns as to Service Provider 2's compliance with the quality assessment framework in relation to the lack of adequate needs and risk assessments, health and safety procedures and accusations between Directors of the company of gross negligence.

6.20.81. On 23 June 2006 Mr Morton emailed Employee 22 and the in-house legal advisor:

"There is further evidence which has arrived with me today that Service Provider 2 are an increasingly failing organisation and accordingly I do not think it tenable to wait another 4 weeks before we consider contingency plans (personally I would skip this anyway and concentrate on an exit strategy, legal advice notwithstanding…."

6.20.82. On 26 June Mr Morton emailed the in-house legal advisor that Cardiff Magistrates Court were to pursue a prosecution for non-submission of accounts to Companies House by the owners of Service Provider 2.

6.20.83. On the same day in response to a question from Mr Morton, Employee 22 advised:

"Yes, we need to seriously consider the exit strategy"

6.20.84. On 30 June Mr Morton took further whistle-blowing evidence from Service Provider 2's staff in which they alerted him to Service Provider 2 planning to close down operations at Rock Lane West and move tenants to Spenser Lodge. He shared this information with Employee 22. Unfortunately, Employee 22 had not seen this email by the time he/she received a telephone call from Service Provider 2 advising that they were in the process of decanting tenants (rather than discussing with him/her and their advocates how this might be achieved given their legal rights as tenants).

6.20.85. It should be noted that CSCI had not yet registered Service Provider 2 and from email exchanges the consultant has seen between Mr Morton and a CSCI employee it would appear that it shared Mr Morton's concerns as to the lack of action by DASS in relation to Adult Protection. There appears to be some concern on the part of CSCI that DASS was relying upon CSCI to refuse registration as a means of dealing with their Adult Protection concerns. Whilst the consultant has not been able to confirm that this was DASS' approach, it is probable, although not evidenced, that this had occurred to senior managers.

6.20.86. Mr Morton was asked to supply information to CSCI regarding the growing concerns.

6.20.87. Towards the end of July 2006 the report from large scale investigation was finally available and was discussed. The following extracts are taken from it:

"It is the writer's clear view that Service Provider 2 is a dysfunctional organisation and ultimately responsibility for this must lie with senior managers…..

A lack of clear leadership that has service users rights and needs at the core of its philosophy, alongside a commitment to having a consistent, well trained, empathic and motivated staff group, is identified as a key aspect why problems continue to be reported and why Service Provider 2 as an organisation is failing.

A culture of blame, bullying harassment and intimidation is clearly a major concern and cannot be simply discounted as a conspiracy of disaffected members of staff.

The frequency, individuality and seriousness of each of the incidents reported to the writer would suggest that this problem is deep rooted, endemic and common, accepted practice amongst senior managers……

It was the writer's opinion that Service Provider 2 is not able to manage the needs of its service users currently and this may be due to a number of issues…….

…..A lack of a clear mission statement with service users at its centre had drawn Service Provider 2 into seeking profit at the expense and to the detriment of service users and carers. A lack of effective management had then only served to deepen these problems.

…..without major managerial changes and attention to the issues raised on repeated occasions and briefly commented on in this report Service Provider 2 will continue to be an organisation that causes concern and will continue to present risks both to the service users, staff professionals, the community as a whole and the integrity of the commissioning agents".

6.20.88. From the consultant's perspective this report, in effect, confirmed all the issues Mr Morton had been raising with his managers for years, but nothing effectual had been implemented and, in the consultants opinion, what had been done was very little.

6.20.89. Around July 2006 the Cornwall Abuse Inquiry report relating to service users with learning disabilities was published and reported in a number of professional magazines. Whilst the consultant has not read the Inquiry report itself, from a magazine article she has read there appears to be some elements of transferrable learning (see Appendix 17 to Annex A).

6.20.90. In July 2006 Mr Morton prepared a SWOT analysis for Employee 22 to support the development of an exit strategy which identified:

"Service Provider 2 voluntarily ceases trading without giving notice
Service Provider 2 mounts legal challenge to Council decision
Service Provider 2 makes counter-claims against Council and officers of the Council
Media Involvement"

6.20.91. The consultant believes CSCI called a meeting with DASS on 21 September 2006 regarding Service Provider 2 and the DASS actions (or perhaps lack of them). This was followed-up by a desk top review and the re-assessment of Service Provider 2's service users. This identified the need to improve social work practice and to realise greater cost efficiency with DASS. The issues included:

A. Assessment documents not available for all service users
B. Assessment document not signed team managers
C. Assessment document not signed by care managers
D. Assessment document not dated
E. Assessment document without details of social worker/assessor
F. Care plans not signed
G. Care plan not dated
H. Care plans not specific in detail
I. Care plans allocating "flexible" hours that cannot be monitored or audited
J. Diary sheets not dated
K. Information received from providers not dated
L. Information not recorded on SWIFT
M. Information provided by contracts and finance relating to costings and invoices differed significantly
N. PB11s not available for all service users
O. Many of the costings were determined by Service Provider 2 and not by DASS
P. Annual reviews were irregular. Out of 16 Learning Disability service users, there was evidence of 2 current reviews (2006). Out of 18 Mental Health service users there was evidence of 11 current reviews (2006).

6.20.92. The consultant would suggest that this demonstrates at best a social care team which is not receiving the appropriate level of managerial scrutiny and involvement to enforce good practice or ensure correct and appropriate resourcing levels.

6.20.93. The consultant would therefore ask Members and Senior Officers how they currently assure themselves (rather than relying upon external scrutiny bodies), that social work practice has significantly improved? She would venture to suggest that a robust departmental performance management framework, which received regular scrutiny by Members, might help to focus the mind?

6.20.94. On 3 October 2006 Employee 38 produced a qualitative study of Service Provider 2 Adult Protection referrals. In summary this document states that:

A. 37 adult protection referrals were received over a 17 month period (April 2005 - September 2006) relating to 20 service users;
B. 61 strategy meetings were held to deal with 73 percent of the adult protection referrals which reached a satisfactory response
C. 1 large scale investigation was undertaken by DASS which related to 22 per cent (circa 8 cases) of the adult protection referrals which reached a satisfactory response
D. 27 per cent (10 cases) related to complaints against Service Provider 2, of these 5 percent (circa 2 cases) did not reach a satisfactory response.

6.20.95. The consultant has sought to relate section 2 on page 2 entitled "Types of abuse" to the table on page 4 of this document, the following trends flow:

A. Of the 10 cases referred as an "emotional" concern (which presumably could include bullying etc) 7 cases were referrals against Service Provider 2 or its staff
B. Of the 7 cases referred as a financial concern, none were allegations against Service Provider 2 or its staff.

Part of this analysis tends to support Mr Morton's claims as to concerns about Service Provider 2, however due to the large scale investigation and the possibility of "rolling up" a number of issues, it is likely that this analysis under states the position.

6.20.96. The summary and Mr Morton's analysis also raises concerns about the quality and capacity of the Adult Protection (now Safeguarding) routines within DASS for, clearly, Service Provider 2 had been a concern to a number of DASS employees for a significant period of time before 2006.

6.20.97. However the outcome of this resource intensive review of Service Provider 2 was not an exit strategy but the re-negotiation of fees paid to Service Provider 2 and it is understood a 50% reduction in funding.

6.20.98. This re-negotiation of fees may have been the catalyst or indeed, Service Provider 2 may have been planning its next action in any event but, on 4 February 2007, Service Provider 2 in effect walked away from all of its service users.

6.20.99. Employee 22 has commented that his/her strategy of looking into the organisational aspects/costs to destabilise the organisation was successful because Service Provider 2 voluntarily went out of business which took away any possible legal challenge to DASS. He/she also comments "*that at the time there was no open challenge to his/her leadership of this process nor were there any alternative suggestions being put forward which were plausible and would have held up if any legal battle had ensued.*"

6.20.100. A report entitled "Report on events related to the withdrawal of services by Service Provider 2 1-9 February 2007" written by Employee 39, states:

"The reviews found evidence to support the concerns that had been raised. However, in addition to this the reviews found a substantial difference between the level of services for which Service Provider 2 was raising invoices and the needs of individual service users. The charge for services was far in excess of the services identified as necessary from the needs led assessments. In addition, there was evidence that services charged for were not being provided. The commitment in strategy meetings with Service Provider 2 was to provide Service Provider 2 reports evidencing the concerns. In order to allow an action plan to be drawn up to rectify these concerns. The reports were being prepared. As there were so many, this was a lengthy process. The estimated completion date was the end of February".

6.20.101. The consultant finds this report disappointing and it is her opinion that, whilst this may well have been the process being undertaken, it focuses the attention of the reader upon the amount of money involved, albeit very significant, rather than the protection of vulnerable adults. It is also silent on the length of time of these concerns.

6.20.102. A memo from Employee 39 to Employee 27 in the Legal Department in relation to a subsequent Employment Tribunal claim brought against the Council by Service Provider 2 staff and dated 23rd May 2007 states:

"In the case of Supported Living, the general Service Agreement has not yet been developed. This work is ongoing. The contracting is done via a PB that sets out the level of service required for the individual posed.

I can confirm that the Department had no contingency plan in place to continue with a full range of services. The Departmental response was developed as the situation unfolded. The initial level of response was on an emergency basis and depended on the resources that could be brought together quickly....."

At that time, Social services were discussing with Service Provider 2 how to resolve the quality issues. Social Services were willing to continue to work with Service Provider 2".

6.20.103. However, a newspaper article dated 2nd February 2007 in the Liverpool Daily Post under the headline "Mental health carers left jobless by council cuts" portrays this somewhat differently:

"A Wirral Council spokesperson said: "Service Provider 2 currently provides 30 people with help, care and support who live independently, mainly in the Birkenhead and Oxton areas.

In accordance with standard practice, social workers conducted a review of the needs of the people who use Service Provider 2's services. As a result, the amount of support was reduced in a number of cases.

There is a one-week notification period on both sides if the contract is to be varied: in this case the council has given Service Provider 2 two weeks' notice.

If Service Provider 2 chooses to terminate their contract earlier than the one week's notice period the council has contingency arrangements in place to continue providing a full range of help, care and support.

This will ensure that the service users are able to maintain their tenancies and to continue living independently"

6.20.104. As a result of how DASS had handled this process, legal proceedings were brought about by the members of Service Provider 2 staff who were not transferred to the new providers of support in accordance with the Transfer of Undertakings and Protection of Employment legislation. Consequently the providers and the Council had to make financial recompense to these employees.

6.20.105. During the course of her investigations, the consultant has not been made aware of any Member briefings which explained the issues of concern in relation to any providers. Given that Employee 11 has not been available for interview, this could simply be that this was his/her responsibility and, those senior officers remaining were unaware of such briefings. However, given the lack of committee reports in relating to other matters such as the implementation of Fairer Charging, it could be that Members were unaware of the issues of concern.

6.20.106. The next time the consultant has been able to ascertain evidence of legal services involvement is in an email exchange between Employee 34 and Employee 27 in late February 2007 where legal services are providing advice as to an appeal by Service Provider 2 against the refusal to grant accreditation as an approved provider of supporting people services.

6.20.107. A decision letter was sent to Service Provider 2 on 23 February 2007 advising the company that its contract would cease on 25 September 2007 (the ODPM interim contract had a standard 12 month notice period). The letter can be seen at Appendix 18 to Annex A.

Conclusions

6.20.108. What is clear to the consultant is that many of the 'middle layers' of employees in both DASS and Supporting People were sufficiently concerned to continue to raise concerns with their respective managers and highlight the concerns of others.

6.20.109. Ultimately this resulted in Supporting People refusing to accredit Service Provider 2 and therefore terminating its contract. Here the consultant's belief is that the ODPM interim contract (which was in place at the time) and subsequent legal advice in respect of that contract prevented the Council from issuing a shorter notice period.

6.20.110. Based upon discussions with the supporting people team, the consultant is of the opinion that, should similar circumstances occur again, a speedier supporting people conclusion should be reached, for the team would be more assured of their assessment of the situation, have a greater understanding of the processes to be followed and would seek legal advice and debate it more rigorously to bring the contract to a speedier conclusion.

6.20.111. In addition, there were a number of meetings/strategy meetings in relation to these concerns. Whilst the nature of the issues under discussion were complex and perhaps new to most of the participants, the consultant is not convinced that the meetings/strategy meetings were effective in addressing the protection of vulnerable adults. This is an important conclusion in its own right, but becomes much more serious when considered in the light of the CQC report issued last year.

6.20.112. The consultant is of the view that the desire to investigate and prove the adult protection complaint has during some strategy meetings meant the vulnerable adults were left with circumstances unchanged. During the right to reply process Employee 22 commented that he/she agrees with this assessment, but that "*the same is true for any person living in, or being provided with the service by, a provider that is under suspension at the moment. That is the legal framework that we must work within and it is not satisfactory*"

6.20.113. In addition, it is the consultant's opinion that there was insufficient project management and follow-up on the part of senior management and, in particular Employee 22. Whether or not the Adult Protection processes were "in play", it was his/her responsibility to ensure that services under his/her leadership were effective, and to continue to raise this with his/her Director if he/she believed that he/she was prevented from achieving this for whatever reason.

Employee 22 has responded to this during the right to reply process as follows: Services under her leadership were as effective as it was possible at the time. Adult protection concerns were reported and followed up; financial issues were followed up; people were moved out at their request and no new people were moved in. No documentary evidence was provided.

6.20.114. Whilst the author of the qualitative assessment is to be praised for undertaking this process for the Service Provider 2 Adult referrals in 2006, in that, it rightly looks to the individual cases and makes conclusions, the consultant is concerned about the methodology used in that:

A. This looks only at the formal Adult Protection issues logged and does not seem to reflect the many and varying issues raised by the Supporting People team, Martin Morton on behalf of others and the meeting(s) that DASS held with Service Provider 2 staff together with friends and relatives of service users.
B. It refers singularly to the major review of Service Provider 2 undertaken, which, by its nature and timescales must have covered a wide range of issues, including the death of a service user under Service Provider 2's care.
C. As a result, the methodology does not in the consultants opinion look more widely to draw out issues of concern, areas that had been addressed and those that remain unresolved (in practice rather than on paper e.g. Health and Safety concerns).

6.20.115. Taking this into account, it comes as no surprise to the consultant that shortly after his appointment Employee 64 attended an Adult Protection/Safeguarding strategy meeting and determined that things needed to change. These changes failed to achieve their stated aims. DASS staff interviewed stated that the implementation process was slower than anticipated but, the consultant like the CQC remains to be convinced that this was all that was lacking in the new processes.

6.20.116. Whilst Employee 21 has been addressing these weaknesses during the course of this review, the consultant has concluded that neither Members nor Officers should look for any "quick fixes" in the improvement of DASS, or indeed the Council's corporate governance framework, for in the consultant's opinion the issues appear to be more systematic and cultural. Although she is assured that new processes and procedures, training and follow-up will make a difference, it is the consultant's view based upon experience of turnaround situations that unless and until the cultural issues regarding adult protection are addressed (which experience tells us takes much longer), change will be slow and management and Members must be extra vigilant. Safeguarding (Adult Protection) is really everybody's business, but what matters is the outcome achieved not the inputs.

6.20.117. The consultant would draw Members attention to the similarities between the lack of effectiveness of adult protection procedures and implementation of internal audit recommendations in DASS. In both instances, the identification of issues worked (the inputs) but the outcomes, i.e. what was done to resolve each issue was poor and remained so for a very lengthy period.

Employee 64 has commented during the right to reply process that Internal Audit reports were followed up, reported to Members and revised governance

arrangements introduced to ensure that such a failure could not reoccur. Members of the Audit Committee will be able to test this for themselves via the outcome of Internal Audit follow-up reports.

6.20.118. Members must therefore commit to and be equipped to undertake a "deep dive" on issues of concern or areas/departments with a poor track record of delivery and/or governance to assure themselves that Chief Officers and their management teams are performing appropriately. In the consultant's opinion it is the Chief Executive, Monitoring Officer and Director of Finance as the guardians of governance who hold the responsibility to assist Members in their achievement of this and the culture of the organisation needs to respect this role and facilitate it.

6.20.119. The consultant's view based upon the evidence and information she has seen is that Mr Morton was right in his assessment and that his concerns were genuine and subsequently proven to be substantiated. During the right to reply process Employee 22 has responded to the effect that nobody in DASS ever said that Mr Morton was wrong, but that Mr Morton and his managers disagreed as to the methodology to be used to address these concerns. No written evidence has been provided to this effect.

6.20.120. DASS should in the consultant's opinion have sought legal advice earlier and given its advisors a full briefing of the issues and concerns. Action in relation to adult protection and financial resource should not have been seen as mutually exclusive and it is the consultant's view that they could with the appropriate legal advice have brought the arrangements with Service Provider 2 to an end sooner and in a more managed and less traumatic manner for the service users. The strategy Employee 22 refers to as destabilisation of business in the end led to the emergency support requirements and significant costs via the Council's contribution to TUPE costs.

6.20.121. Clearly the senior and middle management and leadership capacity of DASS has been stretched during the period covered by this review (especially given the personal circumstances of Employee 22) and the consultant understands that Employee 22 did request additional resources for the Learning Disabilities team.

6.20.122. However, the Council did make provision in the DASS budget to create a Deputy Director post. It is understood that this post was not filled until Employee 64 appointed Employee 90, who undertook these duties for approximately 15 months until he/she retired in April 2010. Employee 64 has advised that Employee 90 "*devoted very considerable amounts of his/her time to the re-imbursement issues*" associated with Service Provider 3. However, it is understood that this post has not been filled since Employee 90's retirement. This should in the consultant's opinion be addressed as a matter of priority and external recruitment commenced as soon as practicably possible.

6.20.123. Having set out the missed opportunity to create a Deputy Director's post earlier than 2009, and acknowledging that having such a post would have given the Department more capacity to address the various issues outlined in this report, the consultant does not believe that this would have been a miracle cure. Some of the other issues that in the consultant's opinion were not in place include:

A. Senior and middle management direction, assistance, project management and follow-up, leading to many issues and cases dragging on without a clear and consistent oversight or involvement in the key issues.
B. Joined-up working – DASS needed to work with Supporting People and Housing Benefit. It is the consultant's opinion that if DASS had worked with these teams *before* either DASS or SP made placements, then many of the issues could have been prevented.
C. Proper procurement processes with robust commissioning and client management.
D. A wider understanding and acknowledgement in the social work teams and the placement panels of, the implications of supporting living, supporting people and housing benefits in order that decisions were informed and risks shared.
E. Early and regular engagement with Housing Benefits and Legal Services to ensure that there is a consistent understanding of the "tipping point" from support to care in such tenancies with the development of protocols to address.

6.20.124. The consultant is concerned that DASS has not learned sufficient lessons from the experiences outlined in this report, for during the investigative aspects of her review there was a further case at Tollemache Road and potentially other addresses where similar difficulties have ensued.

6.21. Service Provider 3

6.21.1. Service Provider 3 may be known to members of the Council but, they may not understand that there is a complicated relationship between Service Provider 3, Miscellaneous 22 from whom properties are leased and Service Provider 7, who has advised that he/she acted purely as a consultant.

It is understood that on 16 December 2011 however, both Service Provider 22 and Service Provider 23 (who has been significantly involved in the right to reply process) resigned as Directors of Service Provider 3. It is understood that there is another company (Service Provider 25) which had the same Directors as Service Provider 3 but resignations from Directorships of that company may also have taken place, thus it is believed ensuring there is no overlap in Directorship between the two companies. This information came to the consultant's attention very late in the right to reply process and therefore no questions about this have been put to Service Provider 3.

During the right to reply process Service Provider 3 stated that all of the above are separate legal entities and requested that they be referred to separately rather than generically. The consultant has in some instances found this quite challenging to achieve for in her view it is not always clear in what capacity Service Provider 7 has been involved for he/she has had a significant role to play in inter-actions with the Council throughout the course of the period of this review.

As a result therefore this section of the report will not attempt to unravel the legal relationships between the three. For the purposes of this report Service Provider 3 will be the generic reference to all 3 parties unless it is clear to the consultant which parties are involved and on what basis and therefore an alternative reference can be made.

As of December 2011 the matter as to the relationship between the parties listed above, is the subject of a First Tier Housing Benefit Tribunal with Service Provider 3 maintaining that the entities are separate as confirmed by registration at Companies House whereas, the Council maintains that the relationship was contrived to maximise the eligibility to Housing Benefits as a not for profit organisation. The "rights and wrongs" of this situation will be determined by a separate process and is not a matter for the consultant or this review. It should be noted, however, that the Council has maintained the presence of some form of contrivance in this relationship consistently throughout the period covered by this review, despite having previously lost a Tribunal case on this matter.

During the right to reply Service Provider 3 advised that:

"In 1989, Service Provider 7 and Service Provider 19 created a partnership called Service Provider 26 and purchased a large dilapidated property for conversion to 7 self contained flats. The project opened on the 2nd August 1992, there were initially 4 clients that had come from the Balls Road Social Services project, which at the time was managed by Miscellaneous 13. Miscellaneous 13 was due to retire and retired within a short time of the Woodchurch Road project (Carrigeen) opening. He/she became the manager of the Woodchurch Road scheme. 3 clients moved from Balls Road to Carrigeen on 2/3rd August 1992

The consultant has been advised by Mr Morton that these clients were self - referred and that there was no referral from DASS. He has further advised that Balls Road was intended to operate as a short term tenancy to enable tenants to move on to be fully or more independent.

"……...Service Provider 7 and Service Provider 19 had consulted with the social services department before opening the project with a view to financing the support package that would be required. Unfortunately the social services claimed at the time that they were not in a position to fund and did not understand this type of independent living scheme as proposed as to how the support could be funded. They therefore refused to provide any funding and did not offer the opportunity to assess the clients' needs upon their move in to the independent living scheme. An application for housing benefit was made at a fairly modest level. The utilities for the building were not separately metered, there was one gas and one electric meter and a unmetered water supply. In order for the clients to be able to contribute to the utilities a system of funding was devised called TDC (Tenant Direct Charges). The TDC regime was used to fund all of the clients utilities, on call costs and all of the support provided by the staff which included Miscellaneous 13 as Manager and 2 further members of staff. Service Provider 7 and Service Provider 19 organised a lot of the administration and back room function for Service Provider 26 as it was known at the time. Indeed Service Provider 7 and Service Provider 19 also provided a lot of support to clients at that time. To formalise the arrangement, in terms of clients paying for bills and services, a funding document was devised and distributed to all clients, family members and any social workers involved. At the time social workers were referring clients to the project even though there was no social services funding available.

As the service developed over the next few years, the clients that were referred became increasingly more needy although social services claimed that direct funding was still not an option. The clients at the time were contributing a proportion of their income support and all of their DLA allowance including mobility. It was decided in 1996 to provide further services to disabled people on the Wirral and as a consequence a large derelict property was purchased at 52 Mather Road (Talbot House) for conversion into 8 one bedroom flats with a communal area. A further building plot of land with planning permission for the building of 12 new build flats was also purchased in 1996. After a successful application for planning permission in 1998, the work on Talbot House began and works were completed in the summer of 1999. In June 2000 the building of the new block of flats was completed it was called Salisbury Court (initially Egerton Court).

At that time housing benefit could pay support costs, the rent schedule had been amended over the years to attract further funding to the scheme. In 1998-99, Service Provider 7 had a meeting with housing benefits officer Employee 40 at which he/she was briefed about the changes that were about to occur in relation to Transitional Housing Benefit. At the meeting, options were discussed in terms of the possibility of becoming a social landlord and the various options explored in terms of becoming a housing association, registered social landlord and/or a not for profit voluntary organisation. As a consequence of that meeting a voluntary organisation (partnership) was set up called Service Provider 3, this was a not for profit organisation and in April 2001 became Service Provider 3, a company which had not for profit articles of association. We believed at the time

this structure would allow the property to be classed as exempt accommodation and not be the subject of a rent officer's rent restricting determination.

So at this point in time, the funding for the Carrigeen and Talbot House projects was from the TDC (Tenant Direct Charging) regime, comprising of a contribution from each client from their DLA and income support, the TDC regime guaranteed the client a minimum of £65.00 per week from which to spend on themselves. At this time in the late nineties, these projects were considered ground breaking schemes given that the clients would receive support within their own accommodation and a decent level of disposable income.

The only alternative at the time being residential care where clients were de-skilled and ended up receiving basic pocket money and potentially their DLA mobility. However, in 1999, before Talbot house opened, the clients that were referred by social services were all particularly needy clients whose support needs could not be adequately funding through basic DLA and income support contributions. In view of this situation, a meeting was called with the social services department attended by Employee 20 and Employee 9 at which various options were discussed, one such option was that the more challenging referrals coming through would go to a new project, which would have 24 hour staffing and a manager on site, the scheme would be known as Salisbury Court."

The consultant has not been able to prove/disprove all aspects of the above statements, in particular whether Service Provider 7 and Service Provider 19 consulted social services before opening the project or indeed whether or not social workers were actually referring tenants to Service Provider 3 as has been suggested by Service Provider 3.

Service Provider 3 has supplied undated copies of admission documents produced by them. These documents set out for each client/service user various elements of personal information and specifically show the tenant direct charges (TDC) to be made. That is not to say that setting out how much of each individual's benefits were to be paid to Service Provider 3 under the banner of tenant direct charges legitimises the regime, for it does not set out what the charges are for in detail, nor does it take account of the varying individual needs of each of the service users or show how consent was achieved.

During the right to reply process Service Provider 7 explained to the consultant that early on Service Provider 3 had places which it needed to fill and even though they would only be partly funded such a client would be accepted. He/she went on to comment that each of these clients were (in his/her opinion) entitled to a CCA and the consultant therefore gained an impression that Service Provider 7 had expected that additional funding would be forthcoming. This does not appear to have been the view of DASS given that (at the beginning at least) the majority of Service Provider 3's service users were funded through Transitional Housing Benefit/Supporting People grant for low level housing support needs. Based on some meeting notes provided to the consultant, Service Provider 7 does not appear to always have been entirely clear or consistent on the DASS funding point during the early period covered by this review.

Having said that, Service Provider 3 has during the right to reply process provided some documents which suggest that some of their clients may have

required more than low level housing support covered by THB/supporting people.

6.21.2. Mr Morton has advised that Service Provider 3 first came to his attention in 2001 and that he had *"grave concerns about this organisation from the outset and it was a meeting with Service Provider 3 tenant Service User 2 which initiated what has now been a decade long involvement uncovering serious malpractice and financial mismanagement."*

Mr Morton has stated that he had *"copious and meticulous records relating to Service Provider 3, which were taken from my office whilst I was on sick leave in 2006 and I was denied access to them thereafter."*

Service Provider 3 in its right to reply has commented that there is and never has been any evidence to prove that there was any malpractice or financial mismanagement and that two police investigations (the consultant has seen two reports dated June and November 2006) have found no evidence of any crime having been committed. The police notes state in both instances that Service Provider 7 had explained that DASS were fully aware of the financial arrangements and continued to place people with Service Provider 3 despite the police enquiry taking place. The conclusion of the November 2006 enquiry states

"Having reviewed the facts in this case I have come to the conclusion that there would be little or no prospect of prosecuting Service Provider 7 or anyone at Service Provider 3."

Service Provider 3 have also stated that:

"…….The service user that he (Mr Morton) *was speaking to was one of around 35 service users at the time who had all signed up to the TDC regime at the point of taking their tenancies, all referrals were made by social workers so the funding regime was fully known and transparent to all clients, their families and the placing authorities and personnel. The question of how could such a TDC regime could not be explained in detail before clients were placed as it was included in the marketing literature given to clients and social workers."*

The consultant could not verify the above statement in respect of whether or not referrals were made by social workers (or indeed if they were whether this was in their official capacity), although she has seen a document produced by Service Provider 3 which demonstrates that a care manager may have been aware of the service user. Nor has the consultant been able to verify the extent of the understanding of the TDC regime as this would have required interviews with many now ex-Service Provider 3 service users and/or their families.

6.21.3. Whilst the consultant has secured some documents (see Annex K), nothing that seems to be Mr Morton's files have been made available to her. Indeed, the consultant has relied upon the co-operation of Employee 8 and the Supporting People Team to secure documents. The consultant has established that there are minutes of a meeting on 14 March 1999 between Service Provider 7 and Service Provider 8 of Service Provider 3 and Employee 9 and Employee 20 of Social Services. Extracts from these notes are set out below:

"2……Employee 9 asked if there would be any further charges made. Service Provider 7 replied that Salisbury Court would charge £257 per week, which was

the basic Wirral rate for learning disability clients plus a contribution from all clients' benefits above £60. Employee 9 replied that that would come to around £500. Service Provider 7 agreed.

3…….Employee 9 enquired how Salisbury Court was going to be set up with regard to staffing and said there may be a need for inspections to be carried out by the Social Services Inspections Unit. Service Provider 7 said that registration would affect the tenants benefit entitlement and was not feasible. ……Employee 9 said that contracts would need to be looked at and set up before Salisbury Court could be paid.

4…..Service Provider 7 informed Employee 9 that he/she had looked at assessment packages and felt it wise to use the same packages as Social Services which would give a degree of consistency and protocol. Service Provider 7 assured Employee 9 that funding levels would not increase once clients had been assessed and moved in, and that would not be any increases sought for existing tenants at Salisbury Court.

6…..Employee 9 suggested Salisbury Court needed to tie up its contracts with Employee 20.

7 Employee 9 pointed out that as an independent organisation Salisbury Court was vulnerable to having tenants placed who had mental health problems as opposed to learning disability.

9 Service Provider 7 explained why Salisbury Court had declined the idea of a package of care for people based on an hourly rate. At the start most tenants would need approximately fifty hours per week.

11 Employee 9 said that he/she would rather have a flat fee so Social Services can have some input in checking rates. He/she also warned of poaching tenants from other organisations."

6.21.4. The consultant has also been provided with a letter dated 4 August 2000 which is a letter from Service Provider 7 to Employee 20 in the DASS contracts team. This letter states the following:

"It is the aim of our organisation to help our clients live as independent a life as possible given their particular disabilities. To enable clients to achieve such a life style it is essential that they have access to their full benefits entitlement. Only after many months of budgeting can they start to come to grips with their financial affairs. To remove this financial independence and replace it with a personal allowance linked to the Wirral rate for residential care would inhibit their progress towards independent living.

It is anticipated that tenants will stay at Salisbury Court (initially called Egerton House) for a six to twelve month period, to enable training and development of their skills. During this period the clients, with management support will eventually access their full benefit entitlement. Thus enabling a smooth transfer into one of our satellite schemes, with little more than a change of address required. Once in the satellite scheme funding would revert back to benefits alone. We have operated and funded satellite schemes through benefit entitlement for over eight years to date.

To give an example of the timescale involved in assessing the correct level of benefits, it is not uncommon for housing benefit claims to take in excess of six months, to determine, D.L.A. on the other hand takes at least four months to obtain a review of the award, and a further three months if the review goes to appeal, the third element of funding "income support" especially severe disability premium cannot be awarded until the level of D.L.A. award has been determined. In one particular case this process took three and a half years, and we actually have a dispute concerning housing benefit that goes back seven years.

Taking into consideration the points raised above it may be easier to have a contract based around domiciliary care package, although the services we provide are certainly more comprehensive than the usual home help or night sitter domiciliary care. This would still enable the tenants to access benefits, although they might have to make a small financial contribution towards the care costs.

Following on from this we would find it very difficult to predetermine the level of staffing for each client on an individual basis over a long period of time. When a client first moves into Salisbury Court the staffing levels are one to one, and all individual training is within the clients own flat. This intense input can last for many weeks in our experience. It is our intention to reduce the staffing ratios as the clients develop living skills and independence, towards the goal of moving into a satellite scheme. To this end we believe that an across the board contribution towards care costs set at the Wirral rate for every client referred to Salisbury Court, would prove to be a much more workable solution to the funding issue.

It should be noted that several clients already referred to Salisbury Court and to our satellite schemes would attract a package of care if placed in a residential institution of at least two or three times the Wirral rate, due to challenging behaviour issues. The fees would be paid year on year while in residential care, with no incentive on the part of the care provider to do anything but maintain the client behaviour at a manageable level. In our opinion it is in neither the clients nor the care providers long term interests to under fund placements. I believe our scheme offers a long-term solution to the problem of supporting people with a learning difficulty in the community, offering a structured progression towards the maximum level of independence allowed by the individual disabilities.

In conclusion the success of the scheme will depend largely upon adequate funding. We need adequate funding to be able to develop further satellite schemes within the locality of Salisbury Court. We know from our long experience within the residential home field that a good quality care bed in a registered home requires a capital outlay of between ten and twelve thousand pounds. Whilst one of our luxury self contained flats had a capital value of approaching fifty thousand pounds this is at least four time the capital investment. This level of investment per unit coupled with comprehensive yet flexible staffing cannot be serviced by the Wirral rate alone.

Finally I hope the proceeding notes give an insight into what we would require from any funding package proposed. Perhaps it would be advantageous to have a meeting at Salisbury Court in the near future with Employee 9 present to discuss the matter further. As my manager and myself are based at Salisbury

Court we are flexible about arrangements. I look forward to your comments in due course."

During the right to reply process Service Provider 3 advised that this letter was submitted to DASS after two meetings with DASS. The 1999 meeting was between Service Provider 7 and Service Provider 8 both from Service Provider 3 and Employee 20 and Employee 9 from DASS.

It should also be noted that this letter referred only to Salisbury Court and not any of Service Provider 3's other properties.

6.21.5. On 19 March 2001 Service Provider 7 and Service Provider 8 of Service Provider 3 and Employee 41 and Employee 9 from Social Services met. Notes of this meeting state that Employee 9 opened the meeting by praising Service Provider 3. Extracts from the meetings notes are set out below:

"2. Employee 9 enquired as to what sort of progress had been made in relation to THB claims since the last meeting (14 March 1999 at Mather Road). Service Provider 7 said he/she had forwarded the final drafts and they would be ready by the end of the month. The THB claim forms would be ready by the end of the week. Employee 41 asked would the schedules be detailed person by person and Service Provider 7 replied that it was the same charging structure right across the board. Employee 41 said other agencies had detailed this on a set rate. He/she said if we personalised each package then we would need to forward a copy of each package to him/herself. Employee 9 said that Service Provider 3 were better off using the existing package in place at Balls Road.

4 Employee 9 asked what the old fees were for Service Provider 3 in other properties (satellite) Service Provider 7 replied that it was £67.00 per week Housing Benefit at present. He/she went on to explain that all Service Provider 3 claims for housing benefit had been reassessed by outside consultants. Service Provider 7 said historically there were lots of problems with housing benefit and he/she explained the circumstances behind some of the tenants problems with claiming housing benefit.

8 Service Provider 7 explained he/she had forwarded the letter to Employee 20 and that they were currently discussing Domiciliary Care Packages (D.C.P). Employee 9 said he/she would contact Employee 20 to discuss D.C.P.

9 Employee 9 asked if Service Provider 3 intended to keep the Wirral rate funding after THB had been awarded. Service Provider 7 replied yes but depending on what level the THB came in at. Employee 9 said that there would have to be further discussion on that point as Service Provider 3 could not be paid twice for the same service."

6.21.6. Another document (it is not clear whether this is an attachment to this letter) appears to have been circulated in June 2000 (author is Service Provider 3) but is first drawn to the consultants attention as perhaps (but it cannot be verified) an attachment to a memo from Mr Morton in June 2001 entitled "Funding of Placements at Egerton House" an extract from which includes:

"It has been agreed that the funding for clients placed by agents of Wirral Social Services shall be comprised of the following elements:

A. *Wirral rate for people with learning difficulties presently £262 per week, to be invoiced to the contracting department calendar monthly. These invoices to be paid monthly in arrears, directly into the company fees account through the BACC's system.*

B. *A contribution from the client's income support benefits. This shall be comprised of all benefits above a threshold of £70 weekly (slightly less for the clients under 21 years of age, presently £65). This will include severe disability premium where applicable. Those monies to be paid in cash to the manager on a weekly basis, on the day of benefit encashment. A record shall be kept in individual rent books.*

C. *All elements of a client's DLA (Disability Living Allowance or Disability Working Allowance if applicable) shall form part of the client's accommodation charges. These benefits to be paid into a bank account opened by the company in the client's name. These funds to be transferred into the company's fees account on a 4 weekly basis. The client will receive a bank statement on a monthly basis; this will provide a record of the DLA received into the account. The statement will provide the client with a form of receipt.*

The consultant finds it interesting to note that item (c) refers to the DLA etc forming part of the client's accommodation charges, which in the consultant's opinion is ambiguous as it does not clearly state what these accommodation charges are for. The consultant believes this to be the Tenant Direct Charging regime that Service Provider 3 refer to, but this document does not break down what these contributions are for.

During the right to reply Service Provider 3 have advised that this part of the document demonstrates that:

"Service Provider 3 intended to open designated client accounts for each client's DLA to be paid into. This was used as a method following the abuse of the TDC regime by several clients who refused to pay their DLA towards their bills once in receipt of the said benefit. As it was a Service Provider 3 designated client account, these could be opened by telephone without the client's requirements for signatures."

Service Provider 3 provided the consultant with a copy of a letter, from Miscellaneous 20 (bank) indicating that the account could not be held in the client's name because the bank was unsure of the capacity of each client to open this kind of bank account.

Service Provider 3 has advised that *"as a consequence of this the bank would only open accounts if my name* (Service Provider 7) *was in front of the client's name in effect providing an audit trail, copies of bank statements were forwarded to clients, generally on a monthly basis as a receipt confirming their payments into the TDC funding regime."*

In addition, no evidence has been provided by Service Provider 3 to suggest that when the bank raised the issue of capacity of each of the clients that it made contact with the Council to determine the way forward, in fact quite the contrary.

As the consultant understands the Council's position (as all of this took place before the Mental Capacity Act), the clients were deemed to have capacity as

they were able to hold tenancies and reside in supported living establishments. It is likely therefore that the Council's position regarding the management of the tenants money would have been clear, in that, the clients/service users should manage their own money as they were deemed to have the capacity to do so albeit with some support.

Presumably if Service Provider 3 or Service Provider 7 had approached the Council when the advice from the bank was received then this could have been resolved very early on. Based on the information made available to her during this review the consultant believes that DASS would have advised that the service users must maintain control of their own finances.

In addition, the consultant asks as to whether any advice was provided to the service users/families as to the pros and cons of these designated client accounts? No evidence has been presented to the consultant to suggest that it was?

D. *The company will claim on the client's behalf Housing Benefit and Council Tax Benefit. The Housing Benefit claimed will go directly into the company fees account, 4 weekly in arrears through the BACS system. The housing benefits claim will contain elements of pure rent and other eligible charges. It is anticipated that all clients who claim income support will be entitled to full council tax benefit.*

   All of the above benefits and charges will be claimed by the company on the client's behalf. It is anticipated from experience that the time period in which all relevant claims are accurately processed can be in excess of 6 months. During the period the company guarantee's the client the minimum of £70.00 per week to feed and clothe themselves, (slightly less if under 21 years old). All backdated benefits received by the client, clients relatives or directly by the company are offset against arrears from the date of acceptance of the accommodation."

During the right to reply Mr Morton advised that there was a meeting held on 8 November 2001 between Wirral Council and Service Provider 3, with Employee 9, Employee 20, Employee 41 and Martin Morton representing Social Services Department, Employee 40 representing the Finance Department and Service Provider 14 (of Service Provider 12) and Service Provider 7 representing Service Provider 3. Extracts from the minutes of this meeting are set out below:

"Service Provider 14 was keen to explore the issues of "transparency" to justify THB claims as presented. Described the process as a "speculative exercise" Service Provider 14 acknowledges that a service can only be paid for once, and could see why SSD might seek redress in the matter of existing "top-up fee" of £262. Service Provider 14 stated that Service Provider 3 was currently operating at a loss and consequentially there were issues of sustainability of the current services.

Service Provider 14 stated that if THB claim were to be backdated, Service Provider 3/Service Provider 12 could agree "in principle" to refund SSD fees paid, ONLY IF CLAIMS WERE MET IN FULL.

MM stated that claims as currently presented were not "transparent". Tenants, SSD and Housing Benefits were not clear what they were actually paying for.

This was a matter MM had brought up at a meeting with Service Provider 3/Service Provider 12 in June.

Service Provider 14/Service Provider 7 further acknowledged that it might be required to reimburse tenants charges that had been levied on their benefit by Service Provider 3. Service Provider 7 confirmed that this amounted to all income above £70. Service Provider 7 believed this "residual income" was sufficient to meet tenants' needs and to access monies over and above £70 was "not in (tenants) interest". Service Provider 14 interrupted stating that there needed to be additional consideration of "citizenship and rights".

….Service Provider 14 stated that he/she felt that Community Care Assessment was not an effective way of establishing level of THB claim (Employee 9/MM disagreed). Moreover, Service Provider 14 stated that the model of service provision (i.e. block contracting) had been "sanctioned" by SSD. Employee 20 confirmed that SSD did not have a contract with Service Provider 3. …..

MM asked Service Provider 7 whether his/her position had changed from the meeting in June 2001. (Service Provider 7 mistakenly stated that the meeting was in April 2001). MM understood that Service Provider 7 requested to be paid from three different funding sources (THB, SSD, Tenants) and this was justifiable. Service Provider 7 refuted this. MM and Employee 40 were in agreement that Service Provider 7 had maintained the position stated. Employee 9 also recalled having a similar conversation with Service Provider 7. Service Provider 7 stated that it was in the interest of SSD to maintain payment as tenants could possibly access the independent living fund.

Employee 9/MM were keen to establish clients contribution to support costs. It was essential to establish what tenants were paying for and that it should be written in the tenancy agreement. Employee 9 advocated care managers to be involved in the "signing up" process with tenants to avoid ambiguity over what expectations Service Provider 3 had of tenants in respect of charges. Need to ensure that as a general principle TENANTS NEED TO BE IN CONTROL OF OWN FINANCES. Service Provider 7 expressed concern about this matter stating that tenants might spend money on "booze and fags" or their family might wrest control of monies. MM stated that it was tenants' money and Service Provider 7 should provide sufficient support to assist with budget management.

Service Provider 7 confirmed that "most" tenants receive DLA care and mobility and that he/she charged/took/withheld this money from eligible tenants. It was agreed not to continue with this practice as it was untenable.....

Service Provider 14 requested of Employee 40 what the position was regarding rent. Employee 40 acknowledged the need to progress issues regarding rent and reminded him/her that correspondence sent had not been replied to. Employee 40 felt that a separate meeting would be required to resolve this matter!

…..Service Provider 14 requested that Employee 40 look at interims payment levels currently between £80-£112

MM enquired about Schedule 1 of Service Provider 3 tenancy agreement which Employee 40 had previously requested. The document allegedly outlines charges that Service Provider 3 makes upon individual tenants. MM asked Service Provider 7 directly if this document was in existence. Service Provider 7 stated it

was. MM/Employee 40 requested a copy of the document as it would assist in appropriating costs"

Mr Morton has advised that Schedule 1 did not appear until August 2004 after much SP Team involvement and that it did not provide clear details what tenants were being charged.

During the right to reply process Service Provider 3 have advised that "*the above document* (i.e. the funding document outlined above) *mirrored, but with more detail, the earlier funding documents that had been used at Talbot House and Carrigeen and once again was distributed to all clients, families and placing professionals prior to admission, a copy of which was kept by clients in their safes along with their tenancy agreements and other important documents."* No supporting evidence was supplied by Service Provider 3.

In addition, Service Provider 3 have advised that:

"*Salisbury Court was in great demand and soon filled up as a consequence of this some clients decided to moved on to Talbot House and Carrigeen, those clients did indeed still have significant support needs and therefore were entitled to request a community care assessment. The financial arrangements considered for the Salisbury Court scheme by Service Provider 3 and WBMC social service department encompassed a basic level of £262 per week in terms of a social service support package, this figure was used because it equated to the basic level at the time for a LD placement in a residential home."*

6.21.7. Interestingly, with one copy of this Service Provider 3 "Funding of Placements" document the consultant has also been given a hand written note (author unknown) which states:

"Funding is £262 per week, no contract in place as a contract would have to specify what happens to residents benefits and cannot write this clause without a charging policy."

Service Provider 3 have also advised that:

"DASS placements into residential care result in the client being disbarred from claiming Housing Benefit or Income Support, the client receives a personal allowance which has increased over time to around £21.50 per week presently. There could be no confusion following the meeting between Service Provider 8, Service Provider 7, Employee 20 and Employee 9, that Service Provider 3 schemes would not be registered buildings. In this absence of an existing funding agreement tool as stated by Employee 20, DASS chose to fund through the existing mechanisms at the time, that was a residential model."

It is not clear to the consultant how widely this letter and the associated funding documents were distributed and, the care managers may not therefore have been aware of its contents or indeed the implications of its contents.

Could the lack of knowledge of the Council's 1997 charging policy for learning disabilities have led to all that had happened and all that followed? This is unclear.

6.21.8. The consultant has set this letter and Service Provider 3 "Funding of Placements" document out in almost its entirety, for at first glance perhaps one might assume all is well, but with a more thorough consideration of the letter and perhaps with the benefit of hindsight one might expect some problems along the way. The consultant would particularly draw attention to phrases such as:

A. *To enable clients to achieve such a lifestyle it is essential that they have access to their full benefits entitlement* – this appears to be consistent with the Wirral 1997 charging policy for supported living.

B. *To remove this financial independence and replace it with a personal allowance linked to the Wirral rate for residential care would inhibit their progress towards independent living*. The letter makes no mention of what the level of personal allowance was but, the "Funding of Placements" document does make it clear what was to be charged. This appears to the consultant to be consistent with the Wirral Charging Policy from 1997.

C. *Thus enabling a smooth transfer into one of our satellite schemes, with little more than a change of address required* – there is no reference here to the individual rights of each of the service users at Salisbury Court as tenants and how therefore they would be moved quite so easily nor, what would happen if a service user did not wish to move. This is an issue identified later in an email discussion between Employee 40 and Employee 34. The need for a new benefit application upon the move between properties is not clear.

   During the right to reply process Service Provider 3 advised that:

   "Clients that moved into Salisbury Court did so on the understanding that it was a stepping stone towards greater independence, this was encouraged by social services departments as their funding upon move on to satellite accommodation was non-existent or significantly less. Those clients that moved on to further independence in the outreach service did indeed keep all their income support and the TDC regime only applied to their DLA payments. The move on situation was generally accepted by the vast majority of clients and those clients that did not want to move, which was one or two, did not move. In fact, the first client to move into Salisbury Court (in year 2000) *still resides in a Service Provider 3 assessment scheme to this day."*

D. *To give an example of the timescale involved in assessing the correct level of benefits, it is not uncommon for housing benefit claims to take in excess of six months, to determine* - There is no explanation of why benefits would take so long to determine and it is not the experience of the consultant that any claim would require 6 months unless the claim is lacking in certain essential pieces of information and/or perhaps the Rent Officer's determination of the market rent is appealed as being too low etc.

   During the right to reply Service Provider 3 advised that

   "this was often a difficult situation as Service Provider 3 was under resourced at the time and was receiving very little housing benefit and the back room function was not what it should have been. Given that clients had often been referred in emergency situations with very few belongings and hardly any paperwork, often their benefit payments were being paid into a family bank

account some were, often families were reluctant to pass over details even though the HB and DWP were aware of these accounts as they were paying benefits into those accounts. The clients could not therefore supply bank statements and other verification documents which caused issues and benefits were often delayed for a significant period of time. Also around this time a HB claim was taking between 16-20 week and DLA reviews would take a minimum of 16 weeks. In the meantime the TDC regime would guarantee those clients £65 per week to feed and clothe themselves all utility bills being paid by Service Provider 3."

Service Provider 3 also stated that:

"In the meeting with Employee 20 and Employee 9 there was an impasse over how this was going to be funded with the systems in place and it was suggested that there should be an independent living box on the system."

The consultant has not been able to verify this during the review as there is no evidence to prove/disprove this statement.

E. *…easier to have a contract based around domiciliary care package…. This would still enable the tenants to access benefits, although they might have to make a small financial contribution towards the care costs* – there is no example of what level of financial contribution might be required under this model although, the "Funding of Placements" document makes Service Provider 3's expectations clear. Presumably under a domiciliary care package DASS would have undertaken a financial assessment of the service user to determine their contribution (if any) and DASS would have be liable to pay.

F. To this end we believe that an across the board contribution towards care costs set at the Wirral rate for every client referred to Salisbury Court, would prove to be a much more workable solution to the funding issue – How could DASS pay a flat rate fee for all service users when, clearly if they are assessed and funded through a community care package there would need to be an individual assessment based upon each service user's individual need unless, there was an assumption that the flat rate for residential care would be used, which was not in the consultant's opinion appropriate. In addition, if Service Provider 3 was providing residential care then it should have been registered as such. There was clearly an assumption here on the part of Service Provider 3 that at least for Salisbury Court DASS funding would be available alongside THB/Supporting People funds and HB. This appears to be contradictory to some statements made by Service Provider 3 in notes of meetings but, it was for the DASS officers to achieve clarity and follow-up in writing setting out the position based upon those meetings.

Service Provider 3 has advised that:

"It became clear that DASS were not prepared to undertake community care assessments as they believed that they would then have to fund those assessed needs for all Service Provider 3 clients. The use of the residential care rate did not mean that those clients required residential care, in fact the schemes set up by Service Provider 3 were demonstrably independent living units, this was given testimony when Service Provider 3 attempted to register with CSCI for domiciliary care. CSCI initially refused to register Service

Provider 3 as they did not provide care, legal letters were sent, a domiciliary care registration was then allowed. Although CSCI confirmed that the Service Provider 3 support service did not fall within the realms of 'Domiciliary care'."

No evidence has been provided to prove that DASS were not prepared to undertake CCAs but, as will be seen later the timing and delivery of such assessments has been the cause of dispute between Service Provider 3 and the Council over a considerable time period.

Service Provider 3 have, however, provided evidence in the form of a CQC report.

G. *"…one of our luxury self contained flats had a capital value of approaching fifty thousand pounds"* – during the course of the review the quality of the accommodation has not been questioned but, the consultant would ask whether it is DASS' responsibility to fund luxury? In addition, if HB had been involved from the outset, it could have highlighted potential issues of rent restriction etc.

During the right to reply Service Provider 3 advised that:

"These were good quality units of accommodation not fantastically opulent but of general good quality having been newly refurbished or built. DASS were funding the support element not the housing element which was claimed from housing benefits."

6.21.9. The above represents just a few of the questions the consultant would have investigated at this early stage. However, the consultant has not been given access to any papers to demonstrate that such matters were taken forward by DASS formally in writing or indeed that the letter from Service Provider 3 was ever responded to.

Service Provider 3 during its right to reply uses the fact that DASS had in its possession the document that set out Service Provider 3's proposed funding regime as evidence of its stated view that there had been no wrong doing on its part. Indeed, Service Provider 3 has submitted an undated funding document (probably later than 2000) signed by Employee 41 on behalf of DASS which, it believes proves that DASS had agreed to its funding proposals.

Indeed Service Provider 3 advised during the right to reply process that queries such as those raised by the consultant were not put in writing to them following their submission of the above letter.

Furthermore Service Provider 3 questions why the funding documents would be of interest to the Council given that in Service Provider 3's words "*they had failed to keep promises regarding community care assessments, how did they think this service to clients was to be funded?"*

However, at this point in the timeline covered by the review the consultant can find no evidence of promises of CCAs made by DASS.

6.21.10. It is therefore clear that as early as March 2001, there were issues that needed to be resolved, i.e. that Service Provider 3:

a. Expected THB to be funded at the level it had claimed which may have been unrealistic
b. Expected any shortfall on its THB claim to be funded by DASS although in the consultants opinion this was not always consistently and clearly articulated on its part.
c. Had not justified to the Council the relationship between the TDCs and services provided
d. Should have been provided with a contract, for DASS funded service users.

During the right to reply process Service Provider 3 have stated that:

"It was always clear to Service Provider 3 that the funding regime, required to fund placements in Salisbury Court and later in Talbot and Carrigeen would require a THB (transitional housing benefit) *award. The THB support element would be transferred to the supporting people grant scheme but as stated on several occasions by the supporting people team they only fund low level housing support. Therefore, there would be a requirement for a social services assessments the outcomes of those assessments would then provide further funding for what would be considered at the time, critical or substantial needs.*

…..The funding documents supplied to clients stipulate clearly that the funds raised through the TDC regime were used to fund utilities and various other items including the on-call support services which were not funded by social services."

The consultant has had sight of various documents from the Council and from Service Provider 3 concerning funding regimes for both THB/Supporting People and DASS funded placements, and there has been considerable dispute throughout the period covered by this review and in the consultant's opinion a lack of clarity.

The consultant has not during the course of this review sought to verify the level of needs under Fair Access to Care as this is considered to be beyond her remit. However, the consultant has seen some documents provided by Service Provider 3 relating to service users which could potentially indicate more than a low level of housing support but, this would need to be determined by experts in this field i.e. a qualified social worker or the Courts. As will become clear later in this section of the report, the issue of CCAs became an element of significant disagreement between Service Provider 3 and DASS later in this review.

6.21.11. Mr Morton has referred to a series of meetings in 2001 which led to his developing initial concerns (but as stated above does not have access to his files to provide detailed evidence in all circumstances).

6.21.12. On 4 June 2001 Mr Morton wrote to Employee 22 regarding Service Provider 3. In summary he raised the following issues:

A. The use of a firm of consultants called Service Provider 12 following a Supporting People workshop where an officer from DETR voiced concerns about this company.
B. The level of funding being provided by the Council – there were 14 service users/tenants which DASS was funding at £262 per week and THB was

funding at £636.18. Mr Morton was clearly of the view that this was not appropriate and could not be justified.

C. The need to seek legal advice in relation to the matter in a joined-up manner across the Housing Benefit, Supporting People and Social Care professions.

During the right to reply process Service Provider 3 have advised:

"Service Provider 12 were appointment at the early stages of the transitional housing benefit cost setting assessment, they proved to be unreliable in terms of the production of rent schedules and other information and as a consequence Service Provider 3 disengaged with their service and later took on the consultancy known as Service Provider 13 to establish housing costs going forward

It should be noted that in relation to (B) above, there was an "off-setting" arrangement in place, which Service Provider 3 have advised was negotiated with Employee 22. As the consultant understands matters this agreement took the following form:

- When/if the THB claims were paid in full then the £262 funding from DASS would cease
- Any overpayments due to backdating of THB would be refunded by Service Provider 3.

As will be seen later, THB was not paid at the level required by Service Provider 3 and an interim (lower) level was paid. When the interim THB was put into payment DASS ceased the payments of £262 per week which, it believed was in accordance with the agreement. However, the consultant believes that because the THB was paid at a lower level, Service Provider 3 believed that either the THB award was wrong and/or that the shortfall should be funded by DASS and this resulted in significant disputes between DASS and Service Provider 3.

Service Provider 3 have also stated that "

"….The THB claim was always disputed by Service Provider 3 as the award at Salisbury Court was based on £10 per hour, clearly a reference to a none rolled up hourly rate based upon support costs alone without any allowance for management costs.

The rate was lower than any other Supporting People rate in the northwest which was @£16 and possibly lower than paid to any other provider by WBC."

This statement regarding benchmarking has not been evidenced by Service Provider 3.

6.21.13. On 21 June 2001 Employee 22 responded to Employee 17 and Martin Morton by memo. Extracts of this memo are listed below:

"It seems clear to me from the notes of the meeting, plus correspondence from Martin that Service Provider 3 have been claiming Transitional Housing Benefit for support costs for residents/tenants who are at the same time receiving the full residential care costs. This matter needs to be pursued vigorously. I am very concerned that the income of residents/tenants seems to be held in joint bank

accounts at Service Provider 3. I am also concerned that Salisbury Court opened "at the request of Social Services".

"I am very concerned that the exact nature of personal care was not discussed and established and this needs to be pursued. I am also concerned about the nature of the tenancies which our colleagues in the Housing Department will be able to advise us on. I am also concerned about the statement that community care assessments were "found to be lacking as a realistic assessment of people's needs".

"I fail to see how five support staff are able to undertake a total of 1,055 hours support for a scheme. The minutes point out that the period for this is unclear. It is a physical impossibility, even if the support staff are employed 24 hours a day, for this to happen over a one week period."

"I have stated my concerns above and wish to see the following action take place:

A. *That Martin and Employee 9 meet in order to clarify the rationale for placing people at Service Provider 3*
B. *That Martin and Employee 9 clarify the level of personal care for each tenant/resident which would be needed on top of support costs being claimed*
C. *That Employee 9 (Employee 41) carry out some more work about the financial status of each of the residents in relation to the shared bank accounts.*

Finally, it would seem to me from reading the minutes that, although the meeting was useful, we should be pursuing a line of clarity about the purpose and function of Service Provider 3 as to whether or not there is residential care or support living. It cannot be both at the same time……"

During the right to reply process Service Provider 3 stated:

"…. it should be noted that THB award was in fact delayed until the residential care costs had been stopped in July 2002 during the interim period Service Provider 3 had only been receiving an interim Housing benefit award, therefore Service Provider 3 were not getting paid twice and indeed never did get paid twice as the social services residential care package of £262 stopped the same day that the SP package began."

"….The total hours worked on every scheme as reflected in the Service Provider 3 wage roll has been provided to DASS on at least 4 occasions to my knowledge, the calculation of 1055 hours is something that we were not party to and did not understand how such a calculation could reflect the true nature of the support being provided to the client, where the figure came from and the method of calculation is a mystery to Service Provider 3."

The consultant has not sought to request evidence of this information being supplied to DASS on 4 occasions but has seen notes of a meeting from which this emanates.

Service Provider 3 have also advised that they have always maintained that it did not provide personal care which Service Provider 3 advises was confirmed by CQC at a later date. Service Provider 3 also states that:

"….it would appear that the use of the £262 residential rate gave the impression to Employee 22 and Morton that the placement was into a residential care facility, clearly it shows a misunderstanding of the ethos of Service Provider 3 and the layout of the buildings, as well as the CQC definition of care. A simple solution would have been to ask Service Provider 3 for clarification, or to indeed visit the clients in their accommodation.

In relation to the shared bank accounts, again the funding documents make this quite clear in that the clients benefit were going into a designated client account, set up for that purpose in a transparent manner."

During the right to reply process Employee 22 has advised that he/she was *"not aware that CCA assessments had not been undertaken. I was told that people's needs could be met by the use of THB, by Martin Morton and by Employee 17."*

6.21.14. On 22 June 2001 Employee 20, Employee 9 and Mr Morton (all DASS officers) met to discuss Service Provider 3 following a meeting on 14 June 2001 between Service Provider 3, HB and Supporting People representatives and Mr Morton. The concerns raised in the DASS meeting focussed upon:

A. Excessive and unsubstantiated rent and support charges – the rent and support charges equated to £1000 per tenant per week in some cases finance from THB, Social Services payments and tenants benefits.
B. Status of accommodation – including the fact that despite Service Provider 3 not being a residential home provider it was being paid at the residential care home rate.
C. Practice issues – "*condition of occupation is opening of a joint bank account with Service Provider 7. Service Provider 7 states that DLA mobility allowance is used to offset accommodation charges…. Eviction practices."*

The memo contained a "*SSD proposed"* response:

"Proceed with action following advice from Employee 27/Employee 42 (Borough Solicitors Office)

Options

A. Service Provider 3 to pursue funding solely through THBS – SSD payment cease. Detailed breakdown of costings required, subject to benchmarking against local services.
B. Service Provider 3 to pursue funding through THBS. Any additional payments not covered by THBS and charged to SSD will be subject to:
  i. SSD assessment review of tenant's needs
  ii. Application of SSD charging policy
  iii. SSD specification and contracting arrangements

Further consideration of issues relating to protection of vulnerable adults in relation to financial abuse (contact DSS)."

During the right to reply process Service Provider 3 has advised that

"The clients referred to Salisbury Court were considered in several cases to be extremely challenging and unplaceable by other services, the agreement for

funding continued a THB claim and a separate social services assessment to provide funding for any services that were not considered low level housing support, this was in fact the case for a client that moved into Salisbury Court in September 2003, Service User 7, whereby the agreed support package was reduced by the THB award of £250 per week. This had always been Service Provider 3's understanding concerning the offsetting agreement.

The status of accommodation in terms of receiving residential care rate of £262 was a suggestion that was proposed at the very first meeting with Service Provider 8, Service Provider 7, Employee 20 and Employee 9 in March 1999. It was intended to be a stop gap until the clients could be assessed properly and housing benefit, THB, properly implemented, at which point the offsetting agreement would come into place."

6.21.15. While there is no concrete evidence that this was meant to be a "stop gap", it does seem to the consultant that this is entirely possible because:

- Employee 20 had sent documents to Service Provider 3 regarding possible service specifications for comment
- The 1997 Charging Policy was available for use by DASS where CCAs had been undertaken for those services users who were assessed and qualified

Service Provider 3 has also confirmed that DASS followed the course of action proposed at Option A above in July 2002 by *"stopping all SSD payments without any community care assessments or any consideration to what the impact of the significant reduction in funding would be to those clients."*

The consultant has also been provided with a document from Service Provider 3 that demonstrates that one of their service users "signed up" to the TDC regime in February 2002.

Employee 22 and other DASS officers have advised that there were no DASS referrals to Service Provider 3 without CCAs being in place.

6.21.16. Mr Morton's concerns were heightened by a complaint from a Complainant 2 on the 12 July to the Director of Social Services which read:

"I am writing to make you aware of a most serious matter that if not addressed will bring disrepute upon your authority.
It relates to the growing number of care organisations springing up and trying to profit at the expense of disabled people who your authority have a duty of care toward.
The company I refer to, although there are many others, is Service Provider 3 based at {company address removed}. This company has a block of flats which houses learning disabled and two satellite houses with learning disabled, in Mather Rd, Oxton and 77 Woodchurch Rd and the corner of Carlton Rd. What they are doing wrong is the following:

A. They have opened bank accounts in the names of all residents at Mather Rd and Woodchurch Rd without their knowledge or permission.
B. They have then arranged for all of their Disability Living Allowance to be paid into those accounts, without their permission.

C. *They have then arranged for all of those benefits to be transferred out of those accounts and into the company bank account of the owner Service Provider 7.*

I am also concerned at the manner in which residents are being treated especially Service User 3 of Woodchurch Rd, who has been told to leave because he/she dared challenge Service Provider 8 about what was happening and was actually threatened by Service Provider 8. Service User 3 has learning difficulties and is very vulnerable.....

There needs to be a full enquiry by all agencies into what is happening at these houses.

I believe Service Provider 8 is too young and inexperienced to be doing the job he/she does he/she cannot properly understand the needs of disabled people and also holds no formal qualification.....

I intend to send a copy of this letter to the Disability Living allowance centre in Blackpool for investigation"

Mr Morton advises that he made every attempt to contact the source of this complaint but was unable to do so.

During the right to reply Service Provider 3 advised that:

"*There had been in excess of 100 clients that have been provided a service by Service Provider 3 since 2000, all those clients have understood the funding regime and any queries they have raised have been answered by Service Provider 3. The terms of the TDC funding regime, were explained to all clients, all families and the social workers upon move in, to say that there was any surprise concerning the setting up of the bank accounts etc is clearly giving the wrong impression.*

…..there was a clear option for them to move on and in one case opt out. Service Provider 3 have a complaints procedure that is explained to all tenants and their relatives upon move in. Coupled with that is that questionnaires were sent to family members each year and no complaints were ever returned."

The consultant has seen evidence provided by Service Provider 3 from family members which praises Service Provider 3 and a brochure produced by Service Provider 3 which clearly indicates the intentions regarding tenant direct charges.

Furthermore Service Provider 3 states:

"In certain knowledge, no clients will have been threatened in any way and if threats were bought to the attention of social services, there should have been an immediate investigation and a safe guarding referral made."

However, Mr Morton maintains that service users were telling him things they he believed they should have been complaining about but were not. He therefore suggests that because clients did not complain this does not mean that they did not have a reason to complain.

6.21.17. The Director forwarded a letter on 12 July from Complainant 2 to Employee 22 and Employee 43 to respond with a covering memo which includes, *"If all is as Complainant 2 fears, then that might suggest an inter-agency risk management conference to determine the extent of knowledge and concerns and what further investigation might be necessary. Please advise on the extent to which you feel the Police need to be involved but I am extremely concerned.*"

6.21.18. Employee 22 responded on 17 July 2001:

"The matter has already been picked up and is being pursued via the Supported Living Development Officer, Learning Disabilities, and the Supporting People Team."

6.21.19. On 18 July 2001 Employee 17 wrote to Employee 22 and copied Employee 11 into his/her email. This email and the exchange that follows is included in full at Appendix 19 to Annex A. Whilst Employee 11 does not descent from the joined-up approach he/she provides absolute clarity as to the priority of issues to be considered from a social care perspective.

6.21.20. During early to mid-August some emails are shared between Employee 17, Employee 9 and Employee 22 regarding DASS sending a letter to Service Provider 3. Some of these emails copy Employee 34 into the exchanges.

6.21.21. In particular Employee 17 raises with Employee 22 *"the legality of paying residential costs to unregistered facilities"*..... and adds *"(in reality we don't have a written contract). I am unsure of our position in this matter and would appreciate some further discussion."*

Service Provider 3 has advised that it was unaware of the DASS discussions outlined above and added that "*the facilities and services were never considered to be registerable."*

In the consultant's opinion there were a number of opportunities here to:

- Implement the 1997 charging policy for those funded by DASS
- Agree a contract
- Set out clearly and in detail the concerns about the TDC regime.

6.21.22. Employee 22 responded (13 August 2001):

"It occurs to me from reading these emails that although Service Provider 3 and indeed (redacted text) need to be addressed, we should start to look at a service specification for supported accommodation, against which such organisations can be measured....."

During the right to reply process Service Provider 3 advised:

"this would indicate to me that he/she was not aware of the earlier conversations and minutes of meetings between Employee 20, Employee 9, Service Provider 7 and Service Provider 8. There were discussions and several items of correspondence discussing the proposed format for contracts going forward."

6.21.23. On 13 August 2001 Employee 34 responded agreeing with Employee 22's comments but adds:

"What is concerning me at the moment is that there are several allegations being made about Service Provider 3 and we need to undertake a proper investigation into these, possibly via HB fraud section. If we don't establish any investigation on a proper footing we will probably compromise our ability to take any action in respect of this provider in future."

6.21.24. On 10 August 2001 Mr Morton, at the request of a care manager from the Learning Disabilities Team interviewed Service User 2 who was at the time a tenant of Service Provider 3. In Summary Service User 2 had the following concerns:

A. The signatories on the tenancy documents were not his and that dates had been changed with Tippex having been used. He said he had no knowledge of the rental levels payable until 10 July 2001 when he had received information from HB

Service Provider 3's response to this allegation is

"Anybody that has met this client, Service User 2, and his/her family who are strong advocates on Service User 2's behalf, would know that he/she would not sign or be allowed by his/her family to sign documents that he/she and they did not understand."

B. Requests from Service Provider 3 for birth certificates allegedly for HB purposes

Service Provider 3's response to this allegation is

"Service Provider 3 had problems getting HB into payment as the requirements in terms of verification of HB claims had become somewhat stricter around this time, and continued to get disproportionately restrictive. The identification of clients through the presentation of birth certificates was considered a way of complying with the HB verification process and nothing else."

C. Being "forced" to sign a form which he believed gave Service Provider 3 permission to handle all benefit claims for the duration of his tenancy

Service Provider 3's response to this allegation is:

"Service User 2 would have had the funding documents and would have fully understood their implications. Support with signing documents was under the remit of low level housing support."

In response to questions raised as a result of the right to reply process Mr Morton has confirmed that he was never the first point of contact for any complaints emanating from Service Provider 3 and that all of them had been referred to him by others.

D. Being unaware of a bank account having been opened in his name prior to his taking up his first tenancy at Salisbury Court. (Account names Service Provider 7 re: Service User 2). He/she became aware when HB showed him/her a bank statement.

Service Provider 3's response to this allegation is:

"Service User 2 would not have received a copy bank statement because upon his/her initial move in to Salisbury Court, he/she was not entitled to DLA….. It was a significant time later that Service User 2 was successful in obtaining a DLA award. In fact he/she had moved schemes by then into Talbot House and would again have signed tenancies and been made aware of the TDC regime. He/she did sign a HB claim form at both properties, HB was paid at both locations. If he/she was unhappy with the TDC regime at the time why move to a further Service Provider 3 scheme? At this point in time, he/she should have paid over the arrears that had built up under the TDC regime. However, Service User 2 and his/her family did not stick to this agreement and left the tenancy without paying off any arrears whatsoever, thus avoiding any payment in respect of utilities and on call support. Service User 2 was a significant recipient of on call services."

Nothing in the form of documents that firmly proves or disproves either position has been presented to the consultant, although the service users mother has advised the consultant that the position represented by Mr Morton to DASS is the truth.

E. Why he had been discouraged from seeking full time employment? He now believed that this was because he would not be able to pay the level of rent and top-ups without full benefits.

Service Provider 3's response to this allegation is:

"Service Provider 3 is aware of Service User 2 seeking full time employment but his/her employment aspirations were unrealistic as he/she wanted to work as a highly trained professional. Although Service Provider 3 does support individuals with their employment opportunities, it was unable to facilitate or support Service User 2 in the roles which he/she was willing to undertake. This was also particularly difficult to explain due to Service User 2 being unable to reflect on his/her disability. Service Provider 3 actively encourage meaningful employment."

Service Provider 3 has supplied the consultant with some clinical evidence which seems to support its position but, other professionals would be better able to determine whether or not this is true.

Service Provider 3 further adds:

"….full time employment would not have affected his/her DLA award. DLA is a non means tested benefit. Service Provider 3 would still have received the same rental level, but Service User 2 would have had to contribute."

F. A belief that he did not require low level housing support and concerns about claims for THB when actually the tenants performed cleaning duties on a rota basis.

During the right to reply process Service Provider 3 stated:

"Service User 2 was fiercely independent and believed he/she did not require any services whatsoever as part of his/her condition, something that was

obviously disputed by his/her family and WMBC when they made the referral to Salisbury Court. With reference to tenants performing cleaning duties, it is true that tenants were requested to help in the cleaning duties but only under the supervision of support staff in communal areas."

G. Staff from Service Provider 3 had been encouraging him to make an application for DLA and that he did not want to do it because he did not believe he was entitled to it. If he did apply, he would prefer to be the recipient rather than the money going to Service Provider 3 as was the case for the cold weather payments.

During the right to reply process Service Provider 3 stated:

"It is true that Service User 2 did not believe that he/she would qualify for DLA. Service User 2 was always of the opinion that his/her abilities would bar him/her from such a claim."

The consultant is not in a position to verify whether or not this is the case.

"Service User 2 had applied before and had been refused as his/her family had facilitated the claim and underestimated his/her needs. Employee 44 (Social Worker) had explained that he/she does have needs and had asked Service Provider 3 to reapply after speaking with Service User 2. Service User 2 was reluctant and it was explained that if he/she did get it then it would go on bills so he/she would not be any worse off. …..He/she was awarded a back payment."

Service Provider 3 alleges that there was then a dispute between the service user, his/her family and Service Provider 3 in relation to this back payment of DLA or indeed contributions via the tenant direct charging regime.

Service Provider 3 has advised that "*Service User 2 was placed by social services; he/she agreed to the TDC regime and had agreed to claim DLA to help offset those costs. He/she received DLA and did not pay his/her TDC arrears and left Service Provider 3 owing considerable amount of money, which was not pursued."*

Service Provider 3 also stated during the right to reply process that Employee 41 advised Service Provider 3 to add an additional box on the support contract for the family member so Service Provider 3 would not be in the same situation again.

In relation to the cold weather payment Service Provider 3's response is:

"….it seems somewhat unrealistic that Service User 2 should expect to keep the cold weather payment when he/she made no contribution whatsoever towards his/her bills under the TDC system for the duration of his/her stay at Salisbury Court or Talbot House."

H. He confirmed that most tenants seemed to pay rent top-ups and relinquished all benefits over £70, this being for utilities not paid for by HB.

I. About the level of staff on site.

The response from Service Provider 3 on this point is:

"……then this should have been highlighted at the time to the management. Again all of these complaints relayed and promoted by Mr Morton could have been easily sorted out given a complaint or dialogue to Service Provider 3."

6.21.25. Service User 2's allegations were followed up with a meeting between DASS and Complainant 3 on 14 August 2001 which provided more insight into concerns about Service Provider 3.

6.21.26. In addition, the consultant has had access to notes taken by Complainant 3 of meetings/conversations on 24 September with Service Provider 3, 18 October with Service Provider 3, Employee 41 and Employee 44 from DASS, Complainant 3 & Spouse and Service User 2, and other telephone conversations/meetings with Service Provider 3, Mr Morton, the Police and DLA.

6.21.27. The 18 October 2001 document contains details of a subsequent telephone conversation with DLA:

"Miscellaneous 5 said that he/she couldn't understand why anyone would want to force someone to claim DLA. I said that the landlord wanted it, in order to cover all the costs. Miscellaneous 5 said "he can't do that! It just doesn't work like that!" I replied "I know that, and you know that but, that's what the landlord wants"

During the right to reply process Service Provider 3 believed that the various discussions within DASS "are *made without the knowledge of the funding regime operated at Service Provider 3 accommodation. A conversation with a placing social worker or indeed a LD team leader or Employee 22 at the time should of (sic) given anybody clear insight into the funding regime."*

6.21.28. The next piece of correspondence available to the consultant is dated October 2001 and it appears to be a placement letter for a Service User 4 with effect from 12 April 2001 which confirms £271/£276 per week as payable.

6.21.29. On 19 October 2001 Miscellaneous 21 wrote to Employee 9 outlining some of the cases its learning disabilities advocate had been dealing with from Woodchurch Road this included issues relating to:

A. Inappropriate and illegal eviction threats from Service Provider 3 when benefits were not handed over to Service Provider 3 or when tenants fell into arrears.
B. Levels of support provided
C. Handling of client's money
D. Levels of money paid over to Service Provider 3
E. Bullying behaviours

Service Provider 3 believes these complaints were made by *"disgruntled tenants who feel they have no obligation to pay their utility bills etc under the TDC regime. It was always open for the clients, their families and indeed Miscellaneous 21 to advocate on behalf of clients, or clients could simply source alternative accommodation and/or support*

In the consultant's view this demonstrates that the TDC had been implemented to avoid disagreements with Service Provider 3 residents as to whether or not

each individual should relinquish all entitlements to DLA etc above and beyond the £70 level.

Employee 22 has advised that sourcing alternative accommodation and/or support providers was more difficult than perhaps appeared due to the market being of limited development.

6.21.30. A meeting was called on 8 November 2001 between representatives of Service Provider 3, its consultants Service Provider 12, HB and DASS where a number of issues were raised (most if not all had been raised before by DASS or other officers) with the outcome being that they agreed to meet again to resolve the issues.

Service Provider 3 states that this meeting was called to discuss Service Provider 3's THB claims,

6.21.31. On 5 December 2001 Employee 40 from HB contacted Service Provider 14, who was acting on Service Provider 3's behalf, regarding details he/she was awaiting to progress Service Provider 3's THB claim.

An excerpt from Service Provider 14's (of Service Provider 13) response on 7 December 2001 is set out below:

"…..We agreed with Service Provider 7 that he/she would provide us with a breakdown of the services which tenants are currently being charged for. We would then make any adjustments to the rent to ensure double counting does not occur. Service Provider 7 rang me yesterday to say that the info was in the post but as yet we have not received it. We will also look at any other adjustments to his/her rent that may be required to account for call out and transport costs which he/she says he/she is not recovering at the moment. However, we can't do this until we have established whether any of these services are included in the charges he/she makes to tenants.

Service Provider 7 also indicated that he/she will shortly be writing to Social Services to confirm the intention to refund the money he/she has received under the £262 contract fee arrangement (when he/she is in receipt of backdated housing benefit). Obviously he/she won't be in a position to do this until the claim is settled."

6.21.32. On 6 December 2001 Employee 40 made a file note of a telephone conversation with Employee 9 following him/her emailing a list of questions to enable him/her to complete THB assessments for Service Provider 3. Some pertinent points are highlighted:

A. SSD had been contracting with Service Provider 3 since 1999. SSD was to produce a contract but there still was not one in place
B. Residential care was not necessary due to the ability of the client group
C. Emphasis on support, minimal care provision
D. Payments were a blanket fee, not means tested and used the residential rate because it was considered a reward for dealing with challenging behaviour.
E. This was not meant to be service user's permanent home.

6.21.33. On 19 December 2001 Mr Morton wrote to Employee 9 copied to Employee 17, Employee 22 and Employee 45 suggesting he/she or one of the senior

managers provide some formal guidance regarding placements at Salisbury Court, to address the funding issues and *"unsatisfactory financial arrangements involving tenants. Until this is resolved I think placements could still potentially make SSD a hostage to fortune".*

Service Provider 3 stated during the right to reply process that support at Salisbury Court was “spot purchased” on an individual basis but that a CCA had not been carried out to ascertain the level of needs.

6.21.34. Attached at Appendix 20 to Annex A is a briefing note Employee 34 produced for his/her Director. In relation to the point made about tendering, it should be noted that Employee 22 has suggested that “spot purchasing” was not unusual in social care departments around this time. However, the use of spot purchasing should in the consultant’s experience have been supported by some form of evaluation or procurement processes with a written contract.

6.21.35. On 20 December 2001 Employee 9 confirmed that the project had not been submitted to Cabinet or Members for approval.

6.21.36. The delay in paying THB (and therefore the reason why Supporting People and HB were working so closely together) is, in the consultant’s opinion, because when DASS eventually came to a view about the level of low level housing related support the individuals required it was estimated to be circa £350 per person, some considerable amount more than the 9 hours support per person at £10 per hour estimated originally.

The consultant did not investigate the detail behind the estimate of £350 per person but notes that during the right to reply Service Provider 3 has advised that this level of funding was similar to that claimed by Service Provider 3 in its THB applications.

6.21.37. By May 2002 Martin Morton had written to HB outlining the level of assessed support needed per person residing at Salisbury Court with a caveat that this may require further refinement to be in a position to identify the housing related support and ineligible support. In this email he stated

"I am still anxious that many of the tenants are under the impression that contributions from their benefits is for "rent" and seem to be unaware of the Housing Benefit payments. Protection concerned with financial vulnerability of tenants still needs to be addressed."

The consultant has seen a document provided by Service Provider 3 which is a rent book and shows that money was collected and noted within it. Service Provider 3 have advised that this rent book was actually used to notate the collection of TDC and that clients often described it as rent. The use of a rent book to note the TDC payments in the consultant’s opinion was very likely to cause confusion amongst the service users.

6.21.38. The discussions with Service Provider 3 continued with HB Supporting People and DASS all sharing related concerns.

6.21.39. On 6 March 2003 a meeting took place between DASS and Supporting People with both Employee 22 and Employee 34 in attendance. At this meeting it was

confirmed that HB had made an interim determination of the THB claims and that DASS had stopped payments to Service Provider 3 in July 2002.

It is at this point that Service Provider 3 contends that DASS should have used CCAs to determine the needs that were not being met above and beyond those being funded by Supporting People. Service Provider 3 alleges that whilst THB and DASS funding was in place they were in receipt of sufficient funding to meet the service users' needs and that once the DASS funding stopped they were not. Service Provider 3 also alleges that the CCAs were at best "minimal" and Service Provider 3 suggests were of questionable quality.

The consultant has had sight of comparable documents from other organisations which suggests that there was scope for improvement in the documentation.

6.21.40. Employee 34 advised that there had been a discussion between HB and the Council's legal services to determine whether HB could make the payment to DASS to compensate for the fees DASS had paid to Service Provider 3 while THB was not in payment.

6.21.41. On 21 March 2003 Employee 22 responded to separate updates from Martin Morton and other DASS colleagues where it was made clear that although HB had made an interim THB payment to Service Provider 3 this could not continue indefinitely without it supplying the outstanding information required to make a final determination and that the associated timescale might be a little as 14 days. His/her response was as follows:

"Can you enlighten me. Can we negotiate with H Benefits re this, as Service Provider 7 is indeed going to come to the dept looking for funds. I am very clear that although people cannot be made homeless we cannot pick up the costs as they are not care related."

In the right to reply Service Provider 3 have stated that:

"This is inaccurate as the DASS department could and have subsequently paid for support that was considered substantial and critical to tenants of Service Provider 3 properties. She may be expressing a desire not to fund the client critical and substantial needs due to the DASS budget situation."

6.21.42. A further meeting took place between DASS and Service Provider 3 on 10 April 2003. Largely this meeting focussed upon:

A. The impact upon THB levels as a result of the vacancies for Service Provider 3 in terms of funding. Service Provider 3 outlined a proposal to increase fees by 12% as a result.

Service Provider 3 have advised that its original estimated THB requirements were approximately 2 years out of date by this time.

B. The need for Service Provider 3 to supply outstanding information to enable a final HB determination.

Service Provider 3 states that it had provided all of the information to HB on many occasions. Service Provider 3 has provided correspondence to HB dated 12 July 2002 which demonstrates that it was chasing resolution of the final

determination. There is also correspondence where HB has written to Service Provider 3 representatives in December 2001.

C. DASS advised that no further placements could be made until this was resolved.

D. Working relationship with SSD.

E. Financial transparency needed to be addressed as a matter of urgency especially how Service Provider 3 tenants' finances were managed. It was suggested that perhaps these issues should be covered in one of the schedules to the tenancy agreement. In addition, it was suggested by Service Provider 3 that it was not financially viable unless funding levels improved.

Service Provider 3 believed and still believes that "*financial transparency had been present in all dealings since the meeting in March 1999 between Employee 20, Employee 9, Service Provider 7 and Service Provider 8.*"

The consultant believes that the Service Provider 3's intentions relating to the TDC were clear but that the Council considered that the detail to justify the level of charge was unclear.

F. Practice issues in DASS regarding a particular case.

6.21.43. During the right to reply process Service Provider 3 provided the consultant with minutes of a meeting which took place on 10 April 2003. Present at this meeting were:
Social Services: Employee 17, Employee 9, Employee 45, Employee 20, Martin Morton
Service Provider 3: Service Provider 8, Service Provider 7
Service Provider 13 (on behalf of Service Provider 3): Service Provider 17

The purpose of this meeting was stated to be that "*SSD were seeking to clarify how they made decisions regarding referrals to Service Provider 3. It was established that SSD SP Team should be involved in identify (sic) needs of potential tenants including legitimate care costs. These assessments/costs would then be considered by the Learning Disabilities Panel in the usual manner.*"

"Service Provider 17 wished to establish as a point of clarity that Service Provider 3 were not subject to private landlord status but felt it was a good safeguard to involve SSD in the assessment process."

"Service Provider 7 detailed that there were vacancies within Service Provider 3 and was unaware until MM visited Salisbury Court on 31.3.03 that the consequence of these vacancies meant that SP grant funding would be restricted to the 14 bed spaces occupied at this date (maximum occupancy was identified as 17 at Salisbury Court). Consequently Service Provider 7 felt that the need to increase rent charges to tenants by 12% to cover void losses."

"Service Provider 7 confirmed that SSD payments to Service Provider 3 had ceased in July 2002. Employee 17 stated that there was a need to clarify the position with regard to the subsequent interim THB payments made by Housing

Benefits. SSD considered that they were unable to make referral to Service Provider 3 until this matter was resolved as it was imprudent to agree placements without identifying potential financial liability."

"Service Provider 17 requested the assistance of SSD to usefully move forward the matter of a final Housing Benefit determination. MM stated that this was a matter that needed to be resolved between Housing Benefit and Service Provider 3 and was aware that information had been requested by HB to enable a final determination however it was apparent that this information had not be forthcoming. Service Provider 17 insisted that THB already had much of the information that had been requested and had sent a holding letter prior to providing further information which he/she considered would be sufficient to enable HB to come to a decision, even a decision which could be subsequently challenged. Additionally Service Provider 17 felt that the possible ceasing of HB claims was "not helping" the move towards a resolution."

"….Speaking on behalf of Service Provider 7, Service Provider 17 expressed the need to re-establish a working relationship with SSD and that Service Provider 7 felt that SSD were "working against them at the moment" due to "stonewalling" and a "drought on new referrals". Service Provider 7 cited a list of excuses proffered by Care Managers as to why placements were not being made with Service Provider 3. These included "there's too much violence at the Salisbury Court". Employee 45 stated that this was not an accurate assessment and that she had addressed matters relating to this comment. Employee 17 was keen to address Service Provider 7's use of the word "contrivance" in discussion and wished to establish was in relation to the matter relating to HB and Service Provider 3 and not SSD."

"…..Employee 17 expressed the need to address the above matter but emphasised the issue of financial transparency should be considered as a priority. MM stated that there was a particular issue in relation to how Service Provider 3 tenants finances were managed. Service Provider 17 replied that he/she "shared that discomfort". MM felt that tenants, HB and SSD were not able to ascertain from information provided by Service Provider 3 what contributions from tenants Income Support, DLA (care and mobility) were for services. Service Provider 7 distributed a list which listed utilities and services which accounted for the charges made in respect of the tenants benefits. However, MM considered that this list did not assist the process of financial transparency as it was not itemised. MM queried whether financial arrangements should be list in Schedule 1 of the Tenancy Agreement. Service Provider 17/Service Provider 7 stated that they could consider this as a means of assisting the process of financial transparency. Employee 45 was anxious that tenants should know what they are "getting for their money". A particular example he/she wished to draw attention to was the matter of SLA mobility and the opportunity for tenants to opt out of transport arrangements and manage own finances. Service Provider 7 indicated at this point that DLA Mobility was used to fund 8-9 company vehicles. Service Provider 7 distributed a document which he/she stated was signed by tenants, next of kin and SSD Care Managers agreeing to allow Service Provider 3 to manage tenants finances. Service Provider 17 stated that there was an "element of convenience" to this document until Service Provider 3 secured a "proper level of funding" until such time tenants were being "subsidised by the organisation". Employee 45 replied that transparency should work both ways and that tenants should not be subsidised in such a manner. Service Provider 7 produced a

document from his/her accountant detailing projected losses indicating that "the company" was not viable and that "another resource could be lost to the Wirral".

"MM sought further clarification on how tenants finances were managed, Service Provider 7 stated that all tenants were "self-appointed", kept own benefit books and rent books. Existing financial practices were to be addressed on the appointment of a Welfare Rights Officer."

"…..Service Provider 7/Service Provider 8 questioned the process involving SSD Care Managers which informed the THB interim payment to Service Provider 3 claiming that they were not consulted or involved in that process. MM countered that it was not his understanding of how the process was undertaken, (Service Provider 8/Service Provider 7 requested copies of assessment) moreover the determination was also based on information provided by Service Provider 3 in their SP3 document and company brochure."

"….MM queried whether Service Provider 3's understanding this matter being "resolved" was the realisation of existing THB claim from whichever source (SP Grant, SP and Community Care funding or solely Community Care funding). This was confirmed by Service Provider 17. MM stated that in his opinion this could not be justified. Employee 20 concurred that the costs detailed for XXX were insufficiently detailed to justify the funding."

6.21.44. On 23 May 2003 Employee 34, wrote to legal services regarding the issues and options relating to Service Provider 3 from a supporting people perspective including:

A. Service Provider 3 refusal to accept a level of supporting people/THB that was less than expected (Service Provider 3 had requested £16.98 and was offered £10 per hour).
B. A view held by HB that there was a contrived tenancy in that the split between the support provider and accommodation provider (different companies) was a means to allow the payment of housing benefit. (This was subsequently pursued in Tribunal and the Council failed to prove the case).

Employee 34's view was that the case needed to be escalated to the supporting people commissioning body with a recommendation, but he/she needed further legal advice to enable all parties to agree the way forward.

6.21.45. The consultant has been advised that by July 2003 Legal Rep 3 were representing Service Provider 3 tenants in relation to claims against the levels of THB/Supporting People grant the Council provided to the Service Provider 3/them, saying it was too little. There were concerns from Council Officers and some family members at the time that are apparent to date, as to how Legal Rep 3 became the solicitors for all Service Provider 3's tenants, and whether those they spoke to had given or been able to give informed consent etc.

However, Service Provider 3 have advised that Service Provider 13 were contracted to provide further expertise within the THB area and that it was Service Provider 13 that contacted all clients and gained authority from them to undertake their remit. Service Provider 3 has advised that Legal Rep 3 were not involved until July 2005.

Whichever organisation it was that was pursuing the THB/Supporting People claims, there was clear concern on the part of DASS as to how this organisation had been able to secure appropriate authorisation to act on the service users part.

6.21.46. It was proposed by DASS that it should undertake CCAs for each Service Provider 3 resident to identify the level of support required and therefore payable by Supporting People/THB funding. Mr Morton warned Employee 22 on 22 July 2003 that this process could potentially identify support tasks which were not eligible for Supporting People funding e.g. administration of medication which would be more appropriately deemed to be care and could therefore lead to claims for "top-ups" either from DASS or the service users. Mr Morton also reminded colleagues that it was Service Provider 3 who had and continued to state that there were no personal care tasks involved and that as a result Service Provider 3 had avoided the need for registration. His email is set out below:

"I am not convinced that CCAs would demonstrate why Service Provider 3 do not receive "top ups". Indeed they demonstrate that there are support tasks which are not SP eligible (managing challenging behaviour, administration of medication, monitoring mental health etc).It is Service Provider 7 who insists there are no personal care tasks involved (he/she does not have an understanding of the broader definition of personal care) and I am of the view that he/she does so to avoid the need to register as a Dom Care agency with the NCSC. Correspondence from SSD has opened the door for claiming "top ups" but Service Provider 3 have never sought this funding route. I have long maintained that if Service Provider 3 did approach SSD for funding then this should be deducted from their SP grant as based largely on their own information they simply do not have the capacity to justify the triple funding".

Service Provider 3 stated in its right to reply response that:

"It appears to Service Provider 3 that the statements by Mr Morton go to the crux of the matter. At this point of time in July 2003, the community care assessment had been promised for over two year by DASS and Mr Morton was clearly aware to the fact that a lot of the clients would require additional hours in other words a funding package from DASS, this I believe goes to point that DASS avoided for over 4 years, the proper assessment of clients despite the request from clients, Service Provider 3 and Legal Rep 3 on behalf of the clients. Mr Morton does not appear to understand that DASS are able to fund intensive housing support to those clients were needs are considered substantial to critical."

6.21.47. Employee 22's response to Mr Morton's email:

"You are more than likely right but, there is a process that needs to be followed. Let's go through that and use it to expose the flaws which we haven't been able to so far…."

Service Provider 3 pointed out during the right to reply that it was "*still over two years until those assessments were undertaken, meanwhile Service Provider 3 were providing significant amounts of support at substantial and critical levels to many clients within its properties at great costs. Service Provider 3 is a not for profit company but it is not in a position to fund year on year trading loses, especially as the supporting people regime demanded Service Provider 3 be financially viable thus Miscellaneous 22 not being paid its legitimate lease values*

for the Service Provider 3 units of accommodation over many years ended up subsidising the Service Provider 3 service, in 2011 those Service Provider 3 lease arrears totalled in the region of 1.2 million pounds.

The consultant has not sought to resolve this issue as part of her review, as there is/was ongoing involvement of legal representatives and this matter is part of an issue awaiting decision from a tribunal.

6.21.48. In the meantime there were some service user concerns and a need to find some of them alternative accommodation. In addition, DASS and supporting people still had concerns about the management of finances of individual services users.

Service Provider 3 has advised that:

"Service Provider 3 clients who were either unhappy or disgruntled or did not want to pay TDC had requested move on's or opt outs and it was DASS who were organising those move on's, this course of action had been open to any Service Provider 3 client at any stage if they were not happy with services or the funding arrangements under the TDC regime.

6.21.49. A complaint was also submitted to DASS by Service Provider 3 which by September of 2003 had reached stage 2 of the formal procedure. The investigating officer's summary report dated 17 September 2003 is included at Appendix 21 to Annex A for perusal. The reader will note that some of Service Provider 3s complaints were either upheld or partially upheld which is in the consultant's view a damning indictment on the processes followed by DASS to that point.

The complaint report also summarises quite succinctly the state of the relationship between Service Provider 3 and DASS.

During the right to reply process Service Provider 3 advised that:

"The complaints procedure which was followed by Service Provider 3 was initially considered to be a 3-6 month process, the procedure actually took some 18 months at which point the majority of the Service Provider 3 points of complaint raised where upheld by the complaints officer, unfortunately that complaints officer left before the final draft of the outcome of the compliant, these complaints files fell upon the desk of Employee 22. Employee 22 had been left in the position of adjudicating over complaints that were largely against his/her department. It is interesting to note that, given the recent damning CQC report, the same employee was left to preside over the action plan concerning those severe criticisms.

The complaints officer did feedback to Service Provider 8 during the 18 months that he was frustrated with the complete lack of compliance by officers of DASS and was quoted that they failed to return his calls, fail to be in the office when calls were scheduled and continually failed to meet with him. His description was 'having a nightmare with this'".

It is true that the investigation of this complaint took an considerable period of time and that most of the complaints were upheld.

6.21.50. Around 29 September 2003, Mr Morton and others became aware that a mental health social worker had commissioned a place at Salisbury Court (an unregistered organisation) at £662 per week. This was queried.

In the right to reply Service Provider 3 has advised that:

"In September 2003 a large package of support was commissioned for client Service User 7 who resided at Salisbury Court until October 2011. The package of support commissioned was not a care package and therefore did not require Salisbury Court to be a registered building. In earlier years there was an attempt by Service Provider 3 to register under CSCI the scheme for Carrigeen. At the time Carrigeen did not receive any social services funding and it was felt a registration would provide at least a basic level of funding for the clients that resided there, we went through the process and CSCI and WMBC considered that the building should not be registered as there was no personal care provided at that location."

6.21.51. On 18 December 2003 Mr Morton wrote to Employee 17 and Employee 22 regarding an invoice submitted by Service Provider 3 for £243,136 claiming that DASS ceasing payment in June 2002 was premature as Service Provider 3 was not in receipt of THB at the required level.

Service Provider 3's response here was:

"….there was no community care assessment under taken to establish clients support needs, given that THB was meant to fund only low level housing support. ....The client mentioned (above) ..... *was not the most challenging client at Salisbury Court at the time, those other clients received only low level housing support through the THB system although requests for an assessment to assess those clients needs were made on many occasions."*

6.21.52. Mr Morton in response to questions raised during the right to reply process in relation to the undertaking/reluctance to undertake CCAs on the part of DASS has advised that Service Provider 3 wrote to the DASS at Ashton House in December 2003 cc Employee 11. The crux of this letter being that Supporting People had allegedly refused to fund certain clients and as a result Service Provider 3 was seeking funding from Social Services.

Mr Morton's email response to Employee 17 (who had been passed the letter by the Director) on 3 February 2004 was as follows:

" I'm not sure if the tenants listed below arrived at their respective placements via a CCA. Certainly I've no knowledge of Service User 27 and Service User 28. Unless I'm wrong it would appear that Service Provider 3 are again demonstrating their wilful ignorance of how care management should work. Are funding requests detailed in the letter or is it the usual £600+?

This matter is fundamental to Thursday's agenda as the prime outcome should be to establish how we do business with Service Provider 3. I would suggest it is untenable for Service Provider 3 to unilaterally take people in, think of a number, double it and present SSD with exorbitant costings without any recourse to Care Management processes. Therefore SP are mistaken to suggest that the cost of the placement falls to SSD. Anyway I would suggest that the cases below are primarily a landlord function and not a care/support function"

Mr Morton also advises that the above situation was updated 30/5/05:

"SSD were compelled to enter into discussion with Service Provider 3 with regard to letters dated 1/12/03 in relation to Service User 20, Service User 21, Service User 3, and Service User 22 due to their specific circumstances. I would dispute that SSD "placed" these people at their last named addresses. Service Provider 3 unilaterally decided to move people without having secured funding from SP (I had warned them of this situation arising on 31/3/03 and was subject to a complaint investigation claiming I had made an "outrageous" and "untrue" statement) then that was their responsibility.

Service User 20, Service User 22 and Service User 3 were found alternative accommodation. Service User 22 now receives support from a different agency."

6.21.53. On 23 December 2003 copies of these invoices were submitted to Employee 7 in an attempt by Service Provider 3 to facilitate prompt payment.

6.21.54. There were a number of holding responses from the Finance department and others while legal advice was sought.

6.21.55. During the right to reply process Service Provider 3 provided the consultant with a letter from Employee 11 to Service Provider 7, which was made available to the Audit Commission Inspectors on 2 October 2004 regarding 2 service users. This was provided as evidence of it pursuing community care needs.

This letter outlines the outcome of DASS investigations. One of the issues relates to a service user, which "*originates in a letter and report from your company in June 2003 requesting a prompt re-assessment of XXX's needs. In the letter you refer to the Social Services Department's commitment to complete a re-assessment of XXX's needs at an appropriate time in his/her tenancy at Salisbury Court. In the report you recorded that the placement was working well and that XXX was settled.*

The request for a re-assessment was passed to the Care Managers in the Supporting People Team by the Learning Disability Team Manager. At a meeting on 23 July 2003 the Care Manager was informed that the placement was working well and that XXX was settled. Your staff did express concern about the Care Manager discussing accommodation issues with XXX, as they did not want him/her to become anxious or unsettled. The Care Manager believed that as things were going well, there was no role for him/her. This outcome was reported back to the key worker and the Team Manager.

With reference to your comment to the Inspector that the Social Services Department responded in a tardy fashion to a request for reassessment of XXX's community care needs. Unfortunately, I have to accept this. Although there was an internal response to the letter in terms of the Team Manager asking the Supporting People Care Manager to follow it up, there was however no outward communication with yourselves.

At the time of writing I can confirm that a comprehensive re-assessment of XXX's needs is taking place. The components of this review will include XXX's physical, psychological and environmental needs. When completed the outcome of the re-assessment will be communicated to you in writing."

6.21.56. During a meeting between Service Provider 8 of Service Provider 3 and Employee 62 of Supporting People on 29 January 2004, they discussed the issue of the TDC and the minutes of this meeting state:

"Employee 62: Right, Service Provider 7. I know you sent a letter to us stating that Service Provider 7 has never been an employee of the company (produced copy of the letter written by Service Provider 8) – Can you tell me exactly what his/her role is?
Service Provider 8: Service Provider 7's role as such is soon to be finishing. I have called an emergency meeting with all the people who are involved with Service Provider 3, and I personally feel that we are having problems with the supporting people team and other people because of Service Provider 7. I don't entirely agree with the way he/she deals with a lot of things and when I have been to SP meetings, people there juniors have said "So you're Service Provider 7" before we even get in the door, so I know that he/she has conducted himself sometimes, in a way that is probably not right I think.
Employee 62: I mean as regards tenant contributions, this is one of the conversations the team have had within the office. In principal, it doesn't matter. As long as, the tenants have got the capacity to understand that to receive this service that they have indicated they want, they will have to make a contribution towards it. As long as they can understand and agree and are happy with that, then Supporting People do not have a problem with it. It's just the way it is at the moment, the set up at the moment."

6.21.57. In January 2004 Employee 23 prepared and shared via email an analysis of the positives and negatives of Service Provider 3:

Positives:
Quality of accommodation
Standards of care
Staff
Systems to keep people safe

Negatives:
Lack of financial transparency
Service users unclear about financial arrangements
Lack of clarity about distinction between care and support
Income focussed from whatever route
No formal reviews of support plans
Distinction between landlord and care provider whilst clear on paper less than clear in practice
Systems they say are in place may not as robust as Service Provider 3 purport.

Employee 22 has advised that he/she did not totally agree with the above assessment. During the right to reply process Employee 22 advised that on re-reading it he/she believed it to be contradictory.

Employee 23 has not had access to records or emails since January 2008 and does not have any recollection of this email exchange.

Service Provider 3 refutes any allegations of lack of financial transparency as it states that it had provided documentation to DASS and the clients, although it should be noted that transparency was again mentioned in correspondence

between Legal Rep 6 solicitors acting for the Council and Legal Rep 1 acting for Service Provider 3.

6.21.58. Additional concerns shared by others were how service users arrived at Service Provider 3 for in a number of cases they did not arrive via social services following a CCA and, it appears that Service Provider 3 then expected funding from all sources especially DASS.

Service Provider 3 has advised that *"All clients were referred by social workers at that time and all clients are entitled to a community care assessment, which had been requested but not provided."*

Service Provider 3 has provided documents that suggest that many of those resident within certain of its properties had a named social worker involved at the time payments were made.

6.21.59. On 18 May 2004 after receiving an update from a family member whose son was resident with Service Provider 3. Mr Morton suggested that:

"The time is right to draw the line in the sand with Service Provider 3 especially in relation to their charging policy.

It would seem that Service Provider 3 are now targeting service users who historically have not been funded by SSD but are now wanting payment outside of supporting people funded placements. If so I think that if Panel approves such payments we should insist on their being registered as a domiciliary care agency and that tenants are subject to our charging policy".

Service Provider 3 has stated in its right to reply that it had made constant requests for CCAs in an attempt to establish the true level of support provided by Service Provider 3 to its clients. As outlined earlier in this section of the report Service Provider 3 has advised that it requested a CSCI Domiciliary care registration and were refused, it took letters from Service Provider 3's legal advisers in 2006 before a domiciliary care registration was finally issued on the 9th November 2006. This was however, 2 years after the email from Mr Morton.

6.21.60. What Mr Morton appears to have been promoting here was that it is the responsibility of DASS to apply its 1997 charging policy to service users via a financial assessment (whether they were resident in an internally or externally provided supported living environment). If this had been implemented for those clients who were in receipt of a CCA it should have directed all discussions about funding toward the Council i.e. to DASS for those in receipt of CCAs and to Supporting People and HB Payments. This would then have limited the opportunity for financial abuse and claims for "top-ups" from either the service user or DASS.

Service Provider 3 have also advised that in 2003 there were only two service users who had CCAs and therefore DASS funding in place. On the assumption that this is correct the 1997 charging policy would therefore have applied only to these two clients. Service Provider 3 also expressed an opinion/allegation that DASS was reluctant to assess and therefore fund the remaining clients.

However, this does not obviate the need for Supporting People and DASS to determine the legitimacy or otherwise of the tenant direct charging regime.

6.21.61. On 21 May 2004 Employee 22, in reprimanding some members of his/her team for expressing opinions that, if FoI'd, may have been problematic, included the following statement:

"I am more interested, however, by the feature of ordinary residence. If this gentleman moves from Wrexham into a supported tenancy, he will become the responsibility of this LA, unless we can reach some agreement with Wrexham".

6.21.62. The consultant considers this statement demonstrates the issues that were high or highest on the priority list – namely Finance. Whilst of course this was important because it would have made the DASS financial position even more problematic it, is the consultant's opinion that equal or greater priority should have been given to the adult protection issues still outstanding.

6.21.63. On 2 June 2004 Employee 11 writes in response to a letter from Service Provider 3 dated 23 April 2004 regarding Service Provider 3/the service users/the service users' legal representative's requests for copies of their CCAs. This letter includes the following:

"Your organisation made a request for assessment in relation to 5 tenants on 2nd December 2003. A reply to this request was sent on 2nd March 2004. In this reply, you were advised that we were unable to offer a definitive timescale for the assessments as would be referring all tenants to the Advocacy Service for preliminary discussions. We further advised that once the discussions were completed, we would envisage care management input within 2 weeks. This is still our plan. There have been some difficulties in terms of engaging the services of an Independent advocate but I believe these have now been overcome.

If the assessments are not underway by the end of June 2004, I will ask that the Acting Service Manager write to you to advise of the current position."

6.21.64. Appendix 22 to Annex A is a letter sent from Employee 11 to Service Provider 3 on 7 June 2004, in response to Service Provider 3's complaints about failures to respond and a lack of progress on individual cases. This is reproduced because at the bottom of this letter Employee 11 has written a note to Employee 22.

6.21.65. On 18 June 2004 Mr Morton raised an opportunity to develop a back-up plan which would facilitate stronger discussions with Service Provider 3. It is not clear whether this opportunity was pursued.

6.21.66. Correspondence continued between DASS and Service Provider 3 in relation to a number of issues but particularly the requests for: reassessments (of community care needs) which, DASS had agreed to do (but in its own time according to priorities across the whole client group). The requirement of supporting people for tenants of private landlords to have CCAs before claims for THB could be processed which had been completed.

6.21.67. Around early July 2004 HB had taken Counsel's opinion and was preparing to challenge Service Provider 3 in relation to the alleged contrived split between support provider and landlord.

Service Provider 3 advises that it was at this time that HB stopped paying benefits for Carrigeen and Talbot which Service Provider 3 states resulted in

reduced funding from Supporting People. This was challenged by Service Provider 3 through first and second tier Tribunals where Service Provider 3 won the case.

6.21.68. In Mid July 2004 after attending an Adult Protection training session Mr Morton raised concerns that in not having dealt with the Service Provider 3 and Service Provider 2 inappropriate financial arrangements both he and others were in effect colluding with financial abuse.

Service Provider 3 have stated that there is no connection between Service Provider 2 and Service Provider 3.

Service Provider 3 also suggests that Mr Morton and other DASS colleagues must have been aware that other Service Provider 3 tenants were "*perfectly happy with the TDC regime".*

The consultant believes based on documents and meetings that this was not the case and, indeed it is difficult to make the assumption that just because other clients/service users did not complain, this automatically lead to a conclusion that they were "happy". However, this must be balanced against comments that were made by SP and DASS colleagues who advised that Service Provider 3 had considerable support from service user's families.

6.21.69. On 22 July 2004 the Supporting People Commissioning Body discussed the issue of Service Provider 3's compliance with SP grant and contract conditions and that Service Provider 3 had been given 3 months to comply. The Commissioning Body was of the view that Service Provider 3 may not be able to comply. As a result there was a recommendation that DASS develop an exit strategy.

6.21.70. On 5 August 2004 DASS and Supporting People met to discuss Service Provider 3. It is the consultant's opinion that this meeting largely discussed old and often debated issues and problems but the actions did not move the issues forward.

6.21.71. Things continued as before until 6 September 2004 when Employee 22 asked Employee 38 to arrange a strategy meeting following an allegation that there had been misappropriation of tenant's benefits by Service Provider 3. These allegations were largely a clarification of those raised by Martin Morton some years before.

6.21.72. By 22 September 2004 a further strategy meeting had taken place. Attendees at this meeting were Employee 22 (the chair), two representatives from Wirral's legal services team, 2 Birkenhead CID Officers, a DC with Adult Protection Co-ordination responsibilities, 2 representatives from Birkenhead Job Centre Plus, 2 Supporting People representatives, the acting clinical services manager from Wirral Partnership Trust, Employee 45 and Employee 38.

6.21.73. The purpose given by Employee 22 and noted in the minutes of this meeting was *"To share information to determine whether an investigation is required and to determine what form it should take. In most instances further meetings will be required."*

6.21.74. At this meeting the supporting people team provided an information pack containing information/evidence and discussions ensued around:

A. A list of schemes and service users.
B. The income of the service user.
C. The payments made to Service Provider 3.
D. Breakdown of charges.
E. Discrepancies/concerns.
F. Financial viability of Service Provider 3.
G. The processes for serving notice to quit on tenants.
H. Joint bank accounts with Service Provider 3 and the transfer of funds.

Service Provider 3 have advised that:

"The list of issues that were discussed at this strategy meeting encompasses all those issues that had been around since 1999, those issues are mostly around tenants TDC payments. From the discussion topics it can be seen that there had already been provided a breakdown of the TDC charges etc so the claim that financial transparency had not been provided is clearly untrue, however the DASS attitude towards these charges is somewhat confusing given that the department had refused or delayed assessing clients and consistently side stepped the issue of undertaking proper CCA's."

6.21.75. Job Centre Plus confirmed at this meeting that if the service users did not have appointees and, decided to pay their monies over to Service Provider 3 there was little they could do as they would only investigate irregularity of payment.

6.21.76. One of the attending police officers expressed a personal view that the service users were being exploited but that, DASS and Client paperwork would have to be examined to show that no formal agreement(s) had been made. Supporting people were also asked to provide a written breakdown of where the money was going.

During the right to reply process Service Provider 3 have advised that:

"The police officers opinions here are clearly made without the benefit of Service Provider 3's funding paperwork, why was Service Provider 3 funding documents not presented to the police at this point in time? Indeed following the police investigation, the police officers commented to Service Provider 7 and the Service Provider 3 legal representative that they had never been provided with funding documents by Mr Morton or DASS."

As noted elsewhere in this report the police investigations did not proceed but it is not clear to the consultant whether or not the Police had access to the Service Provider 3 funding document at the outset.

6.21.77. Employee 22 summarised the 3 themes arising from the meeting as:

1. "The charges themselves, which appear to be excessive and are not being applied to everybody. This is a commissioning issue and not an Adult Protection issue

2. What happens to the £75 which is unaccounted for. This is the Adult Protection issue

3. The quality of the service, including the issue of tenants not having the combinations for safes in their rooms, which is a practice issue."

Service Provider 3 has stated that:

"The TDC regime was never a regime that was considered to be a perfect model, it was a regime that was born out of necessity given the local authorities refusal to fund clients over many many years."

This appears to be inconsistent with Service Provider 3's earlier statement where it stated that:

"Addressing the £75 unaccounted for, clearly either employee 22 had not read or seen the funding documents, it states quite clearly that there is an income guarantee, incidentally that guarantee is something that is recognised under the fairer charging regime implemented by various local authorities at this time, with the exception that clients are expected to fund all of the utilities that were covered through the Service Provider 3 TDC regime."

The consultant believes that Service Provider 3 had perhaps not understood that it is for the Council to "means test" the service users and not for each/any provider to undertake this itself.

"With reference to quality of service, clients not having combinations to their safes in their rooms – clients always had combinations which were followed up with keys, clients would often forget the combination or lose the keys and of course a master copy would be kept by the manager in a locked safe."

6.21.78. As a result of this analysis Employee 22 directed the meeting to focus upon item 2 only.

6.21.79. From the consultant's perspective, the minute does not appear to reflect what the real issues were, although she recognises that this could be a reflection of short hand/note taking. The consultant believes that the real issues to be addressed are as detailed in the following paragraphs.

6.21.80. The charges themselves.

The consultant is of the opinion that the Council needed to do one of two things (subject of course to the necessary legal advice):

A. Apply the agreed 1997 charging policy in place at the time to Service Provider 3 (and of course other supported living providers, including in-house establishments); or:
B. Determine a legal route to terminate the unwritten contract with Service Provider 3. If this really was a "spot purchasing" contract as stated by Employee 22 then the Council would have been able to give notice (with due justification, and consideration of the TUPE implications for the incoming providers) in order to move clients to a new provider.

Item (A) above could only have taken place if CCAs had been in place at the time. However, Service Provider 3 has advised that in the main, there were no CCAs with Service Provider 3 relying upon HB and Supporting People Grant to fund the placements together with Tenant Direct Charges. Clearly Mr Morton was

raising the risk that if assessed some of these clients may have been entitled to some element of funding from DASS.

These are indeed commissioning issues but, this needed to be undertaken in the context of and alongside the Adult Protection perspective which would require the Council to explain to Service Provider 3 that it could not condone its TDC practices with legal support etc.

Employee 22 has also advised that (B) above would have been the preferred option but there was a shortage of other providers at the time and the Learning Disabilities team had no help from the Contracts team in finding new providers, and that there were other investigations into the other providers that DASS did have.

6.21.81. From the consultant's perspective although there is no legal evidence to prove this, both options were problematic because:

A. The approved charging policy had not been rolled out to all Wirral supporting people establishments (regardless of internal/external provision).
B. Very few Service Provider 3 residents were in receipt of CCAs and as a result were accessing funding via HB and Supporting People only.
C. Service Provider 3 had clearly sent a letter in 2001 (and perhaps before this given that they appear to have been operating since 1999) which, set out their charging proposals. These proposals had not been challenged in writing (or at least the consultant has found no evidence of such a challenge other than meeting notes which in the main were unclear) until Mr Morton's involvement. Indeed, if the minutes of a meeting from 1999 outlined above are correct a member of DASS staff made a recommendation about using the Balls Road model which is curious given that this property did not comply with the 1997 policy.
D. Changing providers would have required consideration of TUPE implications for Service Provider 3 staff to any new organisation.
E. Reputation-wise, there is no evidence presented to the consultant that suggests Members or other Senior Officers were sighted on this issue at this point (other than perhaps the SP Commissioning Body).
F. Legal challenge - there may well have been a legal challenge.
G. Resources - there is anecdotal evidence to suggest that there was not the capacity within the Learning Disabilities service and/or contracts team to take this additional workload on and budget difficulties may have made it seem impossible to ask for financial assistance to buy-in the additional capacity required.

6.21.82. What happens to the £75?

The £70/£75 was retained by the service user to feed and clothe themselves, all other benefits and entitlements were paid to Service Provider 3 via the tenant direct charging regime. This was set out in the funding documents provided to DASS and based on evidence supplied by Service Provider 3, the consultant believes that this was provided to clients and their families. However, whether the clients/service users/family members understood the unusual nature of these arrangements and questioned its legitimacy is not clear.

Whether this was/is appropriate practice would now either be considered an Adult Protection issue and/or a contracting issue and should have been

addressed in an open manner with Service Provider 3 on a joint and more directive basis between DASS and Supporting People. Service Provider 3 during meetings with the consultant accepted that Mr Morton did raise his concerns with them, but believed that this was his personal perspective.

It should be noted that Service Provider 3 has advised the consultant that one of its other local authority clients has since worked collaboratively with Service Provider 3 to remove the TDC regime, thus enabling tenants to take greater responsibility for payment of bills etc. but, it has also led to problems with service users managing their money. In the consultant's view this further legitimises Mr Morton's/DASS' position in relation to TDC's.

6.21.83. The quality of service.

The consultant agrees that quality of service does flow from practice issues. However, the quality of service provided can and sometimes did also lead to adult protection issues. The fact that the service users were not being allowed/enabled to manage their own monies could have been perceived to be an adult protection issue.

6.21.84. The problems continued and around October 2004 there are further examples of Service Provider 3 serving tenants (whose rent was paid by HB) notice to quit. Service Provider 3 advises that this was due to lack of funding, i.e. not receiving the expected level of funding from Supporting People and DASS not recognising that some of their clients were allegedly "particularly needy" and should have been entitled to CCAs to assess their needs.

Service Provider 3 has also advised that:

"None of these clients lost their tenancies and most still reside in Service Provider 3 accommodation today."

However, it nevertheless caused considerable worry and upset for vulnerable adults and their families.

6.21.85. On 8 October 2004 Mr Morton wrote to Employee 17 outlining his long held views as to the standards to which Supporting People providers should adhere:

A. Domiciliary care standards.
B. Registration as a house in multiple occupation.
C. Registration as a domiciliary care agency and accreditation by Wirral as such.

He also continues to state that DASS should challenge any LD provider who takes the stance that they do not provide "care" as the definition extends to include emotional and psychological support including behaviour management etc.

6.21.86. A further strategy meeting was held on 13 October 2004 with representation from DASS, Supporting People and Job Centre Plus. During this meeting the question of informed consent (N.B. the consultant has been advised by Employee 3 that this is not a legal term, but as she understands matters it boils down to whether the tenants understood what they had agreed and the consequences of that agreement) was raised. The minutes state *"it was felt that the tenants did have the ability to understand the money management issue but the implications of*

the document they signed up to may possibly have not been explained to them." It is not clear to the consultant how this had been determined and/or tested, but if true then the lack of support DASS provided in terms of advocacy before the "placement" must be highlighted.

6.21.87. At this meeting it was confirmed that Supporting People had issued Service Provider 3 with a default notice due to failure on the part of Service Provider 3 to provide information on the leasing of white goods and vehicles that was subsequently charged to tenants.

It was also noted that Service Provider 3 intended to serve notice on current tenants and to replace this client base with service users from other authorities. It was believed that this action was being pursued to make Service Provider 3 financially viable and therefore enable Supporting People to maintain its funding regime.

6.21.88. The Supporting People team suggested the development of an exit strategy; Employee 22 agreed this should be pursued at an additional meeting.

6.21.89. It was noted that, *"CSCI have concerns over Service Provider 3 providing personal care without being registered. It was reported that CSCI have told Service Provider 3 that they will prosecute if they fail to comply."*

As stated earlier Service Provider 3 made a submission to become registered and after involvement of its legal representatives CSCI did register Service Provider 3 as a domiciliary care provider. Service Provider 3 has also advised:

"CSCI went on to state in several inspection reports, indicating that no care is provided under the old CSCI definition of care and also under the latest CQC definition of care."

6.21.90. The minutes also include the following:

"Employee 22 discussed what aspects of the information were Adult Protection and asked for guidance on how to progress.

Employee 38 felt that it needed to be clear that this is not a case of deciding which route to take, adult protection, accreditation, commissioning or criminal prosecution from either the police or CSCI. The Adult Protection process will use all these routes to conclude its investigation. All the actions that can be taken by the individual agencies fall under the umbrella of Adult Protection and are the processes by which the protection will come about."

6.21.91. Another strategy meeting was held a couple of weeks later - 22 October 2004. Attendees included representatives from DASS, legal services, Birkenhead CID, Birkenhead Job Centre Plus, the Police Adult Protection Co-ordinator, Wirral Partnership Trust, Supporting People Team. Much of what had been discussed in previous strategy meetings is outlined within the minutes of this meeting. However, at the meeting the Supporting People team stated that they did not feel able to carry on with its review of Service Provider 3 for fear of jeopardising the investigation.

6.21.92. By early November 2004 Mr Morton had been in contact with DLA in Blackpool in respect of concerns about the monies being paid into joint accounts with Service

Provider 3. As a result DLA required information to be able to investigate further. Mr Morton made some recommendations which were accepted by Employee 45.

Service Provider 3 has stated that it *"requested information from DLA as far back as 2000 illustrating the purpose to which DLA was paid and indeed this is what Service Provider 3 used DLA payment for through the TDC regime."*

No documentary evidence was available to prove/disprove this point. The consultant has seen a letter from DWP to Service Provider 3 which states that there are no restrictions on the use of DLA.

6.21.93. On 15 November 2004 the Supporting People visits to Service Provider 3 commenced but with some complaints and caveats regarding the use of independent advocates when discussing financial matters.

Service Provider 3 has confirmed that it complained *"about two SP inspectors Martin Morton and Employee 49. There had been longstanding disagreements with Mr Morton who was intransigent in his views. In terms of Employee 49, he/she was an officer of the housing benefit department later working for supporting people and the particular officer who made the £10 per hour non-rolled up THB hourly rate decision. These officers had been the subject of complaints and it was entirely inappropriate that they should be undertaking an inspection of Service Provider 3's services.*

Service Provider 3 also stated that given its intention to evict 5 Wirral tenants, it would have though it appropriate for Employee 22 to instigate CCAs for those clients which would have indicated the level of need. Such an approach would have had its merits in that it would have resolved whether or not these 5 service users did/did not have any eligibility at the critical/substantial levels under Fair Access to Care.

Indeed letters from Service Provider 3, indicate that those clients, already in receipt of a DASS support package, would have their notice lifted/were not subject to the notice to quit proceedings.

6.21.94. On 19 November 2004 Employee 22 asked Mr Morton to write a letter to Cheshire and Liverpool Councils asking them not to make placements, notifying them of the supporting people review, challenges to funding levels and advising them of Service Provider 3's intention to evict Wirral tenants. Mr Morton's response was positive but asked permission to seek legal advice.

6.21.95. On 24 November Service Provider 3 wrote to DASS claiming that a placement that had been made set a precedent for funding levels.

6.21.96. On 29 November 2004 a further strategy meeting took place. All the usual representatives attended with the exception of legal services and Merseyside Police.

6.21.97. The minutes of this meeting state *"Employee 38 has spoken to the police who feel that there is no evidence currently available that would point to any criminal activity. Police Officer 1 felt it would be difficult to prove that any of the movements of money that we consider being irregularities were done with the intent to deceive. It was felt that if it can be proven that it was done with good intent and poor knowledge of the law it is not criminal."*

"DLA have suspended taking action against service users following irregularities in claims pending this investigation".

It should be noted that contrary to Service Provider 3's understanding it was not Mr Morton that initiated the police investigations.

6.21.98. On 24 December 2004 Employee 11 wrote to Service Provider 3 (see Appendix 23 to Annex A for a copy of this letter). Employee 11's note to Employee 22 sums up the issues. Based on documents made available to the consultant, she has concluded that there was no strategy in place to address Employee 11's concerns (e.g. no project plans, or action sheets available to show who was to do what, by when, or any briefing notes to members or senior officers have been made available).

Service Provider 3 have suggested that the "*reason there was no action taken following many meetings of DASS and interdepartmental agents was because the fundamental starting point for any action would have required an assessment of the client's needs.*"

6.21.99. On 24 January 2005 Employee 38 wrote to Merseyside police regarding Service Provider 3 asking for an update given that DASS believed this was financial fraud. He/she clearly asks, *"Is there going to be further police action or not?"*

6.21.100. In March 2004 Service Provider 20 presented him/herself as a welfare benefits advisor supporting Service Provider 3 tenants. This caused some concern for both HB and DASS in relation to his/her independence and therefore motivations.

Service Provider 3 has advised that Service Provider 20, a benefits advisor was tasked by Service Provider 3 to resolve issues relating to HB determination for clients who allegedly had been waiting for over 4 years.

6.21.101. At roughly the same time HB are formally notified by Service Provider 3 of their intention to terminate tenancies where HB/THB has not been paid at the level Service Provider 3 expected. Mr Morton, when asked for an update of the position by HB, explained that some tenants:

A. Had been moved on to new accommodation.

Service Provider 3 had advised that service users had also moved between Service Provider 3 accommodation.

B. Were being supported by a new provider in Service Provider 3 accommodation.

Service Provider 3 are unaware of any other provider supporting tenants in Service Provider 3 accommodation at this time.

As a result the consultant sought to verify this statement and Mr Morton has supplied the following email:

Email from Martin Morton to Employee 94 cc Employee 45; Employee 56; Employee 95:

"Hi Employee 94

Although there have been tenants who have moved on from Service Provider 3 and tenants who are in Service Provider 7's accommodation but are now supported by another provider. Other tenants that are identified in recent correspondence as being notice to quit are to be assessed by the Learning Disabilities Team before a decision is reached on appropriate placements. I will need to confirm with Employee 45 where this is up to, however, I don't want to give the impression that we are systematically involved in rehousing all Service Provider 3 service users but it is fair to say that we are trying to respond to individual cases.

Thanks Martin."

C. Had been served with notice to quit.

D. Were being reassessed by social workers before a new placement could be made.

Service Provider 3 has advised during the right to reply process that it was not involved in the process outlined by Mr Morton and that this was because Mr Morton had taken it upon himself to move them without Service Provider 3's knowledge. It further submits that they did not formally complain or raise concerns around the TDC. Given the vulnerable nature of the client base it is unclear to the consultant as to whether they would have been able to raise such concerns or formally raise complaints or indeed understand that the TDC was optional and/or unusual.

There is a suggestion on the part of Service Provider 3 that Mr Morton may have been "cherry picking to further his own argument".

Service Provider 3 also raises the vulnerability of the client base suggesting that they may have been overly influenced by Mr Morton against the TDC regime. Of course this vulnerability could equally have applied to Service Provider 3 in relation to influencing compliance/acceptance of the TDC regime.

6.21.102. On 24 March 2005 Mr Morton sent details of former Service Provider 3 tenants willing to participate in investigations to Merseyside Police.

6.21.103. By 25 March 2005 Service Provider 3 had written a letter to a number of tenants advising them to contact a solicitor who could act on their behalf to approach HB, Supporting People and DASS.

6.21.104. On 29 March 2005 DASS contacted HB to gain copies of signatures on Tenancy agreements and HB applications for the police investigation.

6.21.105. On 31 March 2005 Employee 13 emailed colleagues in DASS stating that:

"I will admit to not understanding the impasse, so I need your help in resolving the matter.

My simple summary is that they think we owe them 400K (claimed to have copied bills to us three times with no response) and we think they owe us 350K (billed this year).

One of us is correct - who?

Can we convene a meeting, and be the Council rather than the Department .....

It is my view this is a Commissioning issue."

At the end of April 2005 Service Provider 3 wrote to its tenants as follows:

"Further to previous discussions with (Service User's Name), and the ongoing discussions with Wirral Social Services Department since 2002, I am writing to you to confirm that ongoing funding problems are now having a serious effect on (Service User's Name), placement with Service Provider 3. Although I was hoping that the problem would have been solved without having to worry you unnecessarily, I now feel I have to confirm the following information.

Due to the continued lack of funding to date for placements through the Adult Learning Disabilities Team at Ashton House, Service Provider 3 can no longer continue to meet the support needs of tenants placed by the above team. As a result of the lack of financial support from Wirral Social Services Department with regard to Wirral tenants, Service Provider 3 has been losing a considerable amount of money each week over the last couple of years for every tenant placed by the Adult Learning Disability Team at Ashton House.

Unfortunately, although Service Provider 3's support for tenants has continued without the funding as a temporary measure, the problem has also continued. It has now reached the point when it can continue no longer as the existence of the company is now being put at risk.

As a result, Service Provider 3 has now been advised to issue notice to quit in line with the respective tenancy agreements to all Wirral tenants who are not funded correctly. As Wirral Social Services Department at Ashton House ceased all funding for Wirral tenants in 2002, this applies to most tenants placed by Wirral. Therefore, Service Provider 3 has no other option than to begin this process with all Wirral tenants that are not receiving either the appropriate funding or indeed any funding at all.

I must apologise to you for the upset this has caused, and may well cause in future. Service Provider 3 makes a long term commitment to all tenants whatever the circumstances as you are fully aware. Unfortunately, the one situation that Service Provider 3 cannot control is that the money for support is paid.

As a result of the above, I am now advising you that notice to quit in respect of all current tenancies has already begun, and people who have not already received the Notice Requiring Possession under Section 21 of the Housing Act 1988 will be receiving it at the earliest opportunity from the date of this letter. This means that your relative will shortly be given a two month notice period.

I have requested that Employee 45 confirms with me any developments in terms of the attempt to secure suitable funding, or indeed any funding, and also the search for any alternative accommodation by Wirral Social Services Department

before the notice period ends. I will in the mean time keep you as up to date as I can.

I am available for any help and support you require with this, so please call me should you need to. Once again, I would like to apologise for the upset and disruption that these circumstances have caused you, and for any future problems that may result. I have tried to be as honest as possible, as I felt it is important that you understand how far things have gone before this step has had to be taken.

With regards

Service Provider 24"

6.21.106. On 22 April 2005 Service Provider 7 had written to Employee 11 regarding the CCA assessments stating that the timelines set out in his letter of 2 June 2004 had been ignored (it was now some 10 months later than promised) and that while some clients were being assessed, it was without the advocacy support that had allegedly been the cause of the delay in December 2003. This letter advises Employee 11 that Service Provider 3 had taken the action and proceeded to notice to quit for all Wirral clients excepting 2 which Service Provider 3 considered to be "funded appropriately" DASS.

6.21.107. On 25 April 2005 Mr Morton wrote to Employee 94 in HB cc Employee 45 as follows:

"It is my view that Service Provider 3 have used the tenancy termination as a means to extract increased support charges from SSD. Increase support has generally not been reflected in Community Care Assessments. Service Provider 3 have subsequently issued notices to quit because we won't agree to higher support charges (tenancy rights are obviously of no consequence to them).

SSD have assisted tenants to move on as and when we feel that it is in the tenants' best interest, strictly speaking the notice to quit should have been challenged legally but I am not convinced that Legal Rep 3 who is allegedly representing tenants has been acting in the tenants best interests but rather Service Provider 3's (Service Provider 7 referred to Legal Rep 3 as "his/her solicitor" during the SP review)."

The consultant is not in a position to comment on the role of Legal Rep 3.

6.21.108. On 29 April 2005 Mr Morton updated Employee 13, Employee 22 and Employee 45 of the position in relation to THB and the likely next steps which included the possibility of ceasing all payments to 2 properties (Mather Rd and Woodchurch Rd) on the grounds of contrivance.

The contrivance issue was pursued by HB through tribunal, a case which it subsequently lost.

6.21.109. Mr Morton also points out that it is likely that Service Provider 3 will not respond well to this action and that an exit strategy should be developed.

6.21.110. The Director on the same date wrote to Service Provider 3 (see Appendix 24 to Annex A). Of more interest than the letter is Employee 11's note to Employee 22 at the bottom of this letter.

The consultant's view accords with that of Employee 11, in that *"this seems to go round and round in circles."*

6.21.111. On 9 May 2005 Employee 22 wrote to Martin Morton and Employee 13 cc Employee 45 as follows:

"When is this "eleventh hour meeting" as I need to be there. There has been a major fallout from this development and myself and the Director of Social Services are receiving phone calls from the parents and carers daily as a result. It has been myself and Employee 45 who are having to put the project plan together for the exit strategy.

Presumably, somebody knew about this development in advance of the meeting? Why wasn't I told or briefed about the consequences? The point about rents being met by council tax is not relevant. This is the source of funding for care costs which we may well have to pick up. We will be under a great deal of pressure as a result and I am not happy that we are helping other departments to obtain their objectives at the risk of our own."

6.21.112. On 9 May 2005 Employee 45 wrote to Employee 22 as follows:

"I apologise if this sounds as if I am running away with the situation. Martin is not aware of our conversation at the end of last week about the development of an action plan. I was agreeable to meet with SP but as you stated in our last conversation that it would be you. I will not now pursue this but wait the outcome of your meeting with Employee 34. I will wait for Employee 47 to contact me about the meeting with carers as I am now also receiving phone calls from concerned carers as well as correspondence from Legal Rep 3. Housing benefit are agreeable to work with us to some extent. I am trying to liaise with Employee 46 about Social Services legal position if housing benefit does make a determination not to pay."

6.21.113. In response to an email dated 9 May 2005 from Mr Morton to Employee 45 where he stated that *"it is becoming more evident by the tone and content of Employee 22's emails that my position within this Department is untenable……"*

Employee 45 wrote the following email on 11 May 2005:

"I do not believe your position to be untenable. I do think that the situation is becoming difficult as issues raised by yourself some time ago and repeatedly is now causing the department some difficulty in terms of how that information was managed. You should congratulate yourself on your tenacity and perseverance and that you have always been a strong advocate on behalf of the service users. Please hang on in there, I value your support and I am sure this will be resolved one way or the other soon. It has to be!!!"

6.21.114. Mr Morton wrote to Employee 22 and Employee 45 on 16 May 2005 as follows:

"Prior to embarking on another Briefing Note for Service Provider 3 I have given some thought to the question of inviting Service Provider 3 to next week's public

meeting with carers. I think it would be useful to have a Panel comprising of reps from the Local Authority and reps from Service Provider 3 to which service users and carers could direct questions. I do not think the Local Authority would be the one vulnerable to interrogation, it would surely become apparent what the motives behind the eviction notices are……."

6.21.115. Employee 22 responded (22 May 2005)

"Thank you for this Martin. Service Provider 3 are not invited specifically to the meeting, but if they telephone to ask, they are welcome to attend. Likewise with any legal representation. I am seeing Legal Rep 4 on Monday and will mention the meeting to him/her. Can you find out beforehand what the legal rights are of the tenants in terms of notice to quit, and also a summary of the HB issues. Employee 45, can you confirm how many of the people in Service Provider 3 accommodation have been reassessed and do people have copies of their care plans."

Notes of this meeting have been provided to the consultant by Service Provider 3. Service Provider 3 have stated that these were taken by family liaison officers Miscellaneous 17 & 18. I am advised that they did not introduce themselves and it has been suggested were not independent. These notes, although described by Mr Morton as "partial" and "selective", if taken at face value demonstrate the level of concern expressed by family members in relation to the eviction notices, funding levels (both DASS and Supporting People) and support for Service Provider 3.

Mr Morton has advised that he was allocated the task of producing notes of the meeting but he was not of aware of this at the outset and did not complete the task, in part because he was contributing to the meeting.

Employee 22 advised during the right to reply process that he/she was concerned that a panel might lead to a risk of a major argument breaking out. Employee 22 also advised that he/she was very disappointed that colleagues in HB and SP did not attend the meeting with relatives because it is his/her belief that Social Services was being held accountable for a situation that had many causes, some of which emanated from other departments. He/she believes that Employee 45` and Martin Morton believed this also.

6.21.116. Employee 38 wrote to Employee 22 on 24 May 2005:

"…I met today with the CID officer allocated to the Service Provider 3 case following a long period of waiting for them to act. Following several complaints from myself I was notified on my arrival that the case has now been given to another officer who wishes to start the investigation this week

This will involve the interviewing of the 4 agreed service users who have now left Service Provider 3. It seems that this officer is keen to get this investigation moving and I have directed him to Martin Morton and Employee 45 for co-ordinating these interviews.

I have contacted Martin today to brief him on the situation and given him the contact details of the CID involved. Police Officer 2 will be contacting Martin today or tomorrow."

Service Provider 7 has suggested that the police officer he/she met with had not seen the Service Provider 3 funding documents which clearly set out the position in relation to TDCs. No evidence has been made available to prove this statement.

6.21.117. On 24 May 2005 the meeting with the Families, Tenants, Advocates and Independent Welfare Rights Officer with DASS took place.

6.21.118. The following day (25 May 2005), Martin Morton wrote to Employee 22, Employee 38 and copied to others:

Dear All

I met with Police Officers 1 & 2 today to give some background to the criminal investigation they have requested I action the following:

a) Contact DLA Blackpool to have DLA payments stopped with immediate effect
b) Provide Achieving Best Evidence contact details (I have discussed with Employee 39 and understand that he/she and Employee 38 will allocate)
c) Provide former tenant contact details

6.21.119. In response to this email Employee 22 wrote on 31 May 2005 to Martin Morton, Employee 38 and copied to others:

"Employee 47 is arranging a meeting to discuss this case with Employee 45, Martin and Employee 38. Employee 39, you are also welcome to join us. I want us to be absolutely clear about the Department's responsibilities in relation to this case. I need to sit down together and sort this out before any action is taken."

6.21.120. On 6 June 2005 Martin Morton wrote to Employee 22, Employee 38 and others as follows:

"The Police advised that we should inform DLA of the investigation and request that the DLA payments to all Service Provider 3 tenants made to existing accounts (i.e. Service Provider 7) be stopped and DLA request bank details of tenants' accounts to enable DLA payments to be made direct to tenants. Police are anxious that if this isn't done the Local Authority could be seen by CPS to be colluding with fraud and this may preclude the matter coming before the courts. Additionally in relation to Service Provider 3 I have spoken to Employee 48 about your memo about Service User 5, in the course of information on Service Provider 3 held by the Local Authority to be made available to them under the Freedom of Information Act. I understand that Borough Solicitors office is aware of the request."

It is alleged by Service Provider 3 that if the appropriate funding documentation had been provided by DASS at the outset then the investigation may never have commenced.

6.21.121. Mr Morton has alleged that he was advised by Employee 22 not to contact DLA. During the investigation, no documentary or other witness evidence has been provided to the consultant to confirm this exchange took place.

During the right to reply process Employee 22 requested that this allegation be removed, but during the writing of this report the consultant has recorded allegations whether they have been proven or not.

However, the following email written by Mr Morton to Employee 22 and Employee 45 on 10 June 2005 does appear to follow up on the issue of DLA amongst other matters:

"Employee 22/Employee 45

I am endeavouring to wade through Service Provider 3 work at the moment and although in the present climate I acknowledge we have to be seen to be responding promptly to these queries I can't help feeling that it is putting us further on the back foot as most of it is historical stuff that has been dealt with time and time again. And whilst this Department has been culpable in some areas it is a classic Service Provider 3 ploy to use these tactics so a smoke screen exists preventing us getting to the real issues which are:

Service Provider 3 doubled their costs overnight in April 2000 which they have never been able to justify
Service Provider 3 management of tenants' finances is controlling and probably illegal

I think it's time this was simply put to Service Provider 3 (preferably by the Director). Personally I would forget the Police Investigation (which I think we have compromised) and simply tell them:

a) *We will pay for assessed need and for nothing else (shortfalls, required level, HB,SP etc;) – end of story*

b) *SSD will be instructing DLA for all payments to be paid into tenants' accounts – end of story.*

I am also feeling particularly exposed undertaking this work without proper legal backing (Employee 48 has also expressed his/her concern) especially when I come across a document today from Service Provider 3 (which I have never seen before) stating "we are not aware Martin Morton has a social work qualification……..."

Service Provider 3 has stated that:

"In terms of Service Provider 3 doubling the costs claimed under the THB in April 2000, this was clearly a reference to the rent schedule that was provided by Service Provider 3 following the reorganisation of Service Provider 3 to enable Service Provider 3 to claim exempt accommodation status which was of course the subject of HB tribunals, upper and lower and the high court which found that Service Provider 3 had done nothing wrong in relation to taking advance of the system as the motive had been to provide the best services it could."

Service Provider 3 has also stated that:

"The DLA payments could have gone to any account that the clients so wished, the clients would still have had to pay that money over under the agreed TDC regime."

6.21.122. Employee 22 responded to Mr Morton on 12 June 2005 as follows:

"Martin this work is very frustrating, I know, but, it has to be done. As you rightly point out, Service Provider 3 make a lot of assertions which are not true or, which have a grain of truth attached. Unfortunately because we don't have all the information in one place we often cannot challenge properly or with complete confidence. A good example is the statement about yourself. If I had seen that letter, I would have responded to them. We do have a history of not responding to Service Provider 3, and not challenging either themselves or Legal Rep 3. That is why I have asked for such detailed analysis of the latest missives sent from both. Unless we start challenging, this is never going to end. Please remember that this is now extremely high profile, and that briefings etc will be frequently required, and that although you have very detailed knowledge of this situation, that the same is not true for others who will have to front up any defence of the department."

6.21.123. As a result of questions raised by Service Provider 3 in relation to DASS being in a position to move some of its clients/service users to new providers (accommodation) when no CCAs were in place, Mr Morton has advised that he, Employee 36 and other colleagues did move some service users and CCAs were undertaken. He also advised that unless the position deteriorated and its was considered that tenants needed to be moved for their own protection, DASS would have insisted that due legal process was applied and that clients remained in their tenancies until alternative accommodation was found even if this exceeded the period of their eviction notice issued by Service Provider 3/Miscellaneous 22 as it would have been necessary for it to obtain a Possession Order, which given the client group would probably have taken some while.

Mr Morton has supplied the following emails (other emails outlined earlier in this section of the report) in support of his response to the right to reply questions:

Email to Employee 45 18 June 2004:

"*The SP team have a proposal which is well worth discussing if only as a back up to enable us to have more "robust" discussions with Service Provider 3 about tenants' rights and acceptable protocols concerned with move on accommodation. Basically it involves discussion with another support provider (Service Provider 15) who have acquired properties with Miscellaneous 23. The support provided would be SP funded. Assessments would still need to be undertaken to ensure needs could be met by this service (Employee 36 and I could pick this up if required, he says, rashly)."*

Email from Martin Morton to Employee 22 and Employee 23 CC Employee 45; Employee 10; Employee 86; Employee 20

"Met with Employee 82 and the SP Team to discuss matters relating to supported living providers. We discussed areas of concern in relation to Service Provider 2/Service Provider 3/Service Provider 4.
Both Service Provider 2 and Service Provider 3 have applications with CSCI to register as Dom Care Agencies. Employee 82 is keen to have both organisations into registration so they can be more closely monitored.....it is clear speaking to Employee 82 that CSI are awaiting guidance on supported living schemes

following the recent court ruling in relation to Service Provider 28. I anticipate that there will be practice issues to consider in relation to particular schemes based on the "If it walks like a duck and quacks like a duck – it's a duck" principle. Particular examples cited that might lead to the need to register as a care home included offices based in properties meaning the agency was operating from the same building where they provide support and arrangements which included centrally held tenant finances and medication....I think we need to monitor legal guidance in this area very carefully"

6.21.124. Service Provider 3 wrote to Employee 34 on 7 June 2005 and extracts from that letter are quoted below:

"…..It is becoming increasingly obvious that the level of needs of individual clients cannot be determined by Wirral Social Services non-existent Section 47 client assessments. Employee 22 recently confirmed at a meeting with advocates and clients families that many of the assessments they had concocted from information obtained during a visit by Supporting People Officer Employee 80….."

The consultant believes that Service Provider 3 is referring to the large meeting with families etc in relation to the Service Provider 3's service of notices to quit etc. From the minutes she has seen, this would not be her interpretation of what was said although, she can see how it could be interpreted in this way.

6.21.125. On 20 June 2005 Employee 22 wrote to Service Provider 3 outlining:

A. The need to confirm who was living at Salisbury Court.
B. A refusal on the part of DASS to accept an increase in the hourly rate for support.
C. Other matters.

Notably this letter also includes the following:

"At this stage, I do not have any comment about the Direct Tenant Charges for services, nor about the funding policy that has been used. However, I must clarify that in terms of supporting living, Social Services does not make placements, although it can help people gain tenancies."

6.21.126. Firstly, the consultant finds it curious that Employee 22 declined to comment on the Direct Tenant Charges. Of course there are a number of reasons this could be his/her position, including:

A. Not wishing to compromise a police investigation, but see information above.
B. Concerns about the weaknesses in the DASS position, given the lack of a written contract for those service users who were eligible for support from DASS as a result of CCAs
C. The fact that the early correspondence from Service Provider 3 to DASS (see above) had made clear Service Provider 3's intentions as to the TDC regime and expectations as to the level of Supporting People grant.

This is of course speculative.

Employee 22 has acknowledged that the consultant's speculation (in relation to at least A and B) may well be correct, and with the passing of time he/she cannot recall any reason.

6.21.127. In relation to the point that Employee 22 is making about placements, this is a very interesting point. It is true to say that before DASS could make any determination as to the level of care (in residential environments) or support (in supported living environments) required for a service user, a CCA must have taken place and demonstrated that the service user had "needs" that met the critical and substantial level. Service Provider 3 advances an argument that despite numerous requests, CCA's were not undertaken in respect of those clients already under Service Provider 3's care. This has been verified in part at least as members of DASS have confirmed that Service Provider 3 had taken in individuals who did not have eligibility under FACs but, subsequently Service Provider 3 claimed that there was an entitlement. This position also goes some to explaining Employee 22's comments to the consultant that DASS were being expected to take the lead on an issue which predominately focussed upon clients who were funded by Supporting People only. It may also go some way to explaining the comments that have been made to the consultant by almost all parties in relation to cost shunting in that:

- DASS believed Service Provider 3 were trying to maximise income by seeking to establish eligibility under FACS
- Supporting People may have believed that DASS was cost shunting onto its programme instead of funding CCAs
- Service Provider 3 believed that DASS was cost shunting by avoiding CCAs for those in receipt of its services.

However, Employee 22 is also distinguishing between the "placement" made in residential care as opposed to assistance being provided to service users with Learning Disabilities to gain tenancies and enter supported living environments where the service users were helped to live independently. It is for this reason perhaps, that, Mr Morton has for many years recommended that the domiciliary care charging regime should have been applied to these service users. The consultant believes that there are indeed similarities between those older people who are assisted to live in their own homes and those service users who are supported to live in such tenancies.

6.21.128. It is the consultant's opinion that this is an area which requires further consideration by DASS, especially in the changing environment of control and choice and direct payments etc. There will be a fine balance between the needs of an individual being supported to live independently and an individual requiring care and it is in the consultant's opinion the responsibility of DASS to maintain protocols that facilitate this.

6.21.129. In addition, making the distinction between a placement and helping a vulnerable adult to access a tenancy and commission support to enable independent living does not, in the consultant's view, alter in any way, the statutory responsibilities to protect vulnerable adults. Ultimately this may be tested in the Courts but, Wirral Councillors should in the consultant's opinion ensure that they have sufficiently robust and regular information to ensure that the highest standards of protection are afforded.

6.21.130. On 23 June 2005 Mr Morton wrote to Employee 22 cc Employee 45:

"Employee 22
Before Employee 36 (and a.n.other) embark on ABE interviews the police have requested that we inform DLA of the investigation so that they can write to tenants. If we don't the Police will not proceed as they cannot collude with allegations of criminal acts as this will fatally compromise the investigation."

6.21.131. On 6 July 2005 Legal Rep 1 wrote to Employee 13 to recover the sums it believed were due and had previously sent invoices for.

Service Provider 3 advise that this is the first time that Service Provider 3 had in its own right engaged solicitors to *"try to force WMBC into performing section 47 assessments following a threat to end the supporting people contract"*

6.21.132. By the 13 July 2005 Mr Morton had decided to ignore Employee 22's instruction to him, in that he contacted DLA and advised Employee 22:

"I have forwarded the names and the Nat. Ins nos to DLA Blackpool at the request of the police".

6.21.133. Such was the level of commitment Mr Morton felt towards resolving these issues that he agreed to forego his work/life balance arrangements during the summer holidays. Employee 22 has also acknowledged Mr Morton's commitment. However, it should also be noted that Employee 22 had his/her own personal challenges (which have been outlined earlier in this report) and it should be acknowledged that his/her commitment was such that he/she did not take a leave of absence.

6.21.134. During July 2005 Mr Morton, whilst bringing all the Service Provider 3 information together, uncovered an email from Service Provider 12 who had been advising Service Provider 3 in relation to it gaining access to HB and SP funding. It included the following:

"However, in the process of working with Service Provider 3 we have had a number of ongoing concerns about the information supplied by Service Provider 7 in support of tenants' claims for housing benefit"

Service Provider 3 have advised that:

"Service Provider 12 were commissioned by Service Provider 3 to provide a comprehensive rent schedule to assist with the THB claims for all three schemes. The agreement with Service Provider 12 was that a specific fee would be charged for each successful THB claim, it became increasingly obvious during the course of 2001 that they were not forwarding the relevant information to the THB department and as a consequence things were not progressing. They then issued an invoice for some £13,000 which was not in accordance with the agreement with Service Provider 3 therefore Service Provider 3 refused to pay the invoice. It was only after this refusal to pay that Service Provider 12 decided to send the email claiming that there had been some double counting, again Service Provider 12 were not in any position to make that claim not knowing the funding streams that existed in the Service Provider 3 structure."

Service Provider 3's statement has not been verified with Service Provider 12 and no documentary evidence was provided by Service Provider 3 to substantiate this claim.

6.21.135. On 26 July 2005 Mr Morton received an email relating to his 13 July 2005 correspondence regarding DLA. It explained that the team dealt with allegations of fraud where claimants do not have or are exaggerating their disability. It then goes on to state:

"Unless the tenants on the list that you have provided me with are not entitled to DLA or AA and are knowingly falsely claiming the benefit we are unable to go any further with the allegation. In this case it appears from your fax that the tenants have learning difficulties and are entitled to receive DLA for someone to provide help to them.

We would not intend to take any action for the tenants on the list. But would be happy to provide you with any details of the DLA payments received for the tenants including payee and bank account details as well as any Witness statements that you may need to help with your investigations."

6.21.136. Various pieces of correspondence were exchanged between DASS, Employee 13 and Service Provider 3 in relation to the financial issues (i.e. invoices and counter invoices).

6.21.137. In addition, the consultant has seen various email exchanges attempting to collect more information in relation to the Service Provider 3 case.

6.21.138. By 25 August 2005 Employee 22 wrote to Employee 13 as follows:

"….. You and I have discussed the alleged sum owing to the Department of £350,000 by Service Provider 3. I am presuming that this is the recompense for the amount paid by the Department to Service Provider 3 to cover the period whilst settlement of Housing Benefit was awaited. However, this needs to have firm evidence, as we refute the counter claim for £442,000 made by Service Provider 3 for the same period and were they claim that no funding was received from the Department.

I have attached the letter of 13th December 2001 from Service Provider 3 which clearly accepts that money is owed by themselves to the Department.

I also attach correspondence from Service Provider 3, in which they make the counter claim. However, this is addressed to Supporting People. Employee 27 from Legal Services is of the opinion that this is a "mistake" although this seems to be a hypothesis rather than having any evidence to back up the claim.

I will be meeting with all other Departments shortly in order to further clarify matters and would appreciate some early advice on the matter."

During the right to reply process Service Provider 3 has pointed out that in a letter dated 30 September 2001 Service Provider 3 accepts that money would be owed to DASS but on the condition that the level of THB claimed by Service Provider 3 would be paid in full. It is the consultant's opinion that DASS was not in a position to agree such an arrangement unless it had previously agreed with HB that it had sufficient information to approve this level of THB claim and/or that

DASS itself would make up the difference between the level of THB claimed by Service Provider 3 and paid by DASS. Presumably to do this DASS would have required a CCA to have been in place confirming eligibility at a critical and/or substantial level?

6.21.139. The consultant has also seen correspondence between Mr Morton and a social work colleague who had been involved in the assessment of Service Provider 3 residents dated 13 September 2005

"….In view of Employee 22's decision to allow tenant contributions to cover most of the costs of their care packages, which I am against, then I can't see the point in challenging the therapeutic earnings side of things. For most of the people we would have to consider some day service or work placement activity and this would probably cost more than the service that Service Provider 3 are providing. The best I could come up with is the fact that people are not actually in need of, or receiving the huge level of support that Service Provider 3 have claimed for, but all of them do have some support needs."

During the course of the right to reply process Service Provider 3 brought to the consultant's attention an outstanding dispute with DASS. Service Provider 3 alleges that after the CCAs were undertaken by Employee 50, an unnamed officer(s) decided to reduce the level of funding payable to Service Provider 3 by the level of the Tenant Direct Charges paid by the service user. Service Provider 3 further alleges that such a practice is unlawful.

The consultant swiftly contacted DASS and its legal representatives Legal Rep 6 to assess whether or not this issue could be resolved quickly. The information received from Legal Rep 6 on behalf of the Council confirms:

- The issue remains outstanding
- That Legal Rep 6 on behalf of DASS contacted Service Provider 3's legal representatives, Legal Rep 1 and an exchange took place. The Council was seeking to establish on whose behalf the queries were being raised. This was in the context of purported appellants in housing benefit appeals having previously contacted the Council to indicate that they knew nothing about appeals having been brought in their name. Further, clarity was sought in relation to the nature of the complaint. Previously general complaints had been made against the Council and individual officers, which were not particularised and the Council had difficulty in defending judicial review proceedings brought against it - R (F and 24 others) v Wirral BC (2009), in which the Court criticised the way in which the claim presented.
- Legal Rep 1 failed to respond to the letters from Legal Rep 6 and there has remained a lack of clarity. Legal Rep 1 continued to act for Service Provider 3 and its various tenants until March 2011. There has been no contact from Service Provider 3 after Legal Rep 6' letter dated 22 October 2010.

Notwithstanding this DASS felt it appropriate to consider the issue that has been raised and this will be taken forward in early January 2012.

The consultant has therefore decided that it is in the public interest to allow the discussions between Service Provider 3 and the Council to run their course outside of the remit of this review thus enabling this report to be submitted to the Council without further delay.

During her investigations the consultant has been provided with a copy of an opinion from Legal Counsel which she believes is relevant to this issue. The Council has confirmed, however, that it views the document as legally privileged and that there has been no authorised waiver of that privilege. The consultant is not therefore at liberty to comment on that document and as such she is unable to comment further on this issue.

Given all of the above the consultant is of the view that the matter is very serious as if found to be true there could be further reimbursements payable. Members therefore need to ensure the Officers to provide:

1. A timeline for the anticipated resolution of this long outstanding issue
2. A report to Cabinet when a firm conclusion has been drawn as to the robustness of Service Provider 3's allegations.

6.21.140. On 19 September 2005, a meeting took place between Service Provider 3's solicitors, Employee 27 of Wirral Legal Services and Employee 22 regarding the claims and counter claims for outstanding sums. Employee 22 advised that this was a "without prejudice" meeting. Employee 22 has advised that during this meeting in responding to a question from Service Provider 3's solicitors that a colleague from another authority had contacted him/her regarding Service Provider 3 offering vacancies to his/her staff. Employee 22 has stated that he/she explained the position to his/her colleague.

As a result of this explanation Employee 22 received a letter from Service Provider 3's solicitors threatening professional malfeasance.

6.21.141. At a meeting held between DASS and SP on 24 October 2005, SP advised that *"it was the intention of SP to issue 12 months' notice as Service Provider 3 has failed to meet the requirements of the action plan. There is no statutory obligation for SP to fund services."*

Service Provider 3 has advised that whilst it was offered 12 months notice its contract was not finally terminated until June 2010 and that this was because Service Provider 3 complied with the required action plans.

6.21.142. By 31 October 2005 Employee 11 wrote in response to Employee 34's memo dated 27 October 2005. This memo was entitled "Service Provider 3 – No Continuation of SP Contract", stating:

"…..unclear why it has suddenly become necessary to have a 3 day deadline to finalise such a significant decision. I accept there has been a discussion in the Commissioning Body and the Borough Solicitor has clearly approved the notice letter. However, equally important, is the fact that this has the potential to disrupt the lives of some 20-30 people and I would want to see the result of some joint contingency planning about how we propose to respond. Much depends on Service Provider 3, but I would have wanted to see some detailed consideration of likely scenarios, both in terms of what action we would need to take, but also how we are managing the potential high profile media interest, if people are threatened with being made homeless. I would also want to see some financial modelling about the impact of the changes as I have no capacity organisationally, or financially, to respond to such a potentially significant rise in community care demand.

It may be that the Core Strategy Group, in the true spirit of partnership, has debated the range of considerations and I would wish to see the result of that before I could be happy with the letter being issued."

6.21.143. Whilst the consultant does not have a final copy of the reply to Employee 11's memo she has seen a copy of a draft, which is reproduced at Appendix 25 to Annex A. It points out that SP has been raising concerns since 2000 and the SP review of this organisation has been ongoing since 2004. It refers to a report to the Commissioning Body in September 2005 and the need to respond to letters from Service Provider 3/Legal Rep 1 about the outcome of the review.

An important element of Employee 34's proposed response is as follows:

"I cannot really comment on the potential rise in the community care demand except that to say that, throughout this process, social services has consistently maintained the view that NONE of Service Provider 3's clients has an entitlement to anything other than the low level support needs being met through SP grant funding. If this is not the case (and if, in fact, some Service Provider 3 clients have care entitlements), then the issue arises as to why this was not identified earlier, when Service Provider 3 was making this very claim."

6.21.144. Of course, this refers the reader back to an earlier issue raised by Mr Morton, where he questions whether issues such as behaviour management were actually care in the legal definition (see Appendix 26 to Annex A).

6.21.145. This does not of course obviate the widely held view that in many circumstances Service Provider 3 had been paid twice/three times i.e. by supporting people and DASS and of course through the "top-ups" by tenants. Whether they had actually been paid twice/three times or, whether and in the consultant's view more likely, Service Provider 3 was in effect maximising income generation via the pursuit of funding via all possible sources, brings the focus of the report, yet again, the DASS' failure to consistently and transparently apply a charging policy, commission/procure services effectively and contract manage those contracts. In addition, it points to a lack of co-operation and understanding of the inter-relationship between Supporting People and DASS.

As Service Provider 3 has pointed out during its right to reply process it was being funded through

- Housing Benefits for Rent and Maintenance
- THB/Supporting People for low level housing support
- DASS for statutory provision
- TDC for support, on call, utilities, transport, staff expenses and activities

It appears to the consultant that Council concerns can best be summed up as whether:

- Service Provider 3 was legally maximising its income levels
- The public purse was receiving value for money
- The TDCs were of a reasonable level and actually being used for the stated purpose
- The TDCs were appropriate given that the stated aim of supported living was to promote independence

- There was overlap in Service Provider 3's charging regimes
- The vulnerable adults were being protected

6.21.146. During November 2005 the tenants of Service Provider 3 began to receive notifications of appeals against Housing Benefit determinations which had been arranged collectively by Legal Rep 3.

6.21.147. As a result Relative 2, a parent of one of the Service Provider 3 tenants, raised concerns about the request for access to all documents held in his/her son/daughter's name. Mr Morton raises the issue of the tenants being able to give informed consent in his email to Employee 22, Employee 34 and others including Employee 27 (Legal Services).

During the right to reply Service Provider 3 has advised that:

"Legal Rep 1 besides interviewing clients individually also held meetings with families on 3 occasions to discuss the situation with reference to HB and the situation concerning clients support packages. Even at this early stage, Service Provider 3 had considered that the working relationship with WMBC had deteriorated to such an extent that the only way going forward that Service Provider 3 could provide a service to Wirral clients would be through the clients obtaining their own personal packages, something that was to be rolled out by Wirral in the following years."

6.21.148. Having met with Relative 2, a parent of the service user, the consultant can confirm that Mr Morton's email reflects the concerns he/she was raising, and indeed Relative 2's concerns are more wide ranging in relation to the practices of Service Provider 3's solicitors. As a result of the concerns on the part of the family, the service user did not engage with Service Provider 3's solicitors further on this matter and subsequently it has been stated that this led to him/her having to be rehoused outside of the Service Provider 3 environment. (See paragraph 6.21.162 below)

The consultant has not verified this with Relative 2.

6.21.149. DASS did ask if Legal Services could provide assistance to Service User 6, but were advised by Employee 27:

"I am not able to give legal advice to Service User 6 because he/she is not a Council employee. You might however suggest to his/her parent that they write a letter of complaint to Legal Rep 3 and invite them to explain why their son/daughter had received the letter seeking authority to gain access to their son/daughter's records when they were not his/her solicitors."

{NB Employee 27 was wrongly informed that it was Legal Rep 3 rather than Legal Rep 1 by DASS}.

Employee 27 has stated during the right to reply that if Relative 2 had written to Legal Rep 3 he/she would have been advised that they had not been involved in this process.

However, the consultant believes that the Council via Employee 27 could have provided further assistance perhaps by pointing Service User 6 in the direction of an alternative legal advisor who could act on his/her behalf.

6.21.150. During her investigations the consultant has asked colleagues to review legal files. Appendix 27 to Annex A outlines a file note taken by Employee 27 in Legal Services which records a "heated" discussion that took place on 7 November 2005. It is reproduced to provide the reader with an insight into the mind set of some colleagues in DASS, perhaps suggesting that some of those DASS colleagues realised, perhaps belatedly, that things in relation to Service Provider 3 had been handled in a less than satisfactory manner?

6.21.151. After a meeting between Service Provider 3, Wirral SP and Wirral Legal Services, a new plan of action was devised. Appendix 28 to Annex A is the minutes of the meeting, which formed part of a briefing pack brought together by Employee 34 for the Director of Regeneration (as the responsible director for SP). As a result of this meeting, and perhaps taking into account the views of Employee 11 (although this is not stated or commented upon), a new approach to Service Provider 3 was developed from a SP perspective. The proposal was to *"decide not to decide"* on the outcome at that time based on a belief that substantial improvements would be achieved by 6 March 2006.

6.21.152. In the meantime Service Provider 3 had appointed Service Provider 9 who was keen to sort out the problems between Service Provider 3, DASS and SP. It was unclear to colleagues exactly what form Service Provider 9's involvement took as Mr Morton noted on 15 December 2005:

"It was interesting to note the presence of Service Provider 9 at the Providers Forum yesterday who signed him/herself in as Service Provider 3 (Consultant/Audit Commission).

Anybody had any dealing with him/her.....?"

Service Provider 3 has confirmed that Service Provider 9 was not representing the Audit Commission but Service Provider 3.

6.21.153. On 24 January 2006, HB made a request for Employee 49 and Martin Morton to be witnesses at a hearing related to the HB determination not to pay on 2 of Service Provider 3's properties.

6.21.154. Employee 22 agreed to Mr Morton being involved, "*however you will need to be properly briefed and rehearsed. Can you find out if this will be the case as you will be representing the Department and I don't want to place you (or the Department) in a vulnerable situation. We have to make sure that you have all the relevant facts to hand, and that you deal with these, and not opinions unless specifically asked to do so."*

6.21.155. The consultant has seen a number of pages of email correspondence in relation to a particular service user, Service User 7, which had involved Martin Morton and others in relation to difficulties with his/her tenancy etc. The email exchanges had included Employee 22, where relevant and pertinent, but on 31 January 2006, Employee 22 wrote to Mr Morton and Employee 13:

"I am clearing out old emails and note that this is still outstanding. How did we resolve this? Was an invoice sent and are we still waiting for a response?"

6.21.156. PCT Joint Commissioning Manager responded that same day:

"As far as I know this is still not resolved, although the invoice has been raised and forwarded to the provider."

6.21.157. The consultant would draw the reader to another significant delay for, there is correspondence dating back to September 2005 if not before (involving both Employee 22 and Employee 13). This in the consultant's opinion is just another example of lack of timely and effective management follow-up and intervention.

6.21.158. The consultant has also been supplied with a letter that Service Provider 7 wrote to Legal Rep 2 regarding a complaint to Wirral MBC. In this letter Service Provider 7 outlines a process whereby a placement for a service user from Clatterbridge Hospital appears to have been delayed.

"When the Balmoral Ward were questioned concerning why this {visit} was not possible the Balmoral Ward sister went on to explain that Employee 97 had stated that there were issues regarding an investigation into Salisbury House for client abuse, and that Wirral Social Services were not contracting with Salisbury House at that time"

…..Service Provider 19 was invited to a CPA meeting/ward round at Clatterbridge Hospital to discuss the placement of {the service user}. *During that ward round the Psychiatrist, Miscellaneous 16, asked Service Provider 19 "had things been resolved in relation to the investigation" Service Provider 19 felt embarrassed at this request and informed Miscellaneous 16 that she had heard absolutely nothing in relation to any investigation to date.*

Service Provider 7 tried to make contact with the various Social Workers involved but did not receive any returned telephone calls. Eventually the referral process continued and Salisbury House successfully applied for a variation certificate and the service user moved into the property."

The consultant notes in this letter Service Provider 7 refers to him/herself and Service Provider 19 as the "registered managers" for Salisbury House, which perhaps gives the reader, some insight as to why the Council is seeking clarity as to their respective roles.

6.21.159. On 13 February 2006 Service Provider 7 wrote to Employee 96 in Supporting People regarding the action plan of September 2005. Within this letter he/she states:

"*We would confirm that the funding documents are provided to the clients, the clients families and the placing authority, Social Worker. It was suggested by Wirral Social Services Department that all three parties sign this document to indicate the understanding of the charging structure. We would confirm that this is the case and has been for several years."*

6.21.160. On 17 February 2006 in preparation for his evidence to support Housing Benefits, Mr Morton quotes from some minutes produced by Service Provider 3 in relation to a meeting which took place on 14 March 1999 with Employee 9 and Employee 20. These minutes seem to confirm the opening to this saga outlined at paragraph 6.21.3. At the conclusion of this email however, Mr Morton writes:

"In conclusion:

a) *There was not "funding of placements" agreement at Carrigeen/Talbot House*
b) *Tenants at Carrigeen/Talbot House have always had support costs met by HB even prior to THB*
c) *Tenants at Carrigeen/Talbot House were not dependent upon a Community Care Assessment/care management involvement to access property*
d) *Therefore SSD did not strictly speaking commission services at Carrigeen/Talbot House (that is, a CCA undertaken, a referral made and a funding package agreed). There was no contractual undertaking at these properties (there is an implied contractual arrangement at Salisbury Court simply because we pay money for the services there)*
e) *Tenants at Carrigeen/Talbot House were either self-referrals or recommendations from existing tenants*
f) *Salisbury Court clearly offers a different model of service than that in the "satellite" accommodation (e.g. short term rehabilitative 24 hour support) and clearly SSD purchased services on that basis."*

During the right to reply process Service Provider 3 has rightly pointed out that:

"A blanket approach such as 'we don't fund in Carrigeen and Talbot' is not consistent with clients having the right to request CCA's at any point in time."

Service Provider 3 goes on to say:

"Given the fact that by this time the assessments from Employee 50 had identified that all clients had substantial or critical needs and should have had a support package and should have gone to funding panel. To try and differentiate Salisbury Court at that time was highly inappropriate given that the comments were made to a Housing Benefit tribunal to justify the fact that while HB had been stopped in Carrigeen and Talbot House illegally by WMBC for some 2 and half years, it had continued to pay HB at Salisbury Court. This is something that the tribunal judge could also not understand."

6.21.161. Mr Morton clearly summarises the position from the DASS perspective, the question the consultant raises which may slightly contradict Mr Morton's analysis is that based on the early letter outlined in paragraph 6.21.3 above, there may also have been an implied contract in relation to SSD tenants that moved from Salisbury Court to Carrigeen/Talbot House.

6.21.162. On 21 March 2006 Mr Morton advised SP colleagues that allegedly Service Provider 3's solicitors had contacted the Police Commander asking why Service Provider 3 was under investigation when Wirral Council were in the process of accrediting it (Mr Morton advises that this information was provided to him by Police Officer 2). Mr Morton also advises in an email dated 24 March 2006 that this same police officer expressed concerns about Service User 6's position becoming untenable as a tenant of Service Provider 3. Indeed, Relative 2 (Service User 6's parent) had previously written an email to HB (12 March 2006) regarding the appointment of Service Provider 20 as a Welfare Benefits advisor to act on Service User 6's behalf, as other Service Provider 3 tenants had done:

"Service User 6 may have instructed this Service Provider 20 and even Legal Rep 3 to act for him/her, but it was certainly without any idea of what was involved or what was going on at all. Service User 6 (and myself and my

husband/wife) have no inclination to request Service Provider 20 (whoever he/she is) or Legal Rep 3 to act for Service User 6.

We have been kept abreast of what is happening and likely to happen by Mr Morton and Employee 36 from social services department (as far as they are confidentially permitted to at least).

I have Service User 6 with me at this time of emailing and he/she has full knowledge of my comments."

{NB it should be noted that Employee 36 had previously emailed Employee 22 and Employee 45 on 13 May 2005 based on concerns raised by Relative 2}.

"*Relative 2 said that he would prefer if his son/daughter were to be supported by another organisation as he/she did not like the way Service Provider 3 staff spoke to the tenants and he/she listed a number of incidents where he/she felt tenants had been intimidated by staff. Service User 6 phoned him/her last night saying that he/she was with a member of staff who wanted him/her to sign a form but he/she didn't know what it was for. When Relative 2 asked the staff member what it was about he/she was told that it was so that the company could sue the council but he/she didn't know what for as he/she had only been working for the company for a week. Relative 2 told his son/daughter not to sign."*

Employee 36 collected copies of letters from Legal Rep 3 and bank statements that Service User 6 had given to his/her parents. This included details of 5 different bank account numbers, each using a different combination of Service Provider 7's and Service User 6's names and initials as the title, which Service User 6 knew nothing about.

Employee 36 added in an email dated 3 June 2005:

"*In addition there are three letters from Legal Rep 4 dating back to Sept 04. Service User 6's parents knew nothing of this involvement until he/she showed them the letters and they have no idea what the "case" is about. They have phoned me today and told me that Service User 6 has a further letter asking him/her to attend an appointment with Legal Rep 4 at Salisbury Court, 10.00 am Saturday 4th June. His/her dad/mum has advised him not to go as he/she feels that this is a contrivance."*

An assessment completed by Employee 50 on 15th September 2005 identifies that *"this placement has broken down over the last year"* and required action including that someone be identified to help Service User 6 find alternative accommodation.

There is more correspondence demonstrating that:

A. Service User 6 continued to receive correspondence from Legal Rep 3 and as he/she did not understand them and did not trust Service Provider 3 employees to explain them he/she would ask Mr Morton to do so.
B. That there was increasing concern as to the treatment of Service User 6 and the risks to him/her arising from him/her providing evidence/not complying with Service Provider 3's wishes
C. The need for Service User 6 to be found suitable alternative accommodation, which Mr Morton achieved.

During the right to reply process Service Provider 3 has advised that:

"It could be that the legal actions that had required the signature of Service User 6 were in relation to him/her having his/her CCA funded by DASS and a HB appeal processed. Both of which would of helped Service Provider 3 fund the support package for Service User 6 and surely would have been in the client's best interests. Given that arrears of housing benefit rent and services charges were increasing on a weekly basis. It should be noted that of all clients through Service Provider 3's doors, Service User 6 was the client that received the greatest benefit from the TDC regime, that client only having to contribute in the region of £20 per week for all bills and Service Provider 3 services including holidays, transport, taxi account and staff expenses.

Around October 2006 Service Provider 3 moved banks so there will have been a similar bank account opened in the name of Service Provider 3 designated clients account re – 'name of client'. So potentially there could be two bank accounts. To say that the clients knew nothing about the bank accounts is misleading given that all clients received copies of their bank statements and had done for many years. Indeed it was these bank account copy statements that were forwarded to Mr Morton at an earlier stage. During all of this 12 month process where it is alleged that the service user placement had broken down, any concerns or complaints could have been raised by himself, his family or indeed Mr Morton, Service Provider 3 have a full complaints procedure. To try and allege that, that procedure was not undertaken for fear of reprisal does a disservice to Service Provider 3, its staff and its ethos."

Mr Morton is responding generally to a question about complaints about the breakdown of relationships between Service Provider 3 and service users. He has advised that he would not have been involved in all complaints and generally only became involved when the situation had irretrievably broken down. He also advised that it was not always appropriate for issues to be raised with Service Provider 3 directly as some complaints were adult protection/safeguarding issues and it would not be appropriate to disclose those complaints to the alleged perpetrator and thus possibly place the service user at greater risk. Mr Morton states that he is aware that care managers would as a general principle try to meet and mediate with Service Provider 3 and the service user because a breakdown of the relationship would have led to the need for a new placement. He has stated that initially he *"considered it to be pragmatic and less time consuming to try and address complaints directly with Service Provider 3."*

Email from Martin Morton dated 21 October 2003:

"Dear all could we arrange to meet as a matter of urgency to clarify work in relation to this org (Service Provider 3) .There is outstanding work in relation to Service Users 25,5,26 and 7 and I am trying to circumvent further complaints, investigations and solicitors letters from Service Provider 3 which are becoming a major distraction"

The consultant has not sought to interview service users or their families during this review although 3 sets of family members have come forward to participate. Two families' views are in accordance with Mr Morton's statements to the consultant, the other is not. This is obviously not a representative sample, but the consultant asks how likely it is for:

- Vulnerable service users to realise they had something to complain about; or
- Other family members to realise that the arrangements with Service Provider 3 were highly unusual

The consultant suggests that the natural priority of the family members will be to ensure that their relation receives the best possible care regardless of the impact upon the public purse.

6.21.163. When forwarding Relative 2's email to various colleagues in SP (13 March 2006), Mr Morton raised the issue of informed consent again as follows:

"Before forwarding information to various people and entering into discussions with Legal Rep 3, Legal Rep 1 etc; the Local Authority should have insisted that INFORMED CONSENT be demonstrated (otherwise we could be subject to a legal challenge from the likes of Relative 2 and anyone else who is not happy about assessments, benefit claims and personal information etc. being forwarded to all and sundry).

I know legal will say we are too late now but they've missed the fundamental question here: How are the various legal challenges and appeals in the tenants' best interest?"

6.21.164. Mr Morton sent an email to the Finance Department in May 2006 in support of the forthcoming Housing Benefit Tribunal held in October 2006 as follows:

- *"There was no "funding of placements" agreement at Carrigeen/Talbot House*
- *Tenants of Carrigeen/Talbot house have always had their support costs met by HB even prior to THB*
- *Tenants at Carrigeen/Talbot were not dependent on a Community Care Assessment/care management involvement to access property*
- *Therefore SSD did not strictly speaking commission services at Carrigeen/Talbot House (that is a CCA undertaken, a referral made and a funding package agreed) .There was no contractual undertaking at these properties (there is an implied contractual arrangement at Salisbury Court simply because we pay money for services there)*
- *Tenants at Carrigeen/Talbot House were either self–referrals or recommendations from existing tenants*
- *Salisbury Court clearly offers a different model of service than that in "satellite accommodation (e.g. short term rehabilitative 24 hour support) and clearly SSD purchased services on that basis."*

6.21.165. On 10 May 2006 Mr Morton advised colleagues from HB, SP and DASS that the D.C. had requested a statement from the local authority detailing how much money is paid to Service Provider 3 with a breakdown as to what the payments are for e.g. rent, care, support etc. On 23 May 2006 Mr Morton sent a written position statement which included:

"Police Officer 2 anticipates that there is every probability that Service Provider 7 will be called in for questioning in June.

Police Officer 2 has requested that financial information relating to Service Provider 3 is provided by the Council so that he/she has a better understanding of the concerns and he/she is in a better position to question Service Provider 7.

However I have already explained as detailed in my email dated 10/5/06 that, as ever with Service Provider 3, financial transparency remains the most pertinent issue.

Police Officer 2 has advised that Legal Rep 2 has contacted his/her Area Commander about the police investigation and emphasised the dichotomy that if the Local Authority was aware of ongoing police investigation why was it in the process of accrediting the organisation?

At the time of writing Service Provider 3 have not been accredited by either Supporting People or the Social Services Department.

If Service Provider 3 are accredited during the course of the investigation Police Officer 2 suggests this will severely undermine the case against Service Provider 7."

Actions required:

a) *I will request that Police Officer 2 formally requests the financial information relating to payments made by Supporting People, Housing benefits and Social Services Department*
b) *I will liaise with Police Officer 2 with regard to when Service Provider 7 is to be questioned so that alternative accommodation (even if only temporary) can be organised for witness Service User 6.*
c) *Matters relating to accreditation must be considered within context of ongoing police investigation.*

Housing Benefit Appeal
Meeting held with Legal Rep 7 on 22/5/06 to consider matters relating to above Appeal.
Legal Rep 7 stated that he/she considered Legal Rep 1 were "bullying the Council" and advised that we "don't cave in to it."
It should be noted that in relation to the above actions:
a) DASS failed to provide financial information
b) I secured alternative accommodation for Service User 6
c) Supporting People and DASS both accredited Service Provider 3……"

Service Provider 3 during the right to reply process has stated that:

"It should also be noted that those clients specific calculations appeared at the back of every CCA undertaken by Employee 50 and were used to remove funding from the DASS support package indicates that financial transparency was duly achieved and then used to financially abuse Service Provider 3 and its clients."

The ongoing dispute is set out earlier and has been referred to the Council.

In terms of alternative accommodation of the service user Service Provider 3 have advised that:

"*Up until reading this report, Service Provider 3 were unaware who (the) service user was and any complaints they may have had. There are thinly disguised accusations that* (the service user) *would be prejudiced by Service Provider 3 if*

*his identity was revealed. Service Provider 3 have dealt with several difficult clients over the years and would not professionally be seen to prejudice any client while there was a complaint against Service Provider 3 on-going or at any other time. An option to put in an alternative service provider would have always been there for DASS in relation to (*this*), within Service Provider 3 accommodation, as has been the case more recently."*

6.21.166. Mr Morton has suggested to the consultant that the reason why DASS never submitted the financial information to the police was because of the following exchange.

Mr Morton emailed Employee 22 and Employee 45 on 5th June 2006:

"I would be grateful if you could advise on the position with regard to Employee 50's assessments, reports and recommendations in relation to Service Provider 3 and tenant support charges as this is particularly significant.

My understanding is that if the funding of placements detailed in Employee 50's breakdown is agreed then this:

a) Legitimises Service Provider 3's charging regime and to a certain extent compromises the police investigation and;
b) Contravenes the fairer charging policy."

The issue here is that Service Provider 3 had for some time been of the opinion that service users living in its accommodation were entitled via CCAs to funding from DASS as they had critical and substantial needs. Service Provider 3 has advised that the CCA's undertaken by Employee 50 in effect confirmed this to be true.

Service Provider 3 has stated that in the absence of other funding streams the TDCs were the only means by which clients could fund the support to meet their needs. This would need to be verified by other professionals.

6.21.167. Employee 22 replied as follows on 5 June 2006:

"An interesting conundrum, as the cases are due to be presented to joint care panel on Wednesday. They were agreed at LD community care panel on Friday. In the case of charging etc, there is a letter on file which states that Service Provider 3 can charge tenants/service users for the services as long as they are left with £70 per week. You have had sight of this. The Department did not refute it at the time. Is this a police matter, or is it a case for a forensic accountant? I know that there is a lack of transparency about costs, but have all the files been perused as part of this investigation?

I am not sure how this contravenes the fairer charging policy. Can you explain? You should also take me through the other issues here so that I can brief the director."

6.21.168. Mr Morton's response on 6 June 2006 to Employee 22, Employee 45 cc Employee 13 was as follows:

a) "With regard to the letter outlining Service Provider 3's charging policy which was not refuted at the time, I would contend that it has been challenged subsequently and would apply the principle "that was then, this is now."

b) *As far as I'm aware the police have taken statements from 3 individuals and have access to DLA files and their own files*

Service Provider 3 contend that the Police did not have access to all the relevant funding documents as they were not provided by Mr Morton or any other member of DASS.

c) *My understanding of the fairer charging policy is that following a financial assessment a fair and consistent charge is made based on a means tested formula. SSD should be paying for ALL assessed needs and implementing the charging policy from there. It should not be allowing a provider to implement a separate arbitrary policy which is far from transparent or fair. Service Provider 3's own consultants (Service Provider 13) described their charging policy as "worrying". Whilst another set of consultants (Service Provider 12) dropped them like a hot potato because they weren't happy with financial arrangements.*

During the right to reply process Service Provider 3 has pointed out that for the fairer charging policy to apply, CCA's need to have been approved by the DASS internal funding panel and alleges that because of the deduction of TDCs from the CCA assessment many were never presented to panel.

In addition, it has confirmed that Service Provider 12 were not considered by Service Provider 3 to have undertaken their contracted duties effectively.

d) *The police matter is concerned with coercion and fraud in relation to DLA payments. I would suggest that it wouldn't take a forensic accountant to come to the conclusion that how Service Provider 3/Service Provider 7 managed these payments is at best described above as "worrying" and at worst fraudulent (hence the police investigation)*

Service Provider 3 points out during the right to reply process that the vast proportion of its service users were happy with the funding arrangements.

e) *I am not aware of any outstanding issues that the Director needs to be aware of that were not covered in my previous briefing note in relation to HB directions hearing and police investigation. Please advise if there are any areas you think I may have missed."*

6.21.169. Employee 22 responded the same day to Mr Morton and Employee 45 cc Employee 13, as follows:

"Thanks for this Martin. In terms of point a, do we have any written evidence?
Do we have information on how much each person from Wirral is paying?
Can you send another copy of the briefing note and copy to Employee 13.

Employee 13, we need to discuss as a matter of some urgency."

6.21.170. As stated above, the consultant agrees with Mr Morton in that, the Council should set a charging policy which is implemented through its financial assessment of the service user. The cost of the placement or service is then a matter for the Council and the provider. Clearly this was not the case and, senior managers within the department did not appear to grasp this until Mr Morton's

email in 2006. However, Mr Morton also appears to be highlighting that for this charging policy to be effective, all appropriate individuals who are entitled to a CCA need to undergo such a process, and where this CCA identifies a critical and substantial need then that need should be funded via DASS. Here the consultant believes that Mr Morton is pointing to the alleged deduction of TDCs from the assessed eligibility before presentation to funding panel. The means testing element of the process would occur after this and would mean any tenant contributions would in the first instance be assessed by the Council. However, the consultant is clear that even with this process it would be perfectly possible although hopefully more unlikely for any service provider to request "top ups" or TDCs for additional services provided.

6.21.171. On 12 June 2006 Mr Morton sent a further email to Employee 22 cc Employee 13 which included the following:

"The information is a bit convoluted but if we take Service User 4 as an example his/her total weekly income was £229.45, Service Provider 3 charged him/her £155.40 (£80.58 is accounted for within Service Provider 3's breakdown, £74.82 isn't – Service Provider 3 have never satisfactorily answered this question as to what this charge is for).
The imposition of the Fairer Charging Policy would both offset DASS costs and address this anomaly"

During the right to reply process Service Provider 3 has stated that:

"The TDC regime was never claimed to be a perfect funding strategy. It was implemented in the absence of a DASS support package and should be seen as such. However the levels of DLA and income support premiums are not determined by Service Provider 3 but by the appropriate DLA office."

The consultant however believes that the TDC regime had been in place prior to SILs claims for CCAs.

6.21.172. At a meeting held on June 5th 2006 Mr Morton has alleged that Relative 3 stated that his/her son/daughter thought Mr Morton was *"the devil incarnate"* (this was after securing £100K to enable his son/daughter to acquire a property). However, in Mr Morton's view, Relative 3 was intent on securing the services of Service Provider 3 to support his/her son/daughter (which was something Mr Morton was very clear he had no control over). Employee 22 has advised that without the support of him/herself and Employee 13 the £100k mentioned above would not have been available.

During the right to reply process Relatives 3 came forward and wished to add further detail. Relative 3 has advised that he/she cannot recall his/her son/daughter ever using such words as "devil incarnate" as these were not in his/her vocabulary and that he/she could not recall having made this statement. Relative 3 also advised that the minutes of the meeting do not record Relative 3 as having made such a statement. In addition, Relatives 3 have advised that in their opinion it would have been impossible for their son/daughter to have lived in one of the properties to be purchased by Miscellaneous 15, for there were no suitable properties within the budget available. In addition, they have advised that those properties offered did not accord with his/her risk assessment or consider the impact such locations would have upon his/her behaviour.

Relatives 3 also wished to explain some of the circumstances surrounding their interactions with DASS in respect of their sons/daughters going back to 2002, which from their perspective had been highly unsatisfactory with frequent changes of social workers (allegedly some only being allocated to one of their sons/daughters for a matter of weeks) resulting in assessments going missing very often. In the end one of their sons/daughters secured legal aid as a means by which he/she might receive sufficient support from DASS. In 2004 this son/daughter secured 24 hour one to one support. The consultant has not sought to investigate Relatives 3's claims.

Whilst the consultant does not intend to reiterate the contents of the discussions, if what Relatives 3 allege is true then their sons/daughters may have received a highly unsatisfactory level of support from DASS.

Relatives 3 are, however, very supportive of the service offered by Service Provider 3 and indeed they suggest that they have written to Employee 55 at some point around 2004 to advise that Service Provider 3 could provide the 24 hour one to one support required.

Relatives 3 also submitted that one of their sons/daughters had been under the care of Wirral Adult Social Services since 1996, originally under the care of Service Provider 4 (see section on Service Provider 4) where they allege that the service user's money was under the control of the owner and that their son/daughter was left with circa £30 per week which had to pay for lunch and clothes. Allegedly whilst under the care of Service Providers 10 & 11 one of their sons/daughters was taken to hospital because of an overdose and suffering a fit. As a result Relatives 3 raised what they considered to be serious concerns about Service Provider 4 and requested a transfer to Service Provider 3 because they had received a recommendation from a friend whose child was resident there.

In relation to the use of service users' funds, Relatives 3 have shown the consultant tenancy agreements dated November 2007 and 2005 which had itemised within them, details of the financial arrangements including tenant direct charges. Whilst the consultant has not been provided with earlier documents, Relatives 3 have advised that earlier documents similarly set out the financial arrangements. Relatives 3 explained that whilst under the care of Service Provider 3 each service user was only left with circa £70 and it was their opinion that as a result Service Provider 3 did everything for them and all they had to do was buy food and pay for their personal day to day expenses. In their experience Service Provider 3 would even fill the freezer when undertaking house checks.

Relatives 3 also advise that one of their sons/daughters improved so much under the care of Service Provider 3 that he/she no longer needed to see his Community Nurse or his Psychiatrist. They also advise that, since Service Provider 3 are no longer a DASS supplier, one of their sons/daughters has deteriorated to such an extent that he/she has subsequently been sectioned.

6.21.173. Mr Morton advises that he has recently discovered that Miscellaneous 10 has allegedly undertaken "consultancy work" for Service Provider 3 and was based at Ashton House. The consultant has not been supplied with any evidence to support this allegation.

Relatives 3 have advised that they had found Miscellaneous 10 to be a person of integrity and that he/she had always supported their sons/daughters.

For information the reader should be aware that Miscellaneous 10 acted as a litigation friend in the judicial review process {R (F and 24 others) v Wirral Borough Council (2009)} and also provided a statement in support of the claimants in the failed judicial review proceedings R(Broster and others) v Wirral Borough Council (2010).

6.21.174. Mr Morton does appear to have been "singled out" during these difficult and challenging times, e.g. in an email reported to Employee 22 and Employee 45 on 15 June 2006:

"My wife was told yesterday by a good friend whose husband had had dealings with Service Provider 7 that the latter has stated: "A man called Martin Morton has been putting people with learning disabilities into cheap accommodation, making people miserable and making them suffer."

I (have) spoken to Employee 51 (Legal Department) about the matter as I strongly suspect this is linked to Relative 3 and she has advised against taking legal action for defamation because it is protracted and expensive. However I will be seeking the advice of my solicitor on this matter as when you bring it to my home a certain line is crossed."

The consultant has not been provided with any evidence other than the testimony of Mr and Mrs Morton as to whether this was true and is not in a position to provide any comment or criticism regarding Mr Morton in respect of this issue.

This matter and the response from Employee 22 was considered in the separate investigation undertaken by Miscellaneous 8 and is included here to give context.

6.21.175. The issue relating to Service User 7 as referred to in paragraph 5.13.137 above also raised itself again with an email from a colleague in DASS to Mr Morton on 29 June 2006:

Mr Morton wrote to Employee 68, the Social Worker who invited him to meet with Service Provider 3 Director Service Provider 9, on July 3rd 2006:

".....This case drives me to distraction.

I have advised previously that this is double paying at best and fraud at worst. I thought we'd stopped paying?

Can I come with you to ensure this is sorted once and for all....."

Following this meeting Mr Morton reported via an email of 3 July 2006:

"During this meeting when questioned about Service Provider 3's "charging policy" Service Provider 9 described the system as being "intrinsically flawed" and "distasteful". Service Provider 9 was provided with an outline of how the Fairer Charging Policy should be implemented and has asked for assistance from DASS from someone with an "objective viewpoint" to address the "fundamental problems" in relation to Service Provider 3 service user charges.

Therefore I would advise that we seize the initiative in this regard and reflect back in writing his comments and in the spirit of co-operation volunteer somebody suitably versed in Fairer Charging proposals to advise him accordingly.

Do you wish me to draft a letter?"

Employee 22 responded on 4 July 2006:

"Yes please it must be the weather!"

Service Provider 3 has alleged during the right to reply process that DASS subsequently attempted to assess several clients under the fairer charging regime that were not having their support paid by DASS. It has provided no evidence to support this claim.

On 3 July 2006 Mr Morton also received an email from Employee 63 from the Supporting People Team:

"Just a few thoughts.

If an appropriate needs assessment was carried out by Service Provider 3 prior to the offering of a service, then it is hoped that if the potential Service User has needs above and beyond covered by the SP payment, then the Service Provider would seek additional funding to cover this from SSD. The funding stream cannot be held accountable for a Service Provider that fails to secure adequate funding. This demonstrates the importance of a robust needs assessment.

The point being, it's no use carrying out a half-arsed assessment, offering a service, realising the SP funding isn't enough and then crying about it..."

At the end of the day we need to remember that Service Provider 3 were running a business (and in some respects a highly speculative and potentially lucrative business), if they chose to support tenants without a full understanding of individual needs then they must share the culpability and should have been cognizant of the possible consequences."

The consultant believes this is a view that was shared by others in the Council.

6.21.176. Service Provider 9 wrote an email to Employee 68 that was forwarded to Mr Morton, who made it clear that he was not happy with the response, stating in his reply:

"This just doesn't add up and I'm now convinced further that Service Provider 9 has "taken the shilling" and is colluding with financial abuse (I mean, how more blunt could I have been on Monday?) I'd certainly like to put it to him/her that if he/she was undertaking a visit with the Audit Commission would he/she not have concerns?

I have discussed with Employee 45 and he/she has advised that in my letter to him/her I refer to his/her role with the Audit Commission and the concerns we have as a L.A.

I will be expecting a rather more robust response than he/she outlines below. It is not up to Service Provider 9 / Service Provider 8 to "examine" their tenants' charges, they should "comply" with our instructions on fairer charging and, dare I say, the law."

6.21.177. Mr Morton advises that he wrote this letter to Service Provider 9 on July 6 clearly stating these concerns and subsequently spoke to Service Provider 9 on 11 July 2006. Unfortunately Mr Morton could not provide a copy of this letter as it was contained in the files that were removed from his office whilst he was on sick leave. The consultant secured a copy of this letter, however, from alternative internal sources.

6.21.178. The letter to Service Provider 9 was sent after review by Employee 22 who proposed some alterations. In particular Employee 22 suggested the removal of the word "worrying" in relation to Service Provider 3's charging practices. Mr Morton responded to this amendment as follows:

"Worrying" is quoted in minutes and in previous correspondence sent to Service Provider 7.

It was a Service Provider 17 who actually made the comment.

Even Service Provider 12 were concerned about the practice because "worrying" is a polite epithet these organisations hide behind when they should be using the word abuse but they won't whilst they're on Service Provider 7's payroll.

Service Provider 9 has gone a step further and called it "distasteful" and "intrinsically flawed".

Call it what you like Service Provider 9 you know what it is and so do we.

This puts Service Provider 9 in a double-bind which I think we should fully exploit in the best interest of service users. He/she needs to make up his/her mind – he/she's either an "honest broker" working towards an equitable settlement with the Local Authority, or he/she "takes the shilling" from Service Provider 7 and continues to collude with abuse.

If Service Provider 9 chooses the latter option then I will personally report him/her to the Audit Commission for whom I believe he/she does freelance work. I can only hope he/she audits the number of paperclips used by LAs as he/she is in no position to comment on good practice in the social care sector as far as I'm concerned and yes, I am questioning his/her integrity, because Lord knows Service Provider 3 have questioned mine often enough (including, I recall, to the Audit Commission during an SP inspection – oh well "what goes around, comes around" as they say)....."

6.21.179. In Mr Morton's words *"This led to the conclusion that I had no option but to resign".*

6.21.180. The questions around Service Provider 3's practices continued and Mr Morton investigated issues such as the calculation of the hourly support rate being charged, with the help of colleagues in HB and/or SP.

6.21.181. Service Provider 9 responded to Mr Morton's letter on 11th July stating;

"Fairer Charging" is an initiative that should be welcomed by all organisations (Voluntary or Statutory) that truly have the best interests of vulnerable people at heart, and I know that includes the organisations we both represent. As such we will make sure we co-operate fully and assist with the implementation of this policy in any way we can.

As I mentioned on the phone, I do feel there are intrinsic flaws in our system in regard to Tenant Direct Charges....."

6.21.182. On the same date an email exchange took place between Employee 22 and Mr Morton:

MM: "*Employee 22, I've had a couple of calls today from a very anxious Service Provider 9 who received my letter about Fairer Charging today.*
Desperately wants to meet asap to discuss (I can't think why!)

Employee 13 – is there anyone involved in this area of work you could nominate to meet with him/her? Thanks, Martin."

Employee 22: "*Martin, apologies for this email.*
Can you let me know when you are leaving, as we will need to sort out a lot of this kind of work which you have been quietly getting on with."

MM: "*I have spoken to my union and expressed that I intend my last working day to be July 18th. I will be taking further advice from Unison/HR as to the formalities and processes required.*

I will ensure that before I go there will be few loose ends."

6.21.183. Also on 11th July 2006 Employee 22 sought further information from Mr Morton about the Service Provider 3 Directions Hearing relating to the Housing Benefit dispute:

"It may need further simplification for me
Where does this leave the department?
What about the people living at Service Provider 3?"

6.21.184. Mr Morton responded as follows:

"Interesting question.

Service Provider 3 appear to be angling for a deal but as detailed earlier Service Provider 7 doesn't usually do compromise.

I discussed with Employee 45 last week and as a quick contingency we concluded that:

a) *Service Provider 3 do a deal with HB before Tribunal – end of story.*
b) *Tribunal finds in favour of Service Provider 3 – they take over the world*
c) *Tribunal finds in favour of HB – Service Provider 3 focus attention on SP and SSD for additional funding. Service users/carers used as lever by Service Provider 3 and are served eviction notices for "rent arrears". SSD can point to the fact that i) this is an HB matter ii) there has been a*

Tribunal ruling and iii) Legal Rep 3 should be representing his clients more robustly in challenging eviction. Why should vulnerable tenants be held responsible for a Tribunal ruling and why should they be expected to pay £300 a week rent when the LA have been told they shouldn't?

Anything more let me know."

6.21.185. As Mr Morton wanted to clear up the Service Provider 3 charging policy issues before he left he met with a colleague from the Client Financial Services team in DASS and reported:

"*Interesting discussion with Employee 52 this morning. He/she was HORRIFIED about Service Provider 3 (Financial Assessment Visiting Officers going out pronto).*

However interesting snippet as he/she advised that the figures below are the minimum income levels that people should be left with before any charges should be imposed.

He/she estimates that nearly all Service Provider 3 tenants will be charged £7.27 a week under Fairer Charging.*"*

The consultant believes that this is the basis upon which Mr Morton is estimating that DASS lost significant amounts of income. This point will be returned to elsewhere in this report.

6.21.186. Mr Morton's resignation was withdrawn by his union and he was requested to submit a grievance connected to his whistle-blowing allegations. However, he has advised that he could not contemplate working under the same circumstances that he had endured for many years previously and consequentially was on sick leave between September 2006 – May 2007 for the reasons outlined in Annex L (Medical in Confidence).

6.21.187. With the benefit of hindsight Mr Morton is clear that he was not in the right mental or physical state to attend the Housing Benefit Tribunal on behalf of Wirral Council on 10th October 2006. Mr Morton describes this hearing as extremely adversarial.

Mr Morton has stated that:

"The focus of the cross examination by Service Provider 7's QC (I refuse to accept that he was acting on behalf of Service Provider 3 service users) was not my statement but a completely bogus and malicious claim that I had been harassing a Service Provider 3 tenant Service User 8 in my local Sainsbury's!

Service Provider 9 also denied the claim I made at this hearing that he/she had agreed that Service Provider 3's charging policy was "intrinsically flawed" and because I did not have access to my Service Provider 3 files I could not produce the letter he/she had written where he/she had stated this."

6.21.188. The Housing Benefit Tribunal found in Service Provider 3's favour.

6.21.189. Mr Morton states his representations to Wirral Council's legal representative about raising the issues of informed consent and mental capacity were not

addressed and instead the focus became the intricacies of housing benefit regulations. The consultant is not surprised by this, this was after all a Housing Benefit Tribunal and such matters would normally need to be considered in a different legal process.

6.21.190. Legal Rep 1 representing Service Provider 3 wrote to the Council on 16 November 2006 stating that because one of the SP team had been involved in the Tribunal testifying against Service Provider 3, she was, in effect, no longer independent and that she and her colleagues could not undertake future SP reviews and that the Council should commission an independent SP review team.

6.21.191. Employee 34 in consulting with legal services made it very clear that "*we cannot accept that a member of our staff should be excluded from carrying out work for the authority on the basis that they claim"* and *"that there is absolutely nothing preventing Service Provider 3 from having an "independent" inspection carried out and making the results known to us."*

During the right to reply Service Provider 3 has advised that it did "*engage the services of a specialist SP consultant which helped to sort out any problems with the SP regime and the SP contract continued. It is worth noting that the SP consultant challenged the grades being rated and in each occasion they were improved."*

It alleges that:

"The inspection was biased and forensic in nature rather than working in partnership to improve services or issues."

The consultant has been provided with a table that shows the assessments carried out by Employee 50 and the independent assessments undertaken by the specialist SP provider and this shows the two to be more aligned.

6.21.192. During the right to reply process, Service Provider 3 have also provided the consultant with a letter from Miscellaneous 14 of the Adults and Older People's Mental Health Division (part of the Cheshire and Wirral Partnership NHS Trust) dated 27 December 2006 which states:

"*Specifically, the conversation dealt with the way in which a placement is funded at Salisbury Court. I made it clear that other organisations fund differently. However, I also showed the relevant part of your prospectus where it is spelled out clearly how funding is arranged. I also mentioned that Service User 24 would be allocated only £76.30 / week out of his benefits with the balance going to Service Provider 3.*

As far as Service User 24, his family (and, indeed myself) are concerned, they do not consider the way in which you arrange placement funding to be unreasonable at all. Quite the contrary they expressed their surprise that anyone should be so supported without making a financial contribution; and culturally, it is important to them and especially Service User 24 that they should feel that they are paying their way – and it would help alleviate one of the stresses Service User 24 currently has around being in hospital "for free".

I also mentioned that although Wirral Social Services seem to have an issue with your funding arrangements, this is not so for Local Authorities 1, 2 and even 3, who are happy to provide funding for individuals with needs your organisation are able to deal effectively with."

6.21.193. On 20 December 2006 there was an Adult Protection Subsequent Strategy Meeting chaired by Employee 39. Minutes of the meeting are equally as damning of the Council as they are of the police:

"Police Officer 2 reported back that he/she had interviewed Service Provider 7 under caution, whilst being interviewed Service Provider 7 admitted that he/she takes the DLA of the clients. However he/she also pointed out that Wirral Borough Council is fully aware of this fact.

Police Officer 2 also reported that Service Provider 7 has a joint bank account for all the clients. He/she has authorisation from the clients to do this. The Disability Living Allowance goes into the joint account and is then passed on to Service Provider 3.....

Police Officer 2 has stated that the bottom line is that Service Provider 7 is not committing theft. What is actually occurring is a civil dispute in regards to what the clients are actually receiving for their money"

In the summary of further action from this meeting it states:

"The way forward seems to be a commissioning approach. The other concerns are the varying funding streams. Are clients coming off worse by losing more benefit than they should be.

How is it possible to protect service users from an unscrupulous provider.

A meeting is to take place hopefully in January with the different funding streams.

An accreditation meeting has been arranged for January. Supported Living are to attend the meeting to discuss this situation and the whole process. If possible Employee 53 will also attend to discuss the various financial elements."

During the right to reply process Service Provider 3 disputes the quote in the email above as follows:

"The DLA goes into the client account and is transferred to Service Provider 3 as part of the funding. Further to this, there is no joint bank account; the account is a designated client account.

These designated client accounts were not set up in the name of Service Provider 7. They were designated client accounts and are on behalf of the named client. These accounts were similar to a solicitors practice setting up such an account and the solicitor would not be considered the beneficiary of the account.

Miscellaneous 20 (bank) describe the account as: This account enables you to hold your clients' individual funds in separate accounts. It's suitable for any

professional practice or other businesses that hold clients' money, for example: solicitors, accountants, insurance brokers, estate and managing agents.

The implicit suggestion and impression given throughout all the discussions around the accounts has been that Service Provider 7 was in some way benefitting personally through the setting up of these accounts. That is categorically not the case.

We can refer to Service Provider 3's non for profit status that if money was being taken out of the organisation as a distributed profit then the Service Provider 3's accountant would raise the alarm as it would not be adhering to its memorandums and articles.

DLA payments were generally paid into the designated client accounts, but not in all cases as on rare occasions clients were being paid DLA combined with their income support or incapacity benefits. In these few cases the clients would pay the DLA element of their benefits to the scheme manager for onward payment into the Service Provider 3 trading account."

Service Provider 3 also advises that there has been no civil dispute with any of the clients who are subject to the TDC regime.

In response to this the consultant has asked further questions relating to the procedures covering these designated client accounts in particular, the questions and answers received from Service Provider 3 are set out below:

- To which account was the DLA transferred?

"It was transferred to the trading accounts. These are named Service Provider 3 (1) and Service Provider 3 (2).

DLA was automatically transferred (as Service Provider 7 had set up a BACS) to bank account Service Provider 3 (1) or Service Provider 3 (2).

In the earlier years clients DLA contributions were generally transferred to the Service Provider 3 (1) Trading account from the designated client account by standing order (S/O). BACS payments were used when the correct amount were not sent across. This happened for several reasons, the S/O would be set up at a specific figure every April at around the second week, although this could vary from client to client, the levels of DLA benefits received by clients changed. This meant that a small balance would then build up in the client account until the S/O amount was changed to reflect this. A BACS transfer would then be used to deal with any monies left over. Similar situations arose when clients were successful in appealing their levels of DLA benefit.

In later years when Service Provider 3 adopted an internal SAGE accounting system and an accounts manager with an assistant the S/O system was abandoned in favour of monthly BACS transfer undertaken by duly authorised accounts personnel. These were authorised by the managing director of Service Provider 3.

It was at this stage, to help with the monthly management accounting system, the Service Provider 3 (2) trading account was opened. The main Service Provider 3 trading account (Service Provider 3 (1)) was running out to nearly 10

pages of bank statements with all of the client account transfers. This was proving problematic when it came to the accounts manager doing monthly bank reconciliation ahead of producing that months management accounts. The Service Provider 3 (2) account was therefore used as a clearing account into which client DLA payments would be held and then transferred into the Service Provider 3 (1) account. This usually happened on a monthly basis. Service Provider 3 external accountants received full details of the Service Provider 3 (2) account transactions when preparing annual statutory accounts.

The reasons for having the TDC regime was to guarantee a level of quality of life to clients who had the capacity to make bad decisions (in not paying utilities or having a positive lifestyle). The outline of TDC and its benefits has been covered elsewhere, it should be worth noting that several clients, including some of the complainants to MM, left Service Provider 3 after enjoying quality of life paid for by TDC but failed to pay DLA and avoiding charges for services to the tune of several thousand pounds. It should be noted that Service Provider 3 wrote off these amounts and did not pursue reimbursement."

- Whether or not these designated client accounts were accounted for in Service Provider 3's financial statements?

"I believe that the bank balances do not appear on the Service Provider 3 statutory accounts as balances, however the funds once transferred into the Service Provider 3 trading bank accounts (which is the only account that these funds are ever transferred in to) form part of the Service Provider 3 fee charges and as such appear within the Service Provider 3 trading accounts that are prepared by the Service Provider 3 accountants.

Service Provider 3 use the cash accounting system, therefore the funds held within the client accounts are only accounted for within the Service Provider 3 trading accounts when the funds are transferred into the Service Provider 3 trading accounts Service Provider 3 (2) and Service Provider 3 (1). As stated above this is generally done on a monthly basis. Service Provider 3 do not accrue for DLA benefits that are due to clients that had not yet been received into the designated client accounts."

- Details of written procedures relating to these designated client accounts in relation to say procedures to be followed on the death of a client, payment of interest associated with these accounts etc
- Details of the type of account or accounts that were chosen as designated client accounts and why?

"With reference to the procedures to open bank accounts, this is done by accounting staff, the use of this type of account is outlined within the Service Provider 3 funding documents and was discussed with the client, their families and the sponsoring Local Authorities social workers before tenancy sign up."

- Procedures on the death of a client

Service Provider 3 advised that this "*Happened upon two occasions whilst the TDC regime was in use. It is my understanding upon the issue of a death certificate the relevant authorities are informed through official channels, this can take up to 28 days. On the two occasions in question mentioned above the DWP and the DLA office in Blackpool, will have been informed by the scheme manager. At that point in time the benefits would be frozen while the situation is*

assessed by the relevant DWP department that deals with DLA (Disability Living Allowance) or the local office that deals with the clients Income Support or Incapacity Benefits.

Whilst Income Support and Incapacity Benefit are generally, but not always, paid two weekly in arrears, this can vary from client to client. Historical cases, older claims etc may be on a different payment basis, this can be further complicated if the client receives his or her DLA as a combined payment with other benefits such as Income Support or Incapacity benefit.

As the death is reported immediately there is little chance of an overpayment as benefit is suspended, sometime later the relevant amount of DLA benefit would be released into the designated client bank account.

No older policies are available but looking at the 2009 policies before the updating in 2010 there was no 'Death in Service Policy'.

With reference to interest, any interest that accumulates before the d/d or transfer into the Service Provider 3 trading account form part of the TDC charges as the DLA is agreed as part of the TDC charges when it is received into the client account, generally speaking the d/ds are set to transfer funds a day or so after the DLA hits the client account and therefore interest if at all applicable is a matter of a few pence. On the other hand Service Provider 3 does not charge clients interest for the late payment of TDCs which can often take several months to get into payment. Service Provider 3 also ensured an income when clients were not in receipt of benefits while benefits were applied for, of which many times were not recovered and no interest was charged."

- Whether the DLA Christmas "bonus" was paid into these accounts and whether this was passed onto the clients?

"Generally speaking the Xmas bonus of £10.00 has historically been paid with the clients income support or incapacity benefit and therefore is retained by the clients. Some of the longer term tenants did receive their Xmas bonus paid with their DLA, the DLA office also sent a letter to the clients informing them of the payment, in such circumstances the client was supported with the letter and received the payment in cash from Service Provider 3 and a petty cash voucher raised within the Service Provider 3 accounting system. It should be noted that those clients benefiting from the TDC regime also got a present each year at Christmas to open at a cost of £20-30 per present, as often they did not have any family or others who would ensure that they had a present.

Additionally under the TDC regime clients would enjoy a fully paid for Christmas Party, 3 Course Christmas Dinner with drinks and an evening buffet on Christmas Day and Boxing Day and a New Year's Eve party at each project."

- Details of Service Provider 3's approach to the local authority with regard to mental capacity assessments following the Bank's concerns about the client's capacity

"The question of capacity was a non-issue as far as Service Provider 3 was concerned, as all clients were introduced by social workers (or in a few exceptions from 1992 when DASS were aware of clients' wishes to move into an independent living scheme) who believed that clients had the capacity to enter into a tenancy agreement and understood their responsibilities under that tenancy. The banks opinion was largely based upon the convenience of opening

Designated Client Accounts in circumstances where clients often did not have the required documentation to open bank accounts, it also provided a level of transparency which was further increased as clients received copies of their bank statements, as stipulated within various Service Provider 3 funding agreements.

At the start of operations there was no mental capacity act to be able to judge capacity. Capacity is seen by banks as a very different ability than by social care professionals. Bank staff in many cases in experience would not open accounts by anyone who had a visible learning disability and although clients knew the basics over their bank accounts and what it was used for etc and how they would access it which would constitute capacity, but would not open one without papers from the court of protection, papers indicating power of attorney or corporate appointeeship.

In LD social care, historically, often the support provider has had to take over corporate appointee ship to be able to open bank accounts for clients and also be named on the account.

Mental Capacity Assessments may still not be accepted by a bank on face value, additionally that the mental capacity act 2005 was not written during the majority of the scope of the investigation - and was only put in place into practice on 1st October 2007.

It is only more recently that WBC and other Local Authorities have trained their social workers to be versed in making mental capacity assessments and so they would not be able to facilitate assessments during the majority of that time.

The clients had capacity to make decisions but would make the wrong decisions. Although the DLA ensured a quality of life, they still had their benefits such as income support to spend as they wished.

Service Provider 3 did not want to become corporate appointee, it wanted to give clients the opportunity to manage their monies and guarantee a quality of life through TDC, and at the time DASS were aware of the way TDC worked and did not seem concerned at inception or in the main further down the line and then there is no correspondence that corporate appointee ship was ever suggested by DASS or SP. Without TDC some clients would not want to spend money and sit by candlelight with no heating etc which TDC overcame and still left clients with their income support to spend. This DLA is now in many cases taken by the fairer charging policy leaving them with the same money but without the benefits of TDC. Some would argue the appropriate use of the word 'fairer'".

- Why did the designated client's accounts include Service Provider 7's name when he/she was merely a consultant to Service Provider 3?

Service Provider 3 have responded to this question as follows: *"The formal consultancy agreement signed in 1999 stipulates the areas of consultancy responsibilities and specifically identifies that the consultant will be responsible for financial management.*

Service Provider 7 had a financial relationship with Miscellaneous 20, the bank, for some 15 years at the time of Service Provider 3's inception. Service Provider 7 is also professionally qualified in company administration having qualified as a charted company secretary following a post graduate qualification in company administration.

Service Provider 8 was relatively young, being 25 years old, and while extremely talented in social care and managing day to day front line affairs was inexperienced in corporate matters. The consultancy agreement was to last for the initial set up period, thought to be 3 years or until the company was on a good financial footing.

Unfortunately to this day Service Provider 3 has not been in a position to replace the consultancy from Service Provider 7 due to the continual disputes over funding with WBC either in failing to provide funding for services through failing to assess, or by failing to present assessed need at panel leaving clients paying towards services and Service Provider 3 paying the rest or Housing Benefit disputes. Given that Service Provider 7 has not been paid any consultancy fees since the inception of the agreement it is in the interest of the business to continue to use his/her expertise and skills.

The client account was in the name of Service Provider 7 as he/she was providing a personal guarantee to the bank in terms of the Service Provider 3 overdraft and therefore provides reassurance to the banks to any potential discrepancies within client accounts. At the time of inception Service Provider 3 was not known to the banks and the banks were keen to have them underwritten with Service Provider 7."

- Why did Service Provider 3 establish 5 banks accounts in the name of Service User 6?

Service Provider 3's response during the right to reply process is as follows: *"At no stage until now has any party raised this question with Service Provider 3 or Service Provider 7, instead it seems to be used to reinforce the misconception of fraud or impropriety which are much more interesting than the mundane facts.*

Service Provider 3 believe that the '5 bank accounts accusation' relates to the description that is set against the various legitimate bank transfers than have taken place down the years by different staff. It would seem that the short description that is allowed to identify a transaction has been interpreted as being the name of another bank account.

These transfers have been undertaken by the authorised accounts person who types in a reference description to aid identification later if required.

There has been a description variation down the years, this description bears no influence on the account that the funds are transferred to. Each transfer is to either of the Service Provider 3 trading accounts that are indentified by the sort code and bank account number that does not appear on the copy bank statement that the client has received.

Notwithstanding the above, only the legitimate funds that form part of the agreed TDC regime have been transferred.

The explicit allegations of financial abuse could have been dealt with in a short time rather than still being a live issue many years later. If there is any further information that could be provided such as account numbers then Service Provider 3 would happily look into it further to provide further clarification. Although if only the agreed charges were levied I find it hard to understand how this was financially abusive."

6.21.194. Mr Morton alleges that what is not reported in the minutes of the meeting held on 20 December 2006 is that, according to Employee 54, Police Officer 2 also stated that the Council was doing exactly what Service Provider 3 was doing. He goes on to advise that this was also stated by Police Officer 2 to Complainant 3, his/her husband and son/daughter, and to himself on separate occasions.

6.21.195. Just before Mr Morton returned to work he received the following email from Employee 28 on 24 April 2007:

"Could you let me know where we could find the 17 assessments done in 1999/2000 for the people living with Service Provider 3. Employee 55 needs them for work he/she is doing."

6.21.196. Mr Morton replied:

a) *"I am confused as to why my line manager isn't requesting this information. Surely this isn't your responsibility.*
b) *I am further confused as to why I would know where Community Care assessments from 1999/2000 are. The only CCA's I'm aware of are contained within the Service Provider 3 files that have been removed from my office.*
c) *The only comment I would make is that many Service Provider 3 tenants found themselves in situ WITHOUT a CCA being undertaken. This is one of the commissioning issues I have previously highlighted. Whether this applies to the 17 I cannot comment as I don't know to whom the CCA's refer.*
d) *This causes me some anxiety as my former colleague Employee 50 was concerned that information relating to Service Provider 3 went "missing" on more than one occasion. Whether he/she was referring to these documents again I cannot comment.*

Finally I know you are anxious to keep matters separate but really this is fundamental to my grievance. If I was listened to years ago Employee 55 wouldn't be running round fending off (I assume) another legal challenge from Service Provider 3 & Legal Rep 1.
I am more than willing to assist in any way I can (as my participation in the HB Tribunal testifies) mainly because of my strongly held views in relation to this matter but surely you must understand after the way I have been treated and considering my position that this request is somewhat perplexing."

6.21.197. Thereafter Mr Morton was prevented from having access to his Service Provider 3 files by DASS management which is confirmed in an email exchange between Employee 55 and Mr Morton in May 2007.

6.21.198. Mr Morton became involved in Service Provider 3 again when Employee 51 from Wirral Legal Services contacted him in December 2007 in relation to a judicial review that Service Provider 3 had brought against the Council. Mr Morton's response is set out below:

"Under the circumstances I don't think there's anything else I can add to this case.
I am obviously concerned that the probable outcome of a Judicial Review will not be in the Council's or indeed Service User 30's best interest.

However your comment that it "beggars belief" that DASS have accredited Service Provider 3 and have been "complicit" with its' regime does not augur well for any hearing.
I appreciate your comment about requiring "tenacity" with regard to Service Provider 3, but I have been "tenacious" for 6 years and all I got out of it was threats of disciplinary action for gross misconduct....." {Personal medical information has been removed; an unabridged version can be seen at Annex L (Medical in Confidence)}.

6.21.199. In January 2008 Employee 23 was seconded and did not have access to his files/emails.

6.21.200. Mr Morton has alleged that on 8 January 2008 Employee 22 had approached him at his desk to comment on matters pertaining to Service Provider 7 and Service Provider 3 and stated that he/she felt *"there's something Masonic going on, it's enough to drive you mad.....if you let it!"*

The consultant has not received any other evidence to prove/disprove whether this exchange took place nor to corroborate any suggestion of masonic involvement.

6.21.201. He responded to these comments in a letter dated 17th January 2008:

"I have been explicit in my view (and in an outstanding whistle-blowing disclosure) that the reason Service Provider 3 have evaded accountability is the lack of effective partnership working by the Council, DWP, CSCI and the Police. Such comments may not "drive me mad" but they only serve to trigger very negative recollections about how Employee 11 claimed I did not understand the complex politics or the bigger picture relating to Service Provider 3."

During the right to reply Employee 22 has advised that he/she did not approach Mr Morton at his desk in order to discuss Service Provider 3. He/she was in the office where Mr Morton was based, and had been discussing something entirely unrelated with another staff member. He/she explained that he/she had to pass Mr Morton's desk in order to leave the room and stopped to enquire about his well-being.

This matter was the subject of Miscellaneous 8's investigation and was not pursued further by the consultant.

6.21.202. By January 2008 the grievance appeal hearing had found against Mr Morton and by February 2008 Mr Morton had signed a compromise agreement to leave the organisation.

6.21.203. The consultant has been advised that Service Provider 3 refused to agree to a variation to the contract between it and the Council for the provision of "support services" entered into in March 2008. Specifically Service Provider 3 refused to accept a reduction in the hourly rate and that Service Provider 3 was the only provider out of 28 that did not agree to the change on an ongoing basis.

6.21.204. However, the disagreements between Service Provider 3 and the Council continued and Mr Morton alleges that he was "approached" by an unspecified party to provide "inside information" against DASS. Mr Morton responded by

contacting Employee 56 in the Council's legal services team to ensure that this approach and his refusal to take part were recorded.

6.21.205. By September 2008 Service Provider 3 had brought 2 Judicial Review proceedings and a number of other proceedings against the Council. The remaining actions and proceedings fall outside of the consultant's terms of reference, but readers of this report should note that eventually, after the appointment of an additional temporary resource within DASS, a dedicated legal advisor from an external firm and much concerted effort across DASS, HB and SP, the Council managed to defend its position. The Council gave notice of terminating the contract in mid-2009 with extensions being given until 30 September 2010 as a result of delays on the part of Service Provider 3 and issues it had raised. The consultant has been advised that Service Provider 3 is still a SP provider but no longer provides services to DASS.

6.21.206. During the course of this element of the review the consultant was to meet Service Provider 9, now a past employee of Service Provider 3 but, he/she was unable to attend any of the meeting dates largely due to personal circumstances. It is understood, however, that Service Provider 9 confirms Mr Morton's views of Service Provider 3's practices and is of the opinion that no attempts are being made to ensure that Service Provider 3's tenants understand what they are being charged for and why (in the context of HB covering the rent due), and it is for this reason that he/she has left its employ.

However, Service Provider 3 have advised that Service Provider 9 was due to be disciplined for poor performance and other work related issues which could have resulted in summary dismissal. It further states that several acts of gross misconduct came to light after he/she left Service Provider 3's employ.

6.21.207. During the right to reply Service Provider 3 provided some documents which for simplicity are described by the consultant as customer satisfaction questionnaires which appear to emanate from 2009. These documents show a high level of satisfaction but the consultant did note that in at least one document the description of services was called "residential care/supported living".

6.21.208. On 24 January 2011 a service user wrote to Wirral Council regarding a HB claim. In this letter he stated that in respect of the period 4 April 2004 to 25 November 2008 he received "*absolutely no care just total neglect.*" It goes on to say:

"Service User 6 and Service User 23 never saw any Service Provider 3 staff except when they demand the rent. Tenancy Agreements were very confusing some tenants thought that Service Provider 8 was the Landlord. Service Provider 7 was actually the landlord yet his/her name was never on any of my Tenancy Agreements. Legal Rep 1 are Service Provider 3's solicitors and have never represented Service User 23. Service Provider 3 set up three illegal DLA Bank accounts over the phone in my name whilst I was a tenant there. No Service Provider 3 tenants receive DLA Service Provider 3 takes it. Service Provider 8 gave me a document to sign he/she wanted to be Power of Attorney over my DLA. I never signed it because it was not legal but some tenants probably did sign it not knowing what they were doing.
Congratulations to the Council for the victory over Service Provider 3 in the courts. Very well done. I will not be appealing against the Housing Benefit Repayment that Service Provider 3 have to make because it is the correct decision by the Council."

Conclusions

6.21.209. Based on her findings the consultant believes that there are similar issues here to those described earlier in the report in that:

- They stem from the fact that Social Services did not roll out a consistent and transparent charging policy which included the financial assessment and subsequently charging (depending upon income) clients in Learning Disability Support Living establishments.
- The Department did not have a written contract with Service Provider 3 nor did it set out clearly on what basis it was prepared to "do business" with Service Provider 3 in terms of written guidance as to what it expected of its providers (e.g. standards of practice including acceptable arrangements for "top ups" or tenant direct charges etc)
- There was no involvement of the Contracts Team in monitoring services.

6.21.210. There has been a considerable amount of investigatory work in relation to the Tenant Direct Charging regime operated by Service Provider 3 but this has not been brought to a conclusion by the Council (see later).

6.21.211. There is a lack of clarity as to the relationship between Service Provider 3 and Service Provider 7 and in particular the "not for profit" status claimed by Service Provider 3. The Council is pursuing this further through a HB Tribunal and it is therefore a matter that is outside the remit of this report.

6.21.212. In the consultant's opinion there have been a number of occasions when the desires of Service Provider 3 in relation to funding have been at odds with the expectations of the DASS, HB and Supporting People. The consultant believes that DASS did not from the commencement of discussions provide Service Provider 3 with absolute clarity of the basis upon which it was intending to "do business" with it. Whilst DASS did have numerous meetings with Service Provider 3 the consultant has not been provided with any evidence to demonstrate that DASS followed these up with letters which had the support of legal advice. Service Provider 3 however, also appear to have had funding expectations above those recognised as being reasonable by the Council.

6.21.213. The findings demonstrate that there was a considerable delay in DASS undertaking the CCAs requested by Service Provider 3.

6.21.214. Based on the information received from Service Provider 3 the consultant is of the opinion that its Tenant Direct Charging regime (i.e. the "taking" of benefits above £70 per week) appears to have been created to minimise the likelihood of arrears arising for what Service Provider 3 states are contributions to areas of business such as on call arrangements, transport arrangements, and management/business overheads.

6.21.215. The consultant suggests that the issues raised by Mr Morton can be broken down as follows:

A. Why, when the Council had an established charging policy (no matter how flawed), did it not apply this policy consistently and transparently across all Learning Disabilities Supported Living Providers (whether internal or

external)? There is no answer to this question that has been forthcoming during this review.

B. Why did the Council fail to undertake financial assessments based on the 1997 policy? No answer has been forthcoming to this question either. The consultant can only use supposition when stating that perhaps this was because the 1997 policy was either misunderstood or unknown to most. This 1997 charging policy should have applied to all of those tenants/service users in Service Provider 3 who were in receipt of DASS funding until the introduction of Fairer Charging.

C. Why did Service Provider 3 adopt its charging policy? Service Provider 3 have stated that it required contributions from DLA etc to pay for the support services such as transport and that it established the process of paying these benefits into a designated client account to ensure that the service users made the payments (known as tenant direct charges), the consultant is of the opinion that this was done to reduce the risk to Service Provider 3 of arrears accruing, the consequence of this is that Service Provider 3 in effect took control of the vast majority of the service users funds which, in the consultant's opinion was inappropriate.

Service Provider 3 appears to have defined its own charging regimes without understanding that it is not within a provider's remit to in effect means test its residents by "taking" all benefits above £70 per week from its service users/clients (regardless of the fact that Service Provider 3's service users/clients or clients families had agreed this in advance of taking up occupancy). It does however, appear to the consultant that Service Provider 3 may have "copied" aspects of the charging policy applied at the West Wirral properties.

There continues to be an ongoing and significant difference of opinion between the Council and Service Provider 3 as to why DASS should be concerned/have any remit in relation to Service Provider 3's tenant direct charging regime. The consultant is of the opinion it is entirely within DASS' remit in relation to the protection of these vulnerable adults. It must be remembered that in some instances Service Provider 3 was being funded by HB, THB/Supporting People, Social Care and Tenant Direct Charges.

Service Provider 3 also states that it supplied all the information requested of it by the Council but, Mr Morton and the Officers have disputed this. This is exemplified by an email from Mr Morton to Employee 13 in 2006:

" Service Provider 3 have never been able to provide "a clear schedule of any services and costs that are charged directly to tenants" .Yes they tell us what they charge but it is far from transparent where the money goes. All I was able to identify based on last year's figures that if someone is in receipt of Income Support and high rate DLA Care and Mobility amounting to £229.45 per week and they are left with £70 from these benefits then they were asked to pay £13.20 per week for heating, lighting, power £2.50 per week for water rates £3 per week insurance £37.75 for transport ,£2.26 per week for "leisure, entertainment and moving expenses" £18.94 for on call services £5 for TV licence .This still leaves £76,76 per week unaccounted for; SP have asked the obvious question with regard to this discrepancy and have been told it "contributes to the running costs of the company."

The consultant questions how, each and every Service Provider 3 service user could utilise £37.75 per week on transport costs regardless of their needs and what the £76.76 was being charged for? It is understood that similar questions were raised by the Officers in relation to lease costs for refrigerators and other items.

As can be seen from the extract of the letter from Legal Rep 6 to Legal Rep 1, this is still their stance.

D. Why did Officers not address this sooner? There were investigations but, it is the consultant's opinion that these investigations became uncoordinated and overly complicated due to the sometimes apparent lack of co-operation and understanding between departments and it is the consultant's opinion that this may have been influenced, at least in part, by the financial consequences for DASS (e.g. if HB or SP did not make payment to Service Provider 3 the cost would fall back to DASS). A number of interviewees have highlighted this lack of co-operation in the meetings with the consultant and often the blame is laid at the door of DASS. The situation was complicated because Service Provider 3 had significant support from service users, parents and family members who did not wish for their family member to be moved to another provider and it seems had no concerns about the TDC regime which in effect was being funded from the wider public purse.

DASS has also found it challenging to work/contract with Service Provider 3 and in the consultant's opinion, there has comparatively speaking, been a much greater level of legal exchanges and court action than would be found in the relationship between the Council and many other providers. Employee 22 has also suggested that there were limited alternative providers and many of those that did exist also had problems/issues. In addition, Employee 22 has advised that he/she lacked sufficient resources in the Learning Disabilities service and that there were many conflicting priorities (including having the results of a CSCI inspection of learning disability services in 2005). Having taken all of this into account, the consultant is of the view that these difficult and very challenging issues lacked coherent leadership and dedicated input from senior managers, which left relatively junior and probably under resourced members of the LD team without the support (from areas such as the Contracts Team) and capacity to effect change. Employee 22 has advised, but has provided no evidence to substantiate, that:

- He/she allocated Employee 17 to this area on a full time basis until 2005 when, due to a restructure, he/she was offered a position elsewhere within the Department (without consultation with Employee 22 as to the impact on his/her team's workload)
- The operational resource now available in the Learning Disability team is 3 times the size it was in 2006.

The Council has also informed the consultant that Service Provider 3 has brought a number of challenges against it. The Council has advised that challenge related to lack of section 47 CCA and/or unlawful assessments. The Court criticised the claim and the way it was brought and also the frequent allegations of "misfeasance" against Council Officers. Judgement was handed down on 9 July 2009 and the applications were dismissed. The

25 individuals were ordered to pay costs and the individual's costs were indemnified by Service Provider 3.

E. From discussions with Service Provider 3, Employee 22, colleagues from Supporting People and Mr Morton etc., the issues relating to Service Provider 3's tenant direct charging regime were referred to by at least DASS as a lack of financial transparency, but the proposed regime was set out by Service Provider 3 in a letter to Employee 9 and Employee 20 of DASS at the outset and certainly in a meeting on 14 March 1999 and following correspondence from Service Provider 3 to DASS. There is no documentary evidence available that suggests this was challenged by DASS at the time. It is the consultant's opinion that this was an error on the part of DASS.

The consultant has therefore concluded that in summary the issues of concern associated with Service Provider 3's charging regime were that:

i. Council colleagues believed that the tenant direct charging regime was inappropriate for a supported living scheme, in that it:
   - Was overly controlling (in that all DLA and other relevant benefits were paid into a bank account over which at worst the service user had no control and had no knowledge of and at best was set up in their full knowledge but removed all control from the service user)
   - Did not enable increased independence
   - Did not enable service user choice
   - Left tenants with circa £70 per week
   - In effect allowed a provider to "means test" its service users, a role that clearly sits with the Council.

In the consultant's opinion these are legitimate issues of concern.

ii. Council colleagues had concerns that the level of tenant direct charging were too high when compared to the additional services received above and beyond those paid for by THB/Supporting people, HB and for some clients DASS funding.

In the consultant's opinion these are legitimate issues of concern.

iii. Council colleagues questioned the legitimacy of the benefits payments being made into the designated client accounts which were in the name of Service Provider 7 who Service Provider 3 have advised is merely a consultant and Director of Miscellaneous 22, the property management company with which Service Provider 3 contracts. Service Provider 3 have advised that Service Provider 7's name being on the account should not be of concern as his/her consultancy contract provides for his/her assistance into financial matters.

The consultant has asked questions about the procedures covering these designated client accounts and is of the opinion that it was appropriate for the Council to undertake these investigations (see findings).

Service Provider 3 has provided the consultant with a letter from DWP dated 9 April 2003 addressed to Service Provider 7, Service Provider 3, {N.B. remainder of address removed for anonymisation purposes}, which states:

"*With reference to our phone conversation of earlier today.*

Disability Living Allowance/Attendance Allowance is awarded to people with a disability or illness, and who have specific care or mobility needs as a result. It is intended that this benefit help address these needs. Once awarded it is entirely left to the individual as to how this benefit is used……"

Despite the above the consultant is of the opinion that the Council's concerns are legitimate and this is in the consultant's opinion reinforced by other local authority client's working with Service Provider 3 to remove the TDC regime in their area.

Included in Mr Morton's grievance submission was an article from Community Care, *"Unethical and Illegal",* written by their welfare rights expert:

"I know of a number of establishments around the country, registered and unregistered, where the DLA (mobility component) belonging to individual residents, for example, is automatically pooled and used to provide and fund the home's mini-bus or transport budget. Not only is this unethical, it is also illegal, as the home is, in effect, means-testing the residents DLA".

This article highlights why DASS and Supporting People had concerns as to Service Provider 3's practice of "taking and pooling" DLA and other benefit payments above the £70 threshold.

It should also be noted that, in a letter dated 20 September 2010 from Legal Rep 6 to Legal Rep 1 the tenant direct charges were further pursued:

"*The Council has raised both within the community care assessments commenced in the autumn of 2009 and in the Supporting People review, the way in which the tenants of Service Provider 3 are charged for services. This of course needs to be considered in the context of Service Provider 3 providing accommodation and support for those with learning disabilities and/or mental health problems. The Council has set out in previous correspondence its understanding of the way in which individuals are charged. For many individuals Service Provider 3 receives monies from the Supporting People programme, significant housing benefit payments and payments from local authorities/the Independent Living Fund for providing services to meet eligible care needs. Over and above this the tenants give Service Provider 3 their welfare benefits over a specific sum £80 per week. This is said to fund items such as utilities, telephone calls, TV licenses and transport. However as far as the Council is aware no account is taken of what the tenant contributes, their total benefits, their needs or what their actual usage of the items they fund is."*

Whilst capacity was obviously stretched within the Learning Disability team for a significant proportion of the timelines covered by this report, it should be noted that Employee 64 has advised that he did create and recruited an additional middle manager position to provide additional capacity to project manage and deal with wok demands from Service Provider 3.

The article in Community Care also includes the following:

"The benefits 'system does create perverse incentives in some respects because users generally have access to higher benefit income for their personal use if they live in "unregistered" settings. Housing Benefit and Supporting People money can also help providers decide to go down the unregistered route because those payments are sometimes more flexible (and even amenable to local pressure) than the funding attached to care homes. None of this should skew the decision to register or not, of course, but most inevitably it is something that any local authority will consider when setting up schemes.

Whilst one can see how it might be very sensible for such a scheme to operate in this way it is important for the client to choose to use the mobility component for funding their own transport, e.g. taxis or obtaining a car through the Motability Scheme, or as may have been the case with Service Provider 3 if the second option is inappropriate for those within a 'supported living scheme' because having a learning disability may prevent them from driving. The use of taxis etc can of course be expensive and so the scheme envisaged in the report could potentially be very sensible use of the benefit. As always the question of consent will be an issue. If the person has capacity then it is a matter for them, if not then it will be for the appointee/deputy to decide. It would also be important to consider the use that individuals make of the transport service i.e. do they actually make use of the transport that is provided and what is it provided for. It would also be important to consider whether the provider makes a profit or otherwise from the 'scheme'. The consultant is therefore of the view that all of the above (and more) would need to have been investigated by DASS in order to determine the appropriateness of the scheme.

However, there are some differences with the article and the Service Provider 3 tenant direct charging regime in that a range of benefits were being "taken" for a range of different reasons.

The important point is to ensure that the scheme is properly understood and there is proper consent to it.

On the balance of probabilities the consultant is of the opinion that DASS, at least in the early days, did not have the corporate understanding of the complexities and practices that might arise from learning disability supported living schemes and/or did not have the capacity to investigate and manage such issues proactively and in a determined fashion although, Mr Morton certainly tried. In addition, to achieve this effectively would have required a more integrated approach across DASS, Supporting People and Housing Benefit teams.

Employee 64 also advises that concerns regarding Service Provider 3 were also raised by him/her at Chief Officers Management Team in an attempt to achieve a co-ordinated corporate response. From that meeting agreement was reached that the Head of Legal Services would take the lead in this regards. Employee 64 has advised that this did not occur and that he/she had to take on the co-ordination roles.

Employee 64 has accepted that addressing the issues regarding Service Provider 3 has been extremely protracted, and it is his/her view that this was due to "*the adversarial legal stance" taken by Service Provider 3."* He/she also advises that *"there was resistance from parents to accept changes that DASS sought to introduce."* As a result *"considerable additional (external) legal support*

was provided to back up actions to ensure that people in Service Provider 3 accommodation were protected and at all times Safeguarding people remained the primary motivation."

6.21.216. The outstanding allegations from Service Provider 3 mentioned in this report are serious as there is some potential, if they are proven, for further reimbursement to be made. Members must ensure that they keep track of the progress in resolving them once and for all.

6.22. Service Provider 4

6.22.1. Service Provider 4 was another supported living provider and the consultant has been advised that it was used by DASS on a spot purchase basis without any formal written contracts. Service Provider 4 provided 3 supported living establishments and was the supplier of both accommodation and support. These 3 properties were funded by a Supporting People grant, with the tenants receiving Housing Benefit. The addresses of the properties concerned were as follows:

A. Grove Road, Wallasey

B. 17 Seabank Road, Wallasey

C. 129 Seabank Road, Wallasey

It should be noted that the owners of Service Provider 4 also ran Service Provider 27, a care home with both older and younger persons sections.

6.22.2. Despite a number of attempts to contact Service Provider 4, no response was received in relation to the opportunity for the Right to Reply to the preliminary draft report.

6.22.3. Mr Morton alleges that:

"The motivation for leaving vulnerable people in an abusive situation was that it was potentially financially disadvantageous to DASS to co-ordinate an appropriate protection plan."

"DASS management….simply did not want to pay for services which vulnerable people were legally entitled to in accordance with their Community Care Assessments and wilfully allowed an abusive situation to continue."

He first became aware of Service Provider 4 in May 2004 because concerns were raised with him by Cambridge Road Day Centre managers about a service user who had been making allegations of financial abuse and ill treatment by his/her landlord, Service Provider 10. This ill treatment amounted to lack of heating and food in his/her accommodation (at 12 Grove Road in Wallasey) and that the manager of the "service", Service Provider 10, was verbally abusive and intimidating.

6.22.4. It should be noted that Employee 22 has no recollection of Mr Morton reporting these allegations to more senior managers.

6.22.5. At this point the consultant believes it important to point out that the consultant has not sought to verify this element of her investigations in such an in depth extent as for the previous two case studies. The reasons for this are three fold:

A. Mr Morton's previous statements relating to actions and documents have been verified via documents and therefore he has proved to be a reliable witness in terms of the evidence he has provided, albeit that there are concerns about the completeness of the information received;
B. All members of the Supporting People team still have clear recollections of the behaviours they encountered and concerns that they shared and raised

which, verify Mr Morton's account upon which this section of the report is based;

C. Interrogation of DASS and Supporting People files to the same extent would have delayed the completion of the report further, and the consultant believed that this would be unacceptable to the Council and/or members of the public. This section has however been the subject of a right to reply response from Employee 22. Attempts were made to contact Service Provider 10 but no response was received.

The consultant has, however, included a number of documents at Annexes M and N that specifically relate to this element of the investigation. The reader is asked to refer to these to specifically and more fully understand the extent of the dysfunction involved in this case.

6.22.6. Mr Morton has advised that his *"…outstanding memory of this discussion concerned the service user's finances, in that he/she carried about him/her at all times, a bag of loose change. He/she alleged that Service Provider 10 would come to Grove Rd, take the bag off him/her and take the money out of it without any explanation or justification; he/she would leave the property and drive home in his/her Bentley with personalised number plates*."

6.22.7. Mr Morton states that he first referred the matter in accordance with Adult Protection procedures at the Vulnerable Adults Strategy Meeting that was held on 13th May 2004, where he volunteered to undertake further investigations and contact the Supporting People team to discuss a review of the service.

6.22.8. Mr Morton's recollection is that this review took place in June 2004 and Mr Morton describes the visit as "very disturbing" because Service Provider 11 was very drunk and used extremely inappropriate language during the meeting. However, the consultant has established from minutes of a strategy meeting that a member of the Supporting People team and Mr Morton visited Grove Road on 28th May 2004 and a further visit was made by members of the Supporting People team on 22nd June 2004. The concerns included:

A. Taking the residents benefits and giving them only a small weekly allowance back (circa £30);
B. Lack of benefit books being available for scrutiny and therefore an inability to establish whether or not Service Providers 10 & 11 were the appointees
C. Whether the £37 per week payment by Supporting People was sufficient for the service users needs
D. How unhappy some residents were
E. Lack of health and safety procedures and who was responsible for running these establishments in Service Providers 10 & 11's absence
F. No evidence of care plans

It should be noted that item (A) was confirmed by Service Provider 3 during the right to reply process, because a service user was moved from Service Provider 4 to Service Provider 3.

6.22.9. The actions from this meeting were:

Supporting People *"…to make a referral to CADT to enable a co-ordinated Social Services Department assessment of all 15 Service Provider 4 tenants."* This was done in writing on 29 June 2004.

"MM to liaise with Employee 57 (LD team) and Employee 36 (Supported Living) to set up a project team

MM to compile a briefing rota for Employee 22

Employee 45 informed Day Centre Staff 2"

6.22.10. Concerns appeared to multiply when the Supporting People team and Mr Morton held discussions with tenants of Grove Rd and subsequent enquiries with other tenants away from their accommodation and another strategy meeting was arranged.

6.22.11. The first documentation made available to the consultant is the minutes of a strategy meeting that relate to a service user who was resident in Grove Road, an Service Provider 4 establishment in receipt of Supporting People funds. This was, however, the second strategy meeting in relation to Service User 9 and was chaired by Employee 45.

6.22.12. Mr Morton advises that *"the tenants were clearly unhappy where they were living and there were grave concerns about how their finances were managed and how they were being treated (especially by Service Provider 10)."*

6.22.13. As a result of these visits further referrals were made in accordance with Adult Protection procedures and an email from Mr Morton to Employee 47 on 18 June 2004 demonstrates that he produced 2 reports in relation to Service Provider 4.

6.22.14. Mr Morton states that he advised Employee 45 of the heightened concerns. His/her email in response states:

".....Could we also arrange some supervision dates so you can tell me what I need to be doing!!"

6.22.15. In early July 2004 the Supporting People team advised Service Providers 10 & 11 that because of concerns during its unannounced visits it would be commencing the service review of Service Provider 4 immediately, and that Social Services would be contacting them shortly to reassess the clients in its service.

6.22.16. A colleague of Mr Morton's, Employee 36, and Social Worker Employee 57 were asked to undertake assessments of all Service Provider 4 service users in July 2005. Employee 36 has confirmed this to be true and that the level of support was inadequate for the tenants who were resident with Service Provider 4. They could not be completed however, due to a lack of co-operation from Service Providers 10 & 11.

6.22.17. Employee 36 and Employee 57 wrote a memo to Employee 45 outlining their findings and concerns. Their "general first impressions" were:

A. *"The tenants were unaware of their benefit entitlement*
B. *The tenants were unaware of their own financial arrangements with Service Provider 4*
C. *They say that they do not sign for any pocket money/benefits*

D. *The tenants are dependent on other tenants for the completion of daily living tasks such as laundry, outings etc*
E. *One tenant (Service User 10) is ferried to Sunningdale every day for day care. He/she has TV if he/she is not taken to Sunningdale*
F. *Three tenants (Service User 11, Service User 12 and Service User 13) wanted to move to more independent living although they would require a lot of support if this were to happen.*

The level of support in the houses was inadequate to meet the ethos of supported living given the needs of the tenants we met……..

Some tenants kept their medication in their rooms but we did not evidence whether this was kept in a locked cupboard or drawer. At 12 Grove Road we found all the medication on a Venalink rack left open on the kitchen worktop in view of the ground floor window."

6.22.18. Members of the Supporting People team and Mr Morton have advised that DASS found the assessment process difficult as Service Providers 10 & 11 withheld financial information.

6.22.19. On 27 July 2004 Employee 36 and Employee 57 wrote to Service Providers 10 & 11 to seek further information to enable completion of the CCAs for the tenants given that they were not being funded by DASS. This was followed up by letter again on 6 September 2004 as there had been no response.

6.22.20. Mr Morton then sent an email to all parties involved hitherto with a request for a meeting, which was held on 14th October 2004.

6.22.21. On 14 October 2004 the 3rd Adult Protection Strategy Meeting was held with Employee 45 as the Chair. At this point DASS had completed the CCAs as far as it could without information from Service Providers 10 & 11. At this meeting it was agreed that Mr Morton would produce a briefing note for Employee 22 and that a care manager would be allocated to Service User 9. It was highlighted at this meeting that "*further consideration needs to be given to those tenants who had previously assessed/expressed a preference for moving on".* In addition it was noted that "*potential impact for SSD in terms of commissioning/exit strategy to be detailed in Briefing Note to be compiled by MM.*"

6.22.22. On 18th October a further letter was sent to Service Providers 10 & 11 regarding the outstanding information to enable a CCA to be completed.

6.22.23. On 19th October 2004 Mr Morton received an email from Employee 58, which stated:

"I am concerned to note in the minutes that Employee 45 is required to make further contact with Employee 58, which might suggest that previous contact has been ignored, this of course is not the case as unfortunately Employee 45 and I have had no contact regarding this matter".

6.22.24. It is understood, but unconfirmed, that information from Service Providers 10 & 11 was provided to DASS around the end of October 2004, which enabled the completion of the CCAs.

6.22.25. The Supporting People team was continuing to try to work with Service Providers 10 & 11 regarding improvements to attain the Quality Assessment Framework but this was not successful, for on 8th December 2004 the Commissioning Body agreed in principle to terminate the Supporting People contract.

6.22.26. Mr Morton advises that he compiled an updated briefing note on 21st October 2004, but unfortunately he was unable to supply a copy of this document. Mr Morton states that this briefing note was sent to Employee 22 and Employee 45 and copied to colleagues in DASS. The consultant has however seen email exchanges which show that the briefing note was produced and copied to Employee 22 and Employee 45.

6.22.27. Mr Morton wrote to Employee 22 on 5th November 2004 that all Service Providers 10 & 11's tenants were known to DASS (except one) and all had learning disabilities excepting two individuals. As a result DASS had been actively involved in making these placements with Service Provider 4. He also added:

"We currently do not purchase care on their behalf, it is exclusively SP funded.....and there's the rub, because SP funding is inconsequential and I believe there is evidence to suggest that Service Providers 10 & 11 are supplementing what is a non-existent "service" with monies from tenants (as with Service Provider 3 we need to identify areas that are exploitative and those that are criminal."

6.22.28. Mr Morton advises that on 8th November 2004 Employee 22 responded to the above email:

"*We need to make sure that any action taken by SP includes ourselves because if funding from that source is withdrawn, there may be consequences for the Department."*

6.22.29. The Police appear to have been involved from circa March 2005, although the consultant does not have copies of the minutes of all of the strategy meetings.

6.22.30. On 8 April 2005 a further strategy meeting was held with Employee 45 as the chair. The minutes commence:

"Supported options has been an Adult Protection concern for some time but as it was originally raised prior to the rota system it has remained outside the current Adult Protection arena. Past minutes were not available at this time."

6.22.31. Issues raised during this meeting include:

A. Capacity of the service users to hold a tenancy agreement (NB the Mental Capacity Act 2005 had just become law). The response to this appears to have been that the service users signed their tenancy agreements in July 2004. The consultant would comment that surely DASS should have been under an obligation to involve advocacy at this point and given that at least some of these vulnerable adults were attending day centres, they were indeed known to DASS and therefore DASS has some responsibilities given that there were at least some CCAs in place to enable them to attend.
B. Supporting People team advising that *"an action plan had been drawn up and ……that they would not want to decommission this service. Currently the*

scheme is run like a care home and there is insufficient support being provided for the service users. The SPT have a record of their findings. Personal hygiene tasks are carried out by the support workers. The service is not registered with CSCI."

C. Employee 45 discussed two options, one of decommissioning the service, and the other advising Service Providers 10 & 11 that they could remain landlords but that the provision of support would need to move to another provider. There were concerns as to the likelihood that this would prevent Service Providers 10 & 11 from intimidating the tenants however. This led to a discussion as to which service users would be able to understand their rights to prevent the landlord from entering their properties etc and could therefore remain in the properties, with others who did not have the capacity to manage such a situation being moved on.

D. At this meeting it was agreed that DASS would contact CSCI to establish what other properties/services Service Providers 10 & 11 were registered as owning and that a briefing session for Employee 22 would be arranged.

E. The final bullet point states *"Social Services to support the SPT decommission of the service."*

6.22.32. By June 2005, it is understood that the Supporting People team had already recommended the decommissioning of this service to the Commissioning Body, but further work was requested and this would not be reported back until August 2005. Mr Morton raised his concerns with Employee 22 as he was concerned that they were *"being allowed to drift"*. Employee 22 explained that things were not *"drifting*" however, but this reflects the limited capacity within the team to deal with the many issues the Learning Disabilities team was faced with.

6.22.33. In July 2005 the initial (but separate) strategy meeting in relation to Service Provider 27 (a residential establishment run by Service Providers 10 & 11) took place, chaired by Employee 39, because Service Provider 10 had attempted to set up 9 savings accounts. All the signatures were in the same handwriting however. When applying for these accounts Service Provider 10 produced a letter from a GP confirming that all 9 residents lived at Service Provider 27. The year on the letter had been changed from 2004 to 2005. The applications for all 9 accounts were put on hold. It was agreed that CSCI would undertake a further investigation and finances would be looked at in greater detail. Neither Mr Morton nor colleagues from Supporting People were at this meeting.

6.22.34. On 14th June 2005 Employee 45 sent Mr Morton an email outlining a plan he/she had discussed with Employee 22:

"I have supervision with Employee 22 today and as discussed at the last strategy meeting (in relation to Service Provider 4) *we did have a plan. We decided that it would be appropriate to ask the providers to meet with the department to see if they wished to withdraw but remain landlords with conditions to their contact with the tenants. This would afford the opportunity for tenants to stay with a different provider if they wished. I am conscious with all the difficulties with providers we are not going to be in a position to provide alternative accommodation for them all. I will get back to you after my discussion with Employee 22. I know that the team manager from PSD is off but we need to follow this up with Employee 59 to look at allocation of a SW for Service User 9. Martin could you email Employee 59 with the issues and possibly send him/her copies of minutes from strategy meetings."*

6.22.35. By 3 August 2005 a further strategy meeting took place in relation to Service Provider 27, the residential establishment run by Service Providers 10 & 11. The minutes state that a CSCI representative updated the meeting as follows:

"There is no evidence of financial abuse.

The money that the service users have left over is given to Service Provider 11, for the service users to have a nice grave when they pass away."

6.22.36. It was agreed that, to avoid suspicions being raised, Miscellaneous 7 (building society) would open the accounts and that they would be carefully monitored.

6.22.37. On 30 September 2005, another strategy meeting was held in relation to Service Provider 27 involving the Police, CSCI, Job Centre Plus (Fraud), and colleagues from DASS. At this meeting CSCI had clearly been able to undertake a more in-depth analysis of the financial administration of Service Providers 10 & 11 and there were significant inadequacies and questions raised. As a result CSCI requested appointee/guardianship documentation and concluded that these had been falsified. It was agreed that an audit needed to be undertaken and that the service users would need to be interviewed using "achieving best evidence". The contracts team were to send a letter to Service Providers 10 & 11 regarding their breach of contract and Employee 45 was to contact Miscellaneous 11 from Miscellaneous 21 who was also raising concerns.

6.22.38. On 17 October 2005 Employee 34 wrote to Employee 39 DASS following up after a meeting that had taken place on 10 October 2005. Employee 34 had explained to the consultant that the Supporting People team did not believe it had been given sufficient clarity as to the framework for Adult Protection or the processes employed by DASS, and this has been confirmed by his/her team. He/she states:

"Adult Protection team staff will consider each referral made to them, but will only investigate those which involve individuals <u>who are in receipt of Community Care Services</u>, or who should be in receipt of C.C. services.

……Two points arise from this process:

A. SP will need to be informed of those individuals referred to Adult Protection whose claims will <u>not</u> be investigated, as it would be the intention of the SP team to ensure that the matter is at least raised with the police.
B. Presumably each individual referred to the Adult Protection team who is not currently in receipt C.C. Services will need to have a C.C. assessment (to establish whether or not they should be) before a decision is made to investigate or not.

The second point above raises further questions:

A. How quickly would a CC assessment be made?
B. If a CC assessment has to be made in each case, would it not be good practice to investigate the adult protection at the same time?

You explained the definition of "vulnerable adult" and your explanation does seem to support the process as set out above. It does, however, seem strange to me that Social Services is only required to investigate those allegations relating

to people already within the care system (who, you might think, are least likely to be at risk as their services/service providers should be monitored to some extent), but not to investigate those not within the care system (who would seem to be most at risk)."

Employee 22 has advised that this was his/her understanding of the law/guidance at the time but has offered assurances that this is not the case at the present time.

6.22.39. On 4 November 2005 Service Provider 27 (run by Service Providers 10 & 11) was the subject of another strategy meeting. The audit had not been completed, neither had the achieving best evidence interviews. Both items were for discussion at the next meeting. The contracts team had also visited Service Providers 10 & 11 and concluded that they were not in breach of their contract. It was agreed that there were further questions and concerns including a breakdown and proof of benefits paid and that "*the Learning Disability Team would need to identify a selection of service users that are able to communicate for further police investigation."*

6.22.40. By the next strategy meeting on 17 November 2005 in respect of Service Provider 27, the audit had still not been undertaken and there were some concerns about the ability to secure input from DWP. The minutes also state:

"It was reported the service users that have been identified for investigation have not been reviewed for a while. This was to prevent Service Providers 10 & 11 becoming suspicious and jeopardising the investigations.

It was discussed that 2 from the older person's section of the home and 2 from the younger person's section of the home would be the key subjects for further investigations.

A further case was brought into the meeting…….who is currently residing at Service Provider 27. It has been alleged that a Giro for £364.50 was sent to Service Providers 10 & 11 ……after…had left…"

6.22.41. It was agreed that the Police would concentrate their investigations on the four service users selected.

6.22.42. {NB the reader should note that this is the first time that the consultant has been able to identify any reference to issues relating to Supported Living despite Mr Morton raising concerns in May 2004. Despite Service Provider 27 and Service Provider 4 being run by Service Providers 10 & 11, the previous strategy meetings do not make any cross reference to the Supported Living properties nor does there seem to have been any questions raised to the Learning Disabilities team}

6.22.43. A further Service Provider 27 strategy meeting took place on 1 March 2006. The meeting concluded that the investigations were not completed because further information was required in respect of the service users' finances.

6.22.44. Mr Morton recalls a strategy meeting but has not provided the date in relation to Service Provider 4 which was chaired by Employee 39. Mr Morton alleges that Employee 39 stated that "Service User 14's case was being considered as part of a larger strategic approach". Mr Morton states that he protested that this was

not how Adult Protection procedures should apply and that there should be a protection plan specific to Service User 14, but this was ignored and he and Miscellaneous 11 were advised that no further action was required.

6.22.45. The consultant is advised that after the meeting Miscellaneous 11 and Mr Morton agreed that they would "get Service User 14 out of his/her abusive environment".

6.22.46. On 6th June 2006 Mr Morton contacted Employee 38:

"*I spoke to Day Centre Staff 1 from Cambridge Rd today about above (Service User 9 –Service Provider 4 –Service Providers 10 & 11). I'm concerned that an AP referral made by Day Centre Staff 1 about Service User 9 seems not to have been followed up. Can you advise?*

I have a copy of an email from Employee 22 from June 2005 in which he/she claims matters in relation to Service Providers 10 & 11 were not, as I claimed to be, "drifting".

However 12 months later there is neither a Protection Plan nor an Exit Strategy in place. Therefore Employee 36 and myself have been involved informally in relocating 3 people about whom AP concerns were raised (Service User 14,Service User 15,Service User 16) and it would appear from my involvement in these cases that the financial abuse of tenants continues unabated.

I'm seeing Service User 9 and Day Centre Staff 1 on Monday about the possibility of the former moving on but I am still concerned about remaining tenants and wonder whether we need to formalise a Departmental AP response via a strategy meeting (also involving SP).....again can you advise"

During the right to reply Employee 22 suggested to the consultant that the above paragraph needed further review in respect of balance of opinion in relation to Mr Morton's suggestions that Employee 22 was letting things drift. From his/her perspective, there had actually been drift on a number of fronts including the lack of evidence to prove that Mr Morton had actually followed through on the action points allocated to him during the strategy meeting. The consultant is not in a position to reach a conclusion in respect of exactly which points were followed through.

6.22.47. On 16th June 2006 Mr Morton advised the Supporting People team:

"Employee 36 and myself are decanting Service Providers 10 & 11's properties by stealth, we've moved Service User 14, Service User 15 and Service User 16 is in the process of moving (he/she was admitted to Kent House weeks ago after being found wandering around lost and then proceeded to assault the policeman who tried to take him/her back to Grove Rd!)

Next on the list are Service User 9 and Service User 17 and then Grove Rd will be empty!"

Employee 36 has confirmed the above to be true.

6.22.48. Mr Morton has stated that Service User 16 was *"sectioned and taken to hospital because somebody had forcibly tried to take (him/her) back to somewhere where (he/she) was being abused."*

6.22.49. Employee 38 followed this up with Employee 39 on 27th June 2006:

"Employee 39

It was originally stated that following the conclusion of the Service Provider 27 investigation an investigation into the Supported Living Service Providers 10 & 11 service re the service users below would start. I am aware that you have closed the Service Provider 27 case.

I am currently unaware as to this Supported Living investigation being started. I am aware of a new referral that Employee 60 was dealing with, which was from one of Service Providers 10 & 11's tenants. Does this investigation now need to include the original two referrals?"

6.22.50. Mr Morton went on leave 3 weeks later followed by long term sick leave and his involvement in this case ceased entirely.

6.22.51. On 2 August 2006 Legal Services wrote to the Supporting People team in response to an email dated 21 July 2006, which provides advice as to early termination of the contract based upon a serious default.

6.22.52. On 18 August 2006, a chronology of events in relation to Service Provider 4 is produced. The author is unknown but its content is reproduced below for the reader's information:

5th May 2004
Managers of Cambridge Day Centre wrote to Martin Morton highlighting their concerns regarding the service provided by Service Provider 4 to Service User 9, living at Grove Road.

13th May 2004
Adult Protection Strategy Meeting chaired by Employee 61

28th May 2004
An unannounced visit was carried out to Grove Road by Martin Morton and Employee 62. Information given to them by Service Providers 10 & 11 at the time of the visit was not consistent with the information provided by the Day Centre.

4th June 2004
Employee 62 met with Service User 9 at Cambridge Day Centre to discuss allegations. Also present were Day Centre Staff 2, Assistant Manager and Day Centre Staff 3, Day Centre Officer.

15th/16th June 2004
Martin Morton and Employee 62 visited 17 and 129 Seabank Road to interview tenants.

22nd June 2004
Employee 62 and Employee 63 visited Grove Road.

25th June 04
Adult Protection Investigation – Strategy Meeting 2, chaired by Employee 61

29th June 04
SP made a formal referral to the Central Advice and Duty Team for assessments to be carried out on 15 SP funded clients.

8th July 04
Letter requesting a meeting with Service Providers 10 & 11 for 12th July 04.

12th July 04
Meeting with Service Providers 10 & 11 to advise them that SP would commence service review (letter on file).

27th July 04
Memo from SSD to advise that they have commenced assessments but are experiencing problems due to lack of information provided by Service Providers 10 & 11. Memo also raised a number of concerns.

14th October 04
Adult Protection Investigation – Strategy Meeting 3 regarding Service User 9, 12 Grove Road.

18th October 04
Letter from SSD to Service Providers 10 & 11 regarding their failure to provide information necessary for assessments.

22nd October 04
Letter from SP to Service Providers 10 & 11 notifying them of Validation Visit scheduled for 25th November 2004.

26th October 04
Letter from Service Providers 10 & 11 to SSD supplying the information requested by SSD in their letter of the 18th October 04.

25th/26th November 04
SP Validation Visit carried out by Employee 63, Employee 17, Employee 49, MM (SSD)

Validation Visit resulting in action plans for Accreditation and Quality Assessment Framework (QAF). Written up for presentation to the Commissioning Body.

8th December 04
CB agreed in principle that the contract should be terminated but a delay should be placed on said termination until 'client assessments and re-housing / service re-provision issues identified.'

16th June 05
Meeting held with Service Provider 4 (Employee 34, Employee 59, Employee 17, Employee 49?) issued both QAF / Accreditation Action Plan

6th September 05
Telephone call from Service User's relative with concerns regarding the service provided by Service Provider 4.

30th September 05

Re-review to determine compliance with the action plan. Service Provider 4 had failed to resolve any of the issues identified in the Action Plan.

25th April 06
Default notice issued for failure to submit performance information for the last three quarterly periods.

16th May 06
Default notice issued for failure to submit Interface files.

20th July 06
Unannounced validation visit to Seabank Road.

21st July 06
Validation visit to Seabank Road to conclude the Service Review that commenced in November 04.

26th July 06
Service Review completed. Report written.
Service Provider 4 failed to meet the requirements of Accreditation or the minimum standards required for the QAF. The recommendation of the Review Officers is to issue notice against the interim contract.

10th August 06
Letter to Service Provider 4 giving 12 months notice against the interim contract.

6.22.53. On 6 September 2006 an initial strategy meeting was held for Service User 16 who had been moved from Service Provider 4. The issue of concern was that Service Provider 10 may have been *"robbing him/her of his/her money*", and there were further concerns as to where his/her medication had gone.

6.22.54. The next set of strategy meeting minutes available to the consultant are dated 6 October 2006 and are headed Service Provider 4. These minutes confirm the concerns raised by Employee 36 in July 2004 as:

A. Tenants being unaware of their benefit entitlement and own financial arrangements
B. No access to utilities
C. No option to develop living skills
D. Medication not being managed
E. Tenancy licences not being stored properly
F. Privacy of tenants not being met

6.22.55. Employee 36 confirmed that the assessments could not be completed at that time due to the lack of information including finances, medication etc. He/she also confirmed that he/she and Employee 57 had written to Service Providers 10 & 11 to confirm the request for this outstanding information to be provided during September 2004.

6.22.56. {NB this strategy meeting occurred two years after Mr Morton and Employee 36 first raised their Adult Protection concerns}.

6.22.57. In addition, it would appear that this meeting may not have been aware of all the facts of the previous investigations at the outset, although details do appear to be shared.

6.22.58. The Supporting People representative advised that Service Provider 4 failed its service review in July 2006 but that the service had not been decommissioned to allow time for Service Providers 10 & 11 to address the needs of the Quality Assessment Framework. Due to lack of engagement the interim contract was due to expire on 14 August 2007 (the ODPM contract gave 12 months notice).

6.22.59. This meeting also records that Miscellaneous 11 (Miscellaneous 21 advocate) had written to Employee 22 on 29 June 2006 outlining his/her concerns regarding Service Provider 4 and had assisted 2 service users to move.

6.22.60. At this 6 October 2006 meeting a member of the DASS team stated that she believed DASS *"could not accredit Service Provider 4 given that Supporting People have found them to be unfit."*

6.22.61. The actions agreed at this meeting included:

A. *"Contracts to identify who lives at the Supporting Living Units and what social services are funding and liaise with Employee 54"*
B. *"Community Care Assessments to be reviewed for the fifteen people who reside at Service Provider 4."*
C. *"Employee 38 to brief Head of Services with regard to Service Provider 4. To include a) need for an investigation b) concerns of financial/verbal abuse and neglect c) failure to provide service d) Supporting People withdrawing accreditation……..."*

6.22.62. On 2 November 2006, Employee 39 chaired another strategy meeting in relation to Service Provider 4. This meeting states that:

"*Employee 25 stated that none of the clients are funded by Wirral* (Social Services*) in any way. Employee 38 commented that in subsequent discussions it was established that they do have needs but they don't meet the criteria"*

"……...Employee 36 stated that he/she would be going in, in the next few weeks to assess……."

6.22.63. A member of the Supporting People team reported that *"a meeting was first called in 2004 as Service Provider 10 was failing to meet the criteria and providing proof of finances. Supporting People were looking at pulling the contract…… Supporting people have advised Service Provider 10 that in twelve months time they will not be renewing the contract of which there is seven months left. In the meantime an unannounced visit was made in May 06 to Grove Road. …..the property was freezing, as the heating was not allowed to be put on. Service User 17 had not had any other food since his/her breakfast and it was 1530."*

6.22.64. Employee 39 stated that the priority at present is to get the clients assessed. Employee 62 stated that there is another option where Service Provider 10 could remain as landlord/landlady but relinquish his/her responsibility of care and bring in an agency to provide care but Service Provider 10 is not engaging with Supporting People.

6.22.65. Employee 39 summarised that it is believed that the clients require support and that Service Provider 10 is not meeting their needs. The authority cannot purchase from Service Provider 10 as he/she has not been accredited.

6.22.66. Employee 38 stated that he/she had spoken with the Police but unless there is clear evidence of intentional neglect then they will not get involved. Employee 38 stated that she would speak to the Police again.

6.22.67. Amongst the actions from this meeting Employee 62 was commissioned to develop a contingency plan of bringing in another care agency.

6.22.68. By 17 November 2006, the date of the next strategy meeting, Service Provider 10 had not responded to a letter from the Supporting People team regarding the contingency proposal mentioned above. The minutes also contain the following disturbing information:

"Miscellaneous 11 stated that when Service User 9 was asked about receiving his/her medication he/she stated that he/she also gave Service User 17 his/her medication. Service User 9 cannot read. Employee 36 stated that Service User 11 is desperate to be moved and Employee 36 made commitment to Service User 11 that this would be achieved."

6.22.69. Employee 22 was absent from work between December 2006 and April 2007 and on his/her return, his/her duties changed as a result of which he/she no longer had responsibility for the Learning Disability Service.

6.22.70. On 16 January 2007 the Supporting People wrote to Service Provider 10 in relation to a complaint by a relative of one of the service users regarding a deterioration in the standard of service being provided in its supported living accommodation. As a result the Supporting People team wrote to Employee 39 as follows:

"Please could you advise that, in view of the fact that Service Provider 10 receives the service users' monies then gives them an allowance, in the event that this money is not forthcoming and service users do not have enough to care for themselves, does this not constitute abuse?

Please could you advise me what date the next Adult Protection meeting is due to be held."

6.22.71. Following the complaint received on 16th January 2007, the Supporting People team undertook an unannounced visit to the three Service Provider 4 properties on 31 January 2007. This highlighted a number of discrepancies as to where individuals were living and consequentially there were errors in the level of HB payments and Supporting People payments. The cleaner of the properties was found to be "off sick", therefore there was a lack of support and sometimes the tenants went without food. The visit also exposed a continuation of Service Provider 10's practice of taking the tenants income (benefits) and handing out an envelope each week containing an allowance; in one case this was £50 per week and £10 for lunches at the day centre. The properties also continued to be very cold.

6.22.72. On 1 February 2007 Supporting People wrote to Employee 38 chasing the Adult Protection issues and advising of further concerns. The email also states:

"I have also emailed…..and CSCI because they are in breach of their registration having someone living in their registered scheme when they have not received an assessment."

6.22.73. On 1 February 2007 Employee 38 emailed Employee 39 to chase a response as the Supporting People team had been trying to contact him/her:

"It seems that there are now serious concerns around service user safety. It seems that some of the tenants had their food provided by the cleaner when she came on duty. Since Service Provider 11's death the cleaners work has not been monitored and does not appear to be happening on an agreed daily basis……As chair of this case you are aware that the last strategy on 17 November set actions for Employee 36 to investigate. Employee 36 has been on long term sick leave since before Christmas and so I am assuming this has not progressed……

Emergency action is urgently required."

6.22.74. On 25 April 2007 the Supporting People team asks:

"Any news on the assessments for Service Provider 4 clients?"

6.22.75. On 30 April 2007 Employee 38 wrote to Employee 39 and copied a number of colleagues into the email from DASS, CSCI, Job Centre Plus and Supporting People:

"Employee 39 as Chair for the Service Provider 4 safeguarding adults case I am writing to request action in pulling together a formal investigation of these services.

The General Adults team are nearing completion of the service review for the service users who are in Service Provider 4."

6.22.76. Employee 38 reminds Employee 39 of some of the background and cross refers to the previous Adult Protection concerns in Service Provider 27.

6.22.77. On 9 May 2007, the Supporting People team write to DASS, including Employee 39:

"Once again I am afraid I am the proverbial thorn in the side. Have you any further information on the assessments of the clients in Service Provider 4. Time is now quite limited and I know we will have to liaise with the clients to find them suitable accommodation. Please advise."

6.22.78. On 18 May 2007 Employee 39 simply responds:

"Where are we up to with this?"

6.22.79. On 24 May 2007 the Supporting Team writes asking for a meeting to discuss Service Provider 4 Exit Action Plan.

6.22.80. It would appear that Supporting People decided to escalate the issue of Service Provider 4 to Employee 64, and on 30 May 2007 wrote confirming that the CCAs had been completed but required validation by Employee 45 as the appropriate Senior Manager.

6.22.81. On 1 June 2007 the Supporting People team contact the DASS Adult Protection/Safeguarding coordinator (copied to Employee 64 and other Senior DASS managers) regarding a call he had received from a concerned social worker regarding some serious concerns about the wellbeing of a Service Provider 4 resident, including meals not being delivered, housekeeper not being replaced resulting in the deterioration of the interior and personal hygiene issues. The email goes on to say:

"After the concerns were raised in Jan 06 regarding the unreliable delivery of food and the lack of access that the SU's have to food, Employee 39 advised Employee 45 by telephone that there was food available to the SU's thus minimising the immediate risk. However, as per our T/C with Employee 69, this does not appear to be the case.

Once again we are becoming increasingly more concerned about the health, safety and wellbeing of the SU's."

6.22.82. On 4 June 2007 the Supporting People team also writes to Employee 64 and another DASS member of staff directly:

"As discussed and agreed the following:

Service Provider 4 – Service Provider 10 Contract Termination 14 August 2007:

A. You will forward a copy of all the assessments for the clients in Service Provider 4 ASAP advising SP of their support requirement, and whether any care needs have been identified.
B. You will discuss with AP the issues previously raised and advise of the current position.
C. SP to liaise with alternative support providers regarding a caretaker service as an interim measure.

….The outcomes of the above to be discussed at our meeting on Monday 11th June 1pm."

6.22.83. On the same day, 4 June 2007, the safeguarding co-ordinator writes back:

"We have had a change of structure here at DASS and Employee 65 has taken over from Employee 39. I have made Employee 65 aware of this situation and we will be convening a follow on strategy meeting as soon as is possible."

6.22.84. The next documents relating to strategy meetings available to the consultant relate to the meeting held on 8 August 2007. The minutes start:

"*Due to the concerns and never being able to bring Service Provider 10 to meet the minimum standards, supporting people have had no alternative but to issue notice against contract; this is due to end 12 August. During this time supporting people had arranged monthly impact meetings. Employee 39, who was chairing the adult protection meeting at the time, requested that these meetings be*

stopped and we could meet through the adult protection arena, however, no meetings had been arranged and the process ceased. Therefore supporting people went ahead and have introduced a caretaker service – Service Provider 16 are in place. A lot of people on the previous list are not in the properties any more. There have been issues with the residents being moved around between Service Provider 10's properties. No assessments had taken place and this breaks CSCI regulations that all residents are to have been community care assessed. ……Service Provider 16 will be supporting the people in the transaction and will work with the residents to get their benefits back and supported to move."

6.22.85. It was reported that "*community care assessments had been done but not put in place…..and that the service users had substantial or critical needs."*

6.22.86. It was also reported that *"there were assessments that Employee 36 had done previously. Employee 36 stated that they all had substantial or critical needs. Employee 36 does not know what happened to the assessments then Employee 66 said that none of the residents had needs. Employee 57 reported that the statement of needs and PD has since been done and some residents do come under substantial or critical needs."*

During the right to reply process Employee 66 has stated that he does not recognise the above as a statement he would make. He has further advised that whilst he was team manager for learning disabilities he attempted to address care management issues across the learning disabilities services and the service manager led on the supported living work as this was already underway.

6.22.87. It would therefore appear that Employee 66 had previously and incorrectly advised the SP Team that Service Provider 4 service users did not have Community Care needs. The SP Team were trying to co-ordinate alternative support arrangements for Service Provider 4 tenants at this time.

It is unknown why this occurred or how.

It should also be noted that apart from the above email no conclusive evidence has been made available to the consultant to prove that it was in fact Employee 66 that had undertaken these assessments.

6.22.88. The meeting is now chaired by Employee 65. The Police reported that no evidence had been referred to them which linked Service Provider 10 to financial abuse, however Employee 65 stated that he/she would make referrals to the CADT for the 7 residents, which will be *"launched to the General Adults Team……to ascertain their feelings and wishes in relation to finances and if they would like to move on……..To put care assessment in to action and put the PB's through for the care that is required."*

In addition,

"Employee 25 to contact CSCI and share his/her views again in relation to residents being in the home without the regulated requirement of a care assessment being in place."

6.22.89. By 21st September 2007, at a further Adult Protection Strategy Meeting, the minutes record Employee 65 as the chair of the meeting. The meeting is not in

the consultant's opinion particularly well recorded and therefore it has been difficult for the consultant to understand the flow of the meeting, for there appears to be conflicting information.

However the notes do record Employee 65 as stating:

"We have acknowledged that we have failed these people".

6.22.90. On 1 October 2007 there is an email exchange between various members of DASS Finance, Contracts and Management.

6.22.91. From contracts team to DASS Finance:

"Further to our conversation on Friday, re DASS taking over Appointeeships currently held by supported living providers, I have received a call from social worker Employee 70 who is based in Ashton House.

As part of the current adult protection investigation into the above organisation, he had confirmed that he has reviewed all residents of Seabank Road and Grove Road in conjunction with Employee 71.

All 7 now have breakfast, lunch and 3 hrs evening support going in (Apparently 1 service user said she has forgotten what breakfast and lunch are as she hasn't had them for so long! How awful eh!)

Employee 70 rang me for advice regarding DASS taking over as appointee for these service users, which is what we in contracts have been suggesting for a long time. The current situation is that Service Provider 10, owner of the above set up, is appointee for all – quite how and why I don't know but far from ideal given the capacity of the service users and their vulnerability."

6.22.92. Response from Employee 45:

"When I discussed this with Employee 71 last week I advised that we collate the evidence we have around our concerns about the management of finances to present to the DWP so that the appointeeships can be withdrawn. It could then come over to DASS until such time as we are clear if the individuals are able to manage their finances or whether family members could be considered. I have also asked Employee 71 to liaise with SP so that the continued service that is provided by Service Provider 10 delivering evening meals is stopped."

6.22.93. Response from contracts:

"The DWP should already be aware of the concerns around Service Provider 10 – Miscellaneous 6, DWP fraud investigator, was involved in the adult protection investigation into Service Provider 10's residential homes with us in 2005 (called as a result of Miscellaneous 7 building society alerting us following an application by Service Provider 10 to open 9 liquid gold savings accounts, supposedly for service users, all with the same signature).
If whoever is collating this info wants to contact me, I have a file of info on this provider going back to 2004. It contains testimony of concerns, including financial abuse, from our colleagues at Supporting People and Cambridge Rd day centre plus minutes of adult protection meetings."

6.22.94. On 12th October 2007 a further strategy meeting in relation to Service Provider 4 was held and chaired by Employee 65. An update report by Care Manager Employee 98 was presented.

6.22.95. In this report Employee 98 records that Service User 9 (who was the service user who initiated the original concerns about Service Provider 4 in May 2004 via his/her Day centre Manager) was still, three and a half years later, going without food. Mr Morton is understandably appalled and the reader would expect the Members and Senior Officers reading this report to have similar reactions.

It is also recorded that:

"All three tenants told me they did not like living at Seabank Road, Service User 18 was inconsolably crying and pleading with me to help him/her move out. The previous night Service Provider 10 called round and frisbeed his/her envelope of money at him/her which fell on the floor."

6.22.96. The report details how Service Provider 10 physically removed a support worker who had been commissioned by SP out of the building.

6.22.97. Employee 98 goes on to list the following concerns, most of which (and more besides) had been previously reported by Mr Morton and known to DASS for over 3 years:

A. *No written, signed and dated rental or other payment agreements*
B. *No receipting of monies paid or received*
C. *Evidence of Service Provider 10's deceased husband/wife still being appointee and his/her bank account still being used to handle monies, this came from Miscellaneous 6 in the DWP Fraud team*
D. *Tenants who do not spend their weekly allowance are only "topped" up at the end of the week and resulting in a couple spending all their money on the day before payment to get the full amount*
E. *Tenants getting "fined" £5 if they ask for their money a day early*
F. *A tenant told me that she is shown statements of her savings accrued through the year but this then goes back to nil at the end of the year*
G. *Service Provider 10 telling residents not to touch the substantial amount of food in the outside shed as it is "his/hers"*
H. *According to other tenants one resident of Seabank Road who Service Provider 10 is appointee for and claiming all benefits has not slept in her room for more than two years, she lives with her boyfriend in another place in Egremont and collects her allowance from Service Provider 10*
I. *Copies of an agreement (signed but not dated) saying residents pay Service Provider 10 £47 a week for food which is certainly not provided and £35 for unspecified "management fee"*
J. *Miscellaneous 9 who is appointee for Service User 19 being charged £96.10 per week by Service Provider 10; he/she has a breakdown which states this is for utilities, food and care however the food and care are not being provided to this extent.*

My personal view on the matter is that there needs to be clear role identification in this strategy process. I feel that there seems to be enough suspicion to warrant further investigative work by the appropriate agencies involved, currently I am being pulled outside of my remit of care management.

I further feel that the general integrity of Adult Protection procedures could be compromised without effective inter agency working which we need to get right in this complex situation."

6.22.98. The minutes of the strategy meeting also state:

"A tenants meeting was held last week to discuss the current issues regarding Service Provider 10. Tenants want to see rent books so they know how much they are paying, also tenants queried charges that had been made for various purposes. Another concern raised was the fact that the tenants are unsure if their Carer will turn up because Service Provider 10 will not let them in, or indeed if Service Provider 10 will even turn up. Service Provider 10 is allocating monies to feed and look after them, however Employee 98 mentioned that they are in no way receiving the appropriate food amount for the money that is being given to Service Provider 10. Employee 98 mentioned at this point that the Residents are being taken on shopping trips to make sure they have enough food to live on. The tenants are really enjoying this."

"Service Provider 10 physically removed a care worker from Seabank Road. This particular incident upset all the residents involved particularly because of the physical nature of Service Provider 10's actions. The care worker did go back later on to make sure that all the residents were ok. The Police had not been informed of what happened with the care worker."

6.22.99. A Supporting People impact assessment was undertaken on 12 October 2007; the notes of this meeting confirmed that the SP team had scheduled to undertake monthly unannounced visits. This document also records:

"As a result of an Adult protection meeting on 6/10 Employee 38 emailed Employee 17, which he/she shared with the meeting:

"Following the strategy meeting held on 6 October 2006 the recommendations were that Service Provider 4 needed to be investigated. It was felt that this investigation should be carried out by initially completing a service user assessment for all service users. This would give us clear evidence of concerns. I have since met with Employee 39 for advice on how best to advance this recommendation. Employee 39 will allocate an appropriate social worker to the case and will brief Employee 45 on his/her proposed action."

6.22.100. Another strategy meeting was held on 7 November 2007 again with Employee 65 as chair. At this point Miscellaneous 11 from Miscellaneous 21 was representing the service users as their advocate and that he/she was of the opinion that they all had capacity. It is noted that all service users will be moving from Seabank Road and that Wirral Council would become the appointee to improve financial protection. In addition, extracts from the minutes include the following:

"….no complaints or complainants therefore police action cannot be pursued. Police Officer 3 informed that wilful neglect will only be explored if the victim does not have capacity, which is not the case here."

"Employee 98 explained that he/she met with Relative 4. He/she explained that he/she paid Service Provider 10 ninety six pounds per week for the care of his/her daughter/son. This was an old agreement with Service User 29 however

the contract was not signed by Service Provider 10. Relative 4 is willing to make a complaint.

Police Officer 4 informed that this would not be a strong case for prosecution given that this was a verbal agreement and historically Relative 4 has withheld money from Service Provider 11. Police Officer 4 explained that this would be a civil matter.

Employee 98 reiterated concerns regarding Service Provider 10's deceased husband/wife still being the Appointee and his/her bank account is still being used to handle monies. Police Officer 3 informed that to investigate this allegation police would require evidence. In the first instance someone should contact the bank holding the account who should then investigate through their fraud department. If police action is required the bank would pass their findings onto the police.

Service Provider 21 questioned if the vulnerable adults wish to pursue a complaint when relocated could this be re-explored. Employee 65 confirmed that all professionals could reconvene following receipt of a complaint(s).

Employee 65 summarised that from an adult protection point of view all people involved had been made safe, however no complaints have been made. A protection plan is now in place to safeguard each person."

6.22.101. There is also an undated document titled Service Provider 4 (Service Providers 10 & 11) which Mr Morton advises that he secured via a colleague in DASS because it was on the shared server. Attempts have been made to identify the author and whom this document was sent to, but to no avail.

6.22.102. The document does not say why it was written or to whom it was sent. It is reproduced in full in Annex M.

6.22.103. In the section titled "Risks", the following points are made:

A. *"Departmental failure to decide whether disabled people were entitled to services on the basis of services carried out in 2004* (the consultant and Mr Morton assume that the second services was meant to have read assessments).
B. *Departmental failure to effect POVA protection plan from strategy meeting in 2005.*
C. *Supporting People will try to direct responsibility from themselves towards History of concerns, but failure to address effectively."*

6.22.104. Mr Morton's view is that:

"This was not a catalogue of mistakes – even failure doesn't do it justice. This was a dereliction of duty and wilful neglect of responsibility all of which was prompted by the overriding imperative to minimise financial liability to DASS."

6.22.105. The consultant's believes that the above note confirms her views that this was a failure of Adult Protection procedures that left vulnerable adults in untenable circumstances for many years. However, on 13 December 2010 it appears there may still have been continuing issues because the Supporting People team received another phone call from a concerned relative regarding meals and other

issues, the relative was given the CADT telephone number and was advised to make a complaint.

Conclusions

6.22.106. The owners of this establishment also ran a residential home and there have been overlapping adult protection investigations in General Adults (residential care) and Learning Disabilities (Supported Living) which had similar issues. This fact did not appear to escalate the concerns or increase proactivity on the part of DASS.

6.22.107. Despite this, there appears to have been little learning transferred from one investigation to the other.

6.22.108. In addition, and more worryingly, at least one of the service users circumstances did not improve at all during the period of the investigation, while others improved thanks to Mr Morton's and Employee 36's diligence in finding alternative accommodation with the support of a Miscellaneous 21 advocate.

6.22.109. The Adult Protection process was not effective, took too long to bring to a conclusion and failed the service users. The responsibility for this in the consultant's opinion falls to the Chair of the Adult Protection Strategy meetings and the Departmental Management team who should have been keeping oversight of the adult protection processes.

6.22.110. There were similarities between the financial abuse concerns across all 3 providers considered in the report. Again, there appears to have been little consideration of what could be learned from previous/other experience.

6.22.111. Such was the level of concern and frustration on the part of the Supporting People team that, it wrote to DASS outlining their understanding of Adult Protection concerns and further questions. The consultant has been advised by colleagues outside of DASS that from their perspective there is still a lack of clarity as to when DASS will act in relation to a safeguarding concern/referral but more importantly the effectiveness of the action for the individual concerned.

Overall Conclusions - Adult Protection / Safeguarding

Before setting out the overall conclusions relating to adult protection/ safeguarding, the consultant wishes to quote from a submission made by Employee 22, which may provide some context:

6.22.112. *"My employer was kind enough to allow me to work half the week from home and half in the office between April 2005 and November 2005. This was due to the diagnosis of cancer at an advanced stage of my 18 year-old son/daughter. His/her treatment and care demanded one parent to be at home at all times and he/she spent large periods of time in hospital. This fact was well-known within the Department and it is likely that Mr Morton would also have known about this. My son/daughter's condition deteriorated and through 2006 I would be called away from work suddenly, and be spending periods of time at hospital in Manchester. Throughout this period I continued to work full-time. My son/daughter had over 40 hospital admissions, as well as out-patient appointments to attend and had over 40 radiotherapy sessions. He/she had 6 different courses of chemotherapy. His/her determination to live as normal a life*

as possible meant that I, too, maintained my own normal life as far as was possible. In retrospect this may have been a mistake, as the bulk of this investigation has centred on the years 2005/6. If I had taken a leave of absence in April 2005 and returned in April 2007, after the death of my son/daughter at Christmas 2006, I would have received nothing but sympathy. Instead I tried to do my best for the Authority and for the very vulnerable people for whom I was responsible by coming to work every day, and trying not to let anybody down."

6.22.113. In addition, Employee 22 has advised that he/she believes that the operational and strategic context has changed in that there is "*far more regulation around providers. Considerable resources which were not available in 2005/6, have been devoted to unpicking the complexities of Service Provider 3. …..The service [Learning Disabilities] is now 3 times the size that it was in 2006 and staff employed within the Learning Disabilities services will say that they are fully stretched."*

6.22.114. There was obviously a disagreement between the officers of DASS as to how to deal with the issues outlined in relation to the 3 providers mentioned previously which remains unresolved to this date. Employee 22 has stated that:

"What was in dispute between officers, however, were the methods and tactics which must be used in order to either improve the quality of a provider, or terminate the Department's business with the provider. Both myself and Employee 11 were in agreement that we had to operate within a legal framework and that any action had to be evidence-based. The legal framework meant that we could not arbitrarily restrict trade by ending the relationship between the Department and the provider without full investigation and evidence…….In 2005/6 there had been a number of adult protection complaints made about the quality of services in Service Provider 2 and also many anecdotal reports from practitioners for such an investigation to be launched."

The consultant has not seen any legal advice or documents that confirm whether or not the approach outlined by Employee 22 was/is supported. Employee 22 has stated that this approach was supported by the Director and the service managers, including one of those who declined to participate in this review. There is no documentary evidence to prove/disprove this point other than that provided by Mr Morton, who Employee 22 alleges did not voice his concerns at the time.

The consultant is, however, of the opinion that any/all such advice available should have been shared with those concerned members of the team and formed the basis of internal communications and procedures for that team (and possibly others) going forward. Employee 22 has, however, advised that he/she shared the approach with Employee 45 and others (at least one of which has refused to participate in this review). Employee 22 has stated that he/she relied upon Employee 45 to share this with Mr Morton. The consultant has been provided with no documentary evidence to prove/disprove this point.

6.22.115. Mr Morton has alleged that the actions taken by some of the providers identified in this report were "fraud" or "theft". The Fraud Act 2006 includes 3 classes or definitions:

A. Fraud by false representation.
B. Fraud by failing to disclose information.

C. Fraud by abuse of power - which is defined by Section 4 of the Act as a case where a person occupies a position where they are expected to safeguard the financial interests of another person, and abuses that position: This includes cases where the abuse consisted of an omission rather than an overt act.

It is not clear to the consultant from the paperwork she has seen, what element of the law the police considered in relation to these providers, in particular Service Provider 3. However, it is clear from the paperwork that the police based on the evidence made available to it did not consider there to have been proof of a crime.

6.22.116. Employee 22 has advised during the right to reply process that in his/her opinion:

"T*he law is still not always clear about the operational framework for providers and this can lead to business practices which are seen as sharp or even unethical for officers, but which are legal."*

6.22.117. If the 3 cases detailed in this report were in any way representative of the Adult Protection/Safeguarding processes in place across DASS at that time, then the Council had significant cause for concern. To some extent the issue of the CQC report last year suggests that the processes were flawed. Of more concern is that, based upon the information made available to the consultant, the Officers do not appear to have reported these concerns to Members in a formal sense at that time and, therefore, much of this was a surprise to Members.

6.22.118. It is imperative that Officers ensure that Members understand the full gambit of risks and issues relating to DASS, and to this end the consultant is aware that Employee 21 conducted briefings for senior Cabinet Members with the Chief Executive.

6.22.119. It was not within the consultant's terms of reference to review the work Employee 21 put in place since taking over, but Members should be receiving regular information that will allow them to scrutinise progress and gain sufficient assurances that everything that can reasonably be put in place to prevent such a situation occurring again has been done.

6.22.120. With the passage of time, the limited number of senior managers available for interview and therefore a reliance upon email evidence, it is impossible to determine with any level of certainty whether or not the Service Provider 2, Service Provider 3 and Service Provider 4 issues bear significant resemblance to those raised in a BBC Panorama documentary in June 2011, which was something suggested by Mr Morton.

6.23. Current Position

6.23.1. The terms of reference for this review do not include a requirement for an assessment of the current position in DASS. However, her terms of reference did included a requirement to review and provide informal feedback on the first plan developed by DASS in response to the CQC report to the Officers.

6.23.2. In summary it was the consultants opinion that initial response needed to be improved in a number of areas, in particular:

A. It was overly complex;
B. It appeared overly ambitious in terms of timescales if cultural and other organisational development issues were to be addressed and embedded rather than a "tick box" approach adopted;
C. There were interdependencies both within and without the organisation which may pose risks;
D. In the light of the above, concerns about the capacity of the organisation to deliver.

This feedback was accepted by the Officers.

6.23.3. In relation to the current position it is encouraging to note that since he/she took over Employee 21 established regular meetings with Senior Members of the Cabinet where he/she provided regular updates as to progress, and subsequently reported formally to Members at Committee. As a result the consultant has not undertaken any ongoing review of progress in the delivery of the action plan to address the CQC recommendations.

6.23.4. In respect of Learning Disabilities however, during June 2011 the consultant has received the following update when enquiring about the externalisation of in-house support services:

"Families and carers have been at the centre of the decision making process. This work represents best practice in co-production. Through the Personal budget route individuals and carers are shaping the support to be both innovative and outcome based.

Supported Living - work continues to develop support plans and service specifications with residents of supported living establishments; this has been a very positive experience for many carers and people who use services who have been leading the selection process. The Council's new accredited providers of Personal Support at Home have all been notified and the selection process for the re-provision of supported living has been taking place over the past two weeks. This has been a phased approach. During the first phase, 17 accredited providers were selected to proceed to phase 2, which took place on 26 and 27 May. Panels of tenants and carers were self selected by each of the service areas, and interview questions were designed by tenants and carers. The successful providers will be notified in the week commencing 6 June which will give up to a month of transition between the existing service and the new service, for minimum disruption to the tenants and their families.

Our new contracts for personal support/supported living are now personalised and structured to deliver outcomes.

We have a task group looking at the issues of mental capacity and tenancies and have networked at nationally and regionally to look at how other local authorities are dealing with this issue."

6.23.5. To provide some context to the current position, the consultant has reviewed a few documents from March 2011, which updated Members as to the progress within the department. The consultant has not tested these progress reports, which is something that Members may wish to revisit.

6.23.6. The consultant's observations on the documents referred to in paragraph 6.23.1 above are limited to:

Health and Wellbeing Overview and Scrutiny Committee Reports 22 March and 20 June 2011.

These reports provide the Committee Members with information as to the performance of the Department against the 28 indicators set out in the Departmental plan.

Again, this is a better position in terms of performance reporting than has been seen in the past, but the issue here is how this information is being used by Officers and Members to hold the senior team to account for performance, e.g. why was no corrective action deemed necessary for PI Local 8007 when it was reported in March 2011? Was it because it was the year-end and Officers realised they could not effect a change in this area, or was it because they had spotted this issue earlier in the year and mitigating actions had had little or no effect? The report does not provide an explanation.

6.23.7. When the outturn for 2010/11 was reported in June 2011, the department had continued to under achieve in this area. This should be of concern to Members as this had also been an historic issue highlighted during the consultant's review.

In addition, Local Indicator 8866 was red in the March 2011 report, where it states: *"This critical indicator measures progress against Outcome 7. Significant improvement has been sustained in 2010-11. Where the 24 hour target is not met, effective systems for tracking and monitoring are in place to ensure that all safeguarding adult referrals are appropriately dealt with."*

Perhaps more worryingly, the Q3 assessment was RED at 89%, with a year-end predicted outturn of 95%. By Q4 however, the actual performance had deteriorated to 88.69% without any detailed explanation.

6.23.8. On 26 July 2011 however, the consultant was supplied with the following information by DASS that is more encouraging:

Indicator	March 2011	June 2011
Local Indicator 8858 – the percentage of completed assessment that are recorded as self assessments (the percentage of all people who approach the Department for support who are choosing to complete their own assessment).	38.77%	84.54%
Local Indicator 8007 – Clients receiving a review (Adult and older clients receiving a review as a percentage of those receiving a service)	57.73%	82.26%
Local Indicator 8867 – Percentage of Adults Safeguarding incidents closed or dealt with within 28 days (The percentage of safeguarding incidents regarding clients aged 18 or more that are closed within 28 days)	66.31%	75.90%
Local Indicator 8869 – Timeliness of social care packages following assessment (Service users should expect practical help and other support to arrive in a timely fashion soon after their problems have been referred to social services)	88.08%	93.16%

7. Further Conclusions

7.1. It is the consultant's view that the PIDA report in 2008 should have come as no surprise to DASS or the authority as a corporate body. She has formed this opinion because during her investigations various internal audit reports and wider finance reports raised concerns about Adult Social Care at the highest levels and informal "off the record" comments suggest that Adult Social Care had remained a concern despite improvements in external assessments.

In addition, the consultant believes that the CQC report should not have been a surprise either, given the concerns Mr Morton had raised and the "red flag" that the Audit Commission had raised in respect of data.

7.2. The consultant does not believe Mr Morton to be a vexatious complainant. He has raised issues in good faith, which he believes detrimentally impacted upon a client group with whom he has great empathy. As stated in Miscellaneous 8's report, the Council did not act appropriately in its dealings with his grievance and whistle-blowing complaints, which were inextricably linked. Mr Morton believes that as a result of his whistle-blowing complaints his career and family life have been detrimentally affected. It is certainly true that Mr Morton now finds himself without a permanent job. The Council will certainly need to give further thought to its earlier conclusions in respect of any remedy for Mr Morton.

7.3. The Council needs to take the recommendations in relation to whistle-blowing that have previously been made by Miscellaneous 8 and other external stakeholders very seriously for, as has been demonstrated in Mr Morton's case, the Council has not yet learned how to embed a culture whereby whistle-blowing concerns are investigated in a robust manner without fear of reprisal for the whistle-blower.

7.4. Having said that, however, and subject to the effective implementation of the recommendations set out below, the Council must (a) rectify the situation, (b) improve DASS and the Council more generally to reduce the risk of any such issues occurring again and (c) be allowed to draw a line under this period of its operation in order that it can rightfully focus on improving services to its citizens and service users. This will not be possible while the Council is continually looking backwards.

7.5. During the right to reply Employee 21 made a submission which is supportive of the consultant's report. In this response Employee 21 states:

"You make reference in several places to the deficiencies in performance management in DASS. You are right. DASS has not in the past and still does not exhibit a performance management culture. I have identified it as an urgent priority if improvement is to be embedded.

That is not to say that there have not been improvements in the management of performance. There have been many, for example:

- *Introduction of a monthly PMSLT with a standard agenda focussing on performance, delivery and risk,*
- *Regular, sometimes weekly, monitoring up to Director level of some PIs identified as critical,*

- *Performance surgeries at Branch level,*
- *Performance surgeries for strategic change projects at Director level,*
- *Roll out of a new social work supervision policy linked to the national social work standards*
- *Roll out of the new corporate performance monitoring arrangements initially to SLT level*
- *Implementation of regular supervision meetings linked to individual performance at senior level*
- *Devising new safeguarding policies and procedures and launch, widely acclaimed across the partnership, with a stronger focus on partnership working and quality."*

In relation to Safeguarding Employee 21 states:

"The sense from your report is that whilst DASS colleagues sincerely believed that the safety of vulnerable adults was at the centre of their concerns, indeed it dominated their daily lives, the organisation and culture of the department left critical weaknesses. I agree that this was the case and changing this perception has been one of my most difficult challenges. I believe that there is still some way to go but that many of the issues have been addressed at a fundamental level. For example:

- *New safeguarding procedures have been devised and launched across the partnership,*
- *The operation of CADT has been overhauled and strengthened to acclaim,*
- *New procedures for learning from serious incidents have been introduced and operated,*
- *The Safeguarding Adults Partnership Board is operating much more effectively with better partner engagement,*
- *A new structure for staffing has been agreed and is about to be implemented,*
- *A combined operation with CYP has been put in place to learn from a very successful Council service,*
- *A combined structure for complaints management has been put in place,*
- *The status of safeguarding has been dramatically raised, including by the appointment of a top quality Head of Service to this work and the inclusion of the Principal Manager (Adult Safeguarding) on the Senior Leadership Team.*

There remains much to be done as part of our 14 month programme. Many steps will be completed as planned by December but 2012 will be needed fully to embed the changes. You have identified several key challenges. They include:

- *We need to strengthen the quality assurance team who monitor independent providers*
  This team is to be strengthened by appointments agreed in September by Cabinet
- *We need to strengthen the team providing independent oversight of safeguarding*
  This team is to be similarly strengthened

- *We need to clarify the working relationship between safeguarding, assessment and contracts teams*
  This work is in hand
- *We need to embed the changes in complaints management and improve the performance of the team*
  This work is in hand, including dealing with long term absence in the team
- *We need to clarify the arrangements between DASS and CYP and explore the extent of "jointness"*
  This work is in hand
- *We need to make sure that the case file audit arrangements are working effectively and that cross cutting lessons are captured*
  This work is in hand"

7.6. Legal and Committee Services

7.7. There is a need to review the structure, skills and capacity of the Legal and Committee Services Team in the context of this report, the challenges facing the Council currently and improvements required in corporate governance. There needs to be clear and robust leadership to help these teams develop with strong and clear day-to-day management of the teams. This is a priority for the Council, as these teams should play a key role in the improvement of governance in the Council. They need to be able to articulate clear standards and requirements and hold members and chief officers to account.

7.8. Although not specifically part of her investigations the consultant is aware of a number of delays and errors in relation to Mr Morton's Standards complaint. This in the context of everything that has gone before, which includes a catalogue of errors, is unacceptable. Employee 2 needs to explain "what went wrong and why" to Members and Mr Morton, in order that they can be assured that this will not be repeated.

The consultant would also ask the reader to conclude as she has: "Is it any wonder that Mr Morton and others that support him have lost confidence in the Council?" As a result there is a tendency to see conspiracy or an attempt to "cover up" where perhaps none is justified. Whilst not wishing to create a culture of fear within the Council however, which would in the consultant's view be counter-productive, there is a need to create a culture of accountability and responsibility with consequences where things go wrong.

During the right to reply Employee 2 has stated that *"I accept that there were a number of delays and errors in relation to Mr Morton's Standards Complaint. I have personally apologised to both Mr Morton and the Members of the Standards Committee for these failures. I also prepared a formal report to the Standards Committee setting out the reasons why Mr Morton's complaint was mishandled……The Committee Officer tasked with administrative responsibility for Mr Morton's complaint had over 30 years local government experience. There is no rational explanation as to how he came to make so basic an error as to attach the wrong version of Mr Morton's complaint to the papers distributed to Committee. The officer in question left the Council's employment at the end of June 2011."*

7.9. Policy and Performance Unit

7.10. The Policy and Performance Unit needs to be refocused on its core responsibilities with, perhaps the development of separate policy and performance functions/teams with clearly defined roles and responsibilities for each, which will enable:

A. Horizon scanning for new areas of legislation/changes to Government policy.
B. Identifying the issues, risks and concerns for Wirral, enabling chief officer debate at management team level and with Members.
C. Enabling the transfer of responsibility when concept is to become reality.
D. Highlighting the transfer to the Governance Team to enable monitoring of implementation.

Had this structure been in place, the likelihood of DASS' failure to fully implement fairer charging would have been minimised.

It should be noted that before publication of this report the Council had implemented a decision which divided the policy and performance management elements and this is welcomed by the consultant.

7.11. Record Keeping and Records Management

7.12. A theme in relation to DASS has repeated itself during both the Internal Audit Investigations and this review relating to:

A. Lack of formal and informal recording of decisions.
B. Poor quality record keeping, both in relation to the quality of the record itself, e.g. the minutes of some strategy meetings reviewed do not in the consultant's view provide a strong audit trail of activity.
C. Implementation and control of document retention and location which results in lack of access to historic records.
D. Inability or lack of prioritisation of responses to FoI requests.

The consultant has sought to verify whether this has improved in recent times and received varying responses. This needs to be addressed via Employee 77's leadership as part of his/her improvement programme and tested via internal audit.

The inadequate arrangements in the past cannot be undone and it will therefore remain a risk in any future internal or external challenges that may arise.

7.13. Freedom of Information

7.14. This is not a specific allegation raised by the whistle-blower, or indeed any of the complainants, but it must be noted that DASS has:

A. Received a significant number of FoI requests from the whistle-blower and related parties in what the consultant believes to be an attempt on their part to 'uncover the truth'.
B. Found it enormously difficult to find the documents requested due to its poor document management procedures.

As a result the complainants have endured significant delays, which have in the consultant's opinion fuelled the suspicions of cover up and conspiracy.

7.15. It is the consultant's opinion that this is likely to continue unless/until the complainants believe the truth has been unearthed and that whatever their particular outcomes have been achieved.

As a result DASS needs to address its document storage and retrieval processes in relation to this case.

7.16. Client Management and Monitoring of Providers

7.17. The consultant had during the course of the investigation concerns as to capacity of the team undertaking contract monitoring and safeguarding processes within DASS. In particular, if these processes were to become more proactive, and have a broader field of view then, capacity appeared to her to be challenged.

7.18. It is acknowledged that DASS has recruited another senior manager to its team and it is understood that she will have a specific focus upon safeguarding amongst other issues, the consultant is nonetheless of the view that this area needs review. This is especially true given, that the number of providers in use/to be used by DASS has increased greatly as a result of the recent procurement exercise and, to avoid over reliance upon one/a few providers, it seems to the consultant that this may be further stretched.

7.19. Tenancy Agreements

7.20. In response to the question "what role did DASS have in checking the tenancy agreements promoted by its chosen provider, Service Provider 3?", Employee 22 has advised:

"DASS did not have responsibility. This was between Service Provider 3, the tenant and where funded by Supporting People, they would check (I think). The matter of tenancy agreements and vulnerable people is fairly complex. If a person is able to sustain a tenancy, they were assumed to be able to understand a tenancy agreement. If not, they were seen as not able to do so and therefore more suitable for residential care. However, the Mental Capacity Act has brought much better safeguards in this respect. Someone may well be able to live quite independently and make choices in some areas of their life but not fully understand all of the implications of such an agreement."

7.21. The consultant accepts that the Mental Capacity Act has improved understanding of this area but, looking at the explanation the assumption contained within Employee 22's statement, which may indeed have been the DASS position needs to be challenged both in respect of the formal assessment undertaken by DASS and in terms of the advocacy/wrap around support to enable vulnerable adults to initiate this independent living arrangement.

7.22. The reader is asked to consider this:

The service users moved from Esher House to the 3 West Wirral properties did not have capacity assessments (the Mental Capacity Act 2005 was not introduced at the time). As part of the reimbursement process, however, they have been required to undergo a mental capacity assessment to determine their

ability to understand the situation they find themselves in. As a result they now have appointees or a Deputy, as most were deemed not to have capacity.

7.23. If this group of vulnerable adults is representative of the wider client base of vulnerable adults in supported living, then DASS should in the consultant's view be providing support and assistance in enabling each service user to enter into a tenancy.

7.24. In recent correspondence between DASS and HB, issues relating to supporting living placements have been discussed. The following is an extract from this correspondence:

"The first most quoted obstacle is the issue of capacity in order for a person with a severe learning disability to understand and to sustain a tenancy agreement.

Sometimes with assistance this can be achieved regardless, but if it cannot, the Mental Capacity Act 2005 gives the authority to sign a tenancy agreement in that person's name so long as it can be demonstrated that it is in the person's best interests to live there. This paper in itself gives some material in a general sense to be able to demonstrate a best interests decision of this nature.

If there is any doubt or element of restriction required in the support to prevent a person from leaving for their own safety, which may be considered a deprivation of liberty, then the tenancy and any such restrictive support should be run past the Public Guardian 's Office to give it added authority and legitimacy."

7.25. The consultant recognises that the clarity as to roles and responsibilities etc has been improved and become more stringent since the introduction of the Mental Capacity Act 2005, but clearly the approach of the Learning Disabilities team was less than satisfactory although in mitigation Employee 22 has explained that some service users may have signed tenancy agreements before becoming eligible for support from DASS.

7.26. This issue has been raised with Employee 21 who agreed with the consultant's views in this regard. Employee 21 has advised that this should be addressed through advocacy via the commissioning processes that were to be completed in autumn 2011.

7.27. Performance of Senior Officers

7.28. The consultant has set out a large amount of information, which in a number of instances have highlighted where the actions/lack of action on the part of senior managers gave her cause for serious concern and need to be reflected upon.

7.29. Corporate Working

7.30. In consideration of the case of the Queen v Wirral Borough Council, the Honourable Mr Justice McCombe in his judgement handed down on 9 July 2006 stated at paragraph 27 that:

"Within the Council, as a matter of administrative practice, the 'Supporting People' (SP) grant is managed by the Regeneration Department, rather than the Social Services Department which deals with the other welfare services that are

in issue in this case. It is possible that to some extent in the present case that the left hand of the Council has not known what its right hand was doing."

7.31. The consultant agrees with his Honour in that, DASS appears not to have been "in control" at many times during the period of this review and that the SP team were on a steep learning curve where the seeming lack of coordination and/or co-operation between DASS and Supporting People making this curve even more steep.

7.32. Incompetence v Mistakes

7.33. Undoubtedly there have been a myriad of errors which have been highlighted as a result of this review. The consultant has seen nothing to suggest that any of these actions/lack of actions were intentional.

7.34. There are, however, questions remaining that flow directly from this investigation and need to be answered by the Council, i.e. when does a series of errors become incompetence, how and who decides this and what are the consequences for incompetence?

7.35. This is not within the scope of this investigation but, is an important element of any improvement plan for DASS and for that matter the performance management arrangements that should underpin the organisational development and structures of the Council. It goes to the heart of corporate governance.

7.36. Conspiracy

7.37. Some of the questions posed to the consultant by concerned members of the public and Mr Morton boil down to:

A. Was/is there a conspiracy within DASS to undermine Mr Morton and/or his complaints, e.g. through the incorrect and late payment of his compromise agreement, through the manner in which management addressed his whistle-blowing complaint or via the shredding of documents etc?
B. Is there any evidence to demonstrate that DASS officers attempted to cover up the errors or problems?

7.38. Miscellaneous 8 has dealt with some of the conspiracy issues in his report and therefore the consultant has relied upon elements of that report together with her own enquiries to come to any conclusions. She has found no evidence of conspiracy or cover up more generally, although based on the evidence provided to her she has already identified that issues and concerns within DASS do not appear to have been clearly and formally reported to Members, other than those issues outlined at the Charging Policy Working Group.

7.39. Conspiracy in Relation to Mr Morton Personally

7.40. The consultant has found no evidence to suggest that there was any clear motive or objective for any member of DASS to act in this way. It is the consultant's opinion that some Officers within DASS are wary and perhaps even afraid of Mr Morton, and in the case surrounding Mr Morton's compromise payment this did in the consultant's opinion appear to lead to a reactionary and misguided attempt to make the payment urgently, rather than a considered one. She has formed this opinion as a result of the consequences of the error, i.e.:

A. Exposure to heightened risk of an HMRC inspection.
B. The significant additional work involved for those who made the errors.
C. The level of criticism now focused on those that made the errors.

Employee 28 has during the right to reply process advised that he/she was not aware of item (A) above and that this was not an issue identified during the signing of the compromise agreement.

7.41. In the consultant's view however, Employee 28 was in error when he/she advised Finance that Mr Morton's payment was in relation to redundancy and an ex gratia payment. The compromise agreement refers only to "ex gratia payment" and therefore HMRC have been wrongly advised. In addition, NI contributions should not have been deducted but Employee 79 took the view that if an employee had documentation showing both tax and national insurance deductions it was important those deductions should reach HMRC. HMRC could then determine the best course of action regarding any refund after consulting the supporting background information included in the documentation that accompanied the payment.

Employee 28 has stated during the right to reply process that his/her email to the tax compliance manager in 2010 has confused the issues, but that it was the reason given for the amount and not the reason that Mr Morton was released.

7.42. This must now be rectified by the Council and Mr Morton must be copied into the Council's letter to HMRC. In addition, it would be helpful if the Council were to provide HMRC with a further explanation of the errors made on its part in this case.

7.43. Miscellaneous 8's report deals with the issue of the Council's whistle-blowing policy. The consultant is of the opinion that the failures of the Council in relation to Mr Morton's original whistle-blowing have assisted in the development of a view that there was a conspiracy against him.

7.44. Conspiracy to Undermine Investigations

7.45. Whilst Mr Morton has raised allegations relating to shredding of documents pertaining to him (dealt with by Miscellaneous 8) and shredding of documents when Employee 11 allegedly visited DASS after Employee 64's appointment, the consultant has found no evidence to substantiate this line of thought.

7.46. In relation to the error on the part of Internal Audit in its report to ARMC where it understated the number of affected service users, the consultant has concluded that this error came about because of the narrow interpretation of the scope of those to whom reimbursements were due, i.e. it was applied to current residents only, rather than all residents that had been in occupation at one or more of the West Wirral properties. This error was rectified in a subsequent report to ARMC.

7.47. In addition, during this investigation Internal Audit have also looked again at the calculation of the amounts to be reimbursed and, undertaken a verification process of the amounts paid.

7.48. Officer Cover Up

7.49. The consultant's opinion is that there was certainly a lack of transparency in officer reports and she has found limited evidence of open and frank briefings to Cabinet Members, although she recognises that the lack of involvement of past senior managers has limited her evidence base in this regard.

7.50. She has not identified any barriers in relation to this investigation, other than the lack of documentation, failure of memory and changes of personnel.

7.51. Impact Upon Service Users

7.52. From staff statements it would appear that during at least the early days of implementing supported living circa 1997 - 2001 providers established services and DASS utilised those services. This is verified by the fact that Employee 9 and Employee 20 were involved in early meetings/discussions from at least 1999 and Employee 20 sent Service Provider 3 a draft service specification. No correspondence has been presented which suggests that DASS advised Service Provider 3 that its charging regime was unacceptable.

7.53. There is a position that could be argued that, in these early days, there were very few providers and therefore the opportunity to utilise these services was a high priority both for service users and for DASS (to meet Government requirements and cost reductions, for the expectation was that this route would be less expensive).

7.54. Because of the lack of engagement from the Contracts team, procurement advisors (Wirral did not have a central procurement team) and legal advisors, the arrangements were poor, without contracts & performance standards and in the consultant's opinion led to an over reliance upon a few providers who maximised their position arguably both in terms of numbers and cost.

7.55. The lack of experience in Wirral at that time and perhaps even during the period of the review in terms of market development and management is evident and, the DASS experience does not provide the consultant with confidence that Wirral has learnt the invest to save lesson, i.e. sometimes you need to invest in more process up front to minimise the risk of things going wrong later. In this instance, it would in the consultant's view have required some additional resource which could have led to a better outcome for all.

7.56. In the consultant's opinion, the failure of DASS during the period covered by this review has put vulnerable adults, who were either supported by THB/SP or under the "care" of the providers covered in this report via CCAs, at greater risk, and to quote Mr Morton made them "pawns" in this whole saga. A totally unacceptable situation that needs to be learned from at Member, Senior Officer and Middle Manager level.

7.57. In the consultant's view the culture of DASS appears to be that "the abnormal has become the norm" and the consultant is concerned that many of DASS do not know what "normal" looks like.

7.58. Due to the high number of Public Interest, PIDA and other highly negative and extremely unusual actions taken by external bodies, in an attempt to highlight concerns and issues to Wirral Members and Officers, the consultant is also

concerned that the culture of the Council as a single organisation needs review. This is not to undermine the pockets of acknowledged good work across many teams of the Council.

7.59. If positive and constructive change is to occur a clear articulation of "this is how we do business in Wirral" needs to be developed and modelled every day by those in leadership positions throughout the tiers or management. This will need to be supported by the development of an ability to constructively challenge those who do not adhere to these behaviours.

7.60 Discrimination

In order to address the issue of discrimination, the consultant specifically sought the advice of Legal Rep 5 who were commissioned to provide a view as to whether there had been any breaches of the disability discrimination legal framework. The following paragraphs are drawn from that advice:

7.61. "*Under my terms of engagement, I am specifically required to opine on the question of whether or not the Council has discriminated against the affected service users. Specifically, I am asked to comment on whether or not the Council's actions constitute disability discrimination. The relevant law for the periods under review is the Disability Discrimination Act 1995.*

7.62. *Whilst the background and issues are complex, I believe the following six matters reflect the principle allegations of discrimination to which I have therefore addressed my mind:*

A. The Council's charging policy in respect of the period from 1997 until 2000 (the point at which the policy should have been reviewed) (the "First Period");
B. The Council's charging policy in respect of the period from 2000 until 1 April 2003 (i.e. the period between the date when the original policy should have been reviewed and the date when the Fair Charging Guidance should have been implemented) (the "Second Period");
C. The Council's failure to review the charging policy applied during the Second Period;
D. The Council's charging policy in respect of the period from 1 April 2003 until 1 February 2006 (i.e. the period between the due date for implementation of the Fair Charging Guidance and the date on which it was actually implemented) (the "Third Period");
E. The Council's reimbursement policy in respect of deemed overpayments made between 1 April 2003 and 1 February 2006 (and, in particular, the question of whether or not the Council should pay interest on amounts so reimbursed) (the "Reimbursement Issue");
F. The Council's failure to provide affected individuals with access to funded legal advice (the "Legal Advice Issue").

7.63. *The First Period*

7.64. *It is settled law that local authorities are entitled to charge for the services they provide to persons with disabilities and, further, that charges can reflect the level of services provided to service users.*

7.65. *The fact that the charges levied by the Council may (comparatively with other councils) be regarded as being on the high side, the 1997 charging policy nevertheless remained within the scope of the statutory authority granted to the Council under section 17 of the Health and Social Services and Social Security Adjudication Act 1983. The level of charges levied was not, therefore, discriminatory.*

7.66. *The fact that residents at locations other than the Moreton properties were charged differently (and, most likely, less) is not, in my view, discriminatory. The Council's actions clearly indicate poor administration, but the fact that other persons with disabilities were arguably treated more favourably than the*

residents of the Moreton Properties, is not, in my view, indicative of the Moreton Property residents being treated in a discriminatory fashion.

7.67. *Accordingly, in my opinion, no discrimination occurred in respect of the First Period.*

7.68. ***The Second Period***

7.69. *During the Second Period, the 1997 charging policy continued to be applied, albeit without the formal authority of a resolution of the relevant Council committee. This may, of course, be maladministration on the part of the Council but it does not, in my view, alter the position in respect of the discrimination analysis.*

7.70. *From a statutory perspective, the Council is permitted to charge for its services in accordance with the statutory powers granted to it under section 17 of the Health and Social Services and Social Security Adjudication Act 1983. The absence of a formal resolution of the Council authorising it to do so in accordance with its internal governance procedures does not, in my view, render the ongoing charging policy inherently discriminatory.*

7.71. *The position is complicated further by the Council undertaking a review of other service users' charges. The Council apparently did not review the charging policy in respect of service users with learning disabilities for reasons unknown.*

7.72. *The fact that the Council could have reviewed its charging policy (and indeed did so with other service users) does not render the charging policy inherently discriminatory. The review, had it been undertaken, would have been voluntary and, clearly, the outcome of the review could have been to leave the policy unchanged.*

7.73. *Whilst I note that the Council has subsequently decided that it should reimburse service users in respect of the Second Period (by looking at the difference between what was actually charged and what the charges would have been had the charges been reviewed under the Council's Wider Charging Policy), I do not regard this as necessarily affecting the question of whether or not the Council's charging policy was itself discriminatory.*

7.74. *For these reasons, the principles outlined in respect of the First Period above apply equally to the Second Period. Accordingly, in my opinion, the Council's charging policy was not discriminatory.*

7.75. ***Failure to Review During the Second Period***

7.76. *I concluded above that the charging policy applied during the Second Period was not, of itself, discriminatory. An equally relevant question. however, is whether the failure to review charges for this group of service users was itself an act of discrimination.*

7.77. *If the failure to review the charges for this group was caused or influenced in any material way by the fact of the users' disabilities, or for reasons directly related to them (i.e. the complexity of the benefit structures applicable to disabled service users) then prospectively there would be grounds to assert that the Council acted in a discriminatory fashion.*

7.78. *However, I have not been able to obtain information regarding the reasons why the Council did not review this charging policy in 2000 in respect of this group of service users. In the circumstances, I am unable to express a view one way or the other.*

7.79. ***The Third Period***

7.80. *This is perhaps the most difficult period for the purposes of assessing whether discrimination has occurred.*

7.81. *During the Third Period, the 1997 charging policy continued to be applied without formal authority (as was the case during the Second Period). The differentiating factor, however, was the introduction of the Fair Charging Guidelines.*

7.82. *As I understand it, the Fair Charging Guidelines are not mandatory in their operation (i.e. it is not a mandatory requirement of Government that the guidelines are implemented).*

7.83. *On the one hand, the principles outlined in respect of the First and Second Periods apply equally to this period. The statutory power to charge is unchanged. The possible presence of maladministration continues. The failure to adhere to the Fair Charging Guidelines does not necessarily constitute an automatic breach of the Council's statutory power to charge. Clearly, however, deviation from the Fair Charging Guidelines would make such practices highly vulnerable to challenge on the basis of reasonableness.*

7.84. *Ultimately, therefore, the Council's charging practice prospectively fell within the its statutory powers and, as such, may not be regarded as discriminatory for the same reasons as applied in respect of the First and Second Periods.*

7.85. *Conversely, however, the failure to apply the Fair Charging Guidelines has resulted in a materially adverse outcome for the relevant service users. The legacy 1997 charging policy resulted in considerably higher charges being levied.*

7.86. *In the light of the mandatory guidance issued by Government, the continued application of the 1997 charging policy is clearly unreasonable and therefore prospectively outside the statutory charging power set out in section 17 of the Health and Social Services and Social Security Adjudication Act 1983 which requires that the Council acts reasonably in setting its charges.*

7.87. *There is no doubt that the residents have been treated badly. It is, however, clear from the law and relevant governmental guidance that bad treatment is not necessarily the same as discriminatory treatment.*

7.88. *In the circumstances, I do not believe that the issue is clear cut one way or the other. On balance, however, I prefer the view that the Council's actions were discriminatory. I take this view because:*

A. The failure to change the charging policy and apply the Fair Charging Guidance was, in my view, unreasonable.
B. Whilst this failure may have been due to a failure in internal administration and decision making, ultimately, it only affected people with disabilities.

C. *The material delay in addressing the issue perpetuated and worsened the position of those affected in an unreasonable way.*
D. *The Council has itself accepted that it was not appropriate to charge in the way that it did and has taken steps to compensate individuals. The Council has not, therefore, suggested that it was, in fact, legitimately entitled to charge service users in the way that it did in practice. By its own admission, therefore, the Council does not purport to suggest that the continued application of the 1997 charging policy was a legitimate exercise of its statutory charging power.*
E. *Even if the charging regime itself was not discriminatory, the Council is prospectively guilty of a failure to make reasonable adjustments by not addressing the Fair Charging Guidelines sooner to take steps to alleviate the hardship of those under its care.*

7.89. *For completeness, given what I say above, I see no realistic basis on which the Council could argue that its actions could be objectively justified.*

7.90. *Finally, I would add that what distinguishes the Second Period from the Third Period is the mandatory nature of the Government guidance which underpins the charging regime in the Third Period. The fact that the Council had to change to the policy, rather than having the option of changing the policy, is a material differentiating factor in my view.*

7.91. ***The Reimbursement Issue***

7.92. *The question of how and on what basis the Council seeks to repay or recompense service users is, to my mind, a matter of compensation assessment. There are many factors to take into account in assessing an appropriate basis of compensation.*

7.93. *As I understand it, the Council addressed its mind to a number of factors and believed that it was fairly compensating individuals in respect of the period of overcharging. None of those factors were, I believe, based on, or influenced by, the fact that the relevant individuals were disabled.*

7.94. *Whilst the Council's approach may not, in fact, have fully compensated affected service users, I do not regard the Council's approach to calculating compensation as being discriminatory. The absence of discrimination does not, however, preclude a challenge on the question of whether or not the individuals have been adequately compensated which, it seems to me, is an entirely separate matter.*

7.95. ***The Legal Advice Issue***

7.96. *Under section 21 of the DDA, the Council is under a duty to make "reasonable adjustments" as may be necessary to seek to alleviate the difficulties occasioned to service users. In relation to the handling and assessment of compensation, it should be readily apparent that vulnerable adults would require independent advice and guidance in dealing with the Council.*

7.97. *The duty to make reasonable adjustments, however, arises only in respect of services provided to the public generally. The legal position can therefore be looked at in two ways:*

A. *The provision of legal advice is not a service provided to members of the public generally and, therefore, a disabled person cannot demonstrate adverse treatment in this respect, nor that a duty to make reasonable adjustments arises. Taking this analysis, no discrimination arises.*
B. *Alternatively, and in view of my findings in respect of the Third Period above, the failure to fund legal advice regarding the treatment of compensation is, in essence, a perpetuation of the discrimination which arose in the respect of the charging policy itself; that having recognised its error, the duty to make reasonable adjustments extended to providing assistance in addressing the council's errors and compensation programme.*

7.98. *In my view, I believe that the Council would face considerable criticism for its actions and the denial of access to independent advice. However, from a purely legal position, I believe that the analysis set out at 7.94.A. above is the better legal approach.*

7.99. *As a consequence, on balance it is my view that no discrimination has occurred."*

8. **Recommendations**

8.1. The consultant believes that, in recognising the importance of the Executive Leadership function of Cabinet, Leading Member's should form a Cabinet committee to be charged with delivering a fundamental review of corporate governance, developing and monitoring the implementation of an improvement plan to radically upgrade Wirral's corporate governance arrangements (in practice), addressing the cultural issues outlined in the conclusions and developing compliance as a matter of urgency.

The Cabinet committee should review:

A. The adequacy of the reports presented to Members.
B. The appraisal framework, starting with the appraisal of the Chief Executive and Chief Officers.
C. The performance reporting and management arrangements.
D. The policy unit and the adequacy of horizon scanning processes.

The above is not proposed as an exhaustive list, rather as a "starter for ten". See also the supplementary report on corporate governance.

8.2. In dealing with the issues identified in this report and those in the supplementary report on Corporate Governance the officers will require the support of all Members regardless of political persuasion together with their Political leadership of the governance of this improvement process.

8.3. In accordance with the findings in Miscellaneous 8's report in relation to claims of Bullying and Harassment and her overarching conclusions, the Chief Executive supported by the Director of Law, HR and Asset Management must ensure that the weaknesses in the Council's understanding of whistle-blowing together with enabling processes and procedures are robust, widely understood and implemented effectively.

8.4. The Director of Law, HR and Asset Management report to the Cabinet subcommittee with his proposals in relation to the improvement of the Legal and Committee Services Teams in the light of the conclusions set out in paragraph 7 above.

8.5. The Council should give serious consideration to the creation of a Corporate Governance Team as outlined in paragraph 6.7.3. above. This should provide a corporate project management resource to the required improvement programme. This team should also be charged with working with the Cabinet in investigating how the deficiencies in culture and appreciation of understanding what its normal and acceptable performance and the factors that sustain this.

8.6. The Cabinet should review the ongoing and separate nature of both the Policy and Performance functions giving consideration to its form and structure determining how the horizon scanning and other weaknesses highlighted in this report will be addressed.

8.7. The Director of Finance should report to the Cabinet committee with his proposals in relation to the improvement of Internal Audit in the light of the external review that is currently being commissioned and the findings, conclusions and recommendations set out in this report.

8.8. That the Council's Finance Director leads and quality assures (with dedicated support from legal services) a corporate review of the various charging regimes in place in all of the Council's departments, making recommendations for improvements for which each Chief Officer will be held accountable for delivering, implementing and maintaining improved working practices.

8.9. The Officers consider and report to a future Cabinet meeting, during Spring 2012, the proposed way forward relating to other charging issues outlined in paragraph 6.2.14 and Appendix 4 to Annex A.

8.10. The Council favourably reconsiders the effective date for the calculation of the reimbursements for those service users who had lived in the 3 West Wirral properties and their surviving relatives. The context of the "benefits trap" also needs to be considered as part of this process.

8.11. The Council favourably reconsiders the calculation of the reimbursement for the lack of interest. Again this must be considered in the context of the benefits trap.

8.12. The outcome of Complainant 3's stage 3 complaint should be reviewed in the light of the context of the events precipitating Service User 2's need to relocate and in the consultant's view this should lead to DASS honouring the commitment to pay the top-up payment.

8.13. The role of the Audit and Risk Management Committee, must continue to be an important element of the Councils improved governance arrangements going forward with, perhaps, the Cabinet seeking the Chair of the Committee to report formally on a half yearly basis to present findings and raise concerns.

8.14. Whilst recognising that progress has been made in records management since its consolidation under the Director of Finance, there is scope for further improvement. The Director of Finance should be required to report to the Cabinet the performance of each of the Council's departments in this area, which would include as a minimum:

A. The length of time taken for each department to respond to a Freedom of Information request (measuring the date the FoI request was received and the date the response was sent)
B. The number of the issues/follow-up requests raised
C. The number of Information Commissioner concerns raised and/or interventions

8.15. The quality of inputs to and outcomes from Adult Protection strategy meetings should be kept under close review, with a particular emphasis on at least the following questions at each meeting:

A. What has changed for the better for the vulnerable adult?
B. Why did the change not occur sooner?
C. What is the pathway (or project plan) for resolving this referral?
D. Who is responsible for each action?
E. Who is taking the overall responsibility for the case and will be held accountable for the quality and timeliness of both the review and its resolution?

8.16. Details of Adult Protection concerns raised must be logged centrally with a close monitoring of the inputs, outputs and outcomes recorded in detail such that the Director can report in an open and transparent way to Leading Members monthly and the Health and Social Care Select Committee on a quarterly basis.

8.17. Opportunities for improvements in the CCA and review processes should be considered and proposals for improvement reported via the Cabinet Portfolio holder during the Spring of 2012.

8.18. The effectiveness of the actions put in place since the CQC report in relation to Adult Protection (now Safeguarding) should inform the above, but must be based upon quantitative and qualitative analysis contained within a formal report to Members before the peer review in the Autumn.

8.19. The Director of Adult Social Care should continue to ensure that there is a shared understanding of the risks and issues facing DASS, at Member and Corporate Management team levels, together with the proposed mitigating action(s). This should be undertaken both formally and informally.

8.20. DASS needs to improve its early engagement activities with the HB Team to ensure future Supported Living proposals and the providing agencies are clear as to the likely benefits payable.

8.21. Corporate working needs to be further developed but, clarity of objectives, the parameters within which the team can operate and accountabilities needs to be clearly communicated at the outset. This should be the responsibility of the Chief Executive and each member of the Chief Officer Management Team.

8.22. DASS should ensure that the planned use of a "peer review" to check, challenge/verify the improvements and achievements of the department is seen as a means by which regular external progress assessments can be undertaken and that the Cabinet portfolio holder is engaged in the discussions with those undertaking the review(s).

8.23. Legal Services needs to provide clearer and more definitive advice as to the "tests" to be applied by DASS and HB for the purposes of distinguishing between residential and Supported Living establishments.

8.24. The Director of Adult Social Services to review the resources allocated to safeguarding and contract monitoring, reporting back to Members at Cabinet or the Cabinet Subcommittee within 6 weeks of the publication of this report.

8.25. The Council apologises to Mr Morton in writing for the errors in making the payment as a result of him signing his Compromise Agreement. This is long overdue. The Director of Law, HR and Asset Management has agreed to undertake this task.

8.26. The Council (Director of Law, HR and Asset Management) writes to HMRC with a copy to Mr Morton outlining what went wrong in an attempt to assist him with their ongoing enquiries. Director of Law, HR and Asset Management has during the right to reply agreed that this should be undertaken as a matter of priority but highlights that "*the recent large scale EVR/VS programme resulted in over 1000 employees signing Compromise Agreements and leaving the Authority's employment. This was managed by HR and Payroll and was conducted without*

any of the errors and complications associated with Mr Morton's departure. The procedures are in place for managing Compromise Agreement departures appropriately, but I will ensure that they are reviewed in the light of what went wrong in Mr Morton's case."

8.27. That the Director of Law, HR and Asset Management develops and implements a procedure to ensure that if in the future other errors are made in relation to employee tax and National Insurance contributions, all relevant correspondence is copied to the affected individual.

8.28. The Cabinet ensures that the outstanding allegation from Service Provider 3 in relation to the level of DASS funding is thoroughly and robustly investigated with a view to early resolution. This will require the development of an action plan which is approved by the Director and Cabinet Portfolio holder that includes the delivery of written updates to the Cabinet Portfolio holder approximately in a 2 weekly cycle.

8.29. The culture of the organisation needs a fundamental shift at both member and officer levels to ensure that the "abnormal" is no longer accepted as the norm. This is not a political issue and must be addressed by all members as part of their responsibilities for corporate governance and fiduciary duties.

8.30. In respect of the issue of the breaches of Disability Discrimination law, the consultant recommends that the Council gives serious consideration to both the remedies and actions that arise from the conclusion that discrimination has occurred, and reports the proposals and outcomes with the Equalities and Human Rights Commission to Cabinet at the earliest possible opportunity. In light of this, the Council must in addition consider further the wider ramifications and track record on equalities, with the Chief Executive making recommendations to Members as to improvement proposals by the Spring of 2012.

This page is intentionally left blank