

WIRRAL COUNCIL

CABINET – 14 JANUARY 2010

REPORT OF THE DIRECTOR OF ADULT SOCIAL SERVICES

**RESIDENTS OF BERMUDA ROAD, CURLEW WAY AND EDGEHILL ROAD –  
DECEMBER 2000-FEBRUARY 2006**

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***Executive Summary***

*The purpose of this report is to convey the recommendations of the Audit and Risk Management Committee for reimbursement to tenants and former tenants of Bermuda Road, Curlew Way and Edgehill Road, Moreton in respect of the period between December 2000 and the application of Fairer Charging arrangements in February 2006. The report summarises the Committee's resolutions, sets out some legal and practical issues for Members to consider and suggests how the recommendations may be implemented.*

**1 Background**

1.1 The Audit and Risk Management Committee has considered detailed reports from the Chief Internal Auditor into certain specific issues arising out of the Audit Commission PIDA Report in August 2008. These concerned the question of whether tenants at Bermuda Road, Curlew Way and Edgehill Road had been incorrectly charged for a number of years, pending the introduction of Fairer Charging.

1.2 The findings of the Committee, which had advice from the Director of Law, HR and Asset Management, as well as the Director of Adult Social Services and the Chief Internal Auditor, were in two parts. At its meeting on Wednesday 23<sup>rd</sup> September the Committee resolved:

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

(1) implement the principle of reimbursement of service users at Bermuda Road, Curlew Way and Edgehill Road, Moreton, between April 2003 and February 2006, insofar as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay, had the Council implemented Fairer Charging in April 2003 by making any appropriate reimbursements; and/or

(2) take any other appropriate restorative action. “

At its meeting on 25 November the Committee further resolved:

“that the Director of Adult Social Services be instructed to seek the approval of Cabinet for

- (1) the reimbursement of residents and former residents of Bermuda Road, Curlew Way and Edgehill Road, Moreton for the period dating back from March 2003 to December 2000, based on the difference on the “Special Charging Policy” and the wider review of Social Services charging approved by Members in July 2000; and/or
- (2) to take any other appropriate restorative action.”

## **2 Detail and Implementation**

- 2.1 Sixteen individuals have been identified who fall within the remit of the recommendation of the Audit and Risk Management Committee. Of these three are deceased and five have moved out of the premises concerned. Detailed work showed, on a case by case basis, the amounts per individual that would be generated by the recommended reimbursement. The total cost of implementing both recommendations amounts to £241,482 (this figure revises slightly that included in the report to the Audit and Risk Management Committee of £244,000, following further work within the department). It is important to note that certain assumptions have had to be made regarding benefit levels and personal/financial circumstances of each individual over that time period; the calculations are therefore based on the best and most reliable information available, however it has not been possible to provide an actuarial assessment of each individual.
- 2.2 There are a number of issues which need to be considered. The first of these is the potential impact upon each affected individual’s current financial position. The impact of the reimbursement of a significant sum of money, when combined with any capital resources an individual may already have, may have wider implications that may not be initially appreciated by those in receipt of means-tested benefits. The regulations for such benefits are framed in such a way as to preclude individuals or those acting on their behalf from taking such actions, in any way, which may be regarded as an evasion of benefit regulations. The Committee, in making its recommendations to Cabinet, was aware of this issue and thus the reference to the resolution to “appropriate restorative action”. Whilst consideration has been given to how the Council can ensure reimbursement whilst mitigating any adverse impact, this has proved difficult.
- 2.3 The advice from the Director of Law, HR and Asset Management regarding the process for reimbursement is that individuals will need to be advised that they may have a claim against the Council in respect of the deemed “overpayment”. They will need to consider their positions and if they believe they have a legitimate entitlement, make a claim for reimbursement against the Council. It would be advisable, and indeed highly desirable, that each individual be given access to independent advice in formulating such a view and potential claim.

- 2.4 The Audit and Risk Management Committee resolved that initial contact with the individuals be made in order to identify the most appropriate course of action in relation to reimbursement and/or appropriate restorative action; and to investigate the use of the Wirral Advocacy Service. This action will be implemented if Cabinet approves the recommendations. Advocates will need to be fully briefed on the issues so that individuals receive the best possible advice. Support staff who work with the current tenants of the houses on a day-to-day basis will be appropriately briefed on the process so that they can answer any queries which tenants or their families raise, and give proper advice. In addition, social care assessment and review staff will be deployed to counsel and support each individual and their families through this process and work alongside the advocates.

### **3 Financial Implications**

The cost of reimbursing all individuals who would be entitled to make a claim, should Cabinet approve the recommendations, is £241,482. An amount of £68,000 has been set aside in the accounts for such reimbursements so there is a potential shortfall of £173,485. The Adult Social Services Department has no resources available to meet this 'one-off' cost and it is recommended that this be met from balances.

### **4 Staffing Implications**

There are no staffing implications arising from this report.

### **5 Equal Opportunities Implications**

The Audit and Risk Management Committee's recommendations address the needs of people who have learning difficulties; therefore it will be essential to ensure people have proper advocacy and that information is provided in a way to enable decisions to be made in their best interests.

### **6 Community Safety Implications**

There are no community safety implications arising from this report.

### **7 Local Agenda 21 Implications**

There are no Local Agenda 21 implications arising from this report.

### **8 Planning Implications**

There are no planning implications arising from this report.

## **9 Anti Poverty Implications**

Some of the evidence presented to the Committee related to a concern that some individuals suffered hardship as a result of the Charging Policy that was applied.

## **10 Social Inclusion Implications**

There are no social inclusion implications arising from this report.

## **11 Local Member Support Implications**

The homes concerned are in the Moreton Ward.

## **12 Background Papers**

Reports to Audit and Risk Management Committee; PIDA Report (August 2008)

## **13 Recommendations**

That Cabinet is asked to approve the recommendations of the Audit and Risk Management Committee:

- (1)** To implement the principle of reimbursement of service users at Bermuda Road, Curlew Way and Edgehill Road, Moreton between April 2003 and February 2006, insofar as the sums actually paid by an individual service user exceeded what they might reasonably have been required to pay had the Council implemented Fairer Charging in April 2003, by making, upon receipt of a legitimate claim, any appropriate reimbursement and/or to take any other appropriate restorative action.
- (2)** To approve the reimbursement of residents and former residents of Bermuda Road, Curlew Road and Edgehill Road, Moreton for the period dating back from March 2003 to December 2000, based on the difference between the "Special Charging Policy" and the wider review of Social Services charging approved by Members in July 2000, where the Council is in receipt of a legitimate claim; and/or to take any other appropriate restorative action.
- (3)** Cabinet is further asked to authorise officers to write (and confirm with appropriate other means) to individuals (and their carers and advocates) informing them of this decision and inviting them to seek appropriate advice so as to ensure they make an informed decision if they choose to submit a claim; and to provide sufficient information to advocates, acting on the individuals' behalf, to ensure that the individuals can be fully advised of all relevant implications.

- (5) Authorise officers to agree approval of any such claims that fall within the limit of the calculated reimbursement figure and/or any other lawful restorative action.
- (6) Instruct officers to report the outcomes of these transactions to the Audit and Risk Management Committee and the Health and Adult Social Care Scrutiny Committee.
- (7) Instruct officers to report the outcomes of these transactions to the Department of Work and Pensions.
- (8) Agree that the additional cost of the reimbursements, beyond the £68,000 currently set aside in the accounts, be met from the Council balances.

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Date 05.01.10