

WIRRAL COUNCIL

A

AUDIT AND RISK MANAGEMENT COMMITTEE

25 NOVEMBER 2009

REPORT OF THE CHIEF INTERNAL AUDITOR

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

1. EXECUTIVE SUMMARY

- 1.1. Further to Resolution 2 of the Audit and Risk Management Committee of the 23 September 2009 and Resolutions 1 and 2 of the Audit and Risk Management Committee of the 3 November 2009 this report addresses the "Special Charging Policy" applied to service users residing at "in house" Supported Living Units.
- 1.2. Information has been reviewed from a number of sources, i.e. Audit Commission's PIDA Report, Mr Morton's grievance and documents within the Department of Adult Social Services.
- 1.3. Mr Morton did not provide information to Internal Audit within time for it to be considered for inclusion in this report, consequently, this might be subject to amendment in the light of any information Mr Morton presents.
- 1.4. Documentary evidence indicates the charges levied were approved by Members at the Social Services Committee, 3 September 1997. This is in accordance with the definition of "reasonableness" as stated in an Audit Commission Report - "Charging with Care" - May 2000.
- 1.5. It is difficult to judge if Wirral's charges for Supported Living were significantly higher than those of several other authorities in the period 1997 to 2003. Wirral's charges were dependent on a financial assessment based on the service users income whereas other local authorities were based on the level of care.
- 1.6. The Report submitted to the Special Social Services Committee, 26 July 2000, paragraph 4.24 indicates that it was intended to consider Supported Living Charges separately as part of the Charging Policy Review in 2000. No evidence was found that this was done.
- 1.7. Evidence is available that officers were aware in November 2000 and April 2001 that the charges levied for service users residing at "in house" Supported Living Units were higher than they would have been if the provisions of the Special Social Services Committee, 26 July 2000 - Charging Policy Review - had been applied.

2. **BACKGROUND**

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

"That a further investigation be undertaken by Internal Audit, to consider whether there was a point in time between 1997 and 2003 that officers ought reasonably have recognised that the 'Special Charging Policy' was unreasonable and therefore unlawful and, if so, to calculate the amount of re-imburement that would be due; and that Internal Audit be requested to seek the views of Mr Morton in relation to the further investigation".

- 2.2. Members of this Committee on 3 November 2009 (Resolutions 1 and 2) requested:

Resolution 1:

"That consideration of this matter be deferred and an update be presented to the scheduled meeting of the Committee on 25 November 2009".

Resolution 2:

"That, if a response from Mr Morton is not received in time for it to be included in the update report, a further special meeting be arranged to take place no later than the end of the 2009 calendar year"

3. **INTERNAL AUDIT WORK UNDERTAKEN**

- 3.1. In order to assess if the "Special Charging Policy" was "unreasonable" enquiries were made to the Directors of all northern Adult Social Services with a copy to the Chief Internal Auditors of the same Authorities concerning the charges levied by them between 1997 and 2003 for "in house" supported living service users. The format and content of the Questionnaire and letter were agreed with the Director of Adult Social Services and the Audit Commission. Over 50 authorities were consulted, all were given reminders and 11 replies were received from the north west Authorities. (Appendix 1 and 2).
- 3.2. Relevant documents from the Department of Adult Social Services (DASS), e-mails and Committee Reports were reviewed to ascertain if there was evidence that officers had information that could have indicated the charges were unreasonable. Further discussions and enquiries were made with DASS officers and managers. All were again open, cooperative and helpful but inevitably there were difficulties in remembering details and locating documents relating to several years ago.
- 3.3. Internal Audit again reviewed documents and papers relating to Mr Morton's grievance to ensure that all items relevant to the charging policy had been included within this review.

- 3.4. The Audit Commission has been made aware of the documents reviewed by Internal Audit and is not aware of any additional documents relevant to this investigation.
- 3.5.1 Following the Audit and Risk Management Committee of the 3 November 2009 a Member of this Committee submitted a request to the Chief Internal Auditor to seek the views of the Directors of Adult Social Services of the north west Authorities to a specific question. (Appendix 3).
- 3.5.2. With the agreement of the Chair the question was sent to the Directors of Adult Social Services of the north west Authorities.
- 3.5.3. Nine of the eleven Authorities who replied to the Internal Audit Questionnaire, Appendix 1 and 2, replied and their responses are detailed in Appendix 3.
- 3.6.1. The Director of Law, HR and Asset Management wrote to Mr Morton to request his views and assistance in the investigation. Contact has been made with Mr Morton's solicitor. For various reasons a response was not received prior to the meeting of this Committee on the 3 November 2009.
- 3.6.2. In accordance with Minute 42 of this Committee on the 3 November 2009, the Director of Law, HR and Asset Management wrote to Mr Morton's solicitor to request Mr Morton's views and assistance in the investigation and his "final statement".
- 3.6.3. Mr Morton has replied and has stated that he will submit and present a "final statement" on the "Special Charging Policy" to this Committee on the 25 November 2009. No information has been provided to Internal Audit by Mr Morton in time for it to be considered, consequently this can only be considered an interim report which might be subject to amendment depending upon the information Mr Morton provides.

4. FINDINGS

4.1. Chronology of Events

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

"If residents could be asked to contribute their benefits related to their dependency and level of need for care to the costs of care provision, this would leave each person with an income for daily living needs and with all their housing needs provided for while Social Services would provide or purchase a full package of support care for them according to their individual needs".

The Recommendation, which was agreed, was:

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

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

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

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

Paragraph 4.24 of the report stated:

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

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

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

- 4.1.3. It is clear from an e-mail and other correspondence that officers were aware that a further Committee Report was needed and Mr Morton brought these issues to the attention of officers within the Department. (Appendix 4 and 5).

4.2. Charges

- 4.2.1. An analysis of the charges levied on all the service users who lived at Bermuda Road, Curlew Way and Edgehill Road from 1997 to 2003 was completed. The charge levied depended upon the service users' benefits in accordance with the policy approved by Social Services Committee on 3 September 1997.
- 4.2.2. The records reviewed indicate that the average financial assessment charge for the period was £77.70 and the range is from an average of £63.33 in 1997/1998 to £83.82 in 2002/2003. This left an average amount over the period for the service users own use of £97.42, ranging from £89.02 in 1997/1998 to £107.77 in 2002/2003, which is contrary to the suggestion that all supported living service users income was taken as a contribution to the costs of care and that

charges were in excess of £100 per week. Records indicate the average ratio of charge to service user's income over the 5 years is approximately 44%. (Appendix 6). However, Mr Morton at this Committee on the 23 September 2009, see minute 41 of the Audit and Risk Management Committee 3 November 2009, stated that he was aware "... of hardship suffered by a tenant with learning difficulties who had to seek assistance from the Welfare Fund". It has not been possible to identify this person or financial records which would indicate a person in these circumstances.

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

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

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

"Provided that decisions over the principles related to charging are properly debated and resolved then the resultant approach can be considered to be 'reasonable'". (Appendix 7).

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

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

5. SUMMARY OF FINDINGS

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

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

5.2. Analysis of the responses from the Directors of Adult Social Services of the north west Authorities to the question submitted by a Member of this Committee to the Chief Internal Auditor indicates that:

- five of the nine who replied indicated that they applied the Domiciliary Care Policy (Home Care)
- two levied no charge for the service
- two applied a financial assessment in a way similar to Wirral
- Authority "H" provided further comments to indicate that they applied the charge in a similar way to Wirral. It also stated that it was important to have an appeals system in case of hardship. Wirral did have an appeals system which was favourably commented in the Audit Commission Report - "Charging with Care" - May 2000. (Appendix 8).

Due to the number of replies it is not possible to draw a conclusion on whether the approach applied by Wirral was "unreasonable".

5.3. Analysis of the documentary evidence indicates that in October 2000, some officers were aware the charges were not in accordance with best practice by virtue of not having been reported to Members in accordance with a previously reported intention. On 6 April 2001, they were in receipt of an evidenced recommendation that the charges should cease. This reinforced a previous document of 22 November 2000.

5.4. From interviews with officers and the examination of the documents located, it is clear that the situation concerning charging was confused but inevitably as the enquiry is about events which took place over 10 years ago and when the Department was in "Special Measures", records and memories are likely to be unreliable.

6. CONCLUSION

6.1. It is difficult to assess if the level of Wirral's charges was "unreasonable" as the charges made by other authorities are not directly comparable. Several charged on the basis of the level of care provided. It seems that some charged at levels comparable or even in excess of Wirral if a significant level of care was provided. However, the findings of The Audit Commission Report indicated Authorities were entitled to set charges in any way they considered appropriate and recognised all authorities would have different approaches and levels of charge. It also defined "reasonableness" as depending on debating and resolving the approach to charging, which was undertaken at the Social Services Committee, 3 September 1997.

- 6.2. The earliest document identified that draws to the attention of officers that the "Special Charging Policy" should be withdrawn is 22 November 2000, subsequently followed up on 6 April 2001 when the Supported Living Development Officer, wrote a Memorandum explaining the difference between the charges levied by the "Special Charge Policy" and those that would arise from implementing the policy resulting after the Charging Review of 26 July 2000.
- 6.3 Further information might be available from Mr Morton's statement that might enable other conclusions to be drawn.

7. FINANCIAL AND STAFFING IMPLICATIONS

- 7.1. The charging policy for supported living was not reviewed in accordance with 4.24 of the Special Social Services Committee report of 26 July 2000. Had the Policy been reviewed, Members may have implemented the wider charging policy to "in house" Supported Living, albeit the intention is unknown.
- 7.2. If this had been decided then the reimbursement for the 16 service users who were affected for the period 4 December 2000 to 31 March 2003 would total £127,700. This is calculated by reference to records of the amounts service users paid during the period, which were in excess of the charge that would have been levied had the recommendation of the wider departmental charging policy been applied to Supported Living.
- 7.3. Any reimbursement of excess charge will require Cabinet approval. If the funding cannot be met within existing resources, it will also require Council approval. It is recommended that the cost of any reimbursement or other action is funded from the Department of Adult Social Service's Revenue Budget.
- 7.4. There are no staffing implications.

8. LOCAL MEMBER SUPPORT IMPLICATIONS

- 8.1. There are no local Member support implications.

9. LOCAL AGENDA 21 STATEMENT

- 9.1. There are no local agenda 21 implications.

10. PLANNING IMPLICATIONS

- 10.1. There are no planning implications.

11. EQUAL OPPORTUNITIES IMPLICATIONS

- 11.1. There are no equal opportunities implications.

12. COMMUNITY SAFETY IMPLICATIONS

12.1. There are no community safety implications.

13. HUMAN RIGHTS IMPLICATIONS

13.1. There are no human rights implications.

14. BACKGROUND PAPERS

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

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

Appendix 3 - Question submitted by a Member and comments from the north west Adult Social Services Local Authorities.

Appendix 4 - "Charging Policy Review – Implications for Supported Living Schemes Briefing Note" has attached to it an internal address label dated 22 November 2000.

Appendix 5 - Memorandum dated 6 April 2001.

Appendix 6 - Wirral's weekly average income, allowance and financial assessment charge under the "Special Charging Policy".

Appendix 7 - Audit Commission Report - May 2000 - Charging with Care -Extract - Page 25 - Section 45.

Appendix 8 - Audit Commission Report - May 2000 - Charging with Care -Extract - Page 51 - Section 108 & Case Study 3.

15. RECOMMENDATIONS

15.1. Members note the issues in this Report.

15.2. Members consider if further reimbursement is appropriate on the basis that no report into Supported Living Charging Policy was brought for consideration after July 2000.

15.3. If Members consider that reimbursement is appropriate, Members may consider a suitable reimbursement is at the level of the wider charging policy agreed in July 2000, albeit no evidence has been identified of the intention of the department at that time.

DAVID A GARRY
CHIEF INTERNAL AUDITOR