

REPORT OF THE DIRECTOR OF ADULT SOCIAL SERVICES

AUDIT AND RISK MANAGEMENT COMMITTEE 25 NOVEMBER 2009

CHARGING ARRANGEMENTS FOR SUPPORTED LIVING, WIRRAL 1997 - 2003

Executive Summary

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

1 Background

1.1 The 1997 Charging Policy.

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

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

1.3 In the years before 1997, it was becoming more and more the practice for councils to seek some third way, whereby through offering more intensive help to people, they were enabled to stay in their homes and avoid or at

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

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

1.5 On the question of Council policies it states:

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

1.6 Further (speaking of existing guidance):

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

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

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

greater independence than would have been the case had they remained in residential accommodation. I do not consider, again within the context of the time, that the policy could have been regarded as being so “unreasonable” as to question its legality. This is, of course, ultimately a legal question, but that is my judgement as a social worker.

2. 1997 - 2000

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

3 2001- 2003

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

these failed to provide sufficient clarity for Members to make appropriate decisions. During this period (from 2000-2003) there is evidence that concerns about anomalies and a failure to collect income through not applying charges to some service users were raised within the department, but these did not lead to timely action.

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

4 Balls Road

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

5 Financial and Staffing Implications

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

6 Equal Opportunities Implications

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

7 Local Member Support Implications

There are no implications arising out of this report.

8 Human Rights Implications

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

9 Community Safety Implications

There are no implications arising out of this report.

10 Planning Implications

There are no implications arising out of this report.

11 Health Implications

There are no implications arising out of this report.

12 Background Papers

Committee Reports and internal documents.

13 Recommendations

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

JOHN WEBB
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