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## AUDIT AND RISK MANAGEMENT COMMITTEE

Tuesday, 28 September 2010

<u>Present:</u>	Councillor	S Mountney (Chair)	
	Councillors	L Rowlands	C Povall
		RL Abbey	J Crabtree
		P Reisdorf	A Brighthouse
<u>Deputies:</u>	Councillor	AR McLachlan (In place of D Dodd)	
<u>In attendance:</u>	Councillor	S Foulkes	

### 22 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to consider whether they had personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they were.

Councillor R Abbey declared his personal interest in agenda item 5 (Audit Commission Annual Governance Report – Merseyside Pension Fund) (see minute 26 post), by virtue of him being in receipt of a pension from the Merseyside Pension Fund.

### 23 MINUTES

**Resolved – That the minutes of the meeting held on 30 June 2010 be approved.**

### 24 CARE QUALITY COMMISSION (CQC) REPORT ON SAFEGUARDING AND ADULTS WITH A LEARNING DISABILITY

The Director of Adult Social Services presented his report which had been considered by the Cabinet on 2 September 2010 (minute 109 refers) in relation to the Care Quality Commission (CQC) Report, following its Service Inspection of Adult Social Care undertaken in May 2010. The focus of the review had been on safeguarding adults, making a positive contribution for adults with a learning disability and increased choice and control for adults with a learning disability.

He commented that the CQC report had criticised the Council's performance. The report had concluded that the Council was performing poorly in safeguarding adults and in supporting adults with a learning disability to have increased choice and control. The report had also concluded that the Council was performing adequately in supporting adults with a learning disability to make a positive contribution. Lastly, the CQC had concluded that the Council's capacity to improve was uncertain.

The Director outlined the key findings from the report and indicated that it contained a number of recommendations for the Council to improve. Those recommendations had been incorporated into a robust improvement plan that had been approved by the Cabinet and submitted to the CQC. The Director had been instructed to present a

further report to the 14 October 2010 Cabinet, to include the timetable required to deliver the improvements set out in the second, revised improvement plan.

Members expressed their concern with regard to the findings of the CQC report and sought assurance that measures were now in place to ensure that the significant risks identified were being addressed. The Director stated that in response to the previous 'Red Flag' related to safeguarding adults, there had been a fundamental review of how performance data was collected. Data quality was now as good as it had ever been and this had been acknowledged by the CQC. However, he acknowledged that the improvements made were recent and the CQC wanted to see that the changes had bedded in. In response to a question from a Member, the Director commented that the Department had worked closely with Internal Audit with regard to the key components of the improvement plan.

The Director indicated that the improved governance arrangements put in place would supplement the usual management arrangements and would ensure that progress was tightly monitored to ensure improvement in all areas within the timescales set out in the plan. He stated that there was a need to prioritise work within DASS to ensure compliance with the Improvement Plan. The Director also referred to engaging with partners to help support delivery of the Improvement Plan.

The Chair asked whether work was being undertaken to change things culturally within DASS. The Director confirmed that this was the case, particularly in relation to improving skills and competencies and ensuring that mechanisms were in place to provide support to managers and frontline staff working with vulnerable adults and adults with learning difficulties. The Director expressed his appreciation of the support DASS had received from Corporate HR in this work.

**Resolved –**

- (1) That the report be noted.**
- (2) That the Cabinet be advised to receive a report to each meeting in relation to progress to date against the actions contained within the improvement plan.**
- (3) That an update report be presented to the January 2011 meeting of the Committee.**

**25      PROGRESS REPORT ON REIMBURSEMENT IN RELATION TO PUBLIC INTEREST DISCLOSURE ACT 1998 (PIDA)**

Further to minute 95 (24 March 2010), the Director of Adult Social Services provided an update on progress in the implementation of reimbursement to certain residents and former residents of Bermuda Road, Curlew Way and Edgehill Road supported living establishments in Moreton, following the agreement of the Cabinet (minute 256 (14 January 2010) refers) to the recommendations of this Committee.

The Director reported that of the sixteen individuals, who had been identified as eligible for a payment, four were now deceased and reimbursement payments had been made to their next of kin. Each of the remaining twelve people had been provided with an independent advocate, ten with Wirral Mind, one with Mencap and one with Advocacy in Wirral. He reported that a task force had met on a regular basis since February 2010 in order to the review progress with advocates on individual

cases and to discuss any issues. Those meetings were attended by advocates, Weightmans Solicitors and Council staff (including officers from finance, welfare benefits and operational areas). In response to a comment from the Chair, the Director of Law, HR and Asset Management confirmed that although Weightmans Solicitors had been appointed to represent the Council, their attendance was to ensure that the reimbursement process was carried out in a proper and lawful manner. The Council had accepted that it was liable and the role of Weightmans was non-adversarial and intended to be supportive.

The Director of Adult Social Services reported that, in May 2010, a letter had been received from the Office of the Public Guardian (OPG), who had been made aware of the proposed reimbursements and had identified potential safeguarding concerns in relation to substantial sums of money being paid to vulnerable adults who may not have the capacity to make their own decisions. The OPG had advised that capacity assessments should be completed in respect of all individuals and that, where they did not have capacity, it would be appropriate for applications to be made to the Court of Protection. Of nine initial assessments completed, there was an indication that eight individuals did not have the capacity to make decisions around financial matters. Referrals had been arranged for formal assessments of those eight individuals, which is a requirement of the Court of Protection. The Director proposed that the Department would make applications to the Court where there was not an appropriate person or family member willing to do so. The outcome of the three remaining initial assessments was awaited. The Director confirmed that the one payment already made was to a person who did have capacity.

In response to a question from a Member in relation to the timescales for the completion of the work to reimburse the remaining eleven individuals, the Director indicated that there was a desire to conclude the process as soon as possible. Although the pace of work had been guided by work undertaken with advocates, he commented that it was now dependent upon the progress of the applications to the Court of Protection.

**Resolved –**

- (1) That the report be noted.**
- (2) That the final details of reimbursements to individuals be reported to the Cabinet.**
- (3) That an update report be presented to the January 2011 meeting of the Committee.**

26 **AUDIT COMMISSION ANNUAL GOVERNANCE REPORT - MERSEYSIDE PENSION FUND**

The District Auditor presented the Annual Governance Report for the Merseyside Pension Fund (MPF) 2009/2010, which together with the MPF Accounts, had been approved by the Pensions Committee (minute 24 (27 September 2010) refers). He identified adjustments to the accounts, which had been agreed by the Director of Finance and referred also to a non-material error that management had declined to amend. The District Auditor set out the recommendations contained within the report and confirmed that the Pensions Committee had agreed the action plan. Subject to approval of the letter of representation, he proposed to give an unqualified opinion on the MPF financial statements.

The District Auditor also submitted an update for Members consideration, which set out the current position regarding issues that were outstanding and included a final version of Appendix 2 to his report (adjusted errors) and an updated progress report.

**Resolved –**

- (1) That the matters raised in the report and in the update submitted by the District Auditor, be noted.**
- (2) That the adjustments to the financial statements be noted.**

**27 MERSEYSIDE PENSION FUND ACCOUNTS 2009 - 2010**

The Director of Finance reported that the purpose of the Statement of Audited Accounts was to present the overall financial position of the Pension Fund as at 31 March 2010, in accordance with prescribed guidance. He commented upon a number of amendments to the Statement of Accounts that had been requested by the District Auditor, and which had been incorporated into the final accounts. He provided an analysis of those changes that had affected the value of the Fund, together with amendments that had affected the analysis of the Fund but had had no impact on its overall value. One unadjusted misstatement had been identified following the audit and had been included in the Letter of Representation. The misstatement totalled £12.183m and related to the inclusion in the accounts of Compensatory Added Years (CAYs). He set out the reason for not correcting the item and indicated that the Pensions Committee (minute 22 (27 September 2010) refers) had accepted his view that it was not material to the financial statements.

**Resolved –**

- (1) That the referral from the Pensions Committee on the Merseyside Pension Fund Accounts for 2009/2010, including the Pension Fund Annual Governance Report and Letter of Representation, be approved.**
- (2) That the Action Plan within the Annual Governance Report be approved, and the Pensions Committee be informed of progress with its implementation.**

**28 AUDIT COMMISSION ANNUAL GOVERNANCE REPORT - WIRRAL COUNCIL**

The District Auditor presented the Annual Governance Report in relation to audit work undertaken for 2009/2010. He set out the key issues contained within the report and drew the Committee's attention to five material issues in respect of –

- The value of assets of transferred Private Finance Initiative (PFI) foundation schools being removed from the balance sheet.
- Losses in respect of the PFI agreement having been incorrectly recognised in the Statement of Total Recognised Gains and Losses for 2008/2009.
- The treatment of government grants deferred.
- Concerns that the Annual Governance Statement did not comply with CIPFA guidance.
- Weaknesses in relation to the adequacy of asset records.

The report contained a draft Action Plan to ensure compliance with the recommendations contained within it, and the District Auditor indicated that the concerns referred to had been addressed in the draft Letter of Representation. He submitted an update to his report, which indicated that the final audit opinion was unqualified and that post-audit financial statements were free from material error. He also provided an update with regard to outstanding matters.

The Director of Finance referred also to the Annual Governance Statement (AGS) that the Council was required to publish, to report publicly on the extent to which the Council complied with the principles of good governance laid down in the CIPFA/SOLACE Delivering Good Governance in Local Government Framework. He reported that since the AGS was approved by the Cabinet on 15 April 2010 (minute 389 refers), additional information had come to light in relation to PIDA-DASS (Special Charging Policy), the Red Flag received from the CQC report related to Safeguarding Vulnerable Adults (see minute 24 ante), and PIDA-HESPE (see minute 31 post). Although the District Auditor had stated that there were no significant governance issues, the Director suggested the inclusion of a statement to strengthen the conclusion in the AGS.

**Resolved –**

- (1) That the key issues contained within the Annual Governance Report and in the update submitted by the District Auditor be noted.**
- (2) That the adjustments to the financial statements be noted.**
- (3) That the following statement be added to the conclusion in the Annual Governance Statement –**

**“We have been advised on the implications of the result of the review of the effectiveness of the governance framework by the Audit and Risk Management Committee and a plan to address weaknesses and ensure continuous improvement of the system is in place”.**

**29 STATEMENT OF ACCOUNTS 2009 - 2010**

The Director of Finance reported that in accordance with the Accounts and Audit Regulations 2003, Members were requested to consider the adjusted amendments to, and the unadjusted misstatements in, the Statement of Accounts for 2009/2010. The Statement of Accounts included the Merseyside Pension Fund accounts, as Wirral Council was the administering authority for the Fund. As the Fund received a separate Annual Governance Report, this had to be considered by Pensions Committee and also this Committee as part of approving the Accounts (see minutes 26 and 27 ante).

The purpose of the Statement of Accounts was to present the overall financial position of the Council at 31 March 2010 in accordance with prescribed guidance. There were a number of amendments to the financial statements that had been requested by the District Auditor and were detailed in the Annual Governance Report (see minute 28 ante). However, the Director reported that at the time of preparing his report, only the item in respect of Government Grants Deferred remained outstanding. Once discussions were concluded, the result would be an amendment to entries on the Balance Sheet.

The District Auditor had also identified a number of misstatements which had not been adjusted in the Accounts and the Director provided an explanation in relation to each, none of which impacted upon the level of the General Fund balance. Members were requested to consider whether or not they would want to adjust the Statement of Accounts for any of those items and he confirmed that any unadjusted misstatements were required to be referred to in the Letter of Representation.

**Resolved –**

- (1) That the actions taken with regard to amendments to the Statement of Accounts and the misstatements not adjusted, be approved.**
- (2) That the Letter of Representation be approved.**
- (3) That the completed Annual Governance Report Action Plan be approved.**
- (4) That the revised Statement of Accounts for 2009/2010 be approved.**

30

**AUDIT COMMISSION REPORT - MANAGING ATTENDANCE**

The District Auditor presented the Audit Commission Managing Attendance report, which had been produced as a result of a review undertaken to support the Council in its work to strengthen organisational arrangements for managing attendance. It was intended that improved arrangements across the organisation would in turn link to the Council's broader objectives of improving the quality of services and securing value for money.

The report indicated that preventing people from falling ill at work and getting them back sooner, as well as discouraging abuse of absence, was a key component of public sector cost efficiency and change agendas. However, effective management of sickness absence was not just about reducing costs. Staff sickness also resulted in 'lost time' which could have a particularly negative impact on the quality of frontline services. Employers also had legal duties to protect their staff from work-related stress and illness. It noted that Wirral had struggled to meet its sickness absence targets in the past although the situation was now starting to improve.

The District Auditor outlined the detailed findings and main conclusions in the report and referred to the action plan that had been agreed, to address the recommendations contained within the document.

The Director of Law, HR and Asset Management confirmed that the Council was working to strengthen its arrangements across the organisation for managing attendance to help achieve further improvements. He commented also that a revised Absence Management Policy had been produced, which was presently the subject of consultation with the Trade Unions. The final proposed improvements to the Policy would be presented to the next meeting of the Employment and Appointments Committee.

In response to comments from Members in relation to sickness absence targets, the Director referred to the significant work being undertaken by HR with regard to capturing data from departments and ensuring the uniform implementation of the Council's policies across the organisation. He indicated that a centralised HR function and the impending new HR/payroll system would assist in securing continued improvement.

**Resolved –**

- (1) That the report be noted.**
- (2) That the Director of Law, HR and Asset Management be requested to circulate to Members details of what improvements would be delivered by the new HR/payroll system.**

**31 AUDIT COMMISSION REPORT - HESPE: FOLLOW UP OF PIDA DISCLOSURE**

The District Auditor presented the Audit Commission report in relation to an investigation into concerns raised by a group of staff under the Public Interest Disclosure Act 1998 (PIDA), in relation to governance arrangements that operated during the Highways and Engineering Services Procurement Exercise (HESPE), undertaken in 2008. He outlined the concerns raised under the PIDA and commented that they had initially been raised under the Council's "Whistleblowing" procedures.

The investigation concluded that overall the Council set up proper processes for the procurement exercise for highways and engineering services and there were many areas of good practice. There was evidence that the tender evaluation, information provided for decision making and contract awarded were sound. There was no evidence of impropriety by any officers or members and the winning bid was clearly better value for money than the others in terms of both cost and quality. He commented that this was a significant achievement considering the size, complexity, uniqueness and nature of the tender exercise which brought together a number of previous contracts and also involved an in-house bid.

Although at no time was there any allegation or evidence of fraud or corruption, he commented that the concerns were genuine and outlined a number of weaknesses that were highlighted in the review, which potentially left the Council and individuals open to external challenge.

In response to concerns expressed by Members with regard to the weaknesses in control identified in the review, the District Auditor confirmed that in spite of the weaknesses in documentation, his view was that the tender evaluation, information provided for decision making and contract awarded were sound. An action plan had been presented with the report and a response to it was awaited.

**Resolved –**

- (1) That the Action Plan associated with the HESPE PIDA be completed and submitted to the Cabinet for approval.**
- (2) That the Director of Technical Services be invited to attend the next meeting of the Committee, to present an update on progress with the Action Plan.**

**32 AUDIT COMMISSION PROGRESS REPORT**

The District Auditor presented the Audit Commission Progress Report, which provided Members with an update of ongoing work at the Council and informed of the risks that had arisen from the audit, under the International Standard on Auditing (United Kingdom and Ireland) 300. He set out the key messages within the document

in relation to fees, the opinion on the Statement of Accounts, the Value for Money conclusion and work undertaken in relation to the Public Interest Disclosure Act 1998 (PIDA).

He reported that 2010/2011 was the first year that the accounts would be required to be prepared in accordance with the International Financial Reporting Standards (IFRS). However, as reported in the Annual Governance Report, he indicated that Councils were required to implement some elements for the 2009/2010 accounts. He commented that successful implementation of IFRS was vital to the reputation of individual local government bodies and the sector as a whole. A survey of progress being made in the implementation of IFRS, undertaken in July 2010, had resulted in the Council being assessed as 'amber' overall and he presented a supplement to his report, which provided a comparison of Wirral Council's position overall, by authority type and by region. It also highlighted the key risk areas where Wirral Council varied significantly from comparator authorities.

**Resolved –**

**(1) That the report be noted.**

**(2) That a brief update report upon progress in complying with IFRS be presented to the next meeting of the Committee and a further detailed report be presented to the January 2011 meeting.**

### **33 AUDIT COMMISSION REPORTS REVIEW**

The Chief Internal Auditor presented a summary of reviews undertaken by the Audit Commission since April 2006 to date and detailed the action that Wirral Council had subsequently taken to implement the recommendations contained within the associated reports. All reports for the period had been examined and assurances were obtained from Chief Officers that all recommendations had been implemented or were in the process of being implemented. A 20% sample of the recommendations identified had been tested in depth by Internal Audit and he reported that sufficient evidence had been obtained to substantiate the implementation progress in all of the cases examined.

**Resolved – That the report be noted.**

### **34 BUDGET PROJECTIONS 2011 - 2015**

The Director of Finance provided an update to the projected budgets for the years from 2011 to 2015 in line with the decision of HM Treasury to undertake a four year Spending Review. He set out the assumptions which underpinned the projections and provided update information in relation to grant negotiations, balances and efficiencies agreed to date. The budget shortfall for 2011/2012 was £30.1m and in the order of £108m over four years.

**Resolved – That the report be noted.**

### **35 INTERNAL AUDIT UPDATE**

The Chief Internal Auditor reported that in order to assist in effective corporate governance and fulfil statutory requirements, the Internal Audit Section of the Finance Department reviewed management and service delivery arrangements



within the Council as well as financial control systems. Work areas were selected for review on the basis of risks identified on the Corporate Risk Register and as assessed by Internal Audit in consultation with Chief Officers and Managers.

He summarised the audit work completed between 1 June 2010 and 31 August 2010 and commented that during the monitoring period, 150 audit reports were produced, which identified 120 high and 111 medium priority recommendations to improve systems and address control weaknesses. Management had agreed to implement all of the recommendations made within a satisfactory timescale. He reported that to date, 200 reports including follow ups had actually been produced, which represented 90% of those planned for the period. This figure reflected the staffing resources available to the service during the year to date and included necessary seasonal adjustments.

He reported also that a report would be presented to the next meeting of the Committee, which would identify changes that were required to the Internal Audit Plan for the current year. This was necessary to address emerging issues identified and ensure that adequate audit cover was provided in those areas. A detailed review of the Audit Plan was currently underway and had to date identified issues that included the Strategic Change Programme, the Care Quality Commission review and issues of Governance related to two PIDA reports. In response to comments from Members, the Director of Finance referred to the significant risks associated with the Strategic Change Programme and commented that assurance was needed from Internal Audit that the projects within it were deliverable and were adequately managed and budgeted for.

**Resolved –**

- (1) That the report be noted.**
- (2) That a report be presented to the next meeting of the Committee upon changes to the Internal Audit Plan.**

**36 THE ROLE OF THE HEAD OF INTERNAL AUDIT**

The Director of Finance reported upon a CIPFA consultation draft, issued in May 2010, on the Role of the Head of Internal Audit (HIA) in public service organisations. He outlined the opinion of CIPFA, who believed that it was important to issue a statement, similar to the Statement on the Role of the Chief Financial Officer, to raise the profile and clarify the role of the HIA. In introducing the draft Statement, CIPFA stated that the demand for better public services within a complex environment had strengthened the need for effective governance, of which internal audit was a cornerstone.

The Director set out the five principles contained within the Statement that defined the core activities and behaviours that belonged to the role of the HIA in public service organisations and the organisational arrangements needed to support them. For each principle, the Statement set out the governance arrangements that were required within an organisation to ensure that the HIA was able to operate effectively and perform their core duties. He commented that implementation would be effective in time for inclusion with the Annual Governance Statement (AGS) for 2011 and indicated that any failure to comply with the five principles would need to be explained in the AGS.

**Resolved –**

- (1) That compliance with the five principles in defining the core activities of the Head of Internal Audit, be noted.**
- (2) That a brief report be presented to the next meeting of the Committee in relation to the structure, reporting lines and funding of internal audit.**

**37 CORPORATE RISK AND INSURANCE MANAGEMENT**

The Director of Finance provided information on recent progress made against the existing objectives for Corporate Risk and Insurance Management and the anticipated developments in the coming months.

**Resolved –**

- (1) That the report be noted.**
- (2) That Members be requested to make every effort to attend the Risk Management training session on 27 October 2010, if it is possible for them to do so.**

**38 INSURANCE FUND ACTUARIAL REVIEW**

The Director of Finance presented a summary of the conclusions of the recent study undertaken by HJC Actuarial Consulting into the sum required to fund liability claims within the limits of the self-insured liability. The actuarial report had been presented to the Cabinet on 2 September 2010 (minute 113 refers) and the Director commented that it highlighted continued improvement in the Insurance Fund and indicated the potential for reductions in contributions and a further return of resources to the General Fund. The current provision held in respect of Combined Liability claims was £10.9m and the Director reported that HJC had advised that a surplus of £7.5m was the minimum reasonable for the short term needs of the Insurance Fund. He reported also that the actuaries had also indicated that the level of contribution to the Insurance Fund to meet claims for 2010/2011 could be reduced by £600k to £1.5m. The Director agreed with the assessment and considered that on current trends, the proposed level of contribution was sustainable.

In response to a comment from a Member, the Director agreed that the actual cost of liability claims could be greater than the revised minimum recommended contribution and similarly, the revised annual contribution could also be less than the cost of claims for this year and next. However, given that the sums resulted from a formal actuarial study and also took account of a more conservative approach proposed by officers this was considered unlikely.

**Resolved – That the transfer to General Fund balances of £3.4m of the current reserve in the Liability section of the Insurance Fund, be noted.**

**39 REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) - QUARTERLY UPDATE**

Further to minute 18 (30 June 2010), the Director of Law, HR and Asset Management presented a summary of the use of covert surveillance by the Council between 1 June and 31 August 2010. He provided details of five authorisations that

had been granted during the monitoring period, three of which were for the Wirral Anti-Social Behaviour Team to gather evidence of serious anti-social behaviour; one was for Wirral Trading Standards officers for use in an investigation into under-age sales; and one was for the investigation of possible licensing offences.

He commented also upon recent developments, including the decision of a tribunal (Paton v Poole Borough Council) published on 29 July 2010, which held that surveillance of a family, whose mother was suspected of giving a false address to ensure her children attended the school of her choice, had been unlawful. This was because its purpose had not been for the detection or prevention of crime but to obtain evidence that would justify the Council's withdrawal of the offer of a place at the school in question. The Director assured the Committee that Wirral Council had never used covert surveillance to detect breaches by parents of its Schools Admission Policy.

The Director reported also upon a review by the Government of local authorities' powers under the oversight of Lord MacDonal QC, which was anticipated to recommend that only magistrates could authorise local authorities to use covert surveillance. He commented that this was considered to be an acceptable independent safeguard against improper use of RIPA. However, more controversially, it had been suggested that local authorities should only be allowed to use covert surveillance to detect serious crime, for example, crimes of violence or offences which would usually attract prisons sentences of 3 years or more. He reported that this would mean that local authorities could no longer use RIPA to obtain evidence of anti social behaviour and offences such as the sale of counterfeit goods, fly-tipping or contravention of the licensing laws. He expressed the view that enforcement of the law by local authorities would therefore become substantially more difficult and this would not be in the public interest.

**Resolved –**

- (1) That the report on the Council's use of RIPA be noted.**
- (2) That the recommendation of the Director of Law, HR and Asset Management to recommend to the Home Office that local authorities be allowed to continue to use covert surveillance to detect crime and disorder, provided it has been authorised by an independent magistrate, be referred to the Cabinet for consideration.**

**40 ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR - WORK PROGRAMME**

The Chair proposed that the work programme of the Committee should include the consideration of a report in relation to sickness absence and attendance, and what measures could be undertaken to secure improvements.

**Resolved – That the Director of Law, HR and Asset Management be requested to present a report to a future meeting of the Committee upon measures to strengthen organisational arrangements for managing attendance and improving sickness absence targets.**

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