

WIRRAL COUNCIL

CABINET

12 January 2011

SUBJECT:	INDEPENDENT REVIEW OF CLAIMS MADE BY MR MARTIN MORTON (AND OTHERS)
WARD/S AFFECTED:	ALL
REPORT OF:	CHIEF EXECUTIVE
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR STEVE FOULKES
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

- 1.1 This report advises Cabinet of the receipt of the Final Report following an Independent Review of Wirral Council's Response to Claims Made by Mr Martin Morton (and others) ('the Final Report').
- 1.2 A copy of the Final Report is contained in Appendix 1. As is explained in the Final Report, whilst at the request of the Council the names of individuals and companies have been anonymised, the name of the whistle-blower in this matter, Mr Martin Morton, is already in the public domain. For that reason, Mr Morton's name has not been anonymised.
- 1.3 Copies of the appendices to the Final Report have been provided in the Group Offices and will be emailed to all Members and posted on the Council's Website, when available in electronic format.
- 1.4 The Independent Review was commissioned by the former Leader of the Council from AKA (the trading name of Anna Klonowski Associates Ltd.). AKA have prepared a comprehensive Final Report, together with extensive supporting Appendices, in relation to those matters. The Final Report has been concluded following completion of a thorough 'right to reply' process whereby those persons and organisations that were the subject of potentially adverse comment were given the opportunity to consider the relevant sections of a draft of the Report and to respond to AKA.
- 1.5 Cabinet is requested to accept this report as an item of urgent business in view of the seriousness of the issues addressed in the Final Report. This report has been prepared after the publication of the Cabinet Agenda because the Final Report was not delivered to the Council until the afternoon of Monday 9 January 2012.

2.0 RECOMMENDATIONS

2.1 It is recommended that:

- (a) Cabinet accept in full all the recommendations contained within the Final Report and asks the Chief Executive to prepare an Action Plan to be reported back to the next Cabinet and referred to the Special Council meeting in February.
- (b) Cabinet thanks AKA for the Final Report and commends the thoroughness of her investigation.
- (c) Cabinet considers whether to authorise publication of the earlier report by Mr Martin Smith of North West Employers' Organisation into Mr Morton's allegations of bullying, harassment and abuse of power by Council Officers.

3.0 BACKGROUND AND REASONS FOR RECOMMENDATIONS

3.1 Earlier this week the Council received the Final Report following an Independent Review of Wirral Council's Response to Claims Made by the whistleblower Mr Martin Morton (and others). The Independent Review was commissioned by the former Leader of the Council from AKA (the trading name of Anna Klonowski Associates Ltd.). AKA have prepared a comprehensive Final Report, together with extensive supporting Appendices, in relation to those matters. The Final Report has been concluded following completion of a thorough 'right to reply' process whereby those persons and organisations that were the subject of potentially adverse comment were given the opportunity to consider the relevant sections of a draft of the Report and to respond to AKA.

3.2 AKA was appointed in 2010 by the former Leader of the Council. AKA's original brief was to:

- A) Determine whether, in her professional opinion, all of the issues raised by Mr Morton have been properly and adequately addressed;
- B) Determine if all lessons to be learned across the Council have been properly and thoroughly heeded; and
- C) Reassure the Leader and the Portfolio Holder that no similar matters need to be addressed.

3.3 I extended these terms of reference whilst Interim Chief Executive, following consultation with the then Leader, to include work around the Improvement Plan produced in response to the report from Care Quality Commission; issues around the Disability Discrimination Act; and issues raised by the Equalities and Human Rights Commission.

3.4 As Ms Klonowski notes in the Final Report, her report should be read together with the earlier report by Mr Martin Smith of North West Employers' Organisation ('NWEO') into Mr Morton's allegations of bullying, harassment and abuse of power by Council Officers ('the Martin Smith Report').

- 3.5 The Martin Smith Report was presented to the Former Leader and Cabinet in April 2011. At that time it was resolved, on the basis of legal advice from the Director of Law, HR and Asset Management, to defer possible publication of the Martin Smith Report, pending the conclusion of consideration of possible disciplinary or capability action against any serving officers referred to in that report.
- 3.6 A further copy of the Martin Smith Report is attached as Exempt Appendix 2 to this report. The appended copy of the Martin Smith Report has been redacted to remove all names of individuals. In the light of the public availability of the Final Report, consideration needs to be given to making the Martin Smith Report publically available in the attached, redacted form. NWEO have expressed reservations about publishing the Martin Smith Report. A copy of a letter from the Chief Executive of NWEO to me is attached as Exempt Appendix 3. Notwithstanding the concerns expressed in that letter, the Director of Law, HR and Asset Management has advised that Members may elect to publish the attached redacted version of the Martin Smith Report if they are satisfied that it would be in the public interest to do so.
- 3.7 The comprehensive and detailed Final Report provides the Council with the opportunity to ensure that in the future vulnerable adults will be properly protected and to embed a new culture of excellence and high performance across all our services; a culture that welcomes and learns from challenge. As Chief Executive I regard the Final Report as of the upmost significance for this Authority and that it requires urgent and robust action to ensure improvements are both made and sustained.
- 3.8 Working with the Leader and Cabinet, action has already been taken to implement significant changes in response to the Corporate Governance Report prepared by AKA, which arose out of the wider implications of the investigations undertaken into the allegations made by Mr Morton and others. These changes include:
- The establishment of a Corporate Governance Cabinet Committee, chaired by the Leader of the Council, to drive change and hold the Council to account to ensure improvements are made speedily and effectively.
 - The establishment of a 'Turn Around Team' led by the Deputy Director of Finance, with staff drawn from across Council Departments. This team is ensuring that all of Anna Klonowski's recommendations will be in place by April.
 - Major reviews of Committee Services, Internal Audit, the Policy Function and Performance to ensure robust safeguards are in place in the future.
 - An urgent review of our charging policies is also underway and will be reported to Cabinet.

I and my colleagues are absolutely committed to ensuring that all staff feel able to raise legitimate issues of concern with managers; and that all managers respond promptly, positively and appropriately when such issues are brought to their attention. A number of improvements and new initiatives have been put in place to ensure this is embedded across the authority:

- A review is underway of the Council's whistleblowing and harassment and bullying policies.
- A new confidential e mail address where staff can report any concerns that they have.
- The Cabinet have committed to a series of sessions where staff can see them on a confidential basis to raise concerns.

3.9 Significant investments have been made to ensure the Council's safeguarding procedures are robust and appropriate. These include:

- New safeguarding procedures devised and implemented that focus on partnership working and quality.
- The establishment of a Safeguarding Adults Partnership Board to ensure all lessons are learned from serious incidents.
- The appointment of a Head of Service with responsibility for safeguarding and significant new appointments to strengthen the safeguarding team.
- Five new safeguarding officers, five new contracts officers and three advanced practitioners are being appointed to ensure that vulnerable people are robustly protected and that contracts are procured and monitored appropriately.

3.10 We have significantly improved how we manage external providers, including the following steps:

- Providers now have outcome-based contracts, with detailed expectations.
- Performance is reviewed by key partners, including the Care Quality Commission, Infection Control and NHS bodies.
- Providers are given detailed action plans following a review of their service which outline required work. If the Council is not satisfied with a provider's performance, or if there is a safeguarding investigation, we will issue a suspension notice.

3.11 In addition, given the serious nature of some of the allegations made within the Final Report I have already issued the following instructions:

- That the Director of Adult Social Services, supported by the Head of Safeguarding, urgently reviews the Final Report for any further safeguarding issues that need to be addressed.
- That the Director of Law, HR and Asset Management, supported by the Head of Human Resources and Organisational Development, urgently reviews the Final Report to ensure all appropriate action is taken.

- That the Director of Law, HR and Asset Management, in consultation with the Director of Adult Social Services and the Head of Safeguarding, urgently reviews the Final Report to consider whether any historic safeguarding failures should be referred to the Police (or any relevant regulatory body) for investigation.

3.12 Ms Klonowski summarises her interpretation of the key issues that have been raised during her review as follows (pages 14-15 of the Final Report):

'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 whistleblowing 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.*

3.13 The findings and conclusions reached by Ms Klonowski on these issues are set out sections 6 and 7 of the Final Report. Her recommendations are contained in section 8 of the Final Report and are:

'8. Recommendations

8.1. The consultant believes that, in recognising the importance of the Executive Leadership function of Cabinet, Leading Members 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 [the Martin Smith Report] in relation to claims of Bullying and Harassment and [his] 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 Fol 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.’*

- 3.14 Reference is made in the Final Report to complaints against four elected Members by Mr Morton. Those issues were not addressed by Ms Klonowski as they were outside her terms of reference. Mr Morton’s complaints against the four Members were referred to the Council’s Standards Committee who, in turn, referred the complaints to Standards for England. Standards for England resolved to take no action against any of the complained against Members. Copies of Standards for England’s decision letters to the four complained against Members are attached at Exempt Appendix 4.

5.0 RISKS

- 5.1 The Final Report describes in detail a number of serious and long-running failures on the part of the Council that resulted in detriment to vulnerable service users. Clearly, unless the underlying causes and culture that lead to those failures occurring in the first place is robustly and effectively remedied, there is a risk that further service failures will recur.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 None: the Final Report sets out issues identified through an independent external review commissioned on behalf of the Council.

7.0 CONSULTATION

- 7.1 The Final Report concerns issues raised by an independent review commissioned on behalf of the Council. The objective is to learn from the weaknesses and failures discussed in the Final Report and to ensure that the quality of Council services is permanently improved.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1 The objective is to learn from the weaknesses and failures discussed in the Final Report and to ensure that the quality of Council services is permanently improved.

9.0 RESOURCE IMPLICATIONS: FINANCIAL, IT, STAFFING AND ASSETS

- 9.1 It was previously reported to Cabinet on 22 September 2011 that the estimated cost of AKA's investigation was £250,000, including legal fees. However, this estimate was noted as being dependent on any further work required as a result of the 'right to reply' process. That process has been significantly longer and more complicated than originally anticipated and it is likely that there will be additional costs. These will be reported to Cabinet when as soon as they are available. These costs will be funded in 2011/12 from balances.
- 9.2 The Final Report makes a number of recommendations in relation to the possible reimbursement of charges collected from vulnerable adults; and the consideration of also paying interest. The financial implications of these matters will be reported to Cabinet by the Director of Adult Social Services at the earliest opportunity.
- 9.3 IT, staffing and assets: there are no direct implications.

10.0 LEGAL IMPLICATIONS

10.1 The Final Report reveals a number of serious and sustained service failures. As indicated in the body of this report, a review of the Final Report will be undertaken to consider whether any historic safeguarding failures should be referred to the Police (or any relevant regulatory body) for investigation.

11.0 EQUALITIES IMPLICATIONS

11.1 The service failures discussed in the final Report adversely affected vulnerable service users. The Final Report (section 7) addresses the question of whether this failure constituted disability discrimination. Ms Klonowski's final recommendation specifically addresses this issue and the Action Plan, referred to above, will set out how we intend to respond to this issue.

12.0 CARBON REDUCTION IMPLICATIONS

12.1 None.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 None.

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APPENDICES

- Appendix 1: AKA Final Report entitled 'Independent Review of Wirral Metropolitan Borough Council's Response to Claims made by Martin Morton (and Others)' dated January 2012.
- Exempt Appendix 2: Report by Mr Martin Smith of North West Employers' Organisation into Mr Morton's allegations of bullying, harassment and abuse of power by Council Officers
- Exempt Appendix 3: Letter to the Council's Chief Executive from the Chief Executive of North West Employers' Organisation concerning the possible publication of Exempt Appendix 2.
- Exempt Appendix 4: Copies of Standards for England's decision letters to four Members complained against by Mr Morton.

REFERENCE MATERIAL

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet	6 November 2008 22 September 2011
Audit and Risk Management Committee	4 November 2008 29 June 2009 29 September 2009 3 November 2009 (2 Reports) 25 November 2009 24 March 2010