

## WIRRAL COUNCIL

### CABINET

2 February 2012

<b>SUBJECT:</b>	<b>ACTION PLAN IN RESPONSE TO THE INDEPENDENT REVIEW OF CLAIMS MADE BY MR MARTIN MORTON (AND OTHERS)</b>
<b>WARD/S AFFECTED:</b>	<b>ALL</b>
<b>REPORT OF:</b>	<b>CHIEF EXECUTIVE</b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b>COUNCILLOR STEVE FOULKES</b>
<b>KEY DECISION?</b>	<b>NO</b>

#### 1.0 EXECUTIVE SUMMARY

1.1 This report presents to the Cabinet an action plan ('the Action Plan') in response to the Final Report following an Independent Review of Wirral Council's Response to Claims Made by Mr Martin Morton (and others) ('the Final Report'). The Action Plan also contains actions in response to 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 ('the Martin Smith Report'). The Final Report was considered by the Cabinet at their meeting on 12 January 2012. The Action Plan is attached at Appendix 1.

#### 2.0 RECOMMENDATIONS

- 2.1 That Cabinet approves the Action Plan set out in Appendix 1 and refers it to the Special Council meeting on 13 February 2012.
- 2.2 That Cabinet approves the establishment of an Improvement Board with initial draft terms of reference and membership, all as detailed in Appendix 2, with the additions of:
- (a) Monitoring delivery of the Action Plan; and
  - (b) Consideration of the Final Report and the District Auditor's report relating to HESPE.
- 2.3 That the first meeting of the Improvement Board be held at 5pm on Friday 3 February 2012; and that at that meeting the Board is invited to approve its own final terms of reference.
- 2.4 That, in view of this timescale, Call-in be waived in respect of recommendations 2.2 and 2.3 above.

### **3.0 BACKGROUND AND REASONS FOR RECOMMENDATIONS**

- 3.1 On 12 January 2012 Cabinet considered the Final Report following an Independent Review of Wirral Council's Response to Claims Made by the whistleblower Mr Martin Morton (and others).
- 3.2 The Independent Review was commissioned by the former Leader of the Council from AKA (the trading name of Anna Klonowski Associates Ltd.). 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 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. Ms Klonowski makes 30 recommendations and these are contained in section 8 of the Final Report. They are reproduced in full in the Action Plan as Actions 1 to 30 (inclusive).

3.14 On 12 January 2012 Cabinet considered the Final Report and unanimously resolved that:

- (1) Exempt Appendices 2 and 4 be brought into the public domain;*
- (2) the previous Council Leader, Councillor J Green be thanked for engaging AKA to investigate the claims of Mr Martin Morton (and others);*
- (3) the Council apologises to Mr Martin Morton and discussions will continue with him in the hope that an amicable outcome is reached; and*
- (4) this Cabinet recognises the serious failings contained within this report and the harm done to vulnerable adults as a consequence of those failings.*

*It accepts unreservedly the recommendations made in the report and asks the Chief Executive to draw up an Action Plan demonstrating how those recommendations will be implemented, which should be reported back to the next Cabinet, and referred from there to a Special Council for full debate.*

*Cabinet welcomes the fact that the Chief Executive has already asked:*

- *The Director of Adult Social Services, supported by the Head of Safeguarding, to urgently review the Final report for any further safeguarding issues that need to be addressed*
- *The Director of Law, HR and Asset Management, supported by the Head of Human Resources and Organisational Development, to urgently review the Final Report to ensure all appropriate action is taken,*
- *The Director of Law, HR and Asset Management, in consultation with the Director of Adult Social Services and the Head of Safeguarding, to urgently review the Final Report to consider whether any historic safeguarding failures should be referred to the Police, (or any relevant regulatory body) for investigation.*

*It further notes the actions already under way listed in paragraphs 3.8 to 3.10 which include:*

- *A series of measures to strengthen the Council's safeguarding of vulnerable adults*
- *An ongoing review into the Council's whistle blowing and harassment and bullying policies and*

- *A wider review of the Council's Corporate Governance (including a review of all fees and charges)*

*And notes that these measures are designed to ensure that the situations contained within the report could not be repeated in the Department of Adult Social Services or elsewhere across the Council.*

*Cabinet is also conscious of the fact that one of the criticisms in the report is that in Wirral Council the "abnormal has become normal".*

*Cabinet therefore endorses the decision of the Leader of the Council to set up an Improvement Board, under the umbrella of the LGA, with external representatives from the LGA and elsewhere, including the author of this report Ms Anna Klonowski, to ensure that any future decisions are taken on the basis of best practice rather than accepted Wirral practice.*

*Cabinet further endorses the decision to refer the Action Plan to be drawn up by the Chief Executive to this Improvement board for their Scrutiny and comment.*

*Cabinet also refers the Final Report to the Health and Well Being Overview and Scrutiny Committee for their Scrutiny and Comments.*

*Cabinet believes that this Final Report should be seen in tandem with the Martin Smith report into allegations of bullying and harassment and therefore believes it would be in the public interest to publish this report, and refer it to the Special Council called to discuss the Final Anna Klonowski's report, along with a separate report on HESPE which also arose from the actions of Whistleblowers and the Council's response to those Whistleblowers.*

*Cabinet thanks Ms Klonowski for the detailed work that has gone into this Final Report and expresses its hope and belief that these findings can be used as a catalyst for major improvement and change.*

*It further hopes that this will allow the Council to move forward from this point to the provision of radically improved services and a much more open and transparent culture which welcomes and learns from criticism and responds rapidly to complaints or concerns at the earliest possible stage, preventing a situation like this from ever arising again.'*

- 3.15 Appendix 1 contains the Action Plan in response to Ms Klonowski's 30 recommendations. The Action Plan also addresses two further issues identified by the Director of Adult Social Services (as recommendations 31 and 32); the six recommendations contained in the Martin Smith Report (as recommendations 33 to 38, inclusive); and two additional recommendations of Cabinet from the meeting of 12 January 2012.
- 3.16 Following the publication of the earlier Corporate Governance Report, the Council has been working closely with the Local Government Association ('the LGA'). The LGA has suggested that Wirral establishes an improvement board, in partnership with the LGA. The LGA describe the role of the board to 'provide oversight, support and

challenge to Wirral's improvement and transformation journey'. The LGA's suggested terms of reference for the board are set out in Appendix 2. In addition, the Improvement Board will need to monitor delivery of the Action Plan and consider the Final Report and the District Auditor's report relating to HESPE.

3.17 Accordingly it is recommended that Cabinet approves the establishment of an Improvement Board with initial draft terms of reference and membership, all as detailed in Appendix 2, with the additions of:

- (a) Monitoring delivery of the Action Plan; and
- (b) consideration of the Final Report and the District Auditor's report relating to HESPE.

3.18 Additionally it is further recommended that the first meeting of the Board be held at 5pm on Friday 3 February 2012; and that at this meeting the Board is invited to approve its own final terms of reference. Finally, in view of this timescale, it is recommended that Call-in be waived in respect of the recommendations relating to the Improvement Board.

## **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 I have considered whether each element of the Action Plan is appropriate.

## **7.0 CONSULTATION**

7.1 The Action Plan has been prepared with the assistance of the Deputy chief Executive and Director of Finance, the Director of Adult Social Services, the Director of Law, HR and Asset Management and the head of Human Resources and organisational Development.

## **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 The Action Plan allocated responsibilities for every remedial action and sets out a timescale for delivery.
- 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, sets 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: Action Plan.

Appendix 2: Local Government Association initial draft terms of Reference for the Improvement Board.

## **REFERENCE MATERIAL**

None

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Cabinet</b>	<b>22 September 2011</b> <b>12 January 2012</b>
<b>Audit and Risk Management Committee</b>	<b>29 June 2009</b> <b>29 September 2009</b> <b>3 November 2009</b> <b>(2 Reports)</b> <b>25 November 2009</b> <b>24 March 2010</b>