

# WIRRAL COUNCIL

## CABINET

14 APRIL 2011

<b>SUBJECT:</b>	<b><i>DEPARTMENT OF ADULT SOCIAL SERVICES - REPORT OF INDEPENDENT INVESTIGATOR</i></b>
<b>WARD/S AFFECTED:</b>	<b><i>ALL</i></b>
<b>REPORT OF:</b>	<b><i>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</i></b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b><i>COUNCILOR JEFF GREEN</i></b>
<b>KEY DECISION?</b>	<b><i>NO</i></b>

### 1.0 EXECUTIVE SUMMARY

- 1.1 This agenda item presents the Report prepared by Martin Smith, Independent Associate Consultant, North West Employers, into his investigation into the treatment of Martin Morton, former Supported Living Development Officer in the Department of Adult Social Services (DASS). The Report considers Mr Morton's allegations of abuse of power/bullying whilst he was employed by the Council. Mr Smith's Report is attached as Appendix 1.
- 1.2 This report contains exempt information as set out in paragraphs 1 and 2 of Schedule 12A of the Local Government Act 1972. Paragraph 1 of that schedule refers to information relating to an individual and paragraph 2 refers to information which is likely to reveal the identity of an individual. Having regard to the nature of the allegations and findings contained within Mr Smith's Report, this may lead to the Council taking disciplinary and/or capability action. Therefore, at this stage, pending conclusion of any such proceedings, it is in the public interest for this report and Appendix 1 to remain exempt. At the conclusion of any capability and/or disciplinary proceedings this position should be reviewed.

### 2.0 RECOMMENDATION/S

- 2.1 That Cabinet:
- (a) Receives and considers the Report of Martin Smith, presenting the findings of his investigation into the treatment of Martin Morton in relation to his allegations of abuse of power and/or bullying.
  - (b) Accepts all the findings contained within Mr Smith's Report.
  - (c) Accepts all the recommendations contained within Mr Smith's Report and, in relation to those recommendations:

- (i) instructs the Chief Executive to ensure that the Council's policies in relation to Harassment Bullying and Victimisation; Grievances; and Whistleblowing are all reviewed as a matter of urgency: with a view to incorporating those changes and improvements recommended by Mr Smith (and all other provisions that officers consider appropriate), to ensure that the policies are up to date and fit for purpose;
- (ii) that following completion of (i) above, a timely and comprehensive programme of training for all Council managers is put in place to ensure that the revised policies are understood and applied throughout the Authority;
- (iii) that the Head of Human Resources and Organisational Development takes all necessary action to ensure that Recommendation 3 (relating to the Council's HR function) is implemented, in full, as soon as practicable;
- (iv) that the Chief Executive takes all necessary action to ensure that Recommendation 4 (relating to the Council's corporate governance arrangements for dealing with employees' complaints) is implemented as soon as practicable;
- (v) that the Chief Executive ensures that all appropriate action is taken by Council officers in relation to any issues of capability and/or disciplinary action arising from the findings in Mr Smith's Report where officer roles and responsibilities have not been met; and
- (vi) that Cabinet gives consideration, in the light of the investigation findings, to the Council's obligations towards Martin Morton and determines whether it should consider an appropriate remedy of the Council's treatment of him.

### **3.0 REASON/S FOR RECOMMENDATION/S**

3.1 Mr Smith's Report is a lengthy document, at over 270 pages and in excess of 125,000 words. It has been prepared following a very thorough investigation. During this investigation all relevant witnesses who were willing to take part in the process were interviewed by Mr Smith; and evidence statements agreed with those participants. The investigatory process adopted by Mr Smith appears to be thorough, fair and balanced. In the light of this, it seems reasonable for the Council to have considerable confidence in the robustness of Mr Smith's findings and the appropriateness of his recommendations.

### **4.0 BACKGROUND AND KEY ISSUES**

4.1 Cabinet will be familiar with the whistleblowing concerns raised by Martin Morton, the Former Support Living Development Officer in DASS. Mr Morton referred these issues to the Audit Commission under the Public Interest Disclosure Act 1998, which resulted in the Commission submitting a formal report under the Act to the Council. This led to a further investigation by the Council's Internal Audit Section, which in turn resulted in a series of reports to the Audit and Risk Management Committee, in 2009 and 2010.

- 4.2 Following the meeting of the Audit and Risk Management Committee on 23 September 2009, Cabinet met on the following day. Minute 137 of the Cabinet Meeting of 24 September 2009 records that:

*Councillor Holbrook referred to his attendance at the meeting of the Audit and Risk Management Committee on 23 September, which had considered the report of the Chief Internal Auditor in relation to an investigation of matters raised by a whistleblower (Mr M Morton) with the Audit Commission under the Public Interest Disclosure Act ("PIDA"). He reported that the Committee had given full and detailed consideration to the report and he asked Cabinet to support their decisions.*

Cabinet resolved that:

1. *That Cabinet welcomes and supports the decision taken by the Audit and Risk Management Committee on 23 September.*
2. *That the Director of Law, HR and Asset Management be instructed to commence and investigation into the treatment of Mr Morton in relation to allegations of bullying.*

- 4.3 In line with the Cabinet resolution, the Director of Law, HR and Asset Management instructed Martin Smith, an Independent Associate Consultant with North West Employers, to conduct an independent investigation into Mr Morton's allegations. Mr Smith was formerly the Director of Personnel and Performance at Salford City Council and therefore has the relevant knowledge and experience to conduct such an investigation. Mr Smith was advised when instructed that the circumstances surrounding this case are complex; and that it would therefore not be possible to set a definitive timescale for his investigation. Mr Smith, however, was instructed to undertake a thorough, fair and robust investigation.

- 4.4 In the introduction to his main Report, Mr Smith states that the purpose of his investigation was to seek to establish whether Martin Morton was subject to any bullying or other inappropriate behaviour by any officer or Elected Member, or by the Council as an organisation. He describes his methodology in detail; refers to a chronology of events that is appended to his Report as his appendix 1; and describes the legal duty of care that an employer owes to all its employees. Mr Smith points out (paragraph 1.12 in his Report) that an employer is under an obligation to ensure that the following implied terms of an employment contract are honoured;

- to keep employees safe from harm;
- to provide support and assistance to employees; and
- to maintain the employee's trust and confidence.

- 4.5 Cabinet will see that a key issue emerging from Mr Smith's Report is the failure by management to recognise that the concerns raised by Mr Morton comprised a mixture of employee related matters (which were appropriate to be dealt with under the Authority's grievance procedure); and a number of very serious concerns about service failures. The latter should have been (but were not) regarded as whistleblowing concerns and should have been dealt with accordingly.
- 4.6 The failure on the part of senior managers to appreciate this important distinction (between employee related matters and concerns about service failures) was a very large factor in the deteriorating relationship between the Authority and Mr Morton. Flowing from this, Mr Smith recognises what he describes as "two perspectives" (in paragraph 2.4 and 2.5). Mr Morton has alleged that there was a bullying culture in DASS which led to some of the personal treatment he received; but he also has claimed that he was bullied because he was a whistleblower. Consequently, Mr Smith had to investigate those allegations based on individual/personal behaviour by officers and Elected Members and other allegations based on the formal actions of the Council, as an organisation.
- 4.7 Mr Smith categorises Mr Morton's allegations under the following categories:
1. Bullying
    - 1(a) Personal Behaviour

Persistently criticising unnecessarily.  
Making inappropriate personal comments.
    - 1(b) Collective Behaviour

Deliberate isolation by ignoring and excluding someone.  
Withholding information or removing areas of work without justification.  
Failure to support/undermining someone.
  2. Abuse of Power
    - 2(a) Denial of due process at departmental level.
    - 2(b) Denial of due process at corporate level.

Lastly, Mr Smith records that Mr Morton raised concerns about a possible example of nepotism; and an alleged inappropriate payment to a previous whistleblower.
- 4.8 The bulk of Mr Smith's Report contains the findings of his investigation. This is part 5 of the Report which commences on page 44 and extends to page 202.

- 4.9 Mr Smith conducted his investigation in accordance with the Council's Harassment Bullying and Victimisation Policy. This policy states that "when investigating the complaint, it is important to take account of the feelings of the complainant in terms of what has happened. What is offensive and unacceptable behaviour is up to the recipient to determine".
- 4.10 Mr Smith's overall conclusions are set out in part 6 of his Report (commencing at page 203).
- 4.11 Mr Smith concludes that there were three examples of personal behaviour which he believed were inappropriate and which resulted in Martin Morton being bullied. These are detailed in paragraph 6.34 of the Report.
- 4.12 Mr Smith concludes that there were seven examples of collective behaviour which he believes were inappropriate; and which resulted in Martin Morton receiving detrimental treatment. These are detailed in paragraph 6.42 of the Report.
- 4.13 Mr Smith concludes that there were three examples of what he believes to be inappropriate behaviour/abuse of power at the departmental level in DASS; and which resulted in a denial of due process by the Council as an organisation. These are detailed in paragraph 6.52 of the Report.
- 4.14 Lastly, Mr Smith finds that there were three examples of inappropriate behaviour/abuse of power at corporate level, which he believes resulted in a denial of due process by the Council, as an organisation, in its consideration of Martin Morton's grievance claims. These are listed at paragraph 6.63 of the Report.
- 4.15 Where Mr Smith does not uphold allegations made by Mr Morton, sometimes it is because the evidence presented to Mr Smith has been conflicting; and on other occasions, it is because Mr Smith's judgement as to the interpretation of the evidence differs to that applied to it by Mr Morton.
- 4.16 Mr Smith's recommendations are set out in part 7 of his Report which commences at page 227.
- 4.17 Recommendation 1 concerns suggested improvements to the Council's policies and procedures relating to: (1) Harassment Bullying and Victimisation in the Workplace Policy ("HBV"); (2) Grievance Procedures; and (3) Confidential Reporting (Whistleblowing) Policy.
- 4.18 Recommendation 2 emphasises the importance of raising understanding and awareness of the role, purpose and use of the Council's HBV, Grievance and Whistleblowing policies. Following reviews of these policies a programme of training and awareness will need to be put in place to ensure that they are understood and applied across the organisation.

- 4.19 Recommendation 3 concerns the role of HR and recommends that it adopts a more pro-active role in matters of employee complaints. As part of this, appropriate support will be provided to employees who raise grievances, or use the whistleblowing procedure.
- 4.20 Recommendation 4 (page 238) proposes that the Council strengthens its corporate governance arrangements when dealing with employees' complaints in all forms under the HBV, Grievance and Whistleblowing procedures.
- 4.21 Recommendation 5 relates to how the Council gives consideration to all the findings contained within Mr Smith's Report; particularly those where the Authority may take the view that officer roles and responsibilities may not have been met. These are matters to be considered against the background of the Council's employment policies relating to capability and/or disciplinary action. It is proposed that, where appropriate, action is taken in line with these policies.
- 4.22 Mr Smith's final recommendation, Recommendation 6, is that, in the light of the investigation findings, the Council should consider its obligations to Martin Morton; and determine whether it should consider an appropriate remedy for the manner in which the Council has treated him.

## **5.0 RELEVANT RISKS**

- 5.1 Mr Smith's Report makes a number of significant criticisms, not just of individual officers, past and present, but also of collective behaviour within DASS and across the whole Authority. It is therefore important that robust and appropriate action is taken to ensure that the errors of the past are not repeated. With this in mind, the recommendations contained within Mr Smith's Report seem logical and appropriate steps to be taken by way of learning and improvement.

## **6.0 OTHER OPTIONS CONSIDERED**

- 6.1 Given the thoroughness of Mr Smith's investigation and the robustness of his methodology, the alternative option of rejecting some or all of his findings and recommendations, whilst considered, was swiftly rejected.

## **7.0 CONSULTATION**

- 7.1 Mr Smith's Report lists those persons he interviewed and refers to the much smaller number of people whom he was not able to interview.

## **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 8.1 None.

## **9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

- 9.1 None arising immediately from this report.

## 10.0 LEGAL IMPLICATIONS

10.1 Reference is made in the body of this report to the relevant obligations on the part of an employer towards all employees.

## 11.0 EQUALITIES IMPLICATIONS

11.1 None directly arising from this report. However, Members will be mindful that Mr Morton's whistleblowing concerns related to the unlawful charging of vulnerable adults in a number of Council owned properties.

11.2 Equality Impact Assessment (EIA)

- (a) Is an EIA required? No.  
(b) If 'yes', has one been completed? No.

## 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 Report prepared by Martin Smith, Independent Associate Consultant, North West Employers, of his investigation into the treatment of Martin Morton in relation to allegations of abuse of power/bullying. The Report is dated 31 March 2011.

## REFERENCE MATERIAL

Appendix 1, together with the reports and minutes listed below.

## SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit and Risk Management Committee	24 March 2010
Audit and Risk Management Committee	25 November 2009
Cabinet – minute 137	24 September 2009
Audit and Risk Management Committee	23 September 2009
Audit and Risk Management Committee	04 November 2008
Audit and Risk Management Committee	30 September 2008