

Council – 27 September 2007

Independent Reports Relating to an Employment Tribunal Matter

Service Area: council-wide

Wards: none directly impacted

Summary of report

This report presents two recently published independent reports entitled:

- Employment Tribunal Case - prepared by the Audit Commission's District Auditor (**Appendix 1**)
- Independent Enquiry into Employment Matters Linked to Neighbourhood Renewal Fund (NRF) Management – prepared by Mr D Bradbury. (**Appendix 2**)

The draft action plan setting out activities arising from the reports is presented at **Appendix 3**. The District Auditor will be at the meeting to present his report.

Recommendations

- (1) That council notes the contents and accepts the recommendations of both reports.
- (2) That council endorses the action plan which responds to the recommendations and refers monitoring of its implementation to the Audit Committee.

Resource and legal considerations

The District Auditor determined that it was appropriate for him to carry out an investigation into the circumstances which gave rise to the Employment Tribunal case, and the report at **Appendix 1** sets out his findings. The invoiced cost excluding VAT (at 31 August 2007) for this work is £123,580.

In addition, the council commissioned a further report, intended to be complementary to the first which sought to fulfil three objectives:

- To enquire into the departure of senior officers involved with NRF and member involvement;
- To review the application of personnel policies and procedures as applied in this case;
- To consider any particular circumstances giving rise to concern relating to the management of NRF monies and governance and to review whistleblowing reports and arrangements.

At the time of despatch of this report, the council had not been invoiced for this work but are advised that it will be c £15,778.

Citizen impact

The public debate arising from these reports supports openness, transparency and local democracy.

Environmental impact

None directly arising from this report.

Performance and risk management issues

The council is recognised for having strong risk management arrangements overall, scoring the maximum of 4 in this category in the most recent objective assessment. Since this case, risk management arrangements have been further strengthened in relation to the assessment and management of legal cases.

Equality implications

Since this case, c 600 managers have been trained in absence management and the provisions of the Disability Discrimination Act. Such training will continue for all new managers.

Consultation

Legal services have been consulted in the preparation of this report.

Background papers

Attached as appendices.

Signed:



Carole Evans – Acting Chief Executive

17 September 2007

Contact officer

Carole Evans

☎ 01922.652910

✉ evansc@walsall.gov.uk

Audit Detailed Report

September 2007



Employment Tribunal Case

Walsall Metropolitan Borough Council

Audit 2006/07

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For further information on the work of the Commission please contact:

Audit Commission, 1st Floor, Millbank Tower, Millbank, London SW1P 4HQ

Tel: 020 7828 1212 Fax: 020 7976 6187 Textphone (minicom): 020 7630 0421

www.audit-commission.gov.uk

Contents

Summary Report	4
Introduction	4
Background	4
Audit approach	5
Main conclusions	6
Recommendations	9
Detailed Report	10
Overview of events	10
Disability Discrimination Act	12
Handling of grievances	18
Whistleblowing	22
Management of Mr Francis	24
Managing the case	38
Appendix 1 – Chronology of events	41
Appendix 2 – Extracts from legislation	43
Disability Discrimination Act 1995	43
Employment Act 2002 Schedule 2	45
Employment Act 2002 (Dispute Resolution) Regulations 2004	45

Summary Report

Introduction

- 1 This report summarises the results of an investigation into the circumstances surrounding an Employment Tribunal case brought by Peter Francis, a former employee, against Walsall Metropolitan Borough Council (the Council).

Background

- 2 Peter Francis was employed by the Council as Head of Programme Management, and previously as Single Regeneration Budget (SRB) Programme Manager. As a result of events which occurred between January 2004 and June 2005, he brought a case against the Council in an Employment Tribunal. Mr Francis's case alleged:

- unfair dismissal;
- failure to make reasonable adjustments in accordance with the Disability Discrimination Act 1995 (DDA); and
- suffering detriment as a result of 'whistleblowing' under the Public Interest Disclosure Act 1998.

The Council's then Chief Executive, Annie Shepperd, was named as second respondent in relation to the DDA claim.

- 3 The case was listed before the Tribunal for two reading days (11 May 2006 and 12 May 2006) with the consideration of evidence due to commence on 15 May 2006. Before attending the Tribunal, the Council received a legal opinion advising that it was very unlikely to be able to successfully defend the first two elements and strongly recommending reaching an 'out-of-court' settlement. The potential settlement payment was estimated to be very substantial.
- 4 In the event, agreement was not reached prior to 15 May. On this date, however, the Council and the Former Chief Executive made an admission in respect of the DDA and the Council made an admission in respect of unfair dismissal. As a result of these admissions and associated apologies, the claimant withdrew all other allegations and there was no longer a requirement for a full hearing. A remedies hearing was listed to commence on 4 December 2006 to determine the level of the financial compensation, but the Council reached a settlement with Mr Francis at the start of this hearing.
- 5 In view of the potentially large settlement and the Council's and the former Chief Executive's inability to defend their actions, I decided that it was appropriate for me to carry out an investigation into the circumstances which gave rise to the Employment Tribunal case.

Audit approach

- 6 In investigating this matter, I have been conscious of the powers and duties which I have as External Auditor. Under the Code of Audit Practice, the External Auditor has responsibility for assessing the arrangements which a local authority has in place for ensuring economy, efficiency and effectiveness in its use of resources. Paragraph 19 of the Code outlines three areas where the auditor has to make an assessment which are relevant to this case:
- arrangements for managing its financial and other resources;
 - arrangements for ensuring compliance with established policies, procedures, laws and regulations; and
 - arrangements for ensuring that the audited body's affairs are managed in accordance with proper standards of conduct.
- 7 In considering this matter, I have been very conscious of the context in which many of the events took place. The Council was in 2004 and 2005 trying, with considerable success, to overcome the many weaknesses which had been identified in a succession of inspection reports and had resulted in intervention from central government. Officers at all levels and members were therefore facing a large number of challenging issues. Overall, significant improvements were made in both governance arrangements and service performance, and central government intervention was lifted in 2004.
- 8 My investigation involved:
- interviews with relevant current and former Council officers;
 - review of the legal advice obtained by the Council both internally and externally, including the comprehensive opinion provided by expert employment law Counsel; and
 - review of a large number of relevant documents, including the ET 'grounds for complaint' documents, witness statements, letters, emails and transcripts. Most, but not all, of these were already within the bundle of papers prepared for the ET.

Main conclusions

- 9 In this particular case, some of the Council's arrangements for managing its staff and for complying with legislation clearly did not operate effectively. This was because those procedures were not always applied, but there were also weaknesses in some of the arrangements which were in place. My findings do not, however, mean that there were widespread failures in the Council's governance arrangements, which were continuing to improve throughout this period.
- 10 Two key aspects of the case were most significant:
- the Council's failure to properly consider whether or not the provisions of the Disability Discrimination Act applied to Mr Francis, and so whether or not it was required to make reasonable adjustments as required by the Act; and
 - the Council's failure to properly respond to the formal grievances made by Mr Francis.
- 11 A range of other failings contributed to these two issues.

Disability Discrimination Act

- The former Chief Executive was not provided with adequate legal and HR advice in relation to the DDA. In the early stages of dealing with this particular issue it appears that she expressed a view without first seeking advice. Later, the former Chief Executive took decisions having had only tentative legal advice, and was never provided with definitive legal advice.
- Neither the former Chief Executive nor other senior officers involved in the management of Mr Francis had sufficient awareness of the requirements of the DDA.
- The Council did not take action to rectify the mistakes it had made in relation to the DDA, partly because of staffing difficulties in the legal services team during 2005.

Handling of grievances

- The former Chief Executive decided that the Council would not respond promptly to Mr Francis's grievances in November 2004 and January 2005 and in the event there was never an adequate response.
- The Assistant Director of Legal and Constitutional Services decided not to respond to the later grievance against the former Chief Executive until after the ET had been concluded. There is a statutory requirement to respond and failure to do so worsened the Council's position in the Tribunal.

Other issues

- 12** There were a number of other failings.
- The delay in providing Mr Francis with written notification of the outcome of the first investigation of his conduct in January 2004 was inappropriate.
 - The former Chief Executive initiated an investigation into Mr Francis's conduct in September 2004 without relaying to the investigator an accurate understanding of the allegations against him.
 - The tone and content of some of the correspondence from the former Chief Executive to Mr Francis was in my view inappropriate.
 - The former Chief Executive seconded Mr Francis to another directorate without his prior agreement, even though such a secondment should only take place either by consensus or as part of a formal disciplinary process. When the secondment took place, it was not well handled.
 - There were minor delays in dealing with issues raised by Mr Francis about the organisational structure of the relevant part of the Council, but it is unlikely that earlier action would have had a significant impact on the case overall.
 - In preparing for the recruitment process for the new merged post, Mr Francis was only allowed access to information on his computer by complying with a set of stringent conditions which were not imposed on the other candidate.
- 13** Taken together, these issues clearly demonstrate deficiencies in the Council's management of Mr Francis. Although there was a long series of events which had an adverse effect on him, there is no evidence that this series of events amounted to a campaign against him.

- 14 The events of this case can be related to various aspects of my responsibilities for assessing arrangements under the Code of Audit Practice, through either weaknesses in particular arrangements or failure to apply the arrangements which were in place.

Table 1 Findings in relation to auditor's responsibilities

The events of this case relate to a number of areas of the auditor's responsibility for assessing arrangements.

Code area	Findings
Arrangements for ensuring compliance with established policies and procedures	<ul style="list-style-type: none"> • A number of actions were taken which did not comply with Council policies and procedures in relation to grievances and disciplinary action. • Arrangements for providing advice on the application of these policies and procedures were not effective in this case.
Arrangements for ensuring compliance with laws and regulations	<ul style="list-style-type: none"> • Relevant senior officers had inadequate knowledge of the requirements of the Disability Discrimination Act and other legal requirements in relation to grievances. • Resourcing of the Council's legal team was not sufficiently stable to ensure an effective response to this complex and unusual legal action.
Arrangements for ensuring proper conduct of the Council's business	<ul style="list-style-type: none"> • There were weaknesses in how two investigations into Mr Francis's conduct were in the first case reported and in the second case set up.
Arrangements for managing financial and other resources	<ul style="list-style-type: none"> • The Council did not manage risk effectively in relation to this case. • Concerns raised about the effectiveness of the organisational structure in the part of the Council where Mr Francis worked were not dealt with as promptly as they could have been, but it is unlikely that earlier action would have had a significant impact on the case overall. • The compensation now paid to Mr Francis represents substantial expenditure which could have been avoided.

Recommendations

- 15 The lessons for the Council range from broad issues to very specific points. The following recommendations should be implemented to minimise the risk of recurrence of the many things which went wrong in this case. The Council has, on the basis of a draft version of this report, produced an action plan and has implemented many of these actions.

Recommendations	
<i>R1</i>	<i>Implement the planned programme of training for managers regarding the Disability Discrimination Act and, as part of this, ensure that managers are aware of actions which may constitute reasonable adjustments and how to evaluate whether they are appropriate.</i>
<i>R2</i>	<i>Strengthen arrangements for ensuring that adequate training and awareness-raising is put in place for new legislation.</i>
<i>R3</i>	<i>Consider whether any additional processes can be put in place to safeguard the Council against recurrence of any situation where officers do not give robust advice in circumstances where they think that the law or council procedures are not being followed.</i>
<i>R4</i>	<i>Ensure through training that the duty to respond to grievances is well understood by managers at all levels.</i>
<i>R5</i>	<i>Ensure that any future investigations of officers' conduct are:</i> <ul style="list-style-type: none"> <i>• properly concluded in accordance with laid down procedures;</i> <i>• based on well-considered terms of reference derived from reliable initial allegations; and</i> <i>• have sufficient involvement from HR professionals at all stages.</i>
<i>R6</i>	<i>Ensure that any future secondments to allow investigations are properly planned with clear objectives and adequate supervision, as far as is practical given that they may have to be arranged at short notice.</i>
<i>R7</i>	<i>Continue efforts to achieve stable staffing within the legal team, augmented with external assistance and expertise where appropriate.</i>
<i>R8</i>	<i>Review the way specific emerging legal cases are captured for inclusion in risk registers.</i>

Detailed Report

Overview of events

- 16 Peter Francis was appointed to the post of Head of Programme Management in January 2004, having previously been in the Council's employment for over six years. His responsibilities were for 'programme management' of Neighbourhood Renewal Funding (NRF). His post was part of the Regeneration, Housing and Built Environment Directorate. Mr Francis's line manager was (from February 2004 to September 2004) the Assistant Director (Community Regeneration and Housing).
- 17 On 22 January 2004, Mr Francis was suspended following allegations that he had inappropriately provided information to a councillor. Following investigation, he was reinstated on 11 February and informed that there was insufficient evidence against him.
- 18 Between March and July 2004, Mr Francis raised with both his line manager and Internal Audit a number of concerns about the management of NRF, and tensions also emerged regarding his role vis-a-vis those of the directorate finance manager and the Director of the Borough Strategic Partnership. A meeting was held to resolve these matters in July 2004, but although this appeared at the time to have achieved a consensus, Mr Francis subsequently expressed considerable dissatisfaction with the outcome. Mr Francis also raised his concerns with External Audit in July 2004.
- 19 Subsequently, questions arose regarding Mr Francis's conduct. The former Chief Executive became involved and, following discussion with the Executive Director (Regeneration, Housing and Built Environment), wrote to Mr Francis to set up a meeting to discuss complaints regarding his conduct. The former Chief Executive arranged for an independent enquiry to be carried out into the complaints, but before this enquiry (carried out by Mr White of Surrey County Council) commenced, Mr Francis started a period of sick leave.
- 20 The former Chief Executive had arranged for Mr Francis to be seconded to a different directorate while the enquiry was carried out and, on his return from sick leave in November 2004, he was based in the Social Care and Health Directorate. The results of the independent enquiry were notified to him in December 2004, and were essentially that the allegations against him were not proven, except that it was found that he had contributed to a breakdown in working relationships.
- 21 In November 2004, the question arose in correspondence between Mr Francis and the former Chief Executive of whether Mr Francis was suffering from a disability within the meaning of the Disability Discrimination Act, but the Council did not deal conclusively with this issue.

- 22 Following a review of the structure within the RHBE Directorate, a restructuring was agreed in January 2005. This resulted in deletion of Mr Francis's substantive post, along with that of Head of Neighbourhood Partnerships, and placed him in competition with one other officer for a single replacement post.
- 23 Mr Francis commenced a further period of sick leave in February 2005. During this period the recruitment process for the new post was carried out. The process was delayed once at Mr Francis's request, but his second such request was declined. He was unable to attend the interview and the other officer was appointed.
- 24 On 26 April 2005, Mr Francis filed a claim against the Council with the Employment Tribunal in connection with whistleblowing. On 28 April 2005, he lodged a further formal grievance alleging abuse of authority on the part of the former Chief Executive. Mr Francis did not return to work and resigned from the Council's employment in June 2005. This was followed on 1 July 2005 by a further ET claim in relation to unfair dismissal and disability discrimination.
- 25 During 2005, there were staffing difficulties within the Council's legal services team and responsibility for advising on the case was passed between several different officers, most of whom were temporary. Indeed, for key meetings in February 2005, the officer providing legal advice was an individual who had previously been an employment lawyer but was now working in another legal role in the authority (subsequently referred to as 'the planning solicitor'). As a result of the changes of personnel, delays occurred in developing an effective response to the case.
- 26 At a preliminary hearing on 30 March 2006, the Tribunal found that Mr Francis had been suffering from a disability which fell within the Disability Discrimination Act, most likely from mid September 2004 but certainly by December 2004.
- 27 The Council received advice from specialist Counsel in relation to this matter from September 2005 onwards, culminating in a comprehensive Counsel's opinion on 9 May 2006. As a result of this, it commenced further discussions with Mr Francis's representative in the hope of achieving a negotiated settlement. These negotiations continued right up to the day before the start of the main hearing, but a settlement was not reached.
- 28 Following further legal advice, the Council and the former Chief Executive decided to concede on two elements of the claim; those relating to DDA and unfair dismissal. Following further discussions with Mr Francis and his representative, Mr Francis agreed to withdraw the 'whistleblowing' element of the claim in return for a commercial settlement. As part of these negotiations, the Council agreed to make an initial payment to Mr Francis in respect of some of the items in his schedule of losses.

- 29 A further hearing of the Tribunal was scheduled to start on 4 December 2006 to determine the level of compensation to be paid to Mr Francis. This hearing was opened and adjourned on that date and the Council reached a settlement with Mr Francis on the following day. The cost of the settlement to the Council is £619,000, which includes meeting Mr Francis's tax liability on the payment and the interim payment of £35,000 already made in May 2006. The Council also agreed to meet the cost of further support for Mr Francis.
- 30 A chronology of the main events is included as Appendix 1.

Disability Discrimination Act

- 31 The Council failed to consider adequately whether the Disability Discrimination Act applied to Mr Francis and in consequence failed to make 'reasonable adjustments' required by the Act. It also failed to respond to a statutory DDA questionnaire. These failures signify weaknesses in how the Council's arrangements for ensuring compliance with laws and regulations were applied in this case.

Applicability to Mr Francis

- 32 Section 6 of the DDA requires an employer to make reasonable adjustments to reduce the impact of any disadvantage suffered by an employee or potential employee because of their disability (see Appendix 2). For a medical condition to constitute a disability, two tests must be satisfied:
- the condition must be long-term or capable of being long-term; and
 - it must have a significant impact on day-to-day activities.
- 33 The Council appears not to have considered the question of whether or not Mr Francis was disabled until February 2005. The question was raised by Mr Francis in a letter to the former Chief Executive on 13 November 2004. In this letter, he warns the former Chief Executive that if he did not receive satisfactory answers to various questions, he:

'will have no alternative but to raise formal grievances in relation to potential grounds for.....Disability Discrimination...'

He refers again to disability discrimination in his grievance letter of 22 November 2004. The response from the Head of Personnel and Employee Relations, which was drafted by the former Chief Executive, states that:

'this is the first time you have raised this matter and in fact this is something that is described within our sickness absence procedure.'

No further action was taken by either the former Chief Executive or the Head of Personnel and Employee Relations in response to this exchange.

- 34 In two further letters dated 6 December 2004, Mr Francis again drew the former Chief Executive's and Head of Personnel and Employee Relations' attention to the fact that he was suffering from a medical condition and that this was being worsened by the continuing uncertainties over his position and his inability to return to his substantive post.
- 35 The planning solicitor first became involved in this case in very late January 2005. The former Chief Executive asked for a representative from legal services to attend two meetings. Neither the employment locum then in post nor his line manager was able to attend the meetings, and the planning solicitor was asked to attend. She agreed to do so on the understanding that her involvement was simply to attend the two meetings and without any awareness of the emerging complexity of the case. She was the legal services Team Manager for planning and her experience of employment law had been several years earlier in a post in another council. Together with the Acting Head of Personnel and Employee Relations (the permanent postholder having been seconded to an important role elsewhere in the Council), she attended a briefing meeting with the former Chief Executive on 3 February 2005 but felt that this only gave her a limited understanding of the case. She then became involved in dealing with correspondence with Mr Francis's representative.
- 36 The possibility of Mr Francis's condition qualifying under the DDA was addressed in a letter from the planning solicitor to Mr Francis on 4 February, which stated:

'It is the Council's view that you do not satisfy the requirements of the Disability Discrimination Act 1998.'

The solicitor made this assertion based on the fact that she had no medical evidence to support the claim that Mr Francis did have a disability that met the requirements of the DDA. She did not wish to send a letter which contained such a definitive statement, but has stated that she was instructed to do so by the former Chief Executive. There is no conclusive evidence as the planning solicitor did not keep a file note or a copy of the original draft letter which she prepared for review by the former Chief Executive. The former Chief Executive denies, however, that she instructed the planning solicitor to make such a definitive statement. I remain of the view that it was unwise of the Council to make such a definitive statement of its views without careful consideration of the issues.

- 37 Mr Francis's advisor replied in a letter of 8 February which again made clear her view that the Council:

'may be under a duty...to make reasonable adjustments to prevent his disability from having a substantive adverse impact on him.'

- 38 There was further discussion of the question at the meeting on 11 February, at which Mr Francis's representative continued to assert that he was covered by the DDA. The solicitor continued to believe that there was no evidence of Mr Francis having a condition which qualified under DDA. Mr Francis had at that time been back at work for several weeks and there was no medical evidence that he was suffering from any condition at that time. Furthermore, the solicitor had only just become aware of earlier sick notes provided by Mr Francis's GP and of the involvement of the occupational health service. Even if she had believed that there may have been a qualifying condition, however, she considered that it would have been inappropriate for her to concede this in an open meeting as this would have weakened the Council's position.
- 39 Because of her limited up-to-date knowledge and experience, the planning solicitor had sought to have the 11 February meeting postponed and rearranged so that the employment locum could attend. It is not clear, however, whether her request, which was supported by the Head of Law, ever reached the former Chief Executive and the meeting was not in any event postponed. While the planning solicitor expressed sound reasons for wanting the meeting postponed, this could in any case have been unwise given how long it had taken to set the meeting up. The solicitor also made clear to the former Chief Executive that she could only give her qualified advice and that further work would be needed to reach a definitive position.
- 40 The question of whether or not Mr Francis's condition qualified as a disability within the terms of the DDA was finally determined by the Employment Tribunal at a preliminary hearing in March 2006. The Tribunal found that Mr Francis's condition was a clinically well-recognised illness which affected his day-to-day activities and was capable of lasting for more than twelve months.

Reasonable adjustments

- 41 The Council should have considered making reasonable adjustments to reflect Mr Francis's disability during:
- the process for making his post redundant and recruiting to the new post of Head of Neighbourhood Partnerships and Programmes;
 - the handling of enquiries into his conduct; and
 - the handling of his grievances.

The recruitment process

- 42 During the second half of 2004, the Executive Director (Regeneration, Housing and Built Environment) commissioned an independent consultant to recommend an appropriate future structure for the neighbourhood partnerships and programme management teams. This was in response to a number of factors:
- the expected reduction in external funding streams;
 - the need to make cost savings in the 2005/06 budget; and
 - the setting up of the new Local Neighbourhood Partnerships across the Borough.

- 43 Mr Francis has suggested that the restructuring was initiated as a means of 'sidelining' him as a result of his 'whistleblowing' activities. He points out that the existing structure had only been in place since Summer/Autumn 2003 and therefore could not have legitimately needed revision. In my view, there were sound reasons for the further restructure and there is no evidence that it was undertaken for an improper purpose.
- 44 The consultant's report recommended that Mr Francis's post should be deleted, together with that of Head of Neighbourhood Partnerships, and a new post of Head of Neighbourhood Partnerships and Programmes should be created. In line with the Council's policies, this post was 'ring fenced' for the two displaced employees.
- 45 Mr Francis was informed of this in a letter from the former Chief Executive dated 12 January 2005. In line with procedures, this was followed up by a meeting on 1 February between Mr Francis, the Assistant Director and an HR officer. Mr Francis and his advisor were therefore aware of the situation when they met with the former Chief Executive and others on 11 February 2005. At this meeting, Mr Francis's representative explicitly made the suggestion that Mr Francis was suffering from a disability within the DDA. She (the representative) also indicated that, under these circumstances, it would be an appropriate adjustment to slot Mr Francis into the new post rather than him having to compete for it. However, Counsel subsequently instructed by the Council considered this would have gone further than the Act required.
- 46 After a period of further correspondence, the date of the recruitment exercise was fixed for 2 March. Immediately prior to this, Mr Francis was still on sick leave. He therefore wrote to ask for the recruitment process to be postponed. In doing so he did not state that this was a request for the Council to make a reasonable adjustment, but in any case the duty to make reasonable adjustments is on the Council as employer, whether or not the employee makes a request which refers to the Act. The former Chief Executive responded, agreeing to his request but stating that no further delay would be possible because of the importance for the service of filling the vacancy. She has stated that she took advice on this matter but there is no other evidence of this. In the meeting on 11 February, the former Chief Executive had stated that:

'we won't be proceeding with the Assessment Centre or Interviews if either candidate isn't available.'

It is not clear why she subsequently came to a different view. The recruitment was rescheduled for 23 March.

- 47 In the event, Mr Francis was still off sick and wrote on 22 March 2005 asking for a further postponement. Again there was no mention of this being a request made under the DDA. An HR officer responded on behalf of the Executive Director (Neighbourhood Services), refusing the request. The Executive Director took this decision, which he felt was straightforward given the former Chief Executive's previous decision that no further postponement would be possible. The Council's recruitment policies and procedures do not provide any guidance on what action to take in such circumstances.

- 48 As a result, Mr Francis did not attend the assessment centre and the other applicant was appointed. In accordance with the Council's procedures, Mr Francis was placed on the redeployment list.
- 49 This series of events meant that, without considering whether there were any reasonable adjustments it should make to accommodate Mr Francis's disability, the Council proceeded with the recruitment process which led to Mr Francis being placed on the redeployment list. Two main factors led to this:
- a lack of awareness among the relevant senior officers, particularly the former Chief Executive and to a lesser extent the Executive Director (Neighbourhood Services), of the relevant provisions of the DDA; and
 - inadequate advice being provided to those senior officers by the Council's legal and human resources functions, due to:
 - the former Chief Executive not having obtained advice when the question of disability was first raised by Mr Francis;
 - the specialist employment locum not being available for key meetings; and
 - subsequent failure of the employment locum to provide advice.
- 50 The lack of awareness of the DDA provisions demonstrated in this case was symptomatic of the wider lack of awareness of the Act's provisions across the Council and represents a weakness in arrangements for compliance with laws and regulations. Despite the Council's role as a significant employer, there had been no recent compulsory programme of training or even briefing for managers on this area, which is widely acknowledged to be a complex area of law. Some voluntary training seminars organised by legal services had covered DDA but were poorly attended. Since the issues in the case of Mr Francis have become known, the Council has taken action to address this, devising a programme of compulsory training. It now needs to strengthen arrangements to ensure that adequate training and awareness raising is in place for future new legislation.
- 51 With regard to the provision of advice, although representatives from both legal and HR functions were involved in the key meetings in February 2005, neither was able to give definitive, unqualified advice on the Council's duties in relation to the DDA and the employment locum to whom the case was subsequently passed failed to do so. The former Chief Executive told me that she sought on many occasions to contact the employment locum but he did not respond, and that she was very concerned by this stage about the case. She stated that she sought without success to escalate the matter to the Assistant Director of Legal and Constitutional Services. He does not accept this and I have not been able to obtain conclusive evidence. However, I would have expected the former Chief Executive, given her position of authority, to take whatever action was necessary to obtain appropriate advice.

- 52 Taken together, these failings demonstrate that, in relation to this case, arrangements for ensuring compliance with procedures, policies, laws and regulations were not applied effectively. The council now needs to ensure that managers have a good understanding of the need to make reasonable adjustments and how to evaluate whether particular adjustments are appropriate.
- 53 I have concerns regarding other aspects of the recruitment process but, as they do not relate to DDA issues, I comment on them later under 'Management of Mr Francis'.

Investigations of Mr Francis

- 54 The former Chief Executive was alerted to the possibility of a DDA issue in Mr Francis's letter of 13 November 2004. She was reminded of the existence of this possibility over subsequent weeks as set out above. On several occasions he linked the worsening of his medical condition to the way he was being treated by the Council (for example in his letter of 13 December 2004). In his letter of 19 January 2005 to the Former Chief Executive, he refers to the following.
- b. *'Abusing my agreement to a temporary transfer pending the results of an investigation by unnecessary delay and, knowing that I was ill, and contrary to medical advice, effectively 'casting me adrift' in Social Services. I also consider that this is a failure to make a reasonable adjustment as it is your duty to do so under the Disability Discrimination Act.'*
 - f. *'Failing in your duty of care towards me and or failure to make reasonable adjustments to your practices since I became ill in the manner in which I have been treated.'*
 - h. *'Having no regard for my health by bringing a third set of new allegations against me'.*
- 55 The Council should have given this matter careful consideration at the time, but I am not aware of any consideration by the Council of possible adjustments in response to Mr Francis's disability, despite the number of times on which the Council's attention was drawn to this possibility. Counsel instructed by the Council subsequently identified that adjustments should have been made. Mr Francis's assertions that he was suffering from a disability were largely ignored or denied, but this appears to have been, at least until early February 2005, a stance taken by the former Chief Executive without substantive legal or HR advice being obtained. While it is clear that the former Chief Executive did not have sufficient knowledge of the requirements of the DDA, under these circumstances she should have obtained advice earlier than she did and acted on such advice.

DDA questionnaire

- 56 A statutory DDA questionnaire was served on the Council on 20 July 2005, but was only partly completed by the time of the main Tribunal hearing in May 2006 and had not therefore been returned. Such questionnaires are provided for by section 56 of the Disability Discrimination Act 1995 and associated regulations and are intended as an information gathering exercise for a claimant prior to filing their grounds for action. As they are part of a statutory procedure, failure to comply can be viewed adversely by the Tribunal and taken into account in determining whether there should be an uplift to the level of compensation payable, although there is no statutory requirement to complete them.
- 57 Council officers had made some attempt to complete the questionnaire. While the process was not helped by staffing changes within legal services, the main reason why the questionnaire was not completed and returned was that some of the questions required answers which would weaken the Council's case in the Tribunal.
- 58 Whether or not the Council's decision not to return the questionnaire was justified, the Council's previous actions exposed it to the risk that the Tribunal would apply an uplift to the level of compensation.

Handling of grievances

- 59 The Council's failure to deal adequately with formal grievances made by Mr Francis worsened its position in the Employment Tribunal. It was also another way in which the Council failed to make a reasonable adjustment to accommodate Mr Francis's disability.
- 60 Under employment law, employees have a statutory right to make grievances and for the employer to respond to them. In Employment Tribunal cases, where an employer has not followed statutory processes such as this, the Tribunal must increase any award by 10 per cent and may increase it by up to 50 per cent. In addition, failure to respond to a grievance could be seen by a Tribunal as a breach of the implied duty of trust and confidence between employer and employee, and could therefore contribute to a finding of constructive dismissal.
- 61 The Council has in place a grievance policy which reflects the statutory requirements and is widely available.

- 62 Mr Francis lodged a formal grievance on 22 November 2004. It concerned the way he was treated following his raising of concerns about NRF spending and having the allegations of bullying and harassment 'hanging over him'. This was sent to the Head of Personnel and Employee Relations, who responded on 3 December 2004 with a letter, drafted by the former Chief Executive, informing him that:

'the Council cannot deal with a grievance until the independent investigation into the breakdown of working relationships has concluded.'

Mr Francis wrote a letter on 6 December 2004 appealing against this decision and setting out the consequences for his health of delays in resolving the situation, but did not receive a reply.

- 63 On 19 January 2005, Mr Francis wrote again to the Head of Personnel and Employee Relations to ask that the grievances should now be considered as Mr White's investigation had been concluded. On the same day, he wrote to the former Chief Executive making additional formal grievances. The Head of Personnel was at that time seconded to work in a different part of the authority and the letter was dealt with by the acting Head of Personnel and Employee Relations. She decided to set up a meeting with Mr Francis to discuss and clarify his grievance. This meeting was cancelled on the instruction of the former Chief Executive, who indicated, reasonably, that legal advice should be obtained before such a meeting should be held. She also informed the acting Head of Personnel and Employee Relations that all communication with Mr Francis was, to avoid possible confusion, to be through herself. In the event, although there was a subsequent meeting with Mr Francis (on 11 February 2005), this did not discuss the substance of the grievances and there was never any meeting which met statutory requirements or complied with the Council's grievance process.
- 64 On 4 February 2005, the planning solicitor wrote to Mr Francis in response to his letter of 19 January. This informed Mr Francis that his grievance:

'raises a number of issues that are not eligible to be considered under the grievance procedure.'

It did not, however, comment on whether other issues did fall within the procedure and, if so, how they would be dealt with. Consequently, Mr Francis's representative responded in her letter of 7 February, asking the solicitor to indicate *'which grievances are inappropriate and why'*. The solicitor flagged this to the employment locum as an issue for him to consider, but he appears not to have done so.

- 65 There was no substantive discussion of the grievances at the meeting between the former Chief Executive, Mr Francis and his representative on 11 February 2005. Mr Francis's representative stressed at several points that Mr Francis wished to have his grievances dealt with and that this should happen before the recruitment for the new ring fenced post, but the former Chief Executive did not agree to this. Counsel instructed by the Council subsequently stated that dealing with the grievance before proceeding with the recruitment was likely to be a reasonable adjustment which the Council should have made.

66 Mr Francis's representative wrote again to the planning solicitor on 14 February to follow up a number of points from the meeting. She emphasised that Mr Francis still wished his grievances to be dealt with as soon as possible. This point does not appear to have been addressed in subsequent correspondence from the Council.

67 When the planning solicitor handed the case over to the employment locum, her briefing note of 14 February states that:

'I was told by [the acting Head of Personnel] that we could not deal with them (the grievances) under the grievance procedure.'

She suggests that the 'Alternative Disputes Resolution' (ADR) procedure could be used and identifies that a detailed response needed to be drafted to respond to all the points made by Mr Francis and his representative. The suggested use of ADR was never implemented, and no detailed response provided.

68 Overall, this failure to adequately respond to Mr Francis's grievances represents a serious breakdown in administrative procedures. It may also have contributed to a failure to make a reasonable adjustment. I do not believe that the decision by the former Chief Executive to delay responding to the grievances until after Mr White had concluded his investigation was appropriate, and nor was it within the Council's grievance policy. Although the Head of Personnel and Employee Relations had the opportunity to advise her against it, he has stated to me that he felt unable to do so given the former Chief Executive's clear instructions and her behaviour in previous matters. It was also unfortunate that the purpose which was to have been fulfilled by the meeting scheduled for 31 January, but then cancelled, was never met by any subsequent meeting.

69 Mr Francis lodged a further grievance on 28 April 2005. This was headed 'Grievance against the Chief Executive' and was sent to the Leader of the Council, other group leaders and members of the appeals panel. By that date, Mr Francis had already lodged his first Employment Tribunal claim against the Council. The grievance was passed to the Assistant Director of Legal and Constitutional Services (Monitoring Officer), because the former Chief Executive was named in it, and he decided he should not deal with the grievance until the Employment Tribunal case had been concluded. No further action has been taken on this grievance. As part of the Consent Order of 15 May 2006, Mr Francis agreed not to pursue any grievance or complaint against the Council.

- 70 The Assistant Director of Legal and Constitutional Services has explained that he took the decision because:
- the findings from an investigation of the grievance would have been admissible in the Tribunal hearing, and could have considerably worsened the Council's position in that hearing and in its 'out of court' negotiating position; and
 - if the allegations made in the grievance were true, this would have been very disruptive and expensive for the Council to deal with, because of the need to investigate the conduct of the former Chief Executive, and the best way to limit the cost and damage to the Council was for the findings to be made by a Tribunal rather than a grievance investigation.
- 71 I am not convinced that the decision taken by the Assistant Director of Legal and Constitutional Services was appropriate. It is possible that action on the grievances at that stage could have put right some of the damage done by the failure to consider them at an earlier stage. There was still a period of two months before Mr Francis resigned from the Council's employment on 23 June 2005. While it is unlikely that this would have prevented Mr Francis from resigning or from making a further claim, it could have placed the Council in a more defensible position. I also question whether it was appropriate to have the intention of letting the Tribunal process run its course rather than seeking to deal with the issues before reaching a Tribunal hearing.
- 72 Overall, the Council did not comply with legal requirements, because it failed to respond to the grievances in the manner required by legislation (see Appendix 2). For the future, the Council needs to ensure that the duty to respond to grievances is well understood by managers at all levels.
- 73 These events also illustrate an issue with one aspect of relationships between the former Chief Executive and some other managers. A number of officers involved in the case stated to me that they felt unable on occasion to give robust advice to the former Chief Executive in circumstances where they thought that the law or Council procedures were not being followed. They have alleged that this was because on previous occasions where they had provided such advice, it had been robustly contradicted and/or subsequently not followed.
- 74 The former Chief Executive has denied that this was an issue and has provided a number of examples where she had been given robust advice by her colleagues and had acted on it. It is also the case that Audit Commission corporate assessments of the Council carried out in 2004 and 2005 did not identify the issue. Given this conflicting evidence, I am unable to reach a conclusion on whether there was any substance to officers' suggestion that there was a problem of previous advice being robustly contradicted. What matters, however, is that the officers did not give robust advice in relation to this case and that this contributed to mistakes being made.
- 75 Ensuring that there is a culture in which officers feel able to challenge robustly the views and actions of more senior officers is an issue for many organisations. The Council needs to ensure that it is not among them.

Whistleblowing

76 Mr Francis claimed in his submission to the Employment Tribunal that he had suffered detriment as a result of making protected disclosures ('whistleblowing') within the terms of the Employment Rights Act 1996. Section 47B of the Act provides that:

'a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure'.

In the event, the question of whether or not there was any detriment as a result of whistleblowing remained unresolved in that this was the element of Mr Francis's claim which the Council did not concede, but which Mr Francis agreed to withdraw in return for a payment from the Council of £30,000 for injury to feelings, reflecting the resultant saving in its legal costs.

77 This was an area which I nevertheless needed to consider because whistleblowing forms part of the council's arrangements for ensuring proper standards of conduct.

78 Mr Francis raised a large number of concerns between January and September 2004 about the management of NRF in Walsall and in particular decisions relating to funding in 2002 and 2003. These included:

- concerns about whether or not meetings at which spending decisions were made were quo rate;
- failure to comply with EU procurement rules; and
- the way NRF was being used to fund Borough-wide expenditure and whether such funding was having the desired impact on disadvantaged neighbourhoods and groups.

79 He initially raised these through his line manager, the Assistant Director (Community Regeneration and Housing), who was receptive and asked Mr Francis to prepare a report summarising his concerns. This report, in an amended form, was subsequently considered by the meeting of the Walsall Borough Strategic Partnership in July 2004 and resulted in retrospective approval of some items of expenditure.

80 The management of NRF is not in itself within the scope of this report. For the avoidance of doubt, however, it is clear that there were many significant deficiencies in the management of NRF at that time and that many of the issues raised by Mr Francis were legitimate. The Council has since made significant improvements to address the concerns raised by Mr Francis and other areas highlighted by Internal Audit.

81 As External Auditor, I have monitored the Council's progress in relation to NRF, working jointly with Internal Audit on some of the work. Although there is a need for further improvements, in view of the considerable progress already made by the Council, I do not consider it appropriate for me to take formal audit action on this matter.

- 82 In raising concerns, Mr Francis never mentioned invoking the whistleblowing legislation - the nearest he came to this was on one occasion stating to Internal Audit that his comments were 'potentially whistleblowing'. Internal Audit did not seek clarification of Mr Francis's intentions at this point and Mr Francis did not state he was acting under the whistleblowing policy in any subsequent written or verbal communication with Internal (or External) Audit.
- 83 The detriment which Mr Francis claims to have suffered as a result of raising his concerns comprised a range of aspects of the way he was treated during 2004, including being prevented from doing his job, being humiliated in front of others, withdrawal of his responsibilities in relation to NRF at the 16 July 2004 meeting, the secondment to social care and the setting up of the investigation into his conduct. I consider some of these issues within the next section 'Management of Mr Francis', but there is no evidence that any of these took place as a result of Mr Francis having made a protected disclosure.
- 84 These events do not indicate any weaknesses in the Council's whistleblowing procedures.
- 85 Mr Francis also suggests that he was whistleblowing when he met with the Audit Commission's audit manager on 2 July 2004 to discuss his concerns over NRF. The audit manager took the information provided into account in planning and carrying out future audit work.

Management of Mr Francis

- 86 There were various other aspects of the way Mr Francis was managed which weakened the Council's position.

January 2004 suspension

- 87 While I do not take the view that the suspension of Mr Francis in January 2004 was inappropriate, one aspect of it was not well-handled. Although he had been informed promptly by telephone and face-to-face of the outcome of the investigation, it was not until September 2004 that Mr Francis was sent a letter confirming the outcome of the investigation.
- 88 The suspension of Mr Francis followed an allegation of gross misconduct, in that he was alleged to have breached the officer Code of Conduct by advising a councillor of a serious matter without first raising it with management, and that this could bring the Council into disrepute. The investigation followed a conversation between the then Executive Director (Corporate Services) (who later became the Executive Director (Neighbourhood Services)) and the former Chief Executive, which relayed that a councillor had advised the Executive Director that Mr Francis had approached the councillor to suggest that she should go to the press regarding possible clawback of Single Regeneration Budget money. The former Chief Executive told the Executive Director (RHBE) who, with appropriate personnel input, initiated the disciplinary investigation. Such a task would normally be carried out by the line manager but the new Assistant Director (Community Regeneration and Housing) had not yet started work, so on this occasion it fell to the Executive Director.
- 89 Mr Francis was suspended from 22 January to 10 February while an investigation was carried out. The investigation was carried out by the Assistant Director of Legal and Constitutional Services, supported by the Chief Internal Auditor. On 10 February, the Assistant Director of Legal and Constitutional Services reported to the Executive Director (RHBE) that there was insufficient evidence for a case against Mr Francis. The outcome was notified to Mr Francis by telephone and face-to-face, and as a result he returned to work on 11 February.

- 90 Mr Francis was not given any written confirmation of the outcome of the investigation when he returned to work. He repeatedly sought written confirmation through his line manager in the following months, but it was not until 8 September that the Executive Director (RHBE) wrote to confirm that there had been no case to answer. Mr Francis therefore had this issue on his mind for seven months. It would have been a simple issue to remedy, and one of the senior officers involved should have made it happen. The Executive Director has told me that in her view it was the responsibility of the Assistant Director, as line manager, while the latter has informed me that as he had had no involvement in the suspension and investigation and had no paperwork, he repeatedly asked both the Executive Director (RHBE) and the Assistant Director of Legal and Constitutional Services to write and that their failure to do so had a negative impact on his working relationship with Mr Francis. The Assistant Director of Legal and Constitutional Services has stated that he believed that such employment related correspondence is the responsibility of line management and not legal services.
- 91 The delay in providing written confirmation of the outcome to Mr Francis was not in accordance with Council procedures. In future, managers should be reminded of the need to ensure that all similar investigations are properly concluded within laid down procedures.

Structural issues - January to August 2004

- 92 There were minor delays in dealing with issues raised by Mr Francis about the organisational structure of the relevant part of the Council. While this situation had a clear impact on how Mr Francis felt about his employment, I do not believe this was a major factor in the case overall.
- 93 The relevant elements of the Council were part of the Directorate of Regeneration, Housing and the Built Environment. The Partnership Director reported directly to the Executive Director (RHBE). Her responsibilities included overseeing the support provided to the Borough Strategic Partnership (WBSP) and the commissioning of projects funded through NRF. Mr Francis, as Programme Manager, reported to the Assistant Director (Community Regeneration and Housing). Mr Francis was among other duties responsible for 'programme management' of NRF. Another officer with a significant role was the Directorate Head of Finance, who reported to the Assistant Director of Finance and led on financial management support for the directorate. This included the financial management arrangements for NRF. There was, however, a finance manager within the structure reporting initially directly to Mr Francis, although around that time all finance posts throughout the Council were redesignated as reporting through to the Chief Finance Officer to strengthen overall governance arrangements.

- 94 Mr Francis raised a large number of concerns about the structure in the directorate in the period between January and September 2004. The principle concerns raised included:
- confusion regarding the respective roles of himself, the Head of Finance and the Finance Manager over financial monitoring of projects; and
 - allegations that the Partnership Director and the Head of Finance had withheld from Mr Francis information which he needed to carry out his job.
- 95 Most of the officers involved in that structure maintain that it was sufficiently clear and that the issue was solely Mr Francis's lack of understanding, but there does seem to me to have been scope for confusion between the three roles of management, programme management and financial management. Whether or not there was a genuine lack of clarity, however, the fact that Mr Francis did not appear to understand the structure meant that some sort of action needed to be taken and his line manager and the Executive Director (RHBE) clearly recognised this.
- 96 The Assistant Director (Community Regeneration and Housing), Mr Francis's line manager, had discussions with Mr Francis about this issue during Spring 2004 but this did little to resolve the situation. Indeed it would have been difficult for the Assistant Director as he did not line manage all of the relevant individuals. In view of the unresolved issues, he sought a meeting with the Executive Director (RHBE) and other key individuals to seek an agreed understanding of roles and responsibilities in relation to NRF and programme management issues.
- 97 The Executive Director (RHBE) therefore convened a meeting to discuss the concerns about the way structures and accountabilities were working and in particular Mr Francis's concerns regarding NRF. This was originally scheduled for 4 May 2004, but was delayed by the Executive Director (RHBE) due to other commitments and, because of the importance of all relevant parties attending, was not reconvened until 16 July 2004. During the intervening period, Mr Francis continued to express concerns that the structure was leading to difficulties in his performance of his job.
- 98 The meeting on 16 July 2004 was attended by a wide range of interested parties, including the Executive Director (RHBE), Assistant Director (Community Regeneration and Housing), Partnership Director and the Head of Finance (RHBE). The Head of Law was also present for the first part of the meeting because there were constitutional issues to discuss. During the meeting, attempts were made to clarify how the structure was intended to work. The meeting also discussed other issues raised by Mr Francis about the operation of NRF.
- 99 Most of the attendees have stated that the meeting was effective and business-like. Mr Francis, however, later claimed that it was intimidatory and top-heavy, and that it led to unilateral imposition of changes to his job description. He claimed that the way the structure was interpreted in that meeting meant that he was no longer seen as responsible for programme management of NRF. As a result of this, Mr Francis has stated that his health began to suffer.

- 100 The notes of the meeting do not identify any attempt to change Mr Francis's job description. The seniority of the attendees at the meeting does not in my view indicate a meeting which is 'top heavy' but one in which the seriousness of the issues is well understood. However, Mr Francis felt continuing uncertainty after the meeting.
- 101 It would have been desirable to deal with Mr Francis's concerns more promptly, but I recognise that the Executive Director (RHBE) had other priorities at that time and it is to her credit that she took Mr Francis's concerns seriously. Given that the 16 July meeting in any case did not resolve the situation to Mr Francis's satisfaction, it is unlikely that holding the meeting any earlier would have had any significant impact on the case overall.

Early September 2004

- 102 In the early part of September 2004, there was significant correspondence between the former Chief Executive and Mr Francis. This was the former Chief Executive's first significant involvement in the case. Some aspects of the way she communicated with Mr Francis at this time were in my view inappropriate.
- 103 Prior to 1 September, the former Chief Executive had been briefed about NRF issues, including Mr Francis's role, both by Internal Audit and by the Executive Director (RHBE). In relation to Mr Francis, she had been told that:
- many of Mr Francis's submissions to Internal Audit were on a similar theme and addressing them took considerable audit time and resources;
 - it was arguable that Mr Francis could have spent his time more effectively by resolving the issues;
 - his raising of issues is not whistleblowing but is an over-zealous approach to forwarding information to auditors who are already engaged in an audit of the relevant area; and
 - many of the concerns he had raised 'have borne an element of fact'.
- 104 The former Chief Executive took clear personal control of matters relating to Mr Francis from the beginning of September 2004. In the context of most councils, this would be a very unusual situation but was less so in Walsall. Because some of the previous governance issues related to relationships between individual officers and members and there was a culture in which disciplinary action was difficult, the former Chief Executive had become involved in a number of individual personnel issues which appeared to her to be high-risk in this context. An additional reason for her involvement in this case was that the Executive Director (RHBE), who might normally have handled the issues in conjunction with Mr Francis's line manager, was herself involved in that she felt that Mr Francis was seeking to undermine her.
- 105 In taking personal control, however, it was vital that the former Chief Executive sought and was provided with advice from HR and legal specialists. The fact that she made a number of key decisions in this case with either no or only qualified legal and HR advice is a major factor in the case.

- 106 On 1 September 2004, the former Chief Executive met with the Executive Director (RHBE). In the meeting, the former Chief Executive stated that she had been told by the Chief Internal Auditor that Mr Francis had asked that Internal Audit did not share with his line managers the concerns which he was raising with Internal Audit. The Chief Internal Auditor says that he did not say this. The Internal Audit Manager has stated that Mr Francis never told her that he wished any information to be withheld from his line managers, although in some cases this could have been inferred as some documents were headed 'in confidence' or similar. In my view, it would have been illogical for Mr Francis to make any such request as generally he had already raised issues with his line managers before passing them on to Internal Audit.
- 107 In the 1 September meeting, the former Chief Executive asked the Executive Director (RHBE) for her response, and she stated that she felt undermined and knew of no good reason why Mr Francis would wish such concerns to be withheld from her. Subsequently, the Executive Director shared the issue with the Assistant Director, who was also concerned. The Executive Director wrote to the former Chief Executive on 7 September setting out how she felt about the situation and outlining concerns which had been raised with her by the Assistant Director and the Partnership Director about Mr Francis's behaviour.
- 108 As a result of the concerns, the former Chief Executive wrote to Mr Francis on 3 September requesting that he should attend a meeting with her on 8 September. He was notified that he could take a representative with him and that the Head of Personnel and Employee Relations would be present. The letter stated that she had received a number of complaints about his conduct at work, but gave no details. Mr Francis was not expecting to receive this letter and has subsequently stated that it was very disturbing for him. It is difficult to see how the former Chief Executive could have avoided having to send such a letter given her concerns about Mr Francis's behaviour.
- 109 Mr Francis then received a memo on, or around, 6 September from the Assistant Director (Community Regeneration and Housing) setting out the latter's concerns about the manner in which Mr Francis persisted in raising areas of concern. The Assistant Director had written this memo after being informed, incorrectly, that Mr Francis had told Internal Audit not to share his concerns with his line managers. Following this, Mr Francis became ill and did not return to work until 22 November.
- 110 Because Mr Francis did not attend the meeting on 8 September, the former Chief Executive wrote to him again on 9 September, informing him that she intended to appoint an independent person to review his conduct and that, while this was carried out, he would be seconded elsewhere within the Council. No indication was given of the nature of the allegations against him. The letter proposed another date for a meeting (13 September), but Mr Francis replied on 11 September saying that he was still too unwell to attend, but asking for details of the allegations against him. The former Chief Executive set out the allegations in a further letter on 13 September.

- 111 A further exchange of correspondence between Mr Francis and the former Chief Executive took place regarding what Mr Francis saw as changes to his job description resulting from the 16 July 2004 meeting. The former Chief Executive commenced her letter of 22 September 2004 by saying:

'The first thing I wish to make clear to you is that while you are off work on a medical note, I do not expect you to involve yourself in work issues. This is not the purpose of sick leave, you should concentrate on your health and fitness to return to work. I do not expect to have letters from you which are about a post you have been transferred out of, albeit on a temporary basis because this does not help your recovery.'

- 112 The former Chief Executive has explained that the letter reflects the situation in which Mr Francis had not because of ill health attended two meetings to discuss the issue but still wished to engage in lengthy correspondence while off work due to his health.
- 113 The tone of the letter was in my view inappropriate, particularly given that it was the former Chief Executive and not Mr Francis who initiated the series of letters with hers of 9 September. Furthermore, the referral to Mr Francis having been transferred out of his permanent post is unfortunate, given that:
- unless formal disciplinary processes were being followed, Mr Francis could not be temporarily seconded from his post without his agreement, which had not yet been obtained;
 - Mr Francis had not explicitly given any such agreement at that time; and
 - the former Chief Executive had previously said to him that she wished to discuss with him the options for such a secondment - but no such discussion had taken place because Mr Francis did not attend the appointments due to his illness.
- 114 There is no documentary evidence that the former Chief Executive sought or was provided with any HR or legal advice on the drafting of these letters. She has stated that the Head of Personnel and Employee Relations was in the room when these letters were dictated, but the latter has no recollection of this. Whether or not he was present and had input, the tone and some of the content of the letter of 22 September was inappropriate.

The Graham White investigation

- 115** The way in which Mr White's enquiry was set up and the way its findings were reported back both indicate unfair treatment of Mr Francis. I am not in any way critical of the way Mr White carried out his investigation within the terms of reference which were set for him.
- 116** The terms of reference for Mr White were set by the former Chief Executive based on a series of allegations. Mr White was asked to investigate six issues:
- Mr Francis inappropriately used the Council's whistleblowing policy;
 - he bullied and intimidated a member of staff;
 - he requested that auditors do not share information he had given to them with his line managers;
 - auditors stated that Mr Francis was not capable of managing his service and was using audit to address issues he should have addressed;
 - there is a breakdown in good working relations; and
 - external whistleblowing indicates that he may have mismanaged the Neighbourhood Renewal Fund.

117 These issues were prescribed by the former Chief Executive following her formal and informal briefings on the case. Some of them are not, however, directly supported by those briefings and place an inappropriate interpretation on some of the issues. The evidence indicates the following.

- No-one, including the relevant member of staff, has ever alleged that they were bullied or intimidated by Mr Francis. The Partnership Director had a difficult working relationship with Mr Francis but did not complain of being bullied or intimidated, while the Executive Director (RHBE) and the Assistant Director both had said they felt undermined by him. Both had, however, formed this view having been told, incorrectly, that Mr Francis had told Internal Audit not to share his concerns with his line managers. The former Chief Executive has stated that she was told by the Executive Director that the Partnership Director had complained of being bullied by Mr Francis.
- Internal Audit did not state that Mr Francis was not capable of managing his service - they said that he would be better spending his time dealing with the issues as a manager than coming to Internal Audit with them. While this amounts to a criticism of Mr Francis's management of the service, it does not go as far as saying he was incapable of managing it.
- Internal Audit did not tell the former Chief Executive that Mr Francis inappropriately used the whistleblowing policy - they said that it was unclear whether his actions constituted whistleblowing and that, should Mr Francis define his actions as whistleblowing, he would be protected under the Council's whistleblowing policy and PIDA.
- Internal Audit did not state that Mr Francis asked them not to share his concerns with his line managers, although it is clear that he did head up some of his communications 'in confidence'.

There was, however, undoubtedly early evidence of a breakdown in working relationships.

118 In my view, the former Chief Executive should in setting Mr White's terms of reference have more accurately reflected the information provided to her and clarified any uncertainties.

119 In a letter to Mr Francis on 3 November 2004, the former Chief Executive notified Mr Francis that:

'the people who have alleged harassment and bullying are (the Executive Director (RHBE), the Partnership Director and the Assistant Director (Communities, Regeneration and Housing)).'

This was incorrect - none of these members of staff had ever made such an allegation, and the statement goes beyond the issue which Mr White was asked to investigate, which included only the Partnership Director.

120 The investigation was not carried out as part of the Council's disciplinary process. Rather, it was an investigation prior to any disciplinary action being considered. Such investigations are not rare and it is appropriate for there to be a means of investigating concerns without resorting to disciplinary action. It was less common, however, for someone from outside the Council to be brought in to carry out such an investigation although this is reasonable given that there was very limited internal capacity.

121 Because of other demands on his time, it took Mr White two months to complete his investigation. A meeting was set up to provide feedback to Mr Francis on 9 December 2004. Mr White's report was not provided to Mr Francis prior to the meeting and Mr White went through the report in some detail at the meeting.

122 In essence, the report found that none of the allegations against Mr Francis were proven, although he had contributed to the breakdown in working relationships. In relation to bullying and intimidation, Mr White states:

'there was little hard evidence of bullying and harassment. A number of witnesses make reference to third hand information and perception but when pressed this dissipated to a personal view that suggested that they disagreed with PF's style of management and behaviour, rather than actual inappropriate behaviour'.

123 In relation to withholding concerns from his line managers, Mr White reports:

'there was no evidence to suggest that this happened, in fact there is clear evidence from PF, his line manager, his director and Internal Audit that he sent numerous communications and notifications to both parties confirming his position'.

124 In relation to management capability, Mr White again finds that there was no evidence to support the substantive allegation and indeed some to the contrary.

125 The key recommendation in Mr White's report was that Mr Francis should be given a 'fresh start' because of the relationship issues identified in his report. At the feedback meeting on 9 December 2004, the former Chief Executive stated that she wanted this to be implemented. In saying this, she did not take any advice from personnel or legal advisors within the authority. She reinforced her view in her letters to Mr Francis dated 15 December and 12 January and in the further meeting on 11 February 2005. Taking these communications together, it is clear that the former Chief Executive fully intended Mr Francis to be removed from his substantive post and provided with a post elsewhere in the authority. By 12 January, however, the former Chief Executive was aware that Mr Francis's substantive post was to be deleted because of the restructuring.

- 126 The Council's position on the two issues of the proposed 'fresh start' and the impact of the restructuring appears unclear during this period. For example, in her letter to Mr Francis dated 4 February 2005, the planning solicitor says:

'currently your substantive post still exists and if you wish to stay in the post you will need to substantiate the reasons why this is the best option.'

This makes little sense in the context of his post being deleted in the restructuring but, setting this aside, suggesting that the onus was on Mr Francis to demonstrate why he should stay in his substantive post is in my view inappropriate. As stated above, the planning solicitor had not wished to send a substantive letter to Mr Francis at this time given her limited knowledge of the case and she has stated that this particular sentence was inserted by the former Chief Executive, but there is no evidence as the planning solicitor did not keep a file note or a copy of her original draft letter.

- 127 The former Chief Executive invited Mr Francis and his representative to respond to Mr White's report in a further meeting. In the event, no further meeting took place until 11 February.
- 128 The way the investigation was set up and its results acted on was inappropriate. Any future investigations into officers' conduct should be based on well-considered terms of reference derived from reliable initial allegations, and should have sufficient involvement of HR professionals at all stages.

The email investigation

- 129 The Executive Director RHBE authorised an investigation into email communications between Mr Francis and a councillor at the same time as the Graham White investigation was underway. While Mr Francis has raised concerns about this investigation, the investigation was not in my view inappropriate.
- 130 It is not clear who initiated the investigation or where the initial allegations of misuse of email originated. The Executive Director stated to me that, while she had been asked to formally authorise the access to Mr Francis's email account, the investigation had been initiated by the former Chief Executive. She (the Executive Director) believed it was actually an integral part of Mr White's investigation. The former Chief Executive has, however, stated that the Executive Director initiated it.
- 131 The investigation was carried out by Internal Audit. It comprised a search of Mr Francis's email account for selected 'keywords', intended to identify inappropriate communications. The former Chief Executive suggested two additional keywords, one of which was the name of a councillor, because she had been approached by one of the group leaders about information that one of his group had received.

- 132 Mr Francis was not made aware that the investigation was being carried out until 3 December 2004, well after it had been completed. Reference is made to it at the end of a letter from the former Chief Executive in which she rearranges the date of the meeting to discuss Mr White's report. She states:

'If we had met on Monday, I would have explained that there is a further issue I need to discuss with you which relates to the way you have shared electronic information with elected Members....Internal Audit have investigated this matter and I would like to share their conclusions with you.'

- 133 It is normal practice for such preliminary email investigations to be undertaken without the knowledge of the individual, in order to protect the integrity of the files. If a potential breach is identified then the disciplinary procedure is commenced and the person notified.
- 134 The investigation identified a small number of emails between Mr Francis and councillors. Such communication is ordinarily contrary to the Council's officer Code of Conduct. However, the Executive Director (Finance, Law and Performance), who had been asked by the former Chief Executive to review the appropriateness of the documentation identified within the Internal Audit report, found that there was implied consent from the Assistant Director (Community Regeneration and Housing) to Mr Francis responding directly to councillors on routine operational matters and some mismatch between the officer and member codes on this issue. Most of the emails in question were responses on such routine matters, although a very small number were in relation to more sensitive issues.
- 135 Mr Francis was informed of the outcome at his meeting with the former Chief Executive on 9 December 2004. The former Chief Executive informed him that she did not intend to take disciplinary action. Mr Francis's representative stated that a disciplinary hearing should be held to allow Mr Francis to clear his name, but the former Chief Executive decided that this was not appropriate as disciplinary action does not take place in order to clear an employee's name.

The secondment to social care

- 136 The secondment of Mr Francis to social care on his return from sick leave in November 2004 was poorly managed and had not been properly planned.
- 137 The possibility of a secondment to social care had first emerged in September 2004. The former Chief Executive decided that Mr Francis should be given a role away from his normal employment while Mr White carried out his investigation. This was an unusual although understandable step given the situation of difficult working relationships. Mr Francis did not give his explicit consent to the arrangement prior to its commencement, although it has been argued that he acquiesced to it when he returned from sick leave in November 2004 and he acknowledges this in his letter of 19 January 2005. The Council's disciplinary procedures allowed for officers to be seconded during disciplinary investigations as an alternative to suspension, but this was not a disciplinary matter so it required Mr Francis's consent. The former Chief Executive should have ensured that she obtained Mr Francis's explicit consent prior to its commencement.
- 138 At that time, there was a project management role necessary in social care for a resettlement project known as 'the Allen's Centre'. However, Mr Francis commenced a period of sick leave before any secondment could take effect, and by the time he returned to work on 22 November 2004, the work on this project was completed. By this time, Mr White was close to completion of his investigation. However, the former Chief Executive decided that the secondment should take place and as an alternative to the original planned work, Mr Francis was provided with work on analysing performance indicators for the directorate.
- 139 The problems with the secondment arrangement included:
- even though it started at a time when Mr White had already undertaken most of the work required for his investigation, there was no clarity on the length of time which the secondment was to last;
 - the work to be carried out by Mr Francis was not properly defined and the social care directorate had clearly struggled to identify any meaningful work for Mr Francis to be given;
 - he was required to work in isolation, being given sole use of an office well away from relevant colleagues and initially being required simply to do large amounts of reading;
 - initially, there were no clear line management arrangements, reflecting the short timescale in which the secondment was set up and uncertainties caused by the number of interim managers in social care;
 - no arrangements were made for a 'return to work' interview until Mr Francis pursued it; and
 - initially, he was not provided with a computer, which was clearly necessary for the kind of work he was doing.
- 140 Mr Francis drew a number of these issues to the former Chief Executive's attention in the meeting of 9 December 2004, and she then met with Mr Francis's temporary line manager in order to address them.

- 141 Mr Francis referred to these issues with his secondment in his grievance letter of 19 January. Although the problems arose as a result of a combination of circumstances, the decision to proceed with the secondment was taken by the former Chief Executive.
- 142 Although in a formal disciplinary situation a secondment may represent better value for money than a suspension, the arrangements for this secondment represent poor management of resources. The Council needs to ensure, as far as is practical given the reasons which may give rise to such secondments, that in any future cases that secondments are properly planned with clear objectives and adequate supervision.

Other aspects of the restructuring process

Computer access

- 143 In addition to the DDA compliance issues, another aspect of the recruitment process was badly handled.
- 144 Because Mr Francis was on sick leave prior to the scheduled assessment centre, he did not have normal access to his work computer and the information held on it, some of which he believed would help him prepare for the assessment centre. He therefore requested access to his computer files. While the former Chief Executive agreed to this, the conditions which were imposed on this access were very stringent and placed Mr Francis at a disadvantage compared with the other applicant. They included:
- access being only at a specific time on a particular day, 28 February 2005;
 - access being in the chief executive's conference room, with Mr Francis accompanied by an officer from IT services at all times; and
 - Mr Francis not being allowed to download or print any data himself from the computer but having to provide IT services with a list of the files he required in order that they could provide them to him.
- 145 The former Chief Executive states that her intention in imposing some of these conditions, such as the access taking place in her conference room, was to be helpful to Mr Francis, removing any necessity for him to have any potentially difficult contact with former work colleagues. Overall, however, the impression created by the conditions was that Mr Francis could not be trusted. It also introduced an element of unfairness to the recruitment, in that the other candidate had unrestricted access to her data at any time. The Acting Head of Personnel and Employee Relations was uncomfortable with the arrangement but did not believe there was anything she could do as the former Chief Executive had determined what was to happen.

Assessment centre process

- 146** There is no substantive evidence to support the allegations made to me about the way the recruitment process for the new post was set up, but I make reference to these allegations because of their importance to those involved. The allegations were:
- that the employee specification was amended at a late stage;
 - that the titles for a presentation and report to be provided by the two candidates were determined by the former Chief Executive so that it was in a subject area more familiar to the other candidate; and
 - that the former Chief Executive led those involved in the recruitment to a clear view that she did not want Mr Francis to be appointed.
- 147** The employee specification for the new post was not amended at a late stage. Although the former Chief Executive suggested that it should be amended to require a relevant management qualification, this was not actioned and such a change would not in any case have disadvantaged Mr Francis.
- 148** The assessment centre process required the candidates to submit a written report and to make a presentation, each on a particular subject matter. It has been alleged that the former Chief Executive determined the titles for these in such a way that the process favoured the other candidate. In my view, the titles used do appear to relate more closely to the existing job of the other candidate, but they are very relevant titles to some of the key tasks to be undertaken in the new role, which involved the roll-out of Local Neighbourhood Partnerships.
- 149** Some of the people who were involved in the recruitment process had a clear impression that the former Chief Executive wanted the other candidate to be successful in the process. There is no substantive evidence that this reflected the view held by the former Chief Executive or that her actions were influenced by any such view.

Managing the case

Staffing in legal services

- 150 Staffing problems within the Council's legal services section led to inadequate legal advice being provided at key times in the events which led to the case and to delays in assessing the case and preparation for the hearing.
- 151 With the exception of the involvement of the Monitoring Officer in the January 2004 investigation of Mr Francis, there was no significant involvement of legal services in the management of the issues concerning Mr Francis until late January 2005. At this stage, legal services were asked for input to the 11 February meeting with the former Chief Executive and a pre-meeting. At that time, the Council had only one employment lawyer and neither he nor his manager were available for the meeting. In consequence, another officer, who had practised employment law several years earlier at another authority, was asked to attend.
- 152 The nature of the legal advice provided during these meetings, and the lack of subsequent legal advice, has been addressed above. It is reasonable to assume that if definitive advice had been provided to the former Chief Executive during these meetings, and had been acted on, the Council may well have addressed the DDA question.
- 153 After the meeting on 11 February, the case was re-assigned to the specialist employment locum. A handover note was produced and a handover meeting held on 14 February involving the two lawyers and the former Chief Executive. The employment locum promised to produce a briefing note for the Former Chief Executive, but appears never to have done so.
- 154 This employment locum left the Council's employment in June 2005, although the former Chief Executive was not told of this at the time.
- 155 A new employment locum was appointed in July 2005, at much the same time as Mr Francis filed his second Employment Tribunal claim. He wrote to the former Chief Executive to introduce himself and arranged to meet her to discuss the case in order to prepare the Council's initial response to the Employment Tribunal case. This meeting took place on 22 July 2005.
- 156 A further problem which occurred at around this time was that the Service and Case manager was off sick for some time. This led to lower levels of supervision and quality control of casework.
- 157 This second locum left the Council's employment in September 2005. Before he did so, he raised with the Head of Law his concerns about the difficult position the Council faced in defending the case.

- 158** In October 2005, the case was assigned to a third locum, who retained conduct of the case through to the Tribunal hearings. By this stage, the Council was facing a major task in preparing for this case and that of another former employee, with a need to compile documentation and take witness statements from a large number of people in a short period of time. This meant that the process of preparation for the case was fraught, with very tight deadlines imposed on some of the individuals providing witness statements. Although those concerned worked very hard during this period, preparations for the case could have been more effective had more time been available. Nevertheless, it is unlikely that this would have had much impact on the outcome of the case, given that the key events had taken place much earlier.
- 159** Overall, these staffing difficulties made the Council's position very difficult when faced with this complex case. I acknowledge that there are significant difficulties for many local authorities in recruiting and retaining solicitors, and the Council needs to continue its efforts to stabilise staffing within the legal team. It also needs to ensure that it makes appropriate use of external support and expertise to allow it to manage peaks or to meet particular needs.

Keeping members informed

- 160** Officers acted reasonably overall in providing information to the Leader regarding the case and the Leader acted reasonably in not sharing information more widely among members prior to the hearing date.
- 161** At the start of my investigation, members expressed both to me and publicly their concern that officers had kept information about the case from them. In assessing the information provided to members, I have been conscious of:
- the late stage at which the magnitude of the possible outcome became clear to officers; and
 - the need to ensure confidentiality in a case such as this, where any 'leaking' of information such as a potential settlement figure could have been damaging to the Council's case in the Tribunal.
- 162** The Leader of the Council was first briefed on the substance of the case on 11 April 2006. Prior to this, he had clearly been made aware of the existence of the case but not of its magnitude and implications. He was subsequently involved in a number of discussions as the advice from Counsel became more specific and officers sought authority to settle the claim.
- 163** The Leader chose not to share information with his cabinet colleagues at this stage because of the importance of confidentiality.
- 164** There was, however, a potential need for cabinet to consider the matter if the Council was to enter into an out-of-court settlement. A draft cabinet report was therefore prepared in April. In the event, this was not needed prior to the commencement of the hearing.

- 165 A particular concern was also expressed about the timing of a key cabinet meeting at 8am on the day the hearing started. I am satisfied that the timing of this meeting, as close as possible to the start of the hearing, was reasonable. Had the meeting been held earlier than that Monday morning, it would not have been clear what authority or approval officers were seeking from the cabinet. Negotiations designed to achieve an 'out-of-court' settlement with Mr Francis had continued during the weekend and any meeting of the cabinet prior to the weekend may have been futile.

Risk management

- 166 The Council was slow to identify the level of financial and reputational risk arising from this case.
- 167 Through our routine audit work, we have previously assessed the Council's risk management processes as being good. This case was not, however, identified as a major risk until too late and therefore did not feature in the corporate risk register. This is partly because it was not until a late stage that Counsel's opinion highlighted its potential magnitude.
- 168 A consequence of the case not being identified as a major risk was that the Assistant Director of Legal and Constitutional Services had no involvement in it until April 2005 when Mr Francis made his grievance against the former Chief Executive. Had it been properly identified by the officers dealing with it as a significant risk, the Assistant Director of Legal and Constitutional Services would have been made aware. It is very surprising that, given the former Chief Executive's key role in this case and her close working with the Assistant Director of Legal and Constitutional Services in many other areas, the risks of this case were not identified much earlier.
- 169 The Council's risk management arrangements did not operate effectively in this case. Overall, however, our view remains that risk management arrangements are themselves sound, and the problem in this case was the failure to identify the case as a risk and feed it into the risk management arrangements. To prevent a recurrence, the Council should review the way specific legal cases are captured for inclusion in risk registers.

Appendix 1 – Chronology of events

Table 2 The Peter Francis case

The case has a long and complex history.

Date	Event
18 September 2003	Internal Audit work on NRF identifies significant concerns.
1 January 2004	Peter Francis appointed as Programme Manager.
22 January 2004	PF suspended for allegedly inappropriately providing information to a councillor.
January/February 2004	Allegations investigated by the Assistant Director of Legal and Constitutional Services with the support of the CIA.
2 February 2004	Assistant Director (Community Regeneration and Housing) takes up role.
11 February 2004	PF reinstated and told there was insufficient evidence for the suspension to continue, but receives nothing in writing.
8 March 2004	PF first raised concerns about NRF with Assistant Director.
24 April 2004	PF submits detailed report on NRF to Assistant Director.
4 May 2004	Original date set for meeting to clarify roles and responsibilities .
2 July 2004	PF meets External Audit (Audit Manager) to express concerns about NRF.
9 July 2004	Internal Audit Manager provides briefing note on NRF to former Chief Executive.
16 July 2004	Key meeting to clarify roles and responsibilities.
26 August 2004	IA Manager provides further briefing notes to former Chief Executive.
1 September 2004	Former Chief Executive and Executive Director (RHBE) discuss PF's request for his disclosures to Internal Audit to be kept confidential.
3 September 2004	Former Chief Executive writes to PF to set up a meeting to discuss complaints about his conduct.
8 September 2004	ED (RHBE) writes to PF with regard to the January 2004 suspension.
8 September 2004	PF commences first period of sick leave.
9 September 2004	Internal Audit asked by ED (RHBE) to secure data held on PF's computer, pending an investigation into his use of email.
21 September 2004	Graham White commences enquiry into PF's conduct.
22 November 2004	PF returns from sick leave and starts work in social care.
22 November 2004	PF sends formal grievance to Head of Personnel.
8 December 2004	Internal Audit issue final report on investigation into email allegations.
9 December 2004	Meeting to feed back findings from GW enquiry to PF.
12 January 2005	Former Chief Executive wrote to PF to confirm that his post was being deleted.
17 January 2005	Restructuring proposals agreed by directorate management team.
19 January 2005	PF asks for his grievance to be heard now that GW investigation concluded.

42 Employment Tribunal Case | Appendix 1 – Chronology of events

Date	Event
3 February 2005	Meeting between former Chief Executive, planning solicitor and acting Head of Personnel for the latter two to be briefed in relation to the Graham White report.
11 February 2005	Meeting between PF, former Chief Executive and others.
14 February 2005	Planning solicitor hands over the case to employment locum.
23 February 2005	PF starts further period of sick leave.
28 February 2005	PF allowed to access his computer, in former Chief Executive's conference room.
1 March 2005	PF's request for a delay in recruitment process is agreed.
22 March 2005	PF requests a second delay to the recruitment process, which is refused.
31 March 2005	Other candidate is appointed to the post of Head of Neighbourhood Partnerships and Programmes.
26 April 2005	PF files claim with Employment Tribunal regarding 'whistleblowing'.
28 April 2005	PF sends formal grievance against former Chief Executive to the Leader and others.
20 May 2005	Assistant Director of Legal and Constitutional Services informs PF that his grievance will not be dealt with until after the ET case has been concluded.
23 June 2005	PF resigned from the Council's employment.
1 July 2005	PF files claim with Employment Tribunal regarding DDA and unfair dismissal. Council informed on 11 July 2005.
6 July 2005	PF case passed to second locum solicitor, after first locum's departure from the Council.
7 July 2005	PF's advisor provides Council with initial schedule of losses, totalling £211,000.
22 July 2005	Meeting between former Chief Executive and second locum solicitor to discuss conduct of the case.
18 September 2005	Second locum solicitor leaves Council's employment.
3 October 2005	Conduct of case passed to third employment locum solicitor.
30 March 2006	ET finds that PF was disabled within meaning of DDA.
11 April 2006	First substantive briefing of the Leader on this case.
28 April 2006	Leader asked to authorise officers to agree a settlement.
11 May to 12 May 2006	Employment Tribunal reading days.
15 May 2006	ET hearing commences. Cabinet meeting held at 8am. Liability conceded on DDA and constructive dismissal and commercial payment made in return for dropping of whistleblowing allegation.
4 December 2006	Remedies hearing opened and adjourned.
5 December 2006	Settlement reached with Mr Francis.

Appendix 2 – Extracts from legislation

Disability Discrimination Act 1995

Setting out the duty for an employer to take reasonable steps to negate any disadvantage for a disabled employee. The following provision applied prior to October 2004.

- 1 6(1) Where:
 - (a) any arrangements made by or on behalf of an employer; or
 - (b) any physical feature of premises occupied by the employer,place the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the arrangements or feature having that effect.
- 2 (2) Subsection (1)(a) applies only in relation to:
 - (a) arrangements for determining to whom employment should be offered;
 - (b) any term, condition or arrangements on which employment, promotion, a transfer, training or any other benefit is offered or afforded.
- 3 (3)
- 4 (4) In determining whether it is reasonable for an employer to have to take a particular step in order to comply with sub-section (1), regard shall be had, in particular, to:
 - (a) the extent to which taking the step would prevent the effect in question;
 - (b) the extent to which it is practicable for the employer to take the step;
 - (c) the financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of his activities;
 - (d) the extent of the employer's financial and other resources; and
 - (e) the availability to the employer of financial or other assistance with respect to taking the step.
- 5 (5)

- 6 (6) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know:
- (a).....
 - (b) in any case, that the person has a disability and is likely to be affected in the way mentioned in subsection (1).
- 7 (7) Subject to the provisions of this section, nothing in this Part is to be taken to require an employer to treat a disabled person more favourably than he treats or would treat others.

From October 2004, the following applied:

- 8 4A (1) Where:
- (a) a provision, criterion or practice applied by or on behalf of an employer;
or
 - (b) any physical feature of premises occupied by the employer
- Places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all of the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.
- 9 (2) In sub-section (1), 'the disabled person concerned' means:
- (a) in the case of a provision, criterion or practice for determining to whom employment should be offered, any disabled person who is, or who has notified the employer that he may be, an applicant for employment;
 - (b) in any other case, a disabled person who is:
 - (i) an applicant for the employment concerned; or
 - (ii) an employee of the employer concerned.
- 10 (3) Nothing in this section imposes any duty on an employer in relation to a disabled person if the employer does not know, and could not reasonably be expected to know:
- (a)
 - (b) in any case, that the person has a disability and is likely to be affected in the way mentioned in subsection (1).

Employment Act 2002 Schedule 2

Part 2

Procedures to be followed in the event of a grievance being made by an employee

Grievance procedures

- 11 6 The employee must set out the grievance in writing and send the statement or a copy of it to the employer.
- 12 7(1) The employer must invite the employee to attend a meeting to discuss the grievance.
 - (2)
 - (3) The employee must take all reasonable steps to attend the meeting.
 - (4) After the meeting, the employer must inform the employee of his decision as to his response to the grievance and notify him of the right to appeal against the decision if he is not satisfied with it.
- 13 12 Each step and action under the procedure must be taken without unreasonable delay.

Employment Act 2002 (Dispute Resolution) Regulations 2004

Requirement to follow the grievance procedures set out above

- 14 6(1) The grievance procedures apply, in accordance with the paragraphs (2) to (7) of this regulation, in relation to any grievance about action by the employer that could form the basis of a complaint by an employee to an employment tribunal under a jurisdiction listed in schedule 3 or 4, or could do so if the action took place.
- 15 (2) Subject to paragraphs (3) to (7), the standard grievance procedure applies in relation to any such grievance.

INDEPENDENT ENQUIRY INTO EMPLOYMENT MATTERS LINKED TO NEIGHBOURHOOD RENEWAL FUND (NRF) MANAGEMENT – WALSALL MBC

CONTENTS

1. INTRODUCTION
2. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS
3. OBJECTIVE ONE OF THE ENQUIRY- Departure of senior officers involved with NRF and member involvement.
4. OBJECTIVE TWO OF THE ENQUIRY – Policies and procedures re. Peter Francis case.
5. OBJECTIVE THREE OF THE ENQUIRY – NRF management of monies, governance and whistle blowing.

(Note: The brief for the enquiry is attached)

Douglas Bradbury
December 2006

1. INTRODUCTION

1.1 The background to the enquiry, its scope and objectives, and the approach to be taken are all set out in the brief for the enquiry, which is attached to this report.

1.2 The way of presenting this report is to combine the items detailed under the scope and objectives section of the brief into three separate objectives: -

- Objective One – To inquire into the departure of senior officers involved with NRF and member involvement
- Objective Two – To review the application of personnel policies and procedures as applied in the Peter Francis case
- Objective Three – To consider any particular circumstances giving rise to concern relating to the management of NRF monies and governance and to review whistle blowing reports and arrangements.

1.3 The method of enquiry is set out in the various sections of the report relating to each of the three objectives referred to above

1.4 The conclusions and recommendations are set out in each of the three sections and are collated in the following section.

2. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

2.1 Departure of senior officers involved with NRF

2.1.1 The departures of two officers were linked to their dissatisfaction relating to NRF management. Whether the officers suffered detriment due to their disclosures has been disputed and in neither case have the claims of detriment been examined in external or internal proceedings (3.3.1 & 3.3.5).

2.1.2 There is no evidence of other links between departures of four other officers (3.3.2, 3.3.3, 3.3.4 & 3.3.6).

2.1.3 There is no evidence of payments to departing employees which are unreasonable or improper (3.4).

2.1.4 Members were informed of and made decisions in the proper manner with regard to the departure of officers involved in NRF who did not simply resign. The dates of involvement regarding the matters referred to Employment Tribunals are set out in the report (3.5.7).

2.1.5 There are no recommendations regarding changes in the way members are involved other than a suggested small addition to the regular briefing which is now given to members relating to employment differences (3.6.2).

2.2 Application of Personnel Policies & Procedures in the Peter Francis case

2.2.1 It was denied that disciplinary procedures were being used whilst applying measures consistent with such procedures and as a result, important details of the procedures were not followed (4.4.2.1).

2.2.2 There is nothing wrong with the Council's Disciplinary Procedures and the only training needed is to ensure that officers fully understand the importance of following the procedures when dealing with what are in reality disciplinary matters (4.4.2.2).

2.2.3 There has been a consistent delay and failure to consider grievances submitted by Peter Francis. Officers at all levels should be made aware through training of the legal implications of not dealing with grievances (4.4.3.1).

2.2.4 If in future a grievance is made against the Chief Executive it should be investigated by someone independent of the Council (4.4.3.2).

2.2.5 The Council failed in its duties under Disability Discrimination legislation by not making reasonable adjustments in relation to his application for an alternative post (4.4.4.1).

2.2.6 All staff who have a decision making role in relation to disability discrimination matters should be made aware of their obligations in relation to disabilities, and in particular mental impairment, through training. Nominated staff from both the Council's Human Resources and Legal establishments should be designated as specialist disability discrimination practitioners to provide a resource available to other colleagues who may be called upon to advise in relation to disability discrimination matters (4.4.4.3).

2.2.7 The Council properly investigated Peter Francis's disclosures in accordance with the substantive requirements of its Whistle Blowing policy and procedures although the question as to whether or not he suffered detriment as a result of such disclosures has not been proven (4.4.5.2).

2.3 NRF Management and Whistle Blowing

2.3.1 Employee concerns, whether regarded as Whistle Blowing or not have been fully investigated although there was a slowness in implementing earlier recommendations (5.3 to 5.6).

2.3.2 A significant number of recommendations remain to be fully implemented (5.5 & 5.6).

2.3.3 Future audit plans re NRF are comprehensive and sensible although being implemented rather too soon (5.7.1, 5.7.2).

2.3.4 Current NRF governance arrangements are good (subject to minor points of drafting and possible reduction in bureaucracy) (5.8.1).

2.3.5 Current NRF spending controls are comprehensive, although some details might be usefully reduced (5.9.1, 5.9.2).

2.3.6 The Council's Whistle Blowing policy is fine although

- It should become a stand alone policy in its own right
- The relative infrequency of concerns or complaints being categorised as Whistle Blowing is not important as long as those dealing with such matters are aware of the implications of the policy
- All staff should be made more aware of the ambit and operation of the policy (5.10.6).

2.3.7 The Council's Whistle Blowing policy did not have significant bearing on the Peter Francis case (5.10.7).

3. OBJECTIVE ONE OF THE ENQUIRY – DEPARTURE OF SENIOR OFFICERS INVOLVED WITH NRF AND MEMBER INVOLVEMENT

3.1 Brief for enquiry

(i) To examine whether or not the dismissals or resignation of senior officers involved in NRF funding was attributable to the mismanagement or misapplication of said funding or interlinked with each other and whether or not payments were made to said officers on termination to prevent them making disclosures in relation to mismanagement of NRF.

(ii) To consider the separation of roles and responsibilities between members and officers on employment matters relating to the senior officers involved in NRF funding and identify the chronology of significant events and the dates of knowledge of such events and advise what and when members should be informed and briefed on employment matters and consider whether there are any constitutional issues to be addressed.

3.2 Method of enquiry

3.2.1 With regard to point (i) of this part of the brief it needed to be established which senior officers were being referred to in the brief and after making inquiries it was concluded that there were four senior employees directly involved with NRF matters who had resigned or been dismissed between October 2004 and April 2005 and that a fifth senior officer who had support services responsibility for NRF matters had resigned in March 2006. In this report the five officers are referred to as A, B, C, D and E. There was, of course, a further officer involved in NRF matters, Peter Francis, who left the Council's service in June 2005 and as he is named elsewhere in the report there is no reason not to reveal his identity in this part of the report.

3.2.2 Senior personnel from the Human Resources and Legal Departments provided information and access to relevant documents in relation to the departure of the six officers. However it would not be in the Council's interests to refer in any detail in this report to the contents of these documents.

3.2.3 With regard to point (ii) of this part of the brief meetings have taken place with each Group Leader and a number of officers responsible for briefing members. The formal records of Council

Committees/Boards responsible for considering certain matters relating to two of the employees concerned have also been researched.

3.3 Departure of employees, whether attributable to NRF mismanagement or otherwise interlinked

(Note – the cases are dealt with in chronological order of leaving the Council's service)

3.3.1 Officer A

The factors relating to Officer A's departure from the Council's service are complex in that they involve application of the Council's sickness absence policy, the reasons for sickness absence and disclosures re NRF matters under the Public Interest Disclosures Act 1998 (PIDA). Officer A was dismissed under the Council's procedures for dealing with sickness absence and he then appealed to the Council's Employment Appeals Committee which did not feel able to determine the appeal and by then he had submitted claims to an Employment Tribunal on the grounds of detriment due to PIDA disclosures and for unfair dismissal. Matters were finally resolved by agreement in April 2005.

It is clear that Officer A's departure was, from his point of view, clearly attributable to claims of mismanagement and/or misapplication of NRF and there are clear links between this officer's claims and those of Peter Francis. The views of Officer A regarding how he was treated as a result of the disclosures that he made have not been examined in either internal or external proceedings, although the District Auditor is fully aware of the circumstances of Officer A's departure.

3.3.2 Officer B

No reason was given for Officer B's resignation and the individual subsequently took up a senior post with another local authority. This officer is referred to on a number of occasions in the extensive documentation compiled for the Employment Tribunal case involving Peter Francis from which it is concluded

- That there is no evidence at all that Officer B's departure was attributable to mismanagement or misapplication of NRF
- There is anecdotal evidence that there was some unease from Officer B's manager(s) with regard to Officer B's performance and that Officer B, for various

personal reasons, did not feel comfortable in the post. There is similar evidence with regard to Officer C

- There are no other links between the departure of Officer B and any of the other officers whose departures I have examined.

3.3.3 Officer C

The circumstances relating to Officer C's departure are fully set out in a report to the Council's Appointments Board on 18th February 2005. For legal reasons it is not proposed to go into further details other than to confirm that apart from the similarity to the case of Officer B, referred to above, there appears to be no interlink between the departure of this officer and the other departures and in particular it is not found that the departure of Officer C had anything to do with mismanagement or misapplication of NRF.

3.3.4 Officer D

Officer D resigned to take up a post with another public body of a type which fitted more clearly to his career path prior to joining Walsall MBC. The officer's resignation letter expressed pleasure at having been involved during a period when a great deal had been achieved at Walsall. There is no evidence of any dissatisfaction attributable to mismanagement or misapplication of NRF or any interlink with other departures.

3.3.5 Peter Francis

Peter Francis submitted a claim for whistleblowing to the Employment Tribunal before resigning from the Council's service. Peter Francis then submitted claims to an Employment Tribunal for unfair dismissal and disability discrimination. As in the case of Officer A, Peter Francis' case includes complaints of detriment arising from disclosures made in connection with NRF matters, although there is some doubt as to whether or not these were technically made or considered to be under PIDA. However this distinction is academic as in Peter Francis' view he clearly claims his departure was, at least to some extent, related to his disclosures. There is therefore a link between the departure of Peter Francis and Officer A in relation to dissatisfaction regarding NRF matters.

3.3.6 Officer E

Officer E resigned to take up a post with another public body located closer to the officer's home. The officer's resignation letter expressed appreciation of the support given by more senior managers and that Officer E would treasure time spent at Walsall. Again, there is no evidence of any dissatisfaction attributable to mismanagement or misapplication of NRF or any interlink with other departures.

3.4 Departure of employees – payments made

3.4.1 No payments, other than what they were due properly and contractually, were made to Officers B, D and E, in connection with their resignations.

3.4.2 Officers A and C received payments on their departure from the Council. Having examined the totality and the breakdown of these payments and making comparisons based on experience elsewhere it is concluded that they are fair and reasonable given the circumstances at the time. There is no element of the payments that could not be explained by reference to salary levels, length of service, length of notice and likely Tribunal awards and legal costs. In particular there are no unidentified elements which might have been made on termination to prevent the employees from making future disclosures in relation to management of NRF.

3.4.3 With regard to Peter Francis he has not received any monies which relate to prevention of any future NRF disclosures.

3.5 Involvement of Members in relation to senior officers involved with NRF etc.

3.5.1 By law members now have little direct responsibility in relation to recruitment and discipline of officers below a certain level – which is understood to be Assistant Director level within Walsall MBC. There are some exceptions to this (such as dealing with staffing appeals) which are not really relevant to this report except in relation to Officer A.

3.5.2 Members can have involvement at Assistant Director level and above with regard to recruitment and discipline. Of the six officers referred to above, only Officer C was at

this level and the departure of Officer C was sanctioned by the Council's Appointments Board of members. It is understood that the Leader was kept fully briefed of issues relating to Officer C in the period before the Appointment Board met.

3.5.3 Members were not, of course, involved with regard to the departure of officers B, D and E each of whom resigned voluntarily.

3.5.4 Apart from the issues of recruitment and discipline members are, of course, consulted on staffing matters which are considered by officers to be particularly sensitive or important although there may be powers delegated to officers to deal with such matters themselves. For instance the Head of the Council's Legal Services has authority to settle any claim against the Council. However, the magnitude of the claims relating to Officer A and Peter Francis clearly merited reference to members, in these cases the Leader (and on occasions the Deputy Leader) and subsequently, in the case of Peter Francis, the Cabinet.

3.5.5 In considering Employment Tribunal cases, it is important to realise that there is often a fairly lengthy period between a claim being submitted and the time when evidence collated for a hearing has been evaluated sufficiently to enable legal opinion to be expressed on the prospects of one side or the other being successful and the likely financial implications of such an outcome. Thus it was in the case of Officer A and Peter Francis and it was not until March and April 2006 that it became clear what the Council's prospects were in the two cases – Officer A's case was running about three weeks ahead of Peter Francis' case. It was around this time that officers gave consideration to the briefing of members.

3.5.6 It is understood that prior to this time there were many rumours circulating throughout the Authority regarding the two cases but there is no evidence to indicate that members were involved in either case.

3.5.7 The following is the chronological order of events -

- 21st March 2006 - Officers met with the Leader to discuss in general terms the case of Officer A – which took up virtually all of the meeting although there was some reference to the increasing size of Employment Tribunals especially in discrimination cases and it was mentioned briefly in passing how the Peter Francis case might involve paying out a high sum, although the Leader does not recall this.

- 6th April 2006 - First formal briefing re Officer A's case as Barrister's advice had just been received by the legal officers in relation to Officer A's case. The Leader was very fully briefed and he gave instructions to settle within a certain ceiling. At the end of the meeting there was a passing reference to the Peter Francis case.

- 11th April 2006 – The Leader attended a routine briefing meeting with the Chief Executive during which he discussed both Officer A's and Peter Francis' case and was informed generally of the Council's position and its prospects. Later the same day the Leader met with other officers when Peter Francis' case was discussed at some length.

- 28th April 2006 – David Martin (having taken over the instructing client's role as the former instructing client was in a conflict position) arranged an urgent meeting with the Leader to advise that a settlement should be sought in Peter Francis' case. The Leader asked for documentation to study before making any decisions as all of his briefings up to then had been verbal.

- 2nd May 2006 – Documentation on Peter Francis' case was sent to the Leader by e-mail and the Leader met with officers to discuss the Council's position.

- 3rd May 2006 – Further meeting of officers with the Leader (and for the first time Councillor O'Hare) to discuss the Peter Francis case. There were then a number of further discussions with officers as the Barrister's advice became more specific with regard to the Peter Francis case.

- 15th May 2006 – Special early morning Cabinet meeting to discuss what the Council should do at the Employment Tribunal in the Peter Francis case later the same day.

- 18th May 2006 – A briefing note was circulated to Cabinet members on the Peter Francis case.

- 24th May 2006 – The Leader made a statement to the Council on the Peter Francis case.

3.6 Separation of roles and responsibilities of officers and members and when members should be informed and briefed on employment matters

3.6.1 As stated in 3.5.1 there is a legal bar with regard to member involvement with the great majority of officers and this is reflected in Walsall MBC's internal regulations. The involvement of members with regard to any disciplinary action involving three particular officers (the Chief Executive, the section 151 Officer and the Monitoring officer) is also covered by legal provisions.

3.6.2 It is in the discretionary area where problems may arise. Here it is a matter of officers holding delegated authority to deal with employment matters and having to use their discretion when to involve members, which will depend on political sensitivity and nous. A confidential briefing note has been introduced since the seriousness of the Peter Francis case came to light. This note is sent to Cabinet members on a monthly basis to provide information on matters such as current suspensions, on-going disciplinary cases, live grievances and on-going employment tribunal cases. No employees are identified in this briefing note other than those who have submitted claims to an Employment Tribunal. This is a worthwhile innovation to keep members aware of the level and type of employment differences at any one time so that there is an opportunity to if considered appropriate. The only addition to the briefing note which might be useful would be to draw specific attention to any of the particular cases referred to in the note which might be or become particularly significant in terms of whom is involved or which may have major resourcing significance for the Council. It is not suggested that the note itself should contain details in relation to particular cases but that such cases should be flagged in the note in such a way as to ensure that officers verbally brief members on the particular cases when the contents of the note are being considered by members."

3.6.3 Whether or not the briefing note should be shared on a confidential basis with Group Leaders or others who are not Cabinet members is a political decision. However, the thrust of current good Human Resource practice and legislation is to limit too much member involvement in

employment matters and it is understood that this was one issue which was perceived to be a problem in Walsall some years ago.

3.6.4 Returning to member involvement in the cases of officers involved in NRF management, there is little wrong in how and when the Leader was informed about the cases he should have known about. To have briefed much earlier than happened would have meant discussing issues without enough information to make a reasoned judgement or decision. Whether or not the information given to the Leader was sufficient and adequate is a matter for the Leader to say.

4. OBJECTIVE TWO OF THE ENQUIRY - REVIEW OF APPLICATION OF PERSONNEL POLICIES AND PROCEDURES AS APPLIED IN THE PETER FRANCIS CASE

4.1 Brief for enquiry

(i) To review the application of personnel policies and procedures as applied in a current Employment Tribunal case (i.e. involving Peter Francis)

(ii) To consider the associated training requirements of managers and elected members in light of the Employment Tribunal.

4.2 The District Auditor's Investigation

4.2.1 The District Auditor has been undertaking, since June of this year, an investigation to establish what went wrong in relation to the Peter Francis matter and in particular to identify – “gaps or weaknesses in the Council's procedures and where those procedures were not followed and why”.

4.2.2 There has been liaison with the District Auditor, as required by the brief, to ensure there is no risk of confusion or duplication.

4.2.3 As a result of these discussions this part of the report reviews, rather than reports in any detail, the application of the Council's policies and procedures without identifying individuals responsible for application of policies in the knowledge that should the District Auditor refer to the same matters he may well do so in such detail as to identify individuals.

4.3 Method of Enquiry

In accordance with the brief a desktop review of material collected for the Employment Tribunal has been undertaken. There followed a number of interviews with Council officers, who worked for the Council during the relevant periods, to clarify issues arising from the desktop review. What has happened since Peter Francis submitted his claims to the Employment Tribunal has not been investigated in the preparation of this report.

4.4 The Relevant Policies and Procedures

4.4.1 The policies and procedures which appear to be the most relevant in relation to the Peter Francis case are: -

- The Council's disciplinary procedures

- The Council's grievance procedures
- The Council's procedures relating to disability discrimination
- The Council's procedures relating to whistle blowing.

4.4.2 Disciplinary Procedures

4.4.2.1 A failure has been in relation to the Council's disciplinary procedures. This has been for the most part in denying that the procedures were being used, whilst applying measures consistent with disciplinary action being taken. If the applicability of procedures is over ridden it is perhaps not surprising that the detailed requirements of the procedures were not followed.

4.4.2.2 There is nothing wrong with the Council's Disciplinary Procedures and the only training need is to ensure that officers fully understand the importance of following the procedures when dealing with what are in reality disciplinary matters.

4.4.3 Grievance Procedures

4.4.3.1 The failure here has been a consistent delay and failure to consider Peter Francis's many grievances. These are important failures in terms of employment law and give rise to an important training requirement in making officers at all levels aware of the legal implications of not dealing with grievances.

4.4.3.2 A specific issue which requires a decision as to ways of dealing with certain future grievances (rather than strictly speaking a training requirement) relates to the procedures should a grievance be raised in future against the Chief Executive. It would seem inappropriate for such a grievance to be dealt with by a fellow officer who is bound to be accountable to the Chief Executive or by members, who may be compromised if further action eventually needs to be taken

under the statutory disciplinary procedures applicable to the Chief Executive. The solution which has been found to this problem in other local authorities, which is commended to the Council, is for such grievances to be dealt with by an individual who is independent of the Council – although an appeal against such a grievance decision may still need to be considered by members.

4.4.4 Disability Discrimination Procedures

4.4.4.1 The failures here have led to a much increased liability on the Council. The initial major error was in not recognising that as Peter Francis was suffering from a work related stress illness the Council should have pursued more proactively the enquires as to whether or not the illness came within the scope the disability discrimination legislation. These errors were compounded when the claims of Peter Francis' legal adviser that he was disabled were not adequately investigated. As a consequence of these failures the Council did not consider making reasonable adjustments, particularly in relation to Peter Francis' application for an alternative post with the Council following a managerial reorganisation after his own post was made redundant.

4.4.4.2 In so far as training is concerned the Council's Leadership and Employee Development Programme for 2006/07 includes monthly courses for staff commencing on 7th December 2006 through to 18th June 2007. The objectives for these courses includes making staff aware of what is a disability, what can be done in the workplace and also covers the disability discrimination legislation and doubtless discussion at the training sessions will include references to the Employment Tribunal case involving Peter Francis.

4.4.4.3 The main conclusion in relation to disability discrimination issues is that all staff who have a decision making role in relation to disability discrimination matters should be made aware of their obligations in relation to stress related disabilities through the medium of training. It is also suggested that nominated staff from both the Council's Human Resources and Legal establishments, are designated as specialist disability discrimination practitioners and they receive specialist training to provide a resource available to other colleagues who may be called upon to advise in relation to disability discrimination matters.

4.4.5 Whistle Blowing procedures

4.4.5.1 The disclosures made by Peter Francis in relation to NRF matters were never actually dealt with by the Council/auditors formally under the Council's Whistle Blowing procedures, and there is some evidence that prior to the latter days of his employment Peter Francis himself did not regard his disclosures as whistle blowing. However this distinction is not critical in deciding on the applicability of the Council's procedures because, as pointed out elsewhere in this report, what

is important is that disclosures are investigated properly and that there is no detriment to the person making the disclosures.

4.4.5.2 The evidence is that Peter Francis's disclosures were properly investigated. However the question as to whether or not he suffered any detriment as a result of making the disclosures has not been proven as, whilst his claim to the Employment Tribunal was settled, liability in relation to detriment was not admitted by the council.

4.4.5.3 Any training requirements etc. in relation to Whistle Blowing are dealt with in 5.10 of this report.

5. OBJECTIVE THREE OF THE ENQUIRY – TO CONSIDER ANY PARTICULAR CIRCUMSTANCES GIVING RISE TO CONCERNS RELATING TO THE MANAGEMENT OF NRF MONIES AND GOVERNANCE AND TO REVIEW WHISTLE BLOWING REPORTS AND ARRANGEMENTS

5.1 Brief for Enquiry

(i) To consider if there are any particular circumstances relating to the management of NRF monies and governance agreements for NRF involving both the Council and the wider Local Strategic Partnership which could be a cause for concern.

(ii) To review any whistle blowing reports linked to NRF management.

(iii) To consider the effectiveness of the Council's Whistle Blowing policy, its robustness and application, the understanding of the policy by officers and identify if the policy had any bearing on the current case and if there are any wider problems associated with the application of the policy.

5.2 Method of Enquiry

5.2.1 A desktop review of reports produced jointly or separately by Internal Audit and the Audit Commission on NRF governance and spend has been undertaken. There are six such reports (comprising over 240 pages) covering a period from 2002 to October 2006. Associated with these reports are the disclosures made by employees in relation to NRF management. These disclosures are commonly referred to as whistle blowing reports although there is some doubt as to whether most of the disclosures came within either of the Council's or the statutory definition of whistle blowing.

5.2.2 The structure of governance and spending controls in relation to NRF from 2002 through to the proposals to amend the structure and controls agreed earlier this year have also been reviewed.

5.2.3 The Council's Whistle Blowing policy has been reviewed and inquiries made across the Council to determine how it is applied and understood. An assessment has also been made as to whether or not the policy had any bearing on the Peter Francis case or if there are wider problems associated with the policy.

5.2.4 Staff from both the Internal Audit service as well as staff currently involved with NRF have been interviewed

5.2.5 It is understood that there are still considerable misgivings amongst some Council members regarding NRF management in the past. However individual causes of complaint have not been investigated and employees making disclosures in relation to individual matters have not been interviewed. The reasons for not investigating individual complaints is that the brief does not require this and moreover such a task would be far out with the time available to research and prepare this entire report. However a judgement has been made on the investigations which have been made into concerns and the focus has been on trying to identify any matters which are still giving a cause for concern or may do from now onwards

5.3 Initial investigation and audit of NRF concerns

5.3.1 In August 2002 a Council employee expressed concerns to a senior officer regarding the management of NRF funds. These concerns covered: -

- How NRF was being used by the Council
- The performance of staff managing NRF
- How NRF was being accounted for
- The Local Strategic Partnership's review of the Council's management of NRF.

5.3.2 An investigation by the Council's Internal Audit service concluded that a number of the concerns were justified and this led to detailed recommendations and a twelve point action plan to address the concerns.

5.3.3 The action plan was accepted by the NRF managers at the time but in the following year, 2003, when implementation of the action plan was reviewed by Internal Audit there were concerns expressed at the slowness of implementation and this led in turn to further in depth investigations, which are referred to in 5.5 below.

5.3.4 The conclusions drawn from the way in which these concerns were investigated and how the action plan was followed up is that the disclosures were taken seriously and acted upon.

5.4 Third party investigation

5.4.1 The employee who reported concerns in 2002 then, in 2004, referred further concerns – this time direct to the Audit Commission. These further concerns dealt with specific accounting allegations regarding NRF and also alleged insufficient investigation by Internal Audit of the earlier concerns as well as subsequent concerns expressed by another employee, Peter Francis. The disclosures were dealt with as whistle blowing disclosures. In order to obtain an independent review by someone not involved with Walsall MBC's Audit Service the Audit Commission commissioned an investigation from a District Auditor who had no connection with Walsall. This independent report was submitted to the Council earlier this year and concluded that satisfactory progress was being made in investigating NRF matters but there should be close monitoring of Audit recommendations.

5.4.2 The conclusion again drawn is that the whistle blowing disclosures were taken seriously and duly independently investigated.

5.5 Further investigations of concerns

5.5.1 Partially as a follow up to the initial concerns and partially in reference to further disclosures made by the same employee (regarded now as whistle blowing disclosures) and partially in response to disclosures subsequently made by Peter Francis (not regarded as whistle blowing disclosures), a series of joint audit investigations were undertaken in the two year period from November 2004 to October 2006.

5.5.2 The following is a summary of these further investigations

- In November 2004 a joint Internal Audit/Audit Commission report concentrated on NRF administrative costs (one of the subjects of the earlier disclosures). Significant points from this investigation included: -
 - Concerns expressed by officers in relation to NRF administrative costs were partially substantiated
 - Accounting arrangements for NRF administrative costs were inadequate
 - There were six recommendations to deal with perceived inadequacies.

- In June 2005 a further joint audit report was made in relation to NRF approvals of spend (again following up some of the earlier concerns expressed by an officer). Significant points from this investigation included: -
 - A number of employee concerns were substantiated
 - Full approval for twelve NRF projects was missing
 - Whilst there was evidence to support most NRF spending in 2003/2004 there were some control weaknesses and two duplicate payments were identified and some records were inadequate
 - There were seventeen recommendations to improve procedures for agreed NRF projects and accounting for expenditure.

- In February 2006 a further joint audit report was published in relation to project appraisal, project approval, contracting, project monitoring/financial management, governance, commissioning and a number of specific NRF projects. Significant points from this investigation included: -
 - Again some of the concerns expressed by officers were substantiated
 - There were deficiencies in project appraisals and approvals
 - Monitoring of expenditure had been poor
 - There were weaknesses in NRF governance (e.g. quoracy of meetings, recorded conflicts of interest, legality of delegated decisions)
 - There were forty five recommendations to produce efficiencies and bring about improvements.

- In October 2006 a further joint report was produced which basically summarised progress on implementation of the recommendations contained in the November 2004, June 2005 and February 2006 reports. The latest report stated that satisfactory progress had been made in implementing the recommendations and summarised the position as, out of ninety- nine recommendations
 - Sixty-one had been implemented satisfactorily
 - Twenty- five required further work to implement
 - Two were no longer relevant
 - Eleven were incapable of implementation (for example because original documentation was not available).

5.6 The conclusions in relation to the plethora of audit reports submitted in the last two years in relation to NRF matters are: -

- Employee concerns (whether regarded as whistle blowing or not) seem to have been fully investigated although there was slowness in implementing earlier recommendations
- However, a significant number of recommendations (25 out of 99) remain to be fully implemented and it must be a matter for concern that there are still so many recommendations still to be fully addressed.

5.7 Future audit plans

5.7.1 The draft proposals for Internal Audit and the Audit Commission to look into the management of NRF monies and NRF governance arrangements during the period November 2006 to January 2007 include the following: -

“a review of the WBSP constitution and its application”

“sample testing of projects to establish that effective controls are in place for

- the allocation of grants and/or commission
- the authorisation of payment
- the completion of regular quarterly and annual returns to GOWM”

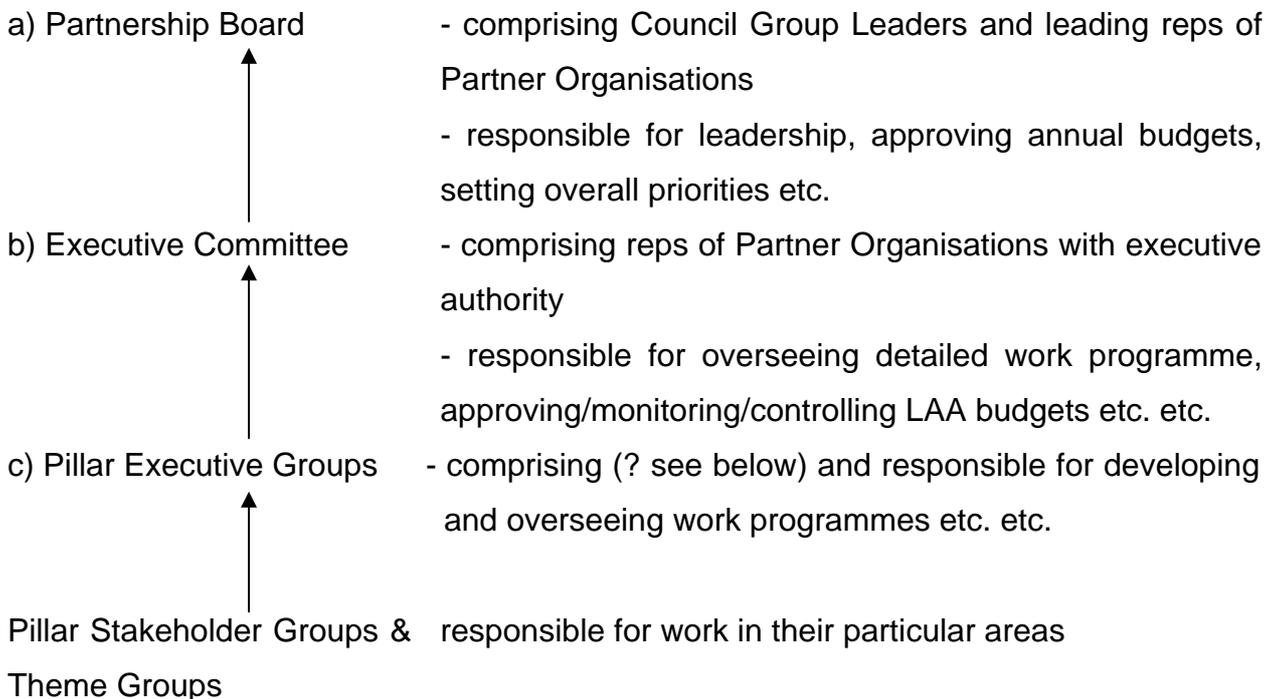
5.7.2 The above proposals are comprehensive and sensible and the only concern is that of timing. This is because the audit work is planned for a period only a few months after the implementation of new governance arrangements and spending controls. It might be preferable to monitor the operation of the controls, say a full year or so after their coming into operation in order to assess a statistically wider range of data and experience.

5.8 Current arrangements for NRF governance and management of NRF monies

5.8.1 NRF Governance

5.8.1.1 A new written constitution for the Walsall Borough Strategic Partnership (WBSP) was approved at the Partnership’s AGM in June 2006 and by the Council’s Cabinet on 26th June 2006.

5.8.1.2 The basic governance structure as referred to in the written constitution is



5.8.1.3 The written constitution commendably tries to bring together in one document the overall governance arrangements for WBSP – which ties in with audit recommendations to improve governance arrangements.

5.8.1.4 Concerns in relation to the constitution document are relatively minor i.e.

There are difficulties in ascertaining who are members of some of the groups e.g. clause 6.2.1 says that “membership of the Executive Committee shall be open to all those organisations named in section 1.1.1 on page 27 of the constitution”– there is no such section on page 27; clause 6.3.3 states that membership of each Pillar Executive shall “include representatives of those organisations named in section 2.3 on page 28 – there are no organisations named in section 2.3.

5.8.1.5 Apart from these minor matters the only concern is that there seems to be a rather bureaucratic structure at lower levels and there may be some scope to reduce the number of bodies at the Pillar Stakeholders Group and Theme Group levels. However the intention for an

audit “review of the WBSP constitution and its application” is an opportunity to address these matters.

5.9 Management of NRF monies

5.9.1 To understand the control mechanisms on the ground for ensuring money is spent properly a number of questions have been asked and copies of documents have been requisitioned to show how the current system should work in practice. The documents seen include the following:

- Procedure notes which explain in considerable detail what is required at various stages of the funding and management process. The notes expressly deal with making claims for payment and contains details requiring claims to be submitted with “robust and eligible evidence, including copy invoices and salary print outs ...”.
- Reports to the Executive Committee a) which recommended withdrawal of funding if claims were not received by a given date and b) contained detailed financial reports.
- External grant claim certificates which require details of eligible expenditure defrayed on implementing specific projects “supported by appropriate evidence on which the claims can be checked and verified”.
- A standard 34 page Commissioning Grant Agreement which provides all the information conceivably required to enable NRF grant recipients to comply with the Council’s financial regulations, including retaining records of all expenditure incurred for at least 8 years.
- A very comprehensive monitoring and Audit Visit Record form to check from sample claims that evidence is available and complete to support expenditure.

5.9.2 The conclusion in relation to the control mechanisms which have been put into place is that they are comprehensive although concerns from the past may have led those responsible for putting in place the new controls to have developed a system which is over elaborate in its detail, and therefore may tend to be increasingly disregarded as time passes. It is therefore suggested that this aspect might be reviewed as part of the planned audit work.

5.10 Whistle Blowing policy effectiveness etc.

5.10.1 The first point to make about the Council's policy is that it took a little time to find the policy when interrogating the Council's Intranet - in effect the policy is an appendix to the Council's Code of Conduct for officers.

5.10.2 The Policy document itself is written in easy to understand terms and it provides a good explanation on what it covers and how it operates.

5.10.3 Whether or not it is effective is more difficult to ascertain. Those officers named in the policy as the most likely recipients of whistle blowing disclosures were asked how many such disclosures they had received in the last four years. The results are: -

- All Executive Directors, only one incident they could recall on a whistle blowing disclosure
- Head of Human Resources, no disclosures
- Chief Internal Auditor, only one whistle blowing disclosure clearly described as such.

However, the Chief Internal Auditor receives a variety of concerns and complaints etc. from a number of different sources e.g. irregularities under the Council's financial or contract regulations from anonymous internal and external resources and those which could more properly be dealt with internally under other procedures (grievance procedures, complaints procedures etc.). All complaints, concerns etc. received are categorised and prioritised, and at this point the Auditors decide whether or not a complaint etc. comes within the whistle blowing criteria. From the records it appears that only about 5% of complaints and concerns received by the Chief Internal Auditor are regarded as whistle blowing disclosures and this amounts to no more than a small handful per annum.

5.10.4 In so far as Executive Directors are concerned they all emphasised that they decided how to deal with concerns or complaints received depending on their assessment of the type and seriousness of the complaint/concern and they might accordingly have the matter looked into departmentally or possibly refer the matter to the Chief Executive or the Chief Internal Auditor, or even the Police. No Executive Director appeared to consider whether or not a particular complaint might be specifically categorised as coming within the ambit of the Whistle Blowing policy if it does not refer to whistle blowing.

5.10.5 All Executive Directors were also asked if they would provide an assessment from their service heads as to how they regarded the Council's Whistle Blowing policy. From the information received back from two Executive Directors the following consensus of opinion emerges: -

- Staff are generally aware of the existence and general ambit of the policy
- There would be difficulties in explaining what the policy covers and how it is intended to operate, without actually accessing the policy
- The policy was circulated with payslips in September 2003 and, as part of the Code of Conduct is part of new staff induction packs, but cognisance of the policy at all levels is uncertain.
- Proactive drawing of attention to the Policy should be undertaken (e.g. referring to on staff notice boards, bringing to staff attention periodically).

5.10.6 Conclusions are: -

a) The Whistle Blowing policy itself is fine.

b) It should become a stand alone policy in its own right (i.e. not an appendix to the Code of Conduct).

c) The relative infrequency of concerns/complaints etc. being categorised as whistle blowing is not a concern in itself provided that the disclosures are investigated properly and those dealing with such disclosures are aware that if the complaint or concern etc. comes within the criteria covered by the policy then the assurances regarding no detriment and confidentiality etc. contained within the policy must be honoured.

d) It would be worthwhile to draw the attention of staff to the policy both to raise general awareness of the ambit and operation of the policy and to remind those responsible for considering concerns raised that they should be aware of the applicability of the policy regarding detriment, confidentiality etc.

5.10.7 The final point is whether the policy had any bearing on the Peter Francis case. It can be argued that if his complaints, however defined, had been more effectively addressed then he would not have found himself in the situation whereby he became ill, was discriminated against and was able to complain effectively of constructive dismissal. However, on the other hand there

is substantial evidence that his complaints were looked into properly and whether or not he suffered detriment has not been proven.

5.10.8 It is concluded on balance that the Whistle Blowing policy itself did not have significant bearing on the Peter Francis case and the situation which the Council found itself in at Employment Tribunal. The failures regarding other Council procedures are much more important in this respect.

END

BRIEF FOR ENQUIRY

PRIVATE AND CONFIDENTIAL

Independent enquiry into employment practices linked to Neighbourhood Renewal Fund (NRF) management

Introduction

This document sets out the brief for the independent enquiry into Walsall Council's employment practices and associated link to issues arising from the management of NRF monies by the council.

Background

Peter Francis was employed by the council as Head of Programme Management, and previously as Single Regeneration Budget (SRB) Project Manager. As a result of events which occurred between January 2004 and June 2005 he brought a case against the Council in an Employment Tribunal. He alleged: -

- Unfair dismissal
- Failure to make reasonable adjustments in accordance with the Disability Discrimination Act (DDA)
- Suffering detriment as a result of 'whistle blowing' under the Public Interest Disclosure Act 1998.

The case was listed before the Tribunal from the 11th May. Following legal advice, on the day the Tribunal was to begin hearing evidence (15th May), the Council and the Chief Executive made an admission in respect of the DDA and the Council made an admission in respect of unfair dismissal. As a result of these admissions and associated apologies, the claimant withdrew all other allegations and there was no longer a requirement for a full hearing. A further hearing will now be required later in the year (December) to set the level of the financial settlement.

In view of the potentially large settlement and the Council's inability to defend some of its actions, the District Auditor considered that it was appropriate to carry out an investigation into the circumstances which gave rise to the Employment Tribunal case. At the same time the Council's Cabinet resolved that an independent investigation should be carried out and, following discussions with the District Auditor, concluded that the District Auditor's investigation would fulfil their purposes.

Following these admissions, there was a period of intense press scrutiny by local newspapers. This included public comments by a number of individuals involved in the case and speculation that the financial settlement would be in the region of £1 million. On the 22nd May, the Leader of the Council received a letter signed by the leaders and deputy leaders of the Labour and the Liberal Democrat groups and by the independent councillor requesting an independent public enquiry, separate from that to be carried out by the District Auditor, into the issues pertaining to the case as set within a wider context.

At Council on 24th May, the Leader of the Council made a statement on matters relating to the Employment Tribunal. Within this statement the Leader agreed to receive proposals on how to proceed with an independent enquiry which would carry the confidence of all parties.

Scope and objectives

This enquiry is intended to: -

- Examine whether or not the dismissals or resignation of senior officers involved in NRF funding was attributable to the mismanagement or misapplication of said funding or interlinked with each other and whether or not payments were made to said officers on termination to prevent them making disclosures in relation to mismanagement of NRF.
- Review the application of personnel policies and procedures as applied in the current Employment Tribunal case.
- Consider the associated training requirements of managers and elected members in light of the Employment Tribunal.
- review any whistle blowing reports linked to NRF management
- Consider the effectiveness of the council's Whistle Blowing policy, its robustness and application, the understanding of this policy by officers and identify if the policy had any bearing on the current case and if there are any wider patterns associated with the application of this policy.
- Consider the separation of roles and responsibilities between members and officers on employment matters relating to the senior officers involved in NRF funding and identify the chronology of significant events and the dates of knowledge of such events and advise what and when members should be informed and briefed on employment matters and consider if there are any constitutional issues to be addressed.

- Consider if there are particular circumstances relating to the management of NRF monies and governance arrangements for NRF involving both the Council and the wider Local Strategic Partnership which could be a cause for concern.

Approach

Liaison with the District Auditor will also be essential to ensure there is no risk of confusion or duplication.

Part of this enquiry will also require the desktop review of material collected for:

- the Employment Tribunal (relevant extracts)
- Internal Audit reports and joint reports with the District Auditor on NRF governance and spend

In addition, meetings with relevant individuals will take place to address queries arising from the desktop review. An initial list of proposed interviewees will be provided.

The independent person will have access to all relevant documents to assist him/her to carry out the enquiry subject to caveats relating to the legislation of disclosure and any other relevant legislation.

Reporting and timescales

Enquiries of this nature need to proceed in a timely manner. This is in order to treat with consideration those involved in the matters under review who may also be subject

to the District Auditor's investigation and most importantly for the Council to learn from its actions and implement recommendations as quickly as possible.

It is proposed that from the time of engagement of the independent person to carry out this enquiry the process, from the initial meeting with group leaders to the final presentation of the report, should take no longer than four weeks, although this will be dependent on the availability of

individuals for meetings. It is expected that the independent person will be engaged for 10/15 days work. Any increase in the number of contracted days will be with the agreement of the Interim Chief Executive. On completion of the contract the report will be submitted to the Interim Chief Executive who will then arrange for the presentation to the group leaders and deputy leaders and the independent councillor.

Any further disclosure will be discussed and agreed with the above parties. This is because due consideration will need to be given to the investigation of the District Auditor which could result in a report under section 8 of the Audit Commission Act 1998 – a ‘report in the public interest’, the Employment Tribunal ‘remedies hearing’ to ensure that this enquiry cannot prejudice that hearing and have due regard to the Data Protection Act. It should also be noted that the report may be subject to Freedom of Information legislation should the council receive such a request.

Personnel and key contacts

Independent person:

Primary contacts from the council:

Cllr Tom Ansell

Leader of the Council

01922 653238

Dave Martin

Interim Chief Executive

01922 652006

Karen Adderley

Client management and administration

01922 652058

REPORTS INTO EMPLOYMENT TRIBUNAL MATTERS

Action Plan

IMPLEMENTATION MANAGER:

Dave Martin

01922.652000

martindavid [@walsall.gov.uk](mailto:martindavid@walsall.gov.uk)

CONTEXT

This improvement plan is in respect of the reports published in September 2007 by both the District Auditor and the Independent Investigator.

This plan addresses all the issues for improvement identified within those reports as either specific recommendations or comments made indicating where improvement is required or is possible. The mainstream performance improvement agenda for the services covered by this plan is contained within the relevant service plans, team plans, and individual performance targets as part of the IPM scheme. This plan does not seek to replicate those actions, and certain issues are therefore signposted to other plans to ensure the relevant connections are made.

This plan focuses on the improvement agenda, so does not cover any strengths or issues of good practice in the report.

The actions for improvement have been devised using SMART principles to ensure clear focus and the best outcomes, as follows:

S	Specific	What exactly are you going to do/change? Absolute clarity is vital.
M	Measurable	How much observable and quantifiable change is planned? What will be different and what will it look like?
A	Action-oriented	What action are you going to take that will ensure the change? How will you know when you've succeeded?
R	Realistic	Your timescales and targets should be stretching and realistic. Identify the critical path to ensure foundation targets are achieved first.
T	Time-based	By when are you going to do it/complete it?

Each recommendation/issue raised in the report is shown in this plan; relevant actions are directly linked to it. Improvement actions are prioritised as either ①, ② or ③, with ① being the highest priority. **BLUE** priority ①s are of particular/critical importance and/or are foundation actions that need to be done first as other actions are dependent upon them. Each action has a named individual, responsible for implementation. The relevant Cabinet portfolio holder is also shown.

Some issues are crosscutting and/or covered in other plans. Where appropriate, these connections to other plans and/or sections of this plan are signposted. Each theme leader should liaise with the Implementation Manager of the other plans to ensure actions are neither duplicated nor missed. The key for other plans is as follows:

The final column shows the current status of each action against target. This enables the original version of the plan to be updated for monitoring and reporting purposes. The traffic light and arrows system in common use throughout the performance management framework, also applies here:

	means on target
	means slightly off target and/or not on target but entirely recoverable
	means off target and at risk

	Performance improving since previous report
	Performance stable since last report
	Performance declining since last status report

The final column should indicate when the action is entirely **COMPLETE**.

The themes within this improvement plan are as follows:

Key responsibilities/frequencies are as follows:

RECOMMENDATION			
No	SHORT TITLE	LEADER	TEL
1	DA's recommendations	Dave Martin	2000
2	Allied issues from DA	Dave Martin	2000

OVERALL PLAN	
Implementation Manager	Dave Martin – Interim CEX
Cabinet Portfolio Holder	Cllr J O’Hare - Leader
Audit Committee	Quarterly
Reporting to SLT	Quarterly

1. SPECIFIC RECOMMENDATIONS FROM DA'S REPORT Addressing specific recommendations	THEME LEADER: Dave Martin
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REF	REPORT	IMPROVEMENT ACTION	PRIORITY 1 2 3	BY WHOM?		BY WHEN?	SIGN POST TO OTHER PLANS	CURRENT STATUS V TARGET
				MANAGER	PORTFOLIO HOLDER			
1a	R1 Implement the planned programme of training for managers regarding the DDA and, as part of this, ensure that managers are aware of actions which may constitute reasonable adjustments and how to evaluate whether they are appropriate.	<ul style="list-style-type: none"> • Deliver focussed training for all current managers on sickness absence to include DDA • Ensure new managers are identified and required to attend such training. • Training material appears on the intranet for access and use. 	①	Paul Smith/ Tony Cox	Al Griffiths	31.12.06	HRD and L&CS Plan	 complete
			①			ongoing		
			①			1.12.06		 complete
1b	R2 Strengthen arrangements for ensuring that adequate training and awareness raising is put in place for new legislation	<ul style="list-style-type: none"> • Monitoring Officer to establish process to identify new legislation and the key issues arising from it and brief SLT as appropriate. 	②	B Gill	Al Griffiths	31.07.07	L&CS Plan	 complete

		<ul style="list-style-type: none"> Develop and deliver a programme of 'all staff' briefing workshops around new policy and legislation. 				From October 2007 onwards		●
1c	R3 Consider whether any additional processes can be put in place to safeguard the council against recurrence of any situation where officers do not give robust advice in circumstances where they think that the law or council procedures are not being followed.	<ul style="list-style-type: none"> Monitoring officer protocol approved by Council on 2 July 2007 Whistleblowing Policy on intranet and circulated to managers to remind of its content and to discuss with in team meetings. Quarterly meeting of Statutory Officers (CEX, Monitoring Officer, and S.151 Officer) to monitor key issues within and across the 3 roles. 	①	B Gill	Al Griffiths	03.07.07 31.08.06 Established May 2007		● complete ● complete ● complete

1d	R4 Ensure through training that the duty to respond to grievances is well understood by managers at all levels.	<ul style="list-style-type: none"> • “Lessons learned” letter to all c 100 managers on the importance of responding to grievances and enclosing copy of the latest policy • Grievance policy reviewed summer 07 – to SLT Sept 07 and ERF thereafter • All current managers trained on grievance procedure • New managers trained. • Grievance procedure appears on intranet • Induction pack enhanced to include advice to managers on grievances. 	①	Dave Martin	Al Griffiths	28 days post publication of report		
				Sarah Homer		30.10.07		
				Sarah Homer		31.12.07		
				Sarah Homer		rolling 12 months		
				Sarah Homer		30.11.07		
				Sarah Homer		30.11.07		

		<ul style="list-style-type: none"> • Provisions to be covered within the mainstream training on grievances. • Managers reminded of the importance of referring matters to internal audit and seeking their advice as necessary in accordance with Council procedures and rules (lessons learned letter) 		<p>Sarah Homer</p> <p>Dave Martin</p>		<p>ongoing</p> <p>28 days post publication</p>		<p>●</p> <p>●</p>
	R6 Ensure that any future secondments to allow investigations are properly planned with clear objectives and adequate supervision, as far as is practical given that they may have to be arranged at short notice	<ul style="list-style-type: none"> • Include in the 'lessons learned letter (see 1d) • Grievance and disciplinary policies both contain a section on secondments detailing arrangements 	①	<p>Dave Martin</p> <p>Sarah Homer</p>	Al Griffiths	<p>28 days post publication of report</p> <p>31.12.07</p>		<p>●</p> <p>●</p>

		for how such secondments should be effected.						
	R7 Continue efforts to achieve stable staffing within the legal team, augmented with external assistance and expertise where appropriate.	<ul style="list-style-type: none"> • Locums in place for key vacancies. • A review of structures and responsibilities has been commissioned and received. • Recruit to permanent posts as far as possible • Design a retention strategy for legal staff 	①	B Gill	Al Griffiths	31.07.07 and ongoing	L&CS SP	● complete
						31.08.07		● complete
						31.12.07 on going		●
						31.03.08		●
	R8 Review the way specific emerging legal cases are captured for inclusion in risk registers	<ul style="list-style-type: none"> • Employment matters are shared with Cabinet in a monthly briefing note • All legal cases are now subject to a risk assessment using the corporate 	①	Carole Evans	Al Griffiths	Already in place + ongoing		● complete
				B Gill		In place + ongoing		● complete

		<p>framework.</p> <ul style="list-style-type: none"> • Relevant cases are discussed at legal services management teams • A copy of the risk register is shared by the AD (L&CS) with the CEX + S151 officer at Statutory Officer meetings and discussed with cases identified as high risk being referred to the Leader. 		<p>B Gill</p> <p>B Gill/ Dave Martin</p>		<p>In place + ongoing</p> <p>30.09.07</p>		<p> complete</p> <p></p>
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3. RECOMMENDATIONS FROM THE DB REPORT

Specific recommendations of this particular report.

THEME LEADER:

Dave Martin

REF	REPORT RECOMMENDATION OR ISSUE	IMPROVEMENT ACTION	PRIORITY 1 2 3	BY WHOM?		BY WHEN?	SIGNPOST TO OTHER PLANS	CURRENT STATUS V TARGET
				MANAGER	PORTFOLIO HOLDER			
3a	2.1.5 – A small addition to the regular briefing note to Cabinet – to flag cases of particular significance.	The briefing to accompany the note now flags up such key issues.	①	Dave Martin	Al Griffiths	done	N/A	 complete
3b	2.2.2 and 2.2.3 – training needed to ensure that officers fully understand the importance of following relevant procedures when dealing with disciplinary matters and grievances	Training updated to include a case study to enable managers to openly discuss issues and concerns	②	Sarah Homer	Al Griffiths	31.12.07	Training Plan HRD	
3c	2.2.4 If in future a grievance is made against the Chief Executive it should be investigated by someone independent of the Council.	Any such grievance would be investigated by someone independent of the council in accordance with procedure under Part 4.6.6 of the Council's constitution and	①	Bhupinder Gill	Al Griffiths	As required	N/A	 complete

		in accordance with statutory process.						
3d	2.2.6 All staff who have a decision making role in relation to disability discrimination matters should be made aware of their obligations in relation to disabilities, and in particular mental impairment, through training. Nominated staff from both the Council's HR and legal establishments would be designated as specialist disability discrimination practitioners to provide a resource available to other colleagues who may be called upon to advise in relation to disability discrimination matters.	<ul style="list-style-type: none"> • Training for managers on DDA (see action 1a above) • Named individuals in HRD and Legal identified as specialist DDA advisors and appearing on intranet, including Occ Health. • Keeping nominations up to date to address new training and turnover. 	①	Bhupinder Gill		31.12.06	n/a	
			②	Sarah Homer/ Bhupinder Gill		30.09.07		
			②	Sarah Homer/ Bhupinder Gill		ongoing		
3e	2.3.3 Future audit plans re NRF are comprehensive and	The audit activity is programmed	②	David Blacker	Al Griffiths	n/a	n/a	 complete

