

Call-In Sub-Committee

SUPPLEMENTAL AGENDA

DATE: Wednesday 3 April 2013

AGENDA - PART I

6. CALL-IN OF CABINET DECISION (14 MARCH 2013) - STRATEGIC REVIEW OF LEARNING DISABILITY ACCOMMODATION (Pages 1 - 4)

The following document is attached:

a) notice invoking the Call-In;

AGENDA - PART II - NIL

Note: In accordance with the Local Government (Access to Information) Act 1985, the following agenda item has been admitted late to the agenda by virtue of the special circumstances and urgency detailed below:-

Agenda item

Special Circumstances/Grounds for Urgency

6. Call-In of Cabinet Decision (14 March 2013) – Strategic Review of Learning Disability Accommodation

The notice was omitted from the main agenda. Members are requested to consider this item, as a matter of urgency, in order to see the grounds stated on the call in notice.

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I hereby give notice that I wish to call-in the decision “Strategic F Learning Disability Accommodation” (item 10) taken by Cabinet on 14th March 2013.

The reasons for this call-in are as follows:

(a) Inadequate consultation with stakeholders prior to this decision

The Council’s report notes (page 89) that it received consultation responses from Harrow Association of Disabled People (HAD) and Harrow Mencap (both found in Appendix 2). *Yet many of the service users in the most affected services – especially in Gordon Avenue and Woodlands – are represented by Advocacy Voice; yet Advocacy Voice were not consulted or asked for a response on behalf of the residents they represent. This raises questions as to how thorough the consultation actually was.*

What is concerning, is that all the residents of Gordon Avenue were opposed to the proposals to move them (p97), and there was little support for the plans regarding Woodlands, with concerns about the deleterious impact that it would have on residents’ lives.

From meeting with relatives and advocates of a number of residents, and from reading the Council’s own report and consultation responses, it is also extremely unclear whether all of those interviewed fully understood the implications of the Council’s proposals. The Council admits that some of the residents in question face difficulties understanding complex issues; on page 83 of the Cabinet report, the following statement is made:

“There are a mix of people with different levels and types of needs in a number of these services. This is because in the past, in order to maximise the use of the homes when vacancies occurred, they were filled without delay, rather than waiting for a referral for someone with the most appropriate needs for the service. This has led to some people being placed in services that may not be the best fit for them, for example someone living in an autism service who needs 24-hour care but does not make use of the specialist autism support.”

Indeed, in reporting the discussions with users at Bedford House, the Council noted (p91):
The consultation meeting was very long and at times it was difficult to keep discussions at a level that many service users could engage with.

... Bedford House reported that six of the eleven service users were unable to provide feedback as they were unable to understand the proposal due a lack of capacity.

Mental capacity of the individual affected to understand a decision being taken is essential – and something that we ordinarily take for granted. However, if an individual is assessed as not having capacity to choose, then someone would need to make a decision on their behalf based on what is in their best interest. If there is a disagreement about what is in the service user’s best interest then an Independent Mental Capacity Advocate (IMCA) would be involved. According to the Mental Capacity Act (Principle 2):

“A person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.”

The Council has admitted that some residents have been placed in these homes who may lack the necessary mental capacity to decide properly yet the Council does not set out details of what

assessment has been done to assess every resident's capacity to understand the consultation document and review meeting. By failing to show that it has made "every effort to encourage and support people make the decision for themselves..." the Council has shown that its consultation process was inadequate.

This also leaves the Council open to a potential human rights challenge, below, as it is clear from the report that some individuals were unable to make decisions but not provided with proper advocates.

(e) a potential human rights challenge;

The apparent failure to provide for a mental capacity assessment of the individual affected to understand a decision being taken, not only raises a question about whether the consultation was adequate, it also lays the Council open to a potential human rights challenge.

To repeat, if there is a disagreement about what is in the service user's best interest then an Independent Mental Capacity Advocate (IMCA) should be involved. According to the Mental Capacity Act (Principle 2):

"A person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions."

The Council admits in its report that some residents have been placed in these homes who may lack the necessary mental capacity to decide properly yet the Council does not set out details of what assessment has been done to assess every resident's capacity to understand the consultation document and review meeting. By failing to show that it has made "every effort to encourage and support people make the decision for themselves..." the Council has left itself open to a potential human rights challenge, as it is clear from the report that some individuals were unable to make decisions.

(f) insufficient consideration of legal and financial advice.

Part One: Insufficient consideration of legal advice:

The report notes Section 149 of the Equalities Act 2010 which created the public sector equality duty:

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it

Yet the report also goes on to note that Harrow Council's own review group – which contained representatives from Harrow Mencap and Harrow Association for the Disabled but no-one from Advocacy Voice – found that:

- There are a significant number of older service users within the services covered by the review. They may be particularly affected by the recommended changes to Gordon Avenue and Woodlands Drive. These recommendations would lead to a number of older people having to move from their current home to a different home. Potential adverse impacts have been identified including the loss of existing friendships, familiar routines and environments and opportunities to access the community and services like day centres.
- To mitigate impacts Officers will ensure that each service user has a person-centred plan and a range of housing options will be considered. These options will include residential care homes if appropriate but may also include: Harrow Shared Lives, supported housing and specialist learning disability services.
- Research has shown that older people with learning disabilities moving into care homes for people without a learning disability may experience harassment and bullying and may be viewed as being different. To mitigate we will work with providers to pay particular attention to supporting the relationships between residents. Individuals will be able to maintain their skills and interests in services that supports their health and wellbeing and enable them to lead an active and fulfilling life. Service users will settle in to a new home, be valued and develop new relationships.

The Council's own report thus identifies "potential adverse impacts" to many of the older residents of Woodlands and Gordon Avenue that would follow from the recommendations being implemented, including harassment and bullying because of their learning disabilities.

Whilst the Council is proposing taking some steps to try to "foster good relations between persons who share a relevant protected characteristic and persons who do not share it", the Council's own report recommends a course of action that previous studies have shown lead to bullying, harassment and victimisation, namely moving people with learning difficulties into a general elderly residential care home. This is something that the Council acknowledges, yet is pursuing a course of action that will create rather than eliminate discrimination under s149 (1) (a) of the Equalities Act 2010.

The Council's own stated proposals to mitigate the impact of any move on its elderly residents with learning disabilities appears to run contrary to s149 (1) (b) of the Equalities Act 2010 to: "advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it." By tearing apart their social world of existing relationships, patterns of engagement with the wider community, the Council is actually reducing rather than advancing the equality of opportunity for the residents affected; their quality of life and opportunity to flourish is being severely reduced and hampered, with the Council admitting that it will have to work extremely hard to reinflate their social sphere.

The costs of doing this effectively, to restore affected residents to at least the status quo that they enjoyed prior to the decision is, again, not costed and would reduced the overall level of proposed savings.

The Council's proposals also appear to fly in the face of some of the key findings of the Winterbourne Enquiry, notably:

- People with challenging behaviours have a right to be offered the support and care that they need in a community-based setting, as near as possible to family and other connections.
- Far too many people are sent a long way from their home and families.
- A failure to design, commission and provide services which give people the support they need, in line with well established best practice.

The Council actually cites (p86) the Government's *Transforming care: A national response to Winterbourne View Hospital Department of Health Review: Final Report* (December 2012), which noted that "children and adults with learning disability or autism and who have mental health conditions or challenging behaviour have too often received poor quality and inappropriate care." The Council's proposals seem set to do just that.

(f) insufficient consideration of legal and financial advice.

Part Two: Insufficient consideration of financial advice:

On Page 124, the report notes that:

"It is not possible to determine the exact level of savings that the recommendations in this review will achieve. This is because the service for each individual who moves to new accommodation will be based on an individual assessment of their need, and up to date care plan. The cost of these services cannot be determined in advance."

The report goes on to suggest that savings might amount to "approximately £600k on conservative estimates in a full year... and could rise depending on the outcome of individual assessments of need..." (p125)

However, this £600k savings total appears to be based on a calculation of the cost of older person residential care (at £466 per week) rather than upon looking at the cost of caring for older people with learning disabilities, which is much higher. This care-costs differential, potential staff redundancy costs (p127), as well as the fact that one of the 8 at Gordon Avenue is actually a Hertsmere-funded resident, suggests that the envisaged savings are likely to much less than anticipated.

Indeed, the section 4.3.3 on "Implementation costs" notes:

"As outlined above the implementation of recommendations will be complex and will involve a range of council officers.

"The majority of these costs will be met from existing adult services budgets for social care operations, commissioning and providers services. In addition there will be a requirement for project support from both human resources and finance.

"There will be some small additional costs incurred through communications and engagement. These will be considered by the Project Group on a case by case basis and will be contained within existing budgetary resources."

The discussion about implementation costs seems to suggest that going ahead with the recommendations will incur substantial financial costs and impacts on staff time, not fully identified, spread across numerous budget lines and not at all transparent. Actual implementation of this report's recommendations will, therefore, impact adversely on other service provision by drawing resources and staff away from these areas.

NB: The Call-In Notice was submitted by the following Councillors on 22 March 2013: Barry Macleod-Cullinane, John Nickolay, Joyce Nickolay, Marilyn Ashton, Amir Moshenson, Simon Williams and Lurline Champagne.