

Meeting:	Cabinet
Date:	12 <sup>th</sup> February 2009
Subject:	To agree arrangements for the transfer of responsibility for commissioning social care services for people with a learning disability from the NHS to the Council
Key Decision:	Yes
Responsible Officer:	Paul Najsarek Corporate Director Adults and Housing
Portfolio Holder:	Cllr Barry Macleod-Cullinane, Portfolio Holder for Adults and Housing
Exempt:	No
Enclosures:	Appendix 1 – Equality Impact Assessment Appendix 2 – Risk Management

## Section 1 – Summary and Recommendations

This report sets out details of the requirements and proposed arrangements governing the transfer of responsibility and funding from Harrow Primary Care Trust to Harrow Council for commissioning social care services for adults with a learning disability.

### **Recommendation:**

Cabinet is requested to:

1. Note the progress made so far to achieve the transfer of responsibility and funding by the required date of 31 March 2009; and
2. Agree the proposed arrangements governing the transfer of responsibility and funding from the PCT to the Council; and
3. Authorise the Portfolio Holder for Adults and Housing to approve the legal agreement governing the transfer and agree the final sum to be

transferred at the deadline of 31 March 2009.

**Reason:**

To enable the Council to meet the Department of Health requirement that the agreed amount to transfer should be submitted to the Department of Health by 31<sup>st</sup> March 2009.

## **Section 2 - Report**

### **Introduction**

1. This report sets out the range of work being undertaken to agree the transfer of funding and commissioning responsibility for the social care needs of people with a learning disability from Harrow Primary Care Trust (PCT) to Harrow Council. The agreed amount of funding to transfer must be declared to the Department of Health by 31<sup>st</sup> March 2009. An initial declaration of the funding to be transferred was required for 1<sup>st</sup> December 2008. The benefits of this proposed transfer are set out in paragraph 9 of this report.

### **Options considered**

2. The transfer of this funding and commissioning responsibility forms part of the implementation of Valuing People Now, the national policy for people with a learning disability. This was confirmed by the Department of Health letter dated August 2008, Gateway Reference Number 9906.

### **Background**

3. In Valuing People Now, published in 2007 the Department of Health proposed the transfer to Local Authorities from 1 April 2009 of any learning disability social care commissioning and funding currently undertaken by Primary Care Trusts. This was confirmed by the Department of Health in August 2008, with guidance on the funding to be transferred to local authorities from the NHS.
4. The PCT will retain responsibility for the commissioning of health care services for people with a learning disability including assessment, treatment and forensic services; continuing health care; and mainstream health services.
5. There has been an agreement in place between Harrow Council and Harrow PCT since 2002, under Section 28a of the NHS Act 1997. This deals with people with a Learning Disability who did not meet the continuing care criteria upon discharge from the Old Long Stay (OLS) institutions. The agreement lists these clients (currently 44 people with a learning disability and 6 vacancies) and the council commission the care for this group and recharges the costs of care and staff costs to the PCT. This agreement will be superseded by the new arrangements to govern the transfer of responsibility from the PCT to the Council from April 2009.

## Progress to date

6. Work has progressed significantly, although deadlines remain demanding. A Project Manager was appointed in October, funded by Harrow PCT and jointly managed by the PCT and Harrow Council. A joint Project Board has been established. Two presentations have been made to the Learning Disability Partnership Board and a Reference Group is being established to provide service user and carer input to the work.
7. Following agreement between the Council and the PCT and discussion with the Adult and Housing Portfolio Holder, the declaration of initial funding was made to the Department of Health on 28<sup>th</sup> November. This was for £3,517,415 and covered the funding of 44 people and some vacancies that were included in the previous S28A agreement.
8. Further work is now underway to agree the remaining funding to transfer. A final figure will have to be declared to the Department of Health by 31 March 2009. The work is in the following areas:
  - a. Identification of additional individuals whose social care is currently directly commissioned and funded by Harrow PCT and, subject to consultation and individual reviews, where it will be appropriate for their care to be commissioned by Harrow Council and the funding permanently transferred:
    - i. 14 individuals previously assessed as eligible for full continuing care funding but who may not meet the current criteria for continuing care funding.
    - ii. 10 individuals, who on discharge from Old Long Stay Hospitals, moved to social care settings, although their funding remained with the PCT.
    - iii. The 24 individuals in i and ii above will require consultation and assessment by Harrow PCT before an individual can be included in this transfer.
  - b. Agreement of the amount of funding to transfer to cover infrastructure costs to enable Harrow Council to effectively deliver commissioning; care management; contract management; financial processing. The existing Section 28a agreement includes an annual payment of £84,626 towards infrastructure costs. This also includes some costs for people with mental health difficulties. Consideration is being given to how these functions for people with mental health difficulties on the current Section 28a agreement can be delivered cost effectively.
  - c. Agreement on day care and transport costs for those individuals within the current Section 28a agreement.
  - d. Agreement on the amount of uplift to be applied to the transferred funding for 2009/10.
  - e. Identification of and agreement on transfer of any capital assets and associated revenue funding.

## **Benefits for Service Users**

9. The anticipated benefits of the transfer are to:
  - a. extend to this group of people local authority skills in social care commissioning and care management;
  - b. provide individuals with access to greater choice and control over their lives;
  - c. enable opportunities for efficiencies and value for money as a result of the integration of budgets and commissioning and contracting of services.

## **Consultation**

10. The Learning Disability Partnership Board has been consulted on the proposals set out in this report as required by the Department of Health guidance. The Partnership Board was generally supportive, but had concerns about the possible liability of individuals to contribute to the cost of the services following transfer to Harrow Council (people have not been charged whilst the responsibility of the PCT); whether services for individuals will be disrupted; and that the funding should remain identifiable and invested in Learning Disability services following transfer. There was recognition that the quality of life gain for service users may be greater than the financial cost of making a financial contribution to their care package, and that this provided an opportunity for long-term investment in the development of community-based services.
11. A Reference Group is being established to provide service user and carer input to the work.

## **Implications for staff/workforce**

12. There are no proposals to transfer staff from the PCT to the Council as a result of the transfer of funding and responsibility for commissioning. An increased workload will result for Council staff and discussions are continuing about the amount of funding to transfer to reflect increased infrastructure costs (paragraphs 8b and 20) for the Council.

## **Equalities Impact.**

13. It should be noted that this is a transfer of funding and responsibility for commissioning, not an immediate change in care arrangements for individuals. These can only change following an assessment or review of the individual's needs. There will, therefore, be no change for service users on 1 April.
14. An Equalities Impact Assessment has been completed and is attached at Appendix 1. All service users transferring will become liable to financial assessment and some may become liable to contribute towards the costs of their services, subject to the outcome of a financial assessment. The PCT currently does not charge these individuals. Those people who are subject to the existing Section 28a arrangements have been financially assessed and already contribute to the cost of their service.

## Legal Comments

15. The proposed transfer will be made under Section 75 of the National Health Services Act 2006 which enables lead commissioning and pooled budget arrangements between local authorities and NHS Trusts.

## Financial Implications.

16. This report needs to be considered in the context of the Adult Community Care budget, where there are pressures particularly in relation to Learning Disability Services, although these can be contained within the overall Adult and Housing Budget budget in the current financial year.
17. Agreed services transferring to the Council carry low risk given funding by the PCT. There is potential for increased flexibility given the funding of vacancies. However, there is a risk that the changes in individual packages [post transfer] and inflationary uplifts [as noted in para 8c] may not be offset by vacancies and therefore not fully funded. These risks are detailed in appendix 2 and the Board will be seeking to mitigate these risks by the point of transfer on 1st April 2009. However, any pressures unfunded in relation to this transfer would need to be managed within the overall Adult and Housing budget
18. A summary of the agreed position (at 1 December 2008) for the amount of revenue funding to transfer from the PCT to the Council is presented below:

	<b>Number of individuals</b>	<b>Funding to be transferred</b>
Section 28a	44 + 3 vacancies (at 1 Dec 2008)	£3,517,415
Continuing Health Care	Tbc	Tbc
Old Long Stay	Tbc	Tbc
Infrastructure costs		Tbc
Revenue budgets supporting capital assets		Tbc
<b>Sub-total of funding to be transferred</b>		<b>Tbc</b>
2009/10 uplift @ N%		Tbc
<b>Total of funding to be transferred</b>		<b>Tbc</b>

19. Further work is being undertaken to identify whether any capital assets will be included in the transfer.
20. Infrastructure costs of £84,626 are paid annually under the current Section 28a Agreement. Work is being undertaken to assess the additional capacity required for effective care management, commissioning, contract management and financial processing arising from the transfer and the amount of additional funding that will be required to support this.
21. The transfer of funding to Harrow Council for 2009/10 and 2010/11 will be made direct from Harrow PCT. From April 2011, the Department of Health intends to make the allocation direct to Local Authorities through the Area Based Grant. There is a risk here that the funding will move from a true cost transfer to a funding formula. The Department of Health have acknowledged the risk and have indicated that they will look at how this

can be mitigated following confirmation of all the final transfer returns on March 31<sup>st</sup> 2009.







22. A principle underpinning the transfer of funding is that any resources which are released through efficiencies in commissioning and procurement, changes to services or a reduction in the number of service users become available for reinvestment in services for people with a learning disability

23. In the absence of definitive guidance from the Department of Health, it is unclear whether the funding will remain identifiable when transferred direct to Harrow Council in 2011. The Learning Disability Partnership Board and Harrow PCT both wish for the funding transferred to remain identified and available for people with a learning disability in the future. The Local Government Association and the Association of Directors of Adult Social Services have raised this concern with the Department of Health.

**Performance issues.**

24. This transfer will impact on our performance relating to the numbers of people in residential care but overall the impact is expected to be neutral given that other authorities will be in the same position.

25. Harrow has recorded top-banded (i.e. low) performance for admissions to residential and nursing care for several years. This suggests that support for people with the highest level of need is good and people are not unnecessarily admitted to residential settings when they could be helped to remain in the community.

	C72 Older people aged 65 or over admitted on a permanent basis in the year to residential or nursing care (per 10000 population)*	C73 Adults aged 18-64 admitted on a permanent basis in the year to residential or nursing care per 10,000 population aged 18-64*
Harrow 2007/8 result	59 dark green ●●●●● 	0.6 dark green ●●●●● 
Outer London average	60 dark green ●●●●● 	1.1 dark green ●●●●● 
Harrow Target 2008/9	59 dark green ●●●●● 	0.6 dark green ●●●●● 

\* low is good anything below 90 (older people) and 1.5 (adults 18-64) is '5 blob', top rated performance

26. There is no national indicator around admissions or numbers in residential care – however, we would expect there to be ongoing scrutiny of the relevant data by the Care Quality Commission.

27. Section 28 (health funded) clients make up a small proportion of residents under LA care. DoH Guidance is not available yet but it is unlikely that when the section 28 cases transfer we will be asked to treat them as new admissions, since all relevant people are already residents. We therefore anticipate that there will be no effect on the indicator (admissions) and a small effect on the total numbers of people in residential care for whom the LA is responsible (there is no NI or statutory indicator in this area). Whichever line the national guidance takes, the effect will be similar in other authorities so the risk is small.

28. There are a number of the new national indicators which are linked to residential care provision but we would not expect this change to have any effect on them. Harrow's overriding policy to promote independent living and self directed support will contribute to improvement in these indicators:
- a. **NI 127 Self reported experience of social care users** PSA 19
  - b. **NI 128 User reported measure of respect and dignity in their treatment** PSA 19
  - c. **NI 129 End of life care – access to appropriate care enabling people to be able to choose to die at home** DH DSO
  - d. **NI 131 Delayed transfers of care** DH DSO
  - e. **NI 134 The number of emergency bed days per head of weighted population** DH DSO
  - f. **NI 136 People supported to live independently through social services (all adults)** PSA 18
  - g. **NI 139 The extent to which older people receive the support they need to live independently at home** PSA 17
  - h. **NI 141 Percentage of vulnerable people achieving independent living** CLG DSO
  - i. **NI 142 Percentage of vulnerable people who are supported to maintain independent living** CLG DSO
  - j. **NI 145 Adults with learning disabilities in settled accommodation** PSA 16
  - k. **NI 149 Adults in contact with secondary mental health services in settled accommodation** PSA 16

### **Environmental Implications**

29. There are no environmental implications arising from this report.

### **Risk Management Implications.**

30. Risk included in the Directorate risk register? **Yes**

31. Separate risk register in place? **Yes**

32. An analysis of key risks and the actions in place to mitigate those risks are detailed in Appendix 2.

33. Senior officers will continue to closely monitor risks in this transfer of funding. It is proposed that the final amount agreed to transfer and declared to the Department of Health by 31<sup>st</sup> March 2009 is agreed by the Corporate Director of Adults and Housing and shared with the Adult and Housing Portfolio Holder.

34. Deloitte, external auditors to the Council and the PCT are being commissioned to undertake an audit of the proposed transfer. The audit will review the information gathered and the process used, providing an independent view of the due diligence in the judgements and decisions made in reaching a final sum to transfer. This will be key information to enable the Corporate Director for Adults and Housing Services to sign off the final agreement.

### Section 3 - Statutory Officer Clearance

Name: Donna Edwards



on behalf of the\*  
Chief Financial Officer

Date: 21 January 2009

Name: Stephen Dorrian



on behalf of the\*  
Monitoring Officer

Date: 21 January 2009

### Section 4 – Performance Officer Clearance

Name: David Harrington



on behalf of the\*  
Divisional Director  
(Strategy and  
Improvement)

Date: 21 January 2009

### Section 5 – Environmental Impact Officer Clearance

Name: John Edwards



Divisional Director  
(Environmental  
Services)

Date: 21 January 2009

### Section 6 - Contact Details and Background Papers

#### Contact:

Mark Gillett, Divisional Director – Commissioning and Partnerships

[Mark.gillett@harrow.gov.uk](mailto:Mark.gillett@harrow.gov.uk)

020 8424 1911

#### Background Papers:

Valuing People Now. Department of Health (2007)

Department of Health letter dated August 2008, Gateway  
Reference Number 9906