ITEM NO: 19

	Executive 11th December 2006 **Report from the Director of Housing & Community Care Director of Finance and Corporate Resources**
For Action	Wards Affected: All

Brent tPCT update on their financial position and possible effect on Brent Council and Residents of Brent

Forward Plan Ref: H&CC-0607-25

1.0 Summary

1.1 Brent tPCT is facing a severe financial crisis following savings it is required to make due in 2006/07 and in preparation for 2007/08 to both its own internal financial problems and the requirement, in line with other PCT to make savings required by the London Strategic Health Authority and the Department of Health. The report details the current revised savings plan, which has been drawn up following the intervention of an external "Turnaround Team" The required level of savings is anticipated to be in the order of £14.2m in the current year and a further £31m in 2007/8. The savings plan, if implemented, as currently proposed will have a major impact on the council's own budget both for this year and next. The report details this effect and, the action the council is taking to protect its own position.

2.0 Recommendations

2.1 Note the contents of the report and in particular the severe financial Implications that the tPCT turnaround plan will have on the budget of Brent Council.

2.2 Note the action that the Leader and Senior Officers have undertaken thus far to try and mitigate the impact to the authority as detailed in paragraph 3.22.

2.3 Note that the full Council at its meeting on 27th November 2006 unanimously agreed a motion in the names of Councillors Lorber and Blackman, detailed in appendix 1.

2.4 Request officers to explore what further measures should be taken to ensure that Brent residents are not adversely affected by the tPCT proposals.

2.5 To request the Chief Executive to bring further report to the Executive in January.

3.0 Detail

3.1 At the start of the current financial year Brent tPCT were required to make in year savings by the London Strategic Health Authority to assist in eliminating the Health service overspends which existed across the country. They had also identified a number of internal pressures and in May put forward a savings plan amounting to £22m. Initially the tPCT board were satisfied that progress was being made to achieve these savings. However, in late summer it became clear that the savings were not being achieved and that further action was required. Estimates as to the level of these further savings varied and hard information was becoming increasingly difficult to get from the tPCT.

3.2 Brent tPCT did however voluntarily enter into what the health service call "turnaround arrangements" bringing in a turnaround team from accountants KPMG to look at their overall financial position and the effectiveness of the current savings plan. As a result of this process it is now clear that the tPCT financial position is considerably worse than had previously been reported. They are now estimating that if they do not take any further action they would end the current year with a deficit of £27.9 m. As a result of this they have drawn up a new "turnaround plan". This plan, if implemented, would, they estimate, reduce the projected deficit to £10.9m at the end of this year and yield a small surplus of £2.1m at the end of 2007/8. The savings required to be made for the remainder of this year is 10.9m and an additional £31m for 07/08. £31m is higher than the projected deficit due to the risk of not achieving all the planned savings which are £28.9m for 2007/08. This represents some 7% of the 2007/8 forecast recurring spend

3.3 The council has been asking to receive detailed information on the exact nature of the proposals prior to the board meeting. This was to ascertain:

- The effect on the councils own budget
- Comment on whether we considered them technically achievable
- Comment on any effect that they may have on the residents of Brent.

Brent Council officers have been informed of the planned savings only just before they were recommended to the PCT Board. The information in this paper has been put together from the paper which

went to the PCT Board which lacks significant detail. No more detail on actual savings for each area was made available at the board meeting (public). Some of the information in this report has been put together from information gained from informal contact with officers rather than through any formal consultation process. It does however represent the best information available to the Council at the time of writing. There has been no formal consultation process prior to the Board decisions. This has prevented Brent Council taking a view on the impact of the savings on the community in Brent and planning for the council's budget. The agreement between Brent PCT and Brent Council states that budgets will be planned on a 3-year cycle: a few days notice of substantial cuts falls far short of this standard.

3.4 The tPCT have also been at pains to emphasise that all information received is still in draft form and would not necessarily all be agreed by the tPCT board. The level of financial detail was the last to be received. It is also at such a high level as to make it difficult to accurately consider the full financial implications to the council. Nevertheless this report to Executive does try and consider the considerable financial implications to the Council.

3.5 The largest impact will be on Adult Social Care budgets. The additional costs fall into two broad categories (1) costs that are directly transferred from Health to the Local Authority (2) Where as a result of changes to services by health there is an increased need for the council to provide services leading to an increase in cost to the council

3.6 **Current position of tPCT savings plan**

The tPCT board on 23rd November agreed to the savings plan to be implemented, with only 2 exceptions. An in principle decision was taken on the cuts to school nursing/health visitors with a request for more detail on the evidence and risk for the new way of working. The only deferment of the decision was on cuts to Brent Carers Centre, to allow them more time to seek alternative funding. It was stated funding a Carers Centre was not a core NHS function but a social care function.

3.7 The public papers at the board whilst confirming the overall savings to be made as set out in para 3.2 gave no detail on the actual sums involved, only what the savings represented in percentage terms. There was no detail on any of the 57 new Project Implementation Plans (PIDs) in terms of each areas savings available in public. The turnaround Director stated this was not to be secretive but each of the 4 workstreams of savings had 4 numbers each, and given the scale, the board was agreeing the principles and target rather than the number. The details would be put out for a wider audience.

3.8 The only specific detail on the cost of each saving was in a response to questions from the Leader, on the cost shunt to the Council.
He was told they did not have the individual details to hand, as they were amalgamated. However it was estimated the cost of transfer of

non-dowry cases could be £1-3m 2006/07, and of all the savings a total £3m 2006/07 and £6m 2007/08.
After the Leader read his statement on the impact of the cuts on the Council, the Chair of the board said there would be consultation with the local authority and partners.

3.9 **tPCT board implementation**

The process now is for all the PIDs to be taken forward and for consultation to be arranged with those affected, NHS and Local authority partners, staff and other groups. The interim Chief Executive made it clear that where any savings cannot be achieved or agreed on, then alternative savings have to be proposed.

Direct Costs

3.10 The following proposals would lead to the current cost of those services being transferred to Brent Council.

- **Bed reductions in hospitals** – meaning that more clients present to Brent Council needing homecare, residential or nursing care. Brent Council officers (with some assistance from health's own models) have calculated the cost shift due to bed reductions at £2.117m for Older People. There is considerable evidence that health now discharges patients much sooner and therefore they are less independent. It is likely that this has or will increase the demand for social care: it is much harder to identify the associated cost.

- **Strict application of health's Continuing Care criteria** – meaning that people who currently get community health services are no longer eligible for them and their social care needs meet Brent Council's criteria. A sample of 50 cases has already been reviewed by health and only 10% were found eligible for a health funded service. For Older People Brent PCT aims to save £0.777m from reviews of Continuing Care clients.

- **Strict application of eligibility criteria for mentally ill patients (s117)** – meaning that people no longer receive a health service and present requiring a social care service. The implications for Brent Council have been costed in detail at £0.7m pa.

- **Former long stay hospital patients** moved into the community by hospital closures traditionally funded by the PCT but with no "dowry" and not meeting the Continuing Care criteria – meaning their needs are not primarily health but now social care. A simple calculation puts the full cost at £3.2m pa. A dowry system was set up by DoH over 10 years ago, to facilitate the closure of long stay mental health or learning disability hospitals. A 'dowry' is a ringfenced fund for a former long-stay patient, to pay for their care permanently, whether having health or social are needs. These cases have always been funded by Brent tPCT but they now claim they never received the dowry from the Strategic Health Authority, and therefore should be funded by Social Care.

- **Review of pre-2003 patients against Continuing Care Criteria**. An agreement between Brent PCT and Brent Council was that clients who started to receive a Continuing Care service before this date would stay with health. Brent PCT has indicated that they now wish to review all these clients against a strict interpretation of the current criteria. It is likely that most will not qualify for a health service. Brent PCT aim to save £0.5m on these patients.

- **General Reductions in service** Reductions in a range of health community services. These include Community Matrons, district nurses, bathing services, grants to the voluntary sector, etc. Again it is difficult to precisely estimate the cost implications for Brent Council, but there will be large numbers of people who now receive a service but who won't in future. It is unclear how many people would then claim a social care service.

  This list takes no account of the new National Continuing Care criteria, where consultation ended in September 2006 and the new criteria are likely to come into effect in April 2007. Sample testing against the proposed new criteria found that very few existing health patients met the criteria and therefore would not qualify for health services. Brent PCT spends approximately £31m pa on Continuing Care services.

  Brent tPCT has estimated that the total impact on Brent Council of their budget reductions will be £3-4.5m in 2006/07 and £6-9m in 2007/08.

3.11 **Indirect service impact**

The impact of changes to primary care and cuts and community health services, is likely to have a significant impact on the quality of service for patients generally and social care users specifically. Reduction in health visitor, community nurses and community matrons support is vital to maintaining patients quality of live, managing acute and long term conditions and preventing (more expensive) use of A & E and hospital beds.

Experience from other local authorities is that this results in more demands on social work duty and assessment teams and often results in more people needing social care or higher care packages to fill the gap.
Any reduction in physiotherapy, rehabilitation and intermediate care also impacts on quality of life and more demands on social care.

The current loss of acute trust beds puts even more pressure on patients being discharged have more quickly and increase probability of unsafe discharges and increase frequent hospital admissions. This will be exacerbated by loss of community nursing services. Recent figures show mental health bed occupancy has increased from 95% to 120%.

Both mental health and learning disabled users will also suffer from loss of support at primary and community level.

The proposal to change the contract with Harrow PCT who provided acute and rehab beds on Northwick Park site will have high impact. These beds are to be reduced and turned into acute beds only. This means any social care delays will incur fines. This will need to be quantified when more detail is available.

The reduction in the timing of continuing care assessments is causing delayed discharges to rise including mental health. A significant proportion are waiting for community care funding. This means patients needing to access acute beds having to wait longer. Members are reminded that the tPCT have already taken the decision to close 20 beds in Willesden Hospital and therefore there is already evidence that delays are increasing.

The PCT is not undertaking assessment for users with continuing care needs who wish to remain at home. This means social care is either funding care for too long or people are not getting the health care they need. Social Care is pressed to agree to also place patients on the basis PCT will later assess and agree to backdate funding. This we are reluctant to do especially bearing in mind the current level of outstanding debts that the tPCT owe to the council and the lack of progress in settling this claim (see below).

3.12 **Effect on Individuals**

Where the tPCT are ceasing to accept that they have responsibility under continuing care agreements to fund an individual for their care they are then assessed by the local authority to see whether they qualify for "social care". In reality the actual care that the individual receives may be little different no matter which authority funds. The Social care assessment is carried out under the social care criteria. Currently Brent undertakes to provide services for people who are classified as having either substantial or critical needs. Those individuals whose needs are classified as either low or moderate do not qualify for care. If as a result of the massive cost shunt envisaged by Health to the authority, we were forced to only consider those having a critical need it could not be assumed that all those individuals who currently receive health care would qualify for social care. In addition to this members are reminded that any person currently receiving continuing health care receives this free of charge. If this is withdrawn and social care substituted then this will be subject to the normal social care charges, which in some circumstances could be substantial.

Children and Families

3.13 The PCT proposals will have a significant impact on the Council and its partner's duty to deliver the Every Child Matters agenda and to meet the targets contained in the Children and Young People's Plan. At their meeting on 17th November the Brent Children and Young People's Strategic Partnership Board expressed concern that the proposed savings

will have a negative impact overall on their combined efforts to promote preventative activities through children's centres and schools.

3.14 **Impact of Specific Proposals**

a) **Speech and Language Therapy (SALT)** – The prime responsibility for the provision of SALT services for children rests with the NHS, however, where SALT is not provided for a child whose statement specifies such therapy as educational provision, ultimate responsibility for ensuring that the provision is made rests with the Council. From September 2006 and without reaching agreement either with the Council, schools or affected parents, the PCT have withdrawn SALT service to 160 Key Stage 2 children. The full year cost implications to the Council for this provision is in the region of 120-150K.

b) **Continuing Care of Young People 18+** - Partnership arrangements exist between the PCT and the Council to consider and fund appropriate packages of support for children and young people with complex and multiple needs. From summer 2006, the PCT have withdrawn such support for young people over 18 years of age. As the Council has responsibility for the young people up to age 19, the full year cost implications are estimated to be in the region of 100K.

c) **Mental Health Services for Young People with a Learning Disability**

The PCT are proposing to de commission mental health services which support young people with a disability. This will place additional pressure on schools and families and may lead to family breakdown and therefore increase social care costs and possible residential placements. As part of a review of PSA targets, the DoH have introduced the monitoring of services for children and young people with learning disabilities, as a key element that should be present as part of a comprehensive CAMH service. This is a joint target for the PCT and the Council and current savings proposals will mean we will not be able to meet this PSA target.

d) **School Nurses** – There are currently 26 school nurses/advisors working in Brent and there are proposals to reduce this service by 50%. This will impact child protection work and a range of preventative measures including health promotion work, particularly around sexual health and healthy eating.

e) **Health Visitors** – There are proposals to reduce health visiting services in the borough. Current health visiting capacity is already insufficient to meet the needs of families living in the most deprived communities in Brent. Any reductions in service will mean that Children's Centres in the borough will not be able to meet core targets around child and family health services. There may also be an impact on the early recognition of child abuse and neglect.

f) **Occupational/Physiotherapy support** – Currently PCT staff visit special schools to provide specific therapies to children and young people. There

are proposals for a reduced service and at this stage we are unclear whether this will be a school based or clinic based model. Reductions in service will have direct cost implications for the Council although it is not possible to quantify this until the details of the proposals are made clearer. Some statements specify occupational therapy as an educational provision and the ultimate responsibility rests with the Council, as for SALT. Physiotherapy is not specified in statements as an educational provision but this could be subject to legal challenge if the PCT cease to provide the service.

g) **Reduction in dedicated child health clinics** – there are proposals to reconfigure and possibly reduce the number of child health clinics by 50%. Any reductions will have a direct impact on the Council's ability to deliver the Children's Centre core offer, integrate services for children with disabilities; however, there may be opportunities to locate some health services in these centres.

h) **Music Therapy** – There are proposals to decommission music therapy for autistic children aged 0-5 with social and communication disorders. This is not seen as a core health activity or a statutory responsibility of the Council and is therefore a service that is likely to be lost to the community.

3.15 **Prevention and Well Being**

As a Council we have a duty to promote the well being of our community and seek to provide services which promote independence well-being and Choice. There are a number of national policies which promote and develop this approach. Amongst these "**Every Child matters"**, "**Our Health, Our Care, Our Say"** and the recently published Local Government White Paper "**Strong and Prosperous Communities"** emphasise the need for ever closer joint working between Health and Local Authorities in order to deliver services. Indeed the recently published Local Government White paper seeks to cement joint working even further and introduces specific measures including:

- A duty for local authorities and NHS organisations to cooperate in agreeing targets in the Local Area Agreements (LAA) and to a have regard to these once agreed.
- New statutory partnerships for health and well-being with a key role for executive portfolio holders.
- Formal arrangements for Joint Directors of Public Health across local authorities and PCTs and encouragement of other senior joint appointments.
- Systematic partnership-working through measures such as pooled budgets and joint commissioning.
- Joining up reporting and performance management systems.

- Increasing the participation of communities, citizens and people who use services, including a statutory requirement for local authorities to establish Links, which will be able to refer issues to health overview and scrutiny committees.

3.16 National policy discourages a silo mentality when considering an individual's health and well-being and stresses the need for Health and Social Care to be provided within the community. Indeed, 'Our Health, Our Care, Our Say' promised that there would be a transfer of resources from the acute services within health to community services without putting an additional cost burden on the local authority.

3.17 Locally, the unilateral action taken by the PCT to make cuts of this scale which will remove significant resources from the Health and Social Care economy is in total contradiction to the above policy direction and places significant barriers in the way to the delivery of preventative services to vulnerable people of Brent.

3.18 It is recognised that the exercise undertaken by the turnaround team may have some positive aspects such as identifying inefficient practice in contracting. However, the proposals being developed by the PCT have not been developed in partnership and do not allow a partnership perspective. It will create significant obstacles to the effective implementation of the vision for care outlined in "Our Health Our Care Our Say" and in particular could impact locally upon our ability to achieve the following:

- Deliver a Health Strategy
- Implement the POPP project
- Change and modernise some of our services including our day services
- Developing some of our work with the voluntary sector
- Single assessment implementation
- Aligning our budget setting with health
- Increasing
- access to community services
- Implementing joint services
- Support vulnerable people in their own homes
- Providing health and Social care closer to home
- Improve joint commissioning arrangements
- Deliver some preventative services
- Shift the balance of care from acute to preventative services

3.19 **Strategic working:**

3.19.1 **Commissioning:** The PCT and community care have recently developed an overarching partnership framework agreement. DoH policy is to move to closer integration and pooling of budgets. The scale of cuts proposed seriously threatens any new partnership agreements and undermines current ones. This will impact on the CSCI performance rating, as the scale of the

proposed cuts will affect PI's, put extra demand on social care staff for assessments (increase waiting times a key threshold indicator) as well as adversely affect the number of reviews that can be carried out. Waiting list for services will build up as will delays in OT assessment.

All community care service areas have developed joint commissioning strategies. The cuts are not co-ordinated across the health economy in order

to determine the impact on strategies.

The older people strategy underpins the BECAD and Willesden Centre for Health land Social Care developments to prevent hospital admissions, improve rehabilitation and promote independence. The level of current cuts in older people's services is already impacting on the delivery of the strategy, without any revision of the strategy, or recognition of the impact on social care funds. It increases the social care blocking of beds and fines for delay.

S31 agreements:

3.19.2**Learning Disability Partnership**

There is a Section 31 partnership agreement for learning disability services with health services managed through community care. There are proposals to significantly alter these health services which would substantially reduce health services for people with learning disabilities and put an increased workload onto social care staff and care packages. There are 3 levels of options; 2 would make the current team non-viable.
It was not clear at the board meeting which staff would be affected, or how a new service could be provided for people with learning disabilities with severe communication difficulties and physical disabilities. This could involve cuts in speech and language therapists, OT's and physio's as well as community nurses. A specific decision was taken to close Neasden day centre and could require social care to fund places for an extra 20 (possibly 36) people.

This will have a significant impact for people with learning disabilities. It is not clear how or what alternative provision will be made for these service users, or what the cost shunt to the Council might be.

This would fundamentally mean the partnership could not deliver its agreed outcomes and threaten the viability of an integrated service, as well as affect staff. The PCT is required to formally consult us on these proposals and if agreement cannot be reached the S31 terminated.

Integrated community equipment service

3.19.3The council is currently re-tendering in partnership with the tPCT for a new integrated community equipment store. The agreement with the tPCT in principle, was that they should increase its funding of its share of the pooled budget for equipment to a 50% share. Under the proposed savings plan they would not honour this commitment and therefore the council needs to

reconsider its original decision as it places increased risk on the council in the management of the pooled budget.

S31 Mental Health Partnership

3.19.4 This is with CNWL and not the PCT. The direct and indirect impact of cuts in mental health has been detailed above. The joint commissioning strategy with the PCT will not be achievable due to continuing lack of investment in key areas, particularly in relation to primary care support and prevention. Funding of the voluntary sector is crucial here, and loss of new funding for community workers will impact.

Capital

3.21 As with much of the report the details of all the proposals relating to capital are unclear. Some are also interdependent on other decisions e.g. potential closure of Neasden Day Centre or Wembley MAPS. The council had planned to locate 2 of its phase 2 children centres at Wembley and Willesden and if either of these closed they would effectively derail those plans.

Outstanding Debt

In addition to the already detailed savings proposals the council has an increasing amount of money which it is owed by the tPCT. This now exceeds £9.7m and even if all it is finally paid in terms of cash flow is already a cost to the council in the region of £0.5m a year. Whilst there have been considerable efforts made to recover this money this has to date not resulted in any significant reductions in the debt. The nature of these debts is as follows: Salaries for jointly funded posts.

- The costs for health clients where Brent Council has arranged the care.
- S28A clients where Brent Council is contracted to arrange the care on behalf of Brent PCT.
- Recharging the PCT for free nursing care which Brent Council administers on behalf of the PCT under contract.
- Homecare costs for PCT clients when the PCT found it hard to arrange homecare, and Brent Council arranged it on their behalf.
  Officers are therefore pursuing all legal remedies to recover this debt.

3.22 **Action Taken To Date**

- When it became clear that the tPCT's financial situation was so precarious there has been considerable pressure put on the tPCT to provide both officers and the Administration with details. It has been made clear to the tPCT both verbally and in writing that the council expects all existing arrangements concerning the provision of health and social care should be retained. That where the tPCT are proposing to transfer responsibility from Health to Social care that this has to be with resources . Furthermore that we would pursue all available legal remedies where it was considered that a cost was being unreasonably transferred to the authority.

- The leader has made direct representation to both the secretary of States for Health and DCLG. The former due to her overall responsibility for the Health Budget the latter due to her department being the primary funder for local authorities.

- The leader made specific representation to the tPCT board at the public part of their meeting on 23rd November.

- Further representations have been made to London Councils and the LGA as well as having detailed discussions with other boroughs in North West London whose PCT's are in similar positions (Harrow and Hillingdon)

4. FINANCIAL IMPLICATIONS

4.1 This report and the proposals from the tPCT to improve its financial position are closely aligned to the financial health of the Council. Members of the Executive will be aware of the pressures on the Council's revenue budget from the regular 2006/07 monitoring reports. The tPCT has been seeking to review its cost base for some time, particularly around the apportionment of costs between health and social care, and this has resulted in growth being required in the Adult Social Care budget. It has been a difficult transition to accommodate. However, within the overall parameters of the Medium Term Financial Strategy the Council has managed to direct resources on a phased basis to meet this challenge and deliver a balanced budget. However the level and immediacy of the proposed cost-shunting present the Council with enormous difficulties given the other identified pressures on future year's budgets.

4.2 2006/07

The Council added £3.0m of growth to the Adult and Social Care Budget for 2006/07. Around two thirds of this anticipated that an increased burden would be passed onto the Council by the tPCT. However, as the report states elsewhere, it is estimated that the measures already taken by the tPCT and those currently proposed will now add around £4.5m to the Council's expenditure. These actions have been one of the main drivers of the significant overspend forecast by Adults and Social Care first reported to the Executive in July. The measures taken to control this, plus an estimated under spending on the Housing element of the service area budget, gives a current forecast net overspending of £2.3m. The Adult and Social Care forecast at the end of October is therefore a £3.1m overspend. There is a high risk this will increase as the latest tranche of PCT savings begin to impact.

4.3 2007/08

4.3.1 The Full Council meeting on 27th November received a full report on the latest position on the 2007/08 budget as part of the First Reading Debate. At the time these papers were published the tPCT Board had not met or issued its report. Given that uncertainty the full impact of the tPCT savings were not included in the main figures produced.

4.3.2 Although the board has now met, there is still no detail in the public domain of what the impact will be. With the limited information that has been made available to us it is considered that the borough could be faced with a transfer of cost up to £9m. This is set out below:

	£m
Bed reductions in hospitals	2.117
Tighter application of continuing care criteria (older people)	0.777
Tighter application of S117	0.700
Discontinue funding S28a long stag LD cases	3.200
Review pre 2003 continuing care clients	0.500
Withdrawal of support continuing care cases children and families	0.100
Reduction in SALT children services	0.150
General reduction to community services such as district and school nurses, community matron etc., leading to additional social care	1.400
Other	0.096
Total specifically identified to date	**9.04**

4.3.3 The Full Council papers already showed a significant gap and when this is added to the tPCT proposals, it is currently difficult to envisage how a balanced and robust budget can be agreed. As an illustration, with a 5% increase in Council Tax, around £28m would need to be taken as savings or reductions in growth. It would certainly involve reductions in many frontline services and little or no growth to priorities included in the Corporate Strategy.
Success in the lobbying activities both with the tPCT and Central Government will therefore be vital in producing a situation the Council can manage.

4.4 Outstanding Debt

4.4.1 The Council has built up a complex financial relationship with the tPCT reflecting such things as joint responsibility for clients, pooled budgets and shared service delivery points. This leads to significant invoicing between the two organisations reflecting where the final income and expenditure lies.

4.4.2 At 31st March 2006 the Council had debt owing from tPCT in its accounts of £7.8m. These figures have been reviewed as part of Brent's closing of accounts procedures and subsequently as this has developed into a major issue. These figures also have been signed off as part of the 2005/06 accounts by the Council's external auditors

PwC. The Council has extensive documentation of each debt and has made a number of attempts to collect these sums. The tPCT however have been reluctant to engage in active discussion of the position. Following a high level meeting between the Council and tPCT on 20th November it was agreed a formal meeting will be held in week beginning 27th November. Taking into account debts raised for the current financial year debts of £9.7m are now owing.

The delay in payment is causing a cash flow loss to the Council. Ultimately if the tPCT do not settle the full amount owing then this one-off loss will fall on the revenue account in 2006/07 and worsen the overall financial position. The Council will consider what formal action it needs to take to recover the debt following the meeting on 27th November.

4.5 Legal Advice

The legal implications in Section 5 of the report raised the possibility of appointing external lawyers to support the Council's position. There is no specific budget provision for this and proposals for the funding, if required, will be included within the report back to the Executive in January.

5.0 Legal Implications

5.1 The tPCT is a public body and, as such, is liable to challenge by way of judicial review in the same way as the Council would be if it makes a flawed decision. A decision may be flawed, and susceptible to judicial review, if the decision is wrongly made procedurally, or if it is unreasonable in the '*Wednesbury'* sense i.e. no reasonable person would have made such a decision, or if it fails to take into account relevant considerations. This could include, for example, a failure to take into account the impact of their decision on the local authority and other people (residents) who might be indirectly affected by their decision and a failure to consult properly. The Council will look very carefully at whether the decision or decisions made by the tPCT have been made properly and will consider the possibility of challenging the decision(s) if there is a flaw in process. The Council may wish to join with other local authorities who find themselves in a similar position.
In addition to these common law principles of administrative law there are also statutory duties which bind the tPCT and the authority in relation to collaborating with each other and consulting each other on changes to services and functions, particularly where this would or would be likely to have an impact on the other body. For example, the National Health Service Act 1977 places upon NHS bodies (which definition appears to include the tPCT) and local authorities a duty to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales. There are various obligations to have in place strategic plans for the health and welfare of the residents in the areas and major changes require consultation. In determining whether a cause of action exists against the tPCT these and any other statutory requirements will be considered.

5.2 It may be possible for the authority to challenge decisions on individual cases, although the same outcome could be achieved if the challenge was bought by a relevant individual with *locus standi* e.g. a patient who has been denied services. This of course will be a matter for them individually.
There might also be a right of challenge if the tPCT adopts an unreasonable or unlawful eligibility criteria or if it makes changes to its criteria without consulting properly or without taking into account all relevant considerations.

In relation to debts owed to the Council, the Council's in house legal team are currently assessing these to determine which debts can be pursued by using formal legal action, what the best form of action might be and the timetable for taking action. However, this should be considered as part of the overall package of measures designed to force the tPCT to reconsider its position and act reasonably and should not be considered in isolation. The courts will not be willing to hear a matter unless it is satisfied that the parties have made reasonable attempts to settle their differences outside of court. This means there will need to be some sort of genuine attempt by the parties to settle. This may require officers from the tPCT and Brent to go through each case and decide what can be done about the debt and who, rightly, the cost should fall to.

5.3 The Council has already entered into a number of partnership agreements with health (section 28 and section 31) and more are planned. The Council will now need to look carefully at the existing agreements to identify areas where it seems likely that the tPCT may want to review its funding. In some, if not all of the agreements, there will be a process built into the agreement governing the way in which the parties can withdraw from the agreement or vary their commitment to it. It will also be necessary to consider whether there are any costs being met by the Council currently which, perhaps, should in fact be met by health. In relation to planned future agreements, the Council will need to consider very carefully whether it would still be sensible to enter into an agreement with a body which appears to be fragile financially at the present time.

5.4 We will need to consider appointing external lawyers to conduct JR proceedings in this matter. The cost of mounting any challenge would be significant. In the event that the Council would wish, at some stage and after proper assessment of the risks, take over responsibility for certain health functions then it will be necessary to identify the necessary legal powers to do so. This will need to be considered on a case by case basis.

5.5 Finally, the Council needs to be seen to be acting reasonably at all times. We should give assistance to the tPCT wherever necessary and appropriate in order to help it manage this difficult situation. We need to come to any proceedings with 'clean hands' and to show that we have acted reasonably throughout.

6.0 Diversity Implications

With the projected impact that the tPCT turnaround plan will have on Brent's services there will need to be a full impact assessment of any proposed action the council may be forced to make due to the massive impact it will have on its own budget. This will be carried out when any proposals are considered by the Executive.
A request has been made to the tPCT to see details of their own equality impact assessment, this has not been received at the time of writing this report.

7.0 Staffing Implications

7.1 As indicated in the body of the report there are a number of joint funded posts which are arguably in jeopardy should these savings be implicated. The council has at the time of writing this report not been given any potential detailed staffing reductions by the tPCT.

7.2 Conversely it is likely that there will be an increased burden on especially adult social care staff to review old and assess new clients this may require the appointment of additional staff to ensure that this is carried.

Background Papers

Brent tPCT Board meeting agenda 23rd November 2006

MARTIN CHEESEMAN
DIRECTOR OF HOUSING & COMMUNITY CARE

DUNCAN MCLEOD
DIRECTOR OF FINANCE AND CORPORATE RESOURCES

APPENDIX ONE

FULL COUNCIL

27TH NOVEMBER 2006

MOTION IN THE NAMES OF COUNCILLORS LORBER AND BLACKMAN

PCT cutbacks and cost shunting

This Council expresses its profound concern at the massive spending cuts approved by the Brent PCT Board meeting on Thursday 23rd November 2006 and the detrimental consequences that these will inevitably have on the health and well-being of all Brent residents and in particular on vulnerable residents with high health and social care needs.

We also express our determination to resist the large scale shunting of costs from the National Health Service on to local government on which many of the PCT's proposals are based. Brent Council will take robust action to protect its own budget and services and will campaign with other affected London boroughs to ensure adequate funding of the capital's health service.

This Council will explore every possible avenue including political and judicial challenge to oppose the PCT's cuts and we will resist any attempt by the PCT to impose unilateral burdens on Brent Council's budget and therefore on Brent's Council Tax payers.

The Council notes that the PCT has already made cuts in the current financial year which are adding to spending pressures in the Council's children's and adult care services. The additional cuts announced last week of a further £14 million in the remainder of 2006/7 and up to £31 million in 2007/8 are totally unacceptable to this Council and cannot fail to place an unmanageable cost on the local authority.

We call on the Brent PCT Board to re-consider their recently approved cuts package and to enter into a serious dialogue with Brent Council about how we can best protect the interests of Brent residents. We also call on the PCT to pay without delay or prevarication their outstanding debt to the Council which is currently estimated at £10 million.

We also urge the Government in the strongest terms to acknowledge the funding crisis facing many Primary Care Trusts in the capital and to take action to ensure that critical frontline services, often serving vulnerable people and deprived communities, are safeguarded. We further call on Brent's three MPs to work with the Council in support of a cross-party campaign to protect our local health services.

Proposed by: Councillors Paul Lorber and Bob Blackman