



**Executive**  
11 August 2010

**Report from the Director of  
Housing and Community Care**

Wards affected:  
ALL

**The transfer of resources from NHS Brent to Brent Council  
for people with learning disabilities**

**1.0 Summary**

- 1.1 Following the regulatory reports on Cornwall, Sutton and Merton NHS services to people with learning disabilities, and the MENCAP report on acute healthcare for the same user group, in August 2008, the government issued guidance and support to effect the transfer of responsibilities for the commissioning of health and social services for people with learning disabilities from the NHS to local authorities.
- 1.2 The negotiations with NHS Brent have been concluded regarding the resources and commissioning responsibilities for those under the relevant criteria from 2007, with effect for 2009/10 and going forward from April 2010, as outlined in this report. The separation of lead commissioning for learning disabilities from other joint arrangements, will assist the governance and oversight of services for people with learning disabilities and their carers in line with the government guidance in Valuing People Now 2009. The Department of Health has been notified of the details of the agreed transfer of funds.
- 1.3 There are several different elements included in the transfer of funding from NHS Brent to London Borough of Brent. They include the following
- Costs of care services
  - The Community Activities and Support Service (CASS)
  - Overheads and commissioning costs
  - Capital assets
- 1.4 There remain a range of integrated and direct service provision for people with learning disabilities in the Brent Community Services ( the provider arm of NHS Brent), for which transfer arrangements need to be concluded in 2010/11. They are not within the scope of this paper. The Peel Road “campus” re-provision is subject to separate project management arrangements and timescale for making the necessary changes to transfer responsibility and funding from NHS Brent to the London Borough of Brent. Also, the Community Team for People with Learning Disabilities (CTPLD) is

an integrated team, funded by the NHS and the local authority. This team addresses the health and social care needs of people with a learning disability, and has recently been subject to a review of functions, accountability and management arrangements to ensure that it meets the needs of people who require a service. Work is underway with NHS Brent to address the findings from the review and construct an effective operation model for the team.

## **2.0 Recommendations**

That the Executive

- 2.1 Approve the financial agreement for the commissioning of services for individuals with learning disabilities between the Council and NHS Brent and approve the PCT transferring the following funds to the Council
  - £7.511m for 2009-10 (£7.261million plus inflation of £250,000)
  - £7.611m for 2010-11, (£7.261million plus inflation of £350,000)
- 2.2. Approve the revision of the joint commissioning of services by staff responsible for the learning disabilities function, such that the Council becomes the lead commissioner, with accountability for the function being held by the Joint Executive Team, between NHS Brent and the Council.
- 2.3 Instruct the Director for Housing and Community Care to report to the Executive seeking approval on the remaining transfers of responsibilities and resources for individuals with learning disabilities from NHS Brent to the Council by 31<sup>st</sup> March 2011. This is to include the NHS Campus closure programme and the future arrangements for the Community Team for People with a Learning Disability.

## **3.0 Detail**

- 3.1 The government responded to two critical regulatory reports into learning disability services run and commissioned by the NHS in Cornwall, and Sutton and Merton, by issuing guidance in August 2008 requiring the transfer of NHS responsibility and resources, benchmarked at 2007/8 values, to local authorities by April 2010.
- 3.2 Subsequently, MENCAP published a critical report on the acute healthcare in hospitals for people with learning disabilities, which led to further strengthening of the Department of Health guidance "Valuing People Now" in July 2009. This report sets out the local response to this guidance, and the specific financial implications, which are substantial.

## **Individual cases and the transfer of NHS Funds**

- 3.3 The transfer of NHS funds to the local authority affects the care and treatment of individuals with complex needs. There were 88 individual cases included in the terms of the transfer of funding. In 2008/09 an independent consultant undertook a review of the needs and funding arrangements of all those individuals for whom NHS Brent funded long term care from 2007 onwards.
- 3.4 The outcomes of this review were as follows:

- NHS Brent retained funding for 22 individual cases with Continuing Health Care needs
- 78 cases were assessed as needing 100% social care funding
- The funding for 1 case transferred to Brent Mental Health services
- The funding for 10 people placed in out of borough placements was transferred to Brent Council
- There were 5 people who were assessed as needing both health and social care services, and therefore, both NHS and social care funding was secured to provide services to meet their needs
- Regrettably, during the negotiation period on the transfer of funds, 10 people died.

The long term care management of those individuals transferred to the Council will be carried out by the integrated Community Team for People with Learning Disabilities (CTPLD), which is managed within the Council's Adult Social Care Division.

- 3.5 It is anticipated that the application of the Council's contractual and fee negotiations for the NHS placements in residential and similar services for these individuals will both improve their access to services, and reduce costs in line with similar arrangements the Council operates. Wherever possible, personal budgets and community based care options will be explored with the service users and their carers and/or advocates to promote choice, independence, and better outcomes.
- 3.6 The majority of the people involved in the transfer arrangements are those with complex and high dependency levels of needs that require long term care, often in residential or similar intensive care. Their previous long term care provision will continue, albeit under Council contracts (where this enables their needs to be met) and reviewed by Council officers through CTPLD. Any changes can only be made after re-assessments of need, consultation with individuals and their carer/advocate on options to meet the needs, and with beneficial outcomes from different personalised care that promotes choice and independence.
- 3.7 Future arrangements for those coming through from children's services at the age of 18 years have already been put in place whereby the application of Continuing Health Care criteria will determine the NHS funding for their care costs, and the CTPLD carry out the long term care management. Further improvements to the long term care planning by the Council and its partners with service users and carers from an earlier age than 17 years, is being explored in a review by both the Adult Social Care and Children's Service Transformation Programmes.

### **The Community Activities Support Service (CASS)**

- 3.8 The CASS day service is operated through the Brent Community Services (BCS) in partnership with the Brent Learning Disability Partnership. The staff in CASS are employed by the NHS in BCS. The funding transfer in this report is a commissioning one that transfers that responsibility to the Council. If BCS cease to provide the CASS service then it is possible that the responsibility for

the staff may be found to transfer to the Council either at that time or retrospectively at the time of the funding transfer.

- 3.9 There are 16 users with complex and high dependency needs in this day service who live either with their families or in residential care homes in Brent, and are supported from a small base at Willesden Community Hospital, with outreach support and respite services. There are discussions underway on how to learn lessons from this service across other Council run day services, arising from the independent Learning Disability Foundation review of the CASS service in 2009, which found it a model of excellent practice.

### **Overhead Costs included in the transfer**

- 3.10 The overhead costs for care management, commissioning, and related support to the transfer of responsibilities to the Council are in the funding agreed. The care management will be carried by the CTPLD in Adult Social Care with an additional post.
- 3.11 The commissioning costs includes 50% NHS Brent contribution to the lead commissioner post (in the previous S31 (pooled funding) agreement on Learning Disabilities between Brent Council and NHS Brent), and the contractual support to placements. At the time of writing, this support is to be continued. The previous joint commissioning post has been successful in supporting the review of the Learning Disability Partnership Board and other service developments in recent years. It is a vital post in securing the health outcomes required under the Valuing People Now guidance for NHS Brent, as well as those relating to personalised care for the Council. The transfer and recommendation is that this post will be hosted and managed with Adult Social Care as a "lead commissioner" with accountability to the Joint Executive Team for health and social care within a joint commissioning strategy for people with learning disabilities.

### **Capital Transfer**

- 3.12 Guidance was produced in June 2009 by the Department of Health relating to the transfer of capital assets and associated revenue costs relating to the *Valuing People Now* transfer of funds from the NHS to local authorities. This guidance had been delayed, and so a decision on the buildings and the capital costs to transfer has not yet been reached.
- 3.13 Discussions are currently underway between officers from NHS Brent and the London Borough of Brent regarding this aspect of the transfer of funding for learning disability services from the NHS to the London Borough of Brent.
- 3.14 Whilst these discussions are at a preliminary stage, initial indications are that there are 4 properties that need to be transferred over to London Borough of Brent from NHS Brent. These are:
- Beechcroft Gardens
  - Kinch Grove
  - Manor Drive
  - CASS – based at Willesden Centre for Health and Care

- 3.15 The process to transfer the properties has already begun. Peel Road (the NHS Campus provision) is subject to separate project management arrangements, and it is proposed that this is included with the properties (listed at paragraph 3.14 above) to form one capital transfer process, with one set of paperwork, thereby simplifying the capital transfer process. The financial implications of this transfer are unclear as yet, due to the discussions being at a preliminary stage.

### **Services not included in the transfer agreement**

- 3.16 There are two services not included in the transfer agreement outlined in this report, that require further work and a report later this year. These are: the Peel Road “campus”, which has a project management structure to effect the reprovision by October 2010; and the NHS staff which has been independently reviewed, and the work is being taken forward in collaboration with NHS Brent.
- 3.17 Peel Road is residential care provision for 6 people from a former long stay hospital, now classified as a “campus” under DH guidance following the Cornwall/Sutton and Merton reports. The DH has provided capital to PCTs and revenue to councils to facilitate reprovision in line with guidance. This project has been delayed but the target date for completion is October 2010 for new provision and a transfer of responsibility to the Council. The Peel Road service is currently operated by NHS staff employed by Brent Community Services.
- 3.18 NHS staff are seconded to the CTPLD to form an integrated team offering diagnosis, treatment and an integrated support with social care management. The NHS staff are employed by Brent Community Services, and a joint review of all the arrangements in CTPLD to produce options on future team configuration, management arrangements and a new service specification has been completed, and discussions are currently taking place with NHS Brent to implement the required changes within the team to ensure that CTPLD can deliver effective health and care management functions to people with a learning disability in Brent. The negotiations are also being undertaken on the assumption that if there are any existing costs arising directly from these discussions which are not covered by the sums already agreed as detailed in this report that additional transfer will need to be made.

### **4.0 Financial Implications**

- 4.1 The DH guidance and the overall purpose of this transfer agreement is for the Council to receive responsibility with full cost funding from the 1<sup>st</sup> April 2009 start point. The figures confirmed for transfer would be based on the 2007-08 figures as a baseline. The review of individuals’ circumstances formed the basis of the joint agreement for the transfer of resources in this report.

Individuals with learning disabilities and the costs associated include:

- Those living or with a known link to an address in Brent - £4,925,544;
- Those for whom the domicile in Brent could not be confirmed, but have been the long term responsibility of Brent PCT. All these cases will be reviewed by the council to see whether they still warrant the same level of service, future funding would not be effected by savings generated.

- - £1,003,598;
- Those who had died since 2007 with resources covered by the guidance, and therefore subject to transfer to the local authority - £382,421
- Those with joint funding and previously disputed - £311,754; and
- Those receiving a day support service from CASS- £433,040.

4.2. In addition the agreement covers overheads:

- A management fee to cover the care management costs of reviewing and supporting these people - £47,861;
- A sinking fund for property - £4,193; and
- Commissioning overheads to cover contract and other oversight work - £53,000.

4.3. There is a range of inflation considerations incorporated in the proposal:

- A sum of £100,000 for inflation prior to March 2009
- A sum of £250,000 for inflation 2009/10 non recurrent;
- A sum of £350,000 for inflation 2010/11 non recurrent.

Additional inflation after 2011 will be dependent upon NHS uplifts and subject to further agreement.

4.4 The totals for each year for the period 2009/10 to 2011/12 are:-

2009/10 £7.511m

2010/11 £7.611m

2011/12 £7.261m + any inflation allocated by the Department of Health.

It is anticipated that applying fairer pricing to the transferred cases will reduce costs.

The overall impact of this transfer is forecast to be neutral on the Council's Adult Social Care budget, with the additional funding transferred in the early years being used to fund the implementation costs of the transfer and the higher initial placement costs. There will be a need to review the existing placements and service configuration with the aim both to ensure that users are being given the most up to date service and to deliver more efficient services in line with the councils overall programme. If the needs of those individuals with learning disabilities for whom the Council is responsible change or deteriorate significantly then the Council may find that it has a future shortfall in funding for these service users' further needs.

4.5 Confirmation of the transfer of learning disability social care funding and commissioning from NHS Brent to the London Borough of Brent (excluding capital transfers) has been agreed by both NHS Brent and the London Borough of Brent and communicated to the Department of Health in April 2010.

4.6 The payments made by NHS Brent to the London Borough of Brent under the transfer are to be made on a quarterly basis beginning in May 2010 and then subsequently in August 2010, November 2010 and February 2011 for the sum of £1,902,750 per quarter.

## **5.0 Legal Implications**

- 5.1 A new S256 agreement between the Council and NHS Brent will incorporate the financial transfer arrangements in this report. A new S75 agreement will confirm the future joint commissioning arrangements. NHS Brent has made budget assumptions based upon the negotiated outcome of discussions, and this report will form the basis of a new agreement in the long term. This revised agreement has been drafted and is currently being discussed by partners.
- 5.2 Discussions have also begun to address the operational provider functions to establish clear management and governance responsibility for the Brent Learning Disability Partnership. This will be included in the S75 agreement referred to above at paragraph 5.1.
- 5.3 There have previously been issues between NHS Brent and the Council regarding responsibility for care of clients with learning disabilities. A settlement agreement was reached last year in respect of the disputes arising under the previous arrangements for such clients. The arrangements outlined in this report now settle future funding.

## **6.0 Diversity Implications**

- 6.1 The transfer of responsibility for people with learning disabilities to the Council will help in the long term development of personalised delivery of care with improved outcomes that maximise their independence and reduce the social exclusion experienced by people with a learning disability, particularly those who have resided in long term institutional care institutions for a number of years.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 The additional care management function required to support the individuals whose care is transferring to the CTPLD will be covered by the funding for an additional post in the transfer arrangements. The staff in CASS will continue to operate from NHS premises and are employed by the NHS. Any change to this at a later date will require discussion with NHS Brent and Brent Community Services. The future employment of the NHS staff currently delivering a service at Peel Road is being addressed through the project management arrangements highlighted above, and will be finalised in the very near future.

### **Background Papers**

Valuing People Now: DH July 2009

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