

## Report of the Director of Adult Social Services

### Executive Board

**Date:** 22 July 2009

**Subject:** Valuing People Now – Transfer of Commissioning Responsibilities from NHS Leeds to Leeds City Council

<p><b>Electoral Wards Affected:</b></p>   <p><input type="checkbox"/> Ward Members consulted (referred to in report)</p>	<p><b>Specific Implications For:</b></p> <p>Equality and Diversity <input checked="" type="checkbox"/></p> <p>Community Cohesion <input type="checkbox"/></p> <p>Narrowing the Gap <input checked="" type="checkbox"/></p>
<p>Eligible for Call In <input checked="" type="checkbox"/></p>	<p>Not Eligible for Call In (Details contained in the report) <input type="checkbox"/></p>

### EXECUTIVE SUMMARY

This report updates Members of Executive Board with regard to progress in relation to negotiations conducted between Adult Social Care officers and officers representing NHS Leeds (Leeds PCT) in relation to the requirement contained in 'Valuing People Now'<sup>1</sup>, the national three year strategy for people with learning disabilities which was reported to the Board in April this year.

A significant requirement of Valuing People Now is that residual responsibility for the commissioning of social care services should transfer from NHS bodies to the Local Authority to commence in the 2009/10 financial year.<sup>2</sup> In Leeds, since 1997, NHS Leeds and Leeds City Council (Social Services/ Adult Social Care) have operated a pooled budget arrangement using the Section 31 (now 75) Health Act flexibilities as the governance vehicle. The pooled budget has been used to purchase all elements of specialist health (including payments in relation to the Continuing Health Care needs of individuals) and social care provision to people with learning disabilities. The contributions to the pooled fund arrangements have been subject to analysis and various elements identified which, under the guidance, should be included in the transfer of responsibilities to the Local Authority. This report deals in more detail with the agreements which have been reached in relation to the specific arrangements for Leeds.

<sup>1</sup> Valuing People Now: Dept. of Health 19 Jan 2009

<sup>2</sup> Valuing People Now; Transfer of the responsibility for the commissioning of social care for adults with a learning disability from the NHS to local government and transfer of the appropriate funding. (DH 2008).

In April 2008 NHS Leeds were required to advise the Strategic Health Authority of the total amount of commissioning activity undertaken in the 2007/08 financial year by that organization in relation to meeting the needs of people with Learning Disabilities in Leeds. A total sum of £27.7m was declared at that time. Later in 2008 advisory guidance was published by the Department of Health setting out the parameters to be used to ascertain the true commissioning purpose (being either social care or health) with the expectation that a value would then be set on each within the overall sum.

The stated government intention is to continue to provide the full value of the sum declared (based on the 2008 declaration) to NHS Leeds in the 2009/10 and 2010/11 financial years but from the start of the 2011/12 financial year to transfer the value identified for social care directly to the Local Authority as part of its overall settlement.

During the negotiations between officers representing NHS Leeds and the Local Authority we have worked on the basis of a principle of no betterment, that is to say neither organisation should gain a financial benefit over the other from this 'technical' transfer of responsibility and funding. In the event of mutual benefits being identified now or in the future then, as now, these are used to promote the wellbeing of people with learning disabilities and their carers.

This report sets out the component elements of the commissioning responsibilities agreed for transfer, their value and examines the known future risks and the mitigation strategies which have been agreed to address those.

## **1.0 Purpose Of This Report**

1.1 To update Members of the Executive Board on the outcome of negotiations in relation to the transfer of the value of those elements of social care commissioning which are currently undertaken by NHS Leeds (Leeds PCT). All Authorities have been required to identify the value of this activity and come to local agreement on the value of the transfer.

## **2.0 Background Information**

2.1 From April 2009 commissioning responsibility and funding for social care for adults with a learning disability transferred from the NHS to Local Authorities. This policy shift was outlined in the Valuing People Now consultation (2007) and confirmed in the requirements associated with 'Putting People First'. The guidance is set out in Valuing People Now and in Department of Health Statutory Guidance (Gateway Reference 9906).

2.2 The guidance suggests that the transfer would serve to strengthen the role played by Local Authorities in the commissioning of services for learning disabled adults, whilst at the same time enabling Primary Care Trusts to focus on better meeting the healthcare needs of this population. A series of high level national reports into continued failure to meet the health needs of people with learning disabilities have served to further support this action.

2.3 By April 2009 Local Authorities and Primary Care Trusts were required to submit to the Strategic Health Authority an estimate of the value of commissioning activity which had been identified as potentially appropriate for transfer. The final deadline for confirmation of such agreements to the Strategic Health Authority (SHA) was the 30th June 2009.

- 2.4 In agreeing amounts to be transferred in Leeds we have worked on the basis of a principle of no betterment. No organisation shall gain a financial benefit from this 'technical' transfer of responsibility and funding. The guidance states that the transfer should be seen as fair by local government, the NHS and people with learning disabilities and their families. No resources should be lost in the transfer, nor should the commitment to a partnership approach, as formalised in a formal Health Act Section 75 Agreement, be effected.
- 2.5 The closure of Meanwood Park Hospital in Leeds in 1997 facilitated the development of a Section 28a agreement between Leeds City Council and the then Leeds Health Authority (this was subsumed into the formal S31 agreement signed in 2005 which has now converted to a S75 agreement under the revised terms of the 2006 Health Act) . The formal agreement entered into in 1997 supported a Joint Commissioning approach and the establishment of a Pooled Budget. The Local Authority has acted as lead commissioner with a joint care management team providing the assessment and care planning function
- 2.6 In 2007/08 the total expenditure declared to the SHA by NHS Leeds on learning disability services was £27.693m. Of this, £15.0m was spent within the pooled fund arrangement on Continuing Health Care, staffing and other costs, a further 12.7m outside of the pool on specialist health services provided by Leeds Partnership Foundation Trust. Approximately £10.0m of this overall value has now been identified as social care activity, the component parts of this are set out in the next section. Elements of the social care activity associated with this sum currently form part of the pooled fund arrangements (£6.2m), part of it is not (£3.5m). (Diagram 1 at the end of the report provides a representation of this shift).
- 2.7 The current 2009/10 value of the pool now sits at £48.5m. Central to the agreement in relation to the transfer of commissioning responsibilities is the firm intention of both partners that these arrangements continue and that the value of that activity to transfer should be managed through the pooled budget and governed under the current Learning Disability Section 75 Agreement.
- 2.8 From April 2011 allocations are scheduled to be made directly from the Department of Health to Local Authorities. It is intended that the value associated with the commissioning activity determined to be eligible to transfer at that time will be added to the pooled fund arrangement by the Local Authority.

### **3.0 Main Issues**

- 3.1 The Association of Directors of Adult Social Services have observed that there is an increasing number of people with learning disabilities and this has an impact on demand for services. Thus the number of people with learning disabilities is estimated to increase by approximately 50% by 2021, with a greater proportion of older people and those with complex needs. This growing demand creates financial pressures and risks on Health and Local Authorities alike which officers have attempted to anticipate in addressing this transfer of commissioning responsibilities.
- 3.2 The first element of activity identified to transfer is in relation to the Leeds Partnership Foundation Trust Supported Living Service. Officers from Adult Social Care and NHS Leeds undertook a review of services provided by Leeds Partnership Foundation Trust which in 2007/08 was directly contracted by NHS Leeds and therefore sat outside the current pooled fund arrangement. As a result of the review, the supported living service was identified for transfer. The service provides care and housing

related support to 91 adults with learning disabilities and 'complex' needs. (88 of these tenancies receive Supporting People monies). The 91 tenancies are spread across 22 properties.

- 3.3 The total value of NHS Leeds commissioning responsibility associated with this contract agreed to be transferred is £3,151,650 (at 2008/09 prices).
- 3.4 Secondly, NHS Leeds have identified 5 Leeds residents previously discharged from the Westwood Hospital who live in a range of community learning disability services provided by Bradford District Care Trust. The five people receive both health and social care services in relation to their needs but for the purpose of this exercise this has been counted in full as a commission appropriate to transfer. This sum also sat outside the pooled fund arrangement.
- 3.5 The value of this contract is £319,974 (at 2008/09 prices) Leeds City Council officers as lead commissioners are developing a contract with Bradford District Care Trust.
- 3.6 Within the current pooled fund arrangement a range of social care activity has been funded by NHS Leeds to support former patients of Meanwood Park Hospital whose discharge into community settings began in the early 1990s.
- 3.7 The formal hospital closure in 1996/97 included the discharge of 111 people to social care provision in the independent sector and the purchase of a significant number of houses in the community. Prior to this hospital closure programme similar numbers of individuals had also been discharged and placed according to need with a range of providers. Both of these areas of activity were covered by separate agreements (S28a Health Act 1993) between Leeds City Council and the then Leeds Health Authority. The agreements were based on the Health Authority agreeing to fully fund all the needs of named individuals discharged from long stay hospital care.
- 3.8 As a consequence, since the early 1990's there has been a gradual year on year decrease in the overall requirement of NHS Leeds to fund as the named individuals have died.
- 3.9 There are a number of other costs which have accrued to NHS Leeds associated with the provision of other services associated to the closure of Meanwood Park such as day care. All of these complex arrangements are managed by the Joint Commissioning Service with the Local Authority acting as the lead commissioner.
- 3.10 Officers from Leeds City Council and NHS Leeds have produced a schedule of current NHS Leeds Social Care expenditure within the pooled budget. This activity totals over £6.25m for the 2007/08 base year.
- 3.11 The statutory guidance states that values to be agreed for transfer are to be based on actual spend in 2007/08. This runs contrary to the agreement which was entered into back in the early 90's which anticipated a gradual reduction in the value of this specific element of commissioning responsibility. Specialist advice has therefore been sought from the Valuing People Support Team regarding these, advice has also been sought from the Strategic Health Authority. The advice provided in return makes clear that the Local Authority and NHS Leeds should identify the most appropriate means of accommodating the budgetary implications associated with the ongoing reduction of the number of patients to whom this original agreement applied whilst anticipating the growth in numbers of people becoming entitled to care which would have previously been provided by the NHS.

- 3.12 It has therefore been agreed that a codicil will be added to the current Section 75 agreement which will confirm the process for managing the change of need of any individuals covered by the original Section 28a agreement following the transfer of commissioning responsibilities to the Local Authority. This will ensure that, in the future, NHS Leeds are not put in the position of funding the continuing healthcare needs of an individual for whom they have already agreed to transfer funding associated with their current commissioning responsibility.
- 3.13 NHS Leeds currently fund £9.2m worth of fully funded NHS continuing care via the Pooled Budget, the commission of which will continue to formally rest with that organization. The demography of the learning disability population nationally and locally indicates that this will be an increasing financial responsibility for the NHS.
- 3.14 Finally, the national guidance makes clear that consideration should be given to the requirement to transfer any Capital assets or liabilities associated with those elements of social care commissioning activity undertaken by the NHS.
- 3.15 In Leeds to facilitate the appropriate discharge from Meanwood Park Hospital since 1993, properties in the community have been purchased by the then Leeds Health Authority. All these properties are still used to provide accommodation for people with Learning Disabilities. As part of the assessment of commissioning activity eligible to transfer, NHS Leeds have secured a list of these properties registered at the Land Registry and have confirmed their ownership and the legal charge.
- 3.16 In total 25 such properties have been identified and 3 plots of land where properties have been built. In addition, Leeds Health Authority contributed £900,000 to the total cost of the building of a day centre – Potternewton. A legal charge also exists for this property.
- 3.17 Whilst more detailed information has been obtained through this negotiation process it continues to be far from certain how the specific issue of the transfer of capital or risk associated with capital is to be managed by Health and Local Authorities, specific guidance which was promised by the DoH has not been published, both the Valuing People Support Team and Strategic Health Authority have therefore not been able offer any advice.
- 3.18 In these circumstances it is not intended that any undertaking is given at this time to transfer or receive any responsibilities in relation to these capital issues until such time as the more detailed guidance is made available. Subsequent to its publication officers will jointly review the position with regard to the relevance and appropriateness of incorporating any capital items into the pooled fund arrangement within the principles on which negotiations have been conducted up to this point (those of no detriment and promoting benefits derived for people with learning disabilities and their carers).
- 3.19 Members of Executive Board are requested to mandate the Directors of Adult Social Services and Resources respectively to approve these arrangements at the appropriate juncture.

#### **4.0 Implications for Council Policy & Governance**

- 4.1 Members of the Executive Board have previously been advised of and have indicated their agreement and support for the overall national policy context , contained in the

Valuing People Now three year strategy, from which the statutory guidance associated with this policy initiative stems.

- 4.2 In relation to the governance of these arrangements going forward, Leeds has a long and successful record of jointly managing the pooled fund arrangements within a best practice governance framework which was substantially revised in 2006 following direction from Council audit officers and with support from Legal services. These arrangements will continue to apply to the management of the pooled fund arrangements following the transfer of the commissioning responsibilities set out in this report with accountability jointly discharged through the Director of Adult Social Services and the Chief Executive of NHS Leeds.

## **5.0 Legal and Resource Implications**

- 5.1 The legal requirement for the arrangements set out in this report are contained in the Local Authority circular and associated statutory guidance, other legal implications in relation to the management of the pool and the oversight of the S75 agreement between NHS Leeds and the Local Authority are set out above.
- 5.2 It is recognised that the requirement to transfer a range of commissioning responsibilities and, more particularly the value of those commissions poses potential future financial risk for both NHS Leeds and the Local Authority which are highlighted in this report and which officers from both organisations have sought to share and mitigate.
- 5.3 The adoption of this risk sharing approach is important as the Department of Health have committed to maintain the current value of transferred funds within the funding allocation to NHS Leeds for the next two years, with the intention that from the start of the 2011/12 financial year an equivalent amount will transfer directly to the Local Authority. The guidance does not guarantee a precise match at the point of actual transfer.
- 5.4 It is theoretically possible that the Department of Health could determine not to pass on the full, agreed value associated with such transfer arrangements to Local Authorities at the end of the transition period.
- 5.5 An Annex to the S75 Health Act Pooled Fund agreement has been constructed, reflecting the content of this report in terms of the specific commissioning responsibilities to transfer, their value and the principles on which future risks associated with the transfer of responsibilities which will be managed through the pooled fund arrangement and will be shared between the partners.
- 5.6 The pooled fund achieved financial balance in 2008/09 against a difficult financial background, significant pressures were again anticipated for this current financial year. The transfer of commissioning responsibilities set out in this report are not expected to add to nor diminish those pressures and significant budgetary action plans have been put into place to mitigate the identified pressures.

## **6.0 Conclusions**

- 6.1 The Valuing People Now Strategy and accompanying delivery plan outline a large number of actions intended to improve the lives of people with learning disabilities, their families and carers. The transfer of commissioning responsibilities is seen as an

essential ingredient of this overall plan, seeking to clarify the proper commissioning responsibilities between health and social care for meeting the needs of people with learning disabilities.

- 6.2 Because of the unique arrangements which have emerged over time in each Local Authority area, guidance issued by the Department of Health to support the process, has had greater applicability and meaning for some areas, less for others. The position in Leeds is of a well integrated set of arrangements negotiated and built on over a number of years. The process of negotiation has therefore involved a significant degree of unpicking those legacy agreements to arrive at the final agreed position.
- 6.3 The final position set out in this report confirms the centrality of the commitment of both NHS Leeds and the Local Authority to better meeting the needs of people with Learning Disability and their carers through more integrated commissioning arrangements supported by a pooled fund. This is seen as the most effective way of understanding, sharing and mitigating risks arising through the demography of this population group, increasing levels of need and future financial uncertainty.

## **7.0 Recommendations**

- 7.1 Members are requested to note:

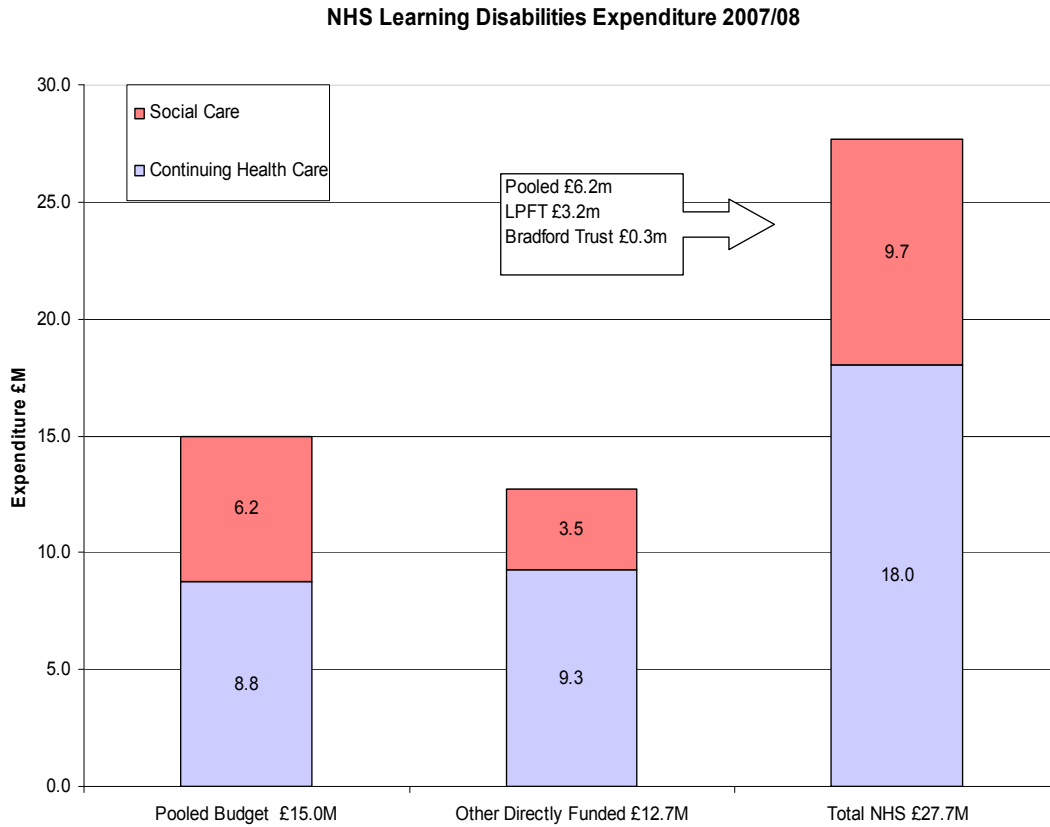
The principles on which the transfer negotiations have been conducted set out within the Executive Summary.

The requirement to transfer remaining commissioning responsibility from NHS Leeds (Leeds PCT) to the Leeds City Council from the commencement of the 2009/10 financial year in the terms set out in section 6 of this report for the continuing greater benefit of people with learning disabilities, specifically:

- ◇ The element of £3,471,624 (at 08/09 prices) proposed for transfer which represents the value of the LPFT Supported Living Service and the social care services provided by Bradford District Care Trust.
- ◇ The further element to transfer totaling £6.25m of social care activity which has been identified as already existing within the Pooled Budget.

- 7.2 Members of the Executive Board are requested to delegate authority to augment the S75 Pooled fund agreement to accommodate transfers of Capital in the terms set out at paragraphs 3.13 – 3.18 jointly to the Directors of Adult Social Services and Resources.

Diagram 1.



**Background documents referred to in this report:**

Valuing People Now - a new three strategy for people with learning disabilities (2009)

LA Circular Gateway ref 9906

Executive Board Report - Valuing People Now – Introduction of a National and Local strategy for people with learning disabilities.

S75 (Health Act 2006) Agreement