



Report of the Director of Adult Social Services

Scrutiny Board Health and Adult Social Care

Date: 17th March 2008

Subject: Risk & Commissioning in Adult Social Care Update

Electoral Wards Affected:

All

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

This report provides information requested by members of the Scrutiny board following discussion of the Commissioning context for adults in Leeds. In particular, the question of risk in commissioning. This report sets out the background to risk analysis in Health and Social Care Commissioning, from its traditional emphasis centred on financial and reputational risk, to its more modern and broader interpretation which is founded in principles of choice, control and improved outcomes.

The report goes on to provide further information in relation to the most recent guidance on risk analysis in relation to the Commissioning Framework for Health and Well-being and highlights further guidance in relation to the role and responsibilities for the Local Authority in relation to the range of risks which might be anticipated through the increasing preference of many people to utilise direct payments to fund their own care arrangements.

1.0 Background Information

- 1.1 A report was submitted to the December meeting of the Health and Adult Social Care Scrutiny Board updating the Board in relation to commissioning activity in relation to a range of current and prospective contractual arrangements with voluntary sector providers in the City.
- 1.2 The report set out the context in which commissioning takes place within Adult Social Care. It also referred to the commissioning responsibilities of Local Authorities and the processes developed to enable the discharge of those responsibilities, these features having been the subject of detailed reporting to the September meeting of the Board. One element of that national context is presented in more detail in this report in relation to the risk framework in which Health and Social care commissioning is based.

- 1.3 The December report also highlighted the emerging challenge for Health and Social Care commissioners focusing on commissioning for individuals (personalisation) shaping responses to meet their needs within their local community. Again, the risk framework which will need to be developed for this new type of commissioning responsibility is highlighted. The issue of direct payments and associated risks for and to individual recipients was raised; this report seeks to address those issues in greater detail.
- 1.4 Finally, a more integrated approach to commissioning within the Council is being developed in relation to this increasingly diverse range of activities and considerations, these considerations are to be included in the overall Council Commissioning Framework currently under development under the accountability of the Chief Procurement Officer.

2.0 Risk analysis, management and sharing in Health and Social Care Commissioning

- 2.1 Traditionally, risk in Commissioning has been chiefly concerned with financial or reputational risks arising out of a contracted activity which either fails to deliver its intended value or benefit or is discharged negligently by the contractor.
- 2.2 To mitigate the potential negative impact of such occurrences, great care is taken in developing service specifications which identify the potential sources of risk that may arise within the contracted area of activity and to set out the means by which those risks should be addressed and the remedies available to both commissioner and contractor if they are not.
- 2.3 Within social care, guidance produced throughout the last decade by the Department of Health has concentrated on these traditional perceptions of risk in commissioning. In particular, great efforts have been made to ensure that commissioners understand the need to more equitably share risks in the contracts that they let, particularly in relation to residential and nursing care provision and for home care.
- 2.4 This guidance came in response to suggestions that Commissioners were seeking to transfer risk away from their responsible organisation to the providers of service, requiring compliance with contract conditions which proved extremely difficult to meet.
- 2.5 To redress the balance, the Department produced best practice guidance in 2004 in relation to the specific contracting element of social care commissioning. This guidance reinforced the need for commissioners to engage with service providers at an early stage in any commissioning process to agree a risk sharing framework and a collegiate approach to the development of service specifications.
- 2.6 Also in 2004 the Department released guidance for Social Care Commissioners in relation to the need for much closer engagement with the end recipients of care services and their carers in the development of both contracts and specifications for care services. This guidance began to emphasise the importance of improving outcomes as a consequence of the commissioned activity and began to broaden the framework in which the issue of risk should be considered.
- 2.7 Contracts entered into by adult social care since 2004 in relation to both domiciliary and residential care have been designed to reflect this best practice approach of risk sharing in relation to being more based in improving outcomes for recipients of care and in terms of sharing the financial risk of the contract. Although this is clearly an area which is subject to regular review and refinement as new issues arise in relation to such arrangements.

- 2.8 Moving away from the traditional financial and reputational confines of risk analysis in commissioning, the more recent guidance began to offer a broader definition of the risks inherent in recipients of care more closely defining how they wished that care to be provided.
- 2.9 Clearly, placing greater emphasis on individuals exercising greater choice and control over their care arrangements moves into sharper focus the need for all the participants in such an arrangement, commissioners, providers, recipients and carers, to participate in the individual specification of how care is to be undertaken.
- 2.10 Recognising the increasing complexity of these emerging arrangements the Department of Health published further guidance in May 2007 (a web link is provided at the footnote below)¹
- 2.11 That guidance makes explicit some of the key considerations for all the parties to commissioning activity set out above, in particular the guidance anticipates the fear that supporting people to take risks as a consequence of exercising choice and control will expose health and social care providers and commissioners to compensation claims if things go wrong.
- 2.12 In addressing the possibility of negligence it is recognised that Local authorities, health bodies, private care providers and individual care staff do all owe a duty of care to individuals for whom they provide services. A duty of care is an obligation placed on an individual requiring that they exercise a reasonable standard of care while doing something (or possibly omitting to do something) that could foreseeably harm others. This means that organisations and individuals must maintain an appropriate standard of care in all the circumstances of their work and not be negligent, the risk of negligence is clearly minimised if the duty of care is observed.
- 2.13 In the context of recipients of direct payments, there is clearly a delicate balance to be achieved between empowerment and safeguarding, choice and risk. The guidance makes clear that It is important for practitioners (care managers) to consider when the need for protection would override the decision to promote choice and empowerment and that a clear distinction is drawn between putting a person at risk and having the necessary practical supportive arrangements in place to enable them to manage risks appropriately.
- 2.14 In Leeds that approach has led to the commissioning of the direct payments support service which is operated by the ASSIST organisation working out of the Leeds Centre for Integrated Living. For the past 5 years the organisation has supported increasing numbers of people to put into place and safely manage a variety of care arrangements, providing practical support, advice and advocacy. It is the intention of commissioners to extend and enlarge this type of service in anticipation of substantial increases in the number of recipients of this type of care. Officers are currently working with the ASSIST organisation to amend it's current service specification to reflect these anticipated changes.
- 2.15 The guidance highlights the role of Central Government in regulating this new system of care, it acknowledges that registration of groups in the health and social care workforce and employers' use of CRB checks do go a considerable way to ensuring that appropriate staff are employed. The guidance anticipates that in late 2008, direct payment recipients and others buying their own support will be able to check those who will be working with them.
- 2.16 Within this new system, individuals will retain the choice about whether or not to make a check, but it is suggested a new duty will be placed on local authorities to inform direct payments recipients of their right to engage with the new scheme. It is

¹ Independence, choice and risk: a guide to best practice in supported decision making. DoH 2007
<http://www.dh.gov.uk/en/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance>

suggested that this will allow direct payment recipients the opportunity to decide how they vet the people that they employ, but ensure they are making an informed choice.

- 2.17 Finally the guidance suggests that local commissioners, providers and recipients of care (and their carers) work together to develop and create outcome based commissioning opportunities which encourage individuals to exercise choice and control over their own care needs within a risk framework agreed with them.
- 2.18 Health and Adult Social Care Commissioning work with providers and users of a range of mental health services in the City has already been reported to the Board. This work has paid close attention to the DoH guidance in relation to choice and risk and the outcome of that work will be incorporated into the specification of the future service models.

Next Steps

- 3.1 Three further initiatives are relevant to the overall consideration of risk in a context of increasingly personalised health and social care commissioned and directly purchased services. The Commissioning Framework for Health and Well-being² sets out a vision and practical proposals for the commissioning of health, care and well-being from 2008/09 that looks to strengthen local skills, capability, partnerships and to address local priorities. A large part of how this will be done is by offering people more choice over the services they want to access. Previous reports have highlighted how Adult Social Care commissioning officers are closely engaged with PCT colleagues in developing shared approaches to these issues.
- 3.2 In connection with that, in January the Government enacted legislation that will, commencing in 2009, change the inspection and regulation regime of Health and social care, combining the current Commission for Social Care Inspection (CSCI) with the current Healthcare Commission and the Mental Health Commission. The principles of these changes are contained in a consultation paper first published in 2006³. In the consultation, the intention is emphasised to focus the work of the new independent regulator to support all the changes highlighted in this report.
- 3.3 Finally, the publication in the coming months of the overall Council Commissioning framework will provide an opportunity for all the Council commissioning functions which have an key interest in the implications of personalisation, to set out a common approach to the shared analysis and management of risk not only in relation to the content of specifications but also in relation to the ways in which the Authority and it's partners can help to support recipients of care services manage risk in their own care arrangements.

4.0 Recommendations.

- 4.1 Members of the Scrutiny Board are invited to note the content of this report.

² http://www.dh.gov.uk/en/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/DH_072604

Published on 6 March 2007;

³ The future regulation of health and adult social care in England, Department of Health, 2006
<http://www.dh.gov.uk/en/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance>