

By: Oliver Mills, Managing Director Kent Adult Social services

To: Adult Social Services Policy Overview Committee –
23 September 2008

Subject: **TRANSFER OF RESPONSIBILITY AND FUNDING FOR THE COMMISSIONING OF SOCIAL CARE FOR ADULTS WITH LEARNING DISABILITIES FROM THE NATIONAL HEALTH SERVICE TO KENT COUNTY COUNCIL**

Classification: Unrestricted

Summary: The transfer of responsibility and funding for the commissioning of social care for adults with learning disabilities from the National Health Service to Kent County Council involves KCC taking social care commissioning responsibility for 559 people with learning disability, many of who have profound and complex needs who are currently supported by the NHS. The associated budget transferred is likely to be in excess of £20m per annum.

This paper outlines the background, key elements, the risks and opportunities that are presented by this transfer. It further details the timeline and governance process in place to achieve this key transformation programme for these individuals.

FOR INFORMATION

Introduction

1. (1) Historically people with learning disabilities (PLD) who were unable to live at home were placed in the long stay hospitals. The long stay hospital closure programme undertaken in the large part in 1980's and 1990s, transferred some responsibility and resources for PLD to local authorities. However, some people have remained in campus accommodation provided and staffed by the NHS. Recent reports by the Health Care Commission, from both Cornwall and Sutton and Merton NHS provided services have uncovered institutional abuse, poor quality services and very poor outcomes for people living in these services.

(2) The Department of Health (DH) has directed that all NHS campus accommodation must close before March 2010 and that local authorities must also take on all social care commissioning responsibility from the NHS by April 2009. This is an extremely high profile programme, closely monitored by the Commission for Social Care Inspection (CSCI) in local authority performance monitoring meetings and contributing to the overall assessment of Adult Social Services Departments' performance.

(3) Members will know from the previous reports outlined in the policy background section, that Kent Adult Social Services (KASS) has been working closely with colleagues in Eastern and Coastal Kent Primary Care Trust (ECKPCT), Kent and Medway Partnership Trust (KMPT) and West Kent Primary Care Trust (WKPCT) to deliver the re-

provision programme in Kent. The model of service delivery that is being designed follows the supported living model where people will be enabled to live in their own homes, accessing the full range of benefits to which they are entitled and receiving the level of personal care and support that they need as individuals.

(4) As of 1 August 2008 there were 172 people living in 'campus' accommodation in Kent. The programme of re-provision for these individuals involves both some people moving individually into personally tailored services delivered by the independent sector and for the others, the services in which they are living transferring into the Independent Sector by April 2009. The programme of change to deliver the service model of supported living will happen thereafter. The process of tendering for the contracts is happening now and when the contracts are let in January and April 2009 they will transfer to KASS to monitor and manage along with the associated resources.

(5) This paper updates ASSPOC of the current position within Kent and identifies risks associated with the transfer and how these risks will be mitigated.

Policy Background

2. (1) The background to these developments has been covered within KCC by previous papers highlighted at the end of this paper.

(2) These developments all link to the national agendas of:

- Valuing People (2001) makes it clear that all people with learning disabilities should have the same rights as the general population and that they should not live within NHS funded or provided services unless they are receiving treatment.
- Our Health, Our Care, Our Say (2006) repeated this commitment and said that no one should be living in NHS accommodation (such as LD Campuses) by March 2010.
- Putting People First (2007) gives the wider agenda for adult social care with personalised services giving as much control as possible to the individual.
- Valuing People Now - Consultation (2007) raised concerns about the lack of progress and re-emphasised the commitment to March 2010 as the deadline for closing the LD Campuses. It also introduced April 09 as the preferred deadline for the transfer of wider social care commissioning responsibility from the NHS to Local Authorities.
- NHS Operating Framework 2008/09 also reiterated these deadlines.
- DH Gateway Reference: 9906. Most recently, on the 21 August 2008, the Department of Health wrote to all PCT and Council Chief Executives setting out guidance in relation to the financial transfer, and requiring the Department of Health to be informed, by 1 December 2008, of the locally agreed amount of funding that will be transferred for 2009/10. The target date being that from 1 April 2009 there will be a local funding agreement in place so that social care commissioning and funding responsibility can be transferred to the local authority.

Key Elements

3. (1) The Department of Health has identified two elements to the transfer which have two different timescales:

(i) Firstly, the transfer of the wider social care commissioning and funding responsibilities to KCC on 1 April 2009 (referred to as Transfer of responsibility).

(ii) Secondly, the closure of the current NHS LD Campus Services by March 2010 and the creation of new services in the community (referred to as Campus Re-provision). Revenue and capital funding for the re-provided campus services will transfer to KCC at the point the contracts are let to the independent sector providers. It is anticipated all the services will transfer by April 2009.

Transfer of Responsibility

4. (1) KASS has taken the lead role for social care commissioning for most PLD for many years. With the transfer of responsibility KASS will now also take all social care commissioning responsibility for the NHS clients who are transferring.

(2) KCC will take the commissioning and funding responsibility for all social care for adults with a learning disability. That is the responsibility for the wide range of services designed to support people to:

- Maintain their independence
- Enable them to play a fuller part in society
- Protect them in vulnerable situations and manage complex relationships.

(3) It includes support with:

- Personal care
- Day activities
- Respite breaks
- Supported living or residential placements

(4) The NHS will continue to retain commissioning and funding responsibility for all health-care for adults with a learning disability. In particular this will include:

- Specialist Learning Disability Health Services

These are provided by Health staff such as LD Nurses, Speech & Language Therapists, Physiotherapists, Occupational Therapists, Clinical Psychologists and Psychiatrists. Some of these staff will continue to operate within, and be accountable to, the KCC-led Integrated Community Teams, while remaining commissioned and funded by the NHS under the separate, existing Section 31 Agreements.

- In-patient services

Access to specialist LD health beds may be needed for the very small number of people who have specific assessment diagnostic and treatment needs at a particular point in time.

- Forensic Services

For those people with learning disability who offend or are at risk of offending.

- Continuing Healthcare

People with learning disability continue to have the same right as other citizens to funding for NHS continuing healthcare.

(5) This transfer will mean that KCC will take direct responsibility for 387 people across Kent whose services are currently being commissioned or funded by the NHS, (Table 1) and for the 172 people living in 'campus' accommodation (Table 2) a combined total of 559 people.

Table 1 Transfer of Responsibility: Numbers of People

	Eastern & Coastal PCT	Kent & Medway Partnership Trust	Total in Kent
Existing Section 256 clients	45	38	83
Other residential placements (no previous KCC involvement)	100	106	206
Other residential placements (some KCC involvement)	42	56	98
Total	187	200	387

Note: Section 256 refers to the NHS Act (2006) and was formerly known as Section 28a. This is the legal mechanism by which the NHS transfers funding to KCC for these clients.

Campus Re-provision

5. (1) A campus is a service that is NHS provided long-term care which is provided in conjunction with NHS ownership/management of housing. It is commissioned by the NHS. It also includes people who have been in assessment and treatment beds for more than 18 months, who are not compulsorily detained or undergoing a recognised and validated treatment programme.

(2) In Kent there are a total of 172 people affected by the campus re-provision. These are generally people with profound or complex levels of need.

Table 2 Campus Re-provision: Numbers of People

	Eastern & Coastal PCT	Kent & Medway Partnership Trust	Total in Kent
Unregistered residential care	45	95	140
Receiving NHS domiciliary services	32	0	32
Total	77	95	172

(3) There are a further 8 people who are currently cared for by KMPT in Woodend, a facility which does meet the campus definition. They have not been included as the service is subject to review and service redesign as part of the separate specialist learning disability service review being undertaken by the PCT in conjunction with KCC. This will have concluded prior to the national deadline of March 2010.

(4) Although the transfer immediately affects these 559 people (Table 1 & 2 combined) and their associated services, the responsibility is wider in both elements. Much of the current NHS responsibility for learning disabilities derives from when the NHS ran large long stay hospitals. The largest proportion of this NHS investment was on the social care needs of those individuals. It is government policy that when this funding is transferred to local authorities it is done in perpetuity. This is to meet the costs of the new generations of people entering services who historically would have been supported by the NHS in such long stay institutions. This is an important principle which KASS strongly supports and which will ensure resources which have been allocated to support PLD will be available for the emerging and growing needs of that client group now and in the future.

Commissioning and Contracting

6. (1) Currently, both KASS and ECKPCT (who are taking a lead on behalf of both Kent PCTs) commission social care for clients with a learning disability. The commissioning team in ECKPCT currently commissions health and social care for their clients.

(2) There is ongoing discussion about the extent to which this commissioning capacity will need to transfer to KASS. Clearly the PCTs will need to continue to commission their healthcare responsibilities and will need to retain some capacity to do this. Equally KASS will need to increase its commissioning capacity to successfully deliver quality services to this sizeable group of people.

(3) As part of their current commissioning and provision responsibilities, the PCTs have undertaken consultation with the people with learning disabilities and their families regarding the re-provision programme. The response to this has been generally positive although understandably there have been some concerns and anxiety expressed about the change.

(4) It has been agreed that at the point the services transfer out of the NHS they will require new contracts between KCC and the new providers. The external services that the NHS currently commissions will also require new KCC contracts. In preparation for this a KASS Contracts Manager has been seconded to Eastern & Coastal PCT to ensure that the preparatory work by health will meet KCC's requirements. It is proposed that this contracting expertise and capacity transfers back to KASS. This will be when the main service transfers occur, to undertake the very complex and detailed contractual work with the providers as they move first to registered care and then in most cases to supported living. To do this as well as deliver the capital change programme will require temporary additional contracting capacity and it has been agreed to fund this out of the Department of Health's Campus Revenue Grant.

Capital Interest that will pass to the Local Authority

7. (1) The transfer guidance also refers to the capital interest that will transfer to Local Authorities in line with their additional commissioning responsibilities. Work is underway to scope the potential size of this interest but it is likely to include:

- New Housing developed to accommodate campus clients which will be owned by the landlords
- Properties currently owned by the NHS and operated by the Independent Sector providers which will transfer to and be owned by the housing providers
- Those properties in ownership of Independent Sector providers but against which the NHS has a legal charge

(2) There is a detailed business case for the capital programme agreed by the PCTS which sets out the funding streams to achieve the programme. These are:

- The value of the current asset base
- The DOH capital grant
- Additional loans to be sourced by housing providers

(3) There is also a contingency where other properties used for people with learning disabilities can be disposed of where they are not now required.

(4) Detailed work has now been commissioned with health colleagues to map the full LD estate, including any residual interest in previously disposed of LD properties. This will all transfer to KASS on 1 April 2009.

Revenue Resources Available

8. (1) For the Transfer of Responsibility, the Department of Health has said that the starting figure should be the NHS's actual spend on these services in 07/08. Within Kent there has been recognition by the PCTs that they needed to increase resources in these services to raise them to the National Minimum Standards required by the Commission for Social Care Inspection, and this is very welcome.

(2) Detailed work is now under way to assess the appropriate level of costs to transfer. This is complicated by the fact that the services themselves are subject to significant change, as the campus reprovision process gets underway. A framework for developing the costing has therefore been agreed. This will take into account the starting position proposed by DH of the 2007/08 outturn figures, suitably adjusted by known variations. It will also look at “bottom up” costings for all of the individuals whose services are due to transfer, together with any appropriate additions (such as the costs of care management). In this way, the agreement will be transparent, between the PCTs and ourselves, with all parties being satisfied that the money transferred is sufficient for the service.

(3) In addition to the core funding there is also temporary work needed to facilitate the transitional period. This consists of things such as temporary additional Care Management, Speech & Language Therapy and advocacy services to ensure the individuals have significant input into the service developments and necessary project management. The Department of Health has recognised these additional costs and has given KCC a revenue grant of £700k for 08/09 for these costs. This has been allocated in partnership with health colleagues. The revenue grant to KCC in 09/10 will be £1.5m and in 10/11 will be £2.5m. Work is ongoing with health colleagues as to the most efficient use of this additional money to support the transfer and improve outcomes for the service users involved.

Opportunities and Risks

(1) There are a number of opportunities and risks in this important process, both for the individuals concerned and for KCC and our partners.

Table 3 Opportunities

Opportunities	Facilitation
Improved quality of life	KASS has the legal and policy framework to maximise choice and control by individuals, and their families, over the service they receive. People who have previously lived in congregate and segregated services will have the chance to live, with the right levels of care and support, in their own homes within their local communities. This can eventually be through Direct Payments and Individual Budgets.
Economic well being	By moving out of NHS care, individuals will have access to significantly more benefit income and KASS will ensure that benefit maximisation occurs.

Improved service quality	Although many of the NHS services are good, some are not. By having both contractual obligations to KASS and external inspection by Care Quality Commission (the CSCI successor body) there will be a requirement that all services meet the National Minimum Standards. Also, all service users will have advocates who will support them through this change programme and ensure that their needs and wishes are represented.
Efficiency & Value for Money	By removing duplication of commissioning between KCC and NHS there could be efficiency savings. It will also mean that KASS, as the lead commissioner, will have more opportunity to influence the market.
In perpetuity funding	This principle should ensure that there is a long term DOH commitment to enable the development of quality services for people with learning disabilities, including new service users and assisting KASS in meeting the anticipated additional pressures associated with demography and increasing complexity.

Table 5 Risks

Risks	Mitigation
Perception that service users' health may deteriorate once outside the care of the NHS	PCTs will focus more clearly on commissioning high quality inclusive mainstream health services and specialist learning disability health services. Health staff will continue to work closely with KASS through integrated teams. Primary Care Facilitators will also be appointed by the NHS.
Need to have appointeeship for some people who lack capacity	Work is on going to develop the best model of helping people who lack capacity manage their money. KASS has the experience and ability to provide this if necessary, but other solutions involving external providers are being investigated.
Liability to personal charges for services previously supplied free by the NHS	The significant majority of people will be better off due to increased rights to benefits, irrespective of possible charges. This will only adversely affect a few people who have built up significant savings whilst in NHS care, and who may not therefore be entitled to the full range of benefits. Work is being undertaken to mitigate this where possible

<p>Reputation of KCC due to the possibility of inheriting poor or inadequate services</p>	<p>A significant and robust Quality Assurance process is underway, involving health's specialist Project Manager, KASS staff and CSCI pre-inspections. Additional resources have been allocated by the PCTs to ensure services will meet registration standards when they are registered.</p> <p>ECKPCT has employed a specialist Project Manager who has audited all of the campus re-provision homes and services across Kent. Improvement and Action plans are being implemented by the current NHS providers. This has given KCC a higher level of assurance that the individuals concerned are safeguarded and that the services will meet registration standards.</p> <p>In West Kent this has been supplemented by the work of KASS's Care Standards Visiting Officer, who is working closely with some of the services to ensure that they meet the National Minimum Standards.</p> <p>Furthermore, each service user will have an advocate who will ensure their voice is heard with regard to the quality of the services the client receives.</p>
<p>Inadequate resources transfer to the local authority increasing the financial pressure in LD services.</p>	<p>All parties have agreed that this transfer should be at no detriment to any of the statutory organisations. An integrated finance subgroup has been established to negotiate the details of the capital and revenue transfer and this group is chaired by Caroline Highwood, and attended by an Audit Commission representative, to ensure that the local authority's interests are protected.</p>
<p>Department of Health using formula to redistribute the funding, post 2011</p>	<p>Representations have been and will continue to be made to the DH about this, by Kent, and other local authorities similarly affected by this risk. This funding is essential to continue the services required by these individuals.</p>
<p>Possible significant increase in need of people as they age</p>	<p>The Department of Health has confirmed that, like the general public, these individuals will have potential entitlement to NHS continuing health care in the future.</p>
<p>Insufficient staffing resources within KASS to deal with the additional responsibility</p>	<p>Required amounts of additional staff – Care Management, Contracting and Management etc have been identified, including specific individuals where high-level expertise is needed. KASS will need to recruit to the additional posts in 2008 to ensure they are available post transfer.</p>

Governance & Decision Making Process

10. (1) Kent's Strategic Learning Disability Board will oversee both elements in the transfer. The board is chaired by Oliver Mills, Managing Director of KASS, and has senior representation from other stakeholders including health colleagues and, through the associated Kent Partnership Board, with people with learning disabilities. The strategic board has established two groups that will concentrate on particular aspects.

(2) Firstly, the Learning Disability Finance Strategy Group is chaired by Caroline Highwood, Director of Resources, KASS, and has representation from health finance colleagues. This is planning and overseeing the transfer of financial responsibility. For 09/10 and 10/11 the funding for this will be transferred from the local PCTs to KCC. This group will ensure that an appropriate funding mechanism for this transfer is in place. Beyond 2011 the funding will be allocated directly to KCC by the Department of Health. The Department of Health has said that it will consult on the determination of these allocations before it implements this.

(3) Secondly, the Learning Disability Campus Re-provision Board is chaired by David Meikle, Director Commissioning & Finance, Eastern & Costal Kent PCT. KASS is represented by both Janet Hughes and Margaret Howard, the East and West Kent Area Directors and by Des Sowerby, Joint Director – Learning Disability. This is overseeing the commissioning and delivery of the re-provision for the 172 people in this group. This Board has delegated responsibility to make decisions to ensure the successful delivery of the changes. They have been meeting monthly and are making regular reports to the Strategic Board. The plans are on track and the campus re-provision programme will meet the local deadline of April 2009 for the vast majority of the services.

(4) Within KCC, the potential impact on the individuals concerned and the likely size of the proposed transfer (potentially in excess of £20m per annum) means that this will be taken to Cabinet for decision on 1 December before it is submitted to DH. It is highly unlikely that the final figure will be available by this date. The fact is that the major campus reprovision programme will have an impact on the long-term costs of the service. It would therefore be foolish to confirm a final cost to transfer, before these changes have been fully assessed. In part this is dependent on the contracts in process of being let, and in part a number of other more minor factors. The report to Cabinet (and DH) in December will set out those figures which can be confirmed, and will indicate where there is still work to be done to finalise this.

Dispute Resolution

11. (1) There has been close partnership working between KCC and our health colleagues. It is fully expected that this will lead to a successful transfer that will meet the Department of Health's requirements. Namely that the transfer is seen to be fair by KCC, the NHS, the service users affected and by their families, that there is partnership working and that there is a local solution.

(2) In the extremely unlikely event that agreement cannot be reached on the transfer, the Department of Health has published a mechanism for mediation, which in Kent would involve representatives from the South East Coast NHS Strategic Health Authority, the Association of Directors of Adult Social Services and the Government Office for the South East.

Recommendations

12. Members are asked to note the ongoing work, the risks and mitigation and to comment on the issues identified for people with learning disabilities and for KCC.

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Background documents:

- NHS Overview & Scrutiny Committee, 12 October 2007, Re-provision of NHS supported accommodation in Kent (Item 4)
- ASSPOC, 29 January 2008, Valuing People Now – From Progress to Transformation (Item B7)
- ASSPOC, 29 January 2008, Re-provision of NHS Accommodation in Kent (Item B9)
- Cabinet, 17 March 2008, Valuing People Now – From Progress to Transformation (Item 7)