

By: Graham Gibbens, Cabinet Member, Adult Social Services  
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To: Cabinet – 13 September 2010

Subject: **PROPOSED RESPONSE TO THE DEPARTMENT OF HEALTH CONSULTATION ON CHANGES TO THE ALLOCATION FORMULAE FOR THE LEARNING DISABILITY COMMISSIONING TRANSFER GRANT, THE PRESERVED RIGHTS GRANT AND THE AIDS SUPPORT GRANT.**

Classification: Unrestricted

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Summary: This report provides a broad outline of the grants included in the consultation and explains the allocation formulae that it is proposed to support, the rationale for selecting those options and associated issues. It seeks Member agreement to the proposed response. The consultation was issued on 27 July 2010 and requires a response by 6 October 2010.

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## **Introduction**

1. The Department of Health (DH) has circulated a consultation on the distribution arrangements for three specific grants. These are: the Learning Disability Transfer Grant, the Preserved Rights Grant, and the AIDs Support Grant. The Learning Disability grant will be a new grant from April 2011, reflecting a change in the responsibility for commissioning services from the health service to local government., while the other two grants have been in place for some years, and until now, have been distributed based on where the known needs are, rather than on a formula.

## **Background to the proposals**

### 2. (1) Learning Disability Transfer Grant

a) Members will recall from previous reports that the DH has directed that all NHS campus accommodation should close and that that Local Authorities (LAs) should take over the responsibility for commissioning social care from the NHS. KCC is now responsible for commissioning social care for most of the people who previously were the responsibility of the NHS. Some people are still in the process of transferring to KCC and these transfers will be completed by March 2011. Whilst KCC pays providers for these services the cost is recovered in full via a Section 256 Agreement with Eastern and Coastal Kent Primary Care Trust (ECKPCT) and service user contributions.

b) From April 2011, the DH will formally remove the funding from all PCTs to redistribute to the relevant local authorities. Nationally, PCTs and local authorities have reported a transfer value of £1.3bn for 2010-11 and we have worked very closely with EKPCT (operating on behalf of both PCTs) to validate the Kent returns to the DH, which have been jointly signed. The DH is consulting on two options for distributing this grant, should it be issued as a DH grant from 2011-12. Option 1 proposes that it should be

distributed in proportion to the 2010-11 transfers between individual PCTs and local authorities. Option 2 bases the transfer on the Adult Social Care Relative Needs Formula (RNF). The DH preferred option is Option 1 which will result in £33.9m for Kent whereas Option 2 would only provide £29.2m.

c) The joint return to DH included details of 7 service users who are within Kent, but are recharged to other local authorities and PCTs by EKPCT with an annual value of £839k. These appear to have been ignored in both options and there is the potential risk that this cost may fall to Kent. The added complication is that 6 of the service users are in supported living situations and there is the risk that ordinary residence rules may apply.

d) It is government policy that transfers of this nature should be made in perpetuity in order to meet the needs of future generations and this is not specifically mentioned in either option.

e) We have been contacted by a non Kent PCT who currently have financial and commissioning responsibility for two people placed in residential care in Kent. They have proposed that KCC assume responsibility for these people and have agreed that funding will be made available via the grant mechanism. This can be accommodated in the consultation process and an 'Annex D' will be completed to cover this arrangement. This is an agreement which is signed by both parties and returned to the DH in order to ensure that the transfer of funds is recognised. Potentially more transfers of this nature will be required and whilst this is manageable during the consultation process there is the risk that others may appear after the end of the process.

## (2) Preserved Rights Grant

a) People who entered residential care prior to 1993 were entitled (where eligible) to claim Income Support to meet the costs of their care and accommodation. This entitlement ceased in 1993 and costs had to be met by local authorities following an assessment of the person's needs. Those people who entered care prior to 1993 retained a 'preserved right' to these levels of income support which were considerably higher than current levels. In 2002 the Preserved Rights Grant was introduced, which effectively transferred funding from the individual to the local authority.

b) The DH is consulting on two options for distributing the Preserved Rights Grant. In 2009, the DH surveyed all local authorities to ascertain the number of remaining preserved rights service users. Option 1 proposes a distribution based on this caseload data and would result in £10.6m for KASS which is very close to the current 2010-11 allocation (which itself was based on 2002 caseload data). Option 2 is based on the RNF and results in £5.4m for KASS. The DH preferred option is Option 1.

## (3) AIDS Support Grant

a) The AIDS Support Grant underpins a range of services designed to enable people with HIV to live as independently as possible. Grant allocations are updated annually using the most recent data from the Health Protection Agency (HPA). In future the DH would like to allocate the grant as part of a multi year settlement to provide local authorities with a level of certainty on the funding they will receive over the four years of the spending review.

b) The DH is consulting on two options for distributing the AIDS Support Grant. Option 1 will take the caseload data from 2008 and will use it to apportion the grant over the four years of the spending review which will result in £328k for Kent which compares relatively favourably to the 2010-11 grant of £339k. Option 2 proposes using the RNF for younger adults which would result in £578k for Kent. The DH preferred option is Option 1.

### **Considerations and risk**

3. (1) There is high risk to Kent should any arrangement be made for distribution of grants which reflects any other than the actual costs of the services which have transferred. Both the Learning Disability Transfer Grant and the Preserved Rights Grant are required to support existing cohorts of people, the costs of which have been transferred from other parts of the public sector. If the alternative distribution method (the relative needs formula) were to be selected, KCC stands to lose £9.9m. As it would not be possible to reduce the spending on the individuals who have transferred, this would require compensating savings to be made elsewhere in the budget.

(2) The Local Government Association and Government have in the past agreed a New Burdens Doctrine, whereby the Government commits itself to “ensuring new burdens falling on local authorities are fully funded”. Clearly, if the actual grant distribution falls short of the costs of the transferred services, this would represent a breach of that agreement.

(3) The large market in Kent for residential care for people with learning disabilities, together with the operation of the rules on ordinary residence means that there will be continued risk that these rules will result in further transfers of people with learning disabilities to KCC. This is in fact a pre-existing risk, albeit exacerbated by the current changing relationships. As shown above, there is already a non-Kent PCT, who will transfer two people, and their funding, to Kent, and it will be critical to ensure that there is a mechanism for this to happen in future, and not just at this time of change.

(4) Earlier Government guidance on the transfer of people with learning disabilities into local authority care suggested that the transfer should be in perpetuity. By this it is intended that, as existing service users die, the money becomes available for new service users. It is very important that this suggestion is followed through, as future forecasts of the need for services with people with learning disabilities show very clearly that both the numbers and costs will increase year on year. This demographic trend is considered as a part of the MTP process at present, and represents an increasing pressure to the budget every year.

### **Proposal**

4. (1) In the absence of any direct relationship between caseload and funding, we would generally accept apportionment of national funding based on RNF. However, for each of these grants there is recent caseload information that is directly related to the funding and it is proposed that KCC supports the DH preferred option in each of the three grants which is option 1 in each case. The critical argument being that for both the LD and Preserved Rights Grant they relate to transfers of service from other parts of the public service (PCTs and DWP respectively) and are still required in full to support the cohort of people for which the grant was made.

(2) The DH proposals only offer medium term security for the AIDS Support Grant which is by far the lower of the three. Any shift to formula funding for the other two grants will seriously disadvantage Kent and we propose to recommend that the caseload basis for apportioning the other two grants is extended for the four years of the spending review.

(3) We propose to raise the issue of the Learning Disability service users (currently recharged to other agencies, see paragraph 2(1)(c)) who were included in the DH returns but have been ignored from the funding proposal, in order to mitigate wherever possible the potential financial risk to Kent.

(4) We propose to raise the issue of funding the Learning Disability Transfer Grant in perpetuity, in an effort to protect the funding available in the future for people with a Learning Disability in Kent.

(5) We will ensure that details of the two non Kent PCT service users (paragraph 2(1)(e)) are properly reported to the DH along with any others that are identified during the consultation process. It will also highlight the risk of similar service users being identified after the consultation process and will ask the DH to develop and publish guidelines for the management of any future cases.

## **Recommendations**

5. (1) Cabinet is asked to:

(a) AGREE the outline proposed response to the DH consultation on Changes to the Allocation Formula for the – Learning Disability Commissioning Transfer Grant, the Preserved Rights Grant and the AIDS Support Grant.

(b) AGREE that the final response is signed of by the Cabinet Member, Adult Social Services in consultation with the Managing Director, Kent Adult Social Services.

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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)

ASPOC, 23 September 2008, 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. (Item B1).

Cabinet, 1 December 2008, NHS LD Transfer (Item 8)

Cabinet, 30 March 2009, The Transfer of People with Learning Disabilities from the NHS to Social Care (Item 10)

DH Consultation Paper (14610) – 27 July 2010: Consultation on the allocation formulae for the Learning Disabilities Transfer Grant, the Preserved Rights Grant and the AIDS Support Grant.