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To: Cabinet – 30 March 2009

Subject: **THE TRANSFER OF PEOPLE WITH LEARNING  
DISABILITIES FROM THE NHS TO SOCIAL CARE**

Classification: Unrestricted

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Summary: An update on the progress made since the last report to Cabinet, together with the outstanding issues.

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## **Introduction**

1. (1) At the Cabinet meeting on 1 December 2008, the proposed transfer of people with learning disabilities from the NHS to social care was discussed, with the risks both of continuing and discontinuing the process being thoroughly explored. It was agreed that the work on the transfer should continue, and that, at the same time, lobbying should continue to mitigate the outstanding risks.

## **Progress to date**

2. (1) One of the major issues of risk has been that there has to date been no regulatory change to support the transfer. We are therefore working with guidance and existing forms. For the day to day elements of the transfer, this is sufficient, as the agreement process under section 256 of the Health Act 2006 is tried and tested methodology. However, for the capital issues this has proved more challenging.

(2) For the revenue transfer, the opportunity has been taken to refresh the section 256 agreements, to ensure that they meet all the eventualities of this transfer. They will then have schedules attached listing every individual who is to transfer, with their associated costs. The agreements themselves contain a requirement for costs to be monitored and tracked, so that, even where an individual's needs have changed, there is a requirement to pay the actual amount.

(3) For the capital transfer, significant progress has been made. Firstly, the Department of Health (DH) have been persuaded to allow the unspent capital grant to be rolled into 2009/10. This will allow the capital works programme to proceed unhindered, which is good news.

(4) The transfer of the capital assets has to be undertaken using the section 256 agreement process. This is problematic, as explained in the previous Cabinet report, and carries an obligation for the value of the asset to be repaid, should it no longer be required for the purpose for which it was transferred. This is a risk for the longer term, and further lobbying of the DH will be undertaken to seek to remove the obligation.

(5) However, despite that risk, it has now been agreed that all of the properties will transfer direct from the NHS to the registered social landlords who will manage and maintain them for the long term future. We have, as a part of this agreement, secured nomination rights, so that, as vacancies occur within this specialist housing provision, they may be used for other service users. This will help by providing much needed capacity for new and existing service users.

### **Continuing work**

3. (1) Internal audit will be undertaking a review of the section 256 process and schedules in March / April this year as a part of signing them off, and to give confidence. It is clear that the detail to be signed off at 31 March 2009 (for submission to the DH) will still not be the final amount for transfer. The reasons for this are that, until the transfer takes place we cannot fully assess and charge for client income; the NHS are still assessing for cases of continuing care (i.e. people who will remain their full responsibility), and not all of the new care contracts will be fully operational by 31 March 2009.

(2) The capital programme of major works, to ensure the quality of environment is brought up to standard will be undertaken by the registered social landlords (RSLs), overseen by a project board made up of NHS and KASS staff. A further bid for capital monies has been submitted to the DH for the 2009/10 year, and the RSLs are also contributing capital from their own sources. It is fully understood that the capital programme must be managed within these resources.

(3) Following the Cabinet meeting on 1 December 2008, Lancaster University were commissioned to produce an actuarial report of the likely rate of growth in numbers of service users (people with learning disabilities). The summary of this report is attached (Appendix 1). It shows that, assuming we retain eligibility criteria at moderate, there will be a significant annual increase of between 5.6% and 7.1% year on year for the next ten years. This will then reduce to a lower rate of increase (from 5.1% to 3.6%) for the next ten years. These numbers relate to the whole population of people with learning disabilities, and are not affected by those transferring across from the Health Service.

(4) This is helpful intelligence for us to continue planning and developing services for this group of service users. However it should be enhanced by a full national study, commissioned by Department of Health to inform the future funding regime for all local authorities. We are, together with others, lobbying for such a study to be undertaken, as it will be critical to ensure the long term security of this group of people.

### **Outstanding risks**

4. (1) There is still no clarity as to the basis on which the funds for this transfer will be distributed from April 2011. We need the funding to recognise the actual cost and location of the people transferred, this cannot then be done by formula; it will need to be fully hypothecated. In addition to that, we need to seek subsequent growth in funding, based on the actuarial forecasts for all people with learning disabilities (not just those transferring from the NHS). This issue of future funding for people with learning disabilities should be the focus of high profile and sustained lobbying, both by Kent County Council, and also through the Local Government Association and the Association of Directors of Adult Social Services.

### **Financial implications**

5. (1) There are three main areas for consideration:
- a) The revenue payments for services provided between April 2009 and April 2011. These will be managed by the tried and tested methodology of section 256 agreements (as described in paragraph 2.2 above). The agreements, and the schedules of names and costs attached to them, have been comprehensively reviewed by Finance and legal staff. Internal Audit has also been commissioned to undertake an audit of these processes and details, to ensure they are robust. The PCTs have indicated that they wish to share this report, for their own reassurance.
  - b) The revenue funding to be received directly from Government after April 2011. The Department of Health have acknowledged that this cannot be provided by formula, as it will not allow for where the funding is actually required. In addition to this concern, the overall growth in numbers and costs of this service user group in the medium to longer term continues to be of concern. We need to continue lobbying Government (see paragraph 4.1) to ensure that this growth is fully factored in to all future planning.
  - c) The capital issues associated with the transfer are no longer of concern, as a result of the transfer of properties direct to registered social landlords (see paragraph 3.2)

(2) As Section 151 officer, the Director of Finance has reviewed these areas of outstanding concern and is satisfied that the risks are being robustly managed and that the level of risk outstanding has been sufficiently mitigated. She is therefore content with the recommendation for the transfer to take place, to the timescale proposed by Government.

## **Conclusion**

6. (1) The previously outstanding risks have been substantially mitigated, although there are still some issues outstanding, and work is continuing. It will be appropriate for the transfers to take place as and when the individuals and their services are ready to transfer.

## **Recommendations**

7. (1) Cabinet is asked to:
- a) AGREE the transfer;
  - b) INITIATE a rigorous campaign to influence Government for the appropriate distribution of funds, and for future growth in this service user group to be adequately provided for, and directly hypothecated;
  - c) AGREE to continued lobbying on the issue of the obligation to repay the value of the capital assets.

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*Background material:*  
Report to Cabinet 1 December 2008: "NHS LD Transfer"

## Kent Headlines

Over the decade 2008-2017 (2008 is the base year for which most information is available), the modelling predicts:

- If social care is provided to *all* new entrants with critical, substantial or moderate needs the number of adults with learning disabilities receiving social care services in Kent will increase from 4,295 to between 7,000 (lower estimate) and 8,000 (upper estimate). These figures are equivalent to 63% and 85% overall growth in social care recipients, and 5.6% and 7.1% annual year on year growth rates.
- If social care is provided to *all* new entrants with critical and substantial needs and 50% of new entrants with moderate needs the number of adults with learning disabilities receiving social care services in Kent will increase from 4,295 to between 6,000 (lower estimate) and 7,000 (upper estimate). These figures are equivalent to 41% and 63% overall growth in social care recipients, and 4.0% and 5.6% annual year on year growth rates.
- If social care is restricted to new entrants with critical or substantial needs the number of adults with learning disabilities receiving social care services in Kent will still increase from 4,295 to between 5,200 (lower estimate) and 6,100 (upper estimate). These figures are equivalent to 21% and 42% overall growth in social care recipients, and 2.1% and 4.0% annual year on year growth rates.

Over the following decade (2017-2026) it is predicted that growth will continue, but at a slower rate. Estimates annual year on year growth rates are:

- 3.1%-3.6% if social care is provided to *all* new entrants with critical, substantial or moderate needs;
- 2.4%-3.1% if social care is provided to *all* new entrants with critical and substantial needs and 50% of new entrants with moderate needs;
- 1.4%-2.4% if social care is restricted to new entrants with critical or substantial needs.