DELEGATED POWERS REPORT NO. 1543

SUBJECT:
Section 75 Agreement – Pooled Budget and Integrated Learning Disability Service
Control sheet

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to the Governance Service for publishing

<table>
<thead>
<tr>
<th>All reports</th>
<th>Name of BGO</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Governance Service receive draft report</td>
<td>Name of BGO</td>
<td>Andrew Charlwood</td>
</tr>
<tr>
<td>2. Governance Service cleared draft report as being constitutionally appropriate</td>
<td>Date</td>
<td>18 Jan 2012</td>
</tr>
<tr>
<td>3. Finance clearance obtained <em>(report author to complete)</em></td>
<td>Name of Fin. officer</td>
<td>Kerry-Anne Smith/ Maria Christofi</td>
</tr>
<tr>
<td>4. Staff and other resources issues clearance obtained <em>(report author to complete)</em></td>
<td>Date</td>
<td>20 Jan 2012</td>
</tr>
<tr>
<td>5. Trade Union response received (Staffing issues only)</td>
<td>Name of TU rep.</td>
<td>no comments</td>
</tr>
<tr>
<td>6. Legal clearance obtained from <em>(report author to complete)</em></td>
<td>Name of Legal officer</td>
<td>Philomena Jemide</td>
</tr>
<tr>
<td>7. Policy &amp; Partnerships clearance obtained <em>(report author to complete)</em></td>
<td>Name of P&amp;P officer</td>
<td>Andrew Nathan</td>
</tr>
<tr>
<td>8. Equalities &amp; Diversity clearance obtained <em>(report author to complete)</em></td>
<td>Name of officer</td>
<td>Julie Pal</td>
</tr>
<tr>
<td>9. The above process has been checked and verified by Director, Head of Service or Deputy <em>(report author to complete)</em></td>
<td>Name</td>
<td>Dawn Wakeling</td>
</tr>
<tr>
<td>10. Signed &amp; dated report, scanned or hard copy received by Governance Service for publishing</td>
<td>Name of BGO</td>
<td>Andrew Charlwood</td>
</tr>
<tr>
<td>11. Report published by Governance Service to website</td>
<td>Name of BGO</td>
<td>Andrew Charlwood</td>
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**Officer reports:**

| 12. Head of Service informed report is published and can be implemented. | Name of BGO                  | Andrew Charlwood |
| 13. Expiry of call-in period                                              | Date                        | 31 Feb 2012      |

**Cabinet Member reports:**

| 14. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet & Head of Service | Name of BGO                  | Andrew Charlwood |
| 15. Report published by Governance Service to website                     | Name of BGO                  | Andrew Charlwood |
**ACTION TAKEN BY CABINET MEMBER(S) UNDER DELEGATED POWERS (EXECUTIVE FUNCTION)**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Section 75 Agreement – Pooled Budget and Integrated Learning Disability Service</th>
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</thead>
<tbody>
<tr>
<td>Cabinet Member</td>
<td>Cabinet Member for Adult Services</td>
</tr>
<tr>
<td>Date of decision</td>
<td>24 January 2012</td>
</tr>
<tr>
<td>Date decision comes into effect</td>
<td>1 February 2012</td>
</tr>
</tbody>
</table>

**Summary**

The Council is entering into a two year Section 75 Agreement with NHS Barnet commencing on 1 February 2012. The Section 75 Agreement will result in the establishment of a pooled budget, lead commissioning arrangements and an integrated community learning disability service. From this date the Council will be entering into a contract with one of the existing providers, Central London Community Healthcare NHS Trust (CLCH) for the provision of an Integrated Community Learning Disability Service.

**Officer Contributors**

Temmy Fasegha – Joint Commissioner Mental Health and Learning Disabilities
Dawn Wakeling – Deputy Director Adult Social Care and Health
Kate Kennally – Director of Adult Social Care and Health

**Status (public or exempt)**

Public

**Wards affected**

All

**Enclosures**

None

**Reason for exemption from call-in (if appropriate)**

Not applicable

**Contact for further information:** Temmy Fasegha – Joint Commissioner Mental Health and Learning Disabilities (020 8359 2841)

Serial No. 1543
1. RELEVANT PREVIOUS DECISIONS

1.1 Cabinet Resources Committee, 13 January 2011, decision item 8: (1) approved a pooled fund for an integrated community learning service in Barnet be established, which will be led by the Council, under Section 75 of the NHS Act 2006. (2) the Cabinet Member for Adults be authorised on behalf of the Council to enter into a two-year Section 75 pooled funding agreement between the London Borough of Barnet (LBB) and NHS Barnet (NHSB), subject to the legal and financial terms of the agreement being approved by the Assistant Director – Legal and the Chief Finance Officer, respectively.

1.2 Health and Wellbeing Board, 22 September 2011, item 10- The Board noted and approved in principle the Section 75 Agreement for an integrated Learning Disability service.

1.3 Cabinet Resource Committee 27 September 2011, decision item 14: (1) authorised the Council as the Lead Commissioner for learning disability services across health and social care to enter into contract with NHS providers, Central London Community Healthcare NHS Trust and Barnet, Enfield and Haringey NHS Mental Health Trust, for the provision of specialist learning disability health services commencing 1 November 2011, for a two year term with the option for a further one year extension. (2) authorised the waiving of the Contract Procedure Rules to allow the appointment of Central London Community Healthcare NHS Trust (CLCH) and Barnet, Enfield and Haringey NHS Mental Health Trust (BEHMHT), for the provision of specialist Community Learning Disability health services.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

2.1 Government policies and guidance including; Valuing People¹, ‘Our Health, Our Care, Our Say’², Valuing People Now³, ‘A Vision for Adult Social Care: Capable Communities and Active Citizens’⁴ and the recent NHS White Paper⁵, call for greater coordination across health and social care to ensure that the needs of people with learning disabilities and their carers are addressed.

2.2 In exercising their respective functions, the Council and Primary Care Trust are required, under Section 82 of the NHS Act 2006, to co-operate to secure and advance the health and welfare of the local population.

2.3 Barnet’s Joint Strategic Needs Assessment⁶ points to an increase in the number of people with learning disabilities over the coming years as they live longer. Many of the young people moving to adult services also have multiple and complex health and care needs which are better addressed within a multi-disciplinary framework.

2.4 The integrated service supports the Council’s Corporate Plan priorities of Better Services with Less Money⁷, through joining up health and social care to provide

¹ Valuing People- DH 2001
² Our Health, Our Care, Our Say - DH 2006
³ Valuing People Now - DH 2009
⁴ Vision for Adult Social Care: Capable Communities and Active Citizens - DH 2010
⁵ Equity and excellence: Liberating the NHS - DH 2010
⁶ Barnet Joint Strategic Needs Assessment - 2011
⁷ Better Services with Less Money - Council Corporate Plan
more effective interventions as well as well as ‘Sharing Opportunities, Sharing Responsibilities’, by enabling more people to live more independently, to access mainstream opportunities and services.

3. RISK MANAGEMENT ISSUES

3.1 As a result of the Council and Barnet PCT entering into a Section 75 agreement, commissioning of the health component of the integrated learning disability service will be led by the Council. The Head of Service for Learning Disability, a joint funded position will be responsible for the pooled budget and operational management of the integrated health and social care learning disability service.

3.2 The Head of Service for Learning Disability will report to the Deputy Director of Adult Social Care and Health and be accountable to the Learning Disability Partnership Management Group (LDPMG) which includes Council, PCT, and NHS provider organisations representation. The LDPMG will lead, drive and co-ordinate activity to ensure effective development of the integrated community learning disability service; monitoring performance and managing change; ensuring that the integrated service achieves the Partnership objectives. The LDPMG is chaired by the Deputy Director for Adult Social Care and Health and is accountable to the Health and Wellbeing Board through the submission of an Annual Report setting out progress on delivering the objectives of the partnership agreement.

3.3 The Section 75 Agreement sets out mechanisms for both Partners to review and/or vary the provisions of the Agreement as prescribed therein. Provision in the Service Contract and S75 Agreement will also ensure that they can be transferred to successor bodies which take on functions from either or both organisations.

4. EQUALITIES AND DIVERSITY ISSUES

4.1 There are no proposals to change the current health and social care eligibility criteria through the establishment of an integrated service. A detailed equality impact assessment (EQIA) has been undertaken to ensure involvement of people with learning disabilities, their carers, staff and other stakeholders in the integrated service development as well as provide assurances that there are no negative consequences resulting from developing the integrated service. The EQIA provided assurance that the impact of the change will be positive with better access to health and social care.

5. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

5.1 The two year Section 75 Agreement between the Council and PCT confers on the Council the lead commissioning responsibility for the provision of specialist Learning Disability NHS services excluding inpatient care and continuing care services, and sets out the overall pooled fund including the contributions of both partners over the term of the Agreement and conditions for the management, mitigation and reporting of risks to the budget. The Pooled Budget is managed by the Head of Service for Learning Disability and is in respect to salary and non-
salary costs in relation to the Council’s learning disability social work, review and
transition teams as well as the learning disability health teams provided by CLCH
and BEHMHT. The Pooled Budget sets out charges in relation to the Council’s
corporate services including IT, premises, etc (refer to table below). Finance
officers have undertaken assurance to ensure that there is sufficient funds in
pursuant of the Section 75 agreement for the commissioning of the integrated
learning disability service and the contracts.

5.2  It is intended that from 1 February 2012, the Council will take on lead responsibility
for commissioning the integrated learning disability service through the existing
Providers, CLCH and BEHMHT. The annual contract value of the contracts with
CLCH and BEHMHT are £1.158m and £0.557m respectively. The annual
contribution of both parties will be reviewed in line with national pay and inflationary
settlements.

<table>
<thead>
<tr>
<th></th>
<th>2011/12 Amount (Pro-rata)</th>
<th>2012/13</th>
<th>2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCT S75 Pooled Budget Contribution</td>
<td>£529,196.32</td>
<td>£1,761,857.70</td>
<td>£1,761,857.70</td>
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<tr>
<td>LBB S75 Pooled Budget Contribution</td>
<td>£321,466.74</td>
<td>£1,218,711.00</td>
<td>£1,218,711.00</td>
</tr>
<tr>
<td><strong>GRAND TOTAL S75 POOLED BUDGET- LD</strong></td>
<td><strong>£850,663.06</strong></td>
<td><strong>£2,980,568.70</strong></td>
<td><strong>£2,980,568.70</strong></td>
</tr>
</tbody>
</table>

Procurement

5.3 The PCT currently holds contracts with CLCH and BEHMHT to provide health
functions to support delivery of the community learning disability service through
their respective health teams. The Section 75 Agreement sets out the Council’s and
PCT’s obligations including contracting with CLCH and BEHMHT. The contract
team of the PCT at the North Central London Cluster will be fully briefed on the
Section 75 Agreement and the Service Contracts to ensure that the PCT takes
account of the Agreement in its contracting relationship with the Providers for other
NHS services. In addition, the PCT will consult with the Council through the
LDPMG to ensure effective market management.

5.4 To ensure effective accountability in the integrated service and simplify the contract
management arrangements, the Council will enter in to contract with CLCH, who
will be the main Provider. CLCH will enter into a subcontract with BEHMHT for the
provision of Psychiatry and Psychology services. The Contract will be for a two year
term with possibility to extend by a further year.

5.5 Under the Council’s Contract Procurement Rules (CPR), contracts of these values
will require a tendering exercise to be carried out, or other approved route utilised,
and the contracts are also subject to EU legislation. Therefore, with regard to the
CPR, to appoint CLCH and BEHMHT direct without a tendering exercise (or
utilising other approved route) a waiver of the CPR has been granted by the
Cabinet Resource Committee on 27 September 2011.
5.6 The contract with CLCH sets out the obligations, functions, obligations and services of respective parties including conditions for payments, transfers, contract variation, performance and liabilities in respect of the delivery of the integrated learning disability service.

Performance & Value for Money

5.7 A performance and outcome framework has been developed for the integrated service including shared and specific health and social care information requirements. This will enable the partnership to gain a detailed understanding of the service performance including valuable information as to customer profiles and needs. The LDPMG will be responsible for agreeing, monitoring and reviewing specific performance and efficiency targets for the integrated service which will benefit the Council and PCT. In addition, the integrated service model will improve service quality by ensuring a ‘joined up’ multidisciplinary approach to safeguarding and protecting vulnerable people using the service.

5.8 The integrated service will deliver better value for money by reducing duplication through the development of multi-disciplinary assessment, care coordination and care planning processes, resulting in more holistic support and better outcomes for Service Users and their carers. It is also intended that the Head of Service for Learning Disability will undertake a review of the workforce of the integrated service in order to develop a plan to improve service efficiency and productivity.

Staffing

5.9 It is intended to restructure and develop multi-disciplinary teams that are more suitable for the integrated service within the first 12 months of operation. However, it is envisaged that, as far as possible, staff will continue to be employed by their, respective, organisations; i.e. social care staff will remain employed by the Council; health staff will remain employed by CLCH and BEHMHT respectively. Therefore, so far as the service contracts are concerned, on the basis that the organisations which, currently provide the services continue to do so, the Transfer of Undertakings (Protection of Employment) Regulations 2006, will not apply.

5.10 The Council will ensure implementation of the integrated service provision and operational management of their staff by the Head of Service for Learning Disability. Honorary contracts will be put in place to enable council staff to manage NHS employees. The Council, CLCH and BEHMHT will ensure that staff who come under the agreement and their Trade Union representatives are fully briefed and consulted as appropriate.

5.11 The proposals include an integrated management structure for the new service including a Head of Service and team managers of the adult multi-disciplinary teams. The Service Contract sets out the responsibilities of the Head of Service in respect to the operational management of the service and staff. It also set out CLCH’s obligations regarding staff recruitment, training, professional and/or clinical supervision, performance reviews etc as appropriate.
5.12 The council’s information systems will be used to record, collate and report client data and service performance. The Service Contracts set out terms and conditions to ensure that health staff comply with the Council’s policies and guidelines in respect to data management, information governance and IT systems environment. All staff in the integrated service will be issued with a tablet to ensure flexible mobile working in order to maximise service efficiency.

Property

5.13 From 1 August 2011, North London Business Park has become the office base for the integrated service. Client facing activities of the integrated service are based in the Vale Drive Health Centre. The Council and PCT have agreed relevant charges for accommodation, IT and other corporate services provided as part of the S75 Agreement and these are reflected in the Service Contracts as appropriate.

6. LEGAL ISSUES

6.1 Under Section 75 of the NHS Act 2006, health and social care organisations can make contributions to a common fund, to be spent on agreed projects or delivery of specific services or delegated functions. These arrangements are often referred to as ‘section 75 agreements’ or ‘health act flexibilities’. The Service Contract with CLCH and subcontracting arrangements with BEHMHT enables the implementation of the integrated community learning disability service as agreed between the Council and PCT pursuant to the section 75 Agreement.

6.2 With respect to the Service Contract, the rules of the public procurement regime for works, services and supplies have been addressed in the report to Cabinet Resource Committee on 27 September 2011. In brief, the principles underlying the regime (non discrimination on grounds of nationality, equal treatment, and transparency) apply to all contracts let by public bodies. This means that the contracting authority is expected to ask itself whether there is a market for these services in other member states and if so what form of appropriate notification and advertisement should apply before an award of contract. The rationale for appointing CLCH and BEHMHT direct without a tendering exercise has been set out in the report to Cabinet Resource Committee on 27 September 2011.

7. CONSTITUTIONAL POWERS

7.1 Council Constitution, Part 3, Responsibility for Functions - Cabinet Members have powers to discharge the Executive functions that relate to their portfolio, whether or not they are also delegated to officers except for matters specifically reserved to Council, Cabinet or cabinet committees.
8. BACKGROUND INFORMATION

Integrated Learning Disability Service

8.1 Following a report to the Cabinet on 13 January 2011, authorisation was given for the Council to enter into a Section 75 Partnership Agreement with the Barnet PCT for the establishment of a pooled fund for an integrated community learning service in Barnet, which will be led and hosted by the Council. The report provided an in depth rationale for an integrated service. Principally, this included the need for a robust and effective health and social care community response to meet the expected increase in the number of people with complex and profound learning disabilities over the coming years.

8.2 The Learning Disability Service is composed of health and social work staff teams. Social work staff in are employees of LBB. The health staff are employed by CLCH (consisting of Community Nurses, Physiotherapists and Speech and Language Therapists) and BEHMHT (consisting of medical staff including Psychologists and Psychiatrists).

8.3 The current service is made up of six health and social work teams based on professional groups. Staff in the community learning disability health and social work teams have been working together to create a good and responsive service but they use different systems and there are duplication and challenges working across organisational boundaries.

8.4 It is intended to set up an integrated management structure for the new service within the first year of formally agreeing the Section 75 Agreements and Service Contracts from 1 February 2012. The Section 75 Agreement and Service Contracts set out the key milestones for the implementation of the integrated service model. The Head of Service has been appointed; the Council and PCT have agreed funding for a project manager to work with the Head of Service for Learning Disability to develop robust project plans for all aspects of change management, service development and delivery.

Benefit Realisation

8.5 The Partners have agreed a set of outcomes to measure the benefits of the partnership, they include:

- Successful recruitment of the Head of Service including set up of the integrated management structure for the service
- Service users and their carers report improvement in their experience in their use of services
- Increase in the proportion of service users who have a health action plan and have an annual health check
- Increase in the proportion of service users making use of personal/individual budget to purchase their care and support
- Greater proportion of people in paid employment
- Reduction in the proportion of people in residential care and out of area placements
- An integrated clinical and practice governance framework for the service developed and agreed
8.6 In recognition of the need to develop operational and management systems for integrated working, the Partnership have also agreed a set of milestones detailed in the LDPMG terms of reference. Further indicators to assess the benefits of the agreement are to be agreed within 12 months of the commencement date.

8.7 The LDPMG which had its first meeting on 6 December 2011 will be responsible for monitoring the progress of the development and implementation of the integrated service and realisation of the benefits of the Partnership Agreement as well as reporting on these to the Health and Wellbeing Board.

9. LIST OF BACKGROUND PAPERS

9.1 Section 75 Agreement for Integrated Learning Disability Services

These documents are available on request from Temmy Fasegha (020 8359 2841; temmy.fasegha@barnet.gov.uk)

10. DECISION OF THE CABINET MEMBER(S)

I authorise the following action:

10.1 That the Council enters into a two-year Section 75 pooled funding agreement with NHS Barnet

10.2 That the decision of the Cabinet Resources Committee dated 27 September 2011 be varied to authorise the council to enter into a contract with Central London Community Healthcare NHS Trust for the provision of specialist learning disability health services commencing 1 February 2012, for a two year term with the option to extend for a further period of up to six months or for a further period of up to one year.

Signed Cllr Sachin Rajput
Cabinet Member for Adults
Date 24 January 2012