Report No.
CEO1210

London Borough of Bromley

PART 1 - PUBLIC

Decision Maker:	**Executive**		
Date:	**28th November 2012**		
Decision Type:	Non-Urgent	Executive	Key
Title:	**PUBLIC HEALTH TRANSFER OF CONTRACTS**		
Contact Officer:	Richard Hills, Strategy Manager - Commissioning Tel: 020 8313 4198 E-mail: richard.hills@bromley.gov.uk		
Chief Officer:	Nada Lemic, Director of Public Health		
Ward:	All Wards		

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1. Reason for report

Public Health will formally join The London Borough of Bromley on 1st April 2013. There are a number of administrative tasks involved in ensuring a smooth transition and to make sure that any risks to services caused by the handover are being properly managed.

This report sets out how the responsibility for the existing contracts, which are commissioned by Public Health, will be transferred under the Transfer Scheme.

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2. RECOMMENDATION(S)

That Members note the approach being proposed nationally for the transfer of assets and liabilities from the PCT to LBB.

That Members confirm their agreement with the approach set out for managing these contracts in 2013/14 and grant officers approval to proceed.

Corporate Policy

1. Policy Status: New policy.

2. BBB Priority: Excellent Council.

Financial

1. Cost of proposal: No cost N.B.The Department of Health have provided PCT/LAs with a transition grant to cover the costs of resourcing the administration involved in the transfer.

2. Ongoing costs: Recurring cost. Contract management support for Public Health will be part of Business as Usual and will be covered through a general support recharge to Public Health.

3. Budget head/performance centre: Public Health

4. Total current budget for this head: £11 million subject to confirmation of final allocation

5. Source of funding: Existing Public Health Budget

Staff

1. Number of staff (current and additional): 23FTE in the department (subject to change as some staff are moved to Public Health England as part of the wider transfer)

2. If from existing staff resources, number of staff hours: Work undertaken by 2 officers plus support from the legal division

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Legal

1. Legal Requirement: <please select>

2. Call-in: <please select>

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): No negative impact on services, this is simply administrative work to transfer the contracts. No immediate change in service provision

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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.

2. Summary of Ward Councillors comments: none

3. COMMENTARY

PART ONE: Transfer of Contracts

National Statutory Legislation

3.1 The Health and Social Care Act 2012 sets out the future structure for health and social care provision in England. A key part of the legislation stipulated the transfer of responsibility for the provision of Public Health (PH) from Primary Care Trusts (PCT) to Local Authorities (LA). All the following guidance and publications on best practice published by the Department of Health and other health related bodies follow on from this Act.

Transfer Scheme

3.2 This is the legal mechanism that will be used to transfer the assets and liabilities for PH across to LAs. A Transfer Scheme is an instrument in writing made by the Secretary of State under sections 300 to 302 of the 2012 Act. It can deal with the transfers of staff, property and liabilities between those entities as specified in Schedules 22 and 23 to the 2012 Act but unlike Transfer Orders does not need to be laid before Parliament.

3.3 Contracts will be included under these Transfer Schemes as an asset, which must be agreed and authorised by both the 'Senders' (PCT) and the 'Receivers' (LA). The Department of Health will assure the contracts of the transfer scheme and sign the agreement confirming the legal right to transfer.

3.4 Nationally, this means the transfer of around 75,000 contracts or agreements. Locally, it means the transfer of around 60 contracts or agreements with providers, including local General Practitioners and Pharmacies.

3.5 As the holders of these assets, the Department of Health expects PCTs to lead on the work required. PCTs are expected to lead the three phases of work required to assure a smooth transfer of healthcare service contracts:

3.6 **Stocktake** – identify all the assets and liabilities held by existing contracting authorities, profile them, and perform a risk assessment on each one. The risk assessment will identify areas of improvement required before contracts are transferred to new authorities. The output of this work should be a fully populated contracts register which is up to date and includes contract values.

3.7 **Stabilise** – address identified risks with targeted actions to safeguard transition. Notify providers of the change prior to the novation of the contracts. Draft the transfer scheme instructions which include the conditions associated with any transfer of risk.

3.8 The vast majority of the Public Health contracts have been set up on an annual basis and so terminate on 31st March 2013, the day that the legal transfer is due to take place. Therefore, for practical reasons and to ensure service continuity as well as 'stabilise' services, PCTs will be seeking a one year extension to all existing contracts as agreed with the PH team.

3.9 These blanket extensions are being referred to as a one-year default duration and will allow Local Authorities the time to review the contracts in a considered fashion through their usual scrutiny processes during 2013/14. This practical step allows LAs to take control of the contracts and the funding associated while granting them the time to consider, review and re-commission PH services within the procurement rules and financial regulations already established.

3.10 **Shift** – operationally and formally transfer contracts and contracting responsibilities to the new contracting bodies under the transfer scheme. It will be the responsibility of current contracting authorities to prepare the handover packs of paper and electronic documentation and archives for the new contracting authorities and it will be the responsibility of new contracting authorities to secure the management arrangements to enable them to receive the handover packs and assume responsibilities for contract management.

3.11 Once authorisation has been given by both sides then the legal title transfers of assets and liabilities can take place.

Timescales

3.12 Sender organisations (PCT) will arrange a board meeting to authorise the transfer of assets and liabilities under relevant legal documents. Following this the Receiver organisation (LBB) will confirm their understanding of the transfer of assets and liabilities and sign off their agreement that the transfer can take place. This is likely to happen in early March and so a report with be prepared for the February Executive either with the full details of the transfer for Executive to approve or asking for the Executive's approval to delegate to the Chief Executive or the Portfolio holder to sign off and update the PDS Chairman and the Leader accordingly. Both sender and receiver authorisation must be completed before 25th March 2013.

3.13 The transfer schemes will then be signed by a senior civil servant during the week commencing 25th March 2013. The legal transfer will take place on 31st March 2013 but physical delivery and payment of any funds will occur on 28 March 2013 (with funds held in escrow and released to Receivers on 2 April 2013). PCTs will then be formally abolished on 1 April 2013.

3.14 These are the timescales as we have them at the current time but dates may alter slightly depending on DoH instruction.

Supporting the PCT

3.15 The Department of Health places the responsibility to get the contracts ready and added to the Transfer Scheme firmly on the PCT. But Local Authorities recognise that the staff associated with PCTs have undergone a series of fundamental reforms since the publication of the Health and Social Care Act 2012 and are already relocated across a number of different organisations and newly created agencies such as the Commissioning Support Services and Clinical Commissioning Groups. This complicates the practicalities or coordinating this work on the ground and for the Director of Public Health to know who exactly at the PCT will be responsible for which part of the process. Where possible officers at LBB have been supporting the senior public health officers in their liaisons with the PCT using the transition funding grant to provide an extra resource to try and make sure that the transfer process remains on target in Bromley and that the correct allocation and contract agreements are in place come 1st April 2013.

PART TWO: Contract Management post transfer

3.16 Public Health run a number of contracts with providers who deliver a wide range of preventative services covering sexual health, smoking cessation, weight management, and vascular disease. These contracts total almost £8m. A complete contracts register has been produced and is attached to this report as an appendix.

3.17 The Public Health Department will take on full commissioning responsibilities; they will be the budget holders and lead commissioners for all of these contracts for the services currently provided by 3rd party providers.

3.18 However, the way these contracts will be procured and managed differs slightly depending on the contract type. The Public Health Department has therefore been reviewing these contracts and with the support from the ECS Commissioning Division, proposes to split the contracts into five types in order to provide robust contract management post transfer.

3.19 Whichever contracting method is followed, in order to mitigate the risk to services immediately following transfer it should be clearly stated that Members will have the same opportunity to review and scrutinise these contracts as they would any other corporate contracts to make sure that they align with Building a Better Bromley priorities.

Contract type 'A'

3.20 These are mainly non-clinical contracts with providers such as Slimming World, Age UK and Bromley MyTime. There are 17 of these contracts totalling £600k and will all come across to LBB with a termination date of 31st March 2014. These contracts are not part of any wider block contract and so once transferred the PH Department will follow corporate procurement procedures for proceeding, awarding, varying or extending any of these contracts post 31st March 2013. Procurement support can be provided via the ECS Commissioning Division.

3.21 The transfer scheme acts as the novation of the contracts across to us and as contracts are renewed and retendered they can be moved across onto LBB's terms and conditions.

Contract type 'B'

3.22 These are clinical contracts that either form part of or are associated with the wider health and acute block contracts. There are 12 contracts with the Genitourinary Medicine (GUM) i.e. sexual health clinics. Sexual health as a whole make up the highest area of Public Health spend. Also there are 4 contracts that form a small part of the Clinical Commissioning Group's (CCG) much broader community block contract with Bromley Healthcare worth around £35 million.

3.23 Exact contract prices for these acute and block contracts have been hard to extract from the block contract and the fact that the acute contracts are demand led. The final position will not be clarified before the draft transfer scheme is completed but based on this year's values they currently stand at £4.1m.

3.24 Public Health will be the commissioner and budget holder on all public health spend against these block contracts but due to the clinical nature of the contracts and due to the fact that they form part of a much wider complex set of health services, it is proposed that Public Health continues to procure these services through the CCG for 2013/14.

3.25 This arrangement can be formalised through the Memorandum of Understanding (MOU) that all Directors of Public Health are currently drawing up with their respective CCGs. The Memorandum sets out what advice, guidance and support that PH will continue to provide to the CCG and vice versa. So much of the service provision is interlinked and PH will remain reliant on the CCG for performance data on health outcomes that will allow them to successfully contract monitor how providers are performing.

3.26 During 2013/14 these contracts will be reviewed by the Director of Public Health and her team to look at whether these contracts should be separated from the wider community health block contract over time and whether the sexual health service contracts should be commissioned through joint commissioning arrangements with other Local Authorities on a regional basis to

maximise efficient use of resources. This work will be reported to Members along with recommendations through Executive and Resources PDS.

Contract type 'C'

3.27 As part of the ongoing process of review there are a number of contracts that will not be transferred and instead will be decommissioned. These contracts were either not fit for purpose or financed through one-off PCT under spend in the past and that funding will not be available or passed on to LBB for the next financial year as part of the transfer. Because of this the Director of Public Health has decided to decommission these schemes. There are 7 of these contracts totalling £530k.

Contract type 'D'

3.28 There are around 160 very small service level agreements between PH and general practices and pharmacies. These are referred to as Local Enhanced Service (LES) and were set up by the Department of Health for local Primary Care Trusts to use to promote health schemes within primary care. They are incentive schemes that pay GP surgeries and pharmacists a small sum to do more in their primary care settings to avoid higher cost referrals into hospitals for simple treatments. Bromley, just as in all London boroughs, has a number of these LESs in place with our 49 GP surgeries and 59 local pharmacies. Public Health is responsible for commissioning 8 of these LESs, specifically:

- £50k on smoking cessation services
- £260k on vascular services
- £230k on sexual health services

3.29 Taken across the 49 GP surgeries and 59 pharmacies this comes out as an average of around £5k per year per provider.

3.30 These agreements like all the other contracts have to be extended and formalised by the PCT before transfer. As the LES scheme is part of the General Medical Services (GMS) contract, only NHS Commissioning Board can use this arrangement for commissioning services from these primary care contractors. A new contracting mechanism will need to be used, i.e. either a LA contract or a NHS contract used by the CCG on behalf of LBB through Section 76 arrangement. Regardless, the commissioning responsibilities and the decision to commit funds will be transferred to LBB.

Contract type 'E'

3.31 These are the contracts associated with the DAT and Substance misuse service. There are 10 contracts totalling around £2m. These contracts have been managed for a number of years by Claire Lynn the Strategic Commissioner for Mental Health and Substance Misuse within the ECS Commissioning Division. This will continue to be the case post transfer. The only change will be that rather than the funding each year coming through from the PCT the funding is now permanently transferred to Public Health and the Director of Public health will ask Claire Lynn to continue to be the lead commissioner on these services.

4. POLICY IMPLICATIONS

This work is in relation to the wider reforms set out in the Health and Social Care Act 2012. Procedures and processes for transfer of assets and liabilities are being led by national guidance. The end result will be that statutory responsibility and accountability for PH passes to LBB.

5. FINANCIAL IMPLICATIONS

The amounts set out in this report are indicative at this early stage of the process. The amounts used are estimates and will not affect the final allocation.

The Deputy Director of Finance will be seconding an accountant from December to work with Public Health on the transition programme to ensure that from April 2013 the Public Health budgets are accounted for in that same format as other council budgets, that officers have a clear understanding of the breakdown of these budgets and funding allocations, as well as reconciling any assets and liabilities that have accrued to Public Health as at the 31 March 2013.

As a number of these contracts are demand lead, officers will need to ensure that any future costs pressures can be contained through tight contract negotiations, change in service delivery models or identifying savings options, so that these budgets can be contain within the overall resources available.

6. LEGAL IMPLICATIONS

The Transfer Scheme is a method by which all Councils countrywide will be receiving assets and liabilities from Public Health. Whilst there are risks and liabilities associated with transferring contracts to the Council; (the most notable being the liability of any demand led contract) this is a statutory responsibility from April 2013 and the relevant departments are working closely to mitigate any issues before the due transfer date in April 2013. The Council will keep a watchful eye on any guidance on managing risks and liabilities which may be handed down from the Department of Health.

7. PERSONNEL IMPLICATIONS

None as this report is only focused on the transfer of the contracts.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date]