

PART ONE - PUBLIC

Decision Maker: Executive
Care Services PDS Committee (Information Item)

Date: 15th January 2014
22nd January 2014

Decision Type: Non-Urgent Executive Key

Title: LEARNING DISABILITY SECTION 75 AGREEMENT

Contact Officer: Lorna Blackwood, Assistant Director Commissioning
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Chief Officer: Executive Director of Education, Care & Health Services

Ward: N/A

1. Reason for report

- 1.1 This report sets out the details of a proposed agreement between the Council and Oxleas NHS Foundation Trust (Oxleas) for the provision of adult learning disability assessment and care management services. Under the agreement Oxleas NHS Foundation Trust would be the lead provider for the Council's adult learning disability functions through an agreement under Section 75 of the National Health Service Act 2006. The Council and Oxleas NHS Foundation Trust will establish a pooled budget to deliver the service.
- 1.2 The purpose of the report is to seek Executive approval to the proposed partnership arrangements subject to final agreement of the terms between the Council and Oxleas.
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2. **RECOMMENDATIONS**

- 2.1 **The Executive is asked to note and comment on the responses received from staff and their representatives to date with regard to entering into a Section 75 agreement with Oxleas NHS Foundation Trust and to comment on the proposals.**
- 2.2 **The Executive is asked to delegate to the Chief Executive the power to approve the final Section 75 agreement between LB Bromley and Oxleas NHS Foundation Trust for the**

provision of learning disability assessment and care management services and the staffing arrangements insofar as Bromley Council is concerned. The Chief Executive's decision will be subject to the outcome of consultation with staff and their representatives and will also take into account comments from Care Services PDS Committee.

- 2.3 Care Services PDS are asked to note and comment on the contents of the report, all comments will be feedback to the Chief Executive as part of the consultation process.**

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Supporting Independence:
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Financial

1. Cost of proposal: Estimated Cost: £887k
 2. Ongoing costs: Recurring Cost:
 3. Budget head/performance centre: 819 Services for people with Learning Disabilities
 4. Total current budget for this head: £ £2,519,970
 5. Source of funding: ECHS revenue budget
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Staff

1. Number of staff (current and additional): 21.43 FTE in the Community Learning Disability Team
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Non statutory requirement : Government Guidance. Under current legislation (National Health Service and Community Care Act 1990 Section 47) the Council's statutory assessment function can only be carried out by a local authority or by an NHS organisation on behalf of the local authority through an agreement under Section 75 of the National Health Service (NHS) Act 2006.
 2. Call-in: Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): There will be no impact on service users from the proposals contained in the report.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1 Background

- 3.1.1 This report covers the assessment and care management function for adults with learning disabilities which are currently part of the Care Services Division in Education Care and Health Services. It does not include services for older people or children or the delivery of services provided to individuals following assessment, such as residential care, domiciliary care or supported living services or to the commissioning of these services.
- 3.1.2 In 2007 the Council entered into an agreement with Oxleas NHS Foundation Trust (Oxleas) in respect of the management arrangements for a joint Community Learning Disability Team (CLDT), consisting of social care staff employed by the Council and clinical nursing staff employed by Oxleas. Under this arrangement, the Council retained responsibility for the delivery of social care functions, while Oxleas remained responsible for clinical and nursing functions. The team were co-located originally at Bassetts House in Farnborough and since 2013 at Yeoman House in Penge.
- 3.1.3 The 2007 agreement stated that the Council and Oxleas would explore options for the future management of both aspects of the service to the benefit of both, taking into account the need for clinical governance and accountability to elected Members.
- 3.1.4 The CLDT currently consists of 21.4 FTE Council staff and 41 Oxleas staff, managed by a Joint Team Manager who is currently a Council employee funded by the Council.
- 3.1.5 Under current legislation (National Health Service and Community Care Act 1990 Section 47) the Council's statutory assessment function can only be carried out by a local authority or by an NHS organisation on behalf of the local authority through an agreement under Section 75 of the National Health Service (NHS) Act 2006.
- 3.1.6 A statutory duty of partnership on NHS bodies and local authorities was established under the Health Act 1999 and later the Health and Social Care (Community Health and Standards) Act 2003. The NHS Act 2006 more recently reinforced this legislation, further enabling the Health Act Flexibilities (HAFs) set out in the 1999 Act. NHS bodies and local authorities can now more easily delegate functions to one another to meet partnership objectives and create joint funding arrangements.
- 3.1.7 The framework provided by the National Health Service Act 2006 means money can be pooled between health bodies and health-related local authority services, functions can be delegated and resources and management structures can be integrated. The arrangements cover integrated provision and pooled budgets. Health bodies, such NHS foundation trusts (of which Oxleas is one) can participate in providing any health related local authority function.
- 3.1.8 The NHS Act 2006 makes provision for the functions (statutory powers or duties) of one partner to be delivered day-to-day by another partner, subject to agreed terms of delegation. This means the transfer of responsibility for undertaking the functions, activities or decisions from one partner to another to more easily achieve the partnership objectives. Although functions can be delegated, partners remain responsible and accountable for ensuring they meet their own duties under the legislation, and cannot pass on responsibility for services outside the agreed activity.
- 3.1.9 Governance, financial management and risk arrangements are clearly defined and set out in a partnership agreement, particularly the extent of delegation agreed. The partners can combine resources and staff to help integrate service provision at all levels. One partner acts

as the host to undertake the other's functions, including management of staff on behalf of both parties (also described as integrated management). Options also include combined management structures where the same person is responsible for services for both bodies, to help ensure cooperation and prevent duplication.

3.1.10 The legislation also allows for pooled budgets – i.e. one fund, shared by both partners, combining all staff across a service area. Staff are paid from the pooled fund which enables the lead partner to use all staff to undertake the duties of either partner when required, such as to provide assessments or arrange care.

3.2 Proposal for learning disability services

3.2.1 In 2004 the Council entered into an arrangement under Section 31 of the Health Act 1999 (now Section 75 of the NHS Act 2006) for mental health services. Under this agreement, Oxleas carry out the Council's mental health functions in respect of specialist assessment, treatment and care. The aims and objectives of this agreement are to provide:

- a seamless service that will simplify access to services for service users and carers and further enhance delivery of safe, sound and supportive services;
- a single line management structure with clear lines of service and professional accountability within a single integrated service framework;
- an integrated and coordinated approach to the assessment of individual needs based on a combined application of the policies of both parties;
- a coordinated approach to the planning and development of services. Provide an integrated approach to clinical, case and service audit;
- integrated programmes of service improvement based on joint standards and service monitoring, and
- ensure that resources are deployed in the most efficient way to avoid overlap and duplication.

3.2.2 It is proposed the Council uses the powers provided by the NHS Act 2006 to delegate its assessment and care management functions for adults with learning disabilities to Oxleas to create a properly integrated service in accordance with the aims and objectives set out in 3.2.1 above, in effect providing benefits to the service user and to the Council in terms of more efficient use of resources. The existing agreement between the Council and Oxleas would be amended to include learning disability services. The agreement covers:

Functions: The agreement clarifies that Oxleas, in becoming the lead provider of adult learning disability services, will fulfil most of the Council's and all of its own functions as they pertain to adult learning disability services. Excluded functions are also detailed.

Finance: The agreement establishes a pooled budget for each year that the agreement operates. This means that the money the Council and Oxleas currently put into adult learning disability services would be put into a single pot. This includes the staffing budget and some running expenses but does not include the existing Council budget for commissioning services (i.e. the placements budget) which would still be controlled by the Council.

Staffing: To allow Oxleas to carry out the functions and obligations for adult learning disability services, it is proposed that the Council's staff would remain employed by the Council but seconded to Oxleas.

Governance and Reporting Arrangements: Responsibility for decision making about the partnership arrangements rests with the Authorised officers designated under the Agreement for the Council, the Executive Director Education Care and Health and for the Chief Executive of Oxleas. The Agreement makes provision for an annual plan (service and financial). There is also a requirement for regular monitoring, both financial and activity, and regular reviews of the effectiveness of the arrangements.

Management: The Director of Oxleas will be responsible not only to the Chief Executive of the Trust but will also be accountable to the Executive Director Education Care and Health.

Termination: The current Agreement for mental health is for 20 years from 2004 but provision is included for early termination if required, with varying lengths of notice dependent on the circumstances.

No fault termination	12 months
Material breach	30 days
Statutory powers (changes)	3 months
Unsuccessful dispute	3 months
Financial	3 months

- either party is no longer able to contribute sufficient funds
- arrangement no longer viable due to other parties proposed contribution
- agreement cannot be reached in setting the budget for the pooled fund

3.3 Management of risk

3.3.1 There are a number of risks associated with partnership arrangements, and steps have been taken in the Agreement to manage these risks:

Meeting statutory obligations: Responsibility for fulfilment of statutory duty is the Council's. There is a risk that in terms of provision of services Oxleas may not fulfil the Council's statutory duties. However, this will be managed by eligibility criteria, the annual service plan and annual financial plan, and by regular reporting. There is also the provision to terminate the agreement if Oxleas breach the terms of the agreement, and any changes to eligibility criteria can be negotiated. The agreement provides rights of indemnity and redress.

Management of resources: For learning disability services the Council will retain responsibility for the agreement of spend on services and for the commissioning of services. One post (which is shortly to become vacant) will be retained by the Council to manage and monitor the budget and to liaise with the ECHS Department's Central Placements Team who will commission the agreed services.

The Council does not get value for money for its contribution: The Agreement sets out a performance management framework, which requires compliance with the Best Value framework and similar NHS responsibilities.

Poor performance by the provider: Evidence of poor performance will be picked up through the monitoring and reporting mechanisms and procedures between the Council and Oxleas. The agreement provides for a Dispute Resolution Procedure. The termination procedure allows for the agreement to be ended with 3 months' notice if the financial and service planning cannot be agreed.

4. POLICY IMPLICATIONS

The proposals in the report contribute to the Council's Building a Better Bromley priority of supporting independence by enabling further integration of health and social care to benefit people with learning disabilities.

5. FINANCIAL IMPLICATIONS

- 5.1 The agreement establishes a pooled budget for each year that the agreement operates. This means that the money the Council and Oxleas currently put into adult learning disability services would be put into a single pot. This includes the staffing budget and some running expenses but does not include the existing Council budget for commissioning services (i.e. the placements budget) which would still be controlled by the Council. The current staffing and running expenses budget is £887k which would be managed by Oxleas as part of the pooled budget. This figure will be subject to due diligence before the agreement is finalised.
- 5.2 The annual financial and service plan will include any efficiencies to be made in the relevant financial year. The agreement would also set out how any underspends would be apportioned between the parties.

6. LEGAL IMPLICATIONS

- 6.1 The section 75 Agreement is designed to further the consolidation and co-ordination of provision of adult learning disability services. Under these arrangements the legal requirement for meeting assessed needs will remain with the Council. The proposed Agreement therefore allows for monitoring and reviewing of arrangements with the opportunity for variation in funding to be agreed and in each partner's rights to terminate the arrangements. Ultimate executive responsibility will remain respectively with the Trust's Board and the Portfolio Holder.
- 6.2 Although it is proposed that Council staff currently engaged on the provision of the services will be seconded to the day-to-day management of the Trust, substantial employment issues such as disciplinary, suspension, management of employee ill health or dismissal action must be agreed and taken by the Council, as the Council will continue to be their employer.

7. PERSONNEL IMPLICATIONS

- 7.1 It is proposed that if the Section 75 Agreement is approved then the 21.43 FTE Council staff in the service will be seconded to Oxleas NHS Foundation Trust with no change to their terms and conditions of employment. The local authority remains the employer of the staff.
- 7.2 Staff and their representatives' perspective on the secondment proposal and management responses, as part of the 30 day consultation process, which commenced on 30th December 2013, will be provided in a further report to the Chief Executive pursuant to recommendation 2.2 above.

- 7.3 Any proposed changes to the service and staffing arrangements post the secondment would be the subject of a separate staff and staff representatives' consultation process pursuant to the Council's Managing Change Procedure. Staff and their representatives and any other stakeholders would be consulted in a timely manner.
- 7.4 One post would be retained by the Council, currently designated as a Social Work Senior Practitioner, as outlined in para 3.3.1 above. The post will be vacant from January 2014. It is proposed that this post would be used to create a new post responsible for overseeing social work practice in the service and managing and monitoring the learning disability placements budget.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	Report DSSH04050 21 st July 2004. S31 Agreement between LBB and Oxleas NHS Trust for the integrated provision of mental health services