

To: Chief Executives PCTs and Councils

August 2008

Gateway Reference: 9906

VALUING PEOPLE NOW: TRANSFER OF THE RESPONSIBILITY FOR THE COMMISSIONING OF SOCIAL CARE FOR ADULTS WITH A LEARNING DISABILITY FROM THE NHS TO LOCAL GOVERNMENT AND TRANSFER OF THE APPROPRIATE FUNDING

As you will be aware, the *Valuing People Now: From Progress to Transformation (2007)* consultation document proposed the transfer of learning disability social care commissioning and funding from Primary Care Trusts (PCTs) to local Government from April 2009, based upon spend in 2007/8. It said that the appropriate amounts identified for transfer would need to be agreed by local authorities and PCTs, based on existing spend in 2007/8. The proposal is part of the wider transformation of adult social care set out in *Putting People First* and will bring clear benefits to people with a learning disability.

Local authorities already have a lead role in delivering the goals set out in *Valuing People Now*. This role will be strengthened when funding and commissioning is fully aligned and we are confident this will result in better services for people with a learning disability that are tailored around their individual needs. The change will also enable PCTs to focus on their primary responsibility of meeting the health needs of individuals with learning disabilities - responsibility for healthcare, including specialist learning disability healthcare services and forensics will remain with PCTs. The transfer relates to commissioning and funding but not of services themselves.

For the final two years of this Spending Review period, 2009/10 and 2010/11, the transfer of specialist social care funding for people with learning disabilities will be made locally from PCTs to local authorities. Our advice is that local discussions should start with the published existing sum that PCTs are spending on Learning Disabilities and negotiate if there is a sound reason to reduce that amount, where both partners agree that the money is being spent on health services which LAs could not commission. We recognise there may be a number of reasons why, following discussions, adjustments will need to be made. These are likely to be particularly in respect of funding that supports the delivery of health services to people with learning disabilities and non-recurring or time limited funding that is currently in place to support

previously determined service change. We know that in many areas these transfer are already being made using arrangements under section 256/7 or section 75 of the National Health Service Act 2006 (former "Health Act flexibilities"). In other areas more work will be needed.

The purpose of this letter is to ask local authorities and PCTs to begin local discussions, if these have not already started, to collect and analyse local data to establish spend on social care for adults with a learning disability, where commissioning and funding responsibility currently lies with PCTs. This is preparatory work to:

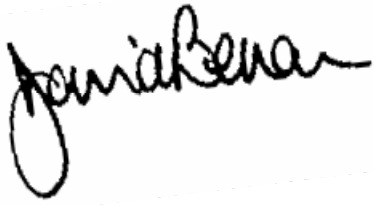
- a) reaching agreement via PCT and LA respective governance arrangements on the amounts to be transferred for 2009/10 and informing the Department by 1 December 2008;
- b) putting arrangements in place (if they do not already exist), so that the transfer is effective from 1 April 2009 and that local transfers of the amount agreed can be made for 2009/10 (and 2010/11).

From April 2011 the intention is that allocations of these social care resources will be made directly from the Department of Health to local authorities. We will consider the best way of achieving the allocation beyond 2011 once PCTs and local authorities have reported the outcome of their local agreements and the results have been analysed at a national level. The Department will consult on the determination of these allocations before its intention to allocate directly to local authorities is implemented.

The guidance at **Annex A** sets out the policy and legal framework for this transfer. We will also be providing further help and support on the DH and CSIP websites. At local level the Valuing People Support Team within CSIP will support the process of reaching agreement and further developing the guidance in the attached annex to include good practice examples where negotiations are progressing well. A Returns Form can be found at **Annex B**.

A handwritten signature in black ink, appearing to read 'D Nicholson', with a long horizontal flourish extending to the right.

DAVID NICHOLSON CBE
NHS Chief Executive

A handwritten signature in black ink, appearing to read "David Behan", is enclosed within a thin, light-colored rectangular border. The signature is written in a cursive, flowing style.

DAVID BEHAN
Director General, Social Care, Local Government & Care Partnerships

Annex A

VALUING PEOPLE NOW: TRANSFER OF THE RESPONSIBILITY FOR THE COMMISSIONING OF SOCIAL CARE FOR ADULTS WITH A LEARNING DISABILITY FROM THE NHS to LOCAL GOVERNMENT AND TRANSFER OF THE APPROPRIATE FUNDING

SUMMARY

1. This Annex sets out the policy and legal framework for the transfer of learning disability social care commissioning and funding from Primary Care Trusts (PCTs) to local Government from April 2009. The expectation is that transfers for the first two years will be made locally between PCTs and local authorities. An 'easy read' version of this Annex is available.
2. This policy was set out in the *Valuing People Now: From Progress to Transformation (2007)* consultation document and the 2008/9 NHS Operating Framework. The outcome of the consultation, which will be published in the autumn, shows a high level of support for the policy.

POLICY RATIONALE

3. The White Paper, *Our health, our care, our say (OHOCOS) (2006)* gives a vision for adult social care. The vision is one of high-quality support, meeting people's aspirations for independence and greater control over their lives, making services flexible and responsive to individual needs.
4. *Valuing People Now: From Progress to Transformation* gives the Government's vision for people with learning disabilities across a range of services based on the four key principles of rights, independence, choice and inclusion. In addition, *Putting People First* sets out the adult social care agenda.
<http://www.dh.gov.uk/en/AdvanceSearchResult/index.htm?searchTerms=Putting+People+First>
5. *Valuing People Now* said that NHS learning disability budgets and associated commissioning responsibility for social care for adults would transfer to local authorities by 2009/10. There is a clear expectation that the transfer will happen by that date. The amounts will be based upon spend in 2007/8 (with an uplift for inflation and any other factors to be agreed locally):

*16.2.3 In order to ensure that the resources for commissioning learning disability services rest with the authority with lead responsibility, PCT learning disability budgets and the associated commissioning responsibility will transfer to local authorities. The transfer will **not** include that for either mainstream/general healthcare nor forensic/offender services. For legal reasons, it is likely that specialist learning disability healthcare commissioning will remain with PCTs and should be commissioned in partnership with the local authority, potentially using the Health Act flexibilities.*

16.2.4 Local authorities and PCTs will be required to agree an appropriate amount for transfer which will then be allocated by the Government, if possible in 2009/10, but based upon spend in 2007/8....

16.2.5 This change will provide greater clarity about resources for specialist social care services where the lead responsibility rests – with local government – and allow the NHS to focus fully on its primary learning disability responsibility, that is equal access to good quality healthcare.

6. The NHS operating framework 2008/9 says "subject to the outcome of consultation, PCTs need to prepare for the transfer of learning disability funding to local authorities, as set out in Valuing People Now". The outcome of the consultation shows a high level of support.

BENEFITS

7. The intended health and social care benefits of the transfer within this policy context¹ are:
 - a. Improved quality of life, economic well-being and enabling people with a learning disability to make a positive contribution – by the local authority, as the lead agency responsible for these issues, having direct access to and control over all social care funding to support this;
 - b. Choice and control and independent living – by local authorities commissioning all social care services. Local authorities have the legal and policy framework to maximise choice and control for people with a learning disability;
 - c. Improved health and emotional well being - by, for example, enabling PCTs to focus more clearly on commissioning high quality inclusive mainstream and specialist health services for adults with a learning disability;
 - d. Efficiency and value for money – by removing duplication of effort and the administrative and bureaucratic obstacles around

¹ Set out in the *Our health, our care, our say* White Paper (2006)

the current annual transfer negotiations that take place locally in most areas.

8. In relation to the commissioning of services for people with learning disabilities², this will mean:
- a. People should be supported to live in their own homes, with tenancies or owning that home if they choose to do so;
 - b. People should receive support as close to home as possible;
 - c. People should have control over the funding, services and supports they receive as set out in Putting People First.
<http://www.dh.gov.uk/en/AdvanceSearchResult/index.htm?searchTerms=putting+people+first>
 - d. That the most appropriate service responses will be individually designed and tailored, rather than simply providing services in group or institutional settings;
 - e. The core of commissioned services should be to support people to live full and active lives, with health interventions promoting positive health to support people accessing life opportunities in their local community;
 - f. People will not be living as in-patients unless undergoing active assessment and treatment;
 - g. For people with very complex needs, health services are commissioned in partnership with local authority commissioned support to address their specific health needs.
 - h. An increase in the number of people with learning disabilities in paid work in response to the report *Improving Work Opportunities for People with a Learning Disability*.

GUIDING PRINCIPLES

9. Three key principles are to apply to this transfer:
- a. Fairness. That the transfer should be seen as fair by local Government, the NHS and service users and their families. In particular this will mean:
 - (i) That resources are not lost in the transfer e.g. resources that are either currently invested or where investment was imminently planned or anticipated (say, within 2008/9) had they remained in the NHS;
 - (ii) That service users and their families are put at the heart of the process so that the transfer of funding and commissioning is transparent and can be readily understood;
 - (iii) That the transfer is anti-discriminatory reflecting equality of citizenship and access for all groups, particularly those with complex needs; and

² set out in *Valuing People Now* and The Mansell Report

- (iv) That the transfer arrangements comply with the principles of the Human Rights Act 1998.
- b. Partnership working. That the transfer should build on partnership working between the NHS and local Government to meet their ongoing responsibilities for the health and well being of local populations. The NHS will retain its responsibility for the healthcare of adults with a learning disability with local authorities responsible for social care. Local agreements should therefore describe how that partnership will be effected through Executive Commissioning Bodies (such as Adult Joint Commissioning Boards) and with particular emphasis on the role of the Learning Disability Partnership Board and the involvement of the PCT in that Board (see guidance on pooled budgets set out in CLG Guidance on partnerships, s31 of NHS Act 1977, now s75 of NHS Act 2006). It is important to involve Partnership Boards at an early stage so that they can be fully engaged.
- c. Local solutions. Whilst the overall policy direction has been set nationally, the intention is to achieve local agreement to the transfer amounts and operational procedures for future commissioning. There will be support available, through the Valuing People Support Team (VPST) within the Care Services Improvement Partnership (CSIP), the new Deputy Directors of Social Care and Care Partnership within the Government Offices for the Regions to support local partners to reach agreement if needed. SHAs and ADASS will also have a key role to play.

SCOPE OF THE TRANSFER

- 10. Unless otherwise stated, this transfer and the policy context described here, relates to commissioning and funding of social care for adults with a learning disability. The OHOSOC White Paper defined 'social care' as the term used "to describe the wide range of services designed to support people to maintain their independence, enable them to play a fuller part in society, protect them in vulnerable situations and manage complex relationships".³ Both LAs and PCTs will need to consider the position of those young people who will move to adult services during the transitional period to ensure that their social care costs are factored into transfer amounts.
- 11. The transfer will mean that commissioning and funding responsibility for all healthcare elements will remain with the NHS (subject to other arrangements, see below), whilst those elements of specialist adult learning disability budgets that are concerned with social care will

³ Social care includes all support in relation to personal care, supported living, day activities, respite breaks and residential/nursing care placements.

transfer to the local authority. The transfer arrangements do not alter existing, or proposed arrangements in respect of health care services under section 256/7 or section 75 of the National Health Service Act 2006 (former “Health Act flexibilities”).

12. Subject to the above, the NHS will retain commissioning and funding responsibility for the following:
 - (i) Specialist learning disability health services. The scope of these was set out in the recent Commissioning Specialist Adult Learning Disability Health Service: Good Practice Guidance http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079987 . Each PCT is expected to be funding and commissioning the range of services outlined in that guidance. The funding associated with those services will remain with the PCT. These services will be commissioned by the PCT in partnership with the local authority, possibly through a joint commissioning arrangement or alternatively using arrangements under section 256/7 or section 75 of the National Health Service Act 2006 (Former “Health Act flexibilities”) such as pooled budgets or lead commissioning. Within these arrangements PCTs will retain overall accountability. Specialist learning disability health services include health care costs being funded by PCTs for people who are also being assessed for Independent Living Fund support. A clear separation will be needed in respect of health/social care costs of jointly funded packages for those with complex support needs. Health costs will not be considered in determining a person’s social care package for ILF purposes.
 - (ii) Forensic services. The NHS will retain responsibility for commissioning and funding forensic services. See section in Commissioning Specialist Adult Learning Disability Health Service: Good Practice Guidance http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079987 .
 - (iii) Continuing Care. Adults with learning disabilities continue to have the same rights as other citizens to access NHS funding for continuing care. Such funds and commissioning responsibility will remain with PCTs. (See the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2007) http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/Continuingcare/DH_079276. For joint packages of care, PCTs will need to identify those continuing care elements that will continue to be funded by PCTs. For fully funded continuing care, PCTs will retain full commissioning and funding responsibility. The Framework, which will be reviewed in the autumn, says that ‘the actual services provided as part of the package should be seen

in the wider context of best practice and service development for each client group". Best practice for people with a learning disability is set down in Valuing People, Valuing People Now and other key documents such as the Mansell Report (which focuses on people labelled as 'challenging services'). In any locality the expectation is that the number of people whose long term support needs are such that their specific healthcare needs are dominant will be very small.

- (iv) Mainstream healthcare. The NHS retains responsibility for all aspects of general healthcare not described in the good practice guidance as being specialist learning disability healthcare. This will encompass access to services through primary care and general hospitals. Such services should be funded and commissioned as an inherent part of PCT contracts with mainstream healthcare providers and through primary care contracts.
- 13. Children's services. In a small minority of locations, contracts for the provision of elements of specialist healthcare services to children with a learning disability are integrated with contracts for adult services. These will need to be separated, with the children's contracts being commissioned through appropriate children's commissioning strategies. It may be decided locally that contracts for children and adult specialist healthcare services will be placed with the same provider. Cost of young people moving into adult social care services by April 2009 (and April 2010) will also need to be considered.
- 14. Commissioning. The transfer should include an appropriate allowance to meet the commissioning and planning costs previously incurred by the PCT in relation to non-healthcare learning disability services. This does not include PCT capacity to commission healthcare services for adults with a learning disability, which will remain with the PCT (unless other arrangements are entered into under section 75 of the NHS Act).
- 15. Workforce. Where there are joint appointments in place and/or lead commissioning and employment responsibilities, then the expectation is that a compromise can be reached between LAs and PCTs, This may include a proportion of staff formerly employed in the NHS to commission services, and associated training and other costs, that will be transferred to local authorities. The emphasis of this transfer is on commissioning and funding, not the transfer of the services themselves. There may be TUPE considerations to be taken into account and PCTs and local authorities will want to take legal advice where appropriate, but these should not delay the transfer itself.
- 16. Capital asset values. The majority of the NHS funding for people with learning disabilities was previously used to fund long stay hospital provision. Some of the services developed to replace that provision therefore have capital grants associated with them, where the PCT

holds an interest in the property on behalf of the Secretary of State.⁴ In implementing this transfer, it is important that:

- (i) Any revenue funding that supports the associated capital estate is identified and is also transferred. For campus re-provision this may form part of the transfer from April 2009 or April 2010, in those areas where campus re-provision is still underway;
- (ii) The capital interest in properties is transferred from the NHS to local Government to reflect the changed commissioning responsibilities.

17. NHS campuses. In some localities, the NHS will still be commissioning and providing services in NHS campuses, which elsewhere in the country have been transferred to local authority social care provision. These services need to be re-provided by 2010, as part of the separate campus re-provision programme. Revenue and capital funding is transferred to local authorities at the point that campuses close and campus residents move to social care funded accommodation. This may be by April 2009 or it may not be until April 2010. Any such transfer need to be reflected in variations in the transfer amount.

OTHER FACTORS TO BE CONSIDERED

18. Continuity of care. There are a number of factors that PCTs and local authorities need to consider to ensure continuity of care packages. These include:

- (i) The working assumption that there will be no change in care until an assessment is carried out, normally as part of any review process. For local authorities, the requirement to carry out community care assessments is set out in section 47 of the National Health Service and Community Care Act 1990 and eligibility criteria guidance is set out in Fair Access to Care Services guidance (currently under review by CSCI who will report back to the Department). When people are assessed for social care they will be financially assessed under Fairer Charging. Where people's needs are re-assessed, you may wish to involve independent advocates where appropriate.
- (ii) There may be individual cases where people should have been charged for services. Local authorities will need to look at these on a case-by-case basis and, again, involve independent advocates where appropriate.

⁴ HSG(95)45 Para 4.1 said "In respect of people being discharged from long stay institutions, the NHS is responsible for negotiating arrangements with local authorities, including any appropriate transfer of resources which assist the local authority meeting the community care needs of such people and of their successors who may otherwise have entered the institution".

FINANCIAL ISSUES

19. The transfer is to be based on actual spend in 2007/08 and amended by any other changes locally agreed to reflect necessary investment decisions over the intervening period (e.g. investment around NHS campus closure. See paragraph 17 above).
20. The amount transferred will be decided by local agreement and not by a national formula. It is estimated that in around 80% of local authority areas, there is already a partnership funding agreement in place. This will provide the basis for agreement – taking into account the factors outlined in this Annex. For authorities without such an agreement at present, more detailed work will clearly be needed and should be started immediately. Examples of Partnership Agreements will be included on the DH or CSIP websites.
21. All PCTs already make a submission to the Department of Health on their reported spend on services for people with learning difficulties. This amount covers health and social care. This sum of money, reported for 2007/8, should be the subject of local discussions about what areas of spend are on health services alone and what spend could be described as being on social care related areas.
22. In addition to the reported sum above, PCTs may have included some of their spend on services to learning disabled people in their reported spend on primary care services. This spend should also be considered as part of local discussions on the details of what monies should be transferred. Once additional costs associated with social care - for commissioning, staff training, administration, personnel and other support costs - are considered, PCTs and LAs should come to a view on exactly what sums of money will be transferred to the local authority alongside the responsibility for commissioning future services.
23. For the final two years of this Spending Review period, 2009/10 and 2010/11, the transfer of specialist social care funding for people with learning disabilities will be made locally from PCTs to local authorities. We expect PCTs to transfer the agreed sum, based on spend in 2007/8, with an uplift for inflation for the intervening year(s). We will consider the best way of achieving the allocation of these resources to local authorities beyond 2011 once agreements have been reached and the results analysed at a national level. The Department of Health will consult on the determination of these allocations before its intention to allocate directly to local authorities is implemented.
24. Agreement to the amount to be transferred will need to be signed off via respective LA and PCT governance arrangements by 1 December 2008, subject to any variation during the year to April 2009 and following your usual governance procedures. Aside from these variations, it is not the intention that the spend is re-negotiated at the end of year one but that it is simply rolled forward for April 2010 with

the appropriate uplift for inflation and any other in-year elements that have been identified (such as the closure of campuses).

25. We understand that there are some different arrangements for commissioners locally – such as arrangements under section 256/7 of the NHS Act 2006 or pooled budgeting arrangements under section 75 of the NHS Act 2006. Agreement will need to be reached by PCTs and LAs within these parameters. Paragraphs 31 - 33 explains the process to follow if you are unable to reach agreement.
26. During the initial transfer process, the Department of Health will want to know:
 - (i) The amount that has been agreed for transfer by 1 December 2008 (see form at **Annex B**);
 - (ii) Confirmation that the transfer has been made locally by 30 June 2009 (and 2010); and
 - (iii) Any major problems that may affect the policy.
27. Learning Disability Partnership Boards should be fully engaged. This is integral to the requirement that PCTs and local authorities notify the Department that local agreement has been reached (under (i) above). This is in line with the *Valuing People Now* consultation proposal for an increased programme of support to strengthen the impact of Partnership Boards, including considering how all public bodies can be encouraged to use and work with them on all issues relating to people with learning disabilities.
28. The period up to 2011 will also provide an opportunity for both local and national review of the transfer prior to finalising arrangements. Both local and national mechanisms will be needed to establish whether there have been any unintended consequences of the policy change that have had a negative impact upon the core policy aims (see paragraph 3 - 8 above).

Equality Impact Assessment (EqIA)

29. PCTs and LAs, working in partnership, will need to consider the potential impact of the transfer on equality issues and carry out a full EqIA as appropriate, bearing in mind the requirements of equality legislation, and in particular their Disability Equality Duty under the Disability Discrimination Act 1995. The Department of Health has already published an Initial Equality Impact Assessment for Valuing People Now http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_081014 and a full Equality Impact Assessment will be carried out before publication of the consultation response in the autumn which will include the commissioning transfer proposals.

PRACTICAL CONSIDERATIONS

30. There will be a number of elements of practical support available to help achieve local agreement, through the Valuing People Support Team within the Care Services Improvement Partnership:
 - a. Supporting the process for reaching agreement;
 - b. Further developing the advice contained in this paper to include good practice examples where negotiations are progressing well using real time intelligence by region.

SHAs will also have a key role to play in negotiating an agreed amount for transfer. Further information under b. above will be available on the DH and CSIP websites.

DISAGREEMENTS

31. Where there are differences between PCTs and local authorities, we expect agreement to be reached locally. In exceptional circumstances if no agreement can be reached, the SHA, the new Deputy Directors of Social Care and Care Partnership and VPST will have a role to play in either settling disagreements or accessing resources or consultancy support to aide agreement. This might involve harnessing expertise from other areas where there has been agreement to the transfer process (for example, areas that are operating a successful pooled budget system already). The costs of any such help or support are to be met locally.
32. There will not be any national mechanism to support appeals by PCTs or local authorities over the amount of the transfer or the process involved in implementing the policy itself using the mechanisms outlined above, beyond that provided by SHAs, the new Deputy Directors of Social Care and Care Partnership and the VPST.
33. As a last resort, LAs and PCTs may decide to seek mediation from a panel comprising members of SHAs, ADASS and Government Offices for the Regions where all other avenues have been explored.

CONTACTS & FURTHER INFORMATION

Returns and comments: comms.transfer@dh.gsi.gov.uk

Valuing People Support Team: www.valuingpeople.gov.uk

Department of Health: www.dh.gov.uk

Care Services Improvement Partnership: www.csip.co.uk

Annex B

VP NOW: TRANSFER OF LEARNING DISABILITY SOCIAL CARE FUNDING AND COMMISSIONING FROM THE NHS to LOCAL GOVERNMENT – RETURN FORM 1 DECEMBER 2008

Please complete and return by 1 December 2008 to comms.transfer@dh.gsi.gov.uk

Name of PCT	
Contact Details	
Name of LA	
Contact Details	
Name SHA	
Contact Details	
Amount Agreed For Transfer at 1 April 2009*	
Plus any other in-year variations (specify)	
TOTAL TRANSFER AMOUNT	
<p>This agreement has been approved via the governance arrangements of both the PCT and the LA.</p> <p>The LD Partnership Board has been fully involved.</p>	<p>Signed PCT (Authorised Signatory)</p> <p>Dated</p>
	<p>Signed LA (Authorised Signatory)</p> <p>Dated</p>

* Including agreed uplift for inflation for 2008/9 and 2009/10.

KEY ISSUES TO CONSIDER

1. Have you ensured that Chief Executives of both the PCT and Local Authority are fully signed up to and treat this transfer as a high priority as set out in the 2008/9 NHS Operating Framework?

2. Have you a mechanism for involving your SHA, Valuing People Support Team, SHA, new Deputy Directors of Social Care and Care Partnerships and LD Partnership Boards early on in the negotiations?

3. Have you identified every service or funding stream that involves social care commissioning or funding where responsibility currently rests with the PCT?

4. Do you have Health Act flexibilities in place (section 256/7 of the NHS Act 2006, formerly section 28A of the NHS Act 1977 or section 75, formerly section 31 of the Health Act 1999) for all or some social care provision? Do these need to be negotiated for 2009/10 and 2010/11?

5. If you have a pooled budget arrangement, is the LA the lead commissioner? If not, LAs will have to be the lead commissioner for social care elements before April 2009 for the transfer to be deemed to have taken place.

6. Do you have campuses remaining in your locality? Do you have reprovision plans in place to close them by end 2010?

7. If you are unable to reach agreement on the amount of the transfer or the process involved, have you involved representatives from your SHA, Government Offices from the Region, ADASS and the Valuing People support Team in CSIP?