



Cabinet Meeting on the 21st December 2011

Partnership Arrangements with Staffordshire and Stoke-on-Trent Partnership NHS Trust

Report Summary from Matthew Ellis, Cabinet Member for Adults' Wellbeing

1. The successful development of a combined Health and Social Care Trust for Staffordshire is an opportunity for step change improvement in patient and service user experience. It would be the largest combined Social Care and Health Trust in the UK and could substantially enhance the future sustainability of the wider healthcare sector across the county.
2. In August 2009 the new County Council administration instigated talks with the two Primary Care Trusts covering the administrative boundaries of Staffordshire with a view to bringing together the community social care services and community health services from the two PCTs into a single function.
3. In 2010, negotiations on that proposal were well advanced when national guidance was issued to PCTs in England requiring them to separate their community health services from their commissioning functions. That new guidance broadly reflected the work already underway in Staffordshire but with the addition of including Stoke PCT community health services.
4. During the last eighteen months, the negotiations to integrate adult social care services with community health services have culminated in firm proposals to achieve that ambition of significant service improvement.
5. This report seeks approval in principle to finalise an agreement to transfer County Council staff to the NHS and to delegate Adult Social Care functions to the Partnership Trust, underpinned by strong governance arrangements.
6. The Staffordshire and Stoke on Trent Partnership NHS Trust will meet on 15th December to consider their decision on whether to support the integrated arrangement.
7. The Strategic Health Authority (Midlands and East) will consider the basis for the integration, post the Trust Board and Cabinet decisions and the Department of Health Transactions Panel will want to assure itself that a robust process has been undertaken to arrive at the decision. This takes place on 12th January 2012.
8. A countywide joint consultation on integration has taken place and was completed on 20th June 2011. The analysis of this consultation has

informed the business case as have the subsequent Health, Equalities and Community Impact Assessments.

9. A detailed business case has been developed for integration, which takes into consideration the impact of integration on the community, service delivery and the financial implications.

Recommendations – I recommend:

- (1) That Cabinet agree to integrate Adult Social Care Services (defined “in scope” see Section 2 in the business case) into the Staffordshire and Stoke on Trent Partnership NHS Trust.
- (2) That the employment status of Adult Social Care and support services staff (as defined on an agreed Transfer of Undertakings Protection of Employees list) are transferred to the Partnership Trust with effect from 1st April 2012.
- (3) That the business case is accepted as the rationale for the integrated arrangement.
- (4) That the Cabinet Member for Adults’ Wellbeing, in consultation with the Director of Finance and Resources and the Director of Law and Democracy, be given delegated authority to approve the detailed terms of the s75 Agreement and associated schedules and to complete the transaction.

Local Members Interest
N/A

Cabinet – 21st December 2011

Proposed Partnership Arrangements for Adult Social Care with Staffordshire and Stoke-on-Trent Partnership NHS Trust

Recommendations of the Cabinet Member for Adults' Wellbeing

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- (2) That the employment status of Adult Social Care and support services staff (as defined on an agreed Transfer of Undertakings Protection of Employees list) are transferred to the Partnership Trust with effect from 1st April 2012.
- (3) That the joint business case is accepted as the rationale for the integrated arrangement.
- (4) That the Cabinet Member for Adults' Wellbeing, in consultation with the Director of Finance and Resources and the Director of Law and Democracy, be given delegated authority to approve the detailed terms of the s75 Agreement and associated schedules and to complete the transaction.

Report of Director for People and Deputy Chief Executive

Reasons for Recommendations

1. This proposed integration will result in significant benefits for Staffordshire residents. As integration takes effect, as a patient or customer you will notice the difference because:
 - one person will coordinate your care even if you have support from different professionals and providers;
 - you will not be admitted to hospital or nursing/residential care when it's possible for you to be supported in your own home.
 - you will be able to choose and direct your own health and care support;

- you will have one assessment, which identifies all your health and social care needs in one place;
 - these needs will be met via one funding arrangement, without delay and uncertainty.
2. The benefits in the business case are the main rationale for the integration taking place. These fall into two broad areas: benefits to patients and customers; and financial benefits. In respect of the former, there are four priorities:
- one practitioner to act as the key contact for a patient/customer, to be measured by cost reduction in the workforce, customer satisfaction, and increased face to face time;
 - the right care at the right place at the right time, measured by improved health outcomes, reduced repeat referrals, less delayed transfers of care;
 - a more flexible and skilled workforce, measured by the ability to better manage demand and capacity within services, increased productivity through better diary management, and workforce satisfaction surveys;
 - making the best use of public money, measured by the alignment of ICT systems, less buildings bases, more agile working, and collaborative procurement of external services.
3. The financial benefits are categorised into three elements. The Trust will take the majority of the responsibility for delivering the Medium Term Financial Strategy of the County Council (as it relates to Adult Social Care) which requires efficiencies of £20.2m over the first three years. In addition, the Trust is required to deliver its Cost Improvement Plans of approximately 4% per annum which amounts to £8m p.a. over the next three years. Over and above that, the most significant development is the transformational change that this integration realises by shifting the whole system away from dependency on hospital and nursing/residential care to support in the community. The business case includes financial modelling of the experiences of other integrated organisations to enable the potential future efficiencies across the whole system to be defined and realised. These are longer term financial benefits which are realised from the whole system of interrelated organisations working differently. This whole system change could realise between £18-31m worth of recurrent savings across the Staffordshire Health system. Negotiations are taking place with commissioners about an equitable sharing of these savings between the principal partners for the future.

Background

4. This report is the culmination of over 18 month's negotiations in relation to the proposed delegation of certain Adult Social Care Services and functions to the Staffordshire and Stoke-on-Trent Partnership NHS Trust, amounting to around £150m (plus overheads) of the County Council's gross expenditure (figure to be finalised at outturn 2011/12.) This includes services to older people and people with physical disabilities; enablement services; Living Independently Staffordshire services; assessment and care management staff; support staff; and Brighton House. In addition, it includes £40m of income and around £80m of independent contracts.
5. On the 16th March 2011, you received an update on the progress of the proposed partnership arrangements with Staffordshire and Stoke-on-Trent Partnership NHS Trust. In that report discussions were still underway with the three Primary Care Trusts (PCTs), the Strategic Health Authority (SHA) and the Department of Health (DoH) on the creation of a new Partnership NHS Trust for Staffordshire and Stoke on Trent.
6. On 20th July, the Department of Health Transactions Panel considered the formal application to establish the Trust. The Panel was satisfied by the evidence presented, and therefore on 1st September 2011, the Trust was formally established.
7. The plan was then to consider whether Adult Social Care Services should transfer to the Trust and a joint business case has been produced to outline the benefits of such an arrangement. This business case will be considered by the Trust Board on 15th December 2011, by Cabinet in this report and will then be reviewed by the Department of Health Transactions Panel on 12th January 2012. All three need to satisfy themselves as to the benefits and financial sustainability of the transfer.

Consultation

8. There has been a joint public consultation which began on 9th May 2011 and took six weeks to complete, ending on the 20th June 2011. The results of the consultation have been fed into the business case and the three key impact assessments: Equality, Health and Community in order to inform Cabinet in their decision making.
9. Public meetings have been held across the county to engage local people and organisations on the proposals. This builds upon the engagement exercise which took place in October/November 2010 which sought to determine whether a Community NHS Trust should be established in Staffordshire and Stoke on Trent. This received considerable public and stakeholder support.

10. The latest consultation has asked the public and stakeholders about their views on how “joined up” services should be. There is broad support for the full integration proposals (where all staff are employed in a single organisation), the proposed model of local teams delivering services in each community, the role of the key worker, who coordinates a person’s care across a range of services, and a ‘person focussed approach.’ The caveat on the feedback is whether people have been able to fully understand the detail and whether the proposed changes can be implemented successfully or not. The majority of respondents welcome the opportunities for more cooperation between health and social care, but specific questions were raised relating to cultural differences between sectors; the provision of robust communication channels; exclusion of specific services; the role of the voluntary sector; governance /accountability arrangements and the funding and commissioning of the ‘services needed’. Feedback themes are included in the Community Impact Assessment (attached) and all these areas are addressed in the implementation plan.

Options Appraisal

11. In order to establish if the patient/customer benefits and the financial efficiencies can be realised, an options appraisal is incorporated into the business case. This evaluates the three shortlisted options that were subject to the public engagement exercise:
- continue as we are;
 - greater joint working with the NHS;
 - full organisational integration.
12. The options were scored against the main criteria for consideration, which are: patient access, quality, business systems, engagement, workforce, innovation and efficiency, market development, and planning/ whole systems approach. The full integration options scores the best for its potential to maximise the improvements.

Financial Implications

13. Under the requirements of the Section 75 arrangement (discussed below) the Trust will take the majority of responsibility for delivering the £20.2m of the Council’s MTFs savings on the services in scope over the next 3 years. While much of this saving could be delivered by closer joint working rather than full integration, the approach of full integration effectively ‘de-risks’ the delivery of these savings from the Council’s perspective, as well as freeing up management and support service focus and capacity that would otherwise have been required to deliver these savings. The benefits of de-risking and freed-up capacity to the Council are not inconsiderable but are difficult to quantify in purely financial terms and so have not been built into the Business Case at this stage.

- 14 There are some costs associated to the Council with integrating Adult Social Care Services into the Trust. These are pensions costs (up to £1.7m per annum); overhead costs (£0.75m year 1, £0.5m year 2, £0.25m year 3, and then nil cost); and £250k per annum client costs to manage the contract. The Partnership Trust will provide a one-off contribution of £0.50m towards the Council's overhead costs in Year 1, and underwrite a reduction of £0.50m per annum to limit the annual increase in pension's costs to £1.2m per annum. For the avoidance of doubt, the Trust are not offering an additional £0.5m per annum if the final agreed cost of pensions drops to £1.2m by other means. Opportunities have also been identified to drive efficiencies from integration of workforce and estates that will total £0.375m per annum on an ongoing basis for the Council by Year 3 (with around half of that saving being delivered in year 2). Thus the total cost to the Council for years 1 and 2 is around £1.7m, reducing to around £1.3m in year 3 and just over £1.0m by year 4 and thereafter.
- 15 In addition to the above discussions are taking place with health commissioners with a view to them releasing a proportion of future savings to the wider health system from the work of the Trust that can then be passported to the Council. The totality of the savings to the health system are forecast to be between £18m and £31m per annum once the Trust is fully functional. Such a mechanism, if agreed, could significantly reduce or negate the costs to the Council from year 2 onwards. However, although these negotiations are made possible by this transaction, they are separate to, and do not form part of, the proposed transaction with the Trust.
- 16 As well as the shorter term issues outlined above there are a number of longer term financial opportunities and risks that would stem from full integration. The opportunities would mainly comprise of delivering more savings out of joint estates, joint workforce and overheads, as well as the opportunity to share savings for health commissioners noted above. The risks would mainly comprise of the Trust withdrawing from service schedules contained in the s75 agreement detailing services the Council will initially provide as part of the section 75. Withdrawal could leave the Council with a number of fixed costs. It is intended to closely monitor the risks and opportunities through the governance process described later in this report.

Foundation Status

- 17 As the new NHS Trust has been established, it is now planning to meet the requirements of Foundation Trust status by 2013/14. One freedom which fundamentally distinguishes NHS Foundation Trusts from NHS Trusts is the freedom to invest money for the purposes of their functions under s17 and s23 of the Health and Social Care (Community Health and Standards) Act 2003. All NHS Trusts are required to gain Foundation Trust status by 2014. Simply put this means that the NHS Foundation Trust would have more freedom to operate by generating

new business. This would enhance its financial and business sustainability in the longer term.

Due Diligence

- 18 Due diligence has been carried out in a number of phases during the last twelve months. Initially Price Waterhouse Coopers (PWC) were engaged by the Trust to carry out financial due diligence on the three former Primary Care Trusts and on Staffordshire County Council. The outcome of a “follow-up” review by PWC on the Council is still awaited. KPMG have then completed the due diligence of the Trust on behalf of the Council. There are no significant risks which remain following this.

Section 75 Agreement

- 19 The detailed arrangements to manage the service integration will be contained in the “Section 75” legal agreement, made pursuant to section 75 of the NHS Act 2006 that will govern the contractual arrangement between the County Council and the Trust. The agreement will be for 10 years terminable on 12 months notice. The agreement may not be terminated so as to come to end prior to the end of the third year (although this is still under negotiation with the Trust who would prefer for it not to come to an end prior to the end of the fourth year). In other words the County Council will be tied into the agreement for a minimum period of 3 years though could exit during this period if the Trust were in breach, as could the Trust if the County Council were in breach.
- 20 The Section 75 will include delegation of functions and services to the Trust, how these are specified, contract and performance management, service change arrangements and actions in respect of any fallings or breach in the contract. This will also define the agreed governance process, the management of third party contracts and how services will be de-commissioned and re-commissioned. It is anticipated that over time, this will develop into a joint commissioning arrangement between health and social care commissioners. The Heads of Terms of the Section 75 Agreement sets out the main overarching legal provisions and is attached to this report.

Governance

- 21 Ensuring effective governance of the Section 75 agreement will be key to safeguarding the County Council’s interests and accountabilities with regard to the integrated services. A governance framework has been agreed in outline which covers:
- political governance as well as day-to-day operational governance;
 - the need to establish effective integrated commissioning arrangements with the newly formed Clinical Commissioning Groups;
 - Performance Management of the transferred services;

- Transformation to new integrated models of delivery;
- 22 The governance framework as a whole will be overseen by joint meetings between representatives of the County Council's cabinet and the Trust's Board. As part of the governance arrangements the issue of Council representation on the Trust Board was considered. This option was not pursued for three reasons:
- i. Membership of the Board would create a conflict of interests' situation for whoever represented the County Council. That person would effectively be debarred from dealing with matters relating to the Trust in their role as a member of the Council, and the requirements of Trust Board membership would force them to view matters before the Trust Board purely from the perspective of the Trust's best interests. As a result, having a member of the Council on the Trust Board offers little value to the County Council.
 - ii. The County Council is approaching this as a Commissioner/Provider relationship. Having a member of the County Council on the Trust Board confuses the nature of the Council's relationship with the Trust.
 - iii. The Trust were clear that they did not think it would be appropriate for a member of the Council to sit on the Trust Board.

Risk

- 23 A Risk Register has been in existence throughout the programme, which has taken into consideration the Cabinet criteria for integration put forward in September 2010. These risks are being monitored and managed in order to reduce their likelihood and potential impact on the programme.

Scrutiny

- 24 The proposed transaction was considered by Assets and Budget Scrutiny Committee on the 6th December. The Committee raised the following issues:
- i. Members asked for reconsideration of the Section 75 agreement penalty clause at 3 years. Members considered that there should be a financial penalty if the clause was breached as this may result in costs to the County Council e.g. bringing staff back into the County Council.
 - ii. Members had reservations regarding the governance arrangements and considered that there should be an elected Member on the Trust Board.
 - iii. Members sought reassurance that the County Council would get a profit share of any savings accruing to the Trust. Members were not wholly convinced of the financial benefits accruing to the County Council from integration with the Partnership Trust.

- 25 In large part these points are dealt with in the report and Appendix 1 in the sections on Financial Implications, Governance and Risk.
- 26 Health Scrutiny Committee will consider the proposed transaction at its meeting on the 13th December and their comments will be reported at the meeting.

Appendix 1

Community Impact Assessment:

This is attached and has been completed as part of the testing of the new approach to assessing the impact of this significant change on the community. It also incorporates the **Health and Equalities Impact Assessments**

Legal implications:

- The service user and public consultation process has been addressed in the report. Staff consultation has taken place and is continuing.
- A robust and fully understood section 75 agreement will reflect the key principles agreed by Cabinet and the Trust Board. A significant legal implication of the section 75 is that whilst the County Council will delegate its functions to the Health Trust to perform, the liability for performance will still remain with the County Council, as is the norm for all contractually based services.
- There is a draft Heads of Terms to reflect the key issues for the s75 contract. This is still being negotiated.
- Financial Due Diligence is continuing, and Legal Due Diligence will continue, up until the signing of the contract.
- A Quality Assurance process has also been undertaken in accordance with the Monitor Checklist for Quality to assure both parties of the quality and performance of services as they move over, and to ensure continuity and legacy issues are dealt with appropriately.
- Care Quality Commission registration will also change when services transfer and the planning for this is well advanced.

Resource and value for money implications: These are fully outlined in the business case.

Risk implications:

The most significant risks for the integrated arrangement are:

- Senior and operational management capacity in social care in order for the Trust to have the requisite knowledge and skills to perform these functions effectively. Allied to this is ensuring that a health and NHS culture does not dominate social care values and principles.
- Justification for the integration and benefits being sufficiently articulated for the key decision makers and realising those benefits through robust contract and performance management arrangements.
- The ability to deliver the County Council's Medium Term Financial Strategy, Cost Improvements Plans, and additional financial benefits in the longer term; outweighing the costs of integrating the organisations in

the first three years.

- The Council will provide a range of corporate services to the Trust via a suite of schedules within the section 75 agreement.. The length of these will be for a period of 3 years after which time the Trust shall have the right to market test the services. If the Council is not successful in any informal / formal tender process then there is the potential for it to be left with retained costs for which no budget provision will exist. Notwithstanding the extent to which some staff would transfer via TUPE, redundancy costs could result along with other fixed costs such as accommodation. A specific risk relates to ICT which has a high element of “fixed” costs e.g. infrastructure and SAP costs. The Council will seek to mitigate this risk within the s75 Agreement.
- Whilst the Trust will take on the majority of the responsibility for delivering the MTFs of the Council (as it relates to ASC), the risk and gain share agreement states that where the delivery of savings by the Trust depends upon delivery of actions / plans by the Council (e.g. the Council ensuring additional flexi-care housing units are available for the Trust), such risk (and hence potential cost) falls to the Council. In addition, the Council will bear the full risk and reap the full gain of pricing variations to the care contracts that it remains responsible for.
- There are a number of VAT considerations as a result of the integration. The first involves ensuring that HMRC would regard the agreement as a Pooled Fund for VAT purposes. The working assumption is that this would be the case but this will need ratification by HMRC. This stance does require the production of suitable documentation to be provided by the Trust in order for VAT to continue to be reclaimed by the County Council. Failure to produce suitable documentation would leave the County Council exposed to the risk of non-recovery. Assuming that VAT can continue to be reclaimed on the provision of social care services the other areas of concern include VAT on any supplies of services between the County Council and the Trust. The main areas are property transactions and support services provided via the schedules in the s75 agreements. The Council and the Trust are working together to ensure that any VAT liability is reduced in all applicable areas. Following on from the above, the Council will seek to ensure (via the s75 Agreement) that the Trust indemnifies it against any VAT liability arising as a consequence of integration.
- Termination of the contract can be invoked by either party on grounds of “breach” or “without cause”. In simple terms, if the Council terminates the contract on grounds of “breach” the Trust will meet the Council’s financial liabilities whereas if the Council’s terminates the contract on grounds of “without cause” the Council will have to meet the financial liabilities. Conversely, if the Trust terminates the contract on grounds of “breach” the Council will meet the financial liabilities whereas if the Trust terminates the contract on grounds of “without cause” the Trust will meet the Council’s financial liabilities. Following on from this, it must be noted that if the Council terminates the contract on grounds of “without cause”

it will incur significant financial costs for which no budget provision will exist.

Climate change implications:

Rationalisation of accommodation, and reduced travel times created by less duplication at the frontline workforce will contribute to the Council's carbon reduction commitment.

Health impact assessment:

A full Health, Impact Assessment (HIA) is has been undertaken and informs the business case and the Cabinet decision.

Contact Officer:

Author's Name: Ian James/Paula Furnival

Appendices

- Appendix 2 Joint Business Case for Integration
- Appendix 3 Joint Consultation Report on Feedback and FAQs
- Appendix 4 Impact assessments – Community, Health and Equalities
- Appendix 5 Summary Community Impact Assessment
- Appendix 6 Draft Heads of Terms to the s75 contract
- Appendix 7 Risk Register

List of Background Papers

Reports from KPMG and PWC on due diligence

