

# WIRRAL COUNCIL

CABINET : 28 MAY 2009

## REPORT OF THE DIRECTOR OF ADULT SOCIAL SERVICES

### ADULT SOCIAL SERVICES- UNRECOVERABLE HISTORICAL DEBT

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#### 1. EXECUTIVE SUMMARY

- 1.1 This report relates to a number of historical debts raised against the NHS. These debts, some of which date back to 2000/01, relate to the cost of care provided to a number of people with specialised or complex needs, some of whom lived outside Wirral.
- 1.2 Having sought counsel's advice and arbitration from the Strategic Health Authority these debts are considered to be irrecoverable.

#### 2. BACKGROUND

- 2.1 A number of previous reports have detailed the background to debt that has been issued to the NHS regarding the provision of packages of care. The latest of these reports was received by the Finance and Best Value Overview and Scrutiny Committee on 24 March 2009. That report stated that in 2005, the Department of Adult Social Services (DASS) and the then two Primary Care Trusts (PCT) agreed a set of local protocols for the joint resourcing of packages of care, where people had health and social care needs.
- 2.2 The protocols were developed in recognition by both DASS and the PCTs that a significant number of people had needs over and above those which a local authority would ordinarily be obliged to meet. Key to this local agreement was that retrospective consideration would be given in instances to a pre determined group of individuals with learning disabilities. It must be noted that these individuals had received services, in line with their care needs, for which the Council had paid various providers. There were 27 individuals in total, 21 of whom were in Wirral based services. The remaining 6 were in placements outside Wirral; and it is these cases that were in dispute.
- 2.3 Invoices totalling £1.9 million were sent to "Out of Borough" PCT's in December 2005 for liabilities up to 31 March 2006 (some of the debt dating back to 2000/01). Subsequent invoices were raised for the period 1<sup>st</sup> April 2006 to 31<sup>st</sup> March 2007 and 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2008 totalling £473,454 and £322,116 respectively.
- 2.4 Counsel's advice was sought on the issue of whether or not these debts were recoverable and the advice was that proceedings would be complex, it would be a difficult matter to pursue with no guarantee of success and more detailed information to support the claim was needed. No supporting documentation was, however, available within the Department. In an attempt, therefore, to expedite the matter the Strategic Health Authority (SHA) were asked to intervene and resolve the long standing issue. Arbitration was passed to Wirral PCT by the SHA. The PCT subsequently responded, acknowledging that it had taken on responsibility for the six cases since April 2005, on a "without prejudice" basis, and wrote to the various "host" PCTs to try to negotiate

appropriate contributions. The SHA subsequently contacted DASS on 30<sup>th</sup> March 2009; stating that Wirral PCT was unable to resolve NHS discussions and reach agreement with the other PCT's on which organisation is future responsible commissioner. As there was no evidence on file or provided by the Council that the individuals concerned had a primary health need prior to 2005 the SHA determined that it would be inappropriate for the NHS to contribute towards the historic debt held by the Council.

2.5 The current status of the debtors is as follows:-

PCT	Total Debt £	Paid Wirral PCT £	Outstanding £
Bassetlaw	524,855	151,247	373,608
Conwy	393,781	177,844	215,937
Craven, Harrogate & Rural	478,876	279,364	199,512
Eastern Wakefield	419,696	168,828	250,868
Shepway	353,961	141,574	212,387
Craven, Harrogate & Rural	490,096	119,681	370,415
<b>Total</b>	<b><u>2,661,265</u></b>	<b><u>1,038,538</u></b>	<b><u>1,622,727</u></b>

2.6 The Council has previously considered legal action to recover these debts. However, the legal advice is that such action would not only be costly, but also unlikely to succeed. This position is further confirmed as, having asked the Strategic Health Authority to review the matter, the Council would in effect also be challenging an agreed process. Having explored these various legal routes open to the Council to recover this debt, it appears that the debt should be cancelled.

2.7 In addition to the above debt with NHS bodies outside of Wirral it has recently been shown that a number of other invoices have been raised on NHS Wirral inappropriately in respect of three individuals. The total debt is £189,501.09 consisting of:

i) In two of these cases DASS had assumed that the care packages were to be fully funded by the PCT for the period 1<sup>st</sup> April 2005 to 31<sup>st</sup> December 2007. There was no evidence to substantiate this and the PCT have agreed 50% funding from April 2005, leaving a balance outstanding of £137,140.37.

ii) In the third case joint funding was agreed from 1 September 2005 but invoices had been sent to the PCT backdated to 4 August 2004. The outstanding invoices for the period 4<sup>th</sup> August 2004 to 31<sup>st</sup> August 2005 total £52,360.72.

2.8 New procedures are in place to ensure that this sort of problem does not occur in the future. Essentially, where care or support are to be jointly funded, written agreements will be required in advance to ensure clarity across both agencies.

### 3. FINANCIAL AND STAFFING IMPLICATIONS

3.1 Taking both of the areas set out in paragraph 2 the following amounts will not be collected by the Council:

Area of debt	£
i) Out of Area PCTs	1,622,727.26
ii) Wrongly assumed Joint Funded Cases	189,501.09
Total recommended for write off	1,812,228.35

3.2 As the invoices were raised in previous financial years and income is included in the accounts when the invoice is raised, the income will have been included within the Adult Social Services accounts for those particular years. By now agreeing not to pursue recovery of the invoices the loss of income will be charged to the Adult Social Services accounts for the 2008/09 financial year.

#### **4. EQUAL OPPORTUNITIES IMPLICATIONS**

4.1 There are none arising directly from this report.

#### **5. COMMUNITY SAFETY IMPLICATIONS**

5.1 There are none arising directly from this report.

#### **6. LOCAL AGENDA 21 IMPLICATIONS**

6.1 There are none arising from this report.

#### **7. PLANNING IMPLICATIONS**

7.1 There are none arising from this report.

#### **8. ANTI POVERTY IMPLICATIONS**

8.1 There are none arising from this report.

#### **9. SOCIAL INCLUSION IMPLICATIONS**

9.1 There are none arising from this report.

#### **10. LOCAL MEMBERS SUPPORT IMPLICATIONS**

10.1 There are no specific implications for any member or ward.

#### **11. BACKGROUND PAPERS**

11.1 None used in the preparation of this report.

#### **12. RECOMMENDATIONS**

12.1 It is recommended that Cabinet approve the cancellation of the invoices to the value of £1.812m for the reasons stated and that this be charged against the Adult Social Services Department in the financial year 2008/09.

**JOHN WEBB**  
**DIRECTOR OF ADULT SOCIAL SERVICES**