



Cabinet

7 FEBRUARY 2011

**CABINET MEMBER
FOR COMMUNITY
CARE**

*Councillor Joe
Carlebach*

CHANGES TO DAY SERVICES:

This report is in two parts:

**Wards:
All**

**HAS AN EIA BEEN
COMPLETED?
YES**

**1. MERGER OF DAY SERVICES FOR OLDER
AND DISABLED PEOPLE INCLUDING THE
DISPOSAL OF 147 STEVENAGE ROAD**

This section provides the results of the recent consultation on the merge of older and disabled people's day services. It recommends that, in light of the outcome of the consultation, the day services for older and disabled people should merge, therefore ceasing the use of 147 Stevenage Road as a day centre provision. The level of funding would be unchanged by these proposals. Decisions on whether funds will be used for these and other social care services will now be made by service users managing their personal budgets.

**2. PROCUREMENT PROPOSALS FOR ALL
DAY SERVICES**

This section will outline procurement proposals for day services:

1. Ellerslie Road (mental health)
2. Options (learning disabilities)
3. Older and disabled people (all-age)

Recommendations:

1. **To merge the day services for older and disabled people and cease use of 147 Stevenage Road as a day centre provision.**
2. **That the site be declared surplus to the Council's requirements and disposed of in accordance with S123 Local Government Act 1972 on terms considered appropriate by the Director of Environment, Assistant Director (Building and Property Management) and the Assistant Director (Legal and Democratic Services).**

CONTRIBUTORS

Commissioning
Manager (Older and
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Head of CSD
Procurement

Head of Community
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**HAS THE REPORT
CONTENT BEEN
RISK ASSESSED?
YES**

- 3. That the procurement proposals for the individual day services be noted.**
- 4. To approve the request for delegated authority to the Cabinet Member for Community Care for the award of any contracts following the procurement exercise.**

1. BACKGROUND

- 1.1 The borough's Adult Social Care (ASC) funded day services for older and disabled people¹ have been reviewed as part of a programme to develop services in-line with the national Self-Directed Support (SDS) agenda. SDS demands that services are personalised to the user, therefore they must offer choice.
- 1.2 When SDS was introduced nationally it was assumed that many people with care needs would opt for different services than have been traditionally provided. For example instead of using a day centre for day care, it was thought that many people would want to participate in activities in the community. However evidence from recent support planning activity suggests that current users of day services want a continuation of the service they receive. It is therefore agreed that some building-based day care provision is needed for this demand.
- 1.3 However it is also agreed that the day services should further develop to include opportunities for people who would like to take part in activities that happen in the community and away from a day centre. Offering both types of service will ensure choice. The council would therefore remodel the current day services for all care groups, to include a community access option.
- 1.4 A community access service would mean there would be less demand on a building to provide resource for activities. In principle this would enable the council to provide for more people because there would be less restriction on capacity. It would also mean that fewer buildings would be needed. A review of the current usage of generic older and disabled people's day services demonstrated that the three day centre buildings from where generic older people's and disabled people's day centre services are provided are under-used. These services could therefore merge and be provided from two buildings rather than three. This would mean the building currently occupied by the physical disability service would be surplus to requirements.
- 1.5 In addition two additional day centres provide support to older people from BME communities - Nubian Life Resource Centre provides a service to African and African Caribbean elders and the Asian Health Agency (known as Shanti Resource Centre) provides a service to Asian elders and disabled adults.
- 1.6 Generic all age day services should be able to meet the needs of diverse residents including their cultural and language needs. However whilst Nubian and Shanti services were not included in the original consultation, officers recommend that due to the current capacity required for day opportunity services and the need for culturally specific support for some residents, that the council should also commission culturally specific (African-Caribbean and Asian [as the two largest BME communities in the borough]), all age services

¹ Services included in this review are: Sunberry, Imperial Wharf and Elgin resource centres

that will meet these needs and sustain current service capacity, with a further consultation exercise carried out with users of Nubian and Shanti.

- 1.7 The proposal to merge the day service for older and disabled people is supported by the new Equalities Act, which was passed in April 2010 and leads councils away from age-related criteria for providing services. It was therefore agreed by Lead Member Cllr Carlebach that a consultation regarding the proposal to merge the day service for older and disabled people and to provide these services from two buildings rather than three should go ahead.
- 1.8 Imperial Wharf and Elgin resource centres, which are the buildings the merged day services would operate from, are both superior to the 147 Stevenage Road building, which is currently occupied by Sunberry ILS. Therefore by merging with the other services, the users of Sunberry ILS would benefit from receiving day care in a more pleasant, much newer and more modern building.
- 1.9 The users of Sunberry ILS do not have a hot lunch served as part of their day care. Both Imperial Wharf and Elgin resource centres have commercial kitchens and cooks and a three course hot meal is provided at a subsidised rate. The users of Sunberry ILS would therefore be able to enjoy this service at whichever resource centre they choose.
- 1.10 The new community access service would create a greater emphasis on community integration and would therefore prevent new service users from becoming heavily reliant on the staff and provisions within a day centre building. The service will support people to access opportunities in the community, such as education, employment and training, as well as leisure and cultural activities. It is envisaged that this service will be short term, which will ensure better throughput and in turn the ability to support more people.
- 1.11 The creation of a community access service and having a mirror image model of day services in the north and south of the borough will create choice for people needing day care. It will ensure that the borough still has safe, stimulating day centres, with the same staff to service user ratio, but will also provide an alternative option at no extra cost to the council.
- 1.12 The twelve week consultation concluded on 29th October 2010 and the results and recommendations are explained in paragraphs 2 - 4 below. The consultation document, which details the proposals and includes the three questions based on these proposals, is available in Appendix 2.

2. CONSULTATION ON THE MERGER OF OLDER AND DISABLED PEOPLE'S DAY SERVICES

2.1 Consultation process:

The twelve week consultation began on 23 August 2010 and completed on 29 October 2010. The consultation focussed on the current users of the

three day services affected. Detailed information about the consultation process is available in Appendix 1.

2.2 **Consultation proposals:**

- 2.2.1 To merge and remodel the older and disabled people's building-based day care provision to create a north and south service model,
- 2.2.2 to reduce the number of day centre buildings by one, therefore closing 147 Stevenage Road, which is where Sunbury Independent Living Service (Sunbury ILS) is provided from and providing the services between the remaining buildings: Imperial Wharf and Elgin Resource Centre,
- 2.2.3 to utilise the building-based provision for people with personal care needs, and
- 2.2.4 create a new community access service for people of all ages with less of an emphasis on providing activities in a day centre building.

2.3 **Reasons for the proposals:**

- 2.3.1 A new Equalities Act was passed in April 2010, which means that councils should not use age-related criteria for service provision unless there is justification for doing so.
- 2.3.2 The day services affected are under-utilised and could be provided from two buildings rather than three.
- 2.3.3 Building-based day centres should be prioritised for people with high care needs that require support from trained staff in accessible buildings. The choice to be supported to access activities and opportunities in the wider community should also be available. Currently only one type of day service provision is offered and has restrictions of being based in a building.

2.4 **Consultation findings:**

- 2.4.1 In total, 96 people returned a questionnaire and 68 of these were from day services users, of which there are 140. Of those 96, there was a high level of support for the proposals. Quantitative evidence is available in Appendix 3. A brief summary of the results follows:
- 2.4.2 90% either strongly agree or agree that the same model of day service should be provided in the north and south of the borough,
- 2.4.3 66% either strongly agree or agree that because the new services will support some people to take part in activities away from a day centre, we will only need two day centres instead of three and
- 2.4.4 76% either strongly agree or agree that the new day services should welcome all adults who need day care, whatever their age.

2.5 **Consultation feedback:**

- 2.5.1 Comments and questions received at the consultation event were recorded. Some common themes at consultation meetings were:
- 2.5.2 Some concern about closing the Stevenage Road building owing to the familiarity and enjoyment of the current Sunberry service.
- 2.5.3 Support for ages to be mixed given the benefits to older people who believe sharing a service with younger people will enhance the experience.

- 2.5.4 Some concern about the all-age model because older and younger people have different interests.
- 2.5.5 Agreement that the Stevenage Road building is not up to the high standard of Imperial Wharf and Elgin Resource Centre buildings.
- 2.5.6 A full Equalities Impact Assessment (EIA), which addresses all of the concerns raised during the consultation is appended at Appendix 4.
- 2.5.7 The two main equalities issues raised during the consultation were firstly the sharing of services by older and younger people and secondly the access to Imperial Wharf. These are expanded in the full EIA. A concern was raised by a carer of a younger disabled person about sharing facilities with older people because of possible cultural differences between the generations. Concern was raised by some older users about having more active, younger people using the centre. Neither of these were widely held views and there are compensatory factors off-setting them, such as an increase in choice. The second concern was access to Imperial Wharf and relates only to the current problems with the gate and signage, which are being addressed.

2.6 **Consultation recommendations:**

Given that the majority of returns are in agreement with the proposals, officers are recommending the merge of older and disabled people's day services and closure of 147 Stevenage Road. The Sunberry ILS service users can be offered the choice between the two remaining resource centres, Imperial Wharf (in the south of the borough) and Elgin (in the north of the borough).

3. **FINANCIAL IMPLICATIONS**

There are no savings attached to these plans and if the proposal to merge the services goes ahead, the existing staff at Sunbury ILS will transfer to Imperial Wharf.

4. **IMPLEMENTATION**

4.1 **Implementing the new all-age day services (Imperial Wharf and Elgin Resource Centre)**

A timetable for implementation has been based on the new services beginning in June 2011. Before the start of the services the following will take place:

- 4.1.1 Current service users will be met with to share their ideas on what they would like included in the new service specifications.
- 4.1.2 Current Sunberry ILS users will be given the opportunity to visit both Imperial Wharf and Elgin, to get a feel for the new buildings and choose which centre they would like to go to.

- 4.1.3 Transport will be met with to discuss providing transport on a more flexible, sessional basis.
- 4.1.4 Staff will be reorganised and trained to make sure they are competent in both moving and handling and social inclusion, so they are ready to work within each of the new service strands.

4.2 Consultation with Nubian Life and Shanti Resource Centre

As specified in paragraph 1.6, a further consultation with Nubian and Shanti is needed so they can be respecified to include adults of all ages. This consultation will be over a period of 12 weeks, starting in January and finishing in March 2011. The consultation will be in the form of a simple questionnaire to all current users and carers of Nubian and Shanti and an event will be held at each service for questions and answers. If the consultation is in agreement with the proposal, the services will be respecified accordingly to include all ages. If the outcome of the consultation does not support the proposal, the service will not be respecified.

5. PROCUREMENT PROPOSALS

5.1 Imperial Wharf

- 5.1.1 Imperial Wharf Resource Centre is currently a council run day service for older people. The proposal consulted on described earlier in this report will require this resource to be a non-age related day service.
- 5.1.2 Staff currently based at Sunberry ILS will, subject to staff reorganisation, transfer to Imperial Wharf.
- 5.1.3 This reorganisation will be completed June/July 2011. The reorganisation will require some time to be implemented.
- 5.1.4 It is recommended that any tender/outsourcing for Imperial Wharf is delayed until 2012 in order that the reorganisation has time to settle and to give the council an opportunity to evaluate the new model of service.

5.2 Elgin Resource Centre

- 5.2.1 Elgin Resource Centre is currently contracted to Nottinghill housing as a day service for older people. The proposal consulted on will require this resource to be a non-age-related day service.
- 5.2.2 The current contract with Nottinghill ends in June 2011.
- 5.2.3 The proposal is to tender this service as one 'lot' within the day service tender as described below.
- 5.2.4 In order to develop the personalisation approach, service users will be given a budget for their care needs, which will include an amount for day care. It is proposed that LBHF will 'block purchase' 50% of the capacity for the first year and 25% of capacity in the second year (subject to review). The remainder of the capacity will be spot purchased either through service users' budgets or direct payments. It is expected that at the end of this two-year period, the council will no longer block purchase any level of service. The entire service will be spot purchased, or purchased through individuals' Direct Payments.

5.2.5 This funding allows the provider and the department to develop the uptake of direct payments. However there is a risk if less than 50% in first year and 25% in second year of capacity is purchased through personal budgets; the council may be at risk of double funding. However this risk is thought to be a low and the usage and uptake of day services is currently high.

5.3 Alzheimer's day service

5.3.1 Alzheimer's day service is currently a service that is non-age-related. It is provided by the Alzheimer's Society and operates from St. Vincent's day centre on Queen Caroline Street.

5.3.2 The proposal would be to tender this service as a 'lot' on the same basis as outlined above for Elgin resource service.

5.3.3 The issue of direct payment for this service users group is more complex because the service users are unlikely to have the mental capacity to manage finance. It is legally permissible to make payments to a suitable third party in these circumstances.

5.4 Nubian Life Resource Centre and Shanti Day Centre

5.4.1 Nubian Life Resource Centre and The Asian Health Agency (Shanti) are currently funded to deliver day services to older people in the black and minority ethnic (BME) community.

5.4.2 Funding was originally agreed under the council's Main Grants Programme allocation in April 2007, a process ring-fenced for 3rd sector providers. Contracts for these services are due to expire in March 2011.

5.4.3 In the recent allocation of the 3rd Sector Investment Fund (3SIF), these two services were transferred from grants funding to contract funding, as the 3SIF grants programme had revised its focus to preventative services only.

5.4.4 The services are well used, and there are few alternatives for users who need culturally-specific support. The proposal to establish non-age-specific day opportunity services for older and disabled residents will result in a tendering process for these services – outlined above. Each of these services will be a 'lot' within the tender on the same funding basis as outlined above: that LBHF will 'block purchase' 50% of the capacity for the first year and 25% of capacity in the second year (subject to review). The remainder of the capacity will be spot purchased either through service users' individual budgets or direct payments. It is expected that at the end of this two-year period, the council will no longer block purchase any level of service, and that the entire service will be spot purchased, or purchased through individuals' Direct Payments.

5.4.5 Nubian and Shanti were not services included in the original consultation on non-age-related services, although users at both centres were consulted with on the service model. It is intended that a further consultation exercise is held with regards to establishing these services as all age centres, while the tender is underway.

5.4.6 There is a risk that service users will not support the change to Nubian and Shanti during the consultation process, in which case the services will come out of the process.

5.5 Options Day Service

5.5.1 This is a council run day service for people with learning disabilities and is provided from a council-owned day centre on Goldhawk Road. A recent market testing project has reviewed this service and recommended that a tender for outsourcing is undertaken.

5.5.2 This 'lot' in the tender would carry a TUPE obligation for in house staff.

5.5.3 The tender would be on the same funding basis as those described above.

5.6 Ellerslie Day Service

5.6.1 50 Ellerslie Road, London W12 7BW is a council owned building in the Shepherds Bush area of the borough. It is a relatively modern building in reasonable condition and offers ample accommodation. It is currently used as a day centre for service users suffering from mental health problems. The service is provided in-house.

5.6.2 It is intended through the tendering exercise to outsource the current service and expand it from a day centre to a resource centre for mental health users. The successful tenderer will be required to manage the building on behalf of the council for the duration of the contract and thereby effectively act as the council's agent. The tendering exercise will be designed to incentivise the successful tenderer to maximise usage of the facilities at Ellerslie Road for the benefit of the community generally and specifically for service users suffering from mental health problems. This will involve usage of the building by third sector organisations and also by service user-led groups responding to demands of their group.

5.6.3 All other funding would be on the same basis as the other lots within the tender outlined. The need for the waiver of rent is two fold - one as described and the other that the number of service users is more variable than with other service users groups. Therefore the funding may not be sufficient to cover all the costs.

5.7 Summary

5.7.1 It is intended to run a restricted tender process following cabinet decision.

5.7.2 The tender will be for all services described above and applicants will be able to apply for all or any of the lots.

5.7.3 In order to ensure that award of contract is within the required timescales it is necessary to seek permission from cabinet for permission for delegated authority for the Director of Community Services to the award of these contracts.

6. RISK MANAGEMENT

- 6.1. There are two main risks attached to the proposals, the first is a risk to the service delivery. It is possible that no independent sector provider would be interested in running a service that would traditionally have been block contracted, but which in future will rely on individual service users spot purchasing it. This is mitigated in part by offering potential providers transitional funding for two years as described in paragraph 5.4.4. The fall-back position if no provider successfully bids is that the council would have to manage the service in-house if there is a continuing need for it.
- 6.2. The second related risk is financial. There is a risk that the service users choose not to use the services during the period of transitional funding. This would result in the council incurring double running costs. However at present there is no indication that current service users will wish to change their service. For any service that remains in-house there will be staffing and non-staffing costs incurred irrespective of whether the service users choose to use it or not. Balancing the level of committed expenditure with estimated levels of demand will be an on-going challenge. At this stage it is impossible to predict the extent to which service users will choose to use their individual budgets for these services in the longer term. This can only be mitigated by accurate year-by-year forecasting.

7. EQUALITY IMPLICATIONS

- 7.1 There was an attempt to gain feedback about the EIA from service users, carers and interest groups. Two meetings were offered, the first on 10th December and second on 17 December. An expected low turn out to the first meeting prompted the attempt to rearrange for the 17, but no-one attended. Feedback was received by email from a member of the consultative forum.
- 7.2 A full Equalities Impact Assessment is attached at Appendix 4, but outlined below are the main points addressed for each of the protected groups: race; disability; gender; age; sexual orientation and religion.
- 7.3 **Race:** It is unknown at this stage how many of the Sunberry ILS service users will transfer to Imperial Wharf or Elgin, but it is highly unlikely that the ethnic make-up of either service will change significantly as a result of the merge. The impact on the service and its users will therefore be neutral in race terms.
The impact on BME groups is likely to be positive because all day services will be reminded of the need to promote diversity, there could be an increase in what BME service users consider suitable for their needs. If more day centres focussed on BME cultural needs there would be an increase in choice available to BME groups.
- 7.4 **Disability:** During the 12 week consultation the Sunberry service users and carers had the opportunity to attend two meetings regarding the proposal to merge the services and cease using 147 Stevenage Road. At the meetings

the participants were reassured that the staff at both Elgin and Imperial Wharf would be fully qualified to meet their care needs and would be trained in all relevant areas prior to the new services starting.

Under the proposal to merge the service with Imperial and Elgin, disabled people would be offered the choice of two services and during the support planning process they will have the opportunity to look into alternatives to traditional day care. This should have a positive impact on people with physical disabilities because they would have more choice and control about how they receive day care.

It is currently difficult to gain access to the Imperial Wharf day service via the electric gates. However this access issue is being dealt with by the day services manager and the owners of the building (see section 07). It is hoped that there will soon be improved access into Imperial Wharf for people to be dropped off at the day centre.

- 7.5 **Gender:** The gender make-up of day services users is unlikely to change as a result of the merge. However, the closure of Sunberry ILS (which has more even numbers of male and female users than the other services) is likely to lead to there being more even numbers of male and female users of all services, which should have a positive impact on gender equality. As with most adult social care services, the large majority of staff working in all three day services are female. The male service users at Sunberry ILS currently receive care from three female and one male day service workers and the deputy manager of the service is male. The impact of these service users moving to the newly merged services is therefore unlikely to be significant, because the gender of the day service workers they receive care from is unlikely to change.
- 7.6 **Age:** There was some concern during the consultation that the Sunberry ILS users would be disadvantaged by using the same day service as older people. However the large majority (78%) of Sunberry service users are aged over 50, so those that are younger are used to mixing with an older age group. The younger service users would benefit from the new community access service, which will be aimed at those that want to participate in education, employment, leisure and training activities in the mainstream community.
- 7.7 **Sexual orientation:** The merge of day services or the procurement proposals will not have a differential impact on users of different sexual orientations. However it should be considered that some evidence suggests as people get older they sometimes feel they should conceal their sexuality, for fear of discrimination. Service providers therefore should understand this and ensure that their service does not discriminate on grounds of sexuality.
- 7.8 **Religion:** There is no evidence to suggest that the merge in day services would have a differential impact on users who hold different religious or philosophical beliefs. The merged services would continue to provide as now for a range of religious needs, for example by addressing dietary requirements such as using halal meat and celebrating all religious and cultural special days.

8. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 8.1. The cost of the proposed merger of the three day services Sunberry, Imperial Wharf and Elgin Resources will be done within the existing budgets.
- 8.2. The merger will result in the property known as 147 Stevenage Road becoming vacant. Community Services have deemed the property surplus to their requirements. The Corporate Asset Delivery Team will be responsible for making a recommendation to EMT/Members regarding future options for the property.
- 8.3. Once the property has been vacated Buildings and Property Management should take responsibility for the Building under existing protocols. The Environment Department currently hold the buildings related budgets of £56,600. These were transferred earlier this year as part of the centralisation of Facilities Management, from Community Services.
- 8.4. There is a financial risk as detailed in section 6.2 of potential double running costs. These occur if service users choose to take a Direct Payment and not use the service, as the Council will be guaranteeing funding of 50% capacity for the first year and 25% for the second as part of the new day care contracts. This will need to be closely monitored as part of the budget monitoring process.
- 8.5. Following the procurement exercise a further delegated report will be required detailing all of the financial implications.

9. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

Merger of Day Services

- 9.1. For those people who are ordinarily resident in the borough and have an assessed need for such services this Authority has a duty to provide day centres and other facilities. That duty arises under two statutory provisions. Firstly under s29 National Assistance Act 1948 and in accordance with guidance under LAC(93)10 at Appendix 2 para 2(1)(c), which refers to the duty "to provide, whether at centres or elsewhere, facilities for occupational, social, cultural and recreational activities." Secondly under s2(1)(c) Chronically Sick and Disabled Persons Act 1970 which includes the duty to provide recreational facilities outside the home, and to assist in taking advantage of educational facilities.
- 9.2. As is stated clearly in the main body of the report the proposed remodelling of older and disabled persons services required full consultation. There is case law guidance as to what constitutes proper consultation. Consultation should

include the following:

9.2.1 It should be carried out when the proposals are still at a formative stage.

9.2.2 Sufficient reasons should be given for the proposals to allow those consulted to give intelligent consideration and an intelligent response.

9.2.3 Adequate time must be given for responses.

9.2.4 The product of consultation must be conscientiously taken into account when the ultimate decision is taken.

9.3 The consultation process followed is outlined in Appendix 1, the consultation document used at appendix 2 and the product of the consultation at appendix 3 and paragraphs 2.5 and 2.6 of the report. The product of the consultation was also used to inform the Equalities Impact Assessment at appendix 4 which is summarised as to equalities implications at paragraph 7 of the report.

9.4 When making a decision as to changes in service provision this Authority must comply with its general equality duties imposed by each of the Sex Discrimination Act 1975 ("SDA"), Race Relations Act 1976 ("1976") and Disability Discrimination Act 1995 ("DDA"). These provisions in similar, but not identical, terms require public authorities in the carrying out of their functions to have due regard to the need among other things to eliminate unlawful discrimination and to promote equality of opportunity.

9.5 The specific matters to which the authority needs to have due regard in the exercise of its functions are set out in the relevant sections as follows:

DDA - s 49A General duty

(1) Every public authority shall in carrying out its functions have due regard to:

(a) the need to eliminate discrimination that is unlawful under this Act;

(b) the need to eliminate harassment of disabled persons that is related to their disabilities;

(c) the need to promote equality of opportunity between disabled persons and other persons;

(d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;

- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life.

SDA - s 76A Public authorities: general statutory duty

(1) A public authority shall in carrying out its functions have due regard to the need:

- (a) to eliminate unlawful discrimination and harassment, and
- (b) to promote equality of opportunity between men and women.

RRA - s 71 Specified authorities: general statutory duty

(1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need-

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity and good relations between persons of different racial groups.

9.6 Case law has established the following principles:

(i) Compliance with the general equality duties is a matter of substance not form.

(ii) The duty to have "due regard" to the various identified "needs" in the relevant sections does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.

(iii) Due regard is regard that is appropriate in all the circumstances, including the importance of the area of life of people affected by the decision and such countervailing factors as are relevant to the function that the decision-maker is performing. The weight to be given to the countervailing factors is a matter for the authority.

(iv) The general equality duties do not impose a duty on public authorities to carry out a formal equalities impact assessment in all cases when carrying out their functions, but where a significant part of the lives of any protected group will be directly affected by a decision, a formal equalities impact assessment is likely to be required by the Courts as part of the duty to have 'due regard'.

9.7 A full Equality Impact Assessment has been carried out and is attached as appendix 4. The Equality Impact Assessment was informed by the consultation process.

9.8 Parts of the Equality Act 2010 came into force on 1st October 2010 but not those parts of the Act which cover the new public sector equality duty, which has been the subject of recent consultation by the Government. When the public sector equality duty provisions of the Act come into force (date as yet uncertain but possibly on 1st April 2011) it will widen the general equalities duties with which a local authority has to comply. It will (among other things) include age as one of the protected characteristics to which the general equality duties will apply and will amend slightly the factors to which authorities will need to have due regard if they are to comply with those duties. Section 149 of the Act provides (so far as relevant) as follows:

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to

participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some

persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

- 9.9 In addition, local authorities will be under a duty by virtue of s 29 of the Equalities Act 2010 not to discriminate against, victimize or harass any person to whom they provide services on any of the protected grounds. The protected grounds will include age as well as the grounds on which the existing equalities legislation already protects people from discrimination by local authorities (i.e. disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief and sex). Discrimination means (1) treating someone less favourably because of a particular protected characteristic (or for a reason related to it, in the case of disability) ("direct discrimination") or (2) applying a provision, criteria or practice equally to everyone but which puts people of a particular protected characteristic at a particular disadvantage (indirect discrimination). An authority may rely on a defence of justification (i.e. that the discrimination was a proportionate means of achieving a legitimate end) in response to a claim of indirect discrimination, or in response to a claim of direct discrimination on grounds of age. Otherwise, direct discrimination cannot be justified.
- 9.10 Whilst the provisions as to age are not yet in force, the forthcoming change in the law is a relevant consideration which a local authority can take into account when making decisions as to service provision.

Procurement Proposals

- 9.10 The services proposed to be tendered are Part B services under the Public Contracts Regulations 2006 and are therefore not covered by the full regime of the Regulations. However, the Council should still ensure that it complies with the general EU principles of transparency, non-discrimination and proportionality in relation to the procurement of the services.
- 9.12 Legal Services will work with the client department in respect of the procurement of the services referred to in this report.
- 9.13 The client department should ensure that it consults with legal services and HR in relation to the application of TUPE to any of the services procured.

10. COMMENTS OF THE ASSISTANT DIRECTOR PROCUREMENT

- 10.1. There are no immediate procurement issues outlined in the Report. However, it is noted that the intention is for the service to be externalised and this project has been added to the Market Testing Programme schedule.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Cabinet Member's Decisions: Decision to consult on the remodel and merge of older and disabled people's day services. 10 th August 2010	Hannah Carmichael/5384	CSD Commissioning
2.	Select Committee Report: Update on Adult Social Care day services. 16 th November 2010	Hannah Carmichael/5384	CSD Commissioning
CONTACT OFFICER:		NAME: Hannah Carmichael EXT. 5384	

APPENDICES

1. CONSULTATION PROCESS

1.1 Consultation participants:

The consultation involved:

1.1.1 Current users of the day services affected by the proposals:

- Imperial Wharf day service
- Elgin Close day service
- Sunberry ILS

1.1.3 Carers, service providers, residents and other stakeholders, including interest groups such as:

- Nubian Life Resource Centre
- Shanti Resource Centre
- Age Concern luncheon clubs
- HAFAD

1.2. Consultation methodologies

1.2.1 Consultation questionnaires and a letter of explanation were handed to all current service users of all the three affected day services and included a prepaid envelope for return. Those that did not attend the day service within a fortnight of the consultation starting were sent a consultation letter, questionnaire and prepaid return envelope to their home address.

1.2.2 The consultation document, which explained the proposals and included the questionnaire, was put together with the assistance of the borough's Reading Group. The Reading Group is a group of volunteers that proof-read documents on behalf of council officers, to ensure documents are 'easy read' and user-friendly.

1.2.3 The existing users of older and disabled people's day services were invited to attend events held in each of the day service buildings. The events included a brief presentation on the proposals followed by a questions and answers opportunity.

Consultation events also utilised the existing user involvement infrastructure for consultation purposes. This included the Better Government's consultative forum and disability forum.

Events were held at each day centre, including Nubian and Shanti. Elgin and Sunberry ILS requested a further event, with which they were granted.

Carers were invited to attend two events, one in the day time and one in the evening, but no carers came to either planned event.

An event was held at Age Concern lunch club.

HAFAD's managers were met with.

Hammersmith and Fulham's Coalition Against Cuts were invited to a meeting, but did not respond.

2 Consultation document



\\LBHF\Root1\
SCU-P&P-Commission

3 Quantitative consultation results



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SCU-P&P-Commission

4 Equalities Impact Assessment



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