

# LONDON BOROUGH OF BRENT

**Meeting of the Executive**  
15<sup>th</sup> November 2004

## Report from Director of Social Services

For action	Wards affected: All
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### **Report Title: Pooled funds and Health and Social Care partnerships**

Forward Plan Ref: SS-04/05-21

#### **1.0 Summary**

- 1.1 This report seeks the agreement of members to a strategy for improving partnership arrangements between the Council and Brent Primary Care Trust. It is proposed that a framework agreement be established between the two agencies for the use of powers under section 31 of the Health Act 1999, and that a number of section 31 agreements (including pooled funds) be established within the framework agreement. A substantially similar report will be considered by the PCT Board.

#### **2.0 Recommendations**

The Executive are asked to:

- 2.1 Note and approve the broad strategic approach to partnership working between Brent Council and the Primary Care Trust.
- 2.2 Agree to the principle of the establishment of a framework partnership agreement under Section 31 of the Health Act 1999.
- 2.3 Agree to receive a further report proposing the detailed framework agreement in order to simplify the process of establishing section 31 partnership arrangements, including pooled funds, or amending the scope of existing ones.

- 2.4 Note the progress in establishing section 31 partnerships and pooled fund arrangements to date between Brent Social Services and the Primary Care Trust (PCT).
- 2.5 Agree to receive further reports detailing arrangements in respect of each service to be subject to partnership arrangements and each pooled fund before it is established.

### **3.0 Detail**

- 3.1 Section 31 of the Health Act 1999 introduced powers whereby primary care trusts could exercise various prescribed local authority functions and local authorities could exercise various prescribed NHS functions. It also introduced powers whereby primary care trusts and local authorities could establish and maintain pooled funds out of which payments may be made towards expenditure incurred in the exercise of those prescribed functions. This is set out in more detail on the Legal Implications section of this report. The intention in introducing the powers is to facilitate the development of whole systems responses to health and social care needs and to improve partnership working between Social Services, Primary Care Trusts, Acute Trusts and other Council departments such as Education, Arts and Libraries.
- 3.2 The issue of partnership continues to be high on the Government's modernisation agenda for adults and children and young people. The Health Act flexibilities and in particular pooled funds have proved successful mechanisms for strengthening partnership arrangements. Brent PCT and the Social Services department wish to enhance their partnership arrangements and are expected to do so by the Department of Health and the Commission for Social Care Inspection. The strength of our partnership arrangements is a significant contributor to a positive annual review of performance and to the star rating for Social Services. The Children Bill further encourages the development of integrated Children services and a Green Paper outlining new arrangements for Adult Social Services is anticipated later this year which is likely to encourage further joint working and a greater emphasis upon the preventative agenda. Further details concerning the Children Bill are contained in the Legal Implications section of this report.
- 3.3 In Brent, Social Services and the PCT have successfully implemented arrangements in respect of some services for vulnerable adults. This has been a gradual implementation with both organisations wishing to adopt an incremental approach.
- 3.4 Pooled funds can be an important aspect of integrated services and can be linked to other arrangements for joint services including a single assessment process and a single management structure. Continuing

to implement the approach contained in this report in Brent offers the following advantages:

- Supports more effective co-ordination of services
- Increases efficiency
- Provides greater flexibility in the use of resources
- Helps to maximise creativity and innovation
- Maximises creativity and innovation

These arrangements provide improved services to service users via a single point of assessment and joined up service delivery.

- 3.5 To assist in the development of a strong partnership we have established a Health and Social Care Partnership Board chaired by the Director of Social Services and below this a Priority Action Group or partnership group for each service area – these include the Children and Young Persons Partnership Group, the Learning Disability Partnership Board and the Mental Health Local Implementation Team. Each partnership group has developed a Joint Commissioning Strategy and is supported by a Joint Commissioning Manager. The commissioning strategies set the direction for the modernisation of services in Brent. The overall strategic direction for Brent is currently agreed at the partnership board and then by the Local Strategic Partnership.
- 3.6 Senior Managers from Social Services and the PCT are in agreement that the conditions now exist in both organisations to support the further development of partnership working and that this would be in the interests of service users in all the major user groups. A legal framework now exists for establishing full Care Trusts but it is not the intention of Brent Council or Brent PCT that we should move towards Care Trust status. Instead, we have adopted an incremental approach to partnership. The approach will continue to be incremental and it is proposed that further partnership be achieved by implementing pooled funding arrangements in those areas of service where partnership working is already well advanced.

### **The Strategic Approach in Brent**

- 3.7 The broad strategic approach to be taken towards each client group is contained at Appendix 1. Appendix 1 summarises section 31 agreements which are currently in place or are under discussion in Brent within each client group. The schedule indicates the type of powers under section 31 of the Health Act which are or will be utilised and who has or may have lead commissioning responsibility, whether there is or may be an integrated service and whether there is or may be a pooled fund. It is intended to provide further reports to the Executive setting out detailed arrangements in respect of each individual pooled fund for approval at the appropriate time, reports will include decisions about the services detailed in Appendix 1.

- 3.8 In Brent we have already established two fully integrated services, the Brent Mental Health Service (established April 2001) and the Learning Disability Partnership (established 2002). The legislation has been used to establish pooled funds for the management teams of both organisations and more recently (April 2004) a pooled fund for an integrated equipment store was established.
- 3.9 It is proposed that future use of the flexibilities will include a pooled fund for the whole of the Brent Mental Health Service and the Brent Learning Disability Partnership, for residential, nursing and continuing care placements for older people and for children with disabilities and complex needs who require tri-partite funding from Social Services, Health and Education. It is intended that work to establish pooled funds for Mental Health Services will be completed by April 2005 and for the Brent Learning Disability Partnership in April 2006.
- 3.10 The lessons learnt from experiences within mental health, Learning disabilities and the integrated equipment store will be used to inform the arrangements we wish to apply within other services.

#### **Advantages of a framework agreement**

- 3.11 The use of a framework agreement would allow the consistent application of principles and standards across individual agreements for pooled funds and other use of the section 31 flexibilities; the agreement would layout those areas common to all pooled fund arrangements, thereby prevent duplication and pull together our partnership work into a less piece-meal more strategic approach. It would also simplify the process of establishing pooled funds or amending existing ones.

#### **Process for taking forward the development of a framework agreement and pooled funds**

- 3.17 A pooled fund steering group has been established which includes senior managers from Social Services, Education Arts and Libraries, the PCT and the Corporate Finance Team. Membership also includes finance representatives from Social Services and the PCT.
- 3.18 Each of the section 31 agreements will be developed by a project team chaired by a member of the steering group. The project teams include the operational manager responsible for the service and the relevant joint commissioner. The teams will be supported by finance officers from social services and the PCT and will have access to Human Resources input if this is required. Legal advice will be taken on all projects as they develop.
- 3.19 The steering group will ensure consistency in the development of the individual pooled funds, especially around issues such as governance and risk management.

- 3.20 The framework agreement would include the strategic governance arrangements and could provide that a partnership board be established to oversee the working of the framework agreement. The framework agreement would identify issues common to all pooled funds and ensure that they were addressed in individual pooled fund arrangements. The framework agreement would also specify the duration of the agreement, the scheme of delegation of powers and arrangements for dispute resolution and any other matters required by regulations and guidance.
- 3.21 The steering group report regularly to a joint Social Services/PCT management team.
- 3.22 Consultation on proposals has started with staff likely to be affected and with the Unions involved. A full consultation strategy will be implemented which will include a programme of consultation driven through the Priority Action Groups and partnership groups and continue to include staff, unions and service users.

#### **4.0 *Financial Implications***

- 4.1 The financial implications will be covered in more detail once the exact nature of the framework agreement is clear. It is proposed the detail of the framework agreement is the subject of a further report to the Executive. Detailed financial comments will also be provided at the time of individual pooled funds being reported to the Executive.

#### **Risk management**

- 4.2 Although pooled funds can lead to improved outcomes for service users there are concerns about controls and accountability being unclear and the ability of each agency to take management action to minimise risks.
- 4.3 To reduce risks it is essential that there is in place a robust framework with appropriate controls and information systems that would allow all parties to be confident that risks are known and are managed appropriately. Each Pooled fund would have an agreement attached to it. The agreements in each case will set out each partner's accountability and responsibilities. The Agreements will document the risk management procedure and outline the risk management between the parties and the action that will be taken. Each agreement will include provisions relating to insurance, liabilities and indemnities. There will be mutual indemnities such that one partner will indemnify the other for losses which the other may sustain as a result of their negligence or breach of the provisions of the agreement. It is proposed there is a pooled fund manager for each of the pooled funds developed within Brent. The pooled fund manager would be responsible and

accountable for managing the pooled fund within an agreed joint service plan and financial plan.

- 4.4 A further risk lies in the management of under and overspends and there has been conflicting guidance from government and from the Audit Commission about this issue. Guidance from the centre and from our internal and external auditors is required to ensure that we have correct procedures and agreements about how these can be managed in-year and over a longer time period.
- 4.5 Risks can be reduced by ensuring that the individual pooled fund schemes and agreements include service outcomes and targets; access and decision making processes; accounting and auditing procedures; performance management and monitoring arrangements; operational and management arrangements.

### **Monitoring, accounting and auditing**

- 4.6 Yearly review will take place to assess and recommend any future amendments to the agreements and to consider the financial contributions by each Partner for the next Financial Year. This review will take place at the end of each year i.e. 31<sup>st</sup> December. Where a Pooled Fund exists, the Pooled Fund Manager will also report on income and expenditure in relation to the Pooled Fund at the end of each Financial Year.

## **5.0 *Legal Implications***

### **Flexibilities under the Health Act 1999**

- 5.1 Sections 26-31 of the Health Act 1999 require local authorities and NHS bodies to work together to improve health and health care and provides for flexible funding and working arrangements to be established by agreement to facilitate this partnership working.
- 5.2 Under these provisions the Health Service or the Local Authority can delegate some of their functions to each other. At the same time funds can be transferred from the delegating partner to the other partner to pay for the exercise of delegated functions. This enables one partner to be the lead commissioner of services for both partners. Services may be provided to service users in an integrated way under one management structure. Under the provisions it is also possible for a pooled fund to be established, to be held by one of the partners, to pay for services for a particular client group(s) or used for the discharge of particular functions. The key principle of the pooled fund is that it is a resource to be used to pay for the services covered by the partnership arrangements irrespective of whether Health or the Local Authority contributed the funds.

- 5.3 Regulations have been made in relation to the use of the new flexibilities. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 specify which local authority and NHS functions can be subject to such an arrangement and specify requirements that must be complied with in respect of such arrangements. These include the following:
- The consent of each Health Authority which has an NHS contract for the provision of services for persons in respect of whom the functions subject to the arrangement may be exercised;
  - There must be an agreement in writing between the partners covering prescribed matters including aims of the arrangements, the contributions/payments of the partners including accommodation staff and goods, the functions, services and potential service recipients covered, the duration of the agreement and how the operation of any pooled fund that is established is to be monitored and managed.
  - One partner must be designated the host partner responsible for accounts and audit of any pooled funds and this must be reflected in the written agreement.
- 5.4 Guidance has been issued in respect of section 31 partnerships and provides that partners should be satisfied that the arrangements will improve the service for users, there should have been joint consultation with stakeholders and the arrangements should fulfil objectives identified in the Health Improvement Programme (HIMP). In practice HIMPs are no longer required to be produced and have now been replaced by Local Delivery Plans. In addition there is specific guidance issued in respect of particular categories of service.

### **Related Powers under the National Health Service Act 1977**

- 5.5 Section 28A of the National Health Service Act 1977 remains in force and enables certain Health bodies to make payments to a local authority to fund the discharge of the local authority's social services functions or other functions connected to Health functions provided certain conditions are met. The Health Act 1999 introduced a new section 28BB into the Health Service Act 1977 enabling a local authority to make payments to certain NHS bodies in respect of the discharge of the functions of those bodies. Guidance issued in relation to partnership working between health and local authorities suggest that capital payments of any significant size between local authorities and Health bodies should use these section 28 powers rather than the new powers in the Health Act 1999 and should comply with the specific requirements in place for the use of the section 28 powers.

## **Governance**

- 5.6 In any Section 31 Partnership Arrangement, even where functions are delegated, each partner retains ultimate statutory responsibility for their respective functions in accordance with the governance arrangements relevant to them. However, provision is required to be made in respect of the partnership arrangements to ensure proper governance and accountability. It is possible for a joint committee to be established but generally a partnership board is established with representatives of the partner bodies together with arrangements for the involvement of users of the services concerned and other stakeholders. The operation and outcomes of the partnership arrangements are monitored and reviewed through these structures with arrangements in place for dispute resolution and for exit from the arrangements.

## **The Children Bill**

- 5.7 The Children's Bill being considered by parliament imposes a duty on children's services authorities (which will include Brent) to make arrangements to promote co-operation between the authority and certain health bodies and with a wider group of "relevant partners" including police authorities, local probation boards and persons providing services under section 114 of the Learning and Skills Act 2000. The arrangements are to be made with a view to promoting the well being of children in the authority's area in relation to specified matters and can include provision of staff, goods, services, accommodation or other (non financial) resources. The arrangements may include the establishment of a pooled fund by the authority and one or more of the relevant partners, for the discharge of the functions of the authority and the partner(s) concerned. There is no specific power for the partners to delegate functions to each other and in this respect the provisions differ from those in the Health Act 1999. It also appears that the operation of any pool established will be less prescribed.
- 5.8 As part of developing detailed proposals for a framework partnership agreement, if approved in principle by members, consideration will need to be given to the extent to which it is appropriate to include services relating to children in the agreement and this issue will be addressed in the further report to be considered by members in due course.

## **6.0 Diversity Implications**

- 6.1 Proposals in this report contribute to improving life chances of our diverse community as they seek to make service provision more accessible and seamless. Consideration will need to be given to the implications and impact of specific proposals as they are developed.



## **7.0 Staffing/Accommodation Implications**

- 7.1 Pooled funds are one of the mechanisms whereby increased service integration can be achieved and consultation with staff and the unions would be a precursor to any structural changes arising from the decision to extend the use of pooled funds in any service area. It should be noted that in Brent the integration of the Brent Mental Health Service and the Brent Learning Disability Partnership has already taken place and extending the use of pooled funds would be in order to secure more flexible use of staffing budgets. Further work is needed in respect of each area to establish whether this would result in significant changes in terms and conditions of staff. Any pooled fund arrangements significantly affecting terms and conditions would have to be agreed separately by the Council.
- 7.2 These proposals will result in accommodation issues and may lead to the more effective configuration and use of accommodation and provide opportunities to modernise facilities.

### **Background Papers**

Reports to the Executive:

28<sup>th</sup> March 2004 to extend the joint mental health service

8<sup>th</sup> March 2004 to establish the integrated equipment store

Report to Social Services Cabinet:

15<sup>th</sup> January 2001 to establish an integrated service for people with Learning Disabilities

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## Appendix 1

### BRENT - SCHEDULE OF SECTION 31 – HEALTH ACT PARTNERSHIPS

Care group	Programme or Service area	Parties	Type of Health Act flexibility and lead	Progress/action	Timescale
Older People	Free Nursing care	LBB-DSS PCT  LBB lead	Lead Comm & possibly pooled fund	<ul style="list-style-type: none"> <li>Executive have approved lead commissioning arrangements for free nursing care.</li> <li>Agreement with Brent PCT due to be finalised Dec 2004. Harrow PCT due to be finalised Jan 2005.</li> </ul>	Jan 2005
Older people and people with physical and sensory disabilities	Integrated Community equipment	LBB-SSD PCT  LBB lead	Pooled fund Lead Comm Integ Service	<ul style="list-style-type: none"> <li>Executive have approved integrated equipment service and this was established in April 2004.</li> </ul>	COMPLETE

Care group	Programme or Service area	Parties	Type of Health Act flexibility and lead	Progress/action	Timescale
Mental health	Adult mental health services	LBB – SSD PCT  PCT lead	Pooled fund Lead Comm Integ service	<ul style="list-style-type: none"> <li>• Service integration complete and approved by executive</li> <li>• Pooled fund operating for senior management</li> <li>• Arrangement has been extended to assertive outreach service</li> <li>• Proposal to integrate operational and purchasing budgets into a pooled fund. Report on proposals for integration to be completed by April 2005.</li> </ul>	COMPLETE  April 2006
Learning disabilities services	Community services	LBB – SSD PCT  LBB lead	Pooled fund Lead Comm Integ service	<ul style="list-style-type: none"> <li>• Service integration complete and approved by executive</li> <li>• Pooled fund operating for senior management</li> <li>• Proposal to integrate operational and purchasing budgets into a pooled fund</li> </ul>	COMPLETE  April 2006

Care group	Programme or Service area	Parties	Type of Health Act flexibility and lead	Progress/action	Timescale
Older people	Delayed discharges – reimbursement  Other older people services	LBB-SSD PCT  <b>Lead TBD</b>	Pooled fund Lead Comm	<ul style="list-style-type: none"> <li>Agreement to be explored between parties .</li> <li>Incremental approach to integrate services. Agreement to be explored</li> </ul>	April 2006 (delayed discharge)  April 2009 (other services)
Substance Misuse	Drugs and Alcohol (D&A) Treatment services	LBB – SSD PCT  <b>Lead TBD</b>	Pooled fund Lead Comm Integ service	<ul style="list-style-type: none"> <li>Proposed integrated service</li> </ul>	April 2006
Children with disabilities	Children with Disabilities	LBB – SSD LBB – Educ PCT  <b>Lead LBB TBD</b>	Pooled fund Lead Comm	<ul style="list-style-type: none"> <li>Proposal to provide a pooled fund for an integrated service between Social Services Education and the PCT.</li> </ul>	April 2005

Notes :

Lead Comm – Lead Commissioning. Integ service – Integrated service.

**Lead-TBD** parties need to identify and agree