ITEM NO: 10

Executive
13th March 2006

Report from the Director of Housing and Community Care and Director of Children and Families

For Action

Wards Affected: ALL

Joint Working with Brent Teaching Primary Care Trust (tPCT)

Forward Plan Ref: A&SC-04/05-32

1.0 SUMMARY

1.1 This report provides members with an update to a strategy for improving partnership arrangements between the Council and Brent Teaching Primary Care Trust. The Executive previously agreed in principle to the proposal that a framework partnership agreement (called a "framework agreement" in the report) be established between the two agencies to provide a framework for the use of powers under section 31 of the Health Act 1999, and that a number of section 31 arrangements (including pooled funds) be established over a period of time within the framework agreement. This report provides details of the framework agreement between Brent Council and Brent tPCT.

1.2 It provides detail of arrangements for joint working including:

- Joint staffing of the joint commissioning unit
- The partnership structures to deliver partnership working within Health and Social Care

A substantially similar report will be considered by the tPCT Board.

2.0 RECOMMENDATIONS

2.1 To agree that a framework agreement substantially as described in Appendix 1 be entered into between the tPCT and the Council, the final terms of the agreement to be approved by the Borough Solicitor.

2.2 To note the arrangements in respect of partnership governance structures set out in paragraph 3.20.

2.3. To agree to receive further reports in respect of individual projects to be incorporated into the framework agreement as they are developed.

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. There are detailed requirements set out in the legislation and in related guidance in respect of the use of these powers. 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 the Council, Primary Care Trusts and Acute Trusts. There are other powers which could be used to establish partnership arrangements in respect of Children services, however it is felt an efficient use of resources to use Section 31 of the Health Act in this respect.

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 tPCT and the Council wish to enhance their partnership arrangements and are expected to do so by the Department for Education and Skills (Dfes), Department of Health (DOH) and the Commission for Social Care Inspection (CSCI). The strength of our partnership arrangements is a significant contributor to the quality of our services and to a positive annual review of performance, to the star rating for Social Services and to the Comprehensive Performance Assessment (CPA) of the Council. The Children Act 2004 further encourages the development of integrated Children services and the joint white paper, "Our health, our care, our say: a new direction for community services" supports further joint working and a greater emphasis upon the preventative agenda. .

3.3 The specific provisions in the Children Act concerning partnership working with a range of agencies may be more suitable than section 31 for future projects concerning services for children in which case a

report will be brought to members concerning the exercise of those powers. However in respect of the services for children identified in Appendix 2 it is proposed that Section 31 of the Health Act 1999 be relied on because the flexibilities available under section 31 are considered sufficient to achieve the desired arrangements for those services and the ability to use the framework agreement will enable arrangements to be put in place more quickly.

3.4 In Brent, the Council and the tPCT 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.

3.4.1 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
- Encourages services integration

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

3.6 At your meeting of the 15th November 2005 you noted that senior managers from Social Services and the tPCT were in agreement that the conditions existed 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. You have also been previously advised a legal framework now exists for establishing full Care Trusts (i.e. separate legal entities that take over the delivery of services) but it is not the intention of Brent Council or Brent tPCT that we should move towards Care Trust status. Instead, we have adopted an incremental approach to partnership. It is proposed in this report that 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. Adoption of the proposed framework agreement should enable efficient progress to now be made based on experience so far. At the January meeting the Executive agreed to establish a pooled fund in respect of the Partnership for Older People Project. Agreement to the adoption of the framework agreement for Brent will facilitate this.

3.7 Officers have been progressing this approach through focusing upon the following key areas:

- finalising the framework agreement under section 31
- reviewing the arrangements for joint commissioning staff
- progressing individual projects for pooled funds to be included in the section 31 framework agreement
- amending and reviewing partnership arrangements in the light of the creation of an Adult Social Department, Housing and Community Care Department and Children and Families Department within the Council and structural change within the tPCT.

Advantages of a framework agreement

3.8 Members agreed in principle to the use of a framework agreement at their meeting of 15th November 2004 to facilitate the consistent application of principles and standards across individual arrangements for pooled funds and other use of the section 31 flexibilities. The draft framework agreement negotiated between the Council and the tPCT (as described in more detail in appendix 1) sets out an agreed position in relation to a number of matters common to all pooled fund arrangements and other uses of the Health Act flexibilities, thereby avoiding unnecessary duplication and pulling together our partnership work into a less piece-meal more strategic approach. It will also simplify the process of establishing pooled funds or other partnership arrangements or amending existing ones by establishing an agreed approach.

The development of the framework agreement

3.9 In order to develop the framework agreement a pooled fund steering group (which in practice considers use of all Health Act flexibilities and not just pooled budgets) was established which included senior managers from Social Services, Education Arts and Libraries, Legal Services, the tPCT and the Financial Services. This drew upon other models of good practice and has considered a range of issues many of them outlined in the last report to your meeting. The steering group reported regularly to a joint Social Services/PCT management team.

Summary of framework agreement

3.10 The draft framework agreement is summarised in greater detail at Appendix 1. The framework agreement will ensure consistency in the development of the individual pooled funds and other arrangements under section 31, especially around issues such as governance, and risk management and legal implications.

3.11 The framework agreement includes the strategic governance arrangements and provides that a partnership board oversees the working of the framework agreement. The framework agreement identifies issues common to all pooled funds and ensures that they are addressed in individual pooled fund arrangements. The framework agreement specifies that the agreement will last for a minimum of three

years (unless terminated early under one of the specific provisions in the agreement, for example for under performance) and can then be terminated on six months notice (to expire at the end of a financial year) by either party.

3.12 Each of the section 31 projects (these are listed in appendix 2) is being 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 from the Joint Commissioning Unit. The teams are be supported by finance officers from Housing and Community Care (or Children and Families) and the tPCT and have access to Human Resources input if this is required. Legal advice will be taken on all projects as they develop. Consultation on proposed individual projects is taking place as they are developed with staff likely to be affected and with the Unions involved. A full consultation strategy covering the joint consultation that the Council and tPCT are required to undertake concerning partnership arrangements will be implemented for each project, including a programme of consultation driven through the Priority Action Groups and partnership groups and continue to include staff, unions and service users.

3.13 Joint working within Brent is driven by the Joint Commissioning Unit within Brent tPCT. This unit contains officers jointly funded by the Council and the tPCT. Joint Commissioning Officers are required to deliver jointly agreed work plans in conjunction with the partnership arrangements and structures outlined in section 3.2 of this report. The well-being power is being used in carrying out this joint working which contributes to key objectives within the Council's Community Plan.

3.14 Recent structural change at the Council and PCT along with other organisational drivers such as changes within the Health service, Gershon and the development of distinct agendas for Adult and Children services has necessitated the need for a review of our joint commissioning arrangements with the PCT. As is noted earlier in this report at paragraph 3.2, the national policy and performance agenda for Council's and Health services encourages the development of joint working. Officers are currently analysing the recently published White paper on Out of Hospital care. Housing and Community Care have recently commissioned a thorough review of commissioning arrangements and a project plan to implement improvements in this area is currently in draft. The PCT and the Council are both involved in this work and any changes to our joint commissioning arrangements will be funded through existing resources. It may be appropriate to establish a pooled budget with the PCT in respect of joint commissioning staff and including the Joint Commissioning Unit as a project schedule to the proposed framework agreement.

3.15 Risk Assessment

The table below sets out risks inherent in partnership agreements and the way that these risks are addressed within the framework agreement. It should be noted that there are no risks arising directly from the framework agreement because by itself it commits the Council and the tPCT to nothing. However, the consequence of the framework agreement is likely to be that there will be a significant increase in the number and monetary value of section 31 arrangements entered into which will yield significant benefits in terms of better delivery of service but will also increase risk.

Risk	Nature of risk	How addressed in the Framework Agreement
Structural changes in health	Changes to health structures may mean that Brent tPCT no longer exists in its current form. Continuation of existing agreements would be put in jeopardy.	It is likely the council would want to continue existing agreements with successor bodies and the potential for continuation is reflected in the Framework Agreement. However the Framework Agreement also provides that the arrangements may be terminated if one or other of the contracting parties ceases to exist in its current form.
Failure of service provision	Changes to service provision arrangements could lead to disruption to services and a resulting impact on users	The Framework Agreement requires that performance measures are put in place in respect of each new project undertaken and that performance against these will be reported back to the Partnership Board. There are also provisions in the agreement that require the Partnership Board to report on performance to accountable bodies (i.e. the Council or the tPCT). The agreement sets out circumstances in which the partnerships can be terminated which include failure of service performance
Additional unbudgeted costs	A pooled budget means that the council will have less direct control over the way its funds are used. There is a risk therefore budgets may overspend and the council is not in a position to take measures to bring spending	The Framework Agreement includes provision for monitoring of budgets and regular reporting to the Partnership Board. It also includes provision for action to be taken where budgets are projected to overspend during the year to ensure control measures are put in place. Any overspend at the end of the year will either be carried forward to the next financial year or met by additional contributions from the partners in a ‘just and equitable

	under control.	manner taking account of the reasons'. If there is not agreement as to what these additional contributions will be the dispute procedure will be followed and if no agreement can be reached after that then the overspend will be met by the partner to whose functions the overspending relates. In these circumstances the partners will have the option of termination of the agreement.
Cost 'shunting'	There is a risk of cost 'shunting' whereby either the council or the tPCT uses the agreement to transfer costs it previously met to the other party.	The potential for cost 'shunting' (see paragraph 5.6) exists whether or not there is an agreement. The Framework Agreement requires that there is an agreement in advance of how costs are apportioned within the partnership. It also requires that the contributions are determined in advance of the relevant financial year. There would therefore be less opportunity to cost 'shunt' because the position of the parties would be more transparent and also there will be more certainty about what is to be paid.
Loss of flexibility to respond to shifting priorities	There is a risk that once the agreement is reached new demands resulting either from changing national or changing local priorities will not be capable of being met.	There is provision within the Framework Agreement for individual agreements to be reviewed to reflect changed circumstances. If variations cannot be agreed, there is also provision for termination.
Inability to deliver efficiency savings	Lack of direct control could make it more difficult to deliver efficiency savings	One of the benefits of pooled budget arrangements is that it allows the Council and the tPCT to plan services and manage the market more effectively and therefore to deliver efficiency savings. The Framework Agreement requires that one of the criteria to be taken into account in deciding whether a pooled budget is appropriate for any particular function or service is whether this is expected to deliver efficiency savings. It also requires that a range of performance

		measures should be included that cover both effectiveness of the service and cost efficiency.

The Strategic Approach in Brent and the programme for Integration

3.16 The broad strategic approach to be taken towards each client group was agreed at the Executive meeting on 15th November 2004 and an update to this is contained at Appendix 2. Appendix 2 summarises the section 31 agreements which are currently in place and the projects under discussion in Brent within each client group. The Appendix 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 project for approval at the appropriate time; reports will include decisions about the services detailed in Appendix 2. All those not already established are intended to be established under the framework agreement.

3.17 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. The existing agreements in respect of these arrangements will remain in place for the time being although in due course they may be replaced by arrangements under the framework partnership agreement.

3.18 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. A pooled fund may also be used to support an integrated service for disabled children aged 0-19. It is intended that work to establish pooled funds for Mental Health Services will be completed by April 2006 and for the Brent Learning Disability Partnership in April 2007.

3.19 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.

3.20 Outline partnerships governance structures for delivering Health and Social Care outcomes.

Adult Social Care services

The partnership arrangements within Brent are overseen by the Health and Social Care Partnership Board which is chaired by the Director of

Adult and Social Care. This Board links into the Local Strategic Partnership and has a number of client based multi – agency implementation groups reporting into it. These include the Learning Disability Partnership Board and the Mental Health Local Implementation Team. Each partnership board or local implementation team has developed a Joint Commissioning Strategy and is supported by a Joint Commissioning Manager. This structure is shown at Appendix 3 to this report. The Health and Social Care Partnership Board has overall strategic responsibility for delivering outcomes for service users in line with Joint Commissioning Strategies for each client group. This Board oversees the proposed programme of integration between the Council and the PCT. The terms of reference of the Health and Social Care Partnership Board will be included in the framework agreement. Work programmes for each of the Joint Commissioning posts contain key performance targets and outcomes these are delivered through the structures referred to at appendix 3. 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.

Children and Families Services

The partnership arrangements for children and young people are driven by a Children & Young People's Strategic Partnership Board whose membership constitutes senior managers from key statutory and non statutory agencies such as acute and mental health trusts, schools, a local college and the Learning Skills Council in addition to representatives from the Local Authority Departments such as Housing and Regeneration as well as elected members.

This Board links directly with the Local Strategic Partnership to enable complimentary and cohesive strategic borough wide planning. The Children and Young People's Strategic Partnership Board is supported by a large representative steering group with membership from statutory and non statutory agencies as well as a number of reference groups to elicit grass roots involvement in strategic planning and delivery. The steering group is supported in its implementation of agreed priorities through 5 theme groups based on the 5 national outcomes.
Four reference groups which are categorised as voluntary and community sector organisations working with children and young people, parents and carers, children and young people themselves, external providers and employers as well as on for practitioners/professionals working with children and young people.

The joint work of the Strategic Partnership Board will be detailed within the Children and Young People's Plan which will comprise a chapter on joint commissioning and a performance management frame work linked to key performance targets and outcomes. The Children and Young People's Plan will set the strategic direction for the modernisation of services in Brent with the overall strategic trajectory

being agreed by the Partnership board and then by the Local Strategic Partnership.

A diagram illustrating the partnerships arrangement for children and young people in Brent is in Appendix 3.

4.0 LEGAL COMMENTS

Flexibilities under the Health Act 1999

4.1 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.

4.2 Under these provisions the Health Service and 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 the 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. As the pooled fund is not a separate legal entity the Health of Local Authority bodies have to reflect their share of any overspends or under spends at the end of the financial year in their own accounts. The projects to be developed and incorporated into the framework Agreement may involve the use of more than one of the possible mechanisms for partnership working under the Act.

4.3 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.

These requirements will be complied with before the Framework Agreement is entered into and before each individual Project Schedule is agreed.

4.4 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

4.5 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. The draft Framework Agreement allows for expenditure on minor items of a capital nature provided legislation and guidance is complied with.

Governance

4.6 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 and this is the route that has been taken by Brent Council and the Brent tPCT. Each Project included in the Framework Agreement will be overseen by a Local Implementation Team which reports to the Health and Social Care Partnership Board. 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 Act

4.7 The Children ACT 2004 imposes a duty on children's services authorities (which will includes 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. The existence of this specific legislation in relation to services for children does not prevent the use of the powers under section 31 of the 1999 Act in respect of these services as is proposed in this report.

4.8 The Council has power under section 2 of the Local Government Act 2000 to do anything which it considers likely to promote the economic, social or environmental well-being if its area. In exercising this power the Council is required to have regard to it Community Strategy (known in Brent as the Community Plan).

5.0 FINANCIAL IMPLICATIONS

5.1 Joint commissioning arrangement provide opportunities for the council to take a more strategic approach to planning services to meet needs and more effective management of the market. There are however also financial risks which are set out in section 3.15 above. The framework partnership agreement provides a basis for managing these risks although the key challenge will be making sure these risks are addressed and managed when entering into partnership project schedules for particular services. Financial risks will be addressed in reports to the Executive on these individual projects.

5.2 The framework agreement itself does not commit the council to any additional costs.

5.3 The framework agreement provides that the contributions to each project, including to any pooled budget, will be determined in advance of the financial year. Contributions will be negotiated with the aim that if the needs are Social Care needs, these will be met by the Council, and if they are health needs they will be met by the tPCT. So long as spending is in line with budget, there is certainty about the contribution

even if in practical terms the proportions of the demand arising from social care as against health needs are not as initially anticipated. If there is an under spend, overall at the end of the year, this is returned to the partners in proportion to their contributions unless otherwise agreed. If there is an over spend, this is either carried forward to be met from the following year's contributions or shared between the partners in a 'just and equitable' manner. In most cases this would depend on the cause of the over spend – i.e. whether due to meeting additional social care or health needs. If agreement cannot be reached there is provision for a disputes procedure to be followed and if there is still no agreement, the overspend will be determined by reference to whether it is due to meeting additional social care or health needs..

5.4 The Framework Agreement provides for accounting and monitoring arrangements which ensure there will be full accountability for spending within projects. The relevant Partnership Board will receive monthly monitoring reports which will feed into the budget monitoring carried out by council departments. There are provisions within the agreement for addressing overspends during the year. If there is an overspend at the end of the year, the Framework Agreement allows for this to be carried forward and met from Partnership Funds in the following year, although the additional contribution incurred within the year would have to be reflected in the council's accounts to the extent that the Council is in principle liable for it under the framework agreement. Whilst the framework agreement accepts the possibility of an over spend, the arrangements should ensure that this is no more likely than if the council itself was directly managing the agreement. Moreover, if the overspend was considered to be the result of the partnership itself, there is provision within the Framework Agreement for the partnership or particular projects to be terminated.

5.5 The situation on the apportionment of costs between health and, the council departments may become more complex in future. It is planned to make increasing use of single assessments of clients / patients against agreed criteria. It is not proposed to change Brent's current eligibility criteria. Costs will partly be controlled through the application of these criteria and agreement over how such costs will be apportioned. The main risk for the council is in areas of ambiguity where a service (and its cost) could reasonably be either a health cost or a cost to the council. For example, where in order to discharge a patient after the minimum number of nights in hospital a package of care is provided, the care may look identical to the type of homecare that would be provided for someone with social care needs. Here it will be important that the reason why the care was approved is documented (in the assessment) in order to correctly allocate costs. At the point of discharge such an allocation may be straightforward while six weeks after discharge it may be a more complex assessment. The Council currently manages such ambiguities outside of any framework agreement with health and the agreement will not change this on-going management issue.

5.6 The framework agreement addresses in its arrangements for annual agreement of contributions the issue of "cost shunting" where the costs of groups of patients are passed by health to the council (or vice a versa) by statutory changes, or changes in the criteria for determining whether the individual has continuing care needs that should be met by the NHS or whether the needs are for social care – often at short notice. Again a key issue is often the uncertainty of clearly classifying how care needs have arisen. It is planned that both bodies produce three year projections of activity (and cost) and that partners consult on these plans. The aim is to prevent sudden shifts in the funding of care between the parties.

6.0 DIVERSITY AND EQUALITIES

6.1 This report is consistent with delivering excellent services for our diverse community. Through joint commissioning arrangements services should become more accessible and better able to meet a range of diverse needs within Health. Social Care and Education functions.

7.0 BACKGROUND INFORMATION

Draft framework partnership agreement.

MARTIN CHEESEMAN
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JOHN CHRISTIE
Director of Children and Families

APPENDIX 1 SUMMARY OF FRAMEWORK AGREEMENT FOR JOINT WORKING BETWEEN BRENT COUNCIL AND BRENT tPCT

1. The Agreement sets out terms agreed between the Council and the PCT covering the introduction of arrangements for working together in relation to particular client groups and the related finance arrangements. It contains general provisions in relation to a number of matters that are required by the regulations to be included in an agreement for a section 31 Partnership, e.g. staff, financial arrangements, liabilities and insurance, termination, contracting, information sharing confidentiality and the press, service standards, performance management and monitoring arrangements.

2. As each particular arrangement ("project") comes into operation a new schedule containing the information specific to that arrangement is added to the agreement. Effectively there is one agreement which gradually grows to cover all the anticipated functions/client groups and which can be terminated in part in order to remove particular schemes if wished. Any provision included in an individual "Project Schedule" will override any conflicting provision in the main part of the agreement.

3. The initial agreement sets out the overall governance arrangements in place. The agreement refers to the Health and Social Care Partnership Board and the Children and Young People's Partnership Board which are already in existence and anticipates the creation/identification of Local Implementation Teams (LITs) for each Project that is established. The LIT will be responsible for overseeing the operation of the Project concerned.

4. The agreement also sets out the roles of the Assistant Director, Joint Commissioning (a tPCT employee). Each Project has its own "Service Manager".

5. Specifically excluded from the agreement are functions which are already covered by an existing section 31 partnership agreement so it is only new partnership arrangements that would be covered by this agreement. Over a period of time it would be possible to amend and incorporate the existing arrangements into the framework arrangements if that is what is required. Also excluded are functions which come to be covered by another agreement - for example under the Children Act. This does not mean arrangements in relation to children cannot be in the framework agreement at all, just that they can't be in the framework agreement to the extent that they are included in any future arrangement under the Children Act 2004.

6. The agreement is initially for 3 years and is then terminable on 6 months notice to expire at the end of a financial year. In addition there are provisions for termination (of the whole agreement or a particular scheme) at other times (subjects to notice requirements that depend upon the reason for termination) as follows:

Current Draft Clause	Circumstance	Effect	Notice required
19.1.6	Failure to agree contributions to pooled or non pooled funds for a scheme or schemes for the next year by its commencement	Terminate agreement in relation to scheme or functions affected	No minimum
21.4.3	Failure to agree about overspends	Terminate agreement in relation to scheme or functions affected	No minimum
42.1.1/2	Material breach	Terminate whole or part	Date of service
42.1.3	Transfer of statutory functions	Terminate in whole or in part	Such reasonable notice having regard to the expected date of transfer as is specific in the notice.
42.2.1	Change in law means cannot perform	Whole or part of the agreement	Upon reasonable notice as specified in the notice.
42.2.2	Fulfilment would breach guidance	Whole or part of the agreement	Upon reasonable notice as specified in the notice.
42.2.3	Fulfilment would be ultra vires	Whole or part of the agreement	From date of service
42.2.4	Inadequate budget to commit	Whole or part of the agreement	Not specified

7. The agreement envisages separate pooled fund in relation to each of the projects rather than one big pooled fund. There will normally be Non-Pooled funds for a project (this would cover direct spending but also contribution by way of contribution in kind such as use of property, professional services such as legal advice and so on) and where the agreed criteria are met, there will also be a Pooled Fund. The Pooled

Fund could in principle cover all the direct expenditure on a project and reimbursement for contribution in kind.

8. Each year a three year financial plan will be agreed (see current draft clause 19.1) together with the funds to be allocated by each partner. This will take into account market and funding trends as well as financial performance for the previous year.

9. Where a pooled fund is established one partner will be responsible for acting as the Pooled Fund Manager to manage and report on the fund. Money in the pooled fund can be spent freely on PCT or Council functions during the year but at the end of the year each partner will have to account for their share of any over or under spending on the pool. The allocation of any overspends or under spends will be in accordance with the terms set out in the main part of the agreement, or in the relevant project schedule if different terms are set out in that. The terms in the main part of the agreement provide that:

   a. the partners will seek to agree a just an equitable apportionment of any overspends but that in the event that agreement cannot be reached overspends will be funded by the partner to whose functions the overspending relates;
   b. under spends will be allocated in proportion to the contributions made by the parties to the pool unless something else is specifically agreed.

10. Criteria for deciding to establish a pool are included in the agreement to assist the partners in determining whether a pooled budget should be established for a particular service or function, and if so, what the right time to do that would be. The criteria identified in the current draft are**:**

   (i) Whether the establishment of a Pooled Fund would:

   - Lead to a single point of assessment
   - Provide “joined up" service delivery.
   - Support more effective co-ordination of services
   - Increase efficiency
   - Provide greater flexibility in the use of resources
   - Help to maximise creativity and innovation
   - Promote independence well being and choice for service users
   - Contribute to taking forward joint strategies

   Normally at least three of these factors would be expected to apply;

   (ii) How developed co-operative working arrangements in respect of the functions or service concerned are;

iii) How predictable future costs of the functions or service concerned are.

11. The agreement envisages that after its commencement the following additional protocols/systems will be developed and complied with:

- Press contact protocol (32)
- Joint complaints procedure (41) – this would not supersede statutory procedures it would just provide a framework for ensuring that the statutory procedures are complied with and that there can be joint resolution of complaints where appropriate.
- Staff management protocol (14.3)
- Insurance claim protocols (optional) (28.5.3)

12. Monitoring

This will be via the Health and Social Care Partnership Board. The Children's Partnership Board and schemes and Local Implementation Teams as well as by relevant managers and the Pool Fund Managers for each pooled fund. There will also be a formal quarterly review and an annual review.

Each of the section 31 projects will have a robust and rigorous performance management regime applied to it with a distinct set of outcomes and associated performance measures and this will be included in the relevant schedule to the agreement.

13. Each project schedule would contain detailed provision concerning staff working in the particular services but the main agreement simply provides that the procedures of the employing partner will apply to the staff. This means that staff working side by side may have different terms, even though their terms are similar terms to other staff of their employer. More complex provisions will need to be included in project schedules if the nature of the arrangements in relation to any services or functions are such that there is a transfer of staff to which the transfer of Undertakings Regulations applies.

14. Where property of one partner is to be used for the purposes of the arrangements the cost (or opportunity cost) of this is included in consideration of the contributions of the partners. Properties can always be withdrawn from use of the partnership where the owning partner wishes to do so, normally on 6 months notice unless that is not practicable.

15. Each partner indemnifies the other in respect of the carrying out of functions of the indemnifying partner except where a liability arises out of an act or omission of the other partner. Potential liabilities are to be covered by insurance in so far as possible. Uninsured liabilities will be funded from pooled, non-pooled allocated funds of that partner or other resources of that partner.

16. Dispute resolution will be initially through attempts to have the matter resolved by chief executives or deputies. Failing resolution by them, disputes will be referred to mediation if that is agreed. Disputes that cannot be resolved through these mechanisms can be taken to court.

Appendix 2

BRENT - SCHEDULE OF SECTION 31 – HEALTH ACT PARTNERSHIPS Updated Oct 2005

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	• Executive have approved lead commissioning arrangements for free nursing care. • Agreement with Brent PCT due to be finalised Jan 2006. Harrow PCT due to be finalised Feb 2006. As this is with Harrow PCT and not Brent tPCT it will not be included in the framework agreement but is included here for completeness.	COMPLETE

Older people	Delayed discharges – reimbursement Other older people services Partnership for Older People (POPP)	LBB-SSD PCT Lead TBD LBB H&CC Brent tPCT	Pooled fund Lead Comm Pooled fund Lead comm. Lead by Council	• Proposal June 2006 • Incremental approach to integrate services. Agreement to be explored • Reported to Executive Jan 2006 • Funding to be provided by DOH April 2006	April 2007 (delayed discharge) April 2009 (other services) Agreement in place April 2006
Older people and people with physical and sensory disabilities	Integrated Community equipment	LBB-SSD PCT LBB lead	Pooled fund Lead Comm Integ Service	• Executive have approved integrated equipment service and this was established in April 2004.	COMPLETE

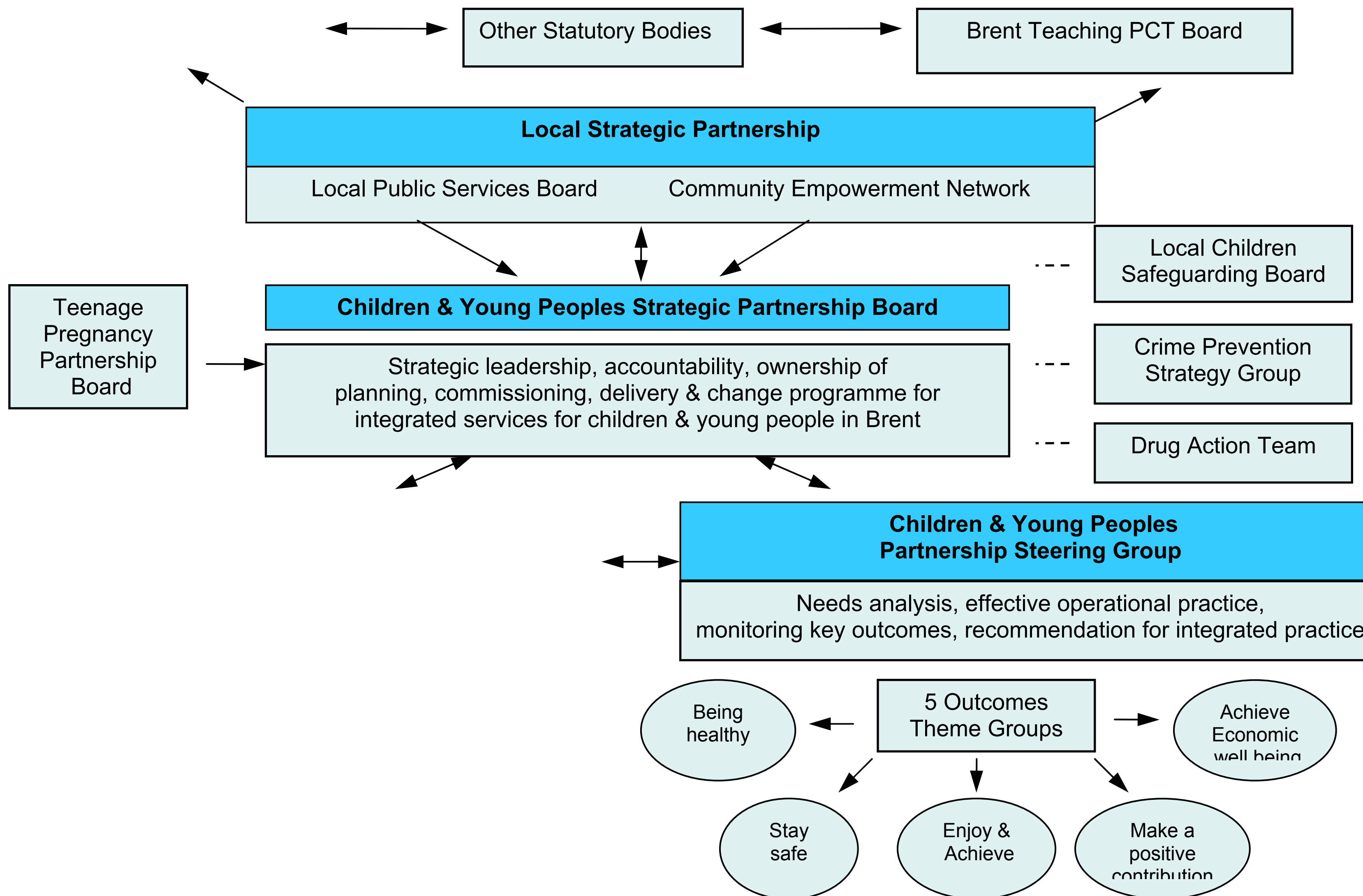
Care group	Programme or Service area	Parties	Type of Health Act flexibility and lead	Progress/action	Timescale
Mental health	Adult mental health services	LBB – SSD PCT PCT lead	Pooled fund Lead Comm Integ service	• Service integration complete and approved by executive • Pooled fund operating for senior management • Arrangement has been extended to assertive outreach service • Proposal to integrate operational and purchasing budgets into a pooled fund. Report on proposals for integration to be completed by April 2006.	COMPLETE April 2007
Learning disabilities services	Community services	LBB – SSD PCT LBB lead	Pooled fund Lead Comm Integ service	• Service integration complete and approved by executive • Pooled fund operating for senior management • Proposal to integrate operational and purchasing budgets into a pooled fund	COMPLETE April 2007

Care group	Programme or Service area	Parties	Type of Health Act flexibility and lead	Progress/action	Timescale
Substance Misuse	Drugs and Alcohol (D&A)Treatment services Dual diagnosis with people with mental health problems	LBB – SSD PCT Lead TBD	Pooled fund Lead Comm Integ service Pooled fund for H&SC funding	• Proposed integrated service • Proposal completed report due to Executive Jan 2006	April 2006 April 2006
Children with disabilities	Children with Disabilities	LBB – SSD LBB – Educ PCT Lead LBB TBD	Pooled fund Lead Comm	• Proposal to provide a pooled fund for an integrated service between Social Services Education and the PCT. • Proposal to develop a pooled fund for the purpose of supporting residential placements for children with complex needs.	April 2006
Voluntary Sector Funding	All client groups	H&CC PCT	S31 Poss Pooled fund	Agreement at officer level in principle to establish joint arrangements and possible pooled fund	TBD

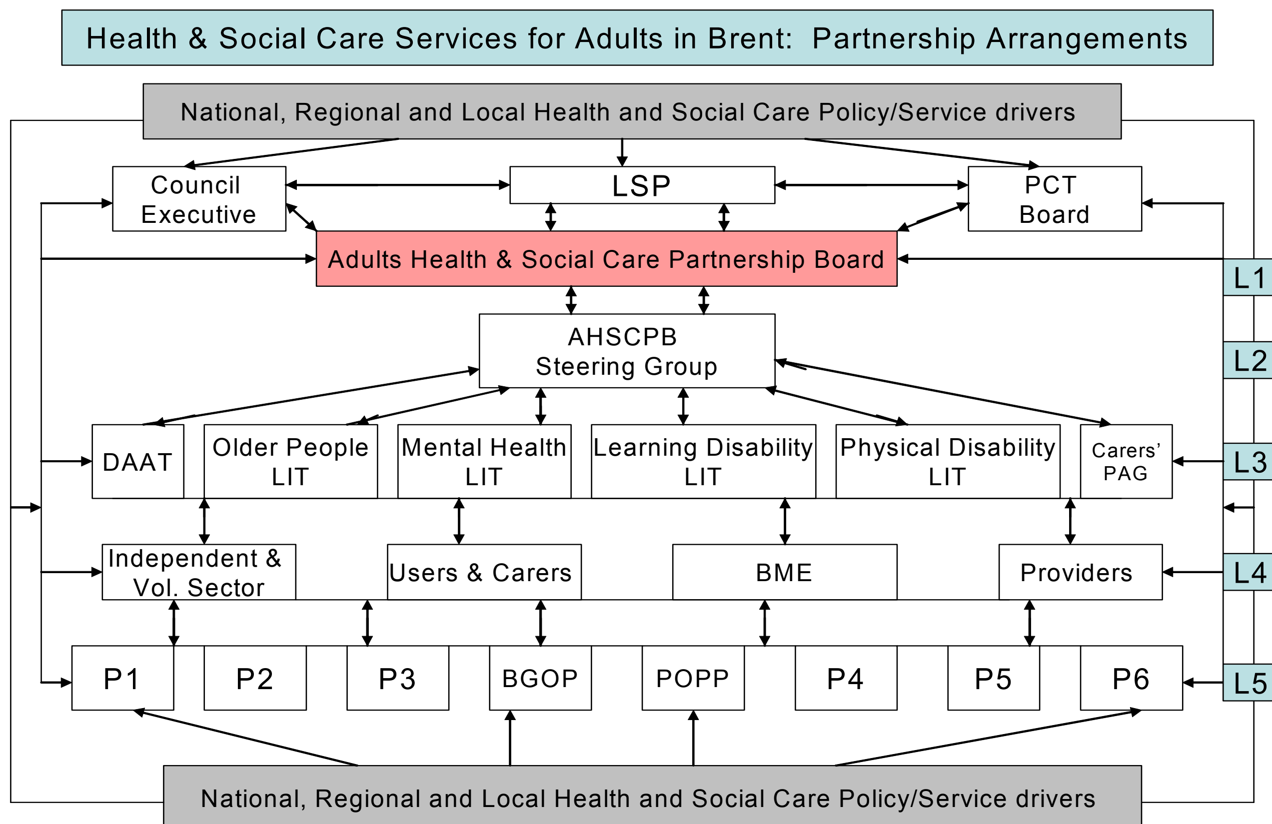
Notes :

Lead Comm – Lead Commissioning. Integ service – Integrated service.
Lead-TBD parties need to identify and agree

Appendix 3
(Children)



APPENDIX 3 (Adults)



Notes:

LSP – The Adults Health and Social Care Partnership Board links into the Local Strategic Partnership.

L1 - Adults Health and Social Care Partnership Board – Provides strategic leadership, accountability and ownership of the planning, commissioning, delivery and change programme for integrated services for adults in Brent. Made up of Directors and Assistant Directors of partner organisations (Adults and Social Care (x2), NHS Trust (x2), Housing (x2), , Chairs of LITs, Representatives of Independent & Voluntary Sector (x2), Users (x2), Carers (x2), BME (x2), and Providers.

L2 - AHSCPB Steering Group: A core group charged with setting the agenda, monitoring initiatives and in consultation with members takes decisions when and if necessary on behalf of the larger group between meeting intervals. The members of this core group will be Assistant Directors of statutory organisations.

L3 - OP, MH, LD, PD Local Implementation Teams (LIT) – Undertakes needs analysis, effective operational practice, monitoring key outcomes, recommendation for integrated practice. This level will be made up of SUMs, Joint Commissioners and support teams, representatives of independent and voluntary sector, users, carers, BME groups and providers (x2) (one statutory (Drug and Alcohol Team and one private provider tbc). The Chair of each LIT will be represented on the AHSCPB.

L4 – Various forums which participate in service planning, decision making, needs analysis, consultations, commissioning, delivery and change programmes. The AHSCPB will ensure that fully fledged and functioning mechanisms are in place for these groups. Representatives from these groups will contribution to the LITs (L3).

L5 – Projects: Various short, medium and long term projects arising from discussions, actions plans/points, aimed at delivering the Adults Health and Social Care agenda.

National, regional and Local Health and Social Care Policy/service drivers – Bounds the structure and informs the adults' health and social care agenda.

The arrows indicate the interrelationship between the various components and show a bottom up and top down approach. This is reinforced by arrows pointing inwards from the vertical line (L1-L5) which recognises the input at all levels by all.