



**Executive
18th March 2008**

**Report from the Director of
Housing and Community Care**

Wards Affected:
None

**Section 31 (now Section 75) Partnership Agreement –
Brent Mental Health Service – Two Year Extension**

Forward Plan Ref: H&CC-07/08-29

1.0 Summary

- 1.1. This report recommends a further 2 year extension to the current partnership arrangement between the Council and Central and North West London NHS Foundation Trust (formerly Central and North West London Mental Health NHS Trust) (CNWL), which expires on 31st March 2008 with a view to reviewing the options for further integration using flexibilities provided by Section 75 National Health Services Act 2006 (formerly Section 31 Health Act 1999). It also seeks agreement to further consider options to use S75 flexibilities for older people's mental health services with both groups to report back by March 2010. The Executive agreed to a one year extension of the current Section 31 Partnership Agreement in March 2007.
- 1.2. A steering group was established, a seminar held, and agreement reached that considerably more detailed work was required if the agreement was to fundamentally change. It was also agreed as vital to have Brent tPCT fully engaged in discussions on future options and pooled budgets. Due to changes in staff on interim appointments and the focus on turnaround, this has not been possible. This will also need to be agreed by CNWL Board. In the integrated Brent Mental Health Service (BMHS) CNWL manages the Council's Adult Social Care staff carrying out mental health assessment and care management and social care provider functions through an integrated management structure, although they remain employees of Brent Council. The Brent Mental Health Strategy for Older People proposes more integrated work with CNWL and OPS in line with best practice.

- 1.3 The report also refers to new requirements under the Mental Capacity Act 2005 which imposes new statutory duties on local authorities and health trusts which need to be implemented by April 2009, and will need to be considered alongside S75 arrangements.

2.0 Recommendations

- 2.1. To agree to a 2 year extension of the partnership arrangement with CNWL until 31st March 2010 with the Director of Housing and Community Care to report back earlier if agreement is reached with regard to matters contained in paragraph 2.2.
- 2.2. To re-affirm the commitment to a fundamental review of the partnership arrangements with CNWL with a view to developing further integration through Section 75 flexibilities.
- 2.3. To agree the Director of Housing & Community Care continues to consider options for use of S75 flexibilities for older people with mental health needs and to report back by March 2010.

3.0 Detail

3.1. Background

The report to the Executive in March 2007 set out the background, achievements and issues. These are repeated below subject to relevant updating to reflect the current situation.

- 3.2 BMHS was established in April 2001, bringing together the mental health services previously provided by Brent Council Social Services and CNWL under a formal Partnership Agreement. It was renewed in February 2004. The management of BMHS is through a Head of Service and managers employed by CNWL, a three star NHS Trust, with funding for these posts from the Council and CNWL placed in a pooled fund arrangement managed by CNWL as defined in Section 31 of the Health Act 1999 (now Section 75 National Health Services Act 2006). The funding for some specific posts concerned with assertive outreach services is also pooled following a variation to the original agreement agreed by the Executive in February 2004. The Head of Service is jointly responsible to CNWL's Director of Operations and the Assistant Director for Community Care. The overall governance and management arrangements and pooled budget are monitored through a mental health partnership board chaired by the Director of Operations (CNWL) for both CNWL and community care, the Assistant Director for Community Care and the Head of Finance. BMHS provides services to Brent residents aged 16 to 65 who have substantial or critical mental health needs under the Council's Fairer Access to Care criteria, which includes assessment, care management, social care support and accommodation services.

3.3. Achievements since Integration

In accordance with DoH guidance BMHS has achieved much to the benefit of service users since the partnership began in 2001: establishing a single point of entry; joint referral criteria; single multi-disciplinary assessment; seamless service delivery to improve the care pathway; single case file; integrated multi-disciplinary workforce with joint supervision and appraisal procedures and integrated training plan, resulting in successive Investors in People (IIP) Accreditations. The majority of the National Service Framework (NSF) targets have been met through the work with the Local Implementation Team (LIT) accountable to the health and social care partnership board and the joint service has performed well in the key health and social care performance indicators such as assessment waiting times, hospital discharges and number of adults helped to live at home. BMHS has also undergone a number of successful reviews including a Supporting People (SP) review of its supported housing accommodation and management and the 2006 Health Care Commission review of Community Mental Health Teams, for which it received an 'excellent' score.

3.4. Operational Considerations

The integration of health and social care through BMHS has undoubtedly been a success in achieving agreed outcomes as above. However the separation of the CNWL and Brent Council workforces and finances (other than at management level) under the original partnership agreement needs further consideration. Operating to 2 systems managers need to understand and apply two HR, Payroll and Financial structures, where the cultures, systems, policies and practices of the two organisations are different, as are their expectations of managers and the level of support they provide. For example, different rules apply to cost savings, growth, capital programmes, suppliers and purchasing processes, staff pay and employment conditions, and separate IT, Complaints and Health and Safety systems, the latter being complex particularly where health and social care staff jointly occupy accommodation owned by either organisation.

Whilst BMHS has effectively managed the separate key business processes inherent in the current partnership agreement, a number of external factors have occurred that will further impact on the agreement.

3.4.1 Change Drivers

Since the outline of policy development set out below, there have been 2 key national policy developments and implementation of legislation requiring more detailed consideration of appropriate structures, as well as the adult social care transformation programme. The DoH protocol on 'Putting Brent People First' and the 'Social Care Reform Grant and Guidance' requires a fundamental review of the way in which assessment and care management services are delivered. The overarching framework is to provide self directed support provide through direct payments and individual budgets. A new S75 agreement would need to reflect these changes.

3.4.2 Legislative changes through the Mental Capacity Act 2005 place new statutory duties on health and social care bodies in relation to people who do not have capacity and whose liberty may be restricted. Structures for 'deprivation of liberty' assessors and boards need to be set up by April 2009. these arrangements will be reported to Executive, If required DoH guidance is still in draft form and will mainly apply to older people with mental health problems and those with learning disability. A Mental Capacity Act local implementation network chaired by the Assistant Director Community Care is taking this forward to implement. A DoH grant is provided for setting up the new requirements.

3.4.3 (i) *Government White Paper "Our Health, Our Choice, Our Say"*: This key document focuses on a five-year plan for health and social care in which it reaffirms the Department of Health policy on developing integrated health and social care partnerships to take forward the plan's recommendations.

(ii) *Mental Health Act 2007*: Currently the local authority has responsibility for carrying out Mental Health Act assessments, however under the new Act it is proposed that the function be extended to include other professionals such as nurses, replacing the Approved Social Worker (ASW) with a new Approved Mental Health Practitioner role. Currently the ASW function is not one which the Local Authority can pool and further clarification is awaited as to whether the Local Authority or its health partners can delegate this function under a pooled budget arrangements. .

(ii) *New Mental Health Act*: Prior to the Act the local authority had responsibility for carrying out mental health act assessments, however under the new Act this function has been extended to other professionals such as nurses, replacing the Approved Social Worker (ASW) with a new Approved Mental Health Practitioner role. As the individual is not required to be employed by the local authority this issue is no longer an impediment to further Section 75 integration, although overall responsibility for quality arrangements remain with the Council.

(iii) *Brent Council Framework Partnership Agreement*: The Executive has previously agreed to the establishment of a "Framework Agreement" between Brent Council and the PCT to provide a framework for the use of Section 75 powers in order to minimise disputes about organisational boundaries, help avoid unnecessary duplication and simplify the process of establishing pooled funds, an important aspect of integrated services and advantageous in increasing efficiency by providing greater flexibility in the use of resources, maximising creativity and innovation and providing better services through joined up service delivery. The 13th March 2006 Report to Executive proposed that the future use of the Section 75 flexibilities would include a pooled fund for the whole of BMHS. This agreement related to the PCT and not CNWL and therefore a separate agreement on the same principles will be needed.

(iv) *CNWL Foundation Trust (FT) Status approved April 2007*: For CNWL needs to function within the parameters of commissioned services by the PCT

and LA subject to monitoring. Operationally there are issues and complexities arising from managing services with 2 separate employer organisations with different policies and procedures. Consideration needs to be given to streamlining this in a more integrated way. Through the FT membership process and elected Board of Governors, social care organisations, service users and the public have greater input into the work of the Trust and which in turn will become more accountable to its stakeholders, including the local authority and community care commissioning.

3.5. Review of current partnership agreement

It was agreed by the Executive in March 2007, in light of the above issues it was vital to review the current integration arrangements in BMHS, making it opportune to consider a new partnership agreement to take advantage of full Section 75 Flexibilities to improve overall service outcomes for users. However due to the difficulties outlined above, the existing partnership agreement will need to be extended for a further two years to allow this detailed work to proceed, and be agreed by the Council's Executive and CNWL Board by March 2010.

- 3.5.1 The reason for requesting up to 2 years renewal is because of the extensive consultations that will be required to agree the best option for the way forward. In order to be effective agreement has to be reached with the PCT, to confirm joint commissioning objectives and outcomes and whether budgets for long term care should be pooled. The PCT is still implementing its turnaround programme and will not be in post for 3 months to appoint a permanent Director for Commissioning. Once these parameters have been agreed, options will then need to be discussed with staff. As one option could be the transfer of social care staff from the Council to CNWL under TUPE or as a result of an order made under Schedule 18 of the National Health Service Act 2006 full consultation with staff and trades unions will take at least 3 months. As the proposal is not just for adult mental health but older people's mental health service there are different issues to consider, and different budgets to disaggregate, hence a longer timescale is necessary.

3.6. Purchasing Budgets

It is proposed to consider a pooled health and social care budget for the purchasing of all care. Both health funding from the PCT and social care funding for adults social care could be amalgamated into one CNWL Pooled Budget and managed by BMHS. In support of this, Brent Council's independent review of purchasing residential and nursing care in 2005 recommended that *'agreement should be reached as a matter of urgency on pooling mental health budgets'*. In view of the current turnaround savings plan with the PCT further discussions are needed with the PCT on investment in any pooled purchasing budget. Indications are that more certainty on this would be possible by 2009/10 for pooled arrangements to be agreed, and whether this should be with CNWL, or between the PCT and local authority.

3.7. Service and Management Arrangements

It is also proposed that options are considered for commissioning of mental health social care as well as provision. The transfer of the Brent Council social care staff working in BMHS to the employment of CNWL and the pooling of the Operational Budget. The options would need to include the implications for commissioning, staff employment and the role of Brent Council, as well as the perceived benefits to service outcomes, users and carers. Currently there is a joint commissioning arrangement with the PCT and community care needs to strengthen its commissioning arrangements. Further DoH guidance has been issued and endorses strong joint commissioning arrangements.

3.8. Property Management

Supported Housing provision for BMHS service users

This will require options appraisal in terms of the property and housing management aspects of the service in order to ensure a cost-effective quality service can be provided in the future as community care properties are currently managed through BMHS.

3.9. Day Care Services

BMHS is currently changing its day services in line with national policy on social inclusion and the Council's day care modernisation programme by moving away from the traditional day centre model to one of community engagement. This approach will promote greater independence and support individuals to achieve wider social participation in services, education, employment, volunteering and training and increasing the use of Direct Payments can improve access and choice for service users. This could involve CNWL taking on a contracted arrangement for delivery of social care services.

3.10 Examples of Full Section 75 Integration

There are a number of examples of mental health providers where integration has successfully taken place through the pooling of funds and transfer of the social care workforce to NHS employment using Section 75 flexibilities, such as the Camden and Islington Health and Social Care Trust, Lincolnshire Partnership NHS Trust, Gloucestershire Partnership NHS Trust, Suffolk Mental Health Partnership NHS Trust and South Essex Foundation Partnership Trust. Locally, the Harrow Mental Health Service completed full integration between CNWL and Harrow Council, whilst Westminster is now also taking integration forward with CNWL.

The proposed Steering Group will review these and other examples of best practice to inform a new Brent model.

3.11. Joint Commissioning Benefits

Joint mental health commissioning intentions between the PCT and community care are to improve quality of life and well being by enabling people with severe mental health problems to live as independent and as full a life as possible. To achieve this Housing and Community Care and the PCT, through the Joint Mental Health Commissioner, and the local implementation network will work to ensure that people with mental health problems are at the centre, promoting choice and safeguarding those who need health and social care.

Within the guidelines of the White Paper *“Our health, our care, our say”* (January 2006), setting out the Government’s vision for more effective health and social care services outside hospitals and focusing on preventative provision, work is being progressed in a number of areas.

3.12 Service User Benefits

Further integration under Section 75 will facilitate the continuing development of whole systems responses to health and social care needs, enabling BMHS to utilise its pooled resources more effectively and maximise creativity and innovation, subject to commissioning requirements. This over time will achieve greater economies of scale. A more joined up and seamless approach to care delivery will improve individual care pathways and throughput through the Service, reducing referral waiting times and overall quality of care throughout the patient journey. Opportunities under Foundation Trust Governance arrangements will provide a more streamlined and effective dialogue with the Brent multi ethnic community, i.e. through its membership and the Board of Governors.

3.13. Service User Involvement and Consultation

Brent has a solid foundation of partnership and the consultation and involvement of users in the development of mental health services, enabling them to influence the care and support available to them. The current BMHS partnership has used and continues to use local networks to influence and improve health and social care developments locally, including: CNWL’s Public and Patient Involvement Forum; Brent Mental Health User Group; Brent Carers Centre; the recruitment and training of BMHS staff; setting of standards; monitoring the quality of services and service developments and research; and representation on CNWL’s Board of Governors from April 07.

The original consultation and involvement for the partnership agreement in 2001 was carried out by the Brent Local Implementation Team, Comprehensive Service Review and through Brent Council and the PCT’s Joint Commissioning processes. Service users were very positive about the new partnership arrangements as they demonstrated transparency and continuous improvements to services and to date they continue to allow service users to highlight specific areas and where improvements on things important to them can be made.

3.14. Project Management

It is proposed to take forward the above proposals on a project management basis and the project Steering Group reporting to the Mental Health Management Board to develop more detailed options. These will be considered by the LIT, which will then make recommendations to the Health and Social Care Partnership Board, for approval by the Council's Executive and CNWL Board.

3.15 Review of services for older people with mental health needs and dementia

Current services are provided separately through CNWL, the PCT and Housing and Community Care. A draft strategy has been developed to improve access to the services and provide a more integrated approach for users. At an operational level Housing and Community Care's Older People's Service is responsible for assessment and care management and has improved liaison arrangements to try to provide a better multi-disciplinary approach with the CNWL older people's mental health team. This is separately managed within the trust from the adults mental health service. Both the Health Care Commission and Commission for Social Care Inspection, through external reviews, have recommended improvements are made to an integrated approach. A multi-agency strategy steering group has been established, chaired by the Assistant Director Community Care. It proposes that S75 flexibilities are explored to consider options such as an integrated team and pooled budgets. This is a complex area to plan for as the vast majority of older people with mental health or dementia needs also have physical health needs, are frail and vulnerable and only a minority of people will receive a secondary health service. However in order to promote an integrated approach the 2 ASW's are working within 2 mental health teams.

3.16 Currently the need for approved social workers for older people is shared with adults mental health. The protocol has recently been relaunched and will need to be incorporated into a S75 agreement subject to issues set out in para 3.4.3.

4.0 Financial Implications

Renewing the existing agreement will on the basis of existing budgets and contributions. The agreement has been for the adult mental health service. Brent Council contributes 30% funding for the pooled budget for integrated management posts. The current agreement does not state the basis of Brent Council's contribution but it is thought by officers to represent the council's spending on the posts included in the agreement. A few posts 100% funded have also been added since the original agreement was signed. The contribution level was agreed to cover a proportionate cost of joint contract, assessment services, and includes management of the Council's provider services as well as those of CNWL.

It is proposed to review this level of contribution as part of the preparation for the new agreement. The joint service is formally defined in the agreement

and will be reviewed. The pooled management budget for the joint service for 2007/08 is £1.478m of which Brent Council contributes £0.517m with the balance coming from CNWL (funded ultimately by Brent tPCT). It is forecast that there will be a small underspend on the budget in 2007/08.

- 4.1. The 2006/07 adult social care operational budget is £2.557m and is used to provide management of the service, community mental health teams, outreach work, in house residential care, day services, supporting people and carers grant payments.
- 4.2. The purchasing budget is £3.233m and is for nursing and residential care, supported accommodation costs, direct payments, homecare and external day care.
- 4.3. The budget for 2007/08 will be on the same basis. The fundamental review will also consider the overall budget allocation and whether efficiencies can be achieved through greater integration.
- 4.4. Implementation of the Mental Capacity Act and Deprivation of Liberty requirements is funded by a DoH grant of £36,612 for 2008/9

5.0 Legal Implications

- 5.1. The Health Act 1999 has now been consolidated into the National Health Service Act 2006 ("the Act"). The Act requires local authorities and NHS bodies to work together to improve health and social care and provides for flexible funding and working arrangements to be established by agreement to facilitate this. This includes, but is not limited to, payments between NHS and local authority bodies, pooled budgets and integrated service provision. Agreements to pool budgets are now entered into under s75 of the Act. There are further provisions in associated regulations which authorise the agreed transfer of staff from one organisation to another as a consequence of an agreement whereby one organisation exercise certain functions of the other organisation.
- 5.2. The Mental Health Partnership Agreement entered into by the Council provides that the agreement will subsist until the 31st March 2007 unless determined earlier or extended by agreement between the parties.
- 5.3. The Agreement covers the exercise of Joint Functions as set out in a schedule to the Agreement, which may be amended from time to time.
- 5.4. Section 75 of the Act stipulates which bodies can enter into such arrangements and includes NHS Foundation Trusts.
- 5.5. Consideration will need to be given in the fundamental review of the partnership arrangements with CNWL concerning whether the transfer of Council social care staff to CNWL in pursuance of greater integration will be covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and if not whether and if so what safeguards should be put in place to safeguard the rights of transferring staff. TUPE does not apply to " a transfer of administrative functions between public

administrative authorities” and arguably the envisaged transfer of staff is such a transfer. However under Schedule 18 of the Act where, under any arrangements under regulations under section 75, any functions of a body (“the transferor”) will be exercised by another body (“the transferee”), the Secretary of State may by order transfer to the transferee any specified description of employees of the transferor (a “schedule 18 order”). If a Schedule 18 order is made the transfer has effect as if it was made under TUPE. In order to reduce uncertainty concerning whether TUPE will apply to the transfer of Council social care staff to CNWL it would be advisable for the Council and CNWL to apply to the Secretary of State for such an order to be made.

6.0 Diversity Implications

The partnership has had a positive impact on promoting equalities and diversity issues. Service users continue to be involved and consulted in the work to promote joined up working and improve partnerships. This is an on going process carried out through a variety of consultation forums including a service user forum, In-patient forum, monthly meetings with the Head of BMHS, LIT meetings and LIT Sub-groups with specific remits for women and black minority ethnic communities. The Partnership has continued to strive for fair representation of all groups across the range of involvement activities in the planning, development, delivery and monitoring of services. An outline Equalities Impact Assessment was completed to support the 2007 report and will be expanded as part of the work of the Steering Group as work progresses.

7.0 HR Implications

There are currently 155 WTE budgeted social care posts in BMHS and about 6 posts in older people services who could be affected. There are no new HR implications for the two-year extension to the partnership agreement and the Brent Council social care staff will remain employed by Brent Council and continue to be managed through BMHS. However the Steering Group will consider the benefits of further integration and the implications for staff if transferred to CNWL under TUPE or under an order made under Schedule 18 of the 2006 Act.. Both the Council and CNWL HR will be involved in the Steering Group as appropriate and there will be consultation with the staff and unions on the considered options. The Council’s Managing Change Strategy will provide the framework for this process.

8.0 Accommodation Implications

The Steering Group will also consider the implications for management of Brent Council properties as part of further integration.

Background Papers

Patient and Public Involvement in the New NHS (1999)

Health Flexibilities Act (1999)

National Service Framework for Mental Health (1999)

NHS Plan (2000)

Health and Social Care Act (2001)

S31 Partnership Agreement Executive report (2001)

Department of Health "Shifting the Balance of Power" (July 2001)

Partnership Renewal Executive Report (February 2004)

Mental Capacity Act 2005

Deprivation of Liberty Safeguards Consultation Paper 2007

White Paper "Our Health, Our Care, Our Say" (January 2006)

Putting People First Concordat 2007

Outline Equalities Impact Assessment (February 2007)

Brent Mental Health for Older People Strategy (draft) 2008

Contact Officers

Christabel Shawcross, Assistant Director of Housing Community Care,
6th Floor, Mahatma Gandhi House, 34 Wembley Hill Road, Wembley,
HA9 8AD. Tel: 020 8937 4230 email: christabel.shawcross@brent.gov.uk

David Dunkley, Head of Brent Mental Health Service,
15 Brondesbury Road, Kilburn, NW6 6BX. Tel: 020 8937 4297
email: d.dunkley@nhs.net

Sarah Nyandoro, Mental Health Joint Commissioning Manager, Brent PCT,
116 Chaplain Road, Wembley, HA0 4UZ. Tel: 020 8795 6468
email: sarah.nyandoro@brentpct.nhs.uk

Martin Cheeseman, Director Housing & Community Care, Mahatma Gandhi
House, 34 Wembley Hill Road, Wembley Middlesex 020 8937 2341 email:
martin.cheeseman@brent.gov.uk

MARTIN CHEESEMAN
Director of Housing and Community Care