

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 09 <sup>th</sup> September 03	<b>MEETING NAME</b> Executive
<b>Report title:</b>		Governance around s31 Partnership Arrangements and agreeing such arrangements for Adult Mental Health Services and NHS Funded Nursing Care	
<b>Ward(s) or groups affected:</b>		All Wards	
<b>From:</b>		Strategic Director of Social Services	

## RECOMMENDATION (S)

- 1 The Executive notes the Governance Framework in place to support the s31 Partnership Arrangements and the integration agenda.
- 2 The Executive, in full or in part, agrees to meet with the Board of Southwark Primary Care NHS Trust twice a year to review health and social care performance, joint objectives and the modernisation agenda.
- 3 The Executive agrees to delete the post of Assistant Director – Community Care from the Council's establishment and replace this post with a Head of Older People's and Physical Disabilities Services.
- 4 The Executive agrees to the setting up of a s31 Arrangement for the pooling of budgets between the Council and Southwark Primary Care Trust for Adult Mental Health Services, and for Southwark Primary Care Trust to act as the lead commissioner for Southwark's integrated Adult Mental Health Services.
- 5 The Executive agrees to the setting up of a s31 Arrangement for the Council and South London & Maudsley NHS Trust to integrate the provision of adult Mental Health services.
- 6 The Executive agrees to the setting up of a s31 Arrangement for the Council to commission NHS Funded Nursing Care for all vulnerable adults in need of registered residential care with nursing care in Southwark.

## BACKGROUND INFORMATION

### Introduction

- 7 Over the next 12 months the Department proposes to achieve continuous improvement in all national and local priorities by modernising service delivery through increasing the pace of integrating service provision with the PCT. The overall aim is to ensure that local residents receive seamless and timely care in the most appropriate setting.
- 8 The process of integrating service provision has already began, this paper describes the legislative framework that enables us to integrate service provision, seeks approval from the Executive to set up such arrangements for Adult Mental Health Services and NHS Funded Nursing Care, and asks the Executive to endorse the governance framework that we propose to put in

place to ensure probity and transparency in delivering integrated services.

### **Background to s31 Arrangements**

- 9 From the 1<sup>st</sup> April 2000 new legislative powers came into force to enable health and local authority partners to work together more effectively. These were outlined in Section 31 of the 1999 Health Act, and are known as “s31 Arrangements”.
- 10 These s31 Arrangements have been developed to give NHS bodies and local authorities the flexibility to be able to respond effectively to improve services, either by joining up existing services, or developing new co-ordinated services, and to work with other organisations to fulfil this.
- 11 The use of such arrangements is a key policy driver which will enable local partners to deliver many of the performance expectations outlined in *National Priorities for Health and Social Care 2003-2006 – Improvement, Expansion and Reform: the next 3 years*. As such, the Social Services Inspectorate (SSI), and the South East London Strategic Health Authority are closely monitoring progress in this area.
- 12 Such arrangements exist in numerous health and social care communities within London, and the rest of England. In respect of Southwark Council we have an s31 Arrangement in place for Learning Disability Services with Southwark Primary Care Trust (SPCT), and the former Lambeth, Southwark & Lewisham Health Authority. This has been in operation since April 2002.
- 13 Later, this paper will ask the Executive to agree to enter into such arrangements for Adult Mental Health Services and NHS Funded Nursing Care. Over the coming year the Department proposes to enter into similar arrangements in areas such as Children’s Disability Services, Intermediate Care Services, Hospital Discharge Services, Child and Adolescent Mental Health Services and Community Equipment.
- 14 Over time our objective is to deliver the majority of services through such integrated arrangements as it offers opportunities to develop innovative services around users rather than structures.
- 15 s31 Arrangements allow for:
- the pooling of budgets and/or
  - the delegation of functions (lead commissioning / integrated provision)
- 16 In order to set up such an arrangement local partners need to agree the functions which are to be included within the s31 Arrangement; these may include any health related local authority functions (such as social services, housing and education functions) and NHS services.
- 17 These Arrangements can be used if local partners are satisfied that:
- the arrangements will improve services to users
  - consultation has taken place with relevant staff who appear to be affected by the arrangement

- the arrangement fulfils the objectives identified in local strategic plans such as the Council's Community Strategy, and the PCT's Local Delivery Plan
- there is a clear written agreement, which meets the requirements of the regulations.

### **Pooled Budget Arrangements**

- 18 Under Pooled Budget Arrangements, the pooled resource can be used on the agreed services as set out in the partnership agreement. This will mean the expenditure will be based on the needs of the users, and not the level of contribution from each partner.
- 19 In addition, minor capital items can be paid for out of the pool, along with rent, capital charges etc. However, major capital investment is not to be managed through the pooled budget.
- 20 To ensure that only local authorities are in receipt of income from charges on service users, local authorities are required to contribute on a gross basis to the pool. All receipts for charges must be tracked back to the local authority partner.

### **Delegation of Functions – lead commissioning & integrated provision**

- 21 Lead commissioning provides an opportunity to commission a range of services from a single point and therefore provides a level of co-ordination which improves services for users. In effect, one partner takes on the function of commissioning for those services which are set out in the agreement. Within Southwark such arrangements are in place in respect of Learning Disability Services.
- 22 Integrated provision is an opportunity to resolve some of the difficulties experienced by users and, at the same time, to increase the quality of the service by allowing different professionals to work within one management structure. In Southwark, this is already in place in respect of Adult Mental Health services, where Approved Social Workers and other staff working within multi disciplinary Community Mental Health Teams are managed by NHS professionals within South London and the Maudsley Mental Health NHS Trust.

## **KEY ISSUES FOR CONSIDERATION**

### **Southwark Council's Executive and Southwark Primary Care Trust Board Partnership Arrangements to support the Governance Framework**

- 23 In order to ensure transparency in setting the priorities for health and social care services in Southwark the Department is recommending to the Executive and Southwark Primary Care NHS Trust Board that they should formally meet twice a year to:
- review progress in delivering on the modernisation agenda, and set health and social care priorities for the following 6 months
  - review performance across health and social care

- develop joint objectives
  - review governance arrangements to ensure compliance with best practice
- 24 It is proposed that an inaugural meeting should take place in October 2003 and at that meeting both statutory bodies should consider and adopt a draft constitution / terms of reference.

### **Health and Social Care Scrutiny Sub-Committee**

- 25 The Health and Social Care Act 2001 gave Local Authorities with a social services function the power to scrutinise local health services.
- 26 The governance arrangements outlined in this report will strengthen monitoring arrangements across both health and social care and will aid Southwark's Health & Social Care Scrutiny Sub-Committee's role in ensuring that high quality services continue to be provided to local residents, along with prompting and championing the involvement of the public in decisions to ensure their voices are supported and encouraged.

### **Client Group Focus - Partnership Arrangements to support the Governance Framework**

- 27 The health and social care partnerships in Southwark currently cover a range of client groups based services including:
- mental health
  - learning disabilities
  - older people
  - physical and sensory disabilities
  - children and young people.
- 28 Other partnerships include vulnerable adults (which is currently under review) and Healthy Southwark (Public Health).
- 29 A structure chart illustrating the partnership arrangements in place is at Appendix B.
- 30 As outlined above, Learning Disability Services within Southwark operates within an s31 Arrangement. This has enabled the pooling of budgets, integrated commissioning arrangements for assessment and care management, integrated internal provider services and a multidisciplinary health team (adult therapies, challenging needs and psychology).
- 31 In Adult Mental Health Services we have seen the integration of community mental health teams, joint placement panels and integrated commissioning – later this paper will ask the Executive to agree to a pooled budget for the service.

- 32 The governance arrangements, or executive decision making for the above service falls within the integrated commissioning teams (the PCT and the Social Services Department). The Partnership Boards play a key role in setting the direction and advising on priorities for these client groups.
- 33 Whilst the legislation states that only statutory nominated officers can have delegated powers within these arrangements, we involve all members on the respective Partnership Boards (i.e. the voluntary sector, practitioners etc) in the decision making process. This has worked well in relation to the Learning Disabilities Partnership Board in their use of pooled budgets over the past 18 months.

### **Senior Management Arrangements for Integrated Services**

- 34 As outlined elsewhere in the report the pace of integrating service provision is gaining momentum and we expect that over the next 12 months many of our services will be delivered under a s31 Arrangement.
- 35 In order to ensure that the appropriate governance arrangements are in place to support the delivery of integrated services we are proposing to review the management arrangements for Older People's Services and Physical Disabilities Services to more fully reflect those already in place for Learning Disability Services and Adult Mental Health Services.
- 36 We are therefore seeking the Executive's approval to delete the post of Assistant Director – Community Care from the Council's establishment and replace this post with a Head of Older People's and Physical Disabilities Services. The cost of this appointment will be shared jointly with the PCT under the terms of a Partnership agreement. The job description and personnel specification for the new post are being developed currently. The appointee will manage both health and social care functions and will be required to work in close partnership with the PCT. Consideration is presently being given as to which function will form the greater part of the post. If the role is predominantly to manage health functions the post may be created by the PCT but with the same expectation of close partnership working with the Local Authority.
- 37 In order to ensure that the Council's interests continue to be recognised, it is proposed to enhance the role of the Department's Assistant Director of Performance and Business Support to ensure that statutory systems of accountability and performance monitoring are maintained.

### **Implications for Staff Working in Integrated Teams under s31 Arrangements**

- 38 Staff employed in the integrated teams will continue to be contracted to their current organisations on the same terms and conditions provided under the respective individual and organisational contracts of employment.
- 39 The detailed operational aspects of day to day working in mixed teams with different employers and conditions of service will be addressed by joint HR Protocol Agreements that will be drawn up between the Council, Southwark Primary Care Trust and other partners - if appropriate. These protocols supplement but do not replace the policies and procedures of staff who will continue to be employed by their existing employer wherever possible. These protocols would merely operationalise the management arrangements and

provide authority for Designated persons to act for either organisation and administer its policies and procedures as appropriate.

### **Adult Mental Health Services – s31 Arrangement for a Pooled Budget**

- 40 The formal s31 Arrangement builds on existing partnerships arrangements within Southwark. A Joint Commissioner for Mental Health has been in post since May 2002, and the Mental Health Partnership Board has, over the past two years, been the main planning and commissioning body for Adult Mental Health services. In addition, all four Southwark Community Mental Health Teams have been operationally integrated since July 2001, working in integrated teams under a single management structure.
- 41 The Executive is asked to take the partnership arrangement forward by agreeing to the establishment of a pooled budget under s31 of the Health Act 1999 between the Council and the PCT for the commissioning of Adult Mental Health services, and for the PCT to act as the lead commissioner for Southwark's integrated Adult Mental Health Services and for the Council and South London & Maudsley NHS Trust to integrate the provision of Adult Mental Health services.
- 42 Further background information is attached at Appendix C.

### **NHS Funded Nursing Care – s31 Arrangement for the Commissioning of Nursing Care Services**

- 43 Guidance on NHS Funded Nursing Care was published by the Department of Health on 12<sup>th</sup> March 2003 – LAC (2003)7. The funding of the nursing care of residents of care homes who are receiving care from a registered nurse was transferred from local authorities to the NHS from 1<sup>st</sup> April 2003. The guidance envisages that in most cases partnership arrangements will be put in place to enable the local authority to continue to contract for the provision of nursing care by a registered nurse. These arrangements cover all adult client groups.
- 44 The Government believes it is possible to avoid the need for two separate contracts with a nursing home for each resident (one with the local PCT for the provision of nursing care by a registered nurse, and one with the placing local authority for the provision of the remainder of the care package). To achieve this, the PCT needs to delegate its function to contract for the provision of **nursing care services** by a registered nurse to the local authority through a partnership arrangement using a s31 Arrangement.
- 45 This report seeks the agreement of the Executive to enter into such an arrangement with the PCT.
- 46 Further background information is attached at Appendix D.

### ***Policy implications***

- 47 s31 Arrangements have been developed to give NHS bodies and local authorities the flexibility to be able to respond effectively to improve services, either by joining up existing services, or developing new, co-ordinated services, and to work with other organisations to fulfil this.
- 48 The use of such arrangements are a key policy driver which will enable local

partners to drive forward the integration agenda and deliver many of the performance expectations outlined in the Council's Community Plan and the PCT's Local Delivery Plan.

- 49 Audits of the management arrangements of the current s31 Arrangement between the Council and the PCT are currently in progress. Recommendations arising from these audits will feed into future governance arrangements.
- 50 However, in the interim, the Council and the PCT will be setting up quarterly monitoring meetings to systematically review financial and activity information on each existing and future s31 Partnership Arrangement.
- 51 The outcome of these monitoring meetings will be made available to the Executive and the PCT Board.

### ***Consultation***

- 52 The respective Partnership Boards have been consulted on the s31 Arrangements for Adult Mental Health Services and the commissioning of NHS Funded Nursing Care. The providers of nursing care and service users who are currently providing nursing provision to local residents have been advised of these proposals.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### ***Borough Solicitor & Secretary***

#### **Adult Mental Health Services-Pooled Budget and Integrated Provision**

- 53 s31 of the Health Act 1999 provides for the Secretary of State to issue regulations to enable local authorities and NHS bodies to pool resources, delegate functions, transfer resources from one body to another and to integrate provision by joining their staff, resources and management structures.
- 54 The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 have been made under this section and came into force on 1 April 2000. The Regulations require that the parties to the Section 31 Arrangements enter into an agreement in writing which must specify:-
- the agreed aims and outcomes
  - what payments are to be made by the parties and how they may be varied
  - the functions which are to be delegated by the parties or the persons to receive the services and the services themselves
  - the staff, goods, services and accommodation to be provided by the parties
  - the length of the arrangements, provisions for variation and determination
  - arrangements for monitoring

- 55 The Council will wish to be satisfied that the agreements comply with these requirements.
- 56 Any arrangements made under s.31 do not affect the legal liability for the exercise of a function (s.31(5)). Therefore the Local Authority retains liability for functions delegated to the PCT. The Agreement, however, will need to contain provisions relating to indemnities between the parties and PCT self insurers.
- 57 Guidance on the implementation of s.31 is contained in LAC (2000)9, a Local Authority Circular issued by the Department of Health. The Guidance states that the statutory partners to arrangements under s.31 should fulfil the following conditions:-
- Partners should be satisfied that the arrangement will improve services for users
  - joint consultation with appropriate stakeholders should have taken place
  - the arrangement should fulfil the objectives identified in the Health Improvement and Modernisation Programme
  - there should be a clear written agreement, as specified in the Regulations
- 58 Draft agreements to give effect to the partnering arrangements have been prepared with advice from the PCT's solicitor; these have been reviewed by Sharpe Pritchard on behalf of the Council.
- 59 A number of drafting points need to be resolved; in addition Sharpe Pritchard have identified the need to re-enforce and strengthen the agreements by producing a more detailed Specification of the services and spelling out clearly the arrangements by which the PCT will contract for the provision of the services from the Council and SL&M.
- 60 In addition the Agreements will have appended to them the terms of reference of the Mental Health Partnership board, and the operational management board, with terms of reference of the latter being expanded to ensure clear lines of responsibility, access to the pooled fund, and monitoring arrangements. In view of the timescale involved, the Service Specification is unlikely to be fully developed by the date the agreements are signed, but the agreement between the Council and the PCT will contain an obligation requiring the production of an agreed Specification within an agreed timetable.
- 61 The Council must bear in mind that notwithstanding the desire for partnership working it is to a large extent the junior partner in the arrangements. It is therefore important to ensure clear lines for consultation and that the pooled budget is spent in such a way that ensures the functions and obligations of both parties are met.
- 62 The terms of the pooled budget agreement are still to be finalised. To ensure that the Authority's interests are safeguarded the power to sign off the terms of the agreement should be delegated to an officer of the Social Services Department in conjunction with the Borough Solicitor and the Chief Finance Officer.

### **NHS Funded Nursing Care**



- 63 Section 31 of the Health Act 1999 provides for the Secretary of State to issue regulations to enable local authorities and NHS bodies to pool resources, delegate functions and transfer resources from one body to another.
- 64 The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 have been made under this section and came into force on 1 April 2000.
- 65 The Regulations require that the parties to the Section 31 arrangements enter into an agreement in writing which must specify:-
- the agreed aims and outcomes.
  - what payments are to be made by the parties and how they may be varied.
  - the functions which are to be delegated by the parties or the persons to receive the services and the services themselves.
  - the staff, goods, services and accommodation to be provided by the parties.
  - the length of the arrangements, provisions for variation and determination.
  - arrangements for monitoring.
- 66 The Council will wish to be satisfied that the agreement complies with these requirements.
- 67 Any arrangements made under s.31 do not affect the legal liability for the exercise of a function (s.31(5)). Therefore the PCT retains liability for functions delegated to the local authority. The Agreement, however, will need to contain provisions relating to indemnities between the parties and insurance.
- 68 Guidance on the implementation of s.31 is contained in LAC (2000)9, a Local Authority Circular issued by the Department of Health. The Guidance states that the statutory partners to arrangements under s.31 should fulfil the following conditions:-
- partners should be satisfied that the arrangement will improve services for users;
  - joint consultation with appropriate stakeholders should have taken place;
  - The arrangement should fulfil the objectives identified in the Health Improvement Programme;
  - There should be a clear written agreement, as specified in the Regulations.
- 69 The Report Author is receiving legal advice both from the Borough Solicitor & Secretary and from the Council's appointed consultant partner Sharpe Pritchard in connection with the terms of the proposed Agreement with the PCT.
- 70 The terms of the agreement with the PCT are still to be finalised. To ensure that the Authority's interests are safeguarded the power to sign off the terms of the agreement should be delegated to an officer of the Social Services

Department in conjunction with the Borough Solicitor and the Chief Finance Officer.

### **Governance Arrangements**

- 71 The aims of good governance must be to ensure that public service bodies and the individuals within them (whether appointed or elected members, and officers) can provide an account of:-
- The improved performance in respect of the outcomes of the arrangement;
  - Their operational objectives and priorities;
  - Proper and efficient use of public money; and
  - The quality of services provided.
- 72 They must also adopt a process that ensures proper accountability arrangements, and lay these open to appropriate external scrutiny. This will be built on the existing corporate governance arrangements of the agencies involved.
- 73 The legislation does not require any particular model of accountability. The Regulations suggest joint committees as an option (see Regulation 2000/617 10(2)) but do not prescribe their composition. The DoH website advises that partners must decide what form of governance best meets local needs and circumstances; the arrangements should be proportionate to the size of the partnership. Large committees to oversee small projects are likely to increase the inefficiency of the decision making process, and ultimately the service.
- 74 The DoH website suggests that partnership arrangements can offer an opportunity to involve local stakeholders in a much more creative way, and to enhance local community and democratic accountability. This means involving community representatives, providers, voluntary organisations, and users and carers, as well as the partners themselves, either directly in a Partnership Board, or if this makes it too unwieldy, in a forum which advises and makes recommendations to the board. Decisions about the allocation of budgets will rest with representatives from those statutory authorities according to the level of delegation agreed locally.
- 75 The paper refers to the manner in which local stakeholders have been involved through Partnership Boards. Decision-making rests with the statutory authorities and it should be clear through delegation of authority who is taking any decision on the Authority's behalf.
- 76 The paper asks the Executive to note the Governance framework proposed to support the s.31 Partnership Arrangements and the integration agenda and to agree to twice yearly meetings with the Board of Southwark PCT to review health and social care performance. It is proposed that the first meeting between the two bodies in October should consider and adopt a draft constitution/terms of reference to enable the governance task to be undertaken. A joint committee is permitted under the regulations and could serve to allow external scrutiny and proper accountability. All meetings should be held in public unless exempt information is to be discussed. The regulations require reporting between the body undertaking any function and its partners on a quarterly and annual basis. There is no requirement as to the frequency of meeting of any joint committee.

- 77 The Governance Arrangements need to include the monitoring of proper and efficient use of public money. The report of the Chief Finance Officer sets out the responsibilities of the respective partners and the requirements for the written agreement for the pooled fund. This should also be an area for the Executive and Southwark PCT Board to monitor jointly.

### **Senior Management Arrangements for Integrated Services**

- 78 It is proposed that the management arrangements for Older People's Services and Physical Disabilities Services be reviewed in order to support the delivery of integrated services in this area.
- 79 In the context of this review it is suggested that the post of Assistant Director – Community Care be deleted and that a new Head of Older People's Services and Physical Disabilities Services be created.
- 80 It is understood that the current Assistant Director post is about to become vacant for reasons unrelated to any proposed restructure, and that accordingly there will be no redundancy issues or costs. [Good practice may still suggest appropriate consultation with staff potentially affected by any restructure]
- 81 The specific functions and description of the proposed new post are presently not clearly defined. Presumably these are in part the subjects of the planned review. Although it is proposed that the costs of the role be shared by the PCT and the Council, it is currently unclear which body will be the "lead provider" primarily responsible for managing the functions of the new role.
- 82 Consideration must be given to developing a full job and personal description for the proposed new post, and agreeing the partnership arrangements relating to its management.
- 83 In our view the appropriate employer for the proposed new post should be determined by reference to the specific functions to be carried out by the new post and the partnership arrangements specifying which body is responsible for those functions.
- 84 The Executive should be aware that yet to be agreed partnership arrangements could require that the new post be constituted within the PCT's establishment.

### **Chief Finance Officer**

#### **FI 646**

- 85 This report sets out the Governance Framework to support the s31 Partnership Arrangements and support the integration agenda.
- 86 Paragraph 10 of this report makes reference to the existing s31 Agreement for Learning Disability Services. The report also seeks the Executive's agreement to the establishment of a pooled budget between the Southwark Primary Care Trust and the Council for commissioning of adult mental health services and an agreement for the Commissioning of NHS Funded Nursing Care under two separate s31 Agreements.

- 87 These agreements will equate to 22% of the net social services budget and 20% of its gross budget being in pooled budgets, within the s31 agreements.
- 88 Appendix E to this report provides a checklist of what should be covered in any s31 agreement.
- 89 Audits of the management's arrangements of current s31 Agreements between the PCT and the Council including governance arrangements are currently in progress. At the time of writing this report the findings and recommendations of these reviews are not yet known. The governance framework identified within this report will be amended if necessary to incorporate any such recommendations when the audits are finalised.
- 90 s31 Partnership Agreements in the Health Act 1999 have been developed to give NHS bodies and local authorities the flexibility to be able to work with each other and other agencies to respond effectively to improve services. A pooled budget is a mechanism by which the partners to the agreement bring money to form a discrete fund. The purpose and scope of the fund is agreed at the outset and then used to pay for the services and activities for the relevant client group. The aims and outcomes for the partnership should be set out in an agreement and the level of contribution made by each partner agreed before the budget is approved.
- Funds that can be contributed include those normally used for services identified budget and minor capital receipts.
  - Appendix F of this report sets out the Social Services contribution from its 2003/2004 revenue budget (Appendix C provides further detail of this contribution). Each partner will retain their statutory responsibility for their contribution and will retain any risk relating to overspends for this element of the pooled budget. The risk, however, is limited to this element.
  - Although the pooled budget is a discrete fund, each year the level of contribution may change, the s31 Agreement needs to set out how and when such changes happen. Each year the partnership will need to agree a joint approach to budget setting and the following management issues:
    - Risk management, including risk on grant and other income, performance standards, over/underspends, internal control and controls assurance, inflation and efficiency savings.
- 91 Appendix C addresses the financial implications arising from the proposed adult mental health services arrangements. There are no new revenue commitments and no capital implications.
- 92 The report makes it clear that the agreement has not yet been finalised and the Borough Solicitor's legal concurrent highlights a number of issues still to be clarified. Some of these have potentially significant financial implications:
- it is not yet clear what procedures will apply if the agreement is to be terminated. Such a move would necessitate disaggregation of the pooled budget. Given that once resources are pooled, they may be used across the whole service, any un-pooling will clearly be complex;

- in the event of an overspend which cannot be met from the following year's resources, the agreement proposes that such a deficit should be apportioned between the parties in a just and equitable manner and that if this cannot be achieved a dispute procedure will come into play. The report suggests that each partner's liabilities in the event of an overspend are limited to the element of their contribution for which they have statutory responsibility. However, once budgets are pooled, there is clearly a risk that it may be difficult to establish the extent of each partner's liabilities. Any overspends will have to be contained within Social Services budgets.
- 93 However, Members are being asked to delegate the power to conclude negotiations and sign the agreements to the Strategic Director of Social Services' nominated officer, in consultation with the Chief Financial Officer & Borough Solicitor, subject to these and any other matters being addressed satisfactorily.
- 94 The advantages of the agreement in terms of operational flexibility are clearly set out elsewhere in the report. Members should be aware however that such an agreement may formally restrict the Council's own ability to respond to changed circumstances in terms of use of resources since contributions to the pool cannot be reduced without negotiations with all partners, and reductions of more than 5% in a contribution can only be done with 12 months' notice.
- 95 Appendix D addresses the financial implications of putting in place s31 Arrangements for the commissioning of Nursing Care Services. This includes the identification for the bandings for costs of care. The financial implications for the Department depended upon the determination of level of need reached locally and included in the 2003/4 s31 Partnership Arrangements.
- 96 The Social Services base budget for 2003/2004 has been reduced by approximately £2.1 million for the transfer of funding to PCTs, this is based on estimated numbers of people placed by the Council and an average determination of £85 per week.
- 97 Without a s31 Agreement between the Council and the PCT, there is no legal basis for the Council to continue to pay the NHS funded nursing care element of current nursing home placements in the area. The PCT would have to enter into separate contracts with each nursing home for each person placed leading to increased transactional and contractual costs.
- 98 Where a s31 Agreement is in place between another Council and its local PCT, Southwark SSD is able to use this agreement to pay for the NHS funded nursing care element and to seek reimbursement from the relevant PCT. Some PCTs have already advised Southwark SSD that they are not entering into such an arrangement and in these cases the payments to nursing homes made by Southwark SSD have been reduced as the nursing homes are to be paid direct by their local PCT.
- 99 Information on Registered Nursing Care Contributions determined by other PCTs is far from complete. There is concern however that the average actual determination will be lower than the national average assumption built into Southwark SSD's base budget for 2003/04. This would lead to lower income than previously anticipated. The level of determinations will need to be closely monitored, particularly to challenge PCTs whose determinations appear to be

low compared with other PCTs with nursing homes in which Southwark residents have been placed.

- 100 The proposed agreement also delegates to the local authority responsibility for commissioning nursing home placements within the authority. This gives the local authority a wider role in assessing the future needs of the population and managing the local market to ensure the needs of the local population can be met within available resources.

## BACKGROUND DOCUMENTS

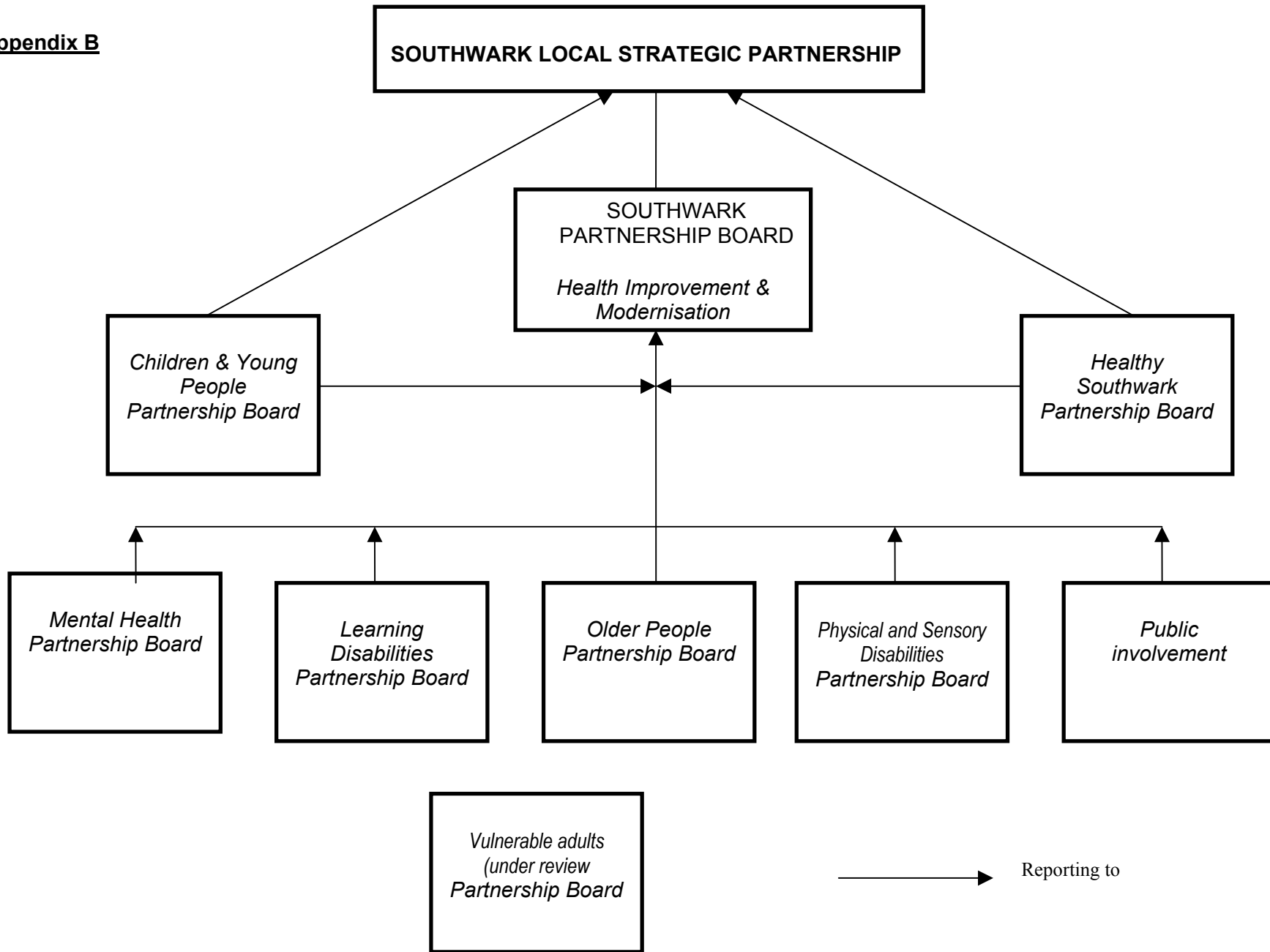
Background Papers	Held At	Contact
HSC\LAC Implementation of Health Act 999 Partnership Arrangements	Social Services	Jamie Nevin 0207 525 3796
National Priorities Health and Social Care 2003-2006 – Improvement, Expansion and Reform: the next 3 Years	Social Services	Jamie Nevin 0207 525 3796
Southwark's Community Strategy	Corporate Services	Eamon Lally 0207 525 7179
SPCT's Local Delivery Plan	Social Services	Jamie Nevin 0207 525 3796

## Appendix A

### Audit Trail

<b>Lead Officer</b>	Jamie Nevin, Assistant Director - Performance & Business Support 0207 525 3796	
<b>Report Author</b>	Jamie Nevin, Assistant Director - Performance & Business Support 0207 525 3796	
<b>Version</b>	Final	
<b>Dated</b>	1st September 2003	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	Yes	Yes
<i>List other Officers here</i>		
<b>Executive Member</b>	Yes	No
<b>Date final report sent to Constitutional Support Services</b>	1 <sup>st</sup> September 2003	

**Appendix B**





## Appendix C

### Background Information: Adult Mental Health Services – s31 Arrangement for a Pooled Budget

The application of Health Act flexibilities is central to the implementation of the National Service Framework (NSF) for Mental Health 1999 and the Mental Health Policy Implementation Guide (DoH 2001). Progress towards integration and full joint working is one of the performance management indicators assessed by the Department of Health and the Social Services Inspectorate and affects the star rating of statutory organisations.

Key Elements of the Partnership Agreement:

- agreement between SPCT and Southwark Council under which a pooled commissioning budget will be created
- agreement between Southwark Council and SPCT that Southwark Council delegates its commissioning function to the PCT which will act as host commissioner.
- agreement between Southwark Council and the SL&M to integrate provision of Adult Mental Health services. These will be commissioned by SPCT under a service level agreement for the integrated service.
- agreement between Southwark Council and SL&M under which both organisations will make employees and premises available for the purpose of meeting their statutory responsibilities and delivering the SLA with the PCT.

Specific benefits of the partnership arrangements:

- creates the opportunity to strategically commission mental health services in an integrated fashion, reducing duplication and providing a level of co-ordination which improves services for service users.
- removes eligibility and funding disputes between the NHS and Local Authority, although no changes are made to the eligibility criteria of the partners
- provides a seamless interface for users of Adult Mental Health services and their carers, providing a single point of access
- removes dual funding arrangements for voluntary sector providers by creating one commissioning body
- delivers integrated care and commissioning as required by the National Service Framework for Mental Health

Under the partnership arrangements the Council delegates its commissioning function to the PCT and a pooled fund is created between the PCT and the Council for purchasing services to carry out the statutory functions of both organisations. The PCT will host the commissioning pool, totalling £33.58 million for adults with a further £11.9 million of forensic services. The respective contributions of the parties are:

Southwark PCT adult	£24.180 million
Southwark PCT forensic	£11.923 million
Southwark Council:	£9.399 million

Of the total pooled funds, £33.175 million will fund services provided by SL&M under the integrated provision agreement, commissioned by the SPCT. The SPCT will also commission other services provided by the non-statutory sector and NHS on behalf of the Council and the SPCT. The Council will retain responsibility for making direct payments to staff and for community placements totalling £6.927 million, so the amount paid over to the PCT will be £2.472 million.

Council contributions are gross of client contributions and grant funding, in line with Department of Health Guidance

Consultation on the pooled commissioning budget has been led by the Mental Health Partnership Board, which has representation from service users, their carers and the voluntary sector in addition to the Council, the SPCT and SL&M. Each of the partner organisations has been fully involved in agreeing the terms of the partnership agreement.

## **Appendix D**

### **Background Information: NHS Funded Nursing Care – s31 Arrangement for the Commissioning of Nursing Care Services**

Primary Care Trusts (PCTs) are responsible for determining someone's need for care from a registered nurse in a care home in their area into one of three bands.

The amounts of the bands for 2003/04 are:

Low - £40 per week

Medium - £75 per week

High - £120 per week

SPCT has undertaken the determination of bandings of individuals placed in nursing homes within the area. This includes people placed under contract by Southwark Council, people placed by other councils (with significant numbers by Lambeth), and self funders who have not approached the council for help.

PCTs in other areas of England and Wales are undertaking assessments of those people in nursing homes in their area placed by Southwark Council (with significant numbers in Lewisham). Measures are in hand to formalise arrangements for collecting reimbursement of contributions from these PCTs, however there is a risk that these may be lower than the levels assumed in the Council's budget.

The government has transferred resources from councils to PCTs for the cost of care by a registered nurse in nursing homes in their area. Southwark Council's Formula Spending Share for 2003/04 and the Social Services base budget have been reduced by approximately £2.1m for the transfer of funding to PCTs based on estimated numbers of people placed by the council using an average determination of £85 per week.

The proposed agreement with SPCT is wider than that needed solely to permit the borough to contract for nursing care services from a registered nurse in nursing homes. It gives the lead responsibility for commissioning nursing care services from nursing homes in the area to the Council. It will be the responsibility of the Department to assess the current and future needs of the population for nursing care services within nursing homes, to specify what services are needed to meet those needs, and to influence the local market to encourage development of new services. This may be through entering into block purchase arrangements with existing providers and commissioning new build.

It will remain the responsibility of SPCT to commission nursing care services by registered nurses for people living in their own homes, and for intermediate and continuing nursing care.

With regard to the immediate needs for nursing care by a registered nurse in a nursing home, determinations so far received from SPCT and other PCTs indicate that a higher number of people than anticipated have been determined to fall into the low band and fewer people than expected fall into the high band. This may mean that the needs of some residents may have changed since the initial placement.

This interim conclusion based on determinations so far received needs to be placed in the national context. The Department of Health guidance states that "with regular assessment and as improvements in capacity in a variety of community settings are introduced, it would be expected that there will be a reduction in the proportion of residents supported by councils in the

low band”.

SPCT and the Department are working together to ensure the local market for nursing places is not disrupted by the new arrangements. As part of the s31 Arrangement, SPCT will reimburse the Council for nursing care services on the basis of the national average unit cost of £85 less £4 per week for continence products.

The financial impact of arrangements in respect of care provided by a registered nurse for Southwark supported residents in nursing homes outside of the borough depends on the local arrangements reached between each PCT and their respective local authority. Pending confirmation of the local arrangements that have been made, the Department will continue to make payments based on total fee levels in order to ensure nursing homes are not short of funds. This however is being kept under review as it is the responsibility of the PCTs to provide the information and there is no legal basis for the Department to contract for nursing care provided by registered nurses in nursing homes.

Some PCTs have already decided that they will contract directly with their local nursing homes for the provision of nursing services provided by a registered nurse. In these cases, the Department has reduced the payment to the nursing homes for each placement made by the amount of the funding determined by the PCT. In other cases, the Department will continue to pay the total fee, and seek reimbursement for the cost of nursing care provided by a registered nurse from the PCT in line with the determination reached for each resident. Where a local s31 Arrangement has been reached, it will be possible for reimbursement to be made through the relevant local authority.

## **Appendix E**

### **Financial Governance Framework within Southwark to support Pooled Budgets**

#### **Written Agreement**

The written agreement for the pooled fund will specify:

- the agreed aims and outcomes of the pooled fund arrangements
- the contributions to be made to the pooled fund by each partner and how those contributions may be varied
- the service users and kinds of services for which the functions may be used
- how the contribution to a capital asset will be repaid in the event of the dissolution of the pooled fund, or a change in the services provided; the functions which are subject to the arrangement, including their eligibility criteria and assessment processes
- the staff, goods, services or accommodation to be provided by the partners
- human resources, including staffing terms and conditions and policies
- arrangements in place for information sharing
- clear arrangements for dealing with complaints
- disputes process –how will partners resolve changes in the arrangements or dissolve the partnership
- financial issues such as charging and VAT implications
- the duration of the arrangements
- provision for review, variation or termination of the arrangements
- how the pooled fund is to be managed, monitored and audited, including specific operational and management requirements
- which body is to be the host partner
- what is the process for appointment of a pool manager
- what performance measures, systems will be put in place to ensure partners can monitor the effectiveness of the pooled fund arrangement
- what arrangements will be put in place to ensure there is clarity for staff in their accountability of fulfilling their tasks e.g. scheme of delegation
- what targets have been set to enable staff and managers to consider how to improve their performance and ensure continuous improvement is achieved
- clarity about the decision making process, and how decisions are to be recorded
- exit strategy – once the arrangement comes to an end

## **Standing Orders, Standing Financial Instructions and Schemes of Delegation**

Standing Orders, schemes of delegation and standing financial instructions need to be amended to cover delegation of identified functions. Consideration should be given to what decisions should be reserved for the 'parent bodies'.

## **Risk Management**

Risk management arrangements should also be included within any arrangement. A risk management framework should set out the relative responsibilities of each partner in the management of the following areas of risk.

## **Finance, Clinical Governance and Professional Supervision**

It is essential that any arrangement reflects what the information needs of the partners are and how these will be met i.e. the level and nature of the information to be provided, and who is responsible for providing it. It should also specify who should receive the information and at what intervals.

Partners will retain statutory responsibility for their functions carried out under the pooled fund. Comprehensive monitoring arrangements must be put in place that assure the partner that their shared aims are being fulfilled.

The 'host partner' is responsible for the accounts and audit of the pooled fund arrangement.

The host authority must appoint one of its officers as the 'pool manager'. The pool manager is accountable for managing the budget and forecasting and reporting to the contributing partners (on behalf of the Accountable Officer of his organisation) on the outturn and outcomes and how far the targets are being met. In a local authority, the Accountable Officer will be the Section 151 Officer, in an NHS Trust or PCT this will be the Chief Executive. Each authority remains accountable for the functions they are required to fulfil.

The pool manager must submit quarterly reports to the partners together with an annual return showing the income and expenditure of the pooled fund and other information by which the partners can monitor the effectiveness of the pooled fund arrangement.

Underspends which arise from unforeseen circumstances can be carried over to the following year within the pooled fund arrangement. Arrangements to prevent and address overspends need to be agreed by partners when establishing the pool; consideration of how to cover inflation, and how to manage efficiency savings will also need to be agreed.

## **Audit Arrangements**

Regardless of any partnership arrangements, the auditors of each partner will have responsibilities in relation to the function of that partner i.e. the local authority auditor is responsible for the local authority functions. Pooled funds themselves will not be subject to a wide Code of Audit Practice audit. However, the contribution each partner makes to the pool will be subject to a Code of Audit Practice by the appointed auditors of each partner.

The areas that may be reviewed include:

- reviewing the financial aspects of corporate Governance
- reviewing aspects of performance management

- use of resources, performance information and best value performance plans

The council and its auditors - the Audit Commission - will have to discuss how information relating to BVPIs and ACPIs will be gathered and whether any reliance has to be placed on systems that the partnership has in place. If this is the case the appointed auditor of the local authority would have to agree with the appointed auditor of the host body (for Southwark, these are one and the same i.e. the Audit Commission), what work they would need to perform in order to meet their objectives.

### **Accounts Implications**

Each partner will account for their contribution to the pooled fund as expenditure within their accounts. The memorandum of accounts sent to each of the partners by the pool manager at the year-end will be included in the statement of accounts of each partner, probably a disclosure within the accounts.

## Appendix F

### London Borough of Southwark (LBS) contribution to Mental Health Pooled Budget 2003/04

Direct Payments retained by LBS	6,926,907
External Contracts ( managed by Southwark PCT)	<u>2,472,154</u>
<b>Total LBS Mental Health Contribution</b>	<b><u>9,399,061</u></b>

*Note: The pooled budget is net expenditure. Income and grants are excluded from these figures.*

### Mental Health Direct Payments 2003/04

<b>Cost centres</b>	<b>Pooled Funds</b>	<b>Grants 03/04</b>	<b>Income</b>	<b>SLAM 03/04</b>
<b>MH MAUDSLEY NATIONAL TEAM</b>	321,742	-30,730	0	-268,829
<b>Mental Health North</b>	2,331,688	-157,659	-231,385	-343,963
<b>MH SOUTH</b>	3,669,298	-318,545	-558,725	-19,775
<b>MH Business Development</b>	109,987	-61,650	0	0
<b>MH Provider Services</b>	494,192	-135,588	-1,727	-21,033
<b>Total Direct Payments</b>	<b>6,926,907</b>	<b>-704,172</b>	<b>-791,837</b>	<b>-653,600</b>