

## **Cabinet - 23 March 2005**

### **Partnership Agreement for Learning Disability Pooled Budget (Section 31 Agreement) – to agree revisions to the Section 31 Agreement.**

**Portfolio:** Councillor Alan Paul – Health and Social Care

**Service Area:** Social Care and Supported Housing

**Wards:** All

**Forward Plan:** Yes

#### **Summary of report**

This report outlines amendments to the Partnership Agreement between Walsall Metropolitan Borough Council and Walsall Teaching Primary Care Trust for the Pooled Budget and Lead Commissioning arrangements for Learning Disability Services. The amendment Agreement will replace the existing 3 Year Partnership Agreement which was put in place from 1st April 2004. Draft amended Partnership Agreement Appendix 1.

The changes in the Agreement concern the use of the agreed Schedule 5 as the basis for agreeing future year contributions from the Partners. In addition, there is clarification (paragraph 4.5 refers) regarding Section 28A Revenue Grant Funding.

#### **Recommendations**

Cabinet to approve the Partnership Agreement for the Learning Disability Pooled Budget and Lead Commissioning, and authorise that the existing Agreement be terminated and the amended Agreement be sealed.

#### **Resource and legal considerations**

The Pooled Budget consists of funding identified for Learning Disability Services by both Social Care and Supported Housing and Walsall Teaching Primary Trust.

The Partnership Agreement has been developed and approved by the Local Authority Legal Section and the Teaching Primary Care Trust Legal Advisers.

## **Citizen impact**

The Partnership Agreement ensures that people with learning disability receive integrated health and social care services that meet their needs.

## **Community safety**

There will be no impact on Community safety arising from this.

## **Environmental impact**

There will be no impact on the environment arising from this.

## **Performance and risk management issues**

The Partnership arrangements between Walsall Metropolitan Borough Council and Walsall Teaching Primary Care Trust facilitate the continuous improvement of learning disability services and contribute towards the delivery of performance targets. Specifically this will impact on delivery of the Performance Assessment Framework Indicators B14 (unit cost of Residential/Nursing Homes), C30 (People with learning disabilities helped to live at home) and all Valuing People Performance Indicators identified in the Delivery and Improvement Statement.

Work completed in developing the Agreement has involved consideration of the risks and the Partnership Agreement, as a legal document, ensure that risks are managed equitably across the partner agencies.

## **Equality implications**

Adults with learning disabilities are often socially excluded, and there is evidence of poor access to health services and health screening. The Partnership arrangements will ensure greater opportunities to improve health, equality and social inclusion.

## **Consultation**

During the development of the original Section 31 Agreement, there was extensive consultation. The Learning Disability Services is committed to four consultation events per year and the arrangements for the Integrated Service are also governed by the Learning Disability Partnership Board which includes both Service Users and Family Carers.

The changes to the Agreement have been discussed and agreed within the Pooled Budget Executive Group which is part of the governance arrangements applicable to the Agreement.

There are no direct implications for Local Neighbourhood Partnerships as the Agreement covers the whole of Walsall.

## **Vision 2008**

The Section 31 Agreement facilitates Priority 5 within Vision 2008 “Make Walsall a healthy and caring place”. In addition, the agreement also facilitates a number of pledges; it helps more people to live at home with care tailored to their needs, it provides more choice to vulnerable people about where they live and it involves Service Users in planning and improving the way we deliver our services.

## **Background papers**

- Section 31 Health Act 1999
- White paper “Valuing People: A strategy for Learning Disability for the 21st century”
- Keys to Partnership: “Working together to make a difference in people’s lives” (DoH).
- Partnership Agreement

## **Contact officer**

John Greensill – Head of Learning Disabilities Tel: 01922 658383  
Greensillj@walsall.gov.uk



**Signed.....**

**Executive Director: David Martin**

**Date: 14 March 2005**



**Signed.....**

**Portfolio Holder : Councillor Alan Paul**

**Date 14 March 2005**

**DATED** **2005**

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**WALSALL TEACHING PRIMARY (1)  
CARE TRUST**

**and**

**WALSALL METROPOLITAN (2)  
BOROUGH COUNCIL**

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**SECTION 31 PARTNERSHIP  
AGREEMENT  
For creation of a Pooled Fund and Lead  
Commissioning for Learning Disability  
Services**

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**THIS AGREEMENT** is made on 2005 **BETWEEN:**  
(1) **WALSALL TEACHING PRIMARY CARE TRUST** of Jubilee House, Bloxwich Lane, Walsall, WS2 7JL ("**the PCT**");  
(2) **WALSALL METROPOLITAN BOROUGH COUNCIL** of Civic Centre, Darwall Street, Walsall, WS1 1RG ("**the Council**").

**WHEREAS:**

- (A) The Partners have agreed to enter into these Partnership Arrangements for the purpose of continuing to pool budgets and have lead commissioning of learning disability Services in the Walsall Area, and have given formal notification to the relevant authority as required by HSC 2000 (010) and LAC 2000 (9). This Agreement is subsequent to a Partnership Agreement dated 12 February 2004, which commenced 1 April 2002 and terminated on 31 March 2005.
- (B) The objective of the Partnership Arrangements are to improve the Services for Service Users through closer working between the National Health Service and Local Government and which is pursuant to the obligations for the Partners to co-operate with each other in providing the Services as [referred to in Section 27 of the Act].
- (C) The Partnership Arrangements have been established pursuant to Section 31 of the Act and pursuant to the Regulations.
- (D) The Partners have carried out consultation on the proposals for the Partnership Arrangements with those persons, user groups, staff, and statutory and non-statutory providers, who appear to them to be affected by the arrangement as required by Regulation 4(2) of the Regulations.
- (E) The Partnership Arrangements proposed by this Agreement fulfil the objectives set out in the PCT's Local Development Plan made pursuant to Section 28 of the Act.  
*[Is this correct?]*
- (F) The provisions of this Agreement shall take effect on the Commencement Date.

**IT IS HEREBY AGREED BETWEEN THE PARTNERS:**

**1 Definitions**

- 1.1 In this Agreement, unless the context otherwise requires:

**“the 1977 Act”** means the National Health Service Act 1977;

**“the Act”** means the Health Act 1999;

**“the Chief Officers”** means the Chief Executive Officer of the PCT and the Director of Social Services of the Council;

**“the Commencement Date”** means the 1<sup>st</sup> day of April 2005;

**“the Council”** means the Walsall Metropolitan Borough Council;

**“the Council's Functions”** means such of those functions as described in Schedule 3 as may be necessary to provide the Services;

**“the Financial Year”** means a twelve month period commencing on 1 April and terminating on the following 31 March;

**“the Functions”** means together the PCT's Functions and the Council's Functions;

**“the Host Authority”** means the Council who the Partners agree will host the Pooled Fund;

**“the Initial Term”** means a period of 3 years terminating on 31 March 2008;

**“the Lead Commissioner”** is the Council under this Agreement;

**“the Learning Disability Partnership Board”** means the board established to create a local Learning Disability Strategy (Joint Investment Plan) and action plan to deliver the objectives of the White Paper “Valuing People” in line with the guidance issued in HSC 2001/016 : LAC (2001) 23 and as per clause 2.1;

**“the Partners”** means together the PCT and the Council;

**“the Partnership Arrangements”** means the arrangements jointly agreed by the Partners for the purposes of providing the Services pursuant to the Regulations and Section 31 of the Act as described in Schedule 4;

**“the PCT”** means the Walsall Teaching Primary Care Trust;

**“the PCT's Functions”** means such of those functions as described in Schedule 3 as may be necessary to provide the Services;

**“the Pooled Fund”** means the fund of monies maintained by the Pool Manager from contributions by the Partners for the purposes of providing the Services;

**“the Pooled Fund Arrangements”** means the arrangements agreed by the Partners for establishing and maintaining the Pooled Fund as set out in clause 4 hereof;

**“the Pool Manager”** means the Head of Learning Disability Service appointed by the Partners for the purposes of administering the Pooled Fund;

**“the Regulations”** means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 SI No. 617 and any amendments and subsequent re-enactments;

**“the Section 31 Executive Group”** means the Pooled Budget Executive Group established by the Partners pursuant to paragraph 10(2) of the Regulations which shall be comprised as described in Schedule 2 and which shall be responsible for monitoring governance and preparing reports and receiving information upon the operation of the Partnership Arrangements and the Partnership Agreement herein;

**“the Services”** means services commissioned for those with learning disabilities under this Agreement;

**“the Service User”** means an individual aged 18 upwards who is assessed as requiring Services and is both ordinarily resident within the boundaries of the Council and registered with a G.P. on the PCT's list and who will receive both health and social care funding from the Pooled Fund. Any individual who is

assessed as requiring Services and is ordinarily resident within the Council's boundaries, but is not registered with a G.P. on the PCT's list and who will receive funding for social care only from the Pooled Fund. Any individual who is assessed as requiring Services and is registered with a G.P. listed by the PCT but is not ordinarily resident within the Council's boundaries and who will receive funding for health care only from the Pooled Fund. The above may from time to time include younger people who are being assessed to enable transfer from children's to adult Services;

**"the Term"** means a period of 3 years from the Commencement Date, plus any extended period as agreed by the Partners under clause 14.2;

**"the Walsall Area"** means the area of Walsall in the West Midlands in which GPs listed by the PCT are practising and also includes the area within the boundaries for which the Council has responsibilities and duties for those ordinarily resident;

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction and a reference to any Schedule or clause is to a Schedule or clause of this Agreement.
- 1.3 Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.
- 1.4 Reference to any statute or statutory provision includes references to the statute or statutory provision as from time to time amended or re-enacted and any subordinate legislation made under the relevant statute or statutory provision.
- 1.5 A person means a partnership, firm, corporation or association, (whether incorporated or unincorporated) as well as a natural person.

## **2 Joint Structures and Responsibilities**

- 2.1 The Learning Disability Partnership Board is an umbrella organisation for the learning disability services that reports to the Health and Social Care Partnership Board of the Local Strategic Partnership and which will create a local learning disability strategy. This Board is not established by this Agreement but it will receive reports from the Section 31 Executive Group and can advise the Section 31 Executive Group if requested by the latter.
- 2.2 For the purposes of implementation of this Agreement the Partners have established the Section 31 Executive Group consisting of representatives of the Partners and other agencies as described in Schedule 2.

2.3 Meetings of the Section 31 Executive Group will take place quarterly.

2.4 The purpose of the Section 31 Executive Group is as follows:

- (i) to jointly manage the provision of Services as set out in this Agreement and to manage issues arising therefrom;
- (ii) to oversee the establishment of any locality groups (if appropriate) and to appoint Senior Managers (where appropriate) with delegated responsibility for the joint local management of Services and access to an agreed level of funding from the Pooled Fund;
- (iii) to receive quarterly information from the Pool Manager, to include both service and financial information, in a form to be agreed, to fulfil the Partners performance management requirements;
- (iv) to prepare and agree the timing of submission of monitoring reports to take account of the reporting cycles of the Partners (copies also to Chief Officers);
- (v) to agree appropriate action resulting from the above reports where necessary;
- (vi) to agree approaches to issues arising from the development of Services;
- (vii) to resolve disputes or where necessary to refer such to the Chief Officers of the Partners to this Agreement for resolution;
- (viii) any other purposes as may be deemed appropriate by the Partners;
- (ix) to liaise with the Learning Disability Partnership Board in order to develop a local learning disability strategy and action plan;
- (x) to report to the Health and Social Care Partnership Board of the Local Strategic Partnership.



### **3      Lead Commissioner Obligations**

#### **3.1      The Partners agree as follows:**

- (i)      The Partners agree that from the Commencement Date the Lead Commissioner shall commission all Services on behalf of the Partners.
- (ii)      The Standing Orders and Standing Financial Instructions of the Council as Lead Commissioner and Pool Manager shall apply to the management of the Pooled Fund and the Partnership Arrangements under this Agreement.
- (iii)      The Host Authority will provide the necessary financial and administrative support to enable the effective and efficient management of the Pooled Fund.
- (iv)      A clear identifiable accounting structure will be created within the Host Authority's systems (e.g. a separate cost centre) to enable effective monitoring and reporting.
- (v)      The Host Authority will provide such information as is deemed necessary by the Partners to this Agreement and the Section 31 Executive Group, to enable effective performance management of the Services provided under this Agreement and the Pooled Fund.
- (vi)      the Pool Manager will be accountable for managing the Pooled Fund and forecasting and reporting to the Partners via the Section 31 Executive Group, on the outputs and outcomes and the achievements of targets as set out in the service plans and objectives;
- (vii)      the Pool Manager will be responsible for the management of the Pooled Fund within financial balance and will report any potential or actual variations to Pooled Fund, as soon as practicably possible to the Section 31 Executive Group and in any event at the next

meeting of the Section 31 Executive Group following identification of any such variation;

- (viii) Clearly defined audit arrangements will be developed taking account of guidance from the Audit Commission and that contained in “Guidance on the Health Act Section 31 Partnership Arrangements” issued by the Department of Health. A year-end Memorandum Account showing income received, expenditure and any balance remaining shall be sent to the Partners for inclusion in their statutory accounts.
- (ix) The Partners shall comply with HM Customs and Excise draft guidance on VAT dated March 2003 in respect of the Pooled Fund. The Host Authority shall consult with HM Customs and Excise to agree an appropriate scheme for recovery of VAT.

#### **4     Funding**

- 4.1 The Partners will agree their contributions to the Pooled Fund each year in accordance with this clause 4. The contributions for the previous Financial Year 2004/2005 (prior to commencement of this Agreement) are as set out in Schedule 5 hereto and will be used as a basis for agreeing future Financial Year contributions from the Partners. Such annual contributions to be evidenced in writing and inserted into Schedule 5.
- 4.2 The Pooled Fund shall only be used for the provision of Services agreed on to fulfil the Aims and Outcomes of this Agreement as set out at Schedule 1 to this Agreement.
- 4.3 The Host Authority shall use the payments made by the Partners in such a way as will secure the most effective and efficient use of resources.
- 4.4 Any specific government grants made available to the pooled budget as per clause 5.3 shall be used and accounted for in accordance with the specific conditions attached to the grants. The Section 31 Executive Group shall approve the expenditure plans for such grants.

- 4.5 For the avoidance of doubt, all section 28A revenue grant funding granted for the provision of learning disability services as supplied under this Agreement are included in the Partner's annual contributions to the Pooled Fund. (*Is this correct?*)
- 4.6 The PCT will pay its contribution to the Pooled Fund on 1 April in each year of this Agreement or by 12 equal instalments in each year of this Agreement, as a minimum an amount equal to the amount allocated in respect of its revenue expenditure budget for learning disability Services for Service Users for the said Financial Year in which the payment is made. The amounts will be set out in Schedule 5.
- 4.7 The Host Authority shall contribute to the Pooled Fund on 1 April a minimum of the amount allocated in its revenue expenditure budget for learning disability Services for Service Users in the said Financial Year. The amounts will be set out in Schedule 5.
- 4.8 Changes forecast to the total level of agreed Pooled Fund expenditure for the year shall be reported in a timely manner to the Section 31 Executive Group in accordance with Clause 3 hereof. The Section 31 Executive Group shall agree appropriate action to contain expenditure within agreed Pooled Fund or to utilise a surplus, or exceptionally, where additional funding is thought to be required, shall submit a case of need to the Partners. Where additional funding is approved, the Partners will consider the appropriateness of continuing such level of funding as part of the Pooled Fund setting process for the following year, as set out in Clause 5.
- 4.9 Where an unforeseen overspend arises at the end of the Financial Year, the Partners will need to consider how best to fund this and its implications for future years. Depending on the cause of the overspend additional funding will be provided by the Partners. Normally such additional funding will be in proportion to the Partners' current year contribution to the Pooled Fund.
- 4.10 Where there is an underspend in any Financial Year it will be returned to the Partners in proportion to their contribution for that Financial Year unless the Section 31 Executive Group agrees otherwise, in which case the underspend will be dealt with in the way that they have agreed. Such agreement to be indicated in writing in the minutes of the relevant meeting of the Section 31 Executive Group.

- 4.11 If any underspend is larger than 2% of the Pooled Fund and the Section 31 Executive Group propose to vary the default distribution then a decision on how the underspend will be dealt with shall be agreed by the PCT's Board and the Council's Cabinet following a recommendation from the Section 31 Executive Group. Any failure to agree between the Partners after consideration by the PCT's Board and the Council's Cabinet may lead to the proposed variation being referred to dispute resolution as per clause 13.
- 4.12 The Partners may agree to vary their annual contribution to the Pooled Fund during the course of the Financial Year to which the annual contribution applies either upwards or downwards. Such variations to the Partners annual contributions must be agreed by the Section 31 Executive Group, such agreement to be indicated in writing in the minutes of the relevant meeting of the Section 31 Executive Group.
- 4.13 In the event of any downward variation to either Partner's contribution in excess of £250,000 (two hundred and fifty thousand pounds) (or the financial limits set in the Host Authority's standing financial instructions currently in force, whichever is the higher) or a failure of the Section 31 Executive Group to agree a downward variation, such variation must be taken to the PCT's Board and the Council's Cabinet and be agreed by them. Any failure to agree between the Partners after consideration by the PCT's Board and Council's Cabinet may lead to the proposed variation being referred to dispute resolution as per clause 13.
- 4.14 In the event of dispute or disagreement in relation to the liability or benefit for any overspend or underspend the matter may be referred by either Partner in accordance with clause 13.2.

## **5 Pooled Funds**

- 5.1 The Partners agree that the annual Pooled Fund will normally be calculated and confirmed by 30 April of the Financial Year for which it applies. In the event the annual Pooled Fund is not agreed by 30 April then the annual Pooled Fund will be equal to the Partners previous initial Financial Year contributions.
- 5.2 The Partners agree that the annual Pooled Fund will normally be calculated as the initial Pooled Fund for the previous year, plus any agreed in-year changes where it is

decided these should be recurrent, plus any agreed inflationary uplift for the forthcoming year, plus any agreed planned changes for the coming year, plus any agreed efficiency requirements. The way in which such annual Pooled Fund will be determined shall be in accordance with the provisions of clause 4 above.

- 5.3 Any monies specifically allocated by the government for adults with learning disabilities or allocated by the Partners for specialist learning disability services as outlined in the Services shall be put into the Pooled Fund, including the Learning Disability Development Fund.
- 5.4 The contribution by the Council to the Pooled Fund shall be made upon the gross figure before deduction for charges levied on Service Users, or any associated costs or expenses.
- 5.5 In addition, the Partners shall conduct a formal annual review which shall encompass the working of the Partnership Arrangement, the delivery of the NHS Functions and the Council's Functions, the extent to which the objectives of the Partnership Arrangements are met, compliance with and fulfilment of national and local policies, financial arrangements and continuous improvement in quality of care through clinical governance.
- 5.6 The Partners will co-operate in undertaking a Best Value Review of the Health Related Functions as required of the Council at any time and in taking other steps required in connection with the Council's duties under Part 1 Local Government Act 1999.
- 5.7 The Pool Fund Manager shall present a quarterly and an annual report to the Partners, the latter following completion of the annual review. The quarterly reports shall be provided by or to the Section 31 Executive Group. The annual report shall be considered by the Partners.

## **6 Liability and Indemnity**

- 6.1 Without prejudice to the primary liability of each Partner for its respective functions, preserved by Section 31(5) (a) and (b) of the Health Act 1999, the following indemnity provisions will apply.

- 6.2 In this Clause any reference to the PCT, its employees, agents or its contractors shall exclude:
- 6.2.1 anyone acting under the direct supervision, instructions, direction or control of the Council under the terms of this Agreement;
  - 6.2.2 any Council Staff; or
  - 6.2.3 other employee of the Council.
- 6.3 References in this Clause to damages, claims and liabilities shall include the obligation to pay sums recommended by an Ombudsman or under any other complaint resolution process.
- 6.4 The PCT will indemnify the Council from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the Council arising from the exercise of the PCT's Functions or the breach by the PCT of any obligation under this Agreement (except in so far as such damages claim or liability arises from any negligent act or omission or breach of any obligation in this Agreement by the Council or a Council Staff or any other employee of the Council) including, without prejudice to the generality of this provision, any act, neglect or default of the PCT its employees, agents or contractors.
- 6.5 The Council will indemnify the PCT from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the PCT arising from the exercise of the Council's Functions or the breach by the Council of any obligation under this Agreement (except in so far as such damages claim or liability arises from any negligent act or omission or breach of any obligation in this Agreement by the PCT its employees or agents) including, without prejudice to the generality of this provision, any act, neglect or default of the Council, its agents, contractors or employees.
- 6.6 Each Partner will indemnify the other from and against any direct loss and expense suffered and reasonable legal fees and costs incurred by the other as a result of any breach of this Agreement by it, except to the extent that such loss etc is caused by the

breach of contract or the act, neglect or default of the other, its employees, agents or contractors.

- 6.7 In relation to the diagnosis, care and treatment of a client or patient of the PCT under the PCT's Functions, the provisions of NHS Indemnity shall apply in relation to any acts or omissions of the PCT, its employees or agents in consequence of which the client/patient suffers harm.
- 6.8 The Partners shall use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any claim or proceedings which is or maybe subject to an indemnity under this Agreement and any material developments. The Partners shall co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by either Partner in dealing with a complaint or in connection with any professional or disciplinary proceedings shall vitiate its right to be indemnified by the other under this Agreement.

## **7 Insurance**

- 7.1 In respect of liabilities arising under any indemnity in this Agreement, the PCT shall maintain membership of the Liabilities to Third Parties Scheme and the Clinical Negligence Scheme for Trusts or such other scheme as may be operated from time to time by the National Health Services Litigation Authority; and, the Council shall maintain such insurance as it considers appropriate.
- 7.2 The Partners shall co-operate with each other in the defence of any claim arising under this Agreement using the Insurance Protocol, agreed between Local Authorities and NHS bodies in operating Partnership Agreements under Section 31, as guidance.

## **8 Sub-Contracting/Assignment**

- 8.1 The Partners acknowledge that neither of them shall be entitled to assign the whole or part of their rights or obligations under this Agreement unless permitted or required to do so by any statutory provision or the Secretary of State for Health in consequence of any transfer of their respective functions to another body or agency.
- 8.2 Each Partner shall be permitted to sub-contract the provision of Services under this Agreement, provided that the sub-contractor is required to enter into a sub-contract

containing provisions of similar force and effect to the relevant provisions of this Agreement.

## **9 Virement**

- 9.1 The Host Authority's normal rules of virement will apply unless the Partners agree differently.

## **10 Costs**

- 10.1 Each of the Partners shall pay any costs and expenses incurred by it in connection with this Agreement.

## **11 Termination**

- 11.1 This Agreement shall terminate upon the effluxion of time except where clauses 11.2 or 14.3.2 below applies.
- 11.2 In the event of dispute or disagreement relating to the terms and conditions of this Agreement, which cannot be resolved under clause 13 of this Agreement, then either Partner may by service of 6 months previous notice in writing upon the other Partner terminate this Agreement, such notice to expire at the end of a Financial Year.

## **12 Complaints**

- 12.1 The Partners shall each continue to deal with complaints falling within the ambit of their statutory functions, duties and powers in accordance with their own complaints procedure.
- 12.2 Each Partner shall ensure that the other will be kept fully informed of the progress of any complaints related to their functions and to the arrangements under this Agreement.
- 12.3 The Partners recognise the need and expediency of responding to a complaint as quickly as possible and will therefore deal with any complaints as speedily as possible.



- 12.4 Prior to the issue of any press release or making any contact with the press on any issue attracting media attention the Partners shall consult with each other to agree a joint strategy for the release and handling of the issue.
- 12.5 In the event of any potential legal action or complaint to the Local Government or Health Ombudsman relating to the Partnership Functions, the Partner notified of the potential legal action or complaint shall notify the other immediately and if possible agree a joint strategy for dealing with the action.

### **13 Disputes**

- 13.1 Should the PCT have concerns that the Host Authority is failing to exercise any of its obligations concerning the PCT's Functions and the commissioning of relevant Services in respect thereof, it shall immediately raise concerns without delay to the Section 31 Executive Group for resolution.
- 13.2 Any dispute or difference between the Partners arising out of or in any way relating to the construction of the subject matter of this Agreement shall if required by either Partner be referred:
- 13.2.1 in the first instance to the Director of Social Services of the Council and the Chief Executive Officer of the PCT to resolve; and failing agreement
- 13.2.2 in the second instance to the Chief Executive Officer of the Birmingham and Black Country Strategic Health Authority and the Chief Executive Officer of the Council; and failing agreement
- 13.2.3 in the third instance to the Secretary of State for Health.

### **14 Review**

- 14.1 The Partners shall review the Partnership Arrangements nine months prior to expiry of the Initial Term.
- 14.2 The Partners may determine to extend the Partnership Agreement beyond the Initial Term.

14.3 If the Partners agree to extend the Partnership Agreement in accordance with the provisions of Clause 14.2 then the following provisions shall apply:

14.3.1 The Partnership Agreement may be extended by successive 12 month periods rolling unless and until terminated by Notice served in accordance with Clause 11.

14.3.2 Notwithstanding the provisions of Clause 11, the Partners shall have the power to determine the Partnership Agreement at any time after expiry of the Initial Term on service of 12 months Notice expiring at any time.

## **15 Sharing and Handling of Information**

15.1 Either Partner shall when it obtains access to Personal Data (as defined in the Data Protection Act 1998) obtained by or in the possession of the other Partner it and its employees will duly observe all their obligations under the Data Protection Act 1998 which arise in connection with this Agreement..

15.2 Except as required by the law the Partners agree at all times during the continuance of this Agreement and after its termination to keep confidential all documents or papers which one Partner receives or otherwise acquired in connection with the other and which are marked “Commercial - in confidence” or such other similar words signifying that they should not be disclosed.

15.3 In the event of an enquiry from a Member of Parliament about the circumstances of a client relating to the Partnership Function, the Partner receiving the complaint shall consult with the other immediately and agree a joint strategy for the release or handling of the issue.

15.4 In the event of an enquiry from a Member of Parliament about policy any Partner shall respond in accordance with this Agreement.

## **16 Variation**

16.1 The variation/change control provisions in this Clause shall apply as a means of developing and refining the NHS Functions or the Council's Functions and fulfilling the objectives of this Agreement.

16.2 If at any time during the term of this Agreement either Partner gives Notice to vary this Agreement, it shall be considered first by the Section 31 Executive Group for approval and then if approved will be implemented by the Host Authority

16.3 If any requested variation/change cannot be agreed or the terms of its implementation cannot be agreed, the change/variation shall not take place.

## **17 Waiver**

17.1 No forbearance or delay by either Partner in enforcing its respective rights will prejudice or restrict the rights of that Partner, and no waiver of any such rights or any breach of any such contractual term will be deemed to be a waiver of any right or of any later breach.

## **18 Force Majeure**

18.1 Neither Partner will be liable to the other for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including fire, natural disaster, flood shortage or delay of power, fuel or transport.

## **19 Contracts (Rights of Third Parties) Act 1999**

19.1 Any rights of any third party to enforce all or part of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

## **20 Entire Agreement**

20.1 The terms herein contained together with the contents of the schedules constitute the complete Agreement between the Partners with respect to the subject matter hereof and supersede all previous communications, representations, understandings and agreement and any representation, promise or condition not incorporated herein shall not be binding on any Partner.

## **21 Notice**

21.1 All formal Notices relating to this Agreement shall be given by hand, pre-paid first class post (or in accordance with the Postal Services Act 2000 if applicable) or facsimile transmission confirmed by pre-paid letter to the addressee at the address

given below or such other address as the addressee shall have for the time being notified to the other Partner giving the notice and such notice shall be deemed to have been delivered either upon delivery if by hand or if by letter at the expiration of forty eight (48) hours after posting or if by facsimile, upon receipt.

21.2 For the purposes of clause 21.1, the address of each Partner shall be:

Council:                      Head of Legal Services *[Is this the most appropriate person?]*  
Walsall Metropolitan Borough Council  
Civic Centre  
Darwall Street  
Walsall  
WS1 1TP

Trust:                         The Director of Finance  
Walsall Teaching Primary Care Trust  
Jubilee House  
Bloxwich Lane  
Walsall  
WS2 7JL

## **22     Governing Law**

22.1 This Agreement shall be governed by and construed in accordance with English law.

## **Schedule 1**

### **Agreed Aims and Outcomes of the Partnership Agreement**

#### **Part 1 Aims**

- The intended aims of the Partnership Arrangements are:
  - to improve the adult learning disability services that users and carers receive;
  - to ensure the public resources are used as efficiently and effectively as possible;
  - to work within the priorities determined by the local Learning Disability Strategy process.

#### **Part 2 Outcomes**

- The Partnership Arrangements will lead to a health gain as defined by the Local Development Plan.
- It is agreed that the Partnership Arrangements will enable the Partners to improve the ways in which the PCT Functions and Council's Functions respectively are exercised by more effectively addressing issues of:
  - inconsistency and inequality of access to and outcomes from service; and
  - inefficient use of resources arising from unnecessary duplication and organisational boundaries.

## Schedule 2

## The Partnership Board (Section 31 Executive Group)

## Constitution of the Board

Adopted on the \_\_\_\_\_ day of \_\_\_\_\_ 2005

**1 Name**

1.1 The name of the Board is the “Section 31 Executive Group”.

## 2 Objects

2.1 The Section 31 Executive Group's objects ("the Objects") are to commission, monitor and evaluate Services for health and social care for adults with a learning disability in Walsall on behalf of the Walsall Teaching Primary Care Trust ("the PCT") and Walsall Metropolitan Borough Council ("the Council").

2.2 The Section 31 Executive Group shall take into account exercising its functions the following statement of principles:

2.2.1 The Partners agree that they are entering into this project, and will participate in the Lead Commissioning on a basis of mutual trust.

2.2.2 The Partners will adopt a policy of mutual openness about information and intentions relevant to the remit of the Section 31 Executive Group.

2.2.3 The Partners acknowledge that the establishment of the Section 31 Executive Group represents an attempt by them to meet common problems and objectives in a co-ordinated way.

2.2.4 The Partners recognise that in the operation of the Section 31 Executive Group each Partner will need to take account of problems faced by the others.

2.2.5 The Partners recognise that in exercising its functions, the Section 31 Executive Group will have regard to the policies and guidance which apply to all Partners.

2.2.6 The Partners will take account of the statement of values approved by the Learning Disability Partnership Board from time to time.

2.2.7 Where decisions of the Section 31 Executive Group will require ratification the relevant Partner shall seek such ratification in advance of the meeting where possible.

### **3 Principal Functions**

3.1 To agree to, and oversee, the use of Health Act flexibilities for learning disabilities between the Health Service and the Social Care and Health Directorate within Walsall

3.2 To commission and to oversee the commissioning of the Services using flexibilities contained within the Health Act 1999.

3.3 To prepare proposals for managing the financial aspects of Pooled Funds for consideration by parent bodies.

3.4 To report to statutory bodies and other stakeholders on 3.1 to 3.4 above by the inclusion of Minutes on "parent" bodies agendas.

3.5 The functions that have been delegated are listed at Schedule 3. Powers that have not been delegated to the Section 31 Executive Group and are retained by the "parent" organisations have been listed at Schedule 3, Part C.

### **4 Membership**

4.1 The PCT will have 2 members:

4.1.1 the Director of Community Services and Nursing; and

4.1.2 the Director of Finance.

4.2 The Council will have 2 members:

4.2.1 the Assistant Director of Adult Services; and

4.2.2 the Head of Finance (Social Care and Supported Housing)..

4.3 Membership will be reviewed annually by the Partners.

## **5 Office Holders**

- 5.1 The Section 31 Executive Group shall have elected a Chair at the first meeting of the Section 31 Executive Group.
- 5.2 The Chair of the Section 31 Executive Group shall be from the PCT as the Host Authority is the Council.
- 5.3 The Chair shall hold office for one year, but may be re-elected.

## **6 Leaving the Section 31 Executive Group**

- 6.1 A member of the Section 31 Executive Group shall cease to hold office if:
  - 6.1.1 he or she notifies to the Section 31 Executive Group a wish to resign;
  - 6.1.2 he or she ceases to be a member/employee of the Council or a member/employee of the PCT which appointed him or her;
  - 6.1.3 the PCT or the Council (as the case may be) notifies the Section 31 Executive Group of their removal.

## **7 Interests of Section 31 Executive Group Members**

- 7.1 No member of the Section 31 Executive Group shall acquire any interest in property belonging to the Council or the PCT or receive remuneration or be interested (otherwise than as a member of the Section 31 Executive Group) in any contract entered by the Section 31 Executive Group.
- 7.2 Members of the Section 31 Executive Group, observers and officers attending the Section 31 Executive Group shall comply with both the Local Government National Code of Conduct and the National Health Service Guidance Ethics, to the extent that the same may properly be applied to the circumstances of this Board.

## **8 Access to Information**

- 8.1 The Section 31 Executive Group Minutes will be included within the agendas of the meetings of the PCT and the Health and Social Care Scrutiny Committee of the



Council. Some information contained within these Minutes will be "exempt" and will be reported in the "private" part of "parent" organisation agendas.

- 8.2 The Section 31 Executive Group will prepare an Annual Report on its activities for the information of all Partners.
- 8.3 Parent organisations will ensure that appointments to the Section 31 Executive Group have been made in an open and fair way.

## **9 Processes**

- 9.1 The Section 31 Executive Group will meet quarterly.
- 9.2 The Section 31 Executive Group will not exceed its powers and will comply with any relevant obligations.
- 9.3 The Chair will be agreed annually by a meeting of the Section 31 Executive Group as per paragraph 5.2.
- 9.4 The Section 31 Executive Group will be quorate with 2 members present. This number must not include the Pooled Fund Manager but must include one officer of the PCT and one officer of the Council.
- 9.5 Agenda papers will be sent out at least 1 week before meetings. Meetings will be minuted.
- 9.6 Members must declare all personal interests, both pecuniary and non-pecuniary. They should also declare interests their parent organisation has over contractual matters (including interests as representatives of both purchasing and providing bodies). People with a personal pecuniary interest should leave the meeting.

## **10 External Review**

- 10.1 The Host Authority will report to the Section 31 Executive Group on planning for, and the results of, any major internal (Best Value) or external reviews of Services (Commission for Health Improvement, Social Services Inspectorate or Audit Commission).

- 10.2 The Host Authority will report to the Section 31 Executive Group the results of annual audits of relevant Pooled Funds.

## **11 Financial and Performance Reporting**

- 11.1 The Host Authority will report on the financial position of the Pooled Fund at each meeting of the Section 31 Executive Group. It will produce a performance report on the Services being purchased by the Pooled Fund. At least annually it will report on the quality of Services being purchased. The Format of the reports will be agreed by the Section 31 Executive Group.

## **12 Notices**

- 12.1 Any notice required to be served on any member of the Section 31 Executive Group shall be in writing and shall be served by the secretary of the Section 31 Executive Group on any member either personally or by sending it through the post in a first class prepaid letter addressed to such member at his or her last known address in the United Kingdom, and any letter sent shall be deemed to have been received within three days of posting.
- 12.2 Notice of meetings shall normally be sent fourteen days in advance and in any event not less than three clear days before the date of the meeting.
- 12.3 The notice of the meeting must include notice, setting out the terms of any alteration proposed by a resolution.

## **13 Alterations to the Constitution**

- 13.1 Subject to the following provisions of this clause the Constitution and Principles may be altered if all the Section 31 Executive Group members of the PCT and the Council have each voted in favour of the alteration.
- 13.2 No amendment may be made to clause 1 (the name clause), clause 2 (the objects clause), clause 7 (Interests of Board members clause), clause 14 (the dissolution clause) or this sub-clause.
- 13.3 No amendment may be made to this constitution which would be in conflict with the legislation regulations or standing orders of the PCT or the Council.

## **14     Dissolution**

- 14.1    The Section 31 Executive Group may be dissolved upon the PCT or the Council giving not less than six months' notice to the other and to the Section 31 Executive Group.

This constitution was adopted on the date mentioned above by:

Walsall Teaching Primary Care Trust

Signed: \_\_\_\_\_

Walsall Metropolitan Borough Council.

Signed: \_\_\_\_\_

## **Schedule 3**

### **Partnership Functions**

#### **A     NHS Functions**

The Section 31 Executive Group will have delegated responsibility for the Term to commission the delivery of the health services to the extent that they apply to Services delegated to the Section 31 Executive Group and subject to any Regulations or Directions of the Secretary of State for Health with regard to such functions:

The functions of the NHS in securing the following services under the **National Health Service Act 1977-**

Services under **sections 2 and 3(1)** which are

- hospital accommodation;
- accommodation for the purpose of any service provided under the 1977 Act;
- medical, dental, nursing and ambulance services;
- other facilities for the care of expectant and nursing mothers and young children, in order to fulfil their health needs which are appropriate as part of the health service;
- facilities for the prevention of illness, for people who are ill, or recovering from illness; this includes rehabilitations, and services intended to avoid admission to hospital which are appropriate as part of the health service;
- other services needed for the diagnosis and treatment of illness.

#### **B     Council Functions**

The Section 31 Executive Group shall exercise on behalf of the Council for the Term for the benefit of persons suffering from learning disabilities in Walsall those functions assigned under the following enactments:

- Provision of residential care, welfare services for people who have learning disability problems. Temporary protection of property belonging to people in hospital or accommodation provided under Part III of the Act; paying the expenses of LA officer acting as receiver for certain patients; prosecution of

individuals for failure to maintain a person, giving false statements, and obstructing a person with power of entry and inspection. (**National Assistance Act, 1948**)

- Assessment of needs for community care services. (**National Health Service and Community Care Act 1990**)
- Direct Payments - Making of assessments and payments to individuals for purchasing community care services. (**Community Care Direct Payments Act 1996**)
- Assessment of ability of carers to provide care (**Carers (Recognition and Services ) Act 1995**)
- The provision of facilities for disabled people, including those with sensory disabilities to be employed or work under special conditions. (**Disabled Persons (Employment) Act 1958**)
- Identifying the need for, and publishing information about welfare services, provision of certain services, and providing certain information to the Secretary of State. (**Chronically Sick and Disabled Act 1970**)
- Representation and assessment of disabled persons. (**Disabled Persons Services (Consultation and Representation ) Act 1986**)
- The promotion of welfare of old people
- Co-operation in relation to homeless people and people threatened with homelessness. (**Housing Act 1985, 1996**)

## **C Excluded Functions**

- Certain sections of the National Assistance Act, 1948 and the Health and Social Services and Social Security Adjudications Act 1983. These are about charging for accommodation, and the recovery of costs.

For the period of the Partnership Arrangements (and subject to the passage of any Primary legislation) the Council will:

- retain direct operational control over charging issues;

## **Schedule 4**

### **Partnership Arrangements**

#### **1. Partnership Arrangements**

- 1.1. The Lead Commissioner shall commission the Learning Disability Services to be delivered under the Partnership Functions on behalf of the Partners.
- 1.2. These Services will deliver the outcomes as described in Schedule 1.
- 1.3. The Partners will aid the Lead Commissioner if required and as and when necessary to deliver the Services to Service Users within the Walsall Area.
- 1.4. The Partners will provide a Pooled Fund from which to commission the Services for the Service Users.

## Schedule 5

**This schedule records the partners financial resources included in the pooled fund.**

The TPCT's initial contribution to the pooled budget for 2004/05 can be analysed as follows :

Services provided by the PCT provider arm **	£5,490,000
Other funding	£5,730,000
Learning Disabilities development grant	£99,000

\*\* this is broken down as

direct costs	£4,319,000
indirect costs and overheads	£1,171,000

Walsall MBC's initial contribution to the pooled budget for 2004/05 can be analysed as follows :

Services provided by Walsall MBC provider arm	£4,121,000
Other funding	£5,029,000
Government grants	£739,000
Corporate overhead charge – social services management support and central support	£703,000

Contributions to the pooled budget for 2005/06 and subsequent years will be determined in accordance with clauses 4.1 of this agreement.

## Schedule 5A

**This schedule records the staff, goods, services or accommodation to be provided by the partners in connection with the agreement.**

The costs associated with the facilities provided by the partners are subsumed in the costs shown in Schedule 5

### **Walsall MBC**

- The pooled fund manager, administrative support and direct line management
- Care management and administrative staff – on 1/4/04 the authorised establishment was 37.24fte
- Corporate support services including procurement, governance, personnel, legal services, financial services including invoice payment and debt collection, internal audit, Audit Commission, Payroll, etc
- Accommodation for care management and administrative staff at the civic centre and other civic buildings.

### **Walsall tPCT**

- None provided

The Common Seal of  
**WALSALL TEACHING PRIMARY CARE TRUST**  
was hereunto affixed in the presence of:-

The Common Seal of  
**WALSALL METROPOLITAN BOROUGH COUNCIL**  
was hereunto affixed in the presence of:-