

1 APRIL 2005

Dudley South Primary Care Trust

AND

Dudley Beacon and Castle Primary Care Trust

AND

Borough Council of Dudley

PARTNERSHIP AGREEMENT

MENTAL HEALTH SERVICES

THIS AGREEMENT is made on BETWEEN Borough Council of Dudley, Directorate of Social Services, Ednam House, 1 St. James Road, Dudley, West Midlands, DY1 3JJ and Dudley South Primary Care Trust, Ashwoodhay, Ridge Hill, Brierley Hill Road, Stourbridge, DY8 5ST and Dudley Beacon and Castle Primary Care Trust, St. John's House, Union Street, Dudley, DY2 8PP

DEFINITIONS

"The 1977 NHS Act" means the National Health Service Act 1977

"the Act" means the Health Act 1999

"the Primary Care Trust" means Dudley South or Dudley Beacon and Castle Primary Care Trusts

"the Council" means the Borough Council of Dudley

"Service Providers" means the organisations who provide Mental Health services, including statutory bodies and voluntary independent sector providers

"the Primary Care Trust's functions" means such of those functions as may be necessary to provide the services as referred to in regulation 5 of the Regulations

"the Council's Functions" means such of those functions as may be necessary to provide the services as referred to in regulation 6 of the Regulations

"the Commencement Date" means 1st April 2005

"the Functions" means together the Primary Care Trust's functions, the Council's Functions and such other obligations imposed upon the Primary Care Trusts, or the Council, pursuant to any subsequent enactment or amendment relating thereto

"the Initial Term" means 2 years from the Commencement date

"the Mental Health Partnership Board" means the Board or Local Implementation Team (LIT) established by the Partners pursuant to regulation 10(2) of the Regulations and which shall comprise two members or officers from each of the Partners and which shall be responsible for monitoring governance and receiving reports and information upon the operation of the Partnership Arrangements

"the Partnership Arrangements" means the arrangements jointly agreed by the Partners for the purposes of commissioning and providing the services pursuant to the Regulations and Section 31 of the Health Act 1999

"the Partners" means together the Primary Care Trusts and the Council

"the Regulations" means the NH8 Bodies and Local Authorities Partnership Arrangements Regulations 2000 81 No. 617

"the Services" means the provision of services as defined in the Service Agreement and such other services as may be agreed by the Partners from time to time during the Term

"the Service Agreements" means the agreements entered into by the Partners for the purposes of commissioning the Services

"the Term" means the term of this Agreement which shall commence on the Commencement Date and (subject to clause 6 hereof) expire on 31st March 2008

"Dudley Mental Health and Social Care Service means the integrated mental health and social care service

WHEREAS

- 1.0 The Primary Care Trusts and the Council have agreed: -
- 1.1 to enter into the Partnership Arrangements for the purposes of establishing single commissioning arrangements for Mental Health services within the borough of Dudley and to ensure effective delivery and provision of those services.
- 1.2 to enter into the Partnership Arrangements for the purpose of establishing integrated provision of specialist Mental Health and Social Care services within the borough of Dudley.
- 1.3 the Council will arrange for the Dudley South PCT to be responsible for the commissioning of Mental Health services on behalf of the Partners through the Head of Mental Health Commissioning.
- 1.4 the Council will [arrange for the Dudley Beacon and Castle PCT to be responsible for the provision of Mental Health services] and for delivering services on behalf of the Partners through the Head of Mental Health and Social Care services.
- 1.5 the Dudley Beacon and Castle PCT will be accountable under the Partnership Agreement to the Council for the provision of Social Care services in Mental Health.
- 1.6 The objective of the Partnership Arrangement is to improve the services for users through closer working between the National Health Service and Local Government. The Agreement is pursuant to the obligations for the Primary Care Trusts and the Council to co-operate with each other in providing the services as [referred to in Section 27 of the Act and Section 22 of the 1977 NHS Act].
- 1.7 The partnership arrangements have been established pursuant to Section 31 of the Act, the Regulations and by virtue of this Agreement.
- 1.8 The Primary Care Trusts and the Council have jointly carried out consultation on the proposals for the Partnership Arrangements with user groups, staff, and non-statutory providers, as required by the terms of regulation 4(2) of the Regulations.
- 1.9 The Partnership Arrangements proposed by this Agreement fulfil the objectives set out in the Primary Care Trusts Local Delivery Plans.
- 1.10 The provisions of this Agreement shall take effect on the Commencement Date of 1st April 2005 and the initial term of the Agreement will be two years with effect from the Commencement Date.

IT IS HEREBY AGREED BETWEEN THE PRIMARY CARE TRUSTS AND THE COUNCIL:

2.0 LEAD COMMISSIONING

- 2.1 The Council shall put in place arrangements for [delegate their commissioning function] the Head of Mental Health Commissioning in the Dudley South PCT to commission Services in accordance with its financial regulations and standing orders.
- 2.2 The agreed aims and outcomes of the lead commissioning arrangements shall be the aims and outcomes as set out in Appendix A.
- 2.3 The Services in respect of which the lead commissioning functions may be exercised are the services specified in Appendix B.
- 2.4 The Head of Mental Health Commissioning will be responsible for commissioning and monitoring the Services provided by the integrated Mental Health and Social Care service.
- 2.5 The PCTs, in recognition that the Council will not be able to contract for healthcare services for people with mental health needs where they are provided as part of wider generic Agreements and Contracts with Health Care providers, hereby undertakes to the Council to ensure the levels and standards of service provided as part of those contracts are maintained by Service Level Agreements with the NHS or contracts with external providers.
- 2.6 The Council retains the power and responsibility to charge for certain of its functions in accordance with the National Assistance Act 1948 and the Health, Social Services and Social Security Adjudication Act 1983. The administration of these charges will continue to be the responsibility of the Social Services finance department
- 2.7 The Partners shall establish and maintain a charging policy and protocol to ensure that the delivery of health care through the performance of any NHS Functions pursuant to this Agreement shall remain free at the point of delivery whilst ensuring that effective procedures exist to facilitate the exercise by the Council of its charging function. The Protocol agreed between the Council and the local NHS in 2000 relating to S117 After-Care will apply.

3.0 FINANCE

- 3.1 For the first year, April 2005 – March 2006 - the Primary Care Trusts and the Council agree to contribute to the integrated service the monies which they currently spend on commissioning and provision of services for people with mental health needs i.e. the cash value of each organisation's investment in Mental Health services in the year

2004-05. The respective contributions of the partners are set out in Appendix C.

- 3.2 The contribution of the Partners for 2005-06 will be calculated as the initial budget for 2004-05 plus any agreed in year changes where it has been agreed that these should be recurrent, plus any agreed inflationary uplift for the year 2005-06, plus any agreed growth for 2005-06 and less any agreed efficiency requirements.
- 3.3 The contribution by the Council shall be made upon the gross figure before deduction for charges levied on service users, or any associated costs or expenses.
- 3.4 The responsible manager for the provider budgets will be the Head of Mental Health and Social Care Services, who will manage both the Dudley Beacon and Castle budget and the Council budget for Mental Health services. The lead commissioner (Dudley South PCT) is responsible for overseeing this budget from a performance management/best value perspective.
- 3.5 The Partners intend that a Pooled Budget will be established by 1st April 2006 by a separate Agreement, to be managed by Dudley South PCT as the lead commissioner.
- 3.6 The Partners intend that they shall agree by 1st April 2006 the monies which each will contribute to the Pooled Budget.
- 3.7 The Head of Mental Health and Social Care Services will be responsible for the management of resources within financial balance and will report any potential and actual variations to budget, as soon as practicably possible, to the Director of Social Services and the Chief Executives of the PCTs.
- 3.8 The Partners agree that in the event of an accumulated over or under-spend during 2005-06, they will review the position and will jointly decide what action to take to address the overspend or utilise the surplus. Where additional funding may be required the Head of Mental Health and Social Care Services shall submit a case of need to the partners.
- 3.9 In the event of dispute or disagreement in relation to the liability or benefit for any overspend or under-spend the matter may be referred by any relevant party to arbitration in accordance with clause 5.3.
- 3.10 A minimum of three months' notice will be given by any of the Partners of a proposal to reduce resources invested in the Service during 2005-06 or 2006-07.

- 3.11 Any monies specifically allocated by the Government for Mental Health services will be allocated to the Service, including the Mental Health Grant and Mental Health Supported Capital Expenditure.
- 3.12 Service Provider financial responsibilities will be detailed within individual contracts and Service Level Agreements. Service providers are required to keep spending in line with the contract or SLA, within their allocation of resources, agreed for 2005-06. Any overspend incurred is the responsibility of the service provider unless an agreement to a variation is agreed by the Head of Mental Health and Social Care Services. In this case, the overspend may be adjusted in the following year's allocation. Unspent monies may be clawed back from service providers, subject to contract terms and conditions.

4.0 INTEGRATED PROVISION

- 4.1 The Dudley Beacon and Castle PCT shall be responsible for the management and provision of the Integrated Service, hereby known as Dudley Mental Health and Social Care Service.
- 4.2 The Head of the Mental Health and Social Care Service, which is a joint appointment between the Council and the Primary Care Trust, will be the delegated officer responsible for the overall management of the Dudley Mental Health and Social Care Service.
- 4.3 The Council's following legislative duties are comprised within the Council's Functions and exercisable by health and social care staff in the integrated service

Chronically Sick and Disabled Persons Act 1975

NHS and Community Care Act 1990

Carers Recognition and Services Act 1995

Housing Act 1996

Health and Social Care Act 2001

- 4.4 The duties of the Council under the Mental Health Act 1983 will continue to be performed by staff employed by the Council, who are seconded to the integrated Service.

5.0 ACCOMMODATION

- 5.1 The PCTs and the Council agree the following arrangements for the office accommodation of staff working in the Mental Health and Social Care Service.
- 5.2 [\[Insert details of CMHT office locations, including EMI team and Ellenvale \(Ellenvale to say 'Team Managers employed by the Council and the central Admin team'\):\]](#)

- 5.3 Buildings or facilities belonging to the Council or the PCT, from which the integrated Service will operate, will remain in the ownership of those organisations unless otherwise agreed. The owner of the building will be responsible for maintenance and repair and for ensuring that the requirements of Health and Safety and Disability Discrimination legislation are met.

6.0 EMPLOYMENT AND SECONDMENT OF STAFF

- 6.1 All employees of both the Dudley Beacon and Castle PCT and Dudley Council who are appointed to a post within the Dudley Mental Health and Social Care Service will continue to be employed by their present employer. Council staff will be seconded to the service under the terms of a separate Secondment Agreement (attached at Appendix D)
- 6.2 The Dudley South Primary Care Trust will employ professionally registered and allied health care staff, who will be seconded to work within Dudley Mental Health and Social Care Service. Such staff will continue to be employed by the Dudley South Primary Care Trust.

7.0 DATA PROTECTION

- 7.1 The Primary Care Trusts and the Council acknowledge that they operate separate rules and protocols for the storage maintenance and handling of information and data in respect of their respective functions, powers and duties. They undertake to share with each other data and information relating to the Functions and the Services to the maximum extent permitted by law and according to the overarching Information Sharing Protocol between Health and Social Services.
- 7.2 The Primary Care Trusts and the Council must each respectively protect personal data of its staff, officers and members of the public in accordance with the provisions and principles of the Data Protection Act 1998 and must ensure the reliability of its staff who have access to the data.
- 7.3 Both the Primary Care Trusts and the Council hereby indemnify the other against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or bought by any person in respect of any loss, damage or distress caused to that person by the disclosure of any personal data by the Employee.
- 7.4 "Personal data" has the same meaning as in the Data Protection Act 1998.

8.0 CLINICAL GOVERNANCE

- 8.1 The Partners will ensure that staff have the necessary education, training, skills and competencies to deliver a high quality service. .

Clinical and social care activity will be based on sound evidence and potential problems anticipated and prevented.

- 8.2 The Partners will monitor and improve existing practice, recognising and acting on poor performance as well as facilitating the implementation of good practice, in line with this Partnership Agreement
- 8.3 The Service will report on performance against complaints and critical incidents and demonstrate action to minimise the risk of repeat incidents.
- 8.4 Performance in relation to clinical governance will be included in the Annual Report to the partner organisations, to ensure compliance with the Partnership Agreement.

9.0 INDEMNITY

- 9.1 The Dudley South PCT shall, subject to the scheme regulations operated by the NHS Litigation Authority, ensure that the insurances maintained by it for the purposes of its functions are sufficient to cover the undertaking by it of the lead commissioning functions of this Agreement.
- 9.2 The Dudley Beacon and Castle PCT shall, subject to the scheme regulations operated by the NHS Litigation Authority, ensure that the insurances maintained by it for the purposes of its functions are sufficient to cover the undertaking by it Integrated Provision functions of this Agreement.
- 9.3 It is agreed between the Council and the Primary Care Trusts that each shall indemnify the other against all and any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at Common Law in respect of any injury to any person, including injury resulting in death and any loss of or damage to personal property directly related to such injury where such injury loss or damage is caused as a direct result of the negligence of the relevant party or any of its staff.
- 9.4 Current arrangements within the PCT whereby clinical negligence claims are met by the NHS Litigation Authority will continue to cover NHS employees.
- 9.5 Any outstanding insurance claims as at 1st April, 2005 or claims which arise as a result of an incident prior to the date of this Agreement, will remain the responsibility of the party to whom the original claim is made.

- 9.6 For the avoidance of doubt each party shall continue to fully maintain its respective insurance cover in respect of buildings, equipment, public and employer's liability.

10.0 MANAGEMENT INFORMATION

- 10.1 The Head of Mental Health and Social Care Services will be the officer responsible for providing activity and other information as required by The Department of Health, Strategic Health Authority, Commission for Social Care Inspection, the LIT and the PCTs and the Council. The Partners will ensure that the Head of Mental Health and Social Care Services has access to both Local Authority and NHS IT systems.

11.0 COMPLAINTS

- 11.1 Complaints made by service users or carers about the provision of services will be dealt with in accordance with Dudley Beacon and Castle's Complaints' Procedure and where appropriate the Complaints' Procedure of the Council. Copies of these Procedures are attached at Appendix E. Those wishing to make a complaint will receive advice on the most appropriate procedure to use.
- 11.2 The handling of complaints in relation to the Partnership Arrangements and the provision of the services referred to in this Agreement shall be dealt with in accordance with regulation 10(3) of the Regulations and shall be referred to the LIT or another group delegated by the LIT for consideration.

12.0 TERMINATION, REVIEW AND DISPUTES

- 12.1 Subject to the further provisions of this clause, this Agreement commences on 1st April 2005 and expires on 31st March 2007 and will be subject to review by the Partners on 1st April 2006.
- 12.2 Any of the partners may on the service of 6 months previous notice in writing served upon the other parties hereto terminate this Agreement. Upon termination of this Agreement, the secondment of staff by the Council shall immediately cease.
- 12.4 The terms and conditions of this Agreement may only be varied by the express agreement by the Partners. Such requirements to vary the terms and conditions of this Agreement shall be proposed in the first instance to the Chief Executives of the PCTs and the Director of Social Services.
- 12.5 In the event of dispute or difference between the parties hereto arising out of or in any way relating to the construction of the subject matter of this Agreement, the same shall, if required by any party, be referred in the first instance to the Director of Social Services and the Chief Executives of the Primary Care Trusts to resolve, and failing

agreement in the second instance to the Chief Executive of the Council and the Chief Executive of the Birmingham and Black Country Strategic Health Authority and failing agreement in the third instance to an Arbitrator to be nominated by the President for the time being of the Royal Institute of Arbitrators and any such reference shall be deemed to be a reference to arbitration within the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force and the allocation of the costs of any such arbitration shall be borne by the parties as determined by the Arbitrator.

13.0 GOVERNANCE

13.1 The existing LIT framework of groups and reporting arrangements would continue for progression and monitoring of local and national targets. The Head of Mental Health and Social Care services will provide to the LIT data and reports to enable the Partners to meet the requirements of performance reporting.

13.2 An Executive Group will be set up comprising the Chief Executives of the PCTs, the Director of Social Services, the Deputy Chief Executive of Dudley South PCT as LIT lead, the Director of Quality in Dudley Beacon and Castle PCT and the Assistant Director (Learning Disability and Mental Health). The Executive Group will be responsible for monitoring the partnership arrangements and governance and will receive an annual report and information upon the operation and performance of the integrated Mental Health and Social Care Service.

14.0 NOTICES

14.1 Any notice to be served on any of the parties by one of the others shall be sent by prepaid recorded delivery or registered post to the address of the relevant party shown at the head of this agreement and shall be deemed to have been received by the addressee within 72 hours of post.

15.0 HEADINGS

15.1 Headings contained in this Agreement are for reference purposes only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate

16.0 RIGHT TO ASSIGN OR TRANSFER

16.1 This Agreement and all rights under it may not be assigned or transferred by any of the parties without the prior written consent of the other.

16.2 Upon such assignment or transfer the assignor or transferor shall ensure that the assignee or transferee enters into a written undertaking to comply with the terms and conditions of this agreement in consideration of which the other party agrees to release the assignor or transferor from further liability except in respect of liability accrued up to the date of such assignment or transfer.

17.0 PROPER LAW AND ARBITRATION

17.1 This agreement shall be governed by English law in every particular including information and interpretation and shall be deemed to have been made in England

18.0 SURVIVAL OF TERMS

18.1 No terms shall survive expiry or termination of this Agreement unless expressly provided

19.0 COSTS

19.1 Each of the parties shall pay any costs and expenses incurred by it in connection with this agreement

20.0 CONFIDENTIALITY

20.1 All documents and information received by the Partners and/or providers during or in connection with the performance of this contract shall be held in the strictest confidence.

20.2 All documents and information provided by either Partner to the other during or in connection with the performance of this contract shall be treated as confidential. Such documents and information shall not be used by the receiving Partner except for the purposes for which they were made available and such documents and information shall not be disclosed by the receiving Partner to any other person without the prior consent of the issuing Partner. The Partners shall use all reasonable endeavours to ensure that its employees and providers of service are under a similar obligation of confidentiality in respect of relevant documents and information. The above restriction shall not apply to information which:

- is already in the public domain; or
- is trivial or cannot reasonably be considered to be confidential;

or

- is disclosed pursuant to this Agreement, or other legal obligation

IN WITNESS whereof the Primary Care Trusts and the Council have executed this Agreement as a Deed the day and year first before written

THE COMMON SEAL of Dudley South Primary Care Trust was hereunto affixed in the Presence of:

THE COMMON SEAL of Dudley Beacon and Castle Primary Care Trust was hereunto affixed in the Presence of:

THE COMMON SEAL of
Borough of Dudley Council was hereunto affixed in the presence of: