

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# Board of Directors

**28 March 2012**

**S75 Partnership Agreement with Oxfordshire County Council**

1. **INTRODUCTION**

The purpose of this report is to seek approval for commencement of a new partnership agreement, under S75 of the NHS Act 2006 with Oxfordshire County Council.

1. **BACKGROUND**

**2.1 Scope of Original Agreement**

* Oxfordshire Mental Healthcare NHS Trust entered into an agreement with the Council on 31st March 2006. The agreement was for a pooled budget with integrated provision and was to continue year by year subject to a review after 5 years. The Agreement covered Adult Mental Health Service and Social Care for 18 – 64 year olds, Drug Misuse and Alcohol Services, Mental Health and Social Exclusion (vulnerable Adults).
* The purpose of the partnership was for the Trust to manage integrated teams including Social Care staff offering a single point of access to all services and the original Social Care staff of the Council were seconded to Trust management. As a part of that arrangement when staff vacancies occurred the partners were able to consider how best to recruit to those vacancies i.e. job specification and ordinarily all new posts were to be recruited to Trust employment.
* The Trust was commended by the Audit Commission in its study of partnership arrangements nationally, “Means to an End” for its local approach to measuring success in Mental Health services through its score card model.

**2.2 Change in Local Circumstances**

* The agreement was extended to run during 2011/12 so that a full review and update could be undertaken as it has become apparent that it is not crucial to the partnership for the Trust to include the full spectrum of its own provision for adults e.g. inpatient and specialist services rather than those front line team services where integration of assessment and access is desirable for service users. Drug and Alcohol Services have also been subject to a local tender process and part of the service has been transferred to a 3rd sector organisation. Older People services are now at a stage where fuller integration is possible and Forensic Services would benefit from a more formal agreement about their management by the Trust.
* Recent changes in employment and pension liabilities make it less desirable financially for ‘the pooled fund’ if the Trust is to ordinarily become the employer for new posts unless there is a clearer understanding reached about the inherent employer liabilities that could occur, should the partnership cease. There is considered to be a risk also that Social Care professionals may be dissuaded from applying for posts where they perceive a loss in professional culture due to the inability to be employed directly a Council.
* The Trust has assisted commissioners in the management of ‘panel’ decision making on necessary placements for example, out of area. However since the original agreement, the PCT and Council have now also created their own separate partnership for Joint Commissioning under a S75 agreement. The PCT is the Lead Commissioner.
* Since the original agreement the Trust has of course also assumed additional responsibilities including for Community Health Services in Oxfordshire and it is likely that some further partnership with the Council may be sought in the future within areas such as Community Integrated Teams and Children Services.
* It has also emerged that from time to time the Council may wish the Trust to manage services on its behalf but that whilst it may be desirable to delegate these to Trust management, it may not be appropriate for the Trust to ‘pool’ (integrate) these with its own services. This is possible under the NHS Act arrangements but is rarely understood in that it lessens financial risk for both partners whilst allowing lead partner to receive delegation, thus minimising operational bureaucracy without the host partner acquiring any additional risk exposure.
* It is not desirable to operate a number of separate agreements each time a new partnership is sought.

**2.3 Process for Change**

* In view of the above it was agreed by the executive team to obtain specialist external advice and support for the review and redrafting. This was secured via Robin Lorimer, an adviser to DH and the Welsh Assembly on partnership and pooled budgets. Robin has also been instrumental in preparation of all local S75 agreements in Oxfordshire and from time to time has assisted DH as for example, a special advisor to the Transforming Community Services programme, Integrated Care Organisation Pilots and Care Trust application assessments.
* A joint Trust and OCC project group chaired by David Bradley was established to assist with advice in redrafting and with full input from Trust staff as the leads on preparing new schedules to the Agreement on Service, Objectives, Finance, HR and Governance Arrangements. Full discussions were maintained with PCT commissioners on the implications of the agreements and their role on directing service change as opposed to managing operational delivery.
* As a result of this a new agreement has been prepared and this has been finalised to the satisfaction of OCC Legal Services. The Trust has also obtained legal advice upon the suitability of the draft agreement for signature and a final version has been prepared subject to Board and OCC Cabinet agreement

1. **PROPOSED AGREEMENT FOR APPROVAL**

**3.1 Key changes**

* The proposed agreement makes provision initially for Integrated Teams for Adult Mental Health Services. This also includes Older People Mental Health Services and Forensic Services. Drug and Alcohol Service have been removed due to the current tender plans of commissioners. The draft excludes other Trust resources not necessary to be subject to joint management or partnership arrangements, thus creating more internal flexibility to manage resources.
* The Agreement is written so that any new service may be added to the partnership without the need for additional separate partnership agreements for example community services for older people.
* It is in effect an ‘overarching agreement’ for the partnership terms and acting as the framework for any new local partnerships with the Trust to be added. This will reduce complexity of governance arrangements. Most importantly the Agreement is subject to Annual Review, rather than every 5 years.
* The original agreement included a Joint Management Group (JMG) with OCC which was to meet at least 9 times a year in order to oversee performance and make recommendations to the partners on changes the agreement. The new draft makes provision for 4 meetings in each year and with two of these to be jointly with the ‘commissioners’ for mental health service. The JMG officers will operate within the normal scheme of delegation of the Trust and the Council with the authority for the JMG to make decisions within those arrangements.
* The purpose of the JMG meetings with commissioners will be to reduce complexity of local Joint Commissioner/ Integrated Provision relationships, especially where the Council is a partner to both agreements. The meetings will also be used to discuss opportunities; agree matters affecting service performance and contract needs; inform the Partners and the PCT/CCG on progress against current commissioning intentions; and review the implementation of the Mental Health Joint Commissioning Strategy for the future.
* The draft also updates employment arrangements so that the Trust does not ‘ordinarily’ become the employer to a new post and reduces the risk for the Trust over employment liabilities: The recruitment and appointment arrangements of new staff will be considered by the JMG and the JMG shall decide before the start of the recruitment process whether the post should be a Trust post or a Council post seconded to the Trust.
* Seconded Staff who apply for new staff posts shall have the option to remain as staff of the County Council pursuant to the terms of the Secondment Agreement and the Seconded Staff Employment Agreement will continue to apply. Alternatively seconded staff will still be able to choose to transfer their employment to the Trust. Where New Staff appointed are already employees of the Council but not seconded to the Trust they will be given the choice to remain employees of the Council or to transfer to the Trust. If they choose to remain Council employees then they will be seconded to the Trust and all other conditions relating to their Secondment Agreement will apply.
* The previous agreement was not clear on the risk to the Trust on its liabilities for staff appointed by it using Social Care contributions to the ‘pooled fund’ ie when later the partnership might be terminated and not all staff in the Trust were necessary for its own needs or suitable for TUPE to the Council. This is because not all new Social Care vacancies have automatically led to a Social Care post being appointed as opposed to whatever is necessary for the benefit of the service.
* The new draft now clearly sets out the responsibility of the partners on how to resolve disaggregation during which time following termination they must continue to fund their share of pooled fund costs. In these circumstances it most importantly places a duty upon Social Services proportionate to their contribution to the pooled fund. If no agreement is reached within 6 months of the date of any planned reduction in contributions or expiry or termination then the employment liabilities are to be allocated to each partner in proportion to their respective contributions to the pooled fund. This will also apply to existing staff employed under the previous agreement.
* The new draft agreement also includes provision for ‘non - pooled’ funds/services to be delegated to Trust management by Social Services without the need for the Trust to merge any of its own services or budgets with these. This provision is described in the agreement as use of ‘non Pooled Funds’. There are none proposed at the outset of the agreement but it is a useful provision for any future circumstances.

1. **RECOMMENDATION**

The Board is recommenced to approve the draft agreement for commencement from 1 April 2012

David Bradley

17 March 2012