

# OLDER PEOPLE AND OCCUPATIONAL THERAPY

**Cambridgeshire County Council  
Cambridgeshire Community Services NHS Trust**

## **NATIONAL HEALTH SERVICE ACT 2006 SECTION 75 PARTNERSHIP AGREEMENT**

### **INTEGRATED PROVISION FOR OLDER PEOPLES SERVICES AND OCCUPATIONAL THERAPY**

Version control				
Version no.:	Change Description:	Requested by:	Date:	
1	BB comments and updates			
2	MW edits updating from BB comments	BB	16.03.12	
3	BB amendments	BB	21.03.12	
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5	CCC amendments; and agreed amendments by working group		04 April	
6	Further CCC amendments		05 April	

**CONTENTS:**

*Index to be sorted out when content resolved*

DRAFT

## PART 1: ARRANGEMENTS

### Arrangement 1: Partnership Arrangement

- 1.1 This Agreement dated 1st day of April 2012 defines the Partnership Arrangement made between **Cambridgeshire County Council** of Shire Hall, Castle Hill, Cambridge CB3 0AP ("the Council") and **Cambridgeshire Community Services NHS Trust** of The Priory, Priory Road, St Ives, PE27 5BB ("the Provider").

### Arrangement 2: Pooled Fund Arrangement

- 1.2 This is not a Pooled Fund Arrangement.

### Arrangement 3: Exercise of Functions

- 1.3 This is an exercise by an NHS body of health functions in conjunction with health-related functions of a local authority. The Partners are exercising the powers in Section 75 of the National Health Service Act 2006 in so far as these are required for the purposes of this Agreement.

### Older Peoples Service

- 1.4 The health functions, the exercise of which are the subject of the arrangements are:

[ ]<sup>1</sup>

- 1.5 The health-related functions, the exercise of which, are the subject of the arrangements are:

Social care for Older People excluding specialist services for Older People with mental health needs.

- 1.6 The persons in respect of whom the functions may be exercised are:

People aged over 65 for social care provision.

### Occupational Therapy

- 1.7 The health functions, the exercise of which are the subject of the arrangements are:

[ ]<sup>2</sup>

- 1.8 The health-related functions, the exercise of which, are the subject of the arrangements are:

Occupational Therapy for adults, aged under 65, with disabilities and Older People.

- 1.9 The purpose of the agreement is to improve the efficiency and effectiveness of care provided to Older People and occupational therapy services through integrating health NHS and social care teams and professionals. The success criteria and measurements are included in Part 3.

The Partners have consulted jointly with such persons as appear to them to be affected by the arrangements in this agreement.

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<sup>1</sup> Trust to complete this

<sup>2</sup> Trust to complete this

- 1.10 The services which are currently to be provided in fulfilment of these functions are set out in Schedule [3 ]

## **Part 2: Interpretation and Construction**

- 1.11 Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee between the Partners.
- 1.12 Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 1.13 Notices or communication in relation to the Agreement shall be deemed to be delivered to the relevant Partners if sent by first class post, delivered by hand, or sent by email or fax, as agreed with the relevant Partners from time to time.
- 1.14 Words and expressions used in the Agreement shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
- 1.15 Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
- 1.16 Words and expressions defined in the Act shall have the same meaning when used in this Agreement.
- 1.17 Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Agreement.
- 1.18 In construing the provisions of this Agreement, the heading or title of any Part, Condition or Schedule shall be disregarded.
- 1.19 Where any obligation of the Partnership is required to be performed by a specified date or within a specified period, and where the Partnership has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.
- 1.20 In this Agreement and the Schedules, the following definitions shall apply unless otherwise expressly stated.
- a) **Authorised Processing** means the processing of the Data solely as is necessary for the delivery of the Services
  - b) The **Council** is Cambridgeshire County Council of Shire Hall, Castle Hill, Cambridge CB3 0AP;
  - c) The **PCT** is NHS Cambridgeshire of Lockton House, Clarendon Road, Cambridge, CB2 8FH;
  - d) The **Provider** is Cambridgeshire Community Services NHS Trust of The Priory, Priory Road, St Ives, PE27 5BB;
  - e) The **Partners** to this Agreement are the Council and the Provider;
  - f) **Representations** is the term used by the Council to describe negative comments about policies or practices from anyone using or entitled to use services;

- g) **PALS** is the service available to patients of the health service to that gives information and advice in order to sort out any concerns, issues and problems as soon as possible;
- h) **Market Management** is the process of ensuring that there is a sufficiently robust and diverse market of health and social care providers for Micro Commissioners to buy from. The Market Management process will ensure that the independent sector and voluntary sector providers are subject to a contract from which Micro Commissioners call off. The Market Management process includes the negotiation and setting of any annual inflation uplift with independent sector and voluntary sector providers;
- i) The **Managed Market** consists of all the independent sector and voluntary sector providers included in the Market Management process;
- j) **Micro Commissioning** is the process by which individual packages of care and support are arranged with independent sector and voluntary sector providers under the contracts put in place through the Market Management arrangements;
- k) **Micro Commissioners** are health and social care staff involved in the assessment and care management process and Service Users arranging their own care either as self funders or by using a direct payment or an individual budget;
- l) **Integrated provision** is the management and operation of a service that delivers both social care and community based health care by either the Council or an NHS body through integrated, multi-disciplinary health and social care teams;
- m) **Data** means the information supplied by either Partner to enable the fulfilment of this Agreement
- n) **Data Controller** has the meaning attributed to it in the Data Protection Act 1998
- o) **Data Processor** has the meaning attributed to it in the Data Protection Act 1998
- p) **Services**<sup>3</sup>
- q) **Section 75** means Section 75 of the National Health Service Act 2006;
- r) **Monitoring Group** means the officer group which will meet to monitor this agreement as more particularly described in Condition 4.2;
- s) **Governance Group** means the Elected Member, Non-executive Member and officer group which will meet to govern this agreement as more particularly described in Condition 4.2;
- t) **Older People** means people aged over 65;
- u) **Subject Access Request** has the meaning attributed to it in the Data Protection Act 1998

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<sup>3</sup> To be confirmed once the service specification is finalised

## **PART 3: CONDITIONS**

### **CONDITION 1: PURPOSE OF AGREEMENT**

#### **Working Arrangements**

- 1.1 The purpose of this Agreement is to establish working arrangements between the Provider and the Council for the integrated provision of social care and health care for Older People for teams in community bases and for the function of discharging people from acute care environments. The agreement also includes the provision of Occupational Therapy Services within integrated teams for adults with disabilities and Older People, as more clearly defined in Schedule 1.
- 1.2 The intention is to allow the Provider the freedom to be innovative in providing the services and determining the method of provision, on the proviso that decisions made are referred back to the Council before implementation and the Council's statutory responsibilities are fulfilled.

#### **Terms**

- 1.3 This Agreement sets out the terms under which:
- a) The agreement sets out the terms under which the Council delegates its statutory obligations under section 75 of the NHS Act 2006.
  - b) The Provider will carry out the management of social care functions for Older People (excluding specialist services for Older People with mental health problems) and for Occupational Therapy Services. This will include responsibility for micro commissioning packages of care either into the home or care home environments.
  - c) The Provider creates integrated provision to deliver the functions transferred from the Council with health functions to create an integrated service.

#### **Duration**

- 1.4 This Agreement is effective from 1<sup>st</sup> April 2012 and will continue until 31<sup>st</sup> March 2015 or unless terminated earlier pursuant to Condition 8.6 or Condition 15. This Agreement replaces previous like agreements.

#### **Aims of the agreement<sup>4</sup>**

1.4

#### **Outcomes of the agreement:**

1.5

### **CONDITION 2: OBLIGATIONS OF THE PARTNERS**

#### **Obligations of the Provider**

- 2.1 The Provider undertakes:
- a) To fulfil on behalf of the Council all of its statutory duties towards Older People (excluding specialist services for Older People with mental health) as specified in Schedule [3];
  - b) To fulfil on behalf of the Council all of its statutory duties towards occupational therapy arising under social services legislation, as specified in Schedule [3];

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<sup>4</sup> The NHS Bodies and Local Authorities Partnership Regulations 2000 require that the written agreement set out the aims and outcomes of the agreement. Trust and Council to supply wording (conditions 1.4 and 1.5 can be consolidated into one condition if this works better)

- c) To operate in a manner which takes account of the Council's strategic objectives as set out in its corporate plan and other strategic planning documents;
- d) To seek the views of the Council at the earliest feasible stage on any decisions which it is contemplating which would affect its discharge of delegated social care functions, and to consult the Council about decisions which would affect any other aspects of the Council's responsibilities;
- e) to carry out their functions in a manner which will ensure the closest co-ordination which can reasonably be achieved between the services of the Provider and other services provided or secured by the Council;
- f) to work to the service specification (as described in Schedule [ ] as the same may be amended from time to time in accordance with this Agreement;
- g) to provide the staff, premises and other assets set out in Schedule [ ] for the purposes of the integrated provision arrangements set out in this Agreement.

### **Obligations of the Council**

2.2 The Council undertakes:

- a) To support the Provider with the full range of Council support functions as set out in Condition 13.1 and Schedule 4 ,to ensure the successful provision of the delegated functions transferred to the Provider;
- b) To make available to the Provider at no charge the premises set out in Schedule [ ]. In the event that the Council shall be unable at any time in the future to make any of those premises available (e.g. due to expiry of the relevant lease) to make available suitable alternative premises for the functions and activities being carried out by the Provider in those premises; arrangements on future premises will be subject to appropriate negotiations in respect of charging;
- c) To operate in a manner which takes account of the Provider's strategic objectives as set out in its Corporate Plan and other strategic planning documents, solely in relation to the integrated provision for Older People and Occupational Therapy services contained within this Agreement;
- d) To consult the Provider at the earliest feasible stage about decisions which it is contemplating which would affect the Provider operations;
- e) To seek the views of the Provider at the earliest feasible stage on any decisions which it is contemplating which would affect the Provider's discharge of delegated social care functions, and to consult the Provider about decisions which would affect any other aspects of the Provider's responsibilities;
- f) to carry out their functions in a manner which will ensure the closest co-ordination which can reasonably be achieved between the services of the Provider and other services provided or secured by the Council.

## **CONDITION 3: RELATED AGREEMENTS AND CONTRACTS**

### **Related Section 75 Agreements**

3.1 There are two related Section 75 Agreements:

- a) OPMH Integrated provision - delegates from the Council to the Cambridgeshire and Peterborough Mental Health Trust the responsibility for the management of social care functions for Older People with mental health problems;
- b) ICES Pooled Budget and Lead Commissioning - Delegates from the PCT to the Council responsibility for the commissioning for the provision of an integrated equipment service.

3.2 The staff employed through the OPMH Integrated provision agreement will access care purchasing and administrative support through the Provider (via locality teams).

- 3.3 Staff from the Provider will access equipment from the ICES pooled budgeting arrangements, according to the agreed protocols and policies for health and social care equipment provision.

### **Related Contracts**

- 3.4 There is one related contract:

- a) between the PCT and the Provider for the delivery of health care functions using the standardised NHS Contract. The health services contracted by the PCT contribute the health element of integrated Older People's teams.

## **CONDITION 4: DECISION MAKING**

### **Decision-making Bodies**

- 4.1 The decision making body for the Council is the Council's Cabinet and for the Provider is the Provider Board.

- 4.2 The Council and Provider will meet formally to monitor and govern this agreement through a Monitoring Group and a Governance Group. The Monitoring Group will meet monthly, and will be attended for the Council by:

- the Service Director, Adult Social Care;
- the Principal Accountant (Adult Support Services);
- the Head of Older People Commissioning;
- the Head of Regulation, Performance and Business Support; and
- the Head of Quality and Transformation.

For the Provider, it will be attended by:

- The Director of Clinical Delivery
- Finance Director
- Performance Development Manager

The Governance Group will meet quarterly, and be attended by the same members as the Monitoring Group. In addition, for the Council, it will also be attended by:

- the Cabinet Member for Adult Services; and
- the Executive Director – Children and Young People's Services and Adult Social Care.

For the Provider, it will also be attended by:

- the Chief Executive; and
- A non-executive Director.

Decisions of the Monitoring Group and Governance Group will be taken by the attendees by exercising their individual delegated authorities. For the avoidance of doubt the Monitoring Group and Governance Group will not be subcommittees of the Council or the Provider. Terms of reference will be developed for each group to outline the responsibilities of each, to be signed off by both the Council's Cabinet and the Provider's Board.

### **Reports and Attendance**

- 4.3 The Provider will prepare reports at monthly intervals throughout the year and on request on any aspect of its responsibilities in relation to this Agreement to the [ ] of the Council. The Provider will arrange for appropriate senior managers to attend relevant meetings to present these reports.

- 4.4 The Council will prepare reports at planned intervals throughout the year and on request on any aspect of its responsibilities in relation to this Agreement to the Provider Board where this is necessary to enable the Provider Board to make a decision. The Council will arrange for appropriate senior managers to attend relevant meetings to present these reports.

## **CONDITION 5: MARKET MANAGEMENT**

### **The Joint Commissioning Strategy**

- 5.1 The Joint Commissioning Strategy sets a commissioning framework within which all Market Management, macro commissioning<sup>5</sup> and Micro Commissioning must operate.

### **Market Management**

- 5.2 The Council will manage the social care and community based health care market to ensure that there is a sufficiently broad based and robust range of independent sector and voluntary sector providers to provide services to meet the needs of all Cambridgeshire residents including those who fund their own care; this responsibility will be informed by the local knowledge of the Provider.
- 5.3 All Micro-Commissioning carried out by the Provider must be done within the Managed Market.
- 5.4 The differentiation between macro and Micro Commissioning and arrangements for these are described in Schedule 3.

## **CONDITION 6: STAFFING ISSUES**

### **Single Management Structure**

- 6.1 All staff involved in the delivery of the service defined in this Agreement will be managed under a single management structure within the Provider and will work in integrated, multi-disciplinary health and social care teams.

### **Staff Transfers**

- 6.2 All staff who were originally employed by the Council to deliver the services outlined in this Agreement were transferred to the PCT following the principles of the Transfer of Undertakings Protection of Employment legislation (TUPE). All of those staff that were employed by the PCT to deliver the services at the time of the establishment of the Provider were then transferred to the Provider following the principles of TUPE.

### **Professional Standards**

- 6.3 The professional standards of the staff delivering the social care function under this Agreement will be maintained in the following ways.

The Provider will:

- a) Ensure all teams with a social care function have access to a suitable social care qualified manager to provide appropriate professional leadership;
- b) have a workforce development strategy which is designed to meet the longer term needs of the service and workforce;
- c) ensure that they provide an annually agreed practice based learning placements a year for Social Work Degree Students and that they maintain sufficient Practice Assessors and Onsite Supervisors to support these practice based

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<sup>5</sup> This term is currently not defined, although it is described in Schedule [3]. Please can the Council supply a definition

learning placements. The allocation of these placements will be agreed with the CCS Professional Development manager and take account of current service capacity and infrastructure;

- d) ensure all staff with social care responsibilities receive monthly supervision from their manager following the Provider policy;
- e) ensure all staff with social care responsibilities receive an annual appraisal from their manager following the Provider policy;
- f) ensure that all social care staff have a clearly defined career pathway linked to appropriate training and development opportunities;
- g) meet all Social Care Learning & Development staff needs through the provisions made available by the Council (see Schedule 6 for details);
- h) ensure all professionally qualified staff with social care responsibilities undertake sufficient professional development to meet their registration requirements;
- i) ensure all un-qualified staff with social care responsibilities undertake sufficient development to maintain their competence;
- j) ensure all Care Managers are supported to achieve a K100 qualification;
- k) ensure all care workers are supported to achieve a level 2 NVQ care qualification;
- l) ensure all staff with social care responsibilities attend the Council's mandatory training;
- m) Manage all social care staff within the Provider's Learning and Development Strategy and the Provider's Study Leave Policy.

The Council will:

- n) Provide the resources and support from the Council's training team and budget (as specified in Schedule 6) in order for the Provider to achieve the points listed above in 6.4;
- o) Develop a strategy with the Provider to support the training of future qualified staff and involve relevant training organisations in this process;
- p) Ensure all training supplied by the Council for Provider employees is agreed with the relevant training and professional leaders in the Provider;
- q) Formulate training courses that support the changing roles of social care professionals working within integrated multi-disciplinary teams;
- r) Provide the appropriate training support for the Provider and Practice Assessors and Onsite Supervisors to provide on site support to Social Work Degree Students.

## **CONDITION 7: ACCOUNTABILITY**

### **Democratic Process**

- 7.1 The elected Members of the Council must be kept fully informed about matters on which they may be required to make decisions or which affect their electoral division.
- 7.2 Individual Members of the Council may ask for factual information. Such requests must be reasonable. If the cost of providing the information requested is prohibitive, or the nature of the request is considered unreasonable, then guidance shall be sought from the Council's Chief Executive as to whether the information shall be provided.
- 7.3 Confidential information relating to casework should not normally be sought. If in exceptional circumstances a Councillor wishes to discuss confidential aspects of an individual case, they shall first seek advice from the Council's Director of Strategy and Commissioning (Adult Social Care). Any such discussions will comply with the Data Protection Act and the Caldicott principles.

## **Scrutiny**

- 7.4 The services delivered through this Agreement will be subject to scrutiny through the Council's Adults Wellbeing and Health Overview and Scrutiny Committee, or any successor committee. The Provider will prepare reports on request on any aspect of its responsibilities to the Health and Adults Wellbeing and Health Overview and Scrutiny Committee in the format and to the timetable defined by the Council's Democratic and Member Services. The Provider will arrange for appropriate senior managers to attend relevant meetings to present these reports.

## **Consultation**

- 7.5 The Provider will ensure that service users and carers or their representatives are actively consulted and involved in the development and provision of the integrated services.

## **External Inspection**

- 7.6 The Provider will provide appropriate access and information to any external body empowered by statute to inspect or monitor the Council's discharge of its social services functions.
- 7.7 The Provider will be subject to performance management on delivery of Health services by the Strategic Health Authority
- 7.8 The service subject to this Agreement will also be subject to inspection by the Care Quality Commission, or any successor organisation.
- 7.9 The service subject to this Agreement will also be subject to oversight and scrutiny from Cambridgeshire LINK until its abolition, and then by its successor organisation Local Healthwatch.
- 7.10 The Provider and the Council will work together with these bodies to bring together inspection and monitoring processes wherever possible.

## **Complaints and Representations/PALS**

- 7.11 Complaints and Representations/PALS will be dealt with as follows:
- a) Issues about Social Care Service Delivery will be managed by the Council, using the Social Care process, with co-operation from the Provider.
  - b) Issues about Health Service Delivery will be dealt with by the Provider
  - c) Issues about individual Provider employees will be dealt with by the Provider
  - d) The Partners will agree a co-ordinated approach to issues that cannot be clearly categorised.
  - e) The partners will share with each other suitable analysis of complaints and Representations/PALS to facilitate organisational learning and policy development.

## **Ombudsman Complaints**

- 7.12 The Partners will cooperate with any investigation undertaken by either the Health Service or Local Government Ombudsman, including giving access to records of any sort and access to the respective officers for the purposes of interview.

## **Data Protection**

- 7.13 Each of the Partners<sup>6</sup> whilst acting as a Data Controller shall at all times comply with the requirements of the DPA as it applies to this Agreement and the Data.

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<sup>6</sup> In a situation such as this it is likely that each partner will have some data for which they retain the role of controller and some where they are merely processing. It is best practice to look at the data sets involved in

- 7.14 The responsibilities of the Data Controller under the DPA in respect of security of Data shall be complied with and shall be monitored and reviewed from time to time to enable and evidence such compliance.
- 7.15 The Data Controller permits the Data Processor to process the Data only in accordance with the Authorised Processing and shall cooperate with the Data Processor to enable such processing in the best interests of the Service Users.
- 7.16 On becoming aware of any perceived or actual breach of security, loss of data or incident which may affect the confidentiality of the Data, the Data Controller shall investigate, take appropriate action to rectify the situation and shall determine whether a notification need be made to the Information Commissioner.
- 7.17 Each Partner whilst acting as a Data Processor shall at all times comply with the requirements of the DPA as it applies to this Agreement and the Data.
- 7.18 The Data Processor agrees to abide by the Data Controller's requirements to ensure the security of the Data as notified to the Data Processor from time to time.
- 7.19 The Data Processor agrees to process the Data only in accordance with the Approved Processing and shall cooperate with the Data Controller to enable such processing in the best interests of the Service Users.
- 7.20 If the Data Processor receives a Subject Access Request they shall not deal with it but rather shall pass it to the Data Controller who shall respond and deal with it.
- 7.21 The Partners warrant to the each other that they hold the Data lawfully and are entitled to permit its processing in accordance with this Agreement.
- 7.22 The Partners shall indemnify each other for any costs, expenses, loss, claim or damage sustained by them as the Data Controller as a result of the Data Processor processing the Data otherwise than in accordance with the Authorised Processing or as a result of negligence in occasioning a breach of security in respect of the Data.
- 7.23 Neither Partner shall export Data outside of the EEC without the prior written consent of the other Partner and the putting into place of a contract which meets EEC Treaty requirements for the exporting of such Data.

### **Freedom of Information**

- 7.24 The Partners acknowledge that they each are required to comply with the obligations of the Freedom of Information Act 2000, any amending enactments and any amending regulations.
- 7.25 The Partners will:
- a) support each others' compliance with current and future Freedom of Information Act 2000 obligations and any codes of practice and best practice guidance issued by the Government and any appropriate enforcement agencies including the Information Commissioner's Office
  - b) comply with the Freedom of Information Act 2000 insofar as it places obligations upon that Partner in the performance of its obligations under this Agreement.

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the arrangements and identify for each set who is the controller and whether this is joint or in common. This is a factual question rather than a role which a party can elect to hold.

- c) notify the other Partner of any request under the Freedom of Information Act which relates to this Agreement or the other Partner, within five (5) days of receiving the request.
- d) agree to give consideration to any comments made by the other Partner where those comments are made within five (5) days of notification.
- e) acknowledge that if the other Partner doesn't make comments to the receiving body within the set period, or if the other Partner's comments do not alter the view of the receiving body that the information should be disclosed, the receiving body is entitled to disclose such information,
- f) agree to co-operate with one another in connection with any request received by either Partner under Freedom of Information Act 2000 and such co-operation shall be at no cost to the receiving body.

7.26 The Partners shall provide each other with such information as each Partner may reasonably request to satisfy themselves that the other Partner is complying with their obligations in conditions 7.12 to 7.25.

### **Continuous improvement<sup>7</sup>**

- 7.27 The Council will consult each year with the Provider about the programme of continuous improvement reviews (whether under the best value duty in the Local Government 1999 Act or under any performance improvement regime applicable to local government from time during the term of this Agreement) or internal audit to be included in the Council's annual Performance Plan. This programme will to be designed so as to cover social care services for Older People and occupational therapy (where applicable) and all services subject to this Agreement.
- 7.28 The Provider will co-operate with the Council in carrying out continuous improvement reviews and internal audits, by providing appropriate information and officer time, including the officer time necessary to lead on any elements of a review where the relevant expertise is located in the Provider. The use of Provider employee time in carrying out or leading a continuous improvement reviews or internal audit cannot be undertaken to the detriment of the realisation of the performance outcomes as specified in this partnership agreement.
- 7.29 The Council will agree with the Provider those elements of any action plan resulting from a continuous improvement review or internal audit, which affect the Provider. In the event that agreement cannot be reached the provisions of Condition 14.10 to 14.14 on disputes will apply but any matter not resolved in this manner will not be referred to arbitration.

### **Prevention of Corruption**

- 7.30 Either Partner may terminate this Agreement and recover all its loss if the other Partner, its employees or anyone acting on the other Partner's behalf do any of the following things:
  - a) commit any offence under the Bribery Act 2010; or
  - b) give any fee or reward to any officer of the other Partner which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration; or
  - c) commit any fraud in connection with this or any other contract whether alone or in conjunction with contractors, employees or Council members; or
  - d) commit an offence under any law creating offences in respect of fraudulent acts.

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<sup>7</sup> Please can we discuss how the Council carries out continuous improvement reviews

7.31 Any condition limiting the Partner's liability shall not apply to Condition 7.29.

#### **Provision of Information**

7.32 The Partners will maintain an information sharing protocol, to be agreed.

7.33 The Provider shall keep and maintain until 12 years after the end of the Agreement, or as long a period as may be agreed between the Partners, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request afford the Council or the Council's representatives or representatives of the Audit Commission such access to those records as may be requested by the Council in connection with the Agreement..

7.34 The Provider and its agents shall permit the Council and their appointed auditors and auditors appointed by the Audit Commission access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) for the purposes of the financial audit of the Council and for carrying out examinations into the economy, efficiency and effectiveness with which the Council has used its resources.

### **CONDITION 8: INTEGRATED PLANNING**

#### **Integrated Planning Process**

8.1 An integrated approach to planning will be followed in which financial, performance, service and risk management plans will be developed together. This process will form the formal process for agreeing the funding and any changes to the service specification in Schedule [1] and performance targets Schedule [ ] in financial years after the 2012/3 financial year for health related functions of the Council included in the integrated Older People and Occupational Therapy services covered by this Agreement

#### **Planning Horizons**

8.2 The Annual Planning Cycle will include detailed financial, performance, service and risk management planning for the following financial year as well as a refresh of the medium term and long term plans. Medium term planning will be based around a five-year horizon. The first year being firm, the following four years in outline. Long term planning for strategic issues, e.g. implications of the growth agenda, will be based around a twenty-year horizon.

#### **Annual Planning Cycle**

8.3 The Annual Planning Cycle will start in July and conclude by the start of the financial year. Specifically:

- a) By the end of September the Partners will produce an integrated plan suitable for non-public discussions at the Council's combined Senior Management Team and Cabinet forum, the Provider's Board. This plan will contain the financial and performance implications of; demography, complexity and inflation changes, efficiency requirements and any proposed additional investment / disinvestments in services;
- b) During January the Council's Cabinet will approve the integrated plan, which will be scrutinised in early February and submitted for final approval at the Council's Full Council, and Provider's Board by the end of February;
- c) Upon approval of the integrated plan and by no later than the start of the financial year the Partners will agree and document for the purposes of this

Agreement any changes to the service specification and performance targets and the funding for the financial year in accordance with the integrated plan.

- 8.4 This Annual Planning Cycle will include specific focus on the contract value of this agreement, irrespective of the mechanism by which the sum of money is transferred to the Provider.

#### **Failure to agree**

- 8.5 In the event that the Partners are unable to agree any matter arising from the Annual Planning Cycle the relevant matter will be addressed in accordance with the dispute resolution procedures described in Conditions 14.10 to 14.14 (as though it were a dispute) but any matter not resolved in this manner will not be referred to arbitration.
- 8.6 In the event that the integrated plan and any changes to the service specification and performance targets and the funding by the Council are not agreed and approved within one month of the commencement of the relevant financial year then either party may terminate this Agreement on not less than 6 (six) month's notice.
- 8.7 In the event that any changes to the service specification or performance targets or contributions by the Council are not agreed by the commencement of a financial year then the service specification performance targets and funding contributions by the Council arrangements from the previous year shall continue to apply.

### **CONDITION 9: RISK MANAGEMENT**

#### **Risk Management**

- 9.1 Risk Management in this context is defined as the risk associated with the Providers ability to deliver the service specified in this Agreement. It therefore covers all risks outlined in this condition. The Provider will carry out an annual risk assessment and report on the risks and mitigation plans throughout the year.

#### **Corporate Reputation Risk Management**

- 9.2 Risk in this context is defined as events connected to the functions covered by this Agreement that have or could lead to negative publicity or that could be used to generate positive publicity.
- 9.3 Responsibility for assessing and reporting the risk and mitigation rests with the Provider. The risk status will be reported to the Monitoring Group or Governance Group, as determined by the Terms of Reference. All Partners will work collaboratively to manage any emerging issues.

#### **Workforce Risk Management**

- 9.4 Risk in this context is defined as events connected to the functions covered by this Agreement that have or could lead to a decline in the professional standards of the workforce or a claim from a member of the workforce. Responsibility for assessing, managing and reporting the risk and mitigation rests with the Provider. The risk status will be reported to the Monitoring Group or Governance Group, as determined by the Terms of Reference

#### **Incidents Risk Management**

- 9.5 Risk in this context is defined as events connected to the functions covered by this Agreement that have or could lead to a claim from a client or patient. Responsibility for assessing, managing and reporting the risk and mitigation rests with the Provider. The risk status will be reported to the Monitoring Group or Governance Group, as determined by the Terms of Reference.

### **Liability and Indemnity - General**

- 9.6 Without prejudice to the primary liability of each Partner for its respective functions, preserved by Section 75(5) (a) and (b) of the Health Act 1999, the following indemnity provisions will apply.
- 9.7 References in this Condition to damages, claims and liabilities shall include the obligation to pay sums recommended by an Ombudsman or under any other complaint resolution process.
- 9.8 The Council will indemnify the Provider from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the Provider arising:
- a) from exercise by the Provider of the Council's Functions; or
  - b) the breach by the Council of any obligation under this Agreement; and
  - c) without prejudice to the preceding provisions, any acts, omissions, neglect or default of the Council, its agents, contractors or employees in relation to 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 Provider or its employees or agents or contractors)
- 9.9 The Provider will indemnify the Council from and against any direct loss and expense suffered and reasonable legal fees and costs incurred as a result of any breach of this Agreement by it or any negligent acts or omissions in relation to this agreement, except to the extent that such loss etc is caused by the breach of any obligation under this Agreement or the acts or omissions, neglect or default of the Council its employees, agents or contractors.
- 9.10 In relation to the diagnosis, care and treatment of a service user or patient of the Provider under the Provider's functions, the provisions of NHS Indemnity shall apply in relation to any acts or omissions of the Provider, its employees or agents in consequence of which the client/patient suffers harm.
- 9.11 The Partners shall use their reasonable endeavours to inform each other promptly in writing of any circumstances reasonably thought likely to give rise to any claim or proceedings which are or maybe subject to an indemnity under this Agreement and any material developments. Partners shall co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by any Partners 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.

### **Insurance**

- 9.12 In respect of liabilities arising under any indemnity in this Agreement, the Provider 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.
- 9.13 The Partners will maintain full public liability insurance.
- 9.14 For the avoidance of doubt the following applies with regard to liabilities for matters arising which predate this Section 75 Agreement and previous Section 75 arrangements between the Council and the Provider.
- 9.15 Liability for all claims lodged before 1 April 2012 and any claims not yet reported but pertaining to service prior to 1 April 2012 will be determined in accordance with the

arrangements in place prior to the 1 April 2012 in respect of the provision of the services and claims arising from the provision of the services<sup>8</sup>

## **Business Continuity Planning**

9.16 The Provider will maintain a Business Continuity Plan.

## **CONDITION 10: SERVICE DELIVERY**

### **Exercise of Council powers**

- 10.1 The Provider will exercise the Council's functions under social services legislation for Older People (excluding specialist services for Older People with mental health needs), subject to the provisions set out in this section of the Agreement. Any functions of the Local Authority which do not fall within the health-related functions of Local Authorities prescribed under regulation 6 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended) are excluded. Schedule 5 contains more details of the functions included in these arrangements.
- 10.2 The Provider will exercise all the Council's functions under social services legislation for occupational therapy, subject to the provisions set out in this section of the Agreement. Any functions of the Local Authority which do not fall within the health-related functions of Local Authorities prescribed under regulation 6 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (as amended) are excluded. Schedule 5 contains more details of the functions included in these arrangements.
- 10.3 The Provider will obtain the agreement of the Council before adopting any new policies that may negatively affect the social services functions carried out by the Provider.
- 10.4 The Council retains responsibility for setting and collecting charges for services. The Provider may not vary the charges for services set by the Council. All receipts for charges belong to the Council and for the avoidance of doubt the financial resources to be provided by the Council will not be adjusted in the event that charges actually recovered vary from those which it is anticipated will be recovered.
- 10.5 The Provider may not vary the eligibility criteria for social care services without the agreement of the Council.

### **Operational Procedures**

- 10.6 Transferred staff will work within the procedures of the Council, until such time as the Provider has developed relevant procedures that have been agreed by the Council.
- 10.7 The Provider will maintain mechanisms to ensure operational policy development includes appropriate input from social care professionals. Where this arises from Government legislation or guidance to Social Services authorities, the Council as commissioner have a continuing responsibility for implementing the new policy and guidance and will agree a joint process with the Provider and make resources available to undertake this work.

### **Performance Targets**

- 10.8 The performance targets directly associated with this Agreement are specified within Schedule 7.

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<sup>8</sup> Liability will be determined in accordance with the prior agreements etc. Responsibility may not always lie with the primary provider of those services eg if similar provisions to Clause 9.8 apply

- 10.9 The Provider is expected to deliver the performance targets against a monthly run rate and link them to action plans and team and management responsibilities and achieve the performance targets relevant to the Older People and Occupational Therapy Service outlined in the related agreements and contracts as described above (see Schedule 7 for more detail).

## **CONDITION 11: REPORTING REQUIREMENTS**

### **Workforce Development**

- 11.1 Workforce Development Reports will be produced six monthly by the Provider and presented at the Monitoring Group or Governance Group, as determined by the Terms of Reference or the social care component of the Providers' workforce. These reports will demonstrate compliance with Condition 6.3, contain information about recruitment and retention issues, sickness levels and turnover rates.

### **Risk Management**

- 11.2 Risk Management Reports will be produced quarterly by the Provider and by exception in between if necessary and presented at the Monitoring Group or Governance Group, as determined by the Terms of Reference, by the Provider. These reports will provide commentary on the risk assessment and incidence of issues relating to the risks outlined in Condition 9.

### **Consultation**

- 11.3 A report will be produced annually by the Provider on consultation and involvement of service users and carers and presented at the Monitoring Group or Governance Group, as determined by the Terms of Reference. This report will demonstrate compliance with Condition 7.5.

## **CONDITION 12: FINANCIAL ARRANGEMENTS**

### **Financial Arrangements**

- 12.1 The financial resources to be provided by the Council to the Provider for the Provider to deliver the expectations set out in this agreement will be transferred to the Provider in twelve monthly instalments to undertake the outcomes specified in this agreement.
- 12.2 The Provider will take appropriate steps to ensure the prudent and effective use of the Council funds paid to the Provider under this agreement. In addition, the Provider will take appropriate steps to ensure the prudent and effective use of other Council funds deployed by the Provider's staff to fulfil the Council's statutory responsibilities, e.g. the ISP budget.
- 12.3 The Provider will ensure that all staff with budgetary responsibilities are issued with guidance on both their duties, and how to manage public money effectively. An example of guidance offered to County Council budget holders is attached as schedule [ ] as an example of the Council's expectations of the information to be provided to employees with budgetary responsibilities, and the support provided by Finance staff.
- 12.4 The financial resources to be provided by the Council to the Provider for the Provider to deliver the expectations set out in this agreement for the 2012/13 financial year are set out in Schedule 6.
- 12.5 Any uplift on the staffing element of the financial resources set out in Schedule 6 for financial years after the 2012/13 financial year to deliver the expectations set out in this agreement will be determined through the annual planning process set out in Condition 8.

- 12.6 Non pay elements of the financial resources for financial years after the 2012/13 financial year to deliver the expectations in this agreement will be determined through the annual planning process set out in Condition 8.
- 12.7 Any cost pressures associated with fulfilling this agreement will be communicated through the monthly monitoring meetings of the Council and the Provider will produce an action plan which will be agreed to deliver a balanced budget. Delivery of the agreed action plan will be monitored by the Monitoring Group or Governance Group, as determined by the Terms of Reference.
- 12.8 Inherent in the yearly uplift discussions will be an expectation for the Provider to make efficiencies in line with public sector organisations. The treatment and re-investment of any financial efficiencies made above this figure will be agreed between the Provider, and the Council at the monthly monitoring meetings.
- 12.9 The Council will make relevant sections of the Council ledger available to the Provider finance teams in order that monthly financial monitoring of the ISP budgets can be undertaken.
- 12.10 Where the Council change agreements with staff that will have a financial affect on the Provider (affecting TUPED staff who kept their Council terms and conditions), how this cost pressure will be met will be agreed prior to implementation with the expectation that the Council meet the cost pressure this creates.
- 12.11 All partners will agree the financial impact and funding gaps created through extra duties and expense imposed on the Provider that are not part of the current role and funding allocation due to any changes made in year through the alteration of legislative or policy guidance.
- 12.12 In the event that the Partners are unable to agree any matters referred to in Conditions 12.7 12.8 12.10 or 12.11 these will be addressed in accordance with the dispute resolution procedures in described in Conditions 14.10 to 14.14 (as though it were a dispute) but any matter not resolved in this manner will not be referred to arbitration.
- 12.13 In the event that any such matter cannot be agreed under the procedures in Conditions 14.10 to 14.14 [within three months] of the failure to agree the relevant matter at the initial monthly Monitoring Group meeting then either party may terminate this Agreement on not less than [one month's] notice.

### **CONDITION 13: OTHER SUPPORT**

#### **Support from the Council**

- 13.1 The Council will provide at no charge to the Provider the following support to this Agreement(as specified in detail in the service specifications in Schedule 4):
- Contract Management - The Council provides contract management support to the Market Management Arrangements for the social care market;
  - Performance Information - The Council provides support to the collation of performance information;
  - Payments - All payments relating to the Independent Sector Purchasing budget are processed through the Councils systems;
  - Income - The Council provides a Financial Assessment Service and a debt collection service. All client contribution income is received through Council systems;
  - ICT - The Council provides and supports appropriate access to Council ICT systems. No ICT assets have been transferred;

- f) Property - The Council provides under lease or license a range of properties. No property assets have been transferred;
- g) Training - The Council provides a range of mandatory training in Social Care, administration, management and IT systems.

## **CONDITION 14: MANAGING THE AGREEMENT**

### **Procedural Documentation**

- 14.1 Any process documents, report formats, operational instructions, working protocols, principles or methodologies necessary for the delivery of this Agreement will be agreed by all Partners at meetings of the Monitoring Group or Governance Group, as determined by the Terms of Reference.

### **Review and Variation**

- 14.2 All changes to this Agreement must be approved by the decision-making bodies defined in Condition 4 of this Agreement.
- 14.3 Any changes proposed to this Agreement must take into account the implications for the related agreements and contracts outlined in Condition 3.
- 14.4 This Agreement terminates on 31st March 2015. At least six months before the end of the Agreement the Council will lead a full review of the Agreement and all Partners will consider the appropriateness of entering into a new agreement on similar terms. If the negotiation is likely to take longer than six months then this Agreement can be extended by up to twelve months by mutual agreement of the Partners.
- 14.5 The Council will lead a review of this agreement at least annually<sup>9</sup> and any agreed variations to this agreement as a consequence of the review will be recorded as a variation
- 14.6 At any point either Partner can propose changes, in writing, to the Service Specifications that, if agreed, will be recorded as a variation.
- 14.7 In the event the parties do not agree any variations pursuant to Clauses 14.5 or 14.6 the matter will be addressed in accordance with the dispute resolution procedures in Conditions 14.10 to 14.14 (as though it were a dispute) but any matter not resolved in this manner will not be referred to arbitration and the relevant variation will not be made.
- 14.8 The provisions of Conditions 14.5 to 14.7 are without prejudice to the arrangements for the Annual Planning Cycle in Conditions 8.3 to 8.7.

### **Monitoring of the Agreement**

- 14.9 All partners are responsible for monitoring compliance with this Agreement.

### **Disputes**

- 14.10 Issues that cannot be resolved at the Monitoring Group shall be resolved in accordance with Conditions 14.11 to 14.15 below.
- 14.11 If resolution is not achieved the dispute will be referred to the Executive Director – Children and Young People's Services and Adult Social Care at the Council and the Chief Executive of the Provider.

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<sup>9</sup> The Regulations require review provisions

- 14.12 In the event that they are unable to resolve the dispute within 30 working days, then mutually acceptable mediation arrangements will be set in place, the costs of the mediator will be shared 50:50 and each partner will bear its own costs incurred in the mediation process.
- 14.13 In the event that the Partners are unable to resolve the dispute through mediation, arbitration arrangements will be set in place.
- 14.14 The arbitration shall be in accordance with the provisions of the Arbitration Act 1996 or any re-enactment for the time being in force and the costs of the arbitration shall be borne as the arbitrator directs. Reference to arbitration shall not reduce the right of a Partner to terminate the Agreement in accordance with Condition 15.

## **CONDITION 15: TERMINATION OF THIS AGREEMENT ON NOTICE**

### **Notice Period**

- 15.1 Any Partner may terminate this Agreement at the end of a financial year, by giving at least 12 months notice in writing to (in the case of termination by the Council) the Chief Executive of the Provider and (in the case of termination by the Provider) to the Chief Executive of the Council.

### **Related Contracts and Agreements**

- 15.2 Termination of this Agreement under Condition 15.1 will trigger a review led by the Council of all the related agreements and contracts outlined in Condition 3.

### **Termination Obligations**

- 15.3 The Provider will continue to provide the services specified within the Agreement during the notice period under Condition 15.1.
- 15.4 The Council will continue to provide the support outlined in Condition 13 during the notice period under Condition 15.1.

## **CONDITION 16: PROVISIONS APPLYING IN RELATION TO TERMINATION**

- 16.1 Upon expiry or early termination of this Agreement the Partners will:
- a) arrange for the sharing of any assets or liabilities between the Partners;
  - c) retain liability in respect of any claims relating to the period that they were a member of the Agreement in accordance with Condition 9;
  - d) return all documents, programmes and other information to the other Partner and shall provide any other such information as reasonably requested in relation to the Agreement for the purposes of terminating the arrangement;
  - e) comply with their respective obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 in so far as applicable.
- 16.2 Termination shall be without prejudice to the Parties rights in respect of any antecedent breach of the provisions of this Agreement.
- 16.3 The following conditions of this Agreement shall survive termination howsoever caused:
- a) Part 2 (Interpretation and definitions)
  - b) Conditions 7.12 to 7.22 (Data Protection)
  - c) Conditions 7.22 to 7.25 (Freedom of Information)
  - d) Conditions 7.29 to 7.30 (Prevention of Corruption)

- e) Conditions 7.31(a) and (b) (Provision of Information)
- f) Conditions 9.6 to 9.11 (Liability and Indemnity)
- g) Conditions 9.12 to 9.15 (insurance)
- h) Conditions 14.10 to 14.15 (Disputes)
- i) Condition 16 (Provisions Applying In Relation To Termination)
- j) Condition 17.1 and 17.2 (Entire Agreement)
- k) Condition 17.3 (Relationship Between the Parties)
- l) Condition 17.4 (Third Party Rights)
- m) Condition 17.5 and 17.6 (Governing Law)

## **CONDITION 17: GENERAL CLAUSES<sup>10</sup>**

### **RELATIONSHIP BETWEEN THE PARTIES**

- 17.1 This Agreement is not intended to and shall not be deemed to create a partnership within the meaning of the Partnership Act 1890, nor constitute either party the agent of the other Party.

### **THIRD PARTY RIGHTS**

- 17.2 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 or otherwise by a person who is not a party to this Agreement.

### **GOVERNING LAW**

- 17.3 This Agreement and any dispute or claim arising out of or relating to or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.
- 17.4 Subject to the provisions of Conditions 14.10 to 14.14 (Disputes) of this Agreement, all disputes and claims arising out of or relating to or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts to which both parties irrevocably submit.

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<sup>10</sup> We have added in various boiler plate clauses which were omitted in the previous draft and which are important

#### **PART 4: SIGNATURES OF THE PARTIES**

In witness whereof the Council and the Provider have executed this deed the day and year first before written.

The **COMMON SEAL** of **CAMBRIDGESHIRE COUNTY COUNCIL** was hereunto affixed in the presence of:

Executed as a **DEED** by **CAMBRIDGESHIRE COMMUNITY SERVICE NHS TRUST** acting by

## SCHEDULE 1: SPECIFICATION OF INTEGRATED SERVICES<sup>11</sup>

DRAFT

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<sup>11</sup> This should include the matters referred to in Condition 2.1(g)

## **SCHEDULE 2: MACRO AND MICRO COMMISSIONING**

### **Macro commissioning <sup>12</sup>**

The Council will lead the process of ensuring a strategic framework for commissioning at the macro level is developed and implemented. The detailed work will be led by the Council contracting and procurement team in conjunction with the PCT lead commissioner for the section 75 and out of hospital commissioning together with the PCT director lead for service re-design and market management. In order to ensure effective dialogue takes place with the micro-commissioners in CCS, a quarterly review meeting will be established to determine direction of travel is on course and to consider any relevant issues. The procurement team will participate in the monthly contract monitoring meetings of which the section 75 agreement will form part and will feed in information on take up of block contracts, day services contracts and any significant variations, pressures and identified gaps in market management.

The strategic framework will draw on the Council's commissioning intentions, service re-design plans and national policy drivers. A process for reviewing the market and responding efficiently and effectively to changing local needs will need to be developed.

It is the Council's responsibility to re-commission and re-focus use of existing contracts including those for interim beds in discussion with micro-commissioners from the Provider.

### **Micro-commissioning**

The responsibility for day-to-day function of purchasing packages of care and making residential and nursing home placements sits with the Provider. Any micro commissioning undertaken must adhere to the strategic framework above and work within benchmarked costs. A performance report on micro-commissioning activity should also be available at the monthly contract monitoring meetings. The report should outline any spot purchased activity in the previous month together with services commissioned from local voluntary agencies.

### **Joint responsibilities<sup>13</sup>**

For both macro and micro commissioning there is a recognition that a joint collaborative approach is required to ensure the market develops in accordance with local need. This agreement recognises the need for commissioners, the procurement team and the Provider service managers to work together to ensure both strategic and operational requirements are aligned.

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<sup>12</sup> Council to update the provisions on how macro commissioning will be done

<sup>13</sup> Partners to consider this wording further bearing in mind the separation of provision

### SCHEDULE 3: STATUTORY FUNCTIONS TO BE MANAGED BY THE PROVIDER<sup>14</sup>

This section covers key social services and social care legislation and summarises core principles, and duties and powers conferred on local authorities by such legislation.

The full text of legislation is available from the **linked items**. Those not linked are not available online but paper copies are available from HMSO (Her Majesty's Stationery Office) which operates from within the Office of Public Sector Information (OPSI) and has responsibility for publication of legislation.

The document has been split into two sections, the first detailing the general legislative framework, and the second section detailing the legislation which states the statutory functions of the Council, which are delegated to CCS as part of the Section 75 Agreements.

#### 1. SECTION 1 - GENERAL LEGISLATIVE FRAMEWORK

##### Duties and Powers of Local Authorities

- Acts of Parliament, statutory instruments and the common law result in the Council's duties and powers.
- When a Council has a **duty** to do something, **it must do it**
- If a Council has a **power** to do something **it is able to do it**
- Where the Council has a **mandatory power** to do something, **it must exercise the power if circumstances arise**
- Where the Council has **discretion** to do something, **it has a choice of how to do it**
- Where the Council has a **discretionary power** to do something, **it can choose whether to exercise that power or not**

##### National Assistance Act 1948

(Printed copy available from [www.tsoshop.co.uk/](http://www.tsoshop.co.uk/))

- Community care means helping people who need care and support to live with dignity and independence in the community, and involves them being cared for in the home, as well as, for some people, in special needs housing, or residential or nursing homes. Community care as a concept has been around for many years, since the inception of the welfare state, beginning with the National Assistance Act 1948
- The National Assistance Act 1948 conferred the following **powers** and **duties** to local authorities:
  - To promote the welfare of people ordinarily resident in their area who are blind, deaf or dumb, mentally disordered, or substantially and permanently handicapped by illness, injury or congenital deformity (Section 29)
  - To provide residential accommodation ('Part III') for persons who by reason of age, illness or disability or any other circumstances are in need of care and attention not otherwise available to them (Section 21)
  - These powers and duties are further defined in LA Circular 93(10):
  - Duty to arrange general social work support and advice in the home and elsewhere
  - Facilities for rehabilitation and adjustment, and for occupation and cultural and recreational activities
  - To provide accommodation to people in need in their area (duty); or from elsewhere (power)
  - To review the level and quality of Part III accommodation (NB: the NHS and Community Care Act 1990 enables local authorities to employ private and voluntary providers)
  - Duty to ensure protection of property of people while in hospital or residential care (Section 48)

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<sup>14</sup> Council to review and update

[Section 47 empowers a 'proper officer' of the health authority (community physician) to apply to the Magistrates Court for an Order to compulsorily persons from home to hospital or residential care under specified conditions. An order lasts 3 months and is renewable. An emergency order for 3 weeks may be made without notice if the proper officer and a second doctor certify it is in the person's interests to be removed without delay (National Assistance Amendment Act 1951)]

#### Immigration and Asylum Act 1999

[www.opsi.gov.uk/acts/acts1999/19990033.htm](http://www.opsi.gov.uk/acts/acts1999/19990033.htm)

- This act transfers responsibility for accommodating destitute asylum seekers and providing support to meet their essential living needs away from local authorities and to the National Asylum Support Service (NASS) of the Home Office Immigration and Nationality Department.
- Local authorities have lost their power to provide accommodation and support for destitute asylum seekers (conferred by Section 21 of the National Assistance Act 1948) unless the need for assistance arises for a reason other than destitution e.g. disability. (However the Home Office may request or direct local authorities to contract with them for the provision of services)
- Unaccompanied minors remain the responsibility of local authority social services departments until they are 18 (or 21, if looked after by the local authority), there being no special provision for families with children within NASS

#### Nationality, Immigration and Asylum Act 2002

[www.opsi.gov.uk/acts/acts2002/20020041.htm](http://www.opsi.gov.uk/acts/acts2002/20020041.htm)

- This act prescribes the circumstances in which nationality and citizenship can be acquired and sets out immigration procedures.
- Section 22 enables the Secretary of State to provide support to destitute asylum seekers under the Immigration and Asylum Act 1999. A person entitled to support from the Secretary of State under the 1999 Act is not entitled to support under Section 17 of the Children Act 1989 (Asylum Support [Interim Provisions] Regulations 1999)

#### Law Relating to Discrimination

##### **Race Relations Act 1976**

(Printed copies available from [www.tsoshop.co.uk](http://www.tsoshop.co.uk))

- The Race Relations Act 1976 makes it unlawful to discriminate directly or indirectly on the grounds of race, colour, nationality or ethnic origin in the areas of housing, education, employment, or in the provisions of goods, services or facilities to the public
- Discrimination is defined as when a person is treated less favourably than others on racial grounds, or when conditions or requirements disadvantage a racial group. (Section 1)
- The quality of services or how they are provided must be non-discriminatory (Section 20), as well as access to such services (Section 40)
- The special needs of racial groups around education, training or welfare can be catered for through provision of special services (Section 35)
- Local authorities have an additional duty to ensure they perform their functions in a way that eliminates unlawful racial discrimination, and promotes equal opportunities and good relations between people from different racial groups (Section 71)
- The Commission for Racial Equality is enabled to advise and assist with individual complaints as well as start legal proceedings in respect of discrimination

##### **Race Relations (Amendment) Act 2000**

[www.opsi.gov.uk/acts/acts2000/20000034.htm](http://www.opsi.gov.uk/acts/acts2000/20000034.htm)

- This Act outlaws racial discrimination (direct, indirect, and by victimisation) in public functions not previously covered by the Race Relations Act 1976
- A further general duty to “have due regard” to the need to eliminate unlawful racial discrimination, and promote equal opportunities and good relations between people from different racial groups is imposed on public authorities by the Act (Section 2)
- The Secretary of State has the power to impose specific duties on public authorities to help their performance under this general duty; and the Commission for Racial Equality can issue compliance notices to enforce these specific duties

### **Sex Discrimination Act 1975**

(Printed copies available from [www.tsoshop.co.uk](http://www.tsoshop.co.uk))

- This Act outlaws sex discrimination (treating a person less favourably because of gender or marital status where employment, education, housing, and provision of goods, facilities and services are concerned)
- The Act enables gender to be regarded as a genuine occupational qualification
- As with the Race Relations Act, the Commission for Racial Equality is enabled to advise and assist with individual complaints as well as start legal proceedings in respect of discrimination

### **Other Legislation**

Discrimination against individuals in the area of employment because of their religion or belief is outlawed by regulations in line with European Directives.

Similarly, discrimination in employment on the basis of sexual orientation is outlawed by the Employment Equality (Sexual Orientation) Regulations 2003

([www.opsi.gov.uk/si/si2003/20031661.htm](http://www.opsi.gov.uk/si/si2003/20031661.htm))

Disability Discrimination Act 1995

[www.opsi.gov.uk/acts/acts1995/UKpga\\_19950050\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1995/UKpga_19950050_en_1.htm)

#### **• General Provisions:**

- ‘Disability’ under the provisions of the Act is defined as “a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day to day activities”
- It is unlawful to knowingly help others to break the law
- Service providers with responsibilities under the Act must be able to show that they have taken reasonable steps to prevent their representatives acting unlawfully
- It is unlawful to victimise people exercising their rights under the Act
- People with hidden or fluctuating levels of disability (e.g. MS) are covered by the Act
- A Disability Rights Commission has been set up to monitor implementation of the Act and draw up a Code of Conduct

#### **• Access to Goods, Facilities, and Services**

It is unlawful for service providers to discriminate e.g. they cannot refuse a service or offer a lower standard of service, or service on less favourable terms, or fail to make reasonable alternative arrangements for people meeting the definition of disability within the Act

#### **• Public Transport**

The Government is enabled by the Act to make accessibility regulations to ensure that disabled people are able to get on and off public transport safely, and to travel in safety and reasonable comfort

Disability Discrimination Act 2005

[www.opsi.gov.uk/acts/acts2005/20050013.htm](http://www.opsi.gov.uk/acts/acts2005/20050013.htm)

- The DDA 2005 amends the 1995 legislation by introducing a new positive duty on public bodies to create equality of opportunity for disabled people, and extends existing duties to cover all functions of public authorities, not just specified services.
- Protection from discrimination is extended to people with the progressive conditions of HIV, MS and cancer. Although an amendment specifically to include depression within the Act was defeated, there is no longer the general requirement that mental disorders must be “clinically well recognised”.
- Specific provisions requiring reasonable adjustments to be made to rented property and accessible transport vehicles, including trains, are being phased in.

#### Law Relating to Gender and Sexuality

##### • **Gender Recognition Act 2004**

[www.opsi.gov.uk/acts/acts2004/20040007.htm](http://www.opsi.gov.uk/acts/acts2004/20040007.htm)

This Act enables an individual who has lived in the acquired gender for at least 2 years and intending to do so until death, or who has changed gender under the law of a country outside the UK, to apply for a gender recognition certificate

Once a full gender certificate is issued, the person's gender becomes the acquired gender for all purposes, including marriage, social security benefits and pensions, but does not affect the person's status as father or mother of a child, or affect their succession under a will already made.

##### • **Civil Partnership Act 2004**

[www.opsi.gov.uk/acts/acts2004/20040033.htm](http://www.opsi.gov.uk/acts/acts2004/20040033.htm)

- This Act allows for the registration of civil partnerships between people of the same sex, and also contains provisions about the dissolution and annulment of such partnerships
- It also makes provision for financial relief for civil partners and for children of the family
- Civil partnership agreements that do not conform to the statutory procedure do not have effect as a contract giving rise to legal rights
- Civil partners can get parental responsibility in the same way as stepparents under the Children Act 1989 and apply for residence or contact orders
- Civil partners can also adopt under the terms of the Adoption and Children Act 2002

#### Human Rights Act 1998

[www.opsi.gov.uk/acts/acts1998/19980042.htm](http://www.opsi.gov.uk/acts/acts1998/19980042.htm)

The Human Rights Act 1998 came into force across the whole of the UK in October 2000, and incorporates the provisions of the European Convention on Human Rights into UK domestic law.

The basic human rights incorporated from the Convention are:

- Art.2: The right to life
- Art.3: Prohibition of torture or inhuman or degrading treatment or punishment
- Art.4: Prohibition of slavery or forced labour
- Art.5: Right to liberty and security of person
- Art.6: Right to a fair hearing
- Art.7: No punishment without lawful authority
- Art.8: Respect for private and family life, home or correspondence
- Art.9: Freedom of thought, conscience and religion
- Art.10: Freedom of expression
- Art.11: Freedom of assembly and association
- Art.12: Right to marry and found a family

- Art.14: The enjoyment of the rights and freedoms in the Convention without discrimination
- First Protocol: Peaceful enjoyment of property; Right to education; Right to free elections
- Sixth Protocol: Abolition of the death penalty
- A State that has ratified the Convention has a duty to secure the rights and freedoms protected by the Convention to everyone within their jurisdiction. This duty extends to non-citizens and implies a duty to protect individuals not just from state interference but also from the actions of others. (NB: The prohibition against discrimination is not freestanding and only relates to rights secured by the Convention).
- People who believe their rights have been infringed can now pursue their claims through the UK courts rather than have to take their case to the European Court in Strasbourg.
- All legislation pre and post-1998 must be interpreted in the light of the
- Convention; English courts can make a declaration of incompatibility where legislation from Westminster is in conflict with the Convention – but this is not the same as the power of a Supreme Court in other States to “strike down” legislation as unconstitutional. Primary legislation remains in force until changed.
- Public authorities will be acting unlawfully if they act incompatibly with the Convention, unless primary legislation means they could not have acted differently. Although public authorities are not defined in the Act except to include courts, local authorities, health authorities and independent contractors carrying out public functions on their behalf may be deemed to be public authorities. This means that for example, standards in residential care will be considered in the light of the Human Rights Act.
- However, only Arts 2, 3 and 7 are “absolute rights” (i.e. cannot be restricted in any circumstances and cannot be balanced against the public interest).
- Articles 4 and 5 are “limited rights” – exceptions to these rights are exhaustively listed in the Articles themselves e.g. the power to detain persons of unsound mind. The meaning of these Articles and their limitation will
- undoubtedly be controversial
- Articles 8 and 9 are “qualified rights” – they are subject to restrictions in the public interest, provided such restrictions are clear and meet the test of proportionality; an example would be overriding parents’ lack of consent to adoption when it is clearly in the best interests of the child.

## 2. SECTION 2 - LEGISLATION ON STATUTORY FUNCTIONS OF THE COUNCIL

### 2.1 Chronically Sick and Disabled Persons Act 1970

(Printed copy available from: [www.tsoshop.co.uk](http://www.tsoshop.co.uk))

- Following the National Assistance Act 1948 there were a number of changes in the provision of services. The Chronically Sick and Disabled Persons Act 1970 built on the provisions of the National Assistance Act and placed a **duty** on local authorities to establish numbers of disabled people in their area, to determine their needs, and publicise services. (Section 1)
- Registration as disabled is not a legal prerequisite for obtaining services under this Act
- Services are available to anyone who is disabled within the meaning of Section 29 of the National Assistance Act 1948 (i.e. people with a physical or sensory or learning disability or who are suffering from a mental disorder)
- Section 2 of the Act places a **duty** on the local authority to arrange for any of the following services (where satisfied it is necessary):
  - practical assistance in the home
  - help with radio and TV
  - library and recreational facilities and help to take up facilities outside the home
  - assistance with travel (permits and orange badge scheme)

- help with holidays, meals, telephones, aids and adaptations
- The Chronically Sick and Disabled Persons Act 1970 also places a **duty** on the local authority (and other agencies) to provide access for disabled people in certain buildings to which the public have access
- The first significant changes began in 1980 when long stay institutions for the mentally ill and disabled were phased out; and the trend towards placing **duties** on local authorities to assess people for services provided under the 1970 Act continued with the Disabled Persons Act 1986 that required a local authority to assess a disabled person or their representative or carer for services.

## 2.2 Disabled Persons (Services, Consultation and Representation) Act 1986

Enables a disabled (or their representative) to insist on an assessment of need and reasons for a decision and gives the ability of any carer to be assessed.

## 2.3 NHS and Community Care Act 1990

[www.opsi.gov.uk/acts/acts1990/UKpga\\_19900019\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1990/UKpga_19900019_en_1.htm)

- The NHS and Community Care Act 1990 signified an important development in the philosophy of community care and in the delivery of services called for in other legislation.
- The Act, together with associated guidance documents from the Department of Health, lays emphasis on a care management approach and assessment based on individual need.
- It requires a close partnership between professionals and service users and carers in assessing need and designing tailor-made packages of care.
- It is also premised upon a split between the functions of purchasing and providing care, with greater encouragement for the independent sector in care provision
- The main social services provisions of the Act are as follows:
  - It gives overall responsibility for community care to local authority social services departments. There is a **duty** on the local authority to carry out a Needs Assessment where it appears that any person for whom it provides/arranges community care services, needs such services. Where the services of health or housing authorities are needed, there is a **duty** on the local authority to notify them and invite their assistance i.e. a **duty** to coordinate arrangements for care provision. (Section 47)
  - When a needs assessment has been carried out, the local authority must decide whether services are to be provided. (Care can be provided before a needs assessment when it is urgently necessary, with assessment carried out as soon as practicably possible afterwards) (Section 47)
  - The Act also requires local authorities to establish a complaints procedure by amending the Local Authorities Social Services Act 1970.

The process of care management within the provisions of the Act can be summarised as:

- Information provided to potential users and carers
- Referrals screened for level of assessment
- Needs-led assessment
- Care planning
- Implementing the Care Plan
- Monitoring, evaluation and review

The key objectives of the NHS and Community Care Act are:

- To promote the development of domiciliary, day and respite care services that enabled people to live in their own homes wherever feasible or sensible
- To give high priority to practical support for carers
- To ensure that proper assessment of need and good case management formed the cornerstone of high quality care
- To clarify the responsibilities of different agencies involved in care provision and make it easier to hold them to account for their performance

- Secure better value for taxpayers' money by introducing a new funding structure for social care; and
- Changes to the benefits system for people going into residential care or nursing homes

#### 2.4 Community Care (Direct Payments) Act 1996

Gives Local Authorities power to provide cash to a person following assessment of need, or to the carers, to purchase services.

#### 2.5 Local Government Act (2000)

In Section 2 of this act, every Local Authority is to have powers to do anything which it considers is likely to achieve any one or more of a number of objectives including the promotion or improvement of the social well-being of their area.

#### 2.6 Carers' Legislation:

##### **Carers (Recognition and Services) Act 1995**

[www.opsi.gov.uk/acts/acts1995/UKpga\\_19950012\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1995/UKpga_19950012_en_1.htm)

- This Act provides for the assessment of carers' ability to provide care. It gives carers the right to an assessment by their local authority under certain circumstances, although it does not give them a right to services.
- While the rights given to carers are limited, the Act encourages a shift in practice towards recognising and supporting carers
- When a carer meets the requirements and requests an assessment, the local authority has the following duties:
  - To carry out an assessment of the carer's ability to provide care before assessing the need for services of the person being cared for
  - To take the results of the carer's assessment into account when deciding whether the person being cared for is provided with services

(The above duties do not apply where the care is provided by the carer as part of a contract or on a voluntary basis for a voluntary organisation)

##### **Carers and Disabled Children Act 2000**

[www.opsi.gov.uk/acts/acts2000/20000016.htm](http://www.opsi.gov.uk/acts/acts2000/20000016.htm)

- This Act supplements the Carers (Recognition and Services) Act 1995 by enabling local authorities to provide carers' services in response to an assessment of their needs; and also enables carers to receive direct payments in lieu of services
- There is no requirement that the person for whom they care has agreed to an assessment under the NHS and Community Care Act 1990.
- The local authority has the power to provide vouchers to purchase respite care for the service user, to enable their carer to take a break.

##### **Carers (Equal Opportunities) Act 2004**

[www.opsi.gov.uk/acts/acts2004/20040015.htm](http://www.opsi.gov.uk/acts/acts2004/20040015.htm)

- This Act further develops the emphasis on carers' rights and requires local authorities to involve carers in the assessment of the person for
- whom they are caring, or to keep a written record of reasons for not doing so
- Section 1 of the Act requires local authorities to inform the carer of their right to request an assessment at the time of carrying out the assessment for the service user
- The assessment of the carer's ability to provide care must take into consideration whether the carer works or wishes to work, or is
- undertaking or wishing to undertake education, training or any leisure activity

#### **Other Local Authority Powers and Duties to Help Carers**

(printed copies available from [www.tsoshop.co.uk](http://www.tsoshop.co.uk))

- Section 8 of the NHS Act 1977 gives local authorities powers to provide or support services to carers
- Section 8 of the Disabled Persons Act 1986 (printed copies also available from this the above link) requires local authorities to consider the ability of the carer to provide care when deciding what services to provide to a disabled person.

## 2.7 Mental Health Legislation

### **Mental Health Act 1983 (Civil Measures)**

#### **Duties and Functions of Approved Social Workers (ASWs)**

The local authority must appoint ASWs who have a **duty** to:

- Assess individuals for hospital admission under the Act within their area (see 'Compulsory Admission and Detention in Hospital' below);
- Interview the person in a suitable manner; and
- Make application for hospital admission or Guardianship if appropriate (see 'Guardianship' below)

Other **duties** of ASWs include:

- **Duty** to respond to Nearest Relative's (NR) request for assessment (Section 13) and to inform NR in writing for reasons, if no application is made
- **Duty** to inform NR of application, and to consult with NR for a Section 3 Admission for Treatment, or for Guardianship (Section 11)
- **Duty** to inform NR of their rights to make an application (Section 11), and their right to discharge the patient (Section 23)
- Discharge the **duty of the social services authority** to arrange for a social worker (not necessarily an ASW) to provide reports to hospital managers when a person is admitted on application by NR (Section 14)

#### **Compulsory Admission and Detention in Hospital**

**Admission for Assessment for up to 28 days**, in the interests of the patient's health or safety or for the protection of others (Section 2)

NB1: Person must be suffering from a mental disorder of a nature or degree that warrants detention

NB2: Application by ASW or NR within 14 days, founded on 2 medical recommendations not more than 5 days apart

**Admission for Treatment for up to 6 months** in the interests of patient's health and safety, or for the protection of others (especially if already known to the clinical team) (Section 3)

NB1: The person must be suffering from one of the following disorders of a nature or degree where hospital treatment is appropriate:

- Mental illness
- Severe mental impairment

OR where treatment is likely to alleviate or prevent deterioration of:

- Mental impairment or
- Psychopathic disorder

NB2: Application by ASW or NR within 14 days, founded on 2 medical recommendations not more than 5 days apart

**Emergency Admission for Assessment for up to 72 hours** where it is urgently necessary for the patient to be admitted and a Section 2 Assessment would involve undesirable delay (Section 4)

NB1: Application by ASW or NR within 24 hours, founded on 1 medical recommendation

NB2: There is NO power to treat under a Section 4 Emergency Admission

**Detention of Informal Patients for up to 72 hours** on recommendation of hospital doctor in charge of treatment [Section 5(2)]

NB1: There is NO power to treat and detention should be in order to arrange a full assessment ASAP under Sections 2 or 3

NB2: Under **Section 5(4)** a nurse of the prescribed class can detain a psychiatric patient for up to 6 hours in order to be attended to by the doctor ASAP

**Police power to remove to a Place of Safety for up to 72 hours**, a person who is in a place where the public have access and the person appears mentally disordered and in need of care or control (Section 136)

NB1: If the place of safety is a hospital, there is NO power to treat and an ASW must assess ASAP

NB2: Detention under Section 136 **is an arrest, and PACE therefore applies**

**Warrant issued by magistrate to gain entry** and, if thought fit, **to remove a person to a place of safety for up to 72 hours** (Section 135)

NB1: Warrant issued on application by ASW, and authorises police accompanied by ASW and a doctor to gain entry/remove person to place of safety

NB2: There must be reasonable cause to suspect that the person suffering from mental disorder has been/is being ill-treated, neglected, or being kept otherwise than under proper control; OR is living alone and unable to care for themselves

### **Guardianship (Section 7)**

#### **Application for Guardianship**

Application for Guardianship may be made by Approved Social Worker or Nearest Relative, founded on 2 medical recommendations

The person must be suffering from mental illness, severe mental impairment, psychopathic disorder, or mental impairment of a nature/degree that warrants Guardianship AND Guardianship is necessary for the person's welfare or for the protection of others.

#### **Effect of Guardianship**

Empowers the Guardian (local authority or person approved by LA) to require the person to:

- reside in a specified place
- attend for treatment, occupation, education or training, and
- require access to any doctor

Guardianship initially lasts for 6 months and may be renewed

NB: Under Guardianship, the person cannot be compelled to accept treatment, nor is there power to convey an unwilling person into residential care

#### **Aftercare**

- There is a **duty** on the Local Authority (and health authorities) to provide aftercare to people detained under Sections 3, 37, 47 or 48 until no longer needed. (Section 117)
- Aftercare cannot be imposed on an unwilling person. (Section 117)
- There is no power to charge for services provided under Section 117. (Section 117)
- Health authorities must provide systematic arrangements for assessing and reviewing the health and social care needs of people referred to specialist psychiatric services. (Care Programme Approach – DoH Circular 1990)
- The Local Authority must cooperate with health and agree arrangements regarding social care assessment, service delivery and review. (Care Programme Approach – DoH Circular 1990)

#### **Mentally Disordered Offenders**

Courts may make various orders relating to mentally disordered offenders, under Part III of the Act:

- Remand to Hospital for Report (Section 35)
- Remand to Hospital for Treatment (Section 36)
- Interim Hospital Order (Section 38)
- Hospital Order (Section 37)
- Guardianship Order (Section 37)
- Restriction Order (Section 41)

### **Rights of Detained Patients**

These include:

- The Right to Information about conditions of detention and treatment, and about patients' rights
- The Right to apply to a Mental Health Review Tribunal for discharge as specified by the Act
- The Right to Refuse Treatment under Sections 4, 5, 136, or 35, if an informal patient; and in some other circumstances
- The Right to Aftercare under Section 117 (see Aftercare above)
- The Right to Sue individual staff (Section 139) if staff acted in bad faith or without reasonable care, or the health or local authority or the Secretary of State.
- Detained patients can also make complaints to the Mental Health Act Commission

### **Mental Health (Patients in the Community) Act 1995**

[www.opsi.gov.uk/acts/acts1995/UKpga\\_19950052\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1995/UKpga_19950052_en_1.htm)

This Act was implemented on the 1st April 1996. It provides for certain mentally disordered people to receive formal aftercare under supervision known as supervised discharge, after leaving hospital. Use the links below for more details on grounds and procedure for supervised discharge:

Grounds for Supervised Discharge:

[www.opsi.gov.uk/acts/acts1995/UKpga\\_19950052\\_en\\_2.htm#mdiv3](http://www.opsi.gov.uk/acts/acts1995/UKpga_19950052_en_2.htm#mdiv3)

Procedure for Supervised Discharge:

[www.opsi.gov.uk/acts/acts1995/UKpga\\_19950052\\_en\\_2.htm#](http://www.opsi.gov.uk/acts/acts1995/UKpga_19950052_en_2.htm#)

Supervised discharge arrangements must be integrated with the Department of Health's Care Programme Approach. Use the link below for more detail on aftercare requirements and effect of supervised discharge:

- Aftercare Requirements
- Effect of Supervised Discharge

[www.opsi.gov.uk/acts/acts1995/UKpga\\_19950052\\_en\\_2.htm#](http://www.opsi.gov.uk/acts/acts1995/UKpga_19950052_en_2.htm#)

- The Act also amends Sections 17 and 18 of the Mental Health Act 1983 which relate to detained patients' absence from hospital.
- It removes the previous six-month limit for recalling a patient on Section 17 leave
- It also removes the 28-day limit for returning patients absent without leave under Section 18 of the 1983 Act

### **Mental Capacity Act 2005**

[www.opsi.gov.uk/acts/acts2005/20050009.htm](http://www.opsi.gov.uk/acts/acts2005/20050009.htm)

The Mental Capacity Act 2005 places the assessment of mentally incapacitated persons on to a statutory basis, and responds to a lack of clarity in the common law with respect to substitute decision-making, and end-of-life issues.

The principles on which it is based is stated in Section 1 of the Act:

- A person must be assumed to have capacity unless otherwise established.
- A person is NOT to be treated as unable to make a decision unless all practicable steps to help that person have been taken without success

- A person is NOT to be treated as unable to make a decision merely because they make an unwise decision
- An act done/decision made for (or on behalf of) a person lacking capacity must be done in their best interests
- The principle of “least restrictive alternative” must be adhered to

**The Act deals with the assessment of a person’s capacity and decisions and acts by professionals of those who lack capacity. The following instruments are introduced:-**

- A single clear test for assessing whether a person lacks capacity to take a particular decision at a particular time
- Advance statements that allow wishes and feelings to be recorded, which must be considered by those assessing capacity and making decisions
- Statutory status for advance decisions to refuse treatment
- Clarification of which acts can be undertaken on behalf of the person who lacks capacity without incurring legal liability
- Lasting Power of Attorney (LPA) which allows a person to appoint an attorney to act on their behalf if they lose capacity in the future, in relation to financial, health and welfare decisions ( an expansion of existing Enduring Powers of Attorney (EPA) which only relates to financial decisions
- Court appointed Deputies to replace receivership in the Court of Protection
- New Court of Protection
- New Public Guardian to register LPAs and Deputies
- Professionals working with people who lack capacity have a statutory duty to involve an Independent Mental Capacity Advocate for specific serious decisions if that person has no one to speak for them
- New Criminal Offence of ill treatment or neglect of a person who lacks capacity with a punishment up to five years imprisonment
- Clear parameters for research involving people who lack capacity
- A comprehensive Code of Practice which professionals and others operating the Act have a duty to comply with

## 2.8 Deprivation of Liberty Safeguards

The Mental Health Act 2007 introduces a major amendment to the Mental Capacity Act 2005 that will permit the use of “Deprivation of Liberty” . This goes beyond current powers in the Mental Capacity Act, which allows restraint only in connection with acts of care or treatment provided it does not result in depriving that person’s liberty. Deprivation of Liberty Safeguards (DOLS) are the procedural remedy to the so called Bournemouth conundrum, allowing the admission of incapacitated individuals to hospitals or care homes where the person cannot consent and also does not actively object. Under this new provision, both Local Authority and the Provider will become Supervisory Bodies that can grant authorisation for the Deprivation of Liberty. Six requirements must all be met before deprivation of liberty will be authorised by the Provider for hospital admissions and the Local Authority for care homes. As supervisory bodies, the Provider and Local Authority must have in place processes and procedures to manage the authorisation and reviews of DOLS.

## 2.9 Protection of Vulnerable Adults

**The aim of all agencies and individuals working in social and health care should be to safeguard vulnerable people from abuse and to ensure that people who have been abused receive support and protection from further abuse.**

**Operational guidance, which sets out the procedures to be used when abuse is disclosed, identified, suspected or alleged has been agreed with all statutory agencies and over 350 independent sector providers across Cambridgeshire.**

**The guidance helps agencies:**

- **define abuse**
- **Recognising and understand how abuse can occur; reducing the risk of abuse happening.**

**The procedures have been produced to strengthen our existing arrangements and meet the requirements of [No Secrets-Guidance on Developing and Implementing Multi Agency Policy and Procedures to Protect Vulnerable Adults from Abuse \(Department of Health 2000\)](#) which:**

- Is a guidance document issued under Section 7 of the Local Authority Social Services Act 1970.
- Applies to all statutory agencies.
- Is a guidance with which every agency has to comply unless local circumstances indicate exceptional reasons that justify a variation.
- Identifies the local authority as the lead agency.
- Requires that a senior manager should be identified in each agency to take the lead role.

Note.

No Secrets is currently under review by the Department of Health

## **SCHEDULE 4: SERVICE SPECIFICATION OF SUPPORT GIVEN BY THE COUNCIL TO THE PROVIDER<sup>15</sup>**

### **1. Contract Management**

#### **SERVICE LEVEL AGREEMENT FOR THE PROVISION OF THE PROCUREMENT AND CONTRACT MANAGEMENT FUNCTION OF OLDER PEOPLE'S SERVICES TO CAMBRIDGESHIRE COMMUNITY SERVICES NHS TRUST**

##### **1.0 SERVICE**

1.1 The Contracts Managers will ensure that robust contracts are in place with all independent sector care providers to deliver quality services that offer protection for the Service User, Primary Care Trust and Cambridgeshire County Council.

1.2 This will be achieved through the development and maintenance of robust systems of selection, service specifications and contracts.

##### **2.0 SERVICE DELIVERY**

2.1 The Head of Procurement for Social Care will nominate a Contracts Manager for each service area that will lead for all contract issues. The Contracts Managers will be expected to acquaint themselves with the strategic and service aims of Cambridgeshire Community Services and their Management Team in respect of Micro Commissioning.

##### **3.0 RESOURCES**

##### **3.1 3. Contracts Managers – Supporting Cambridgeshire Community Services and PCT Commissioners.**

Post 1 (37 hours per week)

- Personal Support Services Homes Based
- Extra Sheltered Housing Schemes

Post 2 (37 hours per week)

- Residential and Nursing Care
- Day Care

Post 3 (37 hours per week)

- Voluntary Sector Services

##### **3.2 4. Care Service Development Officers**

Post 1 (37 hours per week)

- Personal Support Services Home Based
- Extra Sheltered Housing Schemes

Posts 2 & 3 (37 hours per week for each post)

- Residential and Nursing Care
- Day Care

##### **4.0 CONTRACT MONITORING/REVIEW**

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<sup>15</sup> Partners to review this schedule

- 4.1 Care Service Development Officers will measure the performance of Independent Sector Providers using Cambridgeshire's quality measuring system 'Safe in the Knowledge' that reviews policies, procedures, practices and outcomes for service users. The process enables a view to be taken as to whether or not a satisfactory level of achievement has been reached in respect of contract compliance.
- 4.2 Contracts Managers will notify the Area Managers within each locality of any Provider who fails to comply with their contractual obligations and report on any remedial action to be taken and any foreseen impact on Micro Commissioning.
- 4.3 The monitoring will include the Home Care services directly provided by the Provider.
- 4.4 Care Services Development Officers will forward copies of completed monitoring reports to Area Managers to inform them of the quality of services being provided.
- 5.0 ADULT PROTECTION**
- 5.1 Contract Mangers and Care Service Development Officers will respond immediately to requests to monitor any provider in relation to all allegations of adult abuse.
- 5.2 Contract Managers will notify the Area Managers immediately of any action required as a result of the monitoring and the reporting of unsatisfactory performance and notify the Cambridgeshire Community Services as to any decisions taken by the Commissioners in relation to the continuation of the contract or temporary suspension of business.
- 6.0 PROTOCOL FOR WITHDRAWAL OF COUNCIL CONTRACTS WITH HOMES AND HOME CARE AGENCIES**
- 6.1 The Contracts Managers in partnership with Cambridgeshire Community Services will draw up a working protocol to clearly describe the process to be followed in the event of a residential home closing or the cancellation of a contract leading to the residents requiring alternative accommodation.
- 7.0 MARKET MANAGEMENT**
- 7.1 The Head of Procurement / Head of Older People's Commissioning shall ensure that the Provider are aware of any changes nationally, locally, legislative or set by precedent which may have an impact on the direct delivery and micro commissioning of services in Cambridgeshire.
- 7.2 Contract Managers will work in partnership with the Area Managers to ensure a stable and reliable service is maintained across Cambridgeshire.

## **2. Performance Information**

The Council's Adult Social Care Management Information Team retain responsibility for:

- Completing and returning any statutory Adult Social Care Performance Information Returns
- Providing in-depth advice and information relating to the Adult Social Care Statutory Performance Framework specifically around performance indicator definitions and recording processes
- Monthly extraction of raw data from SWIFT
- Ensuring access to detailed social care data and reports for designated users via Business Objects or other available reporting system
- Providing data structured and reported per locality team as agreed between the partners Producing monthly summary reports against the agreed set of performance indicators (per schedule 7) to be made available through an appropriate reporting system. This will include those performance indicators where data is to be provided by CCS or other partners
- Reporting data quality errors affecting Adult Social Care statutory returns and performance indicators

## **3. Payments**

### **RESIDENTIAL AND NURSING CARE – LONG TERM**

3.1.1 Payments to providers of care homes will be made via E Business Suite following an interface feed from Cambridgeshire County Council's automated payment system CRIP2

3.1.2 The CRIP2 relies on information captured from the client database SWIFT.

### **3.1 Responsibilities**

3.1.1 Cambridgeshire Community Services will maintain the individual client information relating to costed packages of care on SWIFT in a timely manner and in line with the CRIP business rules in order to ensure the effectiveness of the payment system. This role is currently carried out by the Care Purchasing Co-ordinators in each Locality Team.

3.1.2 Cambridgeshire Community Services Locality Teams will check the transactions listings to ensure accuracy and remedy any inaccurate data relating to service user information or coding.

3.1.3 All miscoded transactions will be deposited into a default code set up within CRIP and Cambridgeshire Community Service Finance Teams will be responsible for regularly investigating that code and informing the appropriate Locality Team of the need to make corrections in SWIFT.

3.1.4 The Contracts and Care Placements Unit will ensure that providers are notified at the beginning of each financial year the pre-planned dates of the four weekly payments and will alert the Locality Teams if for any reason the payment processing is delayed.

3.1.5 The Contracts and Care Placements Unit will notify providers of any problems that may occur if for any reason the payment run has been delayed.

3.1.6 Cambridgeshire Community Services Locality Teams will be responsible for dealing with queries and complaints directly related to inaccurate payments in the first instance and not the Procure to Pay Team within the County Council.

3.1.7 Difficulties experienced with the system should be referred to the CRIP Support Helpdesk.

- 3.1.8 Cambridgeshire County Council Office of Environment and Community Services Finance Team will input into the resolution of any flagged issues and concerns relating to payments.

### **3.2 DOMICILIARY CARE**

- 3.2.1 Payments to providers of Domiciliary Care will be made via E Business Suite following an interface feed from Cambridgeshire County Council's automated payment system CRIP1.
- 3.2.2 The CRIP1 relies on information captured from the client database SWIFT.

### **3.3 Responsibilities**

- 3.3.1 Cambridgeshire Community Services will maintain the individual client information relating to costed packages of care on SWIFT in a timely manner and in line with the CRIP business rules in order to ensure the effectiveness of the payment system. This role is currently carried out by the Care Purchasing Co-ordinators in each Locality Team.
- 3.3.2 Cambridgeshire Community Services Locality Teams will check the transactions listings to ensure accuracy and remedy any inaccurate data relating to service user information or coding.
- 3.3.3 All miscoded transactions will be deposited into a default code set up within CRIP and Cambridgeshire Community Service Finance Teams will be responsible for regularly investigating that code and informing the appropriate Locality Team of the need to make corrections in SWIFT.
- 3.3.4 The Contracts and Care Placements Unit will ensure that providers are notified at the beginning of each financial year the pre-planned dates of the weekly payments and will alert the Locality Teams if for any reason the payment processing is delayed.
- 3.3.5 The Contracts and Care Placements Unit will notify providers of any problems that may occur if for any reason the payment run has been delayed.
- 3.3.6 Cambridgeshire Community Services Locality Teams will be responsible for dealing with queries and complaints directly related to inaccurate payments in the first instance and not the Procure to Pay Team within the County Council.
- 3.3.7 Difficulties experienced with the system should be referred to the CRIP Support Helpdesk.
- 3.3.8 Cambridgeshire County Council Office of Environment and Community Services Finance Team will input into the resolution of any flagged issues and concerns relating to payments.

### **3.4 PAYMENTS MADE OUTSIDE OF CRIP**

- 3.4.1 The following payments currently continue to be made outside of the CRIP system

- Block Purchased Day Care – Contracts and Care Placements Unit
- Block Purchased Respite Care - Contracts and Care Placements Unit
- Day Care
- Respite Care
- Transport
- Extra –Sheltered Housing Schemes
- Direct Payments

### **3.5 Responsibilities**

- 3.5.1 With the exception of Block purchased Day Care and Block purchased Respite Care, Cambridgeshire Community Services will continue to manually process invoices for services outside of CRIP taking into account the 30 day delayed payment charges until such times as these areas are automated.
- 3.5.2 Authorised invoices will be forwarded to Cambridgeshire County Council's Procure to Pay Unit who will be responsible for the final data entry into the Oracle E Business Suite to generate the payment to the provider.
- 3.5.3 Cambridge Community Services will be responsible for maintaining a commitment record of all payments made outside of CRIP and for monitoring transactions against the commitment to resolve any errors or inaccurate entries.
- 3.5.4 Cambridgeshire County Council Contracts and Care Placements Unit will manually process the payments for all Block purchased Day Care and Respite Care and will enter the payments onto the commitment record for the Pooled Budget.

### **3.6 Income and debt recovery**

- 3.6.1 All Income for services paid for through CRIP are raised through the automated system and relate directly to the assessed charge in SWIFT.
- 3.6.2 Services not yet included in the automated system are processed manually.

### **3.7 Responsibilities**

- 3.7.1 Cambridgeshire County Council will set the annual charge for services through Cabinet approval in order to maximise potential income and will notify the Locality Teams of the new fees and charges prior to the start of the new financial year in line with the DWP annual increase date.
- 3.7.2 Until such time as the whole income collection is automated the Provider will manually raise invoices to services users for the assessed charge in a timely manner to ensure clarity of the period to which the charge refers. Income collection will be a key responsibility of the Provider.

### **3.8 DEBT RECOVERY**

- 3.8.1 Cambridgeshire County Council's Debt recovery Team will be responsible for following up any unpaid client charges through the agreed debt recovery processes.

## **4. ICT**

- 4.1 The IT service provided to members of integrated teams from the county council's networks is as follows:
- Access to a PC, keyboard, mouse and screen which meets their business needs, and which accommodates any special needs arising from disability and Health and Safety evaluation.
  - Access to the standard universal software suite (email and MS Office)
  - Facilities to print to a device located within a reasonable distance of the PC from which they are printing.
  - Automatic upgrade of equipment as necessary to maintain fitness for purpose. (There is no specific maximum age for a PC, but we aim to reach a position where they will usually be replaced before they reach five years old.)
  - The PC to be virus and security protected to a level which protects the integrity and availability of the information in which they have an interest.

- Basic skills training in the use of the standard universal software suite.
- Remote access where required and endorsed by line manager.
- Use of USB memory devices where used in accordance within usage guidance.
- Access to digital camera card readers when required.
- Repair or replacement of faulty equipment within four working days.
- Access via PC to SWIFT, the service user database, and management information and performance reporting system.
- Access via PC to OfficeBase, the home care rostering system.
- EBusiness, the finance and HR management system.
- CamWeb, the council's intranet.
- Access to Wisdom

4.2 The IT service provided to members of integrated teams from the NHS network is provided by the service known as NHS Netilla. This provides access to applications on the council's network from a standard web browser on an NHS provided and supported PC. It provides access to the following systems:

- Email
- The Microsoft Office suite of programmes
- SWIFT, the service user database, and management information and performance reporting system.
- CamWeb, the council's intranet.
- EBusiness, the finance and HR management system.
- Access to Wisdom

4.3 Planning and delivery of services is managed and monitored by a joint board, Integrated Adult ICT Services Board. The board has agreed the following policy: "The provision of ICT services to each member of staff is the responsibility of their employer." However The Council has a responsibility to make available and maintain the systems and support itemised in 4.1 to staff within the Provider to meet the obligations of this partnership agreement..

4.4 Any new investment in systems or hardware would be agreed through the Joint ICT Board. The costs associated with implementing any changes to the current system, would be agreed based on which party is requesting that the change needs to be made. Where there is a mutual interest for the implementing any changes, the costs would be appropriately shared.

## 5 Property

Property	Area (sq. ft.)	Passing Rent (£)	Agreed Rent (£)	SLA Charge @ £6.00 sq.ft)	Interest	Comments
SSD Offices, Comberton Road, Toft	3570	N/A	<b>36,000</b>	6.00 x 3570 = 21,420	7 year lease from 2004	Council owned. Right of way over adjoining OPH. Subject to access rights for store
Unit 1,2,& 6 Dartford Road, March	1550	N/A	<b>15,500</b>	6.00 x 1550 = 9,300	7 year lease from 2004	99 year lease at peppercorn. Self contained shared use of car parks in head lease
Scott House, Huntingdon	2418*	N/A	<b>36,300</b>	6.00 x 2418 = 14,508	7 year lease from 2004	Council owned County Office. Shared use with Council staff of building car parks and access.
Hereward Hall, March	970*	N/A	<b>14,500</b>	6.00 x 970 = 5,820	7 year lease from 2004	Council owned County Office. Shared use with Council staff of building car parks and access.
110a Arbury Road, Cambridge	3462*	N/A	<b>52,000</b>	6.00 x 3462 = 20,772	7 year lease from 2004	Council owned [Part Manor School] – Self contained Council right of access through grounds

Property	Area	Passing Rent (£)	Agreed Rent (£)	SLA Charge @ £6.00 sq.ft)	Interest	Comments
Ditchburn Place, Cambridge		Peppercorn  (in pool)	<b>6,670</b>	In pool	7 year lease from 2004	Leased
Bedford House Day centre, Ely		Peppercorn  (in pool)	<b>11,120</b>	In pool	7 Year sub lease from 2004	Shared access and car park rights contained in head lease
Ramsey Road Day Centre, St Ives		Peppercorn  (in pool)	<b>13,520</b>	Paid by existing tenant.	7 year sub lease subject to existing lease from 2004.	Service run by voluntary group under existing sub lease expiring 11/06.

## 6. Training

- Learning and development opportunities provided by the Council under this agreement will be open and inclusive to all staff working in the adults and Older People directorate regardless of professional background or qualification. This does not include courses within the PQA (Post qualifying awards) framework.
- The Council Learning and development team to agree with the Provider Lead for adult services and learning and professional development managers the topics and content of courses offered taking account business and staff development needs. Training delivered by the Council to the Provider staff will take account of organisational cultural differences.
- The training staff at the Council are funded through Adult Social Care Workforce grants. 50% of their time will be allocated to supporting the Provider staff.

Courses offered by the Council to the Provider include:

- Care Management training
  - Single Assessment Process
  - Person Centred Planning
  - Direct Payments
  - Case File Recording
  - Anti-discriminatory Practice
  - Personal support service-home based
  - Medication Policy
  - Dementia Care
  - Mental Capacity Act
  - Protecting Vulnerable Adults
- Applications for attendance at the Council courses will be through the Council Learning and Professional development department as detailed in the Study Support Policy.
  - Social care career pathway advice will be provided by the Council but will be accessed through the gateway of the Provider's Professional development manager.
  - There is a cancellation charge for all non-attendance; this will be charged to the relevant locality manager; the current rate is £80 per day. Charges will be waived in cases of sickness, bereavement or unplanned court appearances.
  - Funds will be made available to spend on Managerial and leadership development.
  - As per the NHS agenda for change pay arrangements all staff will have a knowledge and skills framework (KSF) against which they are entitled to an annual appraisal and personal development plan. This will take into account the continuing professional development requirements and the business development needs of the Provider.
  - A skills escalator approach to the learning and development needs of staff is detailed in the Provider Learning and Development Strategy and is applicable across the whole organisation. This reflects career development pathways as relevant to health and social care.
  - Statutory and Mandatory training is to be undertaken as detailed in Provider study leave policy, staff are required to commit to this before attendance on CPD or other training. Statutory or mandatory training required by social care specifically will be supported and funded by the Council.

- the Council's Learning and development team to provide timely publication of all training available in a format specifically for the Provider. This will be published on the Council extranet and via staff communications.

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**SCHEDULE 5: PERFORMANCE OUTCOMES TO BE ACHIEVED FROM THIS AGREEMENT:**

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## SCHEDULE 6: FUNDING CONTRIBUTIONS

### Part 1: Funding Contributions by the Council

	12/13`	13/14	14/15
Pay			
Non Pay			
Total		To be determined	To be determined

### Part 2: Funding Contributions by the Provider

The Provider will provide the financial resources for the health functions included in the integration arrangements from its funding in its contract with the PCT