LONDON BOROUGH OF HARROW

Meeting:	Cabinet
Date:	16 December 2003
Subject:	Use of Section 31 Health Act 1999 Flexibilities
Key decision:	Yes
Responsible Chief Officer:	Executive Director –People First
Relevant Portfolio Holder:	Cllr Margaret Davine Social Services
Status:	Part 1
Ward:	All
Enclosures:	Appendix 1 Financial arrangements Appendix 2 Planning Organisational Chart

1. **Summary/ Reason for urgency (if applicable)**

1.1 The purpose of this report is twofold.

- To seek Cabinet approval to the exercise of Section 31 of the Health Act 1999 for the financial year 2004/05 and onwards.
- To seek Cabinet approval to progress work to achieve integration and management of specified local authority services by the Harrow Primary Care Trust (PCT).

1.2 The Health Act 1999 contains the power under Section 31 for a local authority and Primary Care Trust to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority and NHS functions.

1.3 This report is concerned with governance, organisational, management and financial arrangements to further this objective through the effective deployment of the section 31 Health Act 1999 Flexibilities.

1.4 These arrangements will improve services to people using council and PCT services by reducing the volume of assessments and bureaucracy inevitable through separate organisations.

2. Recommendations (for decision by Cabinet)

2.1 Agree the use of Section 31 of the Health Act Flexibilities effective from April 2004 for the service areas set out in this report under 6.1

2.2 Subject to agreement on 2.1, agree in principle, the service integration and management of the services set out in 6.2 by April 2005 at the earliest

2.3 Establish the Joint Commissioning Partnership Board and suggested appointments to the JCPB

2.4 Receive a further report on the implementation of further Section 31 flexibilities necessary to achieve the integration, as outlined in section 6.2 in 2004/05

REASON: To improve the delivery of Council and PCT services to local residents through mutual cooperation and joint arrangements

3. **Consultation with Ward Councillors**

3.1 Not applicable

4. **Policy Context (including Relevant Previous Decisions)**

4.1 From a user's perspective, social care and health services commissioned and provided by Harrow Council and the Harrow Primary Care Trust (PCT) are fragmented. At present a service user may well experience assessments and intervention from various professionals in health and social care. This can generate a lack of clarity for the person about who is responsible to help and support them, and can result in delay and duplication in the provision of services with potentially greater cost in their delivery. There is now a good deal of joint work between health and care workers at the level of the individual service user, but this is not reflected in formal organisational joint partnership arrangements.

Both Harrow Council and the PCT are committed through the principles of the New Harrow Project to break down organisational barriers and to provide locally based service delivery with a sharper customer focus. This local aspiration is strongly supported by national policy to bring health and social care together.

Cabinet 20 September 2001 (in relation to Transfer of Health Authority Care Contracting – Learning Disability and Mental Health) decision 565 (3) Agreed that officers begin negotiation with the Health Authority (and its successor body) for the creation of pooled budgets under Section 31 of the Health Act 1999.

Cabinet 20 September 2001, decision 567 (2) That consideration be given to closer working relationships or integration of services where it is in the best interest of the service users and that initially officers consider services to older people

Cabinet 20 September 2001, Decision 568 Endorsed proposals to develop a range of new and reconfigured health and social care services provided from community health centres, and that officers continue to contribute to the development of the new arrangements to provide integrated health and social care services.

Cabinet 16 July 2002, decision 51 Endorsed the development of the New Harrow Project

5. Relevance to Corporate Priorities

5.1 Harrow Council's Vision and Corporate Strategic Priorities 2002-2006
Particularly relevant to this project are improving the quality of health and social care by promoting and maximizing the independence of disabled, frail and chronically ill people and by ensuring appropriate levels of safe care and support for those not able to live independently.

5.2 The Harrow PCT Local Delivery Plan 2003-2006
The Local Delivery Plan for Harrow identifies integration of social care and health care services as a priority, particularly in the areas of older people's and mental health services provision.

5.3 The National Service Framework for Older People
The National Service Framework (NSF) does not prescribe any single model for management of older people's services. However, it does demand "Person-Centred Care" . In other words, services should work effectively around the person and not around organisational barriers. The NSF specifies that this is achieved as a minimum through single assessment processes, integrated community equipment and continence provision and integrated commissioning arrangements. The spirit of the NSF is, however, that promoting independence and providing appropriate care are best achieved in strong partnership between the NHS and local authorities.

6. Background Information and options considered

6.1 Stage 1
The Health Act 1999 contains the power under Section 31 for a local authority and Primary Care Trust to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority and NHS functions. This report seeks Cabinet approval to the exercise of this flexibility in respect of the following service areas:

- **Older People**
  Current LBH responsibilities: Independent sector purchasing budgets for care home placements, domiciliary care and day care
  Current PCT responsibilities: Continuing Care expenditure on care home placements, domiciliary care and day care provided in the independent sector.

- **Mental Health**
  Current LBH responsibilities: Independent sector purchasing budgets for care home placements, domiciliary care and day care
  Current PCT responsibilities: Continuing Care expenditure on care home placements, domiciliary care and day care, in the independent sector.

- **Learning Disability**
  Current LBH responsibilities: Independent sector purchasing budgets for care home placements, domiciliary care and day care
  Current PCT responsibilities: Continuing Care expenditure on care home placements, domiciliary care and day care, in the independent sector.

- **Physical Disability**
  Current LBH responsibilities: Independent sector purchasing budgets for care home placements, domiciliary care and day care
  Current PCT responsibilities: Continuing Care expenditure on care home placements, domiciliary care and day care provided in the independent sector.

This range of service budgets to be pooled in April 2004 is referred to as Stage 1 in the current draft of the finance annexe to the legal agreement in development set out at Appendix 1 which details the budgets involved at Stages 1 and 2.

6.2 Stage 2

The pooling arrangements outlined in paragraph 6.1 above will need to be extended with a further report to Cabinet during the next financial year. This is to achieve further use of the Health Act Flexibilities in relation to staffing budgets and a number of other budget and Department of Health Grant allocations to take effect should the Cabinet decide to action integration proposals.

Subject to satisfactory progress and a further report in 2004/05 agreement, in principle, to this development is sought from Cabinet at this stage to the proposals outlined below:

- Officers in the local authority and the PCT have started planning for a service integration that would take effect from April 2005. This will involve the Harrow PCT taking direct management responsibility for the services for older people and physically disabled people that are currently provided by the London Borough of Harrow.

- The LBH would take responsibility from the date of service integration for the learning disability services currently the responsibility of the Harrow PCT

- Responsibility for commissioning Mental Health Services provided under the management of the Central & North West London Mental Health NHS Trust through the Harrow Unified Mental Health Service (HUMHS) will be through the Joint Commissioning Manager for Mental Health Services.

These proposals require detailed working through prior to implementation. Arrangements are in hand for project managing this enormous raft of work and the focus of this is shown diagrammatically in Appendix 2

6.3 The volume of work and its corporate importance is recognised and a corporate support group is being established to be chaired by the Executive Director - People First drawing on senior input from Business Connections, Organisational Development and Legal Services. Part of the work of this group will be the development of a Risk Register to ensure that the potential risks for the Council in this partnership are understood, assessed and appropriate action taken to manage them.

6.4 This proposal is in line with the organisational arrangements for the development of People First Services within the New Harrow Project where management of the range of adult community care services is described as transitional.

6.5 A clear line of accountability for decision making in respect of the currently separate pockets of the public purse in the local authority and NHS is essential for all parties. It is therefore proposed that a Joint Commissioning Partnership Board be established with key membership drawn from LBH elected members and the PCT non-executive members.

6.6 It is crucially important that this authority, and indeed the PCT, maintain their ability to manage resources for which they hold statutory responsibilities. In common with models developed throughout the country in recent years, a Joint Commissioning Partnership Board is proposed to ensure accountability back to the Cabinet (and PCT Board) in the application and management of the Section 31 Health Act 1999 Flexibilities. This is illustrated diagrammatically in Appendix 1.It is proposed that two elected members, the Portfolio Holders for Social

Services and Finance, Human Resources and Performance Management are appointed to the Partnership Board when it is established.

6.7 In accordance with current responsibilities it is suggested that the Section 31 arrangements described here are reported to the Health and Social Care Scrutiny Sub-Committee both in their development and in their operation in the future.

6.8 Pooled Budget for 2004/05

This development outlined above has been under discussion for some time in Harrow at officer level and with elected Members of all groups. The Council is now at the point where a decision can be taken which is in line with Department of Health guidance, expectation and good contemporary practice.

The purpose of pooling budgets is to achieve a number of improvements. These are to simplify service commissioning and promote greater integration of services for the benefit of users, with more effective use of resources and partnership working in action.

A number of detailed financial considerations are currently being progressed to ensure clarity of responsibilities, security of their current resources for both parties and effective lines of governance and accountability. These will be contained in an annex to the Legal Agreement in preparation and which will be placed in the Group Offices and Members' Library on its completion. Appendix 1 shows the current draft on financial arrangements to be incorporated into the Legal Agreement and to be put into operational practice in the future. The Pool Manager is the designated director of social services and will be accountable to both the Cabinet and the PCT Board in his management of this responsibility.

6.9 **Future Integration proposal**

This proposal outlined in Stage 2, 6.2 above, is in its early stages. Officers of the Council and the PCT have indicated to their respective groups of staff that this is the direction of travel although they have emphasised that to date there has been no formal discussion or Cabinet decision taken. Following agreement by Cabinet in 2002 to the overall new structure of the Council to reflect the principles and delivery of the New Harrow Project, this proposal was introduced in the report of the Executive Director – People First entitled "People First – progress towards a new structure" in February 2003. The report was shared with Portfolio Holders and nominated members and also with the PCT. The Community Care Division within People First is accordingly described as transitional as a result of the proposals.

Integration of services is in line with government guidance although Harrow will be in the forefront of authorities taking this step forward. The advantages to service users and their carers will be that through

unified management, access to services and more comprehensive assessment of needs will be achieved. Over time this will also assist managing resources most effectively in areas where there is often, and properly, a blurred line between health and social care.

6.10 **Workforce planning**

The Stage 2 proposal will involve staff working in older people's and physical disability services transferring their employment to the PCT. There is clearly a lot of work, communication and negotiation involved in achieving this.

Officers are keen to engage staff and Unison in detailed discussion about this. The Executive Director - People First and the PCT's Chief Executive sent out a joint general letter of intent in October 2003. There was an initial notification of this programme of change to Unison at a People First Departmental Joint Committee meeting in November 2003 and a programme of regular engagement with Unison will be set up, probably involving the Unison Regional Office.

6.11 The Council needs to engage with its partners in the voluntary and independent sectors and the PCT has a formal requirement to consult on this proposal. The PCT Board will be receiving a similar report to this one at its 16 December 2003 meeting seeking authority to proceed with detailed work to achieve this service and management integration.

6.12 It will be necessary to seek extended use of the Section 31 flexibilities during 2004/05 in order to achieve this integration and a further report will be brought to Cabinet

6.13 Performance management

Indicators are being developed that will measure the impact of this service integration. In the main these issues are at the forefront of the performance management agenda now and are outlined below:

1. Noticeable improvement against relevant and appropriate adults' and older people's service targets set for performance indicators both in the Social Services Performance Assessment Framework and the National Health Service Performance Management Framework.
2. Reports from Regulatory and Inspection Bodies for the Authority and the PCT indicating recognition of improved service delivery and outcomes for adults and older people.
3. Increased levels of service user satisfaction as measured by appropriate reviews, surveys and stakeholder forums.
4. Increased staff satisfaction as measured by lower turnover and reduced vacancy rates.
5. Increased budget efficiency savings in both agencies.
6. Governance arrangements established.
7. Management responsibilities clear and in place.
8. Commissioning strategies in place.

7. Consultation

7.1 A joint formal consultation was undertaken between January 2003 and March 2003, preceded by discussions throughout 2002. This was undertaken by the PCT and the Council in partnership. The outcome of this consultation was supportive and the concerns that were raised were about how the Section 31 Agreement would operate in practice rather than whether there should be an Agreement at all. There was consensus that partnership arrangements, effectively managed in the interests of service users, were a positive development.

7.2 The PCT has a formal requirement and desire to consult further. It is proposed that there is a joint consultation with Harrow Council on Stage 2 in preparation for the new organisational arrangement.

7.3 Members will also note the comments regarding consultation with Unison at paragraph 6.10.

8. Finance Observations

8.1 The detailed amount of money in the budgets to be pooled for April 2004 has not been settled yet as this will be on the basis of spend rather than the full year budget. Finance managers from the PCT and People First are working together on this. In broad terms the spend in the PCT is likely to be in the order of £21m and for People First, £26m

9. Legal Observations

9.1 As the report explains, Section 31 of the Health Act 1999 enables joint arrangements between NHS bodies and local authorities, and the proposals in this report seek local implementation of this. There remains work to do on the Agreement (Stage 1), and substantial work for Stage 2, not least the application of TUPE. For both stages, external solicitors' advice will be retained for this specialist area, and having regard to the volume and time periods involved.

10. Conclusion

10.1 Cabinet is asked to agree the recommendations set out at paragraph 2 of this report.

11. Background Papers

11.1 Legal Agreement to be placed in the Group Offices and Members' Library

11.2 The joint Programme Initiation Document between the Council and PCT in has been placed on the Council's website.

12. **Author**

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CABINET REPORT APPENDIX 1

FINANCE ARRANGEMENTS

Stage 1 – Refer to Annex A for clarification of content of Stage 1 (April 2004).

Financial Host
The Local Authority to host the funds and 'manage' the funds in the accounting sense, reporting through the joint commissioning managers, pool manager and Joint Commissioning Partnership Board (JCPB) to the PCT Board and LA Cabinet. This will include the provision of audit certificates to the Harrow PCT and its External Auditors regarding its contribution to the Pools. The pool manager will be the Director of Social services.

Budget Management
The Council and PCT will be delegating the legal authority to spend the Section 31 Pools to the Pool Manager – who will be expected to act on the directions of the Joint Commissioning Partnership Board (JCPB) - see organisational chart and scheme of delegation Annexes B &C . Spending authority for the individual client based pools will be delegated by the Pool Manager to the joint commissioning managers who will act in accordance with the wishes of the JCPB and client focussed partnership boards. The joint commissioning managers will make arrangements with the operational services for the day to day management of the budget. The joint commissioning managers will formally have delegated authority to manage the resources. This authority will be legally delegated to them in accordance with the Standing Orders and Schemes of Delegation of the Council and the PCT.

The joint commissioning managers will submit regular reports to the pool manager who will in turn report to the JCPB through to the Cabinet and PCT Board. . The Pool Manager will require regular, timely and accurate reports on the financial position of the pools on a monthly basis. This will be essential to provide early warning of potential overspends and action necessary to manage them.

Virement.
Funds are to be allocated to separate client-based pools, under the management of the Joint Commissioning Unit in the first instance. The Pool Manager, under the direction of the JCPB, is to have full powers to vire Section 31 pooled funds, between the client groups in response to service pressures and service strategies. This is necessary given the potentially volatile nature of the expenditure and the historic basis on which the funds have been managed.

Free Nursing Care (FNC)
The FNC funds are given as a separate allocation to PCTs non-recurrently each year. These will be split by client group, based on the previous years

outturn (initially 03/04) and passed to the LA as part of the client-based pooled funds. Expenditure will be recorded separately.

Continuing Care (CC) Budgets
Initially only Stage 1 continuing care funding will be pooled – see Annex A. The apportionment of the total S31 funds between the individual pools will be informed by the previous two years actual expenditure and taking into account current known commitments. In future it is the intention that additional responsibilities and associated funding will be included within the pooled funds and the joint commissioning managers will need to take into consideration existing commitments of both partners against those funds for example voluntary sector contracts. In the long-term, the joint commissioning managers with advice from the client focussed partnership Boards and direction from the JCPB will decide the strategy for their client group's services and be able to negotiate the use of the entirety of their budget.

Each Partner will commit funds to the pools on an annual basis and no contribution will be clawed back in-year. The 04/05 initial budget contributions must be sufficient to cover the committed expenditure at the start of the year. The PCT and LA propose to contribute their outturn expenditure ensuring this covers full year commitments on the pooled services.

In addition, the PCT will also contribute inflation based on the annual uprating of the national tariff for community and mental health providers. This contribution will reflect the changes to the continuing care criteria introduced in April 2003. The impact of these changes is being assessed and it is anticipated that any increase in the PCT's continuing care costs that has resulted from the new criteria will be recognised by the Council, and an adjustment agreed that reinstates the financial position that would have existed had the new criteria not been in place.

The Council will contribute an amount for inflation that will be agreed annually as part of the process of setting the level of Council Tax for the Borough.

Subsequent years contributions - each partner shall take its previous year's baseline contribution and add to that the relevant inflation factor and any other cost pressure on the relevant services subject to local and national efficiency savings requirements and commissioning strategies. In determining financial contributions for subsequent financial years the partners will also consider whether it is possible to fund any growth proposals.

Future investment priorities should reflect the priorities of the two authorities. Based upon this the JCPB will decide whether there *is any over-investment in particular service areas* and the Pool Manager will make investment or disinvestments decisions (and changes to be made to pooled budgets in future) accordingly.

Underspends
Underspends in any one pool will first be used to compensate for any overspends in another pool. (Refer Annex D for detailed proposals for the S.

31 Agreement). The pool that created the underspend will in principle have first call on these sums for service developments.

Overspends - refer Annex D
The joint commissioning managers will be expected to take every reasonable step to prevent overspends on their budgets in accordance with the strategy set by the JCPB. If an overspend is forecast, the joint commissioning managers - informed by the operational managers - will submit a report via the Pool Manager to the JCPB stating clearly the reasons for the overspend and corrective action which has already been taken and is still to be taken. The JCPB will advise the Pool Manager on how the overspend should be managed.

If the Pool Manager takes the view the overspend cannot be managed within the pool, he will take advice from the JCPB on the virement of funds from the other pools as deemed appropriate, in order to cover the overspend.

In extreme circumstances, if the Pool Manager cannot manage within the entirety of the S31 pooled funds, he will submit proposals through the JCPB to the Council and PCT for additional funding. If the partners agree to additional contributions, the apportionment of the net overspend will be allocated between the partners in a just and equitable manner as judged by the Pool Manger under the direction of the JCPB taking into account the reasons for overspend.

If the partners cannot agree on an existing overspend they will go to arbitration. Should a dispute arise that cannot be resolved, the Agreement will be terminated.

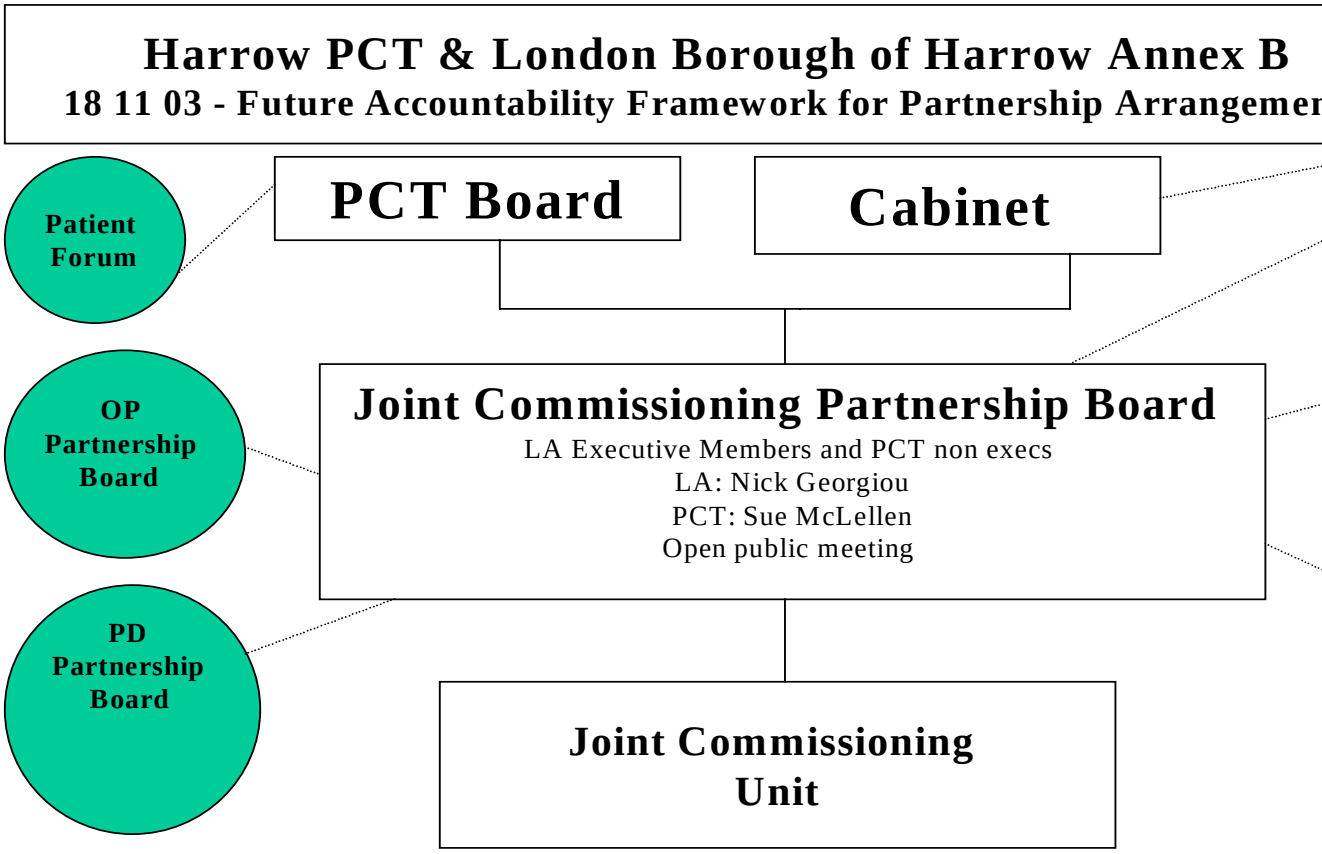
ANNEX A

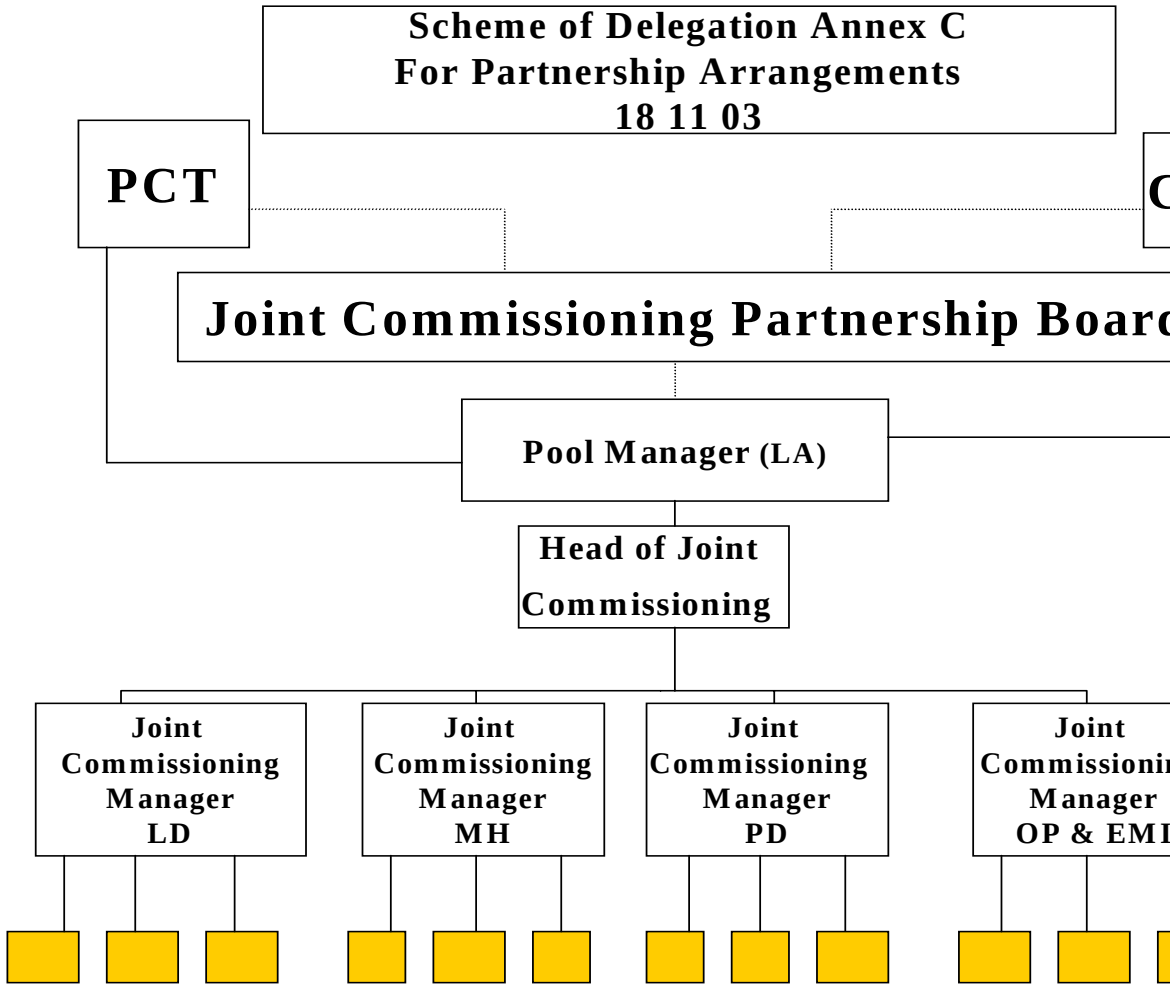
Timetable for Implementation of Lead Commissioning/Pooled Budgets between Harrow PCT and London Borough of Harrow

Care Group and stage:	**Spend to be incorporated into pooled budget**
Older People	
Stage 1:	**LBH:** Independent sector purchasing budgets for care home placements, domicilia and day care. **PCT:** Continuing Care expenditure on care home placements, domiciliary care and care provided in the independent sector
Stage 2:	**LBH**: Staffing budgets for Older People's Care management teams. Supplementary credit approval Development Funds Performance Funds Care group specific grants *Budgets for in-house provision of care home plac domiciliary care and day care.* **PCT:** Voluntary Sector SLAs Minor budgets External SLAs for Older People's Services (NB to be defined) Staffing budgets for employed Older People's Services staff (inc. District Nurses?). *Continuing care expenditure for in house provision of care home placements, dom care and day care.*
Mental Health	
Stage 1:	**LBH:** Independent sector purchasing budgets for care home placements, domicilia and day care **PCT:** Continuing Care expenditure on care home placements, domiciliary care and care, in the independent sector
Stage 2:	**LBH:** Supplementary credit approval Development Funds Performance Funds Care group specific grants *Purchasing budgets for in-house provision for care home placements, domiciliary c day care* **PCT:** Voluntary Sector SLAs Minor budgets Continuing Care expenditure on care home placements, domiciliary care and day c provided in the NHS or independent sector SLA with CNWL (both AMI and EMI ele SLAs with Specialist Mental Health Consortia (e.g. forensic) *Continuing care expenditure for in house provision of care home placements, dom care and day care*

Learning Disability	
Stage 1:	**LBH:** Independent sector purchasing budgets for care home placements, domicilia and day care. **PCT:** Continuing Care expenditure on care home placements, domicialliary care a care, provided in the independent sector
Stage 2	**LBH**: Supplementary credit approval Development Funds Performance Funds Care group specific grants Staffing budget for HLDT. *Purchasing budgets fo house provision for care home placements, domiciliary care and day care*

	PCT: Voluntary Sector SLAs Minor budgets *placements, domiciliary care and day care* Staffing budget for HLDT. *Continuing care expenditure for in house provision home*
Physical Disability	
Stage 1:	**LBH:** Independent sector purchasing budgets for care home placements, domicilia and day care. **PCT:** Continuing Care expenditure on care home placements, domiciliary care and care, provided in the independent sector
Stage 2:	**LBH:** Supplementary credit approval Development Funds Performance Funds Care group specific grants Staffing budget for Physical Disability Care management teams. *Purchasing budge in-house provision for care home placements, domiciliary care and day care* **PCT:** Voluntary Sector SLAs Minor budgets Staffing budget for Physical Disability Team. *Continuing care expenditure for in ho provision of care home placements, domiciliary care and day care*
Joint Equipment Services Stage 1	*In order to secure use of the Access and Systems Grant and to have in pla April 2004 to proceed with an initial separate S31 Agreement*
Stage 2	*To incorporate this service into the revised S 31 Agreement for April 2005*


Harrow PCT & London Borough of Harrow Annex B
18 11 03 - Future Accountability Framework for Partnership Arrangemer
Patient Forum
PCT Board
Cabinet
OP Partnership Board
Joint Commissioning Partnership Board
LA Executive Members and PCT non execs
LA: Nick Georgiou
PCT: Sue McLellen
Open public meeting
PD Partnership Board
Joint Commissioning Unit


Scheme of Delegation Annex C
For Partnership Arrangements
18 11 03
PCT
Joint Commissioning Partnership Board
Pool Manager (LA)
Head of Joint Commissioning
Joint Commissioning Manager LD
Joint Commissioning Manager MH
Joint Commissioning Manager PD
Joint Commissioning Manager OP & EMI

ANNEX D

EXERPTS FROM THE S 31 AGREEMENT ON UNDER & OVERSPENDS

Management of Overspends

Whenever an overspend is projected the Partners shall agree how to manage the overspend and the Partners shall keep the position under review. The Partners shall act in good faith and in a reasonable manner in agreeing the management of the overspend.

If at the end of any Financial Year there is an overspend for a Scheme, the Partners shall identify the reasons for the overspend. The Partners may agree that resources in the next Financial Year shall be applied in meeting the overspend. If this is not agreed the overspend shall be apportioned between the Partners in a just and equitable manner taking into account the circumstances of and reasons for the overspend and the Partners shall make such payments to each other as shall be required to reflect this allocation.

In the event that agreement cannot be reached in respect of any matters referred to in Clauses 22.4.1 and 22.4.2, the Partners shall follow the dispute procedure as set out in Clause [51]. If agreement still cannot be reached then either Partner may by notice in writing to the other Partner terminate this Agreement in relation to the Functions and/or Scheme covered by the relevant Non-Pooled Funds and any Pooled Funds. Termination shall be as from the date of service of such notice or such later date of termination specified in such notice.

Management of Underspends

Whenever an underspend is projected the Partners may agree to the redeployment of that underspend or that the money shall be retained as a contingency in the Non-Pooled Funds or Pooled Funds for the Scheme where the underspending has occurred. In the event that agreement cannot be reached the underspend shall be retained as a contingency.

Any underspend of a Partner's contribution to Non-Pooled Funds at the end of a Financial Year or upon termination shall belong to that Partner.

The Partners may agree that any underspend in relation to any Pooled Funds which arises either during the Financial Year or at the end of a Financial Year or upon termination shall be managed by any of the following mechanisms:

The underspend may apportioned between the Partners in proportion to their contributions to the relevant Pooled Fund and the Partners shall make such payments as are necessary to reflect such apportionment; or

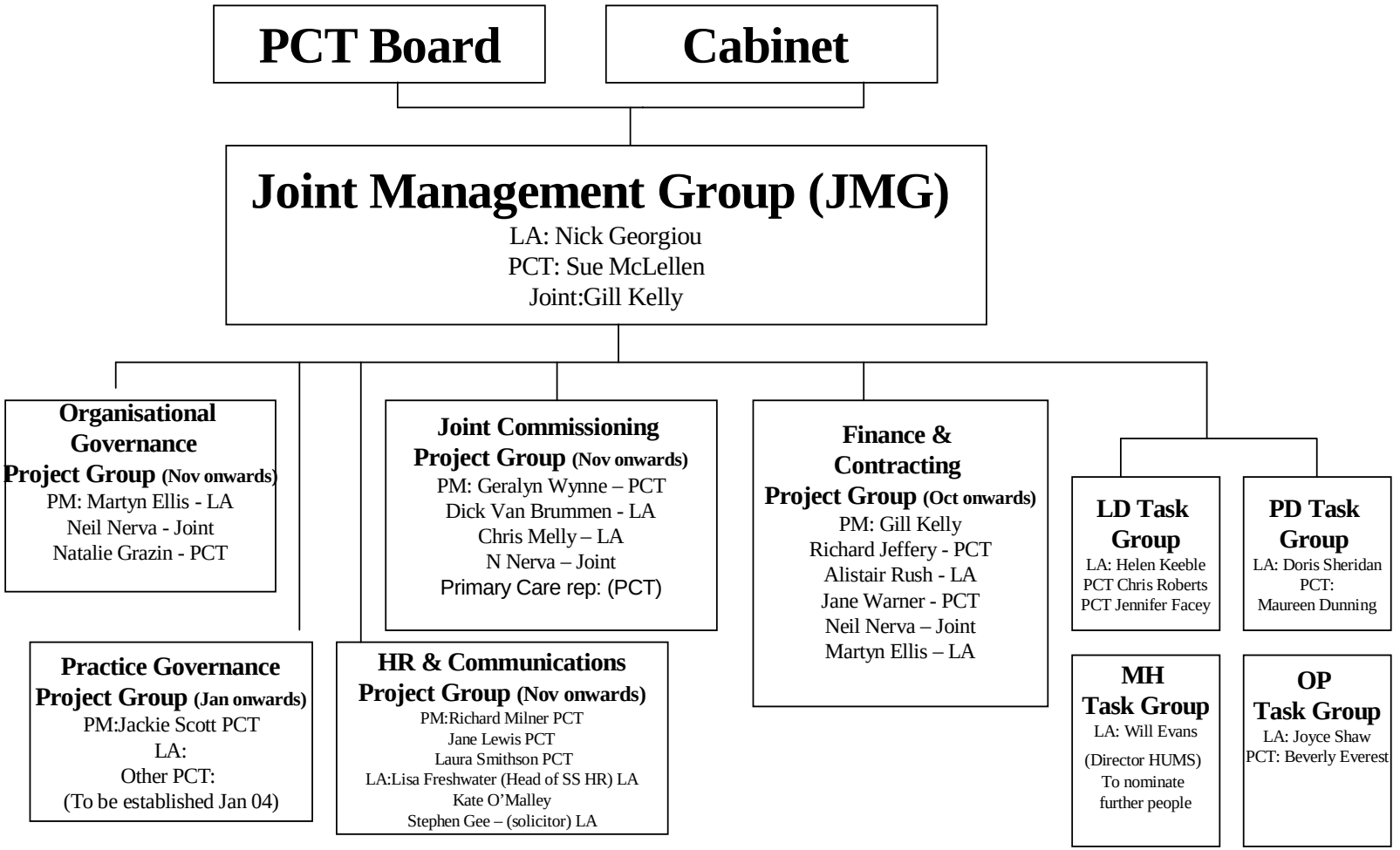
The underspend may be retained as a contingency in the relevant Pooled Fund; or

The underspend may be transferred from the Pooled Fund where it arose to another Pooled Fund or to a Non Pooled Fund

Without prejudice to Clause 22.5.1 to 22.5.3, the Partners may agree to carry forward any underspend in relation to Pooled or Non-Pooled Funds provided that such carry forward will be in accordance with any relevant statutory or other legal requirement or guidance.

Harrow PCT & London Borough of Harrow APPENDIX 2

Integration Programme Planning - Organisational Chart : 19 11 03



PM: Project Group Manager/convenor
Membership of Practice Governance Group still to confirmed
Project Groups deal with overarching issues & Task Groups deal with client group issues