



## LEAD MEMBER FOR ADULT SOCIAL CARE AND HEALTH

**DECISIONS** to be made by the Lead Member for Adult Social Care and Health,  
Councillor Carl Maynard

**WEDNESDAY, 13 JUNE 2018 AT 12.30 PM**

**CC2, COUNTY HALL, LEWES**

### **AGENDA**

- 1 Decisions made by the Lead Member on 27 November 2017 (*Pages 3 - 4*)
- 2 Disclosure of interests  
Disclosure by all Members present of personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- 3 Urgent items  
Notification of any items which the Lead Member considers urgent and proposes to take at the appropriate part of the agenda.
- 4 The continuation of partnership arrangements with Sussex Partnership NHS Foundation Trust (SPFT) in respect of the Mental Health (Forensic) Service (*Pages 5 - 34*)
- 5 Any urgent items previously notified under agenda item 3

PHILIP BAKER  
Assistant Chief Executive  
County Hall, St Anne's Crescent  
LEWES BN7 1UE

5 June 2018

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## LEAD MEMBER FOR ADULT SOCIAL CARE AND HEALTH

DECISIONS made by the Lead Member for Adult Social Care and Health, Councillor Carl Maynard, on 27 November 2017 at County Hall, Lewes

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Councillors Philip Daniel, Angharad Davies and John Ungar spoke on items 4 and 7 (see minutes 5 and 7)

### 1 DECISIONS MADE BY THE LEAD MEMBER ON 23 FEBRUARY 2017

1.1 The Lead Member for Adult Social Care and Health approved as a correct record the minutes of the meeting held on 23 February 2017.

### 2 DISCLOSURE OF INTERESTS

2.1 There were no declarations of interest.

### 3 URGENT ITEMS

3.1 There were no urgent items.

### 4. REPORTS

4.1 Reports referred to in the minutes below are contained in the minute book.

### 5. PROPOSALS IN RELATION TO SUPPORTED EMPLOYMENT SERVICES FOR ADULTS WITH LEARNING DISABILITIES

5.1 The Lead Member for Adult Social Care and Health considered a report by the Director of Adult Social Care and Health on the future operating model of the Supported Employment, car valeting service for people with Learning Difficulties, together with exempt information contained in Item 7 on the agenda.

5.2 The Lead Member considered a statement produced by the Directors of Zest Sussex Community Interest Company (CIC). A copy of the statement is contained in the minute book. The Directors of Zest Sussex CIC, service users and the parent of a service user attended and spoke against the proposal in the report. Further correspondence with the parent of another service user was circulated and considered.

### DECISION

5.3 The Lead Member for Adult Social Care and Health RESOLVED to approve:

(1) the continuation of the provision of the Learning Disability Services Car Valet Service;

(2) the termination of the agreement with the current provider, Zest Sussex CIC, and the transfer of the provision of the service to East Sussex County Council; and

(3) the delegation of authority to the Director of Adult Social Care and Health to take all actions necessary to give effect to resolutions (1) and (2) above.

#### Reasons

5.4 The Lead Member considered the comments of the public and the Members present, together with the information contained in Item 7. The service is valued by clients, their families and paying customers, so as an alternative to closure the service can be transferred to another provider. The transfer to in-house provision will bring a reduction in overall costs while facilitating the continuance of the service and extending the opportunities within the service to a greater number of clients.

5.5 Closer alignment with the Department's Skills Development Pathway would potentially lead to better outcomes for a greater number of people, as well as an enhanced contribution to the Council's performance overall. The service transition will involve: consultation and a full TUPE process with existing employees; consultation with clients, carers and families; and development and agreement of performance outcome measures.

### 6 EXCLUSION OF THE PUBLIC AND PRESS

6.1 The Lead Member for Adult Social Care and Health RESOLVED to exclude the public and press from the meeting on that grounds that if the public and press were present there would be disclosure to them of exempt information as specified in paragraph 3 of part 1 of the Local Government Act 1972 (as amended), namely information relating to the financial or business affairs of any particular person (including the authority holding that information).

### 7 BACKGROUND INFORMATION TO INFORM PROPOSALS IN RELATION TO EMPLOYMENT SUPPORT SERVICES FOR ADULTS WITH LEARNING DISABILITIES

7.1 The Lead Member for Adult Social Care and Health considered a report by the Director of Adult Social Care and Health, which provided exempt information in support of Item 4 earlier on the agenda.

7.2 The Lead Member for Adult Social Care and Health RESOLVED to note the content of the report.

#### Reasons

7.3 The information supports an earlier agenda item.

**Report to:** Lead Member for Adult social Care & Health

**Date of meeting:** 13 June 2018

**By:** Director of Adult Social Care & Health

**Title:** The continuation of partnership arrangements with Sussex Partnership NHS Foundation Trust (SPFT) in respect of the Mental Health (Forensic) Service

**Purpose:** To agree the section 75 Agreement between the Council and SPFT in respect of Mental Health (Forensic) Services

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## RECOMMENDATIONS

Lead Member is recommended to approve the following:

1. To enter into partnership arrangements with SPFT under s.75 of the NHS Act 2006 ('s.75 Agreement') relating to Mental Health (Forensic) services; and
  2. To delegate authority to the Director of Adult Social Care and Health to take any actions arising from the partnership arrangements including any variations to the s.75 Agreement.
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## 1 Background

1.1 East Sussex County Council entered into a s.31 Partnership arrangement with East Sussex County Health Care (now Sussex Partnership NHS Foundation Trust) in 2000. This led to the Council's Adult Social Care Mental Health service being managed by the NHS to deliver better health and social care outcomes. This Partnership was terminated in 2010 following a Council strategic review that identified the delivery and alignment of the Council's safeguarding accountabilities was best secured through the Council's management structure.

1.2 An exception to this was the Forensic Mental Health Service, which manages people with serious mental illness who have committed serious crimes whilst mentally ill and who need expert medical and social supervision on discharge from Prison or Hospital. Safeguarding is intrinsic and at the heart of the work that the Forensic service undertakes. The Council therefore entered into a s.75 Agreement with Sussex Partnership NHS Foundation Trust (SPFT) to enable the Trust to manage the Council's social workers and delivery of the Council's core statutory duties in this area (2010 s.75 Agreement').

1.3 The 2010 s.75 Agreement has now been updated through a small working party comprising of senior officers from the Council and SPFT. The 2010 s.75 Agreement has been updated to capture the Council's responsibilities under the Care Act 2014 and to identify accountabilities for the funding of social workers within the Forensic service.

1.4 During the period 2000-2010, as part of a recruitment drive, all social workers recruited to work in the Forensic Service were employed under the Council's terms and conditions. The Council recharged SPFT for their social work contribution. The future recruitment strategy is for all new social workers in the Forensic Service to be employed under SPFT's terms and conditions, leaving just 2.41 posts funded by the Council on ESCC contracts. Appendix 3 of the revised s.75 Agreement sets out the funding accountabilities.

## **2 Supporting information**

2.1 Partnership arrangements under s.75 of the NHS Act 2006 are one of the recommended tools to integrate health and social care services. This tool is used when all parties agree that an integrated delivery model delivers better health and social care outcomes for the people being served.

2.2 The objective of the partnership arrangements with SPFT is to maintain and support the integration of the Local Authority social work service working within the Forensic Healthcare Service to secure joint provision and to eliminate any procedural difficulties or inefficiencies which may arise from separate arrangements and enhance the quality of the Service by improving continuity of care and co-ordination of professional work.

## **3. Conclusion and reasons for recommendations**

3.1 The Council has agreed revised partnership arrangements with SPFT for the provision of the Forensic Mental Health Service and has updated the terms of the 2010 s.75 Agreement to reflect this.

3.2 The revised s.75 partnership arrangements fit the strategic direction of travel the Council is taking with the integration of health and social care services to deliver better outcomes for the citizens and patients of East Sussex. The arrangement seeks to achieve better life outcomes for service users, whilst also achieving Best Value and delivering good professional social work practices. It is therefore recommended that the Lead Member approves the Council entering into the revised s.75 Agreement and delegates authority to the Director of Adult Social Care and Health to take any actions arising from the partnership arrangements including any future variations to the S.75 Agreement.

**KEITH HINKLEY**

**Director of Adult Social Care & Health**

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## **BACKGROUND DOCUMENTS**

None

DATED \_\_\_\_\_ 2018

**(1)EAST SUSSEX COUNTY COUNCIL**

**and**

**(2)THE SUSSEX PARTNERSHIP NHS FOUNDATION TRUST**

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**PARTNERSHIP AGREEMENT**  
**under Section 75 National Health Service Act 2006**  
**relating to**  
**delivery of the Local Authority statutory social care**  
**(Care Act, Mental Health Act, Mental Capacity Act and other relevant legislation)**  
**functions within the Forensic Healthcare Service**

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**East Sussex County Council**  
**County Hall**  
**St. Anne's Crescent**  
**Lewes**  
**East Sussex BN7 1UE**  
**ref. AS505.209/BF**

**This Agreement is made on the                      day of                      2018**

**BETWEEN**

**(1) EAST SUSSEX COUNTY COUNCIL** of County Hall, St Anne's Crescent, Lewes, East Sussex, BN7 1SW (the "**County Council**")

**AND**

**(2) THE SUSSEX PARTNERSHIP NHS FOUNDATION TRUST** of Swandean, Arundel Road, Worthing, West Sussex BN13 3EP (the "**Mental Health Trust**")

**WHEREAS**

- (a) The Parties have agreed to enter into this Agreement for the purpose of creating arrangements for the establishment and delivery of the Service so that it can be jointly provided to Service Users who are Ordinarily Resident within East Sussex.
- (b) The Parties have agreed to nominate officers to act on behalf of the Parties, who will monitor this Agreement, the performance of the Service, and report to the Steering Group ("**Nominated Officers**").
- (c) The County Council has agreed to delegate its powers for delivering its statutory functions under the Care Act, Mental Health Act and Mental Capacity Act to the Mental Health Trust. The Mental Health Trust has agreed to undertake on behalf of the County Council the discharge of its powers for delivering these statutory functions and the County Council has agreed to continue to commission the service for the period of this Agreement.
- (d) The objective of the Partnership Arrangements is to maintain and support the integration of the Local Authority social work service working within the Forensic Healthcare Service to secure joint provision and to eliminate any procedural difficulties or inefficiencies which may arise from separate arrangements and enhance the quality of the Service by improving continuity of care and co-ordination of professional work. The arrangement seeks to achieve better life outcomes for Service Users, whilst also achieving Best Value and delivering good professional social work practices in compliance with the County Council's governance standards as set out in its Constitution.



- (e) The Partnership Arrangement has been agreed pursuant to Section 75 of the Act and the Regulations and the Parties seek to deliver the aims and expectations of the Local Authority social work service within the Forensic Healthcare Service led by the needs of people Ordinarily Resident within East Sussex who may require the service.
- (f) Approval for the Partnership Arrangements were previously agreed on behalf of the County Council at a meeting of the Lead Member for Adult Social Care on 20 December 2010 and the Mental Health Trust at a meeting of the Executive Management Board. The Parties have each obtained approval to enter into this Agreement in accordance with their respective governance processes.
- (g) Consultation on the proposals for the Partnership Arrangement has been carried out with interested parties in compliance with the Regulations.
- (h) The Parties will facilitate or secure the accession to this Agreement of any successor to their Functions and thereby to the responsibilities and commitments which may pass from them in respect of commissioning and providing the Services. This will occur by agreement of the successors insofar as it does not happen by operation of law.

## **IT IS HEREBY AGREED AS FOLLOWS:**

### **DEFINITIONS OF TERMS USED IN THIS AGREEMENT**

For the purpose only of understanding the content of this Agreement (including the recitals) the following terms will have the following meanings.

<b>The Act</b>	The NHS Act 2006.
<b>After Care</b>	as defined in section 117 of the Mental Health Act.
<b>Agreement</b>	This Agreement between the Mental Health Trust and the Local Authority comprising these terms and conditions together with all Appendices attached to it.
<b>AHMP Function</b>	Adult Mental Health Professional as defined in the Mental Health Act.
<b>Best Value</b>	As defined in section 3 of the local government act 1999 and as referred to in the Care and support statutory guidance issued by the Department for Health and Social Care.
<b>Care Act</b>	The Care Act 2014.
<b>The Commencement Date</b>	1 <sup>st</sup> April 2018.
<b>The Client Group</b>	The collection of Service Users either receiving or eligible to receive the service.

<b>The County Council</b>	East Sussex County Council and its statutory successors.
<b>County Council Functions</b>	means: <ul style="list-style-type: none"> <li>- the Local Authority's statutory functions under the Care Act, and</li> <li>- the role of the Local Authority under the Mental Health Act and the Mental Capacity Act.</li> </ul>
<b>Data Protection Legislation</b>	as defined in clause 40.
<b>The Financial Year</b>	12 months commencing on 1st April of each year.
<b>The Functions</b>	The County Council's Functions and the Mental Health Trust's Functions under the Care Act, Mental Health Act and Mental Capacity Act and other relevant legislation in relation to the provision of the service to meet the needs of the eligible Service Users.
<b>Local Authority</b>	means East Sussex County Council.
<b>Mental Capacity Act</b>	The Mental Capacity Act 2005
<b>Mental Health Act</b>	The Mental Health Act 1983 (as amended - 2007);
<b>Non-Pooled Fund</b>	means a non-pooled fund comprising the County Council's financial contribution.
<b>Nominated Officers</b>	As defined in Recital B.
<b>The Mental Health Trust</b>	The Sussex Partnership Foundation NHS Trust, and its statutory successors.
<b>The Nominated Officers</b>	The group of officers appointed by the Parties which will act jointly to oversee the Partnership Arrangement with powers being delegated by the Parties to whom the Officers will be accountable.
<b>Ordinarily Resident</b>	means 'ordinarily resident' for the purposes of the Care Act.
<b>The Parties</b>	The County Council, and the Mental Health Trust and any statutory or legal successor to their respective functions.
<b>The Partnership Arrangements</b>	The arrangements provided for in this Agreement for the management and provision of the Service by the Parties.
<b>The Regulations</b>	The NHS Bodies and Local Authorities Partnership Arrangements Regulations S.I.2000 (617).
<b>The Service</b>	Provision of the County Council Functions including the provision of supervision for the purposes of After Care and delivery of the AMHP Function;
<b>The Service Managers</b>	The managers employed by the Mental Health Trust responsible for managing the Community Forensic Service and Care Act, Mental Health Act and Mental Capacity Act Service.

<b>The Services Team</b>	The staff employed by the Parties to provide the Service.
<b>Standards</b>	means the County Council's standards of service as set out in Appendix 4.
<b>The Steering Group</b>	The board that has responsibility for oversight of joint working arrangements between the Mental Health Trust and County Council with particular reference to this Agreement.
<b>Service User</b>	Means a person to whom the Council has a statutory duty to provide social care services.

## **ARRANGEMENTS FOR DELIVERING THE SERVICES**

1. With effect from the Commencement Date the Mental Health Trust shall be responsible for the delivery of the Local Authority's statutory duties in respect of the Care Act, Mental Health Act and Mental Capacity Act and other relevant legislation within the Forensic Healthcare Service ("County Council Functions").
2. The County Council shall delegate the County Council Functions in respect of the Service to the Mental Health Trust and shall, for the duration of this Agreement, second to the Mental Health Trust those staff in the Services Team employed by the County Council at the Commencement Date to provide the Service.
3. The Service will be configured so that any care or services which are the primary responsibility of the National Health Service shall be provided without charge to the Service User, but that charges may apply where appropriate to the Service User, at the point such a service becomes the responsibility of the County Council, such configuration being more fully defined in Appendix 1.
4. All services to meet Health and Social Care needs will have the Core Values of the Care Act, Mental Health Act and Mental Capacity Act as their guiding principles: Least Restrictive Intervention, Prevention, Maximising Independence, Personalisation, Choice and Control.
5. The Mental Health Trust shall comply with the Standards in the provision of the Services pursuant to this Agreement.

## **FUNDING AND FINANCIAL ARRANGEMENTS**

### **Funding the Partnership Arrangements**

6. The Parties agree that the funding required for the delivery of the Services shall be met through a Non-Pooled Fund. The Parties have agreed their financial contributions

required for delivering the Service for the Financial Year commencing on the 1st April 2018 as set out in Appendix 3, and shall determine their respective financial contributions for future Financial Years no later than 30 calendar days prior to the 1st April of each year of the operation of the Partnership Arrangements.

7. For 2018/19 all funding decisions must be agreed by the County Council's Care Act Assurance meeting, and for s.117 decisions through the s.117 meeting. For future Financial Years, such decisions shall be made in accordance with the County Council's scheme of delegations as in force at the time of such decisions.

### **Contributions to meet the costs of the Service**

8. The Mental Health Trust will provide or make available any central support services required to facilitate the Partnership Arrangements.
9. The County Council and the Mental Health Trust will make available to the Partnership Arrangements, so as to establish the Services Team, the posts referred to in Appendix 3.
10. The Parties respective financial contributions to the Partnership Arrangements are as set out in Appendix 3.

### **Responsibility for spending over or under budget**

11. Each Party shall be responsible for any over spending in relation to their agreed financial contributions.
12. Each Party shall be responsible for any such spend by or on behalf of that Party which is attributable to:
  - a. Maladministration or any commissioning or services practice which is contrary to that agreed between the Parties.
  - b. Negligence in the management or monitoring of agreed procedures.

### **The Exercise of Functions and Quality Assurance**

13. The Mental Health Trust will make arrangements for the Functions to be carried out through the Services Team but nothing in this Agreement will entitle the Services Team to make commitments or take decisions about any services or functions which are specifically excluded by the Regulations.

14. The Services Manager shall report to the Nominated Officers quarterly and annually as required by paragraph 7(4) of the Regulations in relation to the management of effective quality in the Service, in line with such performance management framework and by reference to such criteria for clinical governance as the Nominated Officers require.
15. The Parties will ensure that they each have in place appropriate procedures and protocols to ensure that the Service Managers are enabled to comply with the requirements of any regulations, standards of care and other obligations from time to time in force covering risk assessments, incident investigations and complaints and any regulations or guidance which must be complied with for the purpose of any statutory regulation of the Service.
16. The Mental Health Trust will provide such reports and information as are deemed necessary by the Steering Board to enable effective performance management of the Service.
17. The Mental Health Trust shall be entitled to enter into agreements and contracts necessary for the delivery of the Service in accordance with the scheme of delegation, standing orders and standing orders on contracts of the Mental Health Trust as may be in force at the relevant time PROVIDED THAT such agreement or contract has been approved by the County Council in accordance with its Constitution.

### **Outstanding Commitments**

18. In relation to those commitments, contracts or agreements in place at the Commencement Date and binding upon any of the Parties in respect of the Service all such commitments and agreements shall continue in place in accordance with their respective provisions, and the Parties will ensure that their respective obligations are met in the interests of securing the objectives of the Partnership Arrangements.

### **Employment of Staff**

19. On and from the Commencement Date, all members of the Services Team shall continue to be employed by the Party that employed them immediately prior to the Commencement Date. Any staff employed by the Council in connection with the Services shall, with effect from the Commencement Date, be seconded to the Mental Health Trust for the duration of the Partnership Arrangements.

20. In the event that any of the posts listed in Part B of Appendix 3 become vacant, the successors to any such posts shall be employed by the Mental Health Trust.
21. The human resources procedures applicable to the Services Team shall be those of their respective employer.
22. Where a member of the Services Team employed by one Party (the "**Manager**") is the manager of a member of staff employed by the other Party (the "**Managed Person**"), the Manager is authorised by virtue of the Partnership Arrangements to give instructions to the Managed Person and all appropriate management action in respect of the Managed Person subject to the terms of the relevant personnel procedure and the agreed joint HR protocol for the management of staff set out in Appendix 2 of this Agreement.

### **Complaints**

23. Any complaint relating to the Functions or the delivery of the Service shall be dealt with in accordance with one of the complaints procedures adopted by the Parties. The preferred procedure shall be that used by the Party identified as the subject of the complaint or whose staff, policies, action or decision are the subject of the complaint. The person with responsibility for handling the complaint and reporting to the Service Managers shall be identified in accordance with the relevant procedure. In the case of any doubt or where more than one Party is the subject of a complaint, the Service Managers and the County Council shall agree which procedure to use to process the complaint. If agreement cannot be reached, this will be referred to the Nominated Officers for resolution.

### **Term, Termination and Dispute Resolution**

24. This Agreement commences on the Commencement Date and, subject to earlier termination in accordance with the terms of this Agreement, shall continue for a period of three (3) years ("**Initial Period**"). The Parties shall meet not later than three (3) months prior to expiry of the Initial Period to review the working of this Agreement.
25. The Parties may, by written agreement following the review process set out in clause 24, extend this Agreement beyond the Initial Period, provided that each such extension shall be for a maximum of three (3) years ("**Extension**"). Save where expressly agreed otherwise by the Parties, any Extension shall be on the terms set out in this Agreement. If the Parties do not agree an Extension pursuant to this clause 25, this Agreement shall automatically expire at the end of the Initial Period.

26. Any of the Parties may at any time terminate this Agreement with less than 12 months' notice but in no case less than six months by giving written notice if any other Party:
- 26.1 does not comply with one or more of its obligations under this Agreement and continues not to comply after receiving written notice from the other Party giving details and an opportunity for the Party receiving the Notice to explain their actions and to invoke the procedure set out in clause 22; or
  - 26.2 cannot fulfil its obligations under this Agreement without acting ultra vires or being in contravention of any law or any guidance from any Secretary of State and where the parties are unable to agree a modification or variation to this Agreement which would enable the Party to comply with its obligations in accordance with law and guidance; and
  - 26.3 in either case the Parties shall agree the shares of financial responsibility for any commitments relating to the Service, such agreement being concluded and put into effect before the termination shall be allowed to take effect.
27. In the event that this Agreement is to terminated in accordance with clause 26, the Parties agree to co-operate to ensure an orderly wind down of their joint activities. Both Parties shall be responsible after termination for winding-up outstanding affairs relating to the Partnership Arrangements.
28. In the event of any dispute between the Parties arising out of the construction of this Agreement or any of its provisions such dispute shall be referred in the first instance to the Director of Forensic Services for the Mental Health Trust and the Head of Service for the County Council. If not resolved, such dispute shall be referred to the Director of Adult Social Care and Health of the County Council and to the Chief Executive of the Mental Health Trust.
29. Failing resolution using the procedures under clause 28, the matter may be referred at the option of either of the parties to mediation in accordance with the model mediation procedure for the time being of the Centre for Effective Dispute resolution.

### **Management of this Agreement**

30. The Parties agree that responsibility for managing, planning and monitoring the Partnership Arrangements, the performance of the Service and for overseeing the implementation of this Agreement shall be discharged by Nominated Officers of the County Council and of the Mental Health Trust.

31. The Nominated Officers will agree their own arrangements for meetings and decisions and shall apply the complaints procedures as referred to in clause 23, and receive or deliver reports as provided for in this Agreement. It shall otherwise be accountable to the Parties through the Steering Group for the aims and objectives of the Partnership Arrangements.
32. The Steering Group, under the administration of the County Council, will meet in March each year for the duration of this Agreement.
33. The Nominated Officers comprise:
- The County Council: Operations Manager – Mental Health
  - The Mental Health Trust: Professional Lead for Forensic Social Work
34. The Steering Group comprises:
- The County Council:  
Assistant Director, Adult Social Care, Operations  
Head of Service – Mental Health  
Supported by a finance officer and a performance officer
  - The Mental Health Trust:  
Chief Operating Officer  
Deputy Chief Operating Officer  
Supported by a finance officer and a performance officer

## **Review**

35. This Agreement shall be reviewed by the Parties in a form and by such representatives as may be agreed, initially one year after the Commencement Date and then annually until the termination of this Agreement in accordance with its provisions. All reviews shall be held within twelve (12) months of each other.
36. The terms and conditions of this Agreement may only be varied by the written agreement of the Parties.

## **Notices**

37. Any notice to be served by any Party in accordance with the terms of this Agreement shall be served by pre-paid recorded delivery post addressed to the address of the Party shown at the head of this Agreement (or such business address as shall be notified by such Party after the commencement of this Agreement) or by electronic mail and shall be deemed to have been received by the addressee after forty-eight



hours of such posting or twenty-four hours of electronic mail transmission. Notices to the County Council should be marked for the attention of the Director of Adult Social Care and Health. Notices to the Mental Health Trust should be marked for the attention of the Chief Executive.

### **Assignment or Transfer**

38. This Agreement and any rights and conditions contained in it may not be assigned or transferred by either Party without the prior written consent of the other Party except to any statutory successor to the relevant Functions.

### **Law and Data Policy and costs of Agreement**

39. This Agreement shall be governed by the law of England.
40. The Parties agree to provide or make available to each other sufficient information concerning their own operations and actions and concerning client, patient and Service User information (including material affected by the Data Protection Act 1998 and / or the General Data Protection Regulation or such other legislation as relates to the protection of personal data in force at the relevant time ("**Data Protection Legislation**")) as to enable the efficient operation of the Services and actions covered by the Partnership Arrangements. The Parties shall use best endeavours to enter into a formal data sharing agreement in respect of any personal data to be shared pursuant to this Agreement and shall thereafter comply with the terms of such data sharing agreement.
41. Each Party shall have in place a policy and procedure for compliance with the provisions of the Data Protection Legislation and the Freedom of Information Act 2000 and shall co-operate with the other Party and respond in a timely way to any request received from any other Party so as to enable them to comply with their obligations under those Acts.
42. Each Party shall pay its own costs and expenses incurred in connection with the implementation of this Agreement.

### **No Partnership (Save to the Extent of this Agreement)**

43. No Party to this Agreement shall act as agent of or have the power or authority to make any commitment on behalf of any other Party or compromise the credit of the other Party in any way nor shall this Agreement constitute a legal partnership between the Parties save to the extent that is necessary to give effect to the

arrangements for delegation of respective Functions and each Party shall be responsible for its own commitments under this Agreement.

### **Confidentiality**

44. Except as required by law, each Party agrees to keep confidential at all times during the continuance of this Agreement and after its termination all documents, data or papers which it receives or otherwise acquires in connection with the Service and or this Agreement and which are marked "Commercial – in confidence" or such other similar words signifying that they should not be disclosed, save in so far as such designation of any data cannot lawfully be maintained in compliance with any obligation referred to in Clause 41.
45. Prior to the issue of any press release about matters relating to these Partnership Arrangements or making any contact with the press on any issue attracting media attention the Chief Executive of the Mental Health Trust and the Director of Adult Social Care and Health of the County Council (or such persons as they shall each designate) will consult with each other to agree a joint strategy for the release or handling of the issue. The provisions of this clause are subject to any alternative arrangements that the Parties may agree for press relations in particular situations.

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

46. 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.

### **Entire Agreement**

47. This Agreement, the Appendices and the documents otherwise referred to in it contain the whole agreement between the Parties relating to the Partnership Arrangements and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter including the predecessor to this Agreement dated 1 April 2010.

**EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL OF  
EAST SUSSEX COUNTY COUNCIL  
IN THE PRESENCE OF:**

.....

**Authorised Signatory**

.....

**EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL OF  
THE SUSSEX PARTNERSHIP  
NHS FOUNDATION TRUST  
IN THE PRESENCE OF:**

.....

**Authorised Signatory**

.....

.....

**Authorised Signatory**

.....

## **Appendix 1                      Statutory Social Care Responsibilities**

- Assessments, re-assessments and eligibility as required by Section 9 of the Care Act 2014
- Regular reviews of Care and Support Plans as per Section 27 of the Care Act 2014.
- Assessments of Carer's Needs for Support as per Section 10 of the Care Act 2014.
- Act as an AMHP to help meet the Local Authority's duty to provide AMHP function.
- Section 117 of the Mental Health Act Discharge Planning.
- Act as a BIA (Best Interest Assessor) under the Mental Capacity Act 2005.
- Social Supervision under Part 3 Mental Health Act 1983 and provide Social Supervision Reports to Ministry of Justice.
- Mental Health Tribunal / Facilities Reports.
- Undertake Safeguarding enquiries under section 42 of The Care Act.
- Address Child Protection in partnership with the County Council's Children's Services Department.
- Work in accordance with the Mental Health Act Code of Practice (2015) and the Health and Care Professional Council (or any successor body) Code of Conduct (2012) and successor regulatory frameworks for social work in all settings.

**Appendix 2**

**Secondment Protocol**

**Appendix 3**

**Financial Protocol**

## Appendix 4                      Standards

### Section 75 Productivity Calculator

Currently have 105 East Sussex Clients under the Forensic Umbrella; this includes inpatients in Sussex Partnership Beds, Inpatients in Out of Area Beds and Community Clients. This can obviously fluctuate.

1. MHA Assessments:  $18 \times 8 = 144$  hours a month (1728hrs a year)
2. BIA Work:  $3 \times \text{BIA's in team} = 12$  weeks a year (444hrs a year)
3. Safeguarding Activity = 10 hours per Section 42 enquiry, 4 hours for non Section 42 enquiries . Number to be determined
4. Placement Reviews = 36 reviews a year (on average) 8 hours a review = 288 hours a year
5. Care Act/117 Assessments = 77 patients  $\times$  1-2 times a year 8 hours a review = up to 1232 hours a year
6. Social Supervision = 112 reports a year = 37 reports per Social Worker = I think we said 1344 a year including visits, report writing, any extra correspondence with MOJ
7. MHRT = Social Circumstances Report/Facilities Reports = average 62 reports a year  $\times$  10 hours to complete a report = 496 hours
8. Attendance at MHRT's = 62 a year  $\times$  4 hours = 248 hours a year
9. Training/Supervision – monthly supervision  $\times$  1 hour  $\times$  3 social workers = 36 hours a year; training 18 days a year  $\times$  7.5  $\times$  3 social workers = 405 hours a year

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## **STAFF SECONDMENT PROTOCOL: NATIONAL HEALTH SERVICES ACT 2006 PARTNERSHIPS**

### **ADULT SOCIAL CARE EAST SUSSEX**

#### **SECONDMENT OF STAFF EMPLOYED BY EAST SUSSEX COUNTY COUNCIL TO SUSSEX PARTNERSHIP NHS FOUNDATION TRUST**

## **1. INTRODUCTION**

- 1.1 Throughout this Protocol the following terms and definitions are used:

<b>Employer</b>	The employer of the employee(s) prior to any secondment .
<b>Host</b>	The organisation to which the employee is seconded .
<b>Parties</b>	The Host and the Employer together.
<b>Employee</b>	The individual seconded from the Employer to the Host.
<b>Agreement</b>	The document outlining the arrangements for the Parties to work together under Section 75 National Health Service Act 2006.

### **Individual Secondment Agreement**

The document which details the arrangements for secondment of the individual employee.

- 1.2 The basis under which any secondment takes place is that each Employee continues in the employment of the Employer or its statutory successor. At the expiry of the secondment, the Employee shall return to a substantive post or shall be entitled to consideration under the Employer's "Managing Change" suite of policies. Existing terms and conditions remain as set out in the individual Statements of written Particulars of Employment of the Employer.
- 1.3 Any changes to this Protocol or an Individual Secondment Agreement which will impact on existing staff will require the process outlined in the County Council's Managing Change suite of policies to be followed.
- 1.4 As a consequence of an Agreement entered into between the Parties, employees of the Employer shall provide Social Care Services whilst working for the Host.

## **2. PURPOSE OF THE PROTOCOL**

- 2.1 This Protocol is to be used by the Parties to an Agreement. This Protocol will be attached as an appendix to the Agreement if the secondment of staff is provided for therein. It sets out the principles and procedures which the Parties shall use wherever it is agreed that there shall be any secondment of staff between the Parties to facilitate partnership arrangements.

- 2.2 The secondment of staff may involve full or part-time employees. The Employee's contract of employment continues in force with the current Employer, although management lines of accountability, supervision arrangements and other day to day management procedures will be amended in accordance with Section 8 of this Protocol.
- 2.3 Any changes to aspects of the job description or other contractual provisions will be agreed with the Employer. In this event, changes would only take place following adequate consultation and with agreement of the Employee concerned. Negotiation and consultation with the relevant recognised Trade Union may also be required.
- 2.4 Where the changes in the job description could have implications on the grading of the job, the Employer's job evaluation scheme will be utilised.
- 2.5 Each secondment of an individual Employee shall only take effect after the completion of an Individual Secondment Agreement detailing the effects of the secondment upon the individual contract of employment and as provided for in this Protocol.

### **3. PARTIES TO THE SECONDMENT PROTOCOL AND AGREEMENTS**

- 3.1 The Parties to an Agreement shall incorporate this Protocol as an appendix to that Agreement and the Protocol shall only be amended by agreement between the Parties as provided for in the Agreement. To the extent that such changes shall affect the terms and conditions of any Employee such Employees and their recognised Trade Union shall be consulted in respect of any changes to this Protocol, as described in paragraph 1.3. Individual Secondment Agreements are tripartite agreements involving the Employer, the Host and the Employee.

### **4. THE CONTRACT OF EMPLOYMENT**

- 4.1 The Employees existing contract of employment shall continue in force for the period of the secondment, together with all current terms and conditions as amended from time to time by the Employer following negotiation and consultation with the recognised Trade Union.
- 4.2 The Employer shall retain the responsibility for the issuing of statements of terms and conditions of employment and other associated documentation to seconded Employee.

### **5. TERMS TO BE INCLUDED IN THE INDIVIDUAL SECONDMENT AGREEMENT**

- 5.1 The Individual Secondment Agreement shall make provision for the following matters:
  - a. Reference to the contract of employment and the Employer's policies and procedures.

- b. The extent to which any changes to the contract of employment are made and agreed between the Employer and Employee as detailed in paragraphs 2.2-2.4.
- c. The location of the Employee following secondment.
- d. The period of the secondment.
- e. The name or post holder and / or job title of the Employee's direct line manager.
- f. Where required, a named Practice or Professional Supervisor will be notified in due course.
- g. Details of any additional provisions or changes affecting accountability, performance management and supervision.
- h. A statement of the effect on the Employee on the termination of the Agreement to include any redundancy waiver against the Host as referred to in this Protocol.
- i. Provision for confidentiality and financial propriety conditions in so far as they may be affected by the secondment.
- j. An account of arrangements for making changes to the Individual Secondment Agreement.

## **6. TERMINATION OF INDIVIDUAL SECONDMENT AGREEMENT / CONTRACT OF EMPLOYMENT OR AGREEMENT**

- 6.1 The individual Secondment Agreement will automatically terminate on the termination of the Contract of Employment. Upon such termination the Employee has the responsibility to return to the Host all data, documents, goods and / or projects relating to the management and delivery of their work that were either held or created by them during the secondment period.
- 6.2 In the event that the relevant Agreement shall come to an end, terminating the secondment, the contract of employment shall be unaffected and no claim of redundancy or other claim relating to the ending of any contract of employment may be made against the Host. The responsibility for the continuing employment of the Employee remains with the Employer. The Employer's Managing Change suite of policies will be applied and there will be no impact on the continuity of employment of the Employee.

## **7. ACCOUNTABILITY**

- 7.1 The Employee shall work and discharge their responsibilities as employees within the Host as integrated members of the Host's team(s). They will be managerially accountable to Managers within the Host as provided for in the Individual Secondment Agreement. This will include accountability for their standards of practice, management of their workloads and day to day operation of the service. The Host and the Employer will co-operate to ensure Employees

are provided with the information, training and support needed to enable this to operate.

## **8. SUPERVISION AND PERFORMANCE MANAGEMENT**

- 8.1 All Employees will receive appropriate support and supervision. The Host will, as soon as practicable following the secondment, introduce a Supervision and Performance Management framework, following appropriate consultation with the relevant recognised Trade Union. Seconded Employees will continue to receive supervision and performance management in line with the requirements of any existing NHS Trust Supervision Policy until replaced.
- 8.2 All seconded Employees will receive their supervision and performance management from their seconded Team Manager or their identified Line Manager in the Host. Where the Line Manager is from a different professional background, the Employee will have a named person, who holds a recognised relevant professional qualification, to act as a professional mentor and provide practice supervision. This person will support and advise on professional issues and workload implications and support the Line Manager and Employee in the Performance Review / Management process.
- 8.3 Identified professional supervisors will be designated to provide support and advice on professional development to Employees within the Host, regardless of whether or not the Employee is a member of their immediate team. In addition, professional support and supervision from designated persons within the Employer may be provided to Social Care Employees so as to ensure that key policy and legislative requirements continue to be met by Employees within these services. Professional development needs, identified through the Supervision and Performance Management and personal development plan process, will be fed back to a nominated person within the Employer, and will be met by the Employer.
- 8.4 The functional training and development needs of all seconded staff for the performance of the tasks required, will be identified by the Host organisation, and will be met by its training and development plans. Professional development needs and training will continue to be met by the Employer. The Employer and Host will co-operate in developing and ensuring provision of training needs identified through the Employee's personal development plan.
- 8.5 The Employer and the Host shall develop and maintain arrangements for monitoring, reviewing and providing all training and development needs of all seconded employees. The Employer will fund within available resources professional development costs. Costs of functional training and development needs will be met by the Host organisation.

## **9. CONFIDENTIALITY AND FINANCIAL PROPRIETY**

- 9.1 All seconded Employees shall be informed of and be bound by the rules on the maintenance of the confidentiality of documents and information acquired, produced or to which access is gained during the course of employment as are

applied to the employees of the Host. This obligation shall continue to bind the Employee after the ending of the secondment

- 9.2 Where a seconded Employee is responsible for the management of money, accounts, bills, or any other aspect of work concerning financial matters they will be informed of and be bound by the Standing Financial Instructions, standing orders on contracts, staff guidance and associated procedures of the Host and the Employer.
- 9.3 In undertaking such duties seconded Employees should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and the achievement of value for money. Policies and Rules adopted by the Employer and the Host will apply. Any such documents shall be agreed between the Employer and the Host.
- 9.4 The Parties agree to protect any personal data held on seconded Employees and otherwise comply with their respective obligations in accordance with the Data Protection Act 1998, the General Data Protection Regulation and such other legislation as may be enacted to protect personal data.

## **10. PAYMENT OF SALARIES AND EXPENSES**

- 10.1 Payroll Services including tax and pension contributions and claims for expenses for seconded Employees will remain the responsibility of the Employer. The Parties may consider changing these arrangements following consultation with Employees and their recognised Trade Union.

## **11. WORKFORCE INFORMATION**

- 11.1 Workforce planning information regarding the seconded Employees will continue to be collected and retained by the Employer. To the extent that the Host may require data concerning seconded Employees in order to support the planning and delivery of services the Employer shall, in accordance with such format and deadlines as are agreed between the Parties, provide this information.

## **12. REPLACEMENT OF SECONDED STAFF**

- 12.1 From the commencement of the secondment arrangements the provision of administrative services to support the recruitment and selection process of employees to posts relating to seconded Employees will be undertaken jointly by the Parties, all costs being carried by the Employer save those relating to the time given to the process by employees of the Host.
- 12.2 The recruitment procedures for the appointment of seconded roles shall be those of the Employer. The Parties may agree arrangements to change or align their arrangements, in consultation with the relevant recognised Trade Union.
- 12.3 Appointment Panels for these posts will comprise appropriately qualified / experienced representatives from the Employer. To be appointed, applicants must be assessed as competent to meet the minimum professional standards as defined in the job specification and as judged by the member(s) of that profession on the Appointment Panel.

- 12.4 Any agreement to fundamentally change the title or content of a vacant post, would be agreed by the Employer in consultation with the Host and with the recognised Trade Union in accordance with the Employer's Managing Change suite of policies.

### **13. DISCIPLINARY AND APPEALS PROCEDURES**

- 13.1 The Disciplinary Policy and Procedure of the Employer shall apply for the period of the secondment. The Parties undertake to ensure that their respective officers fully co-operate in any disciplinary matters relating to either directly employed or seconded staff, including the provision of such information as may be required by the Employer and attendance at any hearing provided for in the relevant procedures.

### **14. GRIEVANCES AND COMPLAINTS**

- 14.1 A grievance raised by seconded Employees relating to practice, procedure, management or supervision within the Host will be dealt with informally in the first instance (i.e. up to and including the level at which the matter is to be dealt with by the line manager) by the Host but otherwise, in accordance with the Employer's grievance procedures. Should the grievance go beyond the informal stage the matter will be dealt with by the Employer. The Host shall ensure that its officers fully co-operate with such processes, including the attendance at any hearing as may be provided for in those procedures.
- 14.2 A grievance brought by seconded Employees related to their terms and conditions of employment will be dealt with by the Employer.
- 14.3 All seconded Employees shall have access to a confidential reporting procedure (whistle blowing policy) maintained by the Host, as well as to that of the Employer.

### **15. MANAGEMENT OF CHANGE**

- 15.1 In the event that seconded Employees are affected by organisational change within either of the Parties, the seconded Employees shall be treated in accordance with the Employer's Managing Change suite of policies.
- 15.2 Seconded Employees will have the right to return to a substantive post if the Agreement under which they are seconded comes to an end. If the substantive post is to terminate or is placed at risk during the secondment period, the Employer's Managing Change suite of policies will be complied with, i.e. consultation will take place with the recognised Trade Union and the Employee and his / her representative and suitable alternative employment will be sought.

### **16. INSURANCE ARRANGEMENTS**

- 16.1 The Parties shall ensure that suitable public liability and employer's liability insurance is in force to cover the secondment arrangements and any additional liabilities associated with the arrangements and any liabilities the Parties need to address during the period of the Agreement.

## **17. CONFLICTS OF INTEREST**

- 17.1 Seconded Employees shall declare and seek agreement from both their line manager and the Head of Service within the Employer, with regard to any interests, financial or otherwise, which may give rise to conflict of interests during the course of their secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and any connection with a voluntary or other body contracting for services connected with the Parties.

## **18. REVIEW**

- 18.1 Subject to the provisions of the Agreement, this Protocol shall apply for the period of the Agreement to which it is attached. It will be the subject of termination, review, amendment or renewal in accordance with the provisions of that Agreement, and appropriate consultation with the relevant recognised Trade Union will take place.

Signed on behalf of the Parties

**Signed:** (for ESCC)

**Print name:** **Date:**

**Signed:** (for Sussex Partnership NHS Foundation Trust)

**Print name:** **Date:**

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<b>Part A - Posts covered by ESCC</b>					
<b>Name</b>	<b>Post</b>	<b>WTE</b>	<b>Grade</b>	<b>Total Cost</b>	<b>Employer</b>
Contract 1	Senior Practitioner	1.00	SS13-36	54,000	ESCC
Contract 2	Senior Practitioner	1.00	SS13-36	54,000	ESCC
Contract 3	Senior Practitioner	0.41	SS13-36	22,140	ESCC
		<b>2.41</b>		<b>130,140</b>	
<b>Part B - Posts covered by SPFT</b>					
<b>Name</b>	<b>Post</b>	<b>WTE</b>	<b>Grade</b>	<b>Total Cost</b>	<b>Employer</b>
Contract 4	Professional Lead for Care Act Social Work (Forensic)	1.00	GREENR-1	57,900	ESCC
Contract 5	Senior Practitioner	1.00	SS13-36	54,000	ESCC
Contract 6	Senior Practitioner	1.00	SS13-36	54,000	ESCC
Contract 7	Senior Practitioner	1.00	SS13-36	54,000	ESCC
Contract 8	Senior Practitioner	0.82	SS13-36	44,280	ESCC
Contract 9	Senior Practitioner	0.61	SS13-36	32,940	ESCC
		<b>5.43</b>		<b>297,120</b>	
<b>Notes</b>					
1. ESCC to recharge SPFT 100% of the cost of the posts covered by SPFT but employed by ESCC.					
2. ESCC to recharge SPFT 100% of all travel and accommodation costs for all seconded staff.					

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