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TO: West Gloucestershire Primary Care Trust Board

FROM: Jackie Huck, Director of Service Development, Cheltenham & Tewkesbury PCT

DATE: 11th May 2006

SUBJECT: FOUNDATION TRUST CONTRACT WITH GLOUCESTERSHIRE PCTs

1.0 PURPOSE

- 1.1 To seek Board approval for the Primary Care Trust (PCT) to enter into a legally binding Foundation Trust contract with Gloucestershire Partnership NHS Trust from July 2006.

2.0 BACKGROUND

- 2.1 Foundation Trusts are legally distinct organisations which continue to be part of the NHS, but are no longer directly accountable to the Secretary of State. Foundation Trusts are instead regulated nationally by an Independent Regulator (Monitor) and are performance managed by the PCTs with whom they now have legally binding contractual obligations. Foundation Trusts have a number of additional freedoms, for example in relation to raising capital funding. They are governed by a Board of Directors and have a Governing Board on which local people and staff are represented.
- 2.2 The Primary Care Trusts (PCTs) are currently in the process of agreeing the contract with the Gloucestershire Partnership NHS Trust which anticipates gaining Foundation Trust status during the current financial year (2006/7). The Trusts overall annual contract value is £60.2m.
- 2.3 Under the PCT's Accountability Framework (Reserved Decisions) the Board is required to ratify 'non-NHS' contracts with a value greater than £100,000 over three years. Although Foundation Trusts are very much part of the NHS, given the commercial nature and value of the contract, the proposed Foundation Trust contract with Gloucestershire Partnership NHS Trust is presented here for Board approval.
- 2.4 Completion of the 'activity and resources' schedule (schedule 2 of the contract) with Gloucestershire Partnership NHS Trust has been key to the finalisation of the PCTs Local Delivery Plan and financial planning assumptions for 2006/7. The schedule includes planned activity against all agreed mandatory services included within the block contract.
- 2.5 The PCTs originally requested that GPT took on the management of private placements as a pre-condition to their FT status. PCTs later agreed to decouple these issues and the transfer of the management of private placements is now being pursued as part of the ISIP work programme.

3.0 LOCAL DEVELOPMENT OF CONTRACT DOCUMENTATION AND TERMS

- 3.1 The Foundation Trust model contractual documentation has been provided by the Department of Health. Local amendments and more detailed supporting schedules have been developed by a county group on which each of the 3 PCTs have been

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represented and Cheltenham & Tewkesbury PCT has taken the lead co-ordinating role. This has enabled a single set of documentation to be developed, with each PCT agreeing to a multiple signatories approach to a single contract with the Gloucestershire Partnership Trust.

- 3.2 The services currently provided by the Partnership Trust and contributed by Gloucestershire County Council (GCC) under Section 31 of the Health Flexibilities Act will continue to be contracted between GCC and GPT and will not form part of the contract between GPT and the Gloucestershire PCTs.
- 3.2 The full draft Foundation Trust contract with Gloucestershire Partnership NHS Trust is available for review.

4.0 LEGAL ADVICE

- 4.1 The Department of Health has developed contracts for all Foundation Trusts and has used its experience of previous waves to refine the draft documentation for Mental Health Services. Amendments have been made to the draft documentation nationally in response to feedback from a number of legal professionals and stakeholders before issuing the model contract. Gloucestershire have used this model contract.
- 4.2 The Department of Health has established a contract with Dickinson Dees to provide strategic legal advice for NHS Trust providers applying for Foundation Trust status. It was agreed locally to rely on this legal review in finalising the contract documentation for Gloucestershire.

5.0 GOVERNANCE

- 5.1 Under the PCT's Standing Orders, and under the terms of the Foundation Trust contract, the Chief Executive is required to nominate an officer with delegated authority for managing the contract, including approving in year contractual amendments, notification of service variations and dealing with performance issues. The Director of Service Development (Cheltenham & Tewkesbury) as lead commissioner for Mental Health Services, will fulfil this role on a substantive basis, with the Assistant Director, Adult Mental Health Services, fulfilling the role on an acting basis until the end of September 2006.
- 5.2 It has been agreed that monthly Director-level and Service lead meetings, supported by the work of the county's Service Level Agreement information group will be held with Gloucestershire Partnership Trust as part of formal performance management arrangements.
- 5.3 The achievement of relevant performance targets and financial forecasts will continue to form part of regular reports to the Board.
- 5.4 Given the timescales associated with entering Foundation Trust contracts which the PCT will be required to complete in 2006/07, it is proposed that the Board formally consider delegating responsibility for the agreement and signing of the contract to the PCT Chief Executive. Delegation would be subject to a sound scheme of delegation being finalised between the Gloucestershire PCTs where 'lead' commissioning arrangements are maintained. As mentioned above, this work is currently in progress through the County Strategic Commissioning Group.

6.0 KEY COMPONENTS AND IMPLICATIONS OF THE FOUNDATION TRUST CONTRACT

6.1 Payments – Monthly payments will be made automatically based on one twelfth of the annual contract value, which will be amended where necessary in line with any revised projections based on monthly activity reports.

6.2 Financial Risk and Demand Management

6.2.1 As Payment by Results cannot yet be introduced into Mental Health FTs, commissioners and providers have been asked to introduce two other mechanisms:

- Minimum Income Guarantee
- A reduction in the elements covered by Block contracts.

6.2.2 Minimum Income Guarantee (MIG)

The aim of the MIG is to give the FT a degree of certainty about the minimum level of income it can expect and this determines whether or not it can be considered as a going concern. There is not a template for a MIG and due to the limited numbers of Mental Health Trusts progressing to FT status, there are no working examples available. It is important for PCTs, however, to ensure that any risk is shared appropriately.

The two key issues to be taken into account are as follows:

- i. It has been necessary to assume a certain rate of inflation. If PCTs assume a rate of inflation that is greater than the actual funded level of inflation, then the PCTs could find themselves paying more than they are funded for.
- ii. The PCTs require a degree of flexibility in order to make the necessary service changes in order to develop the service. Consequently, it is felt that a reduction to the baseline income should be included in the minimum guarantee, thus ensuring that there is some scope for introducing service changes if required.

6.2.3 Moving Away From Block

6.2.3.1 Block contracts define a level of planned activity against which actual activity is monitored monthly. However, funding is neither increased nor decreased in year if actual levels of activity rise above or fall below planned levels.

6.2.3.2 'Monitor' consider block contracts to be one of the most significant risks faced by potential FTs and thus expect a process of reducing the number of contractual elements covered by such arrangements.

6.2.3.3 It has been agreed that GPT and the PCTs will consider introducing variable contracts in relation to three services:

- Low Secure Services (Montpellier Unit)
- Learning Disability Rehabilitation Services (Hollybrook)
- Substance Misuse Inpatient Services (Seizencote Ward)

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- 6.2.3.4 These were considered to be three of the services which are most appropriate as a variable contract, based on information availability and on the characteristics of the service (e.g. low volatility, easily defined). Consequently, appropriate contract models are being developed which can demonstrate movement to a more appropriate base but without shifting undue risk to PCTs. It should be noted that arrangements such as these will be operated on a 'shadow' basis before being introduced as a permanent change. Board's approval will be sought prior to any such agreement.
- 6.3 Service Variation – The contract term has initially been set for three years. Either party may terminate the whole of the agreement voluntarily by giving no less than 12 months written notice to the other party given to expire at the end of the second full contract year. Contract variations will be agreed in line with a prescribed process between nominated contractual lead managers. Should either party introduce a change in practice without prior agreement, they will be responsible for reasonable costs incurred by the other party. Twelve months notice is required for any variation in the contract. The spirit of the agreement is that discussions on plans to introduce change will be discussed at the earliest opportunity to enable joint consideration and planning.
- 6.4 Quality – A specific schedule has been included to support contractual obligations in relation to service quality, and is supported by detailed monitoring requirements. Many of the requirements developed locally have been informed by issues identified through discussions with professional groups and commissioning service leads. A range of operational policies and service specifications are under development to further outline the standards of care expected within the contract.
- 6.5 Dispute Resolution – Given the commercial nature of the contract, and that disputes might ultimately be taken through the legal system, the contract includes formal requirements for dispute notification and management, mediation and arbitration to encourage local resolution wherever possible.

7 RECOMMENDATIONS

Members are asked to:

- 7.1 note the requirement to enter into legally binding contracts with NHS Trusts awarded Foundation Trust status
- 7.2 note the process undertaken locally to develop a contractual agreement with Gloucestershire Partnership NHS Trust
- 7.3 note that the introduction of variable contracts will be brought back to Boards for decision
- 7.4 delegate the signing of the contract to the Chief Executive of the PCT