

**Dated TBC at signing and sealing**

**LUTON BOROUGH COUNCIL**

**and**

**BEDFORDSHIRE LUTON and MILTON KEYNES NHS  
CLINICAL COMMISSIONING GROUP**

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**PARTNERSHIP AGREEMENT RELATING TO THE  
COMMISSIONING AND PROVISION OF HEALTH AND  
SOCIAL CARE SERVICES UNDER SECTION 75  
NATIONAL HEALTH SERVICE ACT 2006**

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We acknowledge use of Bevan Brittan LLP’s *Better Care Fund Pooled Budget Framework Agreement*.

**THIS AGREEMENT** is made on

day of

2021

## **PARTIES**

- (1) **Luton Borough Council** (the "**Council**")
- (2) **BLMK NHS CLINICAL COMMISSIONING GROUP** (the "**CCG**")

## **CONTACT DETAILS OF OFFICERS RESPONSIBLE FOR THE PARTNERSHIP**

	<b>Luton Borough Council</b>	<b>BLMK NHS Clinical Commissioning Group</b>
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## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the Borough of Luton.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the Borough of Luton.
- (C) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions which are delegated to the other Partner.
- (D) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through integrated provision and or lead or joint commissioning arrangements. It is also the means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (E) The aims and benefits of the Partners in entering in to this Agreement are to:-
  - i) improve outcomes for the population of Luton;
  - ii) improve the quality and efficiency of the Services;
  - iii) meet the National Conditions and agreed local strategies, including promoting the

integration of NHS health related functions and Council health related functions;

- iv) promote and facilitate the involvement of service users and carers in the Local Healthwatch and in the co-production of the Services;
- v) make more effective use of resources through the establishment and maintenance of pooled funds for revenue expenditure on the Services;
- vi) ensure that commissioning decisions are informed by the Populations Wellbeing Strategy, Luton 2040 and Joint Health and Well-being Strategy (Arrangements and Process Rules) of the Health and Wellbeing Board;
- vii) make more effective use of resources by integrating delivery of specific Services, which are under this agreement, managed by the Council;
- viii) additional aims for specific services are set out in the Schedules for the Services.

- (F) The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (G) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z3 of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

## **1 DEFINED TERMS AND INTERPRETATION**

- 1.1 In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:-

**1998 Act** means the Data Protection Act 1998;

**2000 Act** means the Freedom of Information Act 2000;

**2004 Act** means the Children Act 2004 (as amended from time to time);

**2004 Regulations** means the Environmental Information Regulations 2004;

**2006 Act** means the National Health Service Act 2006 (as amended from time to time) and its Regulations;

**2007 Act** means the Mental Health Act 2007;

**2010 Act** means the Equality Act 2010 and such other legislation as shall be in force in respect thereof from time to time;

**2014 Act** means the Children and Families Act 2014;

**Health and Social Care Act 2014** means the Health and Social Care Act 2014;

**A Healthier Luton** means the Commissioning Strategy of the CCG;

**Affected Partner** means, in the context of Clause 0, the Partner whose obligations under this Agreement have been affected by the occurrence of a Force Majeure Event;

**Agreement** means this agreement including its Schedules and Appendices;

**Aligned Commissioning** means the commissioning of a service by either of the Partners, which is closely related to the service commissioned through the pooled budget. Funding streams remain separately managed despite spending and performance being jointly monitored. For the avoidance of doubt, an aligned commissioning arrangement does not involve the delegation of any functions pursuant to Section 75;

**Annual Operating Plan** means the Annual Operating Plan of the CCG;

**Annual Review** means a review of this Agreement and the Services and budgets outlined in the Schedules, which will be carried out by the Joint Strategic Commissioning Group (JSCG) as set out in Clause 20;

**Approved Expenditure** means any additional expenditure approved by the Partners in relation to an Individual Service above any Contract Price and Performance Payments;

**At Place Board** means a partnership group of strategic Leaders from across all organisations, responsible for strategic planning, commissioning and delivering services for the people in the Borough of Luton;

**Authorised Officers** means an Officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement;

**Better Care Fund (BCF)** means the Better Care Fund as described in NHS England Publications Gateway Ref. No.00314 and NHS England Publications Gateway Ref. No.00535 as relevant to the Partners;

**Better Care Fund Budget Plan** means the plan attached as Appendix 1 to Schedule 4 setting out the Partners agreed allocation of the Better Care Fund;

**BLMK CCG** means Bedfordshire, Luton and Milton Keynes Clinical Commissioning Group;

**Business Case** means the plans setting out the rationale for the scheme and its details;

**Carer(s)** means those individual carers for whom the Partners have a responsibility to assess and commission Services;

**CCG Statutory Duties** means the Duties of the CCG pursuant to Sections 14P to 14Z2 of the 2006 Act;

**Change in Law** means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England after the date of this Agreement;

**Children and Young People's Trust Board** means a partnership group of strategic managers from across all organisations commissioning or delivering services to children and young people in the Borough of Luton;

**Client** means any child young person or adult age 18 and over for whom the Partners are responsible for the provision of services and who meet the agreed eligibility criteria as set out in specific Schedules or their attachments or linked protocols. Where responsibility for funding services for eligible clients may transfer between the Partners the criteria applied will follow the law or national best practice and may also be captured in local protocols;

**Commencement Date** means 00:01 hrs on the date this Agreement is signed in 2017;

**Commissioning** means all the activities involved in assessing and forecasting needs, links investment to agreed desired outcomes, considering options, planning the nature, range and quality of future services and working in partnership to put these in place;

**Confidential Information** means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement and the

Services and:-

- (a) which comprises Personal Data or Sensitive Personal Data or which relates to any Patient or his treatment or medical history;
- (b) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or
- (c) which is a trade secret;

**Contract Price** means any sum payable to a Provider under a Service Contract as consideration for the provision of Services and which, for the avoidance of doubt, does not include any Default Liability or Performance Payment;

**Co-production** means delivering public services in an equal and reciprocal relationship between professionals, people using services, their families and their neighbours;

**Costs** means staffing salary costs and benefits costs forming the remuneration package but excluding any payments in connection with redundancy, reorganisation, termination of employment/ secondment payments or any costs in relation to Employment Liabilities and TUPE Liabilities;

**Council** means Luton Borough Council or any successors in title to any of its functions;

**Customer(s)** means those individuals who contact the Service with a concern or query who may already be Clients or their relatives for whom the Partners may have a responsibility to provide information, assess needs and or commission Services;

**Default Liability** means any sum which is agreed or determined by Law or in accordance with the terms of a Services Contract) to be payable by any Partner(s) to the Provider as a consequence of:-

- (a) breach by any or all of the Partners of an obligation(s) in whole or in part) under the relevant Services Contract or
- (b) any act or omission of a third party for which any or all of the Partners are, under the terms of the relevant Services Contract, liable to the Provider;

**Financial Contributions** means the financial contributions made by each Partner to the services outlined in the Schedules or Pooled Funds in any Financial Year;

**Financial Year** means each financial year running from 1 April in any year to 31 March in the following calendar year;

**Force Majeure Event** means one or more of the following:-

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
- (b) acts of terrorism;
- (c) '*acts of God*' – *natural events*;
- (d) fire or flood;
- (e) industrial action;
- (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;

- (g) any form of contamination or virus outbreak; and
- (h) any other event with significant impact on people and infrastructure,

For each case where any such event is beyond the reasonable control of the Partner claiming relief;

**Functions** means the NHS Functions and the Council Health Related Functions;

**Eligibility Criteria** means the criteria set out in the Schedules to this Agreement and their attachments that potential Clients must meet in order to be eligible to receive the Service;

**Health Related Functions** means those health related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the commissioning of the Services and which may be further described in the relevant Scheme Schedule or Business Case;

**Healthwatch** means Healthwatch Luton or anybody that succeeds it as the independent consumer champion for Luton that gathers and represents the views of the public about health and social care services. Healthwatch Luton has powers as a statutory watchdog to make sure that the health and social care system listens to people's views and experiences and acts on them;

**Health and Well Being Board (HWB)** means the Health and Wellbeing Board established by the Council pursuant to Section 194 of the Health and Social Care Act 2012;

**Host Partner** means for each Pooled Fund the Partner that will host the Pooled Fund and for each Aligned Fund the Partner that will host the Aligned Fund;

**Indirect Losses** means loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

**Individual Scheme** means one of the schemes which is agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification;

**Integrated Commissioning** means arrangements by which both Partners commission Services in relation to an individual Scheme on behalf of each other in exercise of both the NHS Functions and Council Functions through integrated structures;

**Integrated Service** means a service delivered by the Council which includes the CCG's health delivery of health functions/responsibilities;

**Joint Commissioning** means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint commissioning arrangement does not necessarily involve the delegation of any functions of does not necessarily mean an equal split of activity of funding pursuant to Section 75;

**Joint Strategic Commissioning Group** means the Group of Officers employed by the Partners who have responsibility for commissioning and monitoring the services covered by this Agreement. The terms of reference for this Group and reporting arrangements to the HWB are set out in Schedule 6 Joint Strategic Commissioning;

**Law** means:-

- (a) any statute or proclamation or any delegated or subordinate legislation;



- (b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
- (c) any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and
- (d) any judgment of a relevant court of law which is a binding precedent in England;

**Lead Commissioner** means the Partner responsible for commissioning the Services described in a Scheme Schedule or its attachments;

**Lead Commissioning Arrangements** means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of the other Partner in exercise of both the NHS Functions and the Council Functions;

**Losses** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses and **Loss** shall be interpreted accordingly;

**Market Management** means the process of ensuring that there is a sufficiently robust and diverse market of health and social care providers for Micro Commissioners to buy/purchase from. The Market Management process will usually ensure that the independent sector and voluntary sector providers are subject to an umbrella contract from which Micro Commissioners call off. The Market Management process may include the negotiation and setting of annual inflation uplift with independent sector and voluntary sector providers, subject to the approval by the Council's Executive;

**Micro Commissioner/commissioning** means health and social care staff involved in the assessment and care management process, and Service Users arranging their own care either as self-funders or by using a direct payment or a personal budget;

**Month** means a calendar month;

**National Conditions** mean the national conditions as set out in the NHS England Planning Guidance as are amended or replaced from time to time;

**NHS Functions** means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the CCG as are relevant to the commissioning of the Services and which may be further described in each Service Schedule;

**Non Pooled Fund** means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification;

**Non-Recurrent Payments** means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 8.4;

**Overspend** means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year;

**Partner** means each of the CCG and the Council, and references to **Partners** shall be construed accordingly;

**Partnership Board** means the partnership board responsible for review of performance and oversight of this Agreement that is the HWB, supported by the JSCG or a partnership board responsible for oversight of arrangements for a particular specified group;

**Patient(s)** means those individuals for whom the Partners have a responsibility to assess needs and commission Services;

**Performance Payment Arrangement** means any arrangement agreed with a Provider and one of more Partners in relation to the cost of providing Services on such terms as agreed in writing by all Partners;

**Performance Payments** means any sum over and above the relevant Contract Price which is payable to the Provider in accordance with a Performance Payment Arrangement;

**Permitted Budget** means in relation to a Service where the Council is the Provider, the budget that the Partners have set in relation to the particular Service;

**Permitted Expenditure** has the meaning given in Clause 7.3;

**Personal Data** means Personal Data as defined by the 1998 Act;

**Pooled Fund** has the meaning as set out in the 2006 Act and can be used for Lead Commissioning or Integrated Commissioning;

**Pooled Fund Manager** means such Officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 10;

**Provider** means a provider of any Services commissioned under the arrangements set out in this Agreement;

**Public Health England** means the SOSH trading as Public Health England;

**Purchasing/Procuring** means the operational activity set within the context of commissioning, of applying resources to buy services in order to meet needs, either at a macro/population level or at a micro/individual level;

**Quarter** means each of the following periods in a Financial Year:-

1 April to 30 June;

1 July to 30 September;

1 October to 31 December; and

1 January to 31 March;

**Quarterly** shall be interpreted accordingly;

**Registered population** means those people who are registered with a GP practice in the local area covered by BLMK CCG;

**Regulations** means the means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended), or other regulations for example those accompanying other Acts;

**Resident population** means those people who are ordinarily resident in the local area covered by Luton Borough Council;

**S75 Agreement** refers to this section of the National Health Service Act 2006. S75 enables the CCG and Council to pool budgets and enable the prescribed health related functions of one Partner to be delegated to the other for the purpose that the arrangements are likely to lead to an improvement in the way in which those functions are exercised. The basis of such agreements centre upon promoting effective partnership working with the aim of more effective and efficient use of resources in order to meet the health and social care needs of the citizens of the area;

**Schedule** means a summary description of a Service or group of linked Services or arrangements that form part of this Partnership Agreement. Some Schedules include several Summary Service Descriptions;

**Sensitive Personal Data** means Sensitive Personal Data as defined in the 1998 Act;

**Service User(s)** means those individuals for whom the Partners have a responsibility to assess needs and commission Services;

**Services** means such health and social care services as agreed from time to time by the Partners as commissioned or provided under the arrangements set out in this Agreement and more specifically defined in each Schedule or Summary Scheme Specification and appendices;

**Services Contract** means an agreement for the provision of Services entered into with a Provider by one or more of the Partners in accordance with the relevant Individual Scheme;

**SOSH** means the Secretary of State for Health;

**Staff** means staff of the Council or the CCG who are responsible for lead commissioning or micro commissioning and/or providing care to Clients/Patients as part of service delivery;

**Strategic Commissioning** is, according to the BLMK Accountable Care System;

- (a) Identifying health and well-being needs of the population
- (b) “whole population-based” approach to commissioning, using shared budgets and appropriate incentives
- (c) Health outcome focused with established, long-term contracts to drive efficiency within statutory frameworks.

**Summary Service Description(s)** means a description or summary specification attached to a Schedule setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement;

**Third Party Costs** means all such third party costs (including legal and other professional fees) in respect of each Individual Scheme as a Partner reasonably and properly incurs in the proper performance of its obligations under this Agreement and as agreed by the JSCG;

**TUPE** means the Transfer of Undertakings Protection of Employment Regulations 2006 and subsequent amendments to those Regulations;

**TUPE Liabilities** means the obligations which may arise with respect to the transfer of such employment under TUPE and any other statute or statutory provision which may from time to time implement or purport to implement the Acquired Rights Directive (2001/23/EC) as the same may be amended from time to time including without limitation those obligations under Regulation 10 of TUPE 2006; and

**Working Day** means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking and Financial Dealings Act 1971. Where a different time period is meant by working day this is specified in the Schedule.

- 1.2 Save to the extent that the context or the express provisions of this Agreement otherwise require:-
- 1.2.1 obligations undertaken or to be undertaken by more than a single person shall be made and undertaken jointly and separately;
  - 1.2.2 words importing any gender include any other gender and words in the singular include the plural and words in the plural include the singular;
  - 1.2.3 references to any statute, statutory provision or statutory guidance shall be deemed to refer to any modification or re-enactment thereof for the time being in force whether by statute or by directive or regulation which is intended to have direct application within the United Kingdom and has been adopted by the Council of European Communities;
  - 1.2.4 headings and index are inserted for convenience only and shall be ignored in interpreting or in the construction of the terms and provisions of this Agreement;
  - 1.2.5 references in this Agreement to any Clause or Schedule without further designation shall be construed as a reference to the Clause of or Schedule to this Agreement so numbered;
  - 1.2.6 all obligations on the Partners shall be a direct obligation or an obligation to procure as the context requires;
  - 1.2.7 any reference to "indemnity" or "indemnify" or other similar expressions shall mean that the relevant Partner indemnifies, shall indemnify and keep indemnified and hold harmless the other Partner;
  - 1.2.8 any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person but without derogation from any liability of any original Partner to this Agreement;
  - 1.2.9 the Schedules to this Agreement shall be deemed to be incorporated into the body of this Agreement and shall have full force and effect;
  - 1.2.10 in the event there is a conflict between the contents of the Schedules to this Agreement and the terms of the main body of this Agreement, the terms set out in the main body shall prevail;
  - 1.2.11 subject to the contrary being stated expressly or implied from the context in these terms, all communication between the Partners shall be in writing;
  - 1.2.12 in this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or Officer, Director, manager and agent;
  - 1.2.13 unless expressly stated otherwise, all monetary amounts are expressed in Pounds sterling but in the event that Pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be

converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom;

- 1.2.14 all references to this Agreement include (subject to all relevant approvals) a reference to this Agreement as amended, supplemented, substituted, novated or assigned from time to time; and
- 1.2.15 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 TERM**

- 2.1 This Agreement shall come into force on the ‘Commencement Date’ at which point any current separate Agreements between the Partners for Children and Young People and Adults will end and default to the position stated in this document.
- 2.2 The duration of the arrangements for each of the Services is set out in the relevant Schedule.
- 2.3 The Partners may agree to extend the ‘Termination Date’ for specific services identified in the Schedules by such period, as they shall determine up to a maximum of twenty four (24) months.

## **3 GENERAL PRINCIPLES**

- 3.1 Nothing in this Agreement shall affect:-
  - 3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions); or
  - 3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.
- 3.2 The Partners agree to:-
  - 3.2.1 treat each other with respect and an equality of esteem;
  - 3.2.2 be open with information about the performance and financial status of each; and
  - 3.2.3 provide early information and notice about relevant problems.
- 3.3 For the avoidance of doubt, the aims and outcomes relating to a Service may be set out in the relevant Schedule or Summary Scheme Specification.

## **4 PARTNERSHIP FLEXIBILITIES**

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:-
  - 4.1.1 Lead Commissioning Arrangements;
  - 4.1.2 Integrated Commissioning;
  - 4.1.3 Joint and Aligned Commissioning;
  - 4.1.4 The establishment of one or more Pooled Funds; and/or
  - 4.1.5 Integrated delivery of specific Health and Social Care Services managed by the Council;

These arrangements will be in relation to Individual Services (the "Flexibilities").

A table summarising the flexibilities for each of the Services covered by the Schedules is included at the beginning of Part 2 of this Agreement.

- 4.2 The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Service and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

## **5 FUNCTIONS**

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners, which comply with the 2006 Act and its Regulations and the provisions of the Better Care Fund.
- 5.3 Where the Partners add a new Service or varies an existing Summary Scheme Specification to this Agreement a Summary Scheme Specification for an Individual Scheme or a Business Case for Better Care Fund schemes shall be completed and agreed between the Partners.
- 5.4 The Partners shall not commission a Summary Scheme Specification or Business Case in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being outcomes in accordance with this Agreement.
- 5.5 The introduction of any Individual Change Scheme will be subject to Business Case approval by the Joint Strategic Commissioning Group (JSCG). Core Service allocations will be agreed by JSCG members. Appropriate approval from other bodies including the Council's Executive or the CCG's Board shall also be sought if agreement cannot be met.

## **6 COMMISSIONING ARRANGEMENTS**

### **Lead or Integrated Commissioning**

- 6.1 Where there are Lead or Integrated Commissioning arrangements the Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all regard to ensuring that capability and capacity to meet identified needs reflect provision.
- 6.2 Both Partners shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.
- 6.3 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

- 6.4 Each Partner shall keep the other Partners and the JSCG regularly informed of the effectiveness of the arrangements including use of the Better Care Fund and any Overspend or Underspend in a Pooled Fund.
- 6.5 The JSCG will report back to the Health and Wellbeing Board as required by its Terms of Reference.

### **Appointment of a Lead Commissioner**

- 6.6 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme, the Lead Commissioner shall:-
  - 6.6.1 exercise the Council health related functions and the NHS functions in conjunction as identified in the relevant Scheme Specification;
  - 6.6.2 endeavour to ensure that the Council Health Related Functions and the NHS Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year;
  - 6.6.3 micro commission Services for individuals who meet the eligibility criteria set out in the relevant Summary Scheme Specification or Business Plan;
  - 6.6.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
  - 6.6.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
  - 6.6.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the “Commissioner” and “Co-ordinating Commissioner” with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
  - 6.6.7 undertake performance management and contract monitoring of all Service Contracts;
  - 6.6.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
  - 6.6.9 keep the other Partner and the JSCG regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

## **7 ESTABLISHMENT OF POOLED FUNDS<sup>1</sup>**

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Schedules and Summary Scheme Specifications or Business Cases.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this

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<sup>1</sup> Pooled Funds can be used for Lead Commissioning or Integrated Commissioning arrangements. Furthermore, each Service, can have different Lead Commissioners. The host arrangements for pooled funding is for ensuring that there is streamlined management and accountability of the Pooled Funds with the Host Partner being the accounting body and having responsibility for appointing a Pooled Fund Manager.

Agreement.

- 7.3 It is agreed that the monies held in a Pooled Fund may only be expended on the following:-
- 7.3.1 the Contract Price;
  - 7.3.2 where the Council is to be the Provider, the Permitted Budget;
  - 7.3.3 Performance Payments;
  - 7.3.4 Third Party Costs; and
  - 7.3.5 Approved Expenditure.
- 7.4 The Partners may only depart from the definition of 'Approved Expenditure' to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.
- 7.6 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Schedules or Summary Scheme Specifications. The Host Partner shall be the Partner accountable and responsible for:-
- 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
  - 7.6.2 providing the financial administrative systems for the Pooled Fund;
  - 7.6.3 appointing the Pooled Fund Manager; and
  - 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **8 POOLED FUND MANAGEMENT**

- 8.1 When introducing a Pooled Fund in respect of an Individual Scheme, the Partners shall agree which:-
- 8.1.1 Partner shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund; and
  - 8.1.2 Officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations and have delegated responsibility from the Host Partner to act.
- 8.2 The Pooled Fund Manager in respect of each Individual Service where there is a Pooled Fund shall have the following duty and responsibility:-
- 8.2.1 day to day operation and management of the Pooled Fund;
  - 8.2.2 ensure that all expenditure from the Pooled Fund is in accordance with the provision of this Agreement and the relevant Schedule and or Summary Scheme Specification;
  - 8.2.3 maintain an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;



- 8.2.4 ensure that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
- 8.2.5 report to the JSCG Financial Sub-Group (FSG )and JSCG as required;
- 8.2.6 ensure action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
- 8.2.7 prepare and submit Quarterly reports (or more frequent reports if required) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners to the JSCG Group.
- 8.2.8 The JSCG will through information received monitor the effectiveness of the Pooled Fund and Partners are then able to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met; and
- 8.2.9 prepare and submit reports to the Health and Wellbeing Board as required.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall have regard to the recommendations of the JSCG and shall be accountable to the Partners. Non pooled funds<sup>2</sup>
- 8.4 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Schedule or Summary Scheme Specification. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.
- 8.5 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:-
  - 8.5.1 which Partner if any shall host the Non-Pooled Fund; and
  - 8.5.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 8.6 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.
- 8.7 Both Partners shall ensure that Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Schedule or Summary Scheme Specification.
- 8.8 Where there are Joint or Aligned Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:-
  - 8.8.1 NHS Functions funded from a Non-Pooled Fund are carried out within the CCG Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and
  - 8.8.2 Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant

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<sup>2</sup> These are funds that are notionally held in a joint fund but are not a pooled fund. If there are Lead Commissioner/Integrated Commissioner arrangements, the funds need to be held but they will be separately accounted for.

Service in each Financial Year.

## **9 FINANCIAL CONTRIBUTIONS**

- 9.1 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation of each Individual Change Scheme shall be as set out in the relevant Schedule or Summary Scheme Specification or for BCF, through the Business Case.
- 9.2 The management of Financial Contributions going forward varies for different Services is set out in the Finance Schedule 7. The financial contributions for each Service must be agreed annually in writing by the JSCG before the beginning of the new financial year. Any variations in funds, projected underspends or overspends must be reported to the JSCG Finance Sub Group and then reported to the JSCG.
- 9.3 Financial Contributions will be paid as set out in the each Schedule or Summary Scheme Specification or Business Case. This will be usually three months in arrears.
- 9.4 No provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to Pooled Funds from time to time by mutual agreement in response to identified budget overspend and/ or variation. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in FSG minutes and recorded in the budget statement as a separate item and additionally the Partners must agree to the amendment to the financial contribution in writing.

## **10 NON FINANCIAL CONTRIBUTIONS**

- 10.1 The Schedules and where appropriate the Summary Scheme Specifications and Business Cases shall set out where these apply to non-financial contributions of each Partner including staff, premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and Pooled Funds).

## **11 RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS**

### **Risk share arrangements**

- 11.1 The Partners have agreed risk share arrangements as set out in each Service Schedule. These provide for financial risks arising from the delivery of Integrated Services the commissioning of Services from pooled funds and in the Better Care Fund Schedule the use of the contingency.

### **Overspends in Pooled Funds**

- 11.2 Subject to Clause 11.1, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.
- 11.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs **PROVIDED THAT** the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the other Partner and where appropriate the JSCG in accordance with Clause 11.4.
- 11.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend, the Pooled Fund Manager must ensure that the JSCG is informed as soon as reasonably possible and accurate data is presented with an explanation of why this has occurred.

## **Overspends in Non Pooled/Aligned Funds**

- 11.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an overspend in relation to a Partner's Financial Contribution to a Non-Pooled Fund or Aligned Fund that Partner shall, as soon as reasonably practicable, inform the other Partner and the JSCG.

## **Underspends**

- 11.6 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and where applicable the terms of any Performance Payment Arrangement.
- 11.7 In the event that the Pooled Fund Manager identifies an actual or projected under spend the Pooled Fund Manager must ensure that the JSCG is informed as soon as reasonably possible and action agreed as appropriate by the JSCG.

## **12 CAPITAL EXPENDITURE**

Neither Pooled Funds nor Non Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically, have been funded from the capital budgets of one of the Partners except for those goods and/or services covered by the National Conditions element of BCF. If a need for capital expenditure is identified this must be agreed by the Partners.

## **13 VAT**

The VAT regime of each Pooled Budget host shall apply to the relevant Pooled Budget. The Partners shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Revenue and Customs.

## **14 AUDIT AND RIGHT OF ACCESS**

- 14.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Funds and shall require the body which is established to carry out the functions of the former Audit Commission (which will have ceased to exist by the Commencement Date) whether established under the Local Audit and Accountability Act 2014 or otherwise to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998 or such other statutory provision as shall be appropriate.
- 14.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner organisation in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

## **15 LIABILITIES AND INSURANCE AND INDEMNITY**

- 15.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission by the other Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other

Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.

- 15.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the JSCG.
- 15.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16, the Partner that proposes a claim against the other indemnifying Partner will:-
- 15.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim and reason;
  - 15.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed); and
  - 15.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 15.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.
- 15.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

## **16 STANDARDS OF CONDUCT AND SERVICE**

- 16.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 16.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of Pooled Funds is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 16.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG's Statutory Duties and clinical governance obligations.
- 16.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. 'Equalities' is one of the services being delivered through integrated working by the Council and is outlined in Schedule 7.

## **17 CONFLICTS OF INTEREST AND PREVENTION OF CORRUPTION**

- 17.1 At the date of this Agreement the Partners confirm that they are not aware of any conflict of interest or potential conflict of interest in relation to the provision of the Services stated in this document. In the event that either of the Partners becomes aware of any such conflict at any time during the currency of this Agreement it shall immediately advise the other Partner of the same and the Partners shall thereafter agree a course of action within which the Partners shall act.
- 17.2 The Partners shall ensure that they:-
- 17.2.1 have adequate policies and procedures in place (that shall be shared with the other Partner, on request) to ensure that relevant controls assurance, probity and professional standards are met;
  - 17.2.2 comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - 17.2.3 do not engage in any activity, practice or conduct, which would constitute an offence under sections, 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 17.2.4 have and thereafter maintain in place for the duration of the term of this Agreement, mutual policies and procedures, including (but not limited to) adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 19.1.2 of this Agreement, and will enforce them where appropriate;
  - 17.2.5 include formal declarations of interest on the agenda for all formal meetings including JSCG meetings; and
  - 17.2.6 promptly report to the other Partner any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement;
- 17.3 For the purpose of this Clause 18, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 18, a person associated with a Partner includes, but is not limited to, any subcontractor of the Partner.

## **18 GOVERNANCE**

- 18.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary. The Health and Well Being Board will be supported in managing this responsibility by the JSCG.
- 18.2 The JSCG is based on a joint working group structure. The members of the JSCG shall be Officers of the Partners and have individual delegated responsibility from the Partner employing them to make decisions, which enable the JSCG to carry out its objects, roles, duties and functions as set out in this Clause 19.
- 18.3 The terms of reference of the JSCG shall be as set out in Schedule 6. The terms of reference will be reviewed at agreed time intervals and may be amended by the Partners.

- 18.4 Each Partner has internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 18.5 Governance arrangements vary slightly for the different services, although the JSCG is responsible for reviewing all the Service Schedules and reaching decisions about finances and contributions with the support of its Finance and Performance sub group. The specific arrangements for each service are set out in each of the Schedules.

## **19 REVIEW**

- 19.1 Unless directed by the Health and Well Being Board who may agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any Pooled Fund, Non Pooled Fund and the provision of the Services within three (3) Months of the end of each Financial Year. The Review will be carried out by the JSCG.
- 19.2 Subject to any variations to this process required by the Health and Well Being Board, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in the Service Schedules .

## **20 TERMINATION AND DEFAULT**

- 20.1 This Agreement may be terminated by either Partner. Arrangements for early termination or review are covered in each Schedule. The minimum notice period required should not be less than six (6) Months' notice in writing.
- 20.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Schedule or Summary Service Specification provided that the Partners ensure that statutory service requirements and the Better Care Fund requirements continue to be met.
- 20.3 If one Partner fails to meet any of its obligations under this Agreement, the other Partner may by notice require the Partner to take such reasonable action within a reasonable timescale to rectify that failure. Should the Partner fail to rectify such failure within the agreed reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 20.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of Clause 23.
- 20.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care, which is provided to the Service Users.
- 20.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:-
- 20.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 20.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the

Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;

- 20.6.3 the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing PROVIDED THAT the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;
- 20.6.4 where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract;
- 20.6.5 the JSCG shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 20.6.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.

- 20.7 In the event of termination in relation to an Individual Scheme, the provisions of Clause 22.6 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

## **21 DISPUTE RESOLUTION**

- 21.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 21.2 The Authorised Officers shall meet in good faith as soon as possible and in any event within seven (7) working days of notice of the dispute being served pursuant to Clause 21.1, at a meeting convened for the purpose of resolving the dispute.
- 21.3 If the dispute remains after the meeting detailed in Clause 21.2 has taken place, the Partners' respective chief executives or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) working days of the date of the meeting, for the purpose of resolving the dispute. At this point, the Health and Wellbeing Board should also be informed of the dispute.
- 21.4 If the dispute remains after the meeting detailed in Clause 21.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The

Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

- 21.5 Nothing in the procedure set out in this Clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## **22 FORCE MAJEURE**

- 22.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 22.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.
- 22.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of this Agreement.
- 22.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate this Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

## **23 CONFIDENTIALITY**

- 23.1 The Partners shall:-
- 23.1.1 keep confidential any information obtained in connection with this Agreement and control or process any personal data of Clients in accordance with the Data Protection Act 1998; and
  - 23.1.2 take appropriate technical and organizational measures against unauthorised or unlawful processing of such data and against accidental loss or destruction of or damage to such personal data.
- 23.2 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:-
- 23.2.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
  - 23.2.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:-



23.2.2.1 is in or enters the public domain other than by breach of this Agreement or other act or omission of the Recipient; or

23.2.2.2 is obtained by a third party who is lawfully authorised to disclose such information.

23.3 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.

23.4 Each Partner-:

23.4.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under this Agreement;

23.4.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25; and

23.4.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

## **24 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS**

24.1 The Partners have agreed that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Regulations to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, and directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.

24.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

## **25 OMBUDSMEN**

The Partners will co-operate with any investigation undertaken by the Parliamentary and Health Service Ombudsman or the Local Government Commissioner for England (or both of them) in connection with this Agreement.

## **26 INFORMATION SHARING**

The Partners are committed to improving the sharing of information across agencies to benefit Patients, Service Users and Carers in line with Organisational Information Governance Policy. All data systems in use by the Partners and other providers that will benefit from BCF funding will comply with current legislation and in so doing will ensure that the operation this Agreement complies with Law, in particular the 1998 Act.

## **27 NOTICES**

27.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously

have notified to the other Partner in writing. A notice shall be deemed to have been served if:-

- 27.1.1 personally delivered, at the time of delivery;
- 27.1.2 sent by facsimile, at the time of transmission;
- 27.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
- 27.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

27.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

27.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:-

- 27.3.1 if to the Council, addressed to the Corporate Director Population Wellbeing  
Tel: 01582 548440  
Email: [laura.church@luton.gov.uk](mailto:laura.church@luton.gov.uk)

and

- 27.3.2 if to the CCG, addressed to Director of Primary Care and Luton At Place Executive  
Tel: 01582 532154  
Email: [nicky.poulain@NHS.net](mailto:nicky.poulain@NHS.net)

## **28 VARIATION**

No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.

## **29 CHANGE IN LAW**

- 29.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.
- 29.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners, using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.
- 29.3 In the event of failure by the Partners to agree the relevant amendments to this Agreement (as appropriate), the Clause 23 shall apply.

## **30 WAIVER**

No failure or delay by any Partner to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy.

## **31 SEVERANCE**

If any provision of this Agreement, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not thereby be affected.

## **32 ASSIGNMENT AND SUB CONTRACTING**

The Partners shall not sub contract, assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partner, which shall not be unreasonably withheld or delayed. This shall not apply to any assignment to a statutory successor of all or part of a Partner's statutory functions.

## **33 EXCLUSION OF PARTNERSHIP AND AGENCY**

- 33.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render Partner directly liable to any third party for the debts, liabilities or obligations of the other.
- 33.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:-
- 33.2.1 act as an agent of the other;
  - 33.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
  - 33.2.3 bind the other in any way.

### 34 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

### 35 ENTIRE AGREEMENT

- 35.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.
- 35.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised Officer or representative of the Parties.

### 36 COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes.

### 37 GOVERNING LAW AND JURISDICTION

- 37.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 37.2 Subject to Clause 23, the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS WHEREOF** this Agreement has been executed by the Partners on the date of this Agreement

**THE COMMON SEAL of LUTON** )  
**BOROUGH COUNCIL** was hereunto )  
affixed in the presence of: - )

Authorised Signatory

**THE COMMON SEAL of BLMK NHS** )  
**CLINICAL COMMISSIONING GROUP** )  
was hereunto affixed in the presence of: - )

Authorised Signatory

## **SCHEDULE 1**

### **Schedule for Integrated Children's and Young People's Commissioning 2021-22**

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in this Agreement.

#### **1 OVERVIEW OF SERVICES**

This Schedule covers integrated commissioning of the following social care and health services for Children and Young People using aligned budgets:

1. Integrated disability services including SENDIASS and London Road Resource Centre
2. Children with complex needs including out of borough placements and tripartite funding processes
3. SEND joint resource budget (2021/22) to deliver the written statement of action
4. Other joint funding contributions: Young Carers Service

Lead Commissioning of the services is undertaken by the Council.

#### **2 AIMS AND OUTCOMES**

The schedule will have governance and oversight through the children and young people sub group (CSB) of the Joint Strategic Commissioning Board (JSCG), who are responsible for:

1. Developing a commissioning priorities plan to improve the health and wellbeing for CYP, to include:
  - a. scrutiny and reporting of services within Section 75
  - b. review and agree tripartite funding processes
  - c. receive and ratify CYP needs assessments to inform joint commissioning priorities
  - d. provide a quarterly report to JSCG

#### **3 THE ARRANGEMENTS**

Full detail about the arrangements for each service is included in the service specifications. The Host Partner for the commissioning, and in some cases delivery, of the Services is the Council and the Lead Managers, being Officers of the Council are identified in the service specifications.

#### **4 FUNCTIONS**

The CCG delegates its functions of making arrangements for the provision of services to eligible Patients (children and their carers) under sections 5 of the Regulations to the Council. The Council will exercise these functions alongside its own functions for the delivery of the Service to children and young people as set out under Regulation 6 and which by section 18 of the Children Act 2004 and subsequent Acts are conferred on or exercisable by the authority.

#### **5 COMMISSIONING, CONTRACTING, ACCESS**

##### **5.1. Commissioning Arrangements**

The services commissioned by the CSB are informed by the JSNA and by the by the Children and Young People's Trust Board.

##### **5.2. Contracting Arrangements**

The Lead agency will:

- contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;

- comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the “Commissioner” and “Co-ordinating Commissioner” with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- undertake performance management and contract monitoring of all Service Contracts;
- make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- keep the other Partner and the JSCG regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.
- Information about eligibility for and access to provided services is included in each of the summary descriptions.

## **6 FINANCIAL CONTRIBUTIONS**

Information is included the Financial Schedule 7. Financial resources in subsequent years will be agreed by the JSCG three (3) months before the beginning of the Financial Year.

## **7 FINANCIAL GOVERNANCE ARRANGEMENTS**

The finance arrangements of the Host Partner apply. Where there are any issues of concern there is discussion and agreement between finance managers from both Partners.

Any projected overspends and use of any under spends needs to be discussed between the Partners and agreed at the JSCG.

## **8 VAT**

The regime of the host Partner applies.

## **9 GOVERNANCE ARRANGEMENTS**

Terms of reference for the children’s sub group of the JSCG states role of oversight and reporting of the CYP S75 schedule. This will also incorporate as appropriate commissioning for children’s public health services, which is not part of the integrated commissioning arrangements, however provides an opportunity to align services between the two organisations party to this agreement.

## **10 NON FINANCIAL RESOURCES**

Council and CCG contributions where applicable are shown in the service specifications.

## **11 ASSURANCE AND MONITORING**

Performance is presented at JSCG and when requested the Children and Young People’s Trust Board.

## **12 LEAD OFFICERS**

Lead Officers for each service are identified in the service specifications

## **13 INTERNAL APPROVALS**

In addition to approval being given at JSCG, there should be sign off of the following schemes included in this Schedule approved as part of the Section 75 Agreement, as required:

- Out of Borough Placements for children with Complex needs; Continuing health care – Children with Complex Needs Panel and Care Resource Management Panel
- Public Health at Public Health Commissioning Board.

## **14 RISK AND BENEFIT SHARE ARRANGEMENTS**

This Agreement covers areas of children's services, which potentially have related financial and resource risks. These risks are mainly an increase in demand for services, with the agreed pooled budget becoming insufficient to meet the demand increase. In practice, all services within the S75 agreement are demand led, and this has the potential to bring about under spends or overspends against the pooled budget.

The S75 Agreement is clear about how projected overspends or under spends on the pooled budget should be managed (see Clauses 12.2-12.6) with a report with recommended options being brought to JSCG, but the underlying principle is that they should both be assigned to the each party to this Agreement (the Council and the CCG) in the same proportion as the contributions made by both parties to this Agreement. The Council, as the Lead Commissioner, must notify the CCG as soon as a projected tolerance level of 5% below the budget is identified, and that no overspends on the pooled budget are allowed without the prior agreement of the CCG. In practical terms, this means that the CCG and the Council will be requested to increase their contributions to the pooled budget in the same proportions as the initial allocations, in order to reduce the likelihood of a year-end negative balance.

The highest risk area within the pooled budget are the services provided to children with complex or continuing health care needs. The initial budgets are based on current expected numbers of children and young people; however, due to the low volume and associated high costs, the demand for services is inherently volatile.

To mitigate this risk, cases will be reviewed through allocation panels, at which commissioners and providers can discuss provision according to need, identify changes in care packages and forecast future demand. Cases are discussed by the panel against a set of agreed criteria.

The panels include:

- Children with Complex Needs Panel (to include mental health complex needs)
- Care Management Resource Panel for Children and Young People

If funding is agreed that would potentially take the pooled budget into an overspend position, the Council's People Department Finance Manager will inform the CCG's Finance Manager. In addition, the budget position will be reported at the next meeting of the JSCG.

## **15 REGULATORY REQUIREMENTS**

Statutory requirements for the commissioning of NHS Children's Services apply.

## **16 INFORMATION SHARING**

Client specific information, where applicable, is held on the Council's Children's services database and on the client's NHS health records. All information which is held and used conforms to regulatory requirements including data protection and Caldicott Guardianship.

## **17 DURATION AND EXIT STRATEGY**

The intention of the Partners is to provide services to meet assessed need. The arrangements are reviewed and agreed on at least a three (3) yearly basis. Arrangements for early termination or changes are set out in this Agreement. This Schedule and the services covered by it will be reviewed on an annual basis and a report taken to The JSCG.

## 19 OTHER PROVISIONS

All Services comply with arrangements for Safeguarding Children and may be asked to demonstrate this to Luton's Children and Young People's Safeguarding Children Board.

### Appendix 1 CSB TORS



Children's sub group  
of the JSCB ToR final

### Appendix 2 SENDIASS



A2. SEND-WSOA  
Resource plan 2122.p



## **SCHEDULE 2**

### **Schedule for Commissioning Integrated Mental Health & Wellbeing**

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in this Agreement.

#### **1 OVERVIEW OF SERVICE**

This Schedule concerns the commissioning of integrated adult mental health and mental health adult social care services. (18 years and over)

Services may be administered using both pooled funds and non-pooled funds as set out in the financial schedule.

The Lead Commissioner of this commissioning function is NHS Bedfordshire, Luton & Milton Keynes Clinical Commissioning Group (the CCG).

#### **2 AIMS AND OUTCOMES**

The aim of this Schedule is to set out the strategic commissioning functions to achieve mental health outcomes for adults (including older adults), and mental health adult social care. The outcomes are to:

- a) achieve a transformed mental health and mental health social care offer for Luton, integrated with physical healthcare; and
- b) Deliver the requirements of the NHS Long Term Plan.

#### **3 THE ARRANGEMENTS**

The arrangements will include

- a) Lead commissioning
- b) Integrated commissioning
- c) The use of pooled budgets
- d) The use of non-pooled budgets.

#### **4 FUNCTIONS**

The CCG is the lead commissioner for mental health and wellbeing for the population in Luton (registered and resident). LBC is an associate commissioner to the contracts with the East London Foundation Trust and Turning Point, and has contracts for mental health services.

As part of joint working at place, LBC and the CCG are committed to improving service provision for those with mental health needs, and improving the mental health and wellbeing of Luton residents as a whole.

The commissioning function will:

- ensure that there are appropriate commissioned, cost-effective services to meet the needs of those adults with mental health needs ordinarily resident in Luton;
- work with local stakeholders to shape the strategic direction for mental health in Luton and, in doing so, develop jointly agreed outcome measures for local mental health and wellbeing. These outcome measures will complement national standards and, where it adds value to Luton residents, will be designed and delivered in conjunction with a wide group of stakeholders;
- understand needs and shape the market for all cohorts (including children preparing to transition to adult services). This will involve:
  - assessing the local population prevalence of mental health;
  - analysing assessed needs in health and social care plans, to provide an early view of likely service needs and enable early intervention.
- ensure in-depth knowledge and experience of national guidance and best practice is applied to commissioning initiatives for adults with a mental health need;
- provide support to local providers;

- plan services that take a ‘whole-life’ approach and enable smooth transitions;
- develop a Market Position Statement and development strategy to include:
  - undertaking work to understand the capacity and skill-mix of current and potential health and social care providers and complete a gap analysis for inclusion in the local market position statement. enabling the robust development of community services;
  - undertaking a capacity and gap analysis of housing need and work proactively with housing and social care partners to develop and deliver personalised options for current and future demand.

## 5 SERVICES

- Social care and health services, including services commissioned from voluntary sector organisations, to adults with mental health needs.
- Social care and health services to older people with mental health needs, including specialist health services to older people with dementia.

The arrangement currently includes the following services and providers:

<i>East London Foundation Trust contract</i>	<p>Five (plus two) year contract for provision of mental health services including but not limited to:</p> <ul style="list-style-type: none"> <li>• Inpatient beds for adults, older adults and adults with learning disabilities</li> <li>• Psychiatric Intensive Care beds</li> <li>• Early Intervention in Psychosis</li> <li>• Community Mental Health teams</li> <li>• Psychiatric Liaison Service in Luton &amp; Dunstable Hospital</li> <li>• Children &amp; Young People’s Mental Health Service *</li> <li>• Community Learning Disability service **</li> <li>• Crisis support service</li> <li>• Memory Assessment Service and older adult support</li> <li>• Assessment and care management services as set out under the Care Act; includes assessment of adults with eligible need, support planning and reviewing.</li> </ul>
<i>Caraline</i>	Eating Disorder service for adults; one year contract
<i>Ghar se Ghar</i>	Voluntary organisation for BAME women; grant
<i>Complex mental health placements</i>	Individual placements for patients sectioned under the Mental Health Act following acute or forensic admission
<i>MH non-contractual activity</i>	Activity undertaken by out of area providers and re-charged to the CCG
<i>GPs (Mental Health Act Assessments)</i>	Charges from GPs for Mental Health Act assessments undertaken

<i>Section 117 support</i>	This is joint support for adults entitled to S.117 aftercare and CCG-funded includes supported living charges
<i>Total Wellbeing (Turning Point)</i>	An integrated wellbeing contract between the CCG and LBC. It includes IAPT (CCG funded); social prescription (joint funded) and healthy lifestyles services (LBC funded).
<i>Mental health floating support within wider universal floating support</i>	MH floating support, enabling clients to successfully secure and maintain independent living whilst offering support to address individual needs. LBC funded.  Contract is universal floating support; a flexible peripatetic service provided to people in their own homes or tenancies with the aim of enabling or maintaining independence.
<i>Penrose STEPS</i>	Acute mental health ward based support to find housing provision post discharge, LBC funded, block payment, not part of the S75 Agreement. (For service information only)

The services excluded from the Schedule for the Council are

- Client contributions, including the assessment and collection of client contributions by the Income teams
- Social care LBC in-house provided services to adults with Asperger's
- Ongoing care management and provision of social care placements for older people with dementia provided through the People Directorate.

## **6 COMMISSIONING, CONTRACTING, ACCESS**

### **Commissioning Arrangements**

The CCG will be the Lead Commissioner for the contracts with the East London Foundation Trust and Turning Point and is responsible for contract management.

The CCG and LBC are committed to strengthening joint working by:

- Exploiting opportunities to further integrate services for the benefit of Luton residents (including people registered with Luton GPs who do not live in the local authority area of Luton)
- Creating a mental health strategy co-produced through the Reimagining Mental Health programme
- Securing efficiencies in staffing and management arrangements through partnership working
- Working to develop partnerships in strategy development and service delivery with the voluntary and community sector
- Revitalising partnership with Luton residents through the use co-production principles.

The CCG and LBC will be open and transparent to ensure that local resources are directed appropriately to meet the mental health needs of the residents of Luton. This will include consideration between the partners about the appropriate balance of investment between population-based preventative work in mental health and service delivery.

### **Contracting Arrangements**

#### **1. East London Foundation Trust**

The CCG contracted ELFT as the provider of secondary mental health care services in 2015, with LBC as an associate commissioner. The contract term is five years plus two and has been extended to 31 March, 2022. The contract follows NHS standard contract terms.

Activity in relation to Luton Council's statutory responsibility for Adult Social Care (ASC) for people

with mental health needs is fulfilled by ELFT under this contract including mental health requirements under the Care Act.

The CCG and LBC will work together to consider the future shape and design of mental health services in Luton. As such, it may seek to make amendments to the current provider contract. The CCG and LBC will work closely with ELFT in the development of future mental health strategy and negotiate any changes that may be deemed necessary to the current provider contract. The CCG will coordinate development of any future contract with ELFT, involving LBC and other parties, including opportunities for co-production.

## 2. Total Wellbeing Luton

The CCG and LBC entered into a joint commissioning arrangement in 2017/18, to provide a holistic health and wellbeing service comprising Improving Access to Psychological Therapies (IAPT, a CCG-commissioned service), social prescription (funded via Public Health grant and Better Care Fund) and healthy lifestyles services (commissioned by LBC, funded by PH grant). The CCG as the lead contractor contracted Turning Point to provide the service, for a five years and plus two (2018-2023 or 2024/5). For the purposes of this S.75 Agreement, funding from both the CCG and LBC for this contract is aligned. The contract is a block contract, and no risk share is required. A contract review board oversees the delivery and is the governance mechanism for the overall contract.

## 7 **FINANCIAL CONTRIBUTIONS**

The CCG and LBC will align all and pool some of the financial resources allocated for the provision of mental health services. In doing so, they will ensure that these funds are utilised to ensure the provision of quality mental health care services for Luton.

All care packages agreed by LBC and the CCG to be joint-funded will be split on a 50:50 basis. This will apply to S.117s and mental health non-S117s in accordance with joint funding protocols.

### **Financial Year 2021/22**

Financial resources in subsequent years will be agreed by the JSCG three (3) months before the beginning of the Financial Year.

### **Mental Health Budgets 2021-22**

The budget is included in the Financial Schedule.

## Schedule 3A

### Integrated Strategic Learning Disabilities Commissioning.

#### 1. Purpose

The purpose of this schedule is to define and explain the roles and responsibilities of Bedfordshire, Luton and Milton Keynes Clinical Commissioning Group (the CCG) and Luton Borough Council (LBC) in the commissioning of services for adults with a diagnosis of learning disabilities and/or autism<sup>3</sup>.

#### 2. Aims and Outcomes

The intention is to jointly oversee strategic commissioning, through a population-based approach, focused on health and social care outcomes for all adults with a learning disability.

The commissioning of services for people with a learning disability will be transformed through joint commissioning budgets and contracting arrangements, which incentivise system-wide improvement, placing ever-greater emphasis on the outcomes achieved in addition to the quantity of activity delivered.

#### 3. The Arrangements

The CCG has an Associate Director for Mental Health & Learning Disabilities and a Senior Commissioner for Learning Disabilities and Autism.

LBC will provide a lead for the commissioning function on behalf of both parties, which will include:

- Leadership for place based commissioning
- The use and oversight of pooled budgets
- The use and oversight of non-pooled budgets.

The financial contributions, pertaining to people with learning disabilities with both health and social care needs, not met by universal services, will be made by the partners to a single Luton pooled budget hosted by LBC. The partners will also make financial contributions to some non-pooled budgets, which will be managed on behalf of partners by LBC.

#### 4. Context and Legislation

Responsibilities and functions are derived from joint and separate legislation covering adult social care and the NHS. This includes, but is not limited to:

- The Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD) and any reports and guidance following the Savile Inquiry (2015);
- The Transforming Care Programme – the next steps (2015);
- The Care Act (2014);
- The Health and Social Care Act (2012);
- The National Framework for Continuing Health Care (2012);
- Valuing People Now (2009);
- The NHS Long Term Plan 2019
- The Human Rights Act (1998).

Where appropriate plans to be informed by relevant NICE Guidance and Quality Standards including, but not limited to:

- NICE guideline 96 – Care and Support of People Growing Older with Learning Disability (<https://www.nice.org.uk/guidance/ng96>)
- NICE guideline 11 – Challenging Behaviour and Learning Disabilities: prevention and interventions for people with learning disabilities whose behaviour challenges (<https://www.nice.org.uk/guidance/ng11>);
- NICE guideline 93 – Learning disabilities and behaviour that challenges: service design and delivery (<https://www.nice.org.uk/guidance/ng93>) ;
- NICE guideline 54 – Mental Health Problems in People with Learning Disabilities: prevention, assessment and management (<https://www.nice.org.uk/guidance/ng54>).

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<sup>3</sup> Throughout 'learning disabilities' will be taken to mean 'learning disabilities and/or autism'

## 5. Functions

The commissioning function will:

- ensure that there are appropriate commissioned, cost-effective services to meet the needs of those adults with learning disabilities ordinarily resident in Luton;
- understand needs and shape the market for all cohorts including children preparing to transition to adult services. This will involve:
  - assessing the local population prevalence of learning disabilities in children, young people and adults;
  - analysing assessed needs in education, health and social care plans, to provide an early view of likely service needs and enable early intervention;
  - identifying and using other sources of information, such as registers of people at risk of admission and other dynamic risk data; disabled children's registers; and records of referrals from liaison and diversion teams, youth offending teams and police.
- ensure in-depth knowledge and experience of national guidance and best practice is applied to commissioning initiatives for adults with a learning disability;
- provide support to local providers through the provider forum;
- plan services that take a 'whole-life' approach and enable smooth transitions;
- develop and support local and regional plans that have a single care pathway and point of access for adults with a learning disability, their families and carers that is reflected in commissioning strategies;
- develop a Market Position Statement and development strategy to include:
  - undertaking work to understand the capacity and skill-mix of current and potential health and social care providers and complete a gap analysis for inclusion in the local market position statement. enabling the robust development of community services;
  - undertaking a capacity and gap analysis of housing need and work proactively with housing and social care partners to develop and deliver personalised options for current and future demand;
- use and maintaining a register for those people most at risk of admission to hospital and put appropriate anticipatory support in place. For those on the register with offending behaviour, commission suitable providers who can manage high levels of risk and keep the person and the community safe;
- represent Luton for the Learning Disability Mortality Review (LeDeR), and the Transforming Care Partnership (TCP), attending meetings with NHS England as required and liaising with Specialised Commissioning.

## 6. Delivery through Partnership

Plan and deliver services in a way that:

- ensures co-production with adults using services and their families, carers and independent advocates;
- enables person-centered planning and provision;
- addresses the needs of different age groups but also takes a 'whole life' approach to planning;
- includes planning for a range of future housing and employment support needs;
- integrates health, social care and other relevant services;
- achieves quality and optimum life experience and outcomes for people with learning disabilities.

Working relationships:

- Ambulance Trusts (Ambulance and Patient Transport)
- Bedfordshire, Luton and Milton Keynes Integrated Care System (BLMK ICS) Providers;
- CCG and LBC Executive Teams;
- Commissioning Associate Directors and Service Directors;
- Community Trusts;
- Contracting Teams;
- Direct Reports/Team who may work within the CCG or Council;
- Finance and Business Intelligence teams;
- GP Practices, including GPs and Practice Staff;
- Integrated Urgent Care Provider;
- Luton Borough Council Adult Social Care Team;
- Luton Borough Council Community Learning Disabilities Team;
- Luton Borough Council councilors and portfolio holders;

- Mental Health Trusts;
- NHS Clinical Commissioning Groups;
- NHS England and Improvement and NHS Digital including Specialised Commissioning;
- Members of the public and service users as appropriate;
- Quality leads across the system.

The services excluded from the Schedule for the Council are:

- Client contributions, including the assessment and collection of client contributions by the Income teams;
- LBC social care in-house provided services to adults;
- Assessment and care management and provision of social care placements provided through the Population Wellbeing Directorate, covered in the learning disabilities service schedule.

## **7. Financial Contributions**

The CCG and LBC will align all and pool some of the financial resources allocated for the provision of learning disabilities services. In doing so, they will ensure that these funds are utilised to ensure the provision of quality services for those with learning disabilities for Luton.

All care packages agreed by LBC and the CCG to be joint-funded will be split on a 50:50 basis. This will include those subject to Section 117 arrangements in accordance with the joint funding protocols.

### **Learning Disabilities Budget for 2021/22**

The budget is included in the Financial Schedule.

### **Financial Year 2021/22**

Financial resources in subsequent years will be agreed by the JSCG three (3) months before the beginning of the Financial Year.

## **8. Governance Arrangements for Luton Integrated Strategic Commissioning Learning Disabilities Team**

A Learning Disabilities Programme Board, reporting to the Joint Strategic Commissioning Group<sup>4</sup> will oversee delivery of the LD strategy.

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<sup>4</sup> Or any subsequent group given authority to discharge this responsibility.  
V1.2 March 2021

## **SCHEDULE 3B**

### **Schedule for Learning Disabilities Service Provision**

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in this agreement.

#### **1. PURPOSE**

- 1.1.** The purpose of this schedule is to define and explain the roles and responsibilities of BLMK Clinical Commissioning Group (the CCG) and Luton Borough Council (LBC) in the provision of services for people (adults) with a primary diagnosis of learning disabilities including those who display behaviour that challenges or with a mental health condition.

#### **2. SCOPE**

- 2.1.** This Agreement covers the management of pooled funds, care management, assessments and micro-commissioning arrangements with strategic commissioning described separately.
- 2.2.** As a first principle all parties will work to ensure the effective use of funds for, the provision of the wider remit of care management across adult (18 years and above) health and social care.

#### **3. CONTEXT**

Responsibilities and functions are derived from joint and separate legislation covering adult social care and the NHS. This includes, but is not limited to:

- The Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD) and any reports and guidance following the Savile Inquiry (2015);
- The Transforming Care Programme – the next steps (2015);
- The Care Act (2014);
- Mental Capacity Act 2005
- 
- The Health and Social Care Act (2012);
- The National Framework for Continuing Health Care (2012);
- Valuing People Now (2009);
- The NHS Long Term Plan (2019)
- The Human Rights Act (1998).

#### **4. AIMS AND OBJECTIVES**

- 4.1.** This schedule aims to ensure:

- People with learning disabilities and their carers lead better lives;
- Better coordination and integration of health and social care activity, including early intervention and prevention;
- Better communication between all parties working with people with a learning disability;
- Best value sourcing of holistic services for people with learning disabilities, learning disabilities with autism as well as for their Carers;
- Increased safety of people with learning disability and a reduction in safeguarding risks and alerts;
- Promotion of each person's well-being and, enabling people with learning disabilities to live empowered lives as full citizens of the community.

- 4.2.** The objectives of this schedule are largely determined by Valuing People (2000), Valuing People Now (2009), and are supplemented by National and local development including the Transforming Care Programme (TCP) and the Learning Disabilities Mortality Review (LeDeR). Key local integrated objectives include:



- Working in accordance with Section 2 of the Care Act 2014 to prevent, reduce and delay the need for care;
- Enabling people living out of the area to return to their home town where appropriate;
- Promoting social inclusion and independence through vocational training, paid employment and volunteering opportunities.

To work alongside commissioners to:

- Develop a learning disability pathway and service;
- Improve access to specialist mental health services for people with learning disabilities working with the local Mental Health provider;
- Facilitate accessible transport for people with a learning disability as a key to increasing their participation as active citizens;
- Reduce the reliance on residential care through the identification of a range of local community housing solutions.

## 5. THE ARRANGEMENTS

**5.1.** This is an integrated service arrangement with LBC as the Host Partner of the service.

**5.2.** The Adult Learning Disability Services will work as part of, or in collaboration, but not limited to with the following teams:

- CCG commissioned NHS Mental Health Trust;
- LBC's Quality Assurance and Care Placement;
- the CCG's Continuing Healthcare Team;
- the CCG's Commissioning Team;
- Primary Networks i.e. GPs and allied professionals
- Public Health and Wellbeing;
- The Bedfordshire, Luton and Milton Keynes Transforming Care Partnership;
- Transition teams in Children's Services and Community Health Services.

**5.3.** The Adult Learning Disability Team will maintain good communication and links with the police so that they can advise on assessments of vulnerability, particularly for people with mild or borderline learning disabilities who may otherwise not be identified as vulnerable and people who need support can be diverted from the criminal justice service.

## 6. FUNCTIONS

**6.1.** For the purpose of these arrangements, it is agreed that the CCG will delegate the Health Related Service Functions<sup>5,6</sup> for people with learning disabilities to LBC and that LBC will exercise these functions in conjunction with its Health and Social Care Functions for the purposed of fulfilling its obligations as an Integrated Micro-Commissioner and Provider under this agreement.

**6.2.** The services should fulfil the following core functions:

- Assess and review individuals with a learning disability identified as living with additional health needs;
- Give support to families and carers (by following the recommendations in the NICE Guideline 11 – Challenging Behaviour and Learning Disabilities: prevention and interventions for people with learning disabilities whose behaviour challenges (<https://www.nice.org.uk/guidance/ng11>);
- Provide quality assurance and service development;
- Ensure short-term assessment and intervention;
- Enable longer-term complex intervention.

**6.3.** Specific functions and activities include, but are not limited to:

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<sup>5</sup> DH: The Functions of CCG's -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216555/dh\\_134569.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216555/dh_134569.pdf)

<sup>6</sup> NHS England: Learning disabilities Guidance for CCG's - <https://www.england.nhs.uk/2012/10/ld-guidance-for-ccgs/>

- The recruitment and management of all health and social care staff through the Integrated Learning Disability Team ensuring that they have access to clinical and/or other appropriate supervision, continued professional development (CPD) and revalidation as appropriate;
- Facilitating the Joint Funding Panel ensuring that both health and social care assessments are evidence based and that the decision for joint funding is fair and follows the agreed joint funding protocols;
- Ensuring all people have a key worker to coordinate their care, where appropriate;
- Supporting people that use services through transition periods such as moving from children's services to adults or leaving the family home;
- Conducting assessments of carers' abilities to provide support and reviewing their ability to continue to do this<sup>7</sup>; signposting to carer/parent-training programmes as appropriate;
- Considering the needs of carers and knowing where to direct them to get support;
- Involving the person and their carers in all support planning using an asset and values based approach;
- Support service users take part in personalised daily meaningful activities, enabling people to develop skills for employment and referring to appropriate services;
- Encouraging service users to have their annual health check, engaging with screening programmes and supporting the uptake of flu vaccinations;
- Working alongside partner organisations to ensure people, families and providers are supported appropriately to identify the function of behaviour that challenges recognising possible triggers and environmental factors;
- Signposting to mental health partners as appropriate;
- Contributing to the development and maintenance of the dynamic risk register, providing timely updates as requested;
- Working alongside commissioning colleagues in the operational management of the Transforming Care agenda in Luton. Ensuring attendance at Care and Treatment Reviews (CTRs), supporting discharge planning and arranging LAEP meetings as a crisis response for those at risk of package breakdown;
- Supporting people who are ordinarily resident in Luton but living outside of the area to return to their community where appropriate;
- Undertaking or facilitating Section 42 safeguarding enquiries in line with local arrangements;
- Undertaking reviews for people with learning disabilities including the use of direct payments for people buying health and social care services<sup>8</sup> those people with learning disabilities funded through Continuing Health Care (CHC);

**6.4.** The service should support adults, and their family members and carers in a way that is personalised, flexible, responsive, accessible and reflective.

**6.5** The service, where appropriate, must comply with relevant NICE guidance and Quality Standards including, but not limited to;

- NICE guideline 96 – care and Support of people growing older with learning disability (<https://www.nice.org.uk/guidance/ng96>);
- NICE guideline 11 – Challenging behaviour and learning disabilities: prevention and interventions for people with learning disabilities who behaviour challenges (<https://www.nice.org.uk/guidance/ng11>);
- NICE guideline 93 – Learning disabilities and behaviour that challenges: service design and delivery (<https://www.nice.org.uk/guidance/ng93>) ;
- NICE guideline 54 – Mental health problems in people with learning disabilities: prevention, assessment and management (<https://www.nice.org.uk/guidance/ng54>)
- The Care Act (2014).

## 7. SERVICES

The key priorities and activities to inform service delivery are set out in the Team Plan, Joint Strategic Needs Assessment (JSNA) and other needs assessments and the Learning Disability Strategy that inform service delivery.

<sup>7</sup> Where people are under CHC funding, the Learning Disabilities Team will undertake initial checklists and assessment for verification by the CHC team. Ongoing review requirements will be completed jointly by the teams.

<sup>8</sup> Approval for user of direct payments for health services will be jointly agreed with the Continuing Healthcare Team

### 7.1. Authorisation for care and health services from the pooled and aligned budgets

Where care packages meet the CHC criteria, they will be funded by the CCG, but where they do not and the panel identifies additional health needs not met by universal services, they will be funded 50/50 between the CCG and LBC. This includes packages of support for those entitled to Section 117 aftercare, in accordance with the Joint Funding Protocols.

Based on this approach, disputes over the funding of individual packages of care should be rare; however, any disputes surrounding the funding allocation will be escalated to the Service Director Adult Social Care and the CCG Associate Director Mental Health & Learning Disabilities to resolve in the first instance. Where agreement cannot be reached then this will be taken to [the Corporate Director of Population Wellbeing](#) (LBC) and the Director of Commissioning & Contracts (CCG) and if necessary to the Joint Strategic Commissioning Group (JSCG).

Pending a resolution of the dispute, and if neither authority is currently funding, nor prepared to fund, this will automatically split 50/50 between LBC and the CCG as a short-term measure until resolved.

### 7.2. Community Learning Disability Team

The Community Learning Disability Team forms part of the services for people within LBC's Public Health and Wellbeing Department. The CCG will allocate funding to the team for the healthcare element.

### 7.3. Referral, Access and Acceptance Criteria

- **Geographic Coverage**

The Community Learning Disability Team covers adults with learning disabilities resident in the Borough of Luton and/or registered with a Luton General Practice. It also includes those eligible for services currently living outside of the Borough but ordinarily resident in Luton.

- **Eligibility for the service**

The Community Learning Disability Team supports adults from the age of 18 years with a Learning Disability who meet the national eligibility criteria outlined in the Care Act 2014 and as of 1st April 2015, carers have the right to assessment and support if assessed as eligible.

People with high-functioning autism will be supported by the Council's ASC Community Team and people with autism and a primary diagnosis of mental illness will be supported through the Mental Health Team managed by the Mental Health Provider or other relevant providers.

## 8. INFORMATION SHARING AND COMMUNICATION

8.1. The Integrated Community Learning Disability team will record service user information on the Council's database complying with General Data Protection Regulations (GDPR). The team will share relevant information with other health and care providers and health and social care commissioners in accordance with the information sharing agreements. Any breaches of Data Protection will be reported to the CCG and LBC leads as appropriate.

## 9. FINANCIAL MANAGEMENT AND AUDIT ARRANGEMENTS

9.1. Overall S75 financial reporting schedule provides details on cost and contribution arrangements for both organisations. There is a fixed contribution from CCG which may be uplifted each year in line with the Council agreed pay award as this covers mainly the staffing costs.

## 10. GOVERNANCE AND ASSURANCE

10.1. The service manager for [care management and integration](#) is accountable for services for people with learning disabilities within LBC. This post sits within the Adult Social Care Management Team in [the Population Wellbeing Directorate](#). The team will provide quarterly performance reports including projected spend and user outcomes to the JSCG and/or the Finance sub-group as appropriate.

10.2. Service Performance will be managed by LBC. Monitoring includes measuring performance against

an agreed set of national and local indicators as described in the service performance indicators below.

**10.3.** The governance of the service will sit with a Learning Disability Programme Board, consisting of Associate Director (CCG), Service Director Adult Social Care and Service Director Healthcare and Adults' Commissioning.

## SERVICE PERFORMANCE

Quality checking by experts by experience should be used to support the contract monitoring of services to support best outcomes for individuals who are identified as eligible for.

These indicators will be reviewed quarterly to ensure they are reportable and purposeful.

Activity	Indicator	Target % (subject to review once baseline established)
Demographics of clients	No. of clients supported (with age, gender, and level of care need breakdown)	100
	%/no. clients with learning disability getting long term support from service	90
Keeping People well for Longer	%/no. of requests for support for new <sup>9</sup> people identified as needing Joint Funded Services, where the outcomes included universal services/signposted to other services	20
	%/no. of people who have received an assessment who then go on to receive a package of care	90
	%/no. supported working age people with learning disability living in settled accommodation	80
Personalisation	%/no. with accessible person-centred care plans	100
	%/no. of people in receipt of long term support and carers who receive a direct payment	30
	%/no. of people in receipt of long term support helped to remain in settled accommodation	90
	%/no. of permanent admissions to acute setting	n2
	%/no. of all people supported to return back to living in Luton	10
	%/no. of people referred to employment support	TBC
Operational	%/no. of new assessments completed within 28 days	100
	%/no. of people who have a assigned "named worker" under CPA	95

<sup>9</sup> New to the service within that financial year.

Activity	Indicator	Target % (subject to review once baseline established)
	%/no. of people in receipt of long term support who have been reviewed in the last year	100
	quality-of-life ratings of adults who have used the service, and their family members, friends and carers	TBA
	Number of people identified as lacking capacity vs number of capacity assessments completed.	
	%/no. of those in hospital with discharge plan within 28 days	100
	%/no. of people who have had a change in placement over the preceding 12 months	10
Safeguarding	%/no. of Safeguarding Strategy Discussions held within 5 working days of referral	90
	% of Safeguarding investigation assessments completed within 28 days	100
	% of completed Safeguarding referrals where the outcome is risk reduced or removed	100
	% of people offered advocacy services when a suitable person is unavailable	100
User experience	% satisfaction of people who use services with their care and support	TBA
	measured by personalised and validated tools <sup>10</sup>	

The service will work with people, carers, formal caregivers and commissioners to develop tools to measure people's satisfaction.

<sup>10</sup> Outcomes measured by personalised and validated tools such as the 'measure of processes of care' (MPOC) tool, or the 'patient feedback questionnaire' (PFQ)

## **SCHEDULE 4**

### **Schedule for the Better Care Fund and the Improved Better Care Fund**

Unless the context otherwise requires, the defined terms used in this Schedule shall have the meanings set out in this Agreement.

#### **1. BACKGROUND INFORMATION**

The Better Care Fund (BCF) has been established by the Government, to provide funds to local areas in support of the integration of health and social care. The designated funding must be aligned to the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose.

The improved Better Care Fund (iBCF) is an additional Government funding allocation, paid as a direct grant to Local Authorities, with a condition that it is also pooled into the local BCF plan.

Section 75 within the National Health Service Act 2006, provides local authorities and clinical commissioning groups with powers to establish and maintain pooled funds, out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.

It should be noted that BCF and iBCF are not separate legal entities, joint operations or joint ventures and are therefore accounted for as a pooled budget arrangement. Neither party has unilateral control of the BCF and iBCF, as decisions of the Joint Strategic Commissioning Board need to be made unanimously. (See - Schedule 6 Joint Strategic Commissioning Board)

BCF grant conditions stipulate funding must be allocated within the following areas:

- Non-elective admissions (General and Acute)
- Admissions to residential and care homes
- Effectiveness of reablement (Increase number of people still at home 91 days after period of reablement following hospital discharge)
- Delayed transfers of care

iBCF grant conditions stipulate funding must be allocated within the following areas:

- Meeting adult social care needs
- Reducing pressures on the NHS, including supporting more people to be discharged from hospital when they are ready
- Ensuring that the local social care provider market is supported.

There is no requirement to spend across all of the criteria, or to spend a set proportion on each.

The Disability Facilities Grant (DFG) falls under the Better Care Fund. The Housing Assistance Policy 2021 sets out the Luton duties in relation to the DFG spend.

#### **2. OVERVIEW OF BCF SERVICES**

The services funded through the BCF are identified in BCF Final Approved Budget; Appendix B, and the BCF Tracker; Appendix C, agreed by the Joint Strategic Commissioning Board (JSCG) April 2021 and the Health and Wellbeing Board (HWB), May 2021.

The Luton performance ambitions remain aligned to the BCF Metrics; Appendix A. The 2021-2022 BCF metrics will remain unchanged during quarter 1 and quarter 2. A national metric refresh is expected in quarter 3.

### **3. AIMS AND OUTCOMES**

The national conditions and metrics for the BCF are set out in item one (1). Changes to the national conditions and metrics throughout the life of this Agreement will be executed through a Deed of Variation for the BCF Schedule.

### **4. THE ARRANGEMENTS**

BCF funding, allocated to the Clinical Commissioning Group (CCG), will be managed as a pooled budget. Through the jointly agreed Arrangements, the Council will invoice the CCG for the appropriate project or scheme funding allocation. However, the total £ 16,866,364 (2021-2022) outlined in the Schedule of Funding; Appendix B, includes services delivered by providers commissioned both Partners. This figure includes £1,417,554 (2021-22) which is received directly by the Council for the purpose of delivering Disabled Facility Grants (DFG). Any changes to the designated annual allocation, throughout the life of this Agreement will be executed through a Deed of Variation for the BCF Schedule.

iBCF funding is managed as a pooled budget. In 2021-2022, it is jointly agreed, the iBCF Fund, £ 7,260,958, which includes the Winter Pressure Fund, will be allocated in total, as core funding to Adult Social Care. Please refer to Appendix B. The decision reflects the mutual understanding of the financial pressures faced by the service. Any changes to the designated annual allocation, throughout the life of this Agreement, will be executed through a Deed of Variation for the BCF Schedule.

Council and CCG Joint Staffing Arrangements are detailed in Schedule 5, Joint Commissioning and Joint Posts.

### **5. FUNCTIONS**

For the purpose of these Arrangements, applications for BCF and iBCF monies to change schemes and projects will require a specific Business Case to clarify the specification, functions, relevant BCF or iBCF key performance indicators, expected benefits and costs. Business cases require approval by the Joint Strategic Commissioning Group (JSCG), with advice and recommendations from the Financial Sub Group (FSG). It is agreed that Core funding will not require a Business Case and will be allocated following transparent discussion and approval by JSCG Members.

For the purposes of fulfilling its obligations as the host organisation of the pooled BCF budget under this Agreement, the Council will delegate those health-commissioning functions to the CCG that it is legally empowered to delegate and the CCG will exercise these functions in conjunction with its own Health Functions.

For the purposes of fulfilling its obligations as the host organisation of the pooled iBCF budget under this Agreement, the Council will delegate those health-commissioning functions to the CCG that it is legally empowered to delegate and the CCG will exercise these functions in conjunction with its own Health Functions.

Clarification of Lead Commissioner and Lead Director responsibility will be captured within individual Business Cases and the BCF Programme Tracker. Whichever party is not the Lead Commissioner, will delegate the relevant functions to the Lead Commissioner, including contract monitoring and reporting impact and benefits realised for the scheme.

### **6. SERVICES**

The services and projects that are to be delivered are described in the Luton BCF Tracker, Appendix C. The services and projects will form a BCF and iBCF programme of work, managed by the Integration Programme Manager, reporting into the FSG and the JSCG. The Luton BCF and iBCF Schedule of Funding for 2021-2022 is attached, Appendix B. Agreed allocations for 2021-2022 can be broken down as 95% core funding and 5% to the singular Enhanced Health in Care Homes change scheme.

The allocation to the Adult Social Care service is protected under the National Conditions. The detail of the spend will be captured by the Council's finance team. The beneficiaries of social care services within the BCF and iBCF allocations are those residents and their carers eligible for social care under the Care Act 2014.

## **7. COMMISSIONING AND CONTRACTING**

### ***Commissioning Arrangements***

See S75 Agreement Schedule 6 – Joint Strategic Commissioning Group.

### ***Contracting Arrangements***

The majority of service contracts are already in place and changes will be managed through contract variations with providers. Where new contracts or significant contract variations are required, the terms will be discussed and agreed through the JSCG.

## **8. FINANCIAL CONTRIBUTIONS**

### **Financial Year 2021-22**

BCF and iBCF Schedule of Funding for 2021-2022 is detailed in Appendix B of this Schedule. Changes to financial allocations will be executed through a Deed of Variation for the BCF Schedule.

## **9. FINANCIAL GOVERNANCE ARRANGEMENTS**

### ***Management of the Pooled Fund***

A lead finance manager, appointed on behalf of the lead commissioning organisation, as the Pooled Fund Manager will oversee the implementation of spends for each scheme or enabler project, in accordance with the approved Business Cases. Allocations to social care services are protected under the National Conditions, the Finance Manager will be the ASC nominated Pooled Fund Manager.

Both Partners Finance teams will monitor spend and produce regular reports for the JSCG and FSG. In addition, performance indicators are established to monitor delivery of the Enhanced Health in Care Homes change scheme and measure the expected benefits. A quarterly report against the core funding will evidence the qualitative and quantitative impact of the investment into allocated services.

The JSCG and FSG will both monitor spend and performance. The JSCG will recommend the jointly agreed allocations to the Health and Wellbeing Board for full approval. Allocation of any under spends are to be discussed and agreed between the Partners at the JSCG and the FSG, with unresolved issues escalated to the Health and Wellbeing Board.

### ***Audit Arrangements***

In compliance with any additional audit arrangements required by the Department of Health and Social Care for BCF, CCG audit arrangements will be applied to the pooled BCF budget and Council's audit arrangements will be applied to the pooled iBCF budget. Any recommendations from internal and external auditors pertaining to BCF and iBCF will be shared with both Partners at the JSCG.

### ***Financial Management***

Both Partners' financial management data systems will be used to capture spend for the services they each commission. The Council acting as the host for the monitoring and reporting of the BCF and iBCF will formally report spend information through FSG to the JSCG. Total spend will be agreed by both partners through FSG and any issues arising will be escalated to the JSCG.



Systems in use by both Partners will comply with any additional requirements from the Department of Health and Social Care for BCF.

## **10. VAT**

The VAT regime of the lead commissioning organisation will apply.

## **11. NON FINANCIAL RESOURCES**

The Partners will both contribute additional resources, including equipment, expertise and central support services, for which there will be no additional charge.

## **12. STAFF**

Staff employed by both the Partners will support the BCF and iBCF programme. A jointly appointed Programme Manager for Integration will oversee the implementation and management of the programme. A jointly funded Project Support Officer will facilitate and administer to the joint Boards and projects.

## **13. ASSURANCE AND MONITORING**

Where services and projects are being delivered by other health and social care providers, their performance will be monitored by whichever Partner has lead commissioning responsibility, through their normal arrangements and information will be shared between the Partners.

The national conditions and metrics for the BCF and iBCF are set out in item one (1), the Luton Metric Refresh Plan; Appendix A, and the Schedule of Funding 2021-2022; Appendix B. Any changes to the Appendices will be executed through a further Deed of Variation for the BCF Schedule.

The Enhanced Health in Care Homes change scheme Lead will report progress bi-monthly to the Programme Manager. Business Intelligence teams report performance against core funding allocations on a quarterly basis. The programme is managed against BCF conditions and agreed tolerances, metrics and benefits. A monthly BCF report, a bi-monthly change scheme highlight report, a quarterly core funding report and bi-monthly risk register will be provided to the FSG and JSCG Boards.

## **14. LEAD OFFICERS AND GOVERNANCE ARRANGEMENTS**

Luton Joint Strategic Board (JSCG) is a partnership group, co-chaired by representatives of the Clinical Commissioning Group and the Borough Council. The JSCG operates on behalf of the Health and Wellbeing Board, providing strategic leadership across the health and social care system. The Health and Wellbeing Board approve the Luton BCF allocations, the Luton Plan Template and any changes therein.

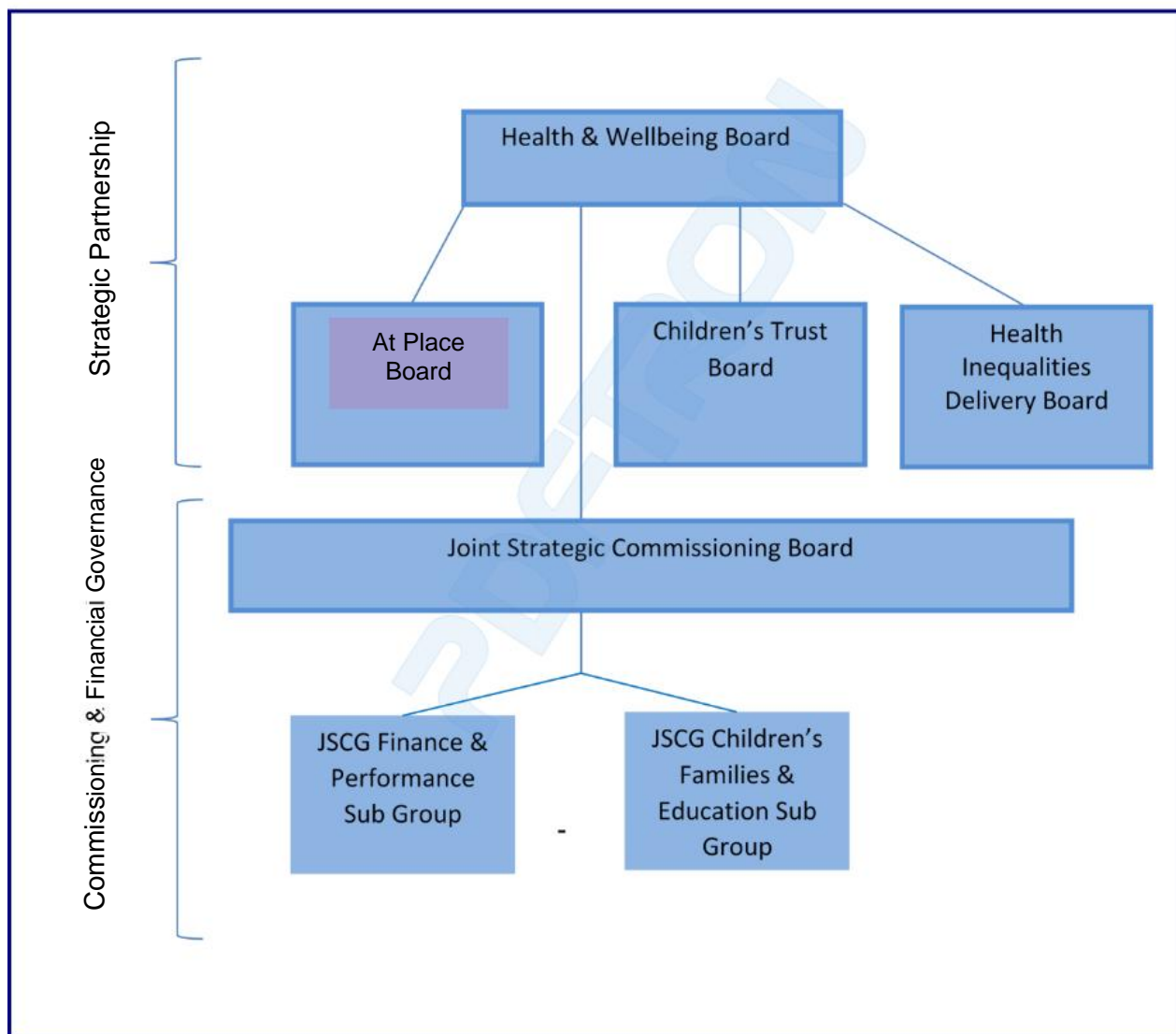
The Programme Manager will report directly to the JSCG and the Joint Financial Sub Group.

Further reporting will follow arrangements for Luton Borough Council and the Clinical Commissioning Group. When appropriate or requested, reports will be taken to Scrutiny Committee, the Health and Well Being Board and other Boards/Committees/ working groups.

## Lead Officers

Partner	Name of Lead Officer	Address
LBC	Corporate Director Population Health and Wellbeing	Luton Council, 3 <sup>rd</sup> Floor, Arndale House, The Mall, Luton, LU1 2LJ
CCG	Director Commissioning & Contracting	Luton NHS Clinical Commissioning Group, 3 <sup>rd</sup> Floor, Arndale House, The Mall, Luton, LU1 2LJ

**Figure 1. Governance Structure**



## 15. INTERNAL AND EXTERNAL APPROVALS

Due to the Covid-19 pandemic, the Department of Health and Social Care have delayed the release the BCF planning guidance and associated planning template for 2021-2020. As an interim measure the Joint Strategic Commissioning Board, on behalf of the Luton Health and Wellbeing Board, jointly approved the 2020-2021 allocations. The programme continues to be managed in line with the

planning guidance for 2019-2020 and the BCF Schedule.

## 15. RISK AND BENEFIT SHARE ARRANGEMENTS

The risks and contingency arrangements are as outlined in the 2021-22 S75 Agreement, Schedule 7; Financial Arrangements, Risk Share and Overspends.

## 16. REGULATORY REQUIREMENTS

Statutory requirements for Children's Services, Adult Social Care and CCG/NHS requirements for commissioning services apply.

## 17. INFORMATION SHARING AND COMMUNICATION

The Partner responsible for each commissioned scheme and core funding allocation will be responsible for ensuring that data systems and information sharing comply with current legislation. However, the JSCG will provide the overarching information governance arrangements to comply with statutory duties.

Any breaches will be reported to and shared between the Partners.

## 18. DURATION AND EXIT STRATEGY

The BCF plan is about delivering transformed and integrated health services through change schemes and core funding agreements. The arrangements are intended to last for the duration of BCF funding and in many cases beyond this.

On a national basis, the BCF is a requirement for 2020-2021, and provides the opportunity for the Luton health and social care system to deliver significant cultural change for personalised health care for the people of Luton.

BCF is expected to continue beyond 2022 and beyond the life span of the Luton Section 75 Agreement 2021-22. Additional changes to funding, national conditions, metrics, will be provided through a Deed of Variation for the BCF Schedule

## 19. APPENDICES (THREE APPENDICES FORM PART OF THIS SCHEDULE)

### **Appendix A**

#### *Luton Metric Refresh Plan*

*(Approved December 2018 – No change 2020-2021 due to the Covid -19 pandemic and the impact on system data in relation to BCF and iBCF allocations)*



BCF Metric Plan Dec  
2018.docx

### **Appendix B**

#### *Schedule of Funding 2020-21*



BCF 2020-21 Final  
Approved Budget (00:

## **Appendix C**

### *Luton Better Care Fund Plan Tracker 2020-2021*



BCF iBCF Tracker  
21.22 working track

## **SCHEDULE 5**

### **SCHEDULE FOR JOINT COMMISSIONING ARRANGEMENTS AND JOINT POSTS**

This schedule identifies the approach the Council and CCG are taking to collaborate and share responsibilities in commissioning health and care and services for the people of Luton and describes current joint working.

#### **1. PRINCIPLES OF WORKING TOGETHER**

The Council and CCG jointly affirm their commitment to co-operate on matters affecting the NHS, public health, wider health issues and social care for the people of Luton, seeking to work in an open, transparent and helpful manner, with good communication and early involvement of the other parties when appropriate. This will build on existing working relationships, with officials continuing to maintain free, informal and regular contact.

The parties will inform each other at the earliest reasonable opportunity of issues including the forming of policy, proposals for legislation, and the timing of public announcements - which are likely to be of mutual interest. In coming to decisions or developing policies or legislation which may have an impact financially or otherwise on other parties, or which may constrain others' policy development, each party will seek the views of those potentially affected at the earliest reasonable opportunity and be mindful of those views in taking any decisions.

In summary, to support better outcomes for Luton people:

- We will align, share and pool resources, budgets and accountabilities where it improves outcomes for the people of Luton
- We will focus on benefits to the public as a whole, rather than organisational interests.
- We will only take decisions that we know will impact on other parts of the Health and Social Care system in an environment of informed and mutual trust
- We will streamline Health and Social Care system governance to enable decisions to be taken at place, across system and pace
- We recognise that there are differences in how we work and the need to design and build systems together, involving our staff to mutually recognise and respect those differences and find innovative ways to address where organisationally feasible.
- We will design a system that is easy for everyone to understand and use.
- We will continue to work with our Integrated Care System partners exploring opportunities to design and deliver change, at scale and at place, which will provide the greatest opportunity to improve outcomes for Luton residents.

#### **2. WAYS OF WORKING**

To achieve this we will work in alliance with each other operating with mutual respect and mutual accountability. We will keep the residents of Luton informed of joint plans, adopting a co-production approach to transformation based soundly on the Luton voice and where it is required, conducting formal consultation. The Council and CCG will ensure that all colleagues and teams are aware of the agreed ways of working and any associated agreements or guidance.

This Schedule does not replace the legal framework or responsibilities of the two statutory organisations. It recognises the complexity of how the health and care system currently work and interact with each other to provide the best possible care and services.

The following behaviours should support joint governance arrangements between the CCG and council for place based jointly agreed plans.

##### **• One Luton Unified Leadership Team**

- Work as 'One Luton' driving agreed priorities through the Luton At Place Board and the designated collaborative delivery groups, focus groups and task and finish groups.
- Collectively champion Luton as a place of aspirations and achievements; a place with people at its heart.
- Embed a strong collaborative and population health management approach, addressing the wider determinants of health and inequalities, to maximise outcomes for the people of Luton.

- Facilitate stronger relationships across the system, to proactively identify, define, agree and drive the delivery of collective priorities for Luton.
- Agree a single Luton SRO for each function with aligned resources for delivery.
- Have the 'right conversation' in the 'right meeting', with 'pre-considered decisive outcomes' once, where possible.
- **Support each other to deliver 'sovereign' Legislative Responsibilities**
  - Be clear on how statutory / legal functions are being discharged and agree whether any legal sign off is required for any joint activities
- **Agree Joint Business Planning**
  - Bring together senior leaders and partners through the Luton At Place Board, to drive and facilitate partnership working with a common vision and purpose, to strategically shape the Luton priorities as set out in the 2021-2026 At Place Board Priorities Plan
  - Build key performance indicators and develop reporting requirements for tracking delivery on shared endeavours and evidencing improved population health outcomes for the people of Luton.
  - Establish a system wide ethos that supports open and transparent working practices
  - Strengthen effective and collaborative resource planning for common priorities and objectives
  - Recognise and respond to change and local need, using Covid-19 lessons learned to be proactive and take risks to achieve the agreed outcomes.
- **Review Joint Working Governance**
  - Keep under review and streamline where possible the decision-making and leadership meetings and terms of reference for joint boards or working groups as systems mature
- **Engage external partners, service users and regulators**
  - Ensure feedback, engagement and co-production is central to continuous improvement plans.
  - Strengthen the resident's voice as the source of truth, informing and co-producing transformation at all stages.
  - Provide clarity around working relationships within Luton and with partners and regulators, support the 'One Luton' approach with the Health and Wellbeing Board acting as the 'One Luton Lead', speaking on behalf of the Luton At Place Board and avoiding duplication at meetings with external stakeholders

### 3. SCOPE

The ICS priorities, Luton 2040 ambitions, the Population Wellbeing Strategy and the At Place Board will inform a jointly agreed 2021- 26 Luton At Place Priorities Plan. The BCF Plan and allocations will reflect the At Place Priorities Plan, focusing on prevention of inequalities and improving population health outcomes over the next five years. The jointly agreed JSCG workstream will remain an iterative, allowing further joint initiatives to be identified and included as our thinking evolves and develops.

Workstreams will include but will remain iterative and not exclusive to:

- I. At Place Board, integrated programmes of work funded through BCF and/or integral to the Luton S75 Agreement
- II. Managing the Better Care Fund (BCF) and the Improved BCF
- III. Section 75 Agreement
- IV. Mental Health transformation and Total Wellbeing provision
- V. Frailty and complex care (Adults)
- VI. Learning Disabilities and Autism
- VII. Children's, Families and Education Services
- VIII. Commissioning for Quality

#### **4. ANTENATAL AND MATERNITY SERVICES**

Owing to the interdependency between commissioning local comprehensive maternity services and health visiting services, it is imperative the CCG and LA work in partnership to ensure best outcomes to women and neonates.

Luton Council commission health visitor services (0-19 services) to in-reach within the antenatal care period for pregnant women to ensure early identification of risk or additional need and to provide a smooth transition post-delivery.

#### **5. FURTHER JOINT COMMISSIONING ARRANGEMENTS**

Integrated commissioning and joint contracts present an opportunity for commissioners to work with providers to maximize productivity and ensure that gaps in services are addressed and improved experiences and outcomes for service users are promoted.

The commissioning teams from CCG and Council will be supported by their respective directors to work together to agree new models for joint commissioning, for priority areas that have been identified to improve the health and wellbeing outcomes for the population of Luton. Any change to team structures will be dependent on the mobilisation and monitoring of new models agreed and these would be updated via a Deed of Variation to the current Section 75 Agreement.

*Please see below section 6 – Joint Posts*

#### **6. JOINTLY FUNDED POSTS**

##### **6.1 INTEGRATION PROGRAMME MANAGER**

The Integration Programme Manager is a joint role, funded through the Better Care Fund. The role is responsible for a diverse range of across-system programmes, jointly agreed and assigned by Luton Borough Council and BLMK CCG leaders.

The role includes:

- Development and oversight of the National Better Care Fund (BCF) annual plan
- Reporting on the BCF plan and programme – internally to the Luton Joint Strategic Commissioning Group and Health and Wellbeing Board, and externally to the BCF Board, NHS England and ADASS
- Development and oversight of the Luton Section 75 Agreement for pooled and aligned budgets, and joint working arrangements.
- Responsible for the integration programme governance, strategic planning and implementation, ensuring that all agreed and designated integrated programmes are monitored and reported with appropriate scrutiny, support and programme controls.
- Supporting the evaluation, impact and effectiveness of integrated commissioning, funding arrangements and joint or collaborative workstreams, through the Managing Successful Programmes performance framework, including Business Case planning and analysis, qualitative and quantitative reporting to associated boards, benefits realisation planning and year-end reporting as required.
- Facilitating local oversight on successful national high impact change models to influence and further integrated working plans and opportunities for Luton.
- Drive forward and manage delegated integration programmes of work, including connectivity governance and management, as set out by the At Place Board and Delivery Groups.

- Facilitating strong across-system relationships, bringing an unbiased approach and strong understanding of both the Health and Care organisations.
- Maintaining a high profile locally, regionally and nationally for Luton through effective communications and oversight, working closely with all system partners across Luton, Bedfordshire and the East of England.
- Maintaining Luton's focus on joint communications and service user voice within the programmes, and working closely with both LBC and CCG commissioning teams and Healthwatch to support resident engagement.

The role is accountable to Director Public Health and in line with agreed governance, reports to the Luton Joint Strategic Commissioning Group, the Health and Wellbeing Board and other joint boards established in relation to changing workstreams. The Integration Programme Manager, line manages the Integration Project Support Officer.



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Programme Manage

## 5.2 INTEGRATION PROJECT SUPPORT

The joint Project Support Officer provides support to the Programme Manager for Health and Social Care Integration, in the management of the Better Care Fund, S75 Agreement and assigned integrated programmes agreed by the Joint Strategic Commissioning Group.

The role includes:

- To attend, support and administer meetings, forward plans, invites, & minutes for formal and working meetings including the Joint Strategic Commissioning Group & the Financial Sub Group.
- Support the implementation of uniform reporting to bring consistency to the integration and joint commissioning projects, BCF and iBCF projects
- Provide project support to the Integration Programme Manager; collating overarching highlight reports, keeping risk register and issues logs, and the programme plan are up-to-date and accurate
- To provide support to BCF & iBCF assigned Project Managers under the guidance of the Programme Manager
- Attend, support and administer meetings, forward plan, invites and minutes for S75 planning, drafting and formatting of formal documents including the S75 Agreement
- To support the emerging and developing integration programme as we seek to deliver an intervention designed to bring council and CCG together into an effective working team for Luton.
- Manage assigned programmes work as projects and coordinate a series of interrelated activities in relation to objectives and projected outcomes and benefits.
- Provide expert administrative capacity to organise and manage complex and still emerging integration workstreams
- Within this role be a point of contact for outside providers
- Coordinator internal and external communications



Supporting

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## 5.3 FINANCE LEAD LBC & CCG



NHS Bedfordshire, Luton and Milton Keynes Clinical Commissioning Group (BLMK CCG) and Luton Borough Council (LBC) have agreed to jointly drive forward effective place-based system solutions. The inter-dependency between health and care systems is fully understood by the two authorities and we now seek finance support to the integrated commissioning function. This joint Finance Lead post holder will establish and agree arrangements for aligning and/or pooling LBC & BLMK CCG budgets with appropriate risk sharing and governance arrangements in place. The role will also support additional shared financial ambitions and the ensuing work streams, as agreed and designated by the Joint Financial Sub-Group (FSG).

The role includes:

- Oversight of overall financial reporting & performance, alongside considering risks in delivering both organisational goals and objectives, provide required assurances to the LBC and BLMK CCG.
- Promoting the highest standards of accountability and transparency. Oversee financial risk share mechanisms and keep both organisations appraised.
- Provide strategic and operational direction to both LBC and BLMK CCG finance teams to ensure that an agreed time line is followed to achieve the aligned and pooled budgets setting and reporting.
- Enthuse and engage finance and non-finance staff in the development and delivery of those objectives.
- Undertake the completion of all statutory returns in relation to financial reporting for the pooled budgets.
- Undertake a detailed mapping of health, social care and Public Health spend in the areas of integration under Section 75 pooled budget arrangements.
- Identify opportunities for expanding pooled arrangements where appropriate and beneficial to do so, bringing these to the attention of partners.
- Undertake a mapping of future planned procurements within the pooled budgets to set a strategic overview of opportunities and financial implications.
- Undertake a review of all contracts and commissioning agreements in place across Health, Social Care and Public Health.
- To ensure that aligned and pooled budget arrangements have been made as scheduled. Taking into account both organisation's commissioning intentions and to achieve better value for money outcomes for people of Luton by enabling them to pursue happy and healthy lives.
- Ensure that there is a robust process in place for providing accurate and timely financial reporting with openness and transparency.
- Support and enhance good scrutiny, governance and accountability for both organisations' budgets to meet statutory obligations and internal monitoring and reporting to achieve outcomes.
- Ensure policy compliance and best practices following National and CIPFA guidelines.
- Develop and update mechanisms for bringing budgets together including updating the section 75 agreement.



Finance Lead LBC  
LCCG Integration Jun

## **SCHEDULE 6:**

### **The Joint Strategic Commissioning Group**

#### **1. PURPOSE**

The Joint Strategic Commissioning Group (JSCG) is responsible for the joint strategic commissioning of services in Luton for children and young people, adults and public health and for managing the services covered by this Agreement.

JSCG is accountable for the governance of the Section 75 Agreement and the associated Schedules, including the Better Care Fund and the Improved Better Care Fund, coordinating the development of joint strategies for the relevant service areas and ensuring necessary arrangements are in place to implement strategies and procure service changes. This includes decisions and proposals that would be inappropriate for reasons of commercial sensitivity to take to Health and Wellbeing Delivery Boards and other groups with provider representation.

The group is responsible for strategic market development, management, and overseeing plans to re-commission and de-commission services, as well aligning this work with joint strategic procurement plans.

The JSCG Terms of Reference is attached in Appendix One (1)

#### **2. JOINT STRATEGIC FINANCE AND PERFORMANCE SUB GROUP**

The Joint Strategic Finance and Performance Subgroup is tasked with supporting the JSCG by developing, implementing, monitoring and reporting all related to the financial and performance aspects of joint commissioning arrangements. Additional short-term working groups or sub committees of the JSCG will be established when appropriate.

The FSG Terms of Reference is attached in Appendix Two (2)

#### **3. CHILDREN'S, FAMILIES AND EDUCATION SUB GROUP**

The Children's, Families and Education Subgroup (CSG) will build upon the collective endeavour for the children and young people of Luton. The Subgroup will discuss, address and drive forward collaborative solutions in regard to contract issues, performance, educational needs, tripartite agreements and any other S75 related concerns. The Subgroup will report to JSCG on a quarterly basis.

The Children's, Families and Education Subgroup Terms of Reference is attached in Appendix Three (3)

## **APPENDICES**

Appendix One (1) JSCG Terms of Reference



JSCG ToR Feb 2021  
V0.6.7.pdf

Appendix Two (2) FSG Terms of Reference



FSG TOR April 2021  
FINAL DRAFT V1.4.pdf

### Appendix Three (3) CSG Terms of Reference



Children's sub group  
of the JSCG ToR final .

## SCHEDULE 7

### S75 Financial Agreements

- 1 Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of Agreement.
- 2 Subject to any contrary provision in the relevant Scheme Specification, the Partners agree that overspends or underspends shall be managed in accordance with this Schedule 7.

#### **Financial Contributions**

- 3 The Financial Contribution of LBC and BLMK CCG Luton to the Pooled Funds for the 2021/22 Financial Year of operation is £55.274m excluding BCF (LBC contributing £13.159m and BLMK CCG Luton contributing £42.115m as set out below):
  - 3.1.1 The total of "Children's Services" is £3.291m (LBC contributing £2.241m and BLMK CCG Luton contributing £1.049m, this includes fixed and variable spend)
  - 3.1.2 The total of "Public Health Services" is £1.399m (LBC contributing £1.372m and BLMK CCG Luton contributing £0.027m, this includes fixed spend)
  - 3.1.3 The total of "Adults with Learning Disability" is £9.446m (LBC contribution is £5.314m and BLMK CCG Luton contribution is £4.131m, this includes fixed and variable spend)
  - 3.1.4 The total of "Others" is £36.812m (LBC contributing £2.068m and BLMK CCG Luton contributing £34.744m, this is fixed spend)
  - 3.1.5 The total of "Collaborative Commissioning" is £4.324m (both LBC & BLMK CCG Luton contributing £2.162m which is variable spend)
- 4 Better Care Fund total budgeted spend is £24.127m including iBCF and DFG which are paid directly to LBC separately. LBC spend profile is £15.902m (including iBCF & DFG) while BLMK CCG Luton spend profile is £8.224m.
- 5 Total Section 75 budget for 2021/22 is **£79.402m** as detailed in Appendix **XX**.
- 5.6 Financial Contributions will be paid as set out in each Schedule. BLMK CCG Luton and LBC shall pay their financial contributions to the Host Partner quarterly. The first, second and third quarters invoices shall be raised within one month after the end of a quarter. The 4<sup>th</sup> quarter invoice shall be raised based on month 11 report, presented at FSG and JSCG in March. Each quarterly payment shall be paid on receipt of an invoice for that payment, in line with the partner's payment terms, subject to resolution of any queries raised.
- 5.7 Due to the current Covid financial regime the NHS have only received funding allocations and set plans for the first half year (H1). On this basis the second six months (H2) of the S75 financial plan is indicative and may need to be revised once NHSE have released the NHS funding allocations and planning guidance for H2.
- 5.8 New financial year's budgets will be considered and agreed by the JSCG before the beginning of the new financial year wherever it is possible due to the different budget setting periods of both organisations.
- 5.9 The host partner's pooled fund manager shall recommend changes to financial contributions for each service based on the latest financial information, insights on historical costs and joint understanding of any year on year increase in demand. LBC shall share information on transition clients. This shall help to inform each partners own organisational budget setting process.
- 5.10 There shall be quarterly, open and transparent reporting. Any variations in BCF & iBCF funds, projected underspends or overspends must be reported to the FSG and then reported to the JSCG.

- 5.11 Where a financial allocation is received by one or more Partners from an external body (e.g. NHS England or MHCLG) during the financial year, and in accordance with the fund/grant conditions, this allocation will be used to increase the Financial Contributions for the appropriate Services. This shall be agreed by the JSCG in accordance with the fund/grant conditions.

### **Risk Share**

- 11 Following the June 2017 Concordat, Luton committed resources to build a S75 Pooled Budget agreement for the future years.
- 12 As detailed in Appendix One (1), each spend line has a share profile attached to it which is either Fixed or Variable.
- 13 Where it is indicated as a fixed share, any overspend or underspend by the host partner will not alter the contributions required by the non-host partner.
- 14 Where it is indicated as a variable share, any overspend or underspend by the host partner will alter the contributions required by the non-host partner. Luton will adopt the S75 flexibility of Pooled Budget with a 50/50 risk share to the joint funding of clients for:
- 14.1.1 People with learning disabilities
  - 14.1.2 People with an active mental health conditions subject to S117
  - 14.1.3 People with an active mental health conditions subject to non-S117
  - 14.1.4 Older People with an active mental health conditions
  - 14.1.5 People with physical disabilities
- 15 There is no risk share on BCF non-electives as it is no longer a requirement within BCF planning requirements since 2019/20.

### **Pooled Fund Management**

- 16 The Pooled Funds are managed by respective commissioning teams, in co-located offices. For example, LBC is the Host Partner to Children & Young People and Learning Difficulties & Autism Pooled Funds. BLMK CCG is the Host Partner to Mental Health & Wellbeing Pooled Fund.
- 17 Any variances and the subsequent treatment against the pooled funds will be subject to a type of contribution either being fixed or variable as explained above.
- 17.18 BLMK CCG Luton lead commissions contract with ELFT and Total Wellbeing/IAPT Services. Planning guidance is usually issued in December and contracts are signed by the end of March each year. LBC finance, the non-host partner, sets its budget five months earlier in November, and once set any deviation becomes an organisational problem. Given these two timing conflicts, BLMK CCG Luton finance has agreed to provide, in written form, any early guidance issued by NHSE to support any budget uplifts required in the LBC budgets for the subsequent financial year.
- 17.19 Previously both partners have agreed a new arrangement for joint funded clients as per paragraph 14 above.

### **S75 Overspend Position**

- 17.20 All spend within S75 is subject to a fixed or variable share or contribution. While fixed share lines in general will never be overspent, variable spend can be overspent depending on the volume or activity level.
- 17.21 It is therefore imperative that both partners set their budgets at the start of the financial year as accurately as possible. Any variations from the originally set budgets will be discussed in FSG and then presented in JSCG accordingly.

- 18 The Partners agree to co-operate fully in order to establish an agreed position in relation to any overspends.
- 19 Any overspends within the Better Care Fund will be mitigated by the jointly agreed solutions.

### **S75 Underspend Position**

- 20 As explained above that all spend within S75 is subject to either a fixed or variable share contribution. While fixed contributions in general will never show an underspend, variable lines can show underspends against the set budgets depending on the volume or activity level.
- 21 Any underspends will be returned to the relevant partners, apportioned in line with pool contributions.
- 22 Any underspends in better Care Fund including any un-allocated amounts or contingencies will be discussed in FSG with the recommendations on use of these made to the JSCG.

### **Financial Management Systems**

- 23 The Host Partner will be responsible for the financial management of the budgets, as set out in this schedule.
- 24 The Host Partner will ensure that full and proper records for accounting purposes are kept in respect of the budgets, for which the Host Partner is responsible and that accounts are kept and cash flows are managed in accordance with proper practices and comply with the terms of all codes of practice or guidance or directions which apply to the Partners.
- 25 The Host Partner will provide regular summarised financial reports to partners in accordance with the agreed governance and performance arrangements for all services as set out in other schedules and statutory year-end memorandum accounts in line with both partners required financial timetables.
- 26 If it is deemed necessary, any of the Partners may convene a meeting to discuss any professional issues arising out of financial management of budget.

### **Timely Invoice Dispute Resolution**

- 27 Clause 22 of the main S75 schedule defines the dispute resolution of last resort. To minimise disputes, the Partners shall follow a *timely* process of escalation.
- 28 FSG shall maintain a register of all the invoice disputes per Partner. FSG shall review the register at every meeting and endeavour to resolve any disputes within two meeting cycles after entry.
- 29 If the invoice dispute is not resolved in FSG, within the two meeting cycles, the invoice dispute shall be added to the unresolved invoice dispute register and escalated to BLMK CCG Luton CFO and Council's S151 officer, for their attention and decision.
- 30 BLMK CCG Luton CFO and Council's S151 Officer shall give priority attention to resolving the dispute within the financial year.

### **Timely settlement of invoices and backing data**

- 31 Both partner are under financial pressures. Timely settlements of invoices within this S75 agreement are a critical part of the day to day financial operation to minimise disputes and help manage financial risk/opportunities.
- 32 BLMK CCG manages its cash flow on a monthly basis. Timely generation of invoices is required for collaborative working. It is agreed that S75 invoices will be presented within one month after quarter 1, 2, 3, and within March for quarter 4 based on February forecast outturn.

- 33 Purchase Orders shall be raised, where applicable, and approved prior to invoicing and preferably at the commencement of a service. The council operates a 'No Purchase Order, No Pay' policy.
- 34 For payable invoices, the backing data to be supplied by either Partner shall contain the following
- For a recharge invoice / joint funded placements / client based:
    - 1) addressed to the correct approval person
    - 2) a clear description of spend, preferably with reference to this schedule 7, paragraph 3.
    - 3) authorisation from relevant Service manager,
    - 4) breakdown of spend per client
    - 5) client info subject to confidentiality
    - 6) contact name of originator in the event of query
  - For S75 quarterly invoicing
    - 1) S75 finance budget/forecast report
- 35 Each partner shall present to the other partner, at the monthly FSG, queries of any outstanding invoices. Responses to queries shall be within 5 work days.
- 36 The partners are committed to improving the sharing of information for the purposes of timely financial settlement and avoidance of disputes. The lead commissioning partner shall maintain data on spend per client as part of day-to-day operation. Both partners shall be prepared to supply client spend data upon request within a short period of time, typically 5 work days for reasonable requests, and 10 work days for more complex requests. If a complex request is likely to be more than 10 workdays, then the reasons must be given to the requesting Partner in order to understand the barriers and formulate possible solution. Simple request is where the information is inside finance department, complex request is where the information is outside of finance department in services or commissioning.
- 37 Failure to supply the correct backing data will lead to delays. Acknowledgement of receipt of the information needs to be made by the receiving party.

### **Open and Transparent S75 Reporting**

- 38 S75 reporting shall promote openness, transparency, timeliness and accuracy with any variations from original budgets clearly agreed and presented.
- 39 S75 budget reporting shall be on a quarterly basis to FSG and JSCG.

### **Appendix One (1)**



S75 Agreements  
Financial Summary 20

## Schedule 8 GDPR Schedule

### GDPR AND Data Processing Schedule Requirements of Processing, Personal Data and Data

1. The Partners shall complete this Schedule as agreed between the Partners
2. Any such further requirements shall be incorporated into this Schedule

Description	Details
Subject matter of the Processing	<p>The Section 75 Agreement 2021-2022 between the Luton Borough Council (LBC) and the Bedfordshire, Luton and Milton Keynes Clinical Commissioning Group (BLMK CCG).</p> <p>To establish a framework through which the Partners can secure the provision of health and social care services</p>
Duration of the Processing	Throughout the life of the Section 75 Agreement 2021-2022
Nature and purposes of the processing	<p>Schedule 8 outlines the data sharing agreement between the 2021-2022 Section 75 Agreement LBC and the BLMK CCG</p> <p>The S75 Agreement and the associated schedules enable the prescribed health related functions of one Partner to be delegated to the other for the purpose that the arrangements are likely to lead to an improvement in the way in which those functions are exercised. The basis of such agreements centre upon the pooling of budgets, agreed joint ways of working and the promotion and strengthening of partnership working with the aim of more effective, efficient use of resources including the appropriate and relevant data sharing associated with the S75 Agreement, in order to meet the health and social care needs of the citizens of Luton.</p> <p>In addition to the GDPR Schedule, BLMK CCG holds an overarching Data Sharing Agreement. This Data sharing agreement should be used in conjunction with this schedule</p>
Type of Personal Data	<p><b>Examples of but not limited to:</b></p> <p><b>Personal Data:</b> Name, address, email address, telephone number, date of birth, gender, household make up including contact information for next of kin and others providing significant support, financial information including bank account details and benefit entitlement, school details, pupil ID numbers, national Insurance number; details of family relationships, lone parent status, family breakdown and relationships, history of domestic abuse, immigration status, language spoken, employment status, benefit entitlement, details of siblings, child receiving support for SEND, criminal reports and antecedents, information if child is looked after or has special guardianship, adoption information</p>



Description	Details
Type of Personal Data Cont'd	<b>Special category data:</b> Ethnicity, religion, NHS Number, Information contained within the patient record including dentist and GP contact details, health information including mental health, mental capacity assessment, disability status and medical conditions, history of substance misuse & addiction, Treatment details, discharge summaries, care plans, medication reviews, medical reports, results of medical investigations such as x rays.
Categories of Data Subject	Adults and Children under the care of either party
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Information will be retained and destroyed in line with the NHS Records Management Code of Practice 2016