

AMENDMENT HISTORY

Version	Author	Reason for change	Description of change	Date of change
First Draft (v1)	P Moseley		First draft of Enhanced Discharge Arrangements variation to BCF S75 for 2020-21	6 June 2020
Second Draft (v2)	P Moseley		Second draft of Enhanced Discharge Arrangements variation to BCF S75 for 2020-21 following JPB amendments on 18 June 2020	19 June 2020

REVIEWERS

This document has been reviewed by:

NAME	VERSION	TITLE/RESPONSIBILITY	DATE
Stuart Lackenby	First Draft	Director for Adult Social Services SMBC	18 June 2020
Angela Poulton	First Draft	Managing Director SWBCCG	18 June 2020
Christine Guest	First Draft	Service Manager SMBC	18 June 2020
Dave Hughes	First Draft	Deputy CFO SWBCCG	18 June 2020
Charlie Davey	First Draft	Finance Business Partner SMBC	18 June 2020

APPROVALS

VERSION	BOARD/COMMITTEE	DATE
Second Draft	Sandwell Commissioning Committee	
Second Draft	Cabinet	
First Draft and Second Draft amendments agreed	Joint Partnership Board	18 June 2020
TBA	Health and Wellbeing Board	

Dated June 2020

- (1) Sandwell Metropolitan Borough Council**
- (2) Sandwell and West Birmingham CCG**

**Variation to the Framework Partnership Agreement Relating To The Commissioning Of
Health And Social Care Services In Relation To The Sandwell Better Care Fund**

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THIS DEED OF VARIATION is made on day of June 2020

PARTIES

- (1) SANDWELL METROPOLITAN BOROUGH COUNCIL of FREETH STREET, OLDBURY B69 3DE (the “**Council**”); and
- (2) SANDWELL AND WEST BIRMINGHAM CCG of 438 – 450 HIGH STREET, WEST BROMWICH B70 9LD (the “**CCG**”)

(The parties are referred to as the “**Partners**” in this Agreement as relevant)

BACKGROUND

- (A) The Partners entered into a Framework Partnership Agreement relating to the commissioning of Health And Social Care Services in relation to the Sandwell Better Care Fund on 28th January 2020 in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable (the “**Partnership Agreement**”).
- (B) As part of the NHS and wider public sector’s response to the global Covid-19 pandemic the Government has issued the Covid-19 Hospital Discharge Service Requirements (the “**Discharge Requirements**”) which took effect on March 19th 2020.
- (C) The Discharge Requirements have been introduced to ensure that where it is clinically safe to discharge patients from an acute or community hospital those patients are discharged in accordance with the new ‘Discharge to Assess’ model.
- (D) To support the new Discharge Requirements a range of measures have been introduced including, amongst others:
 - i. a temporary suspension of the obligation of the need to carry out Continuing Healthcare assessments for patients on the acute hospital discharge pathway and in community settings during the Enhanced Discharge Services Period;
 - ii. a commitment that the NHS will fully fund the cost of new or additional elements of existing out of hospital health and social care support packages to facilitate discharge from, or to prevent admission to, hospital as set out in the Discharge Requirements until such time as local health and care systems are notified that the Discharge Requirements will come to an end; and
 - iii. a suspension of the usual patient eligibility criteria during the Enhanced Discharge Services Period.
- (E) In accordance with the Discharge Requirements, the Partners have considered the most appropriate model through which to commission the enhanced discharge and hospital admission avoidance services and agreed that Sandwell Metropolitan Borough Council shall act as the Lead Commissioner for these services and the Partners shall pool the funding referred to in this Deed for the purpose of funding this service.
- (F) The Partners have agreed to vary the terms of the Partnership Agreement as set out in this Deed of Variation.

AGREED TERMS

1 Defined terms and interpretation

1.1 In this Deed, expressions defined in the Partnership Agreement and used in this Agreement have the meaning set out in the Partnership Agreement.

1.2 Subject to clause 1.1 of this Deed, the following words and expressions shall have the following meanings:

Covid-19 Hospital Discharge Scheme means the scheme as set out in the Annex to this Deed which implements the Covid-19 Hospital Discharge Services Requirements on a local level.

Deed means this Deed of Variation including any schedules and appendices.

Discharge Requirements means the Covid-19 Hospital Discharge Service Requirements published by HM Government and the NHS on 19th March 2020.

Effective Date means the date of this Deed.

Enhanced Discharge Services Period means the period from 19th March 2020 until the date notified to the Partners by NHSE&I or the Department of Health and Social Care as being the date on which Funded Packages will no longer be available to new patients or existing recipients of Funded Packages.

Funded Packages means:

- new or extended out-of-hospital health and social care support packages referred to in the Discharge Requirements and more specifically set out in Annex A of the Covid-19 Financial Reporting Guidance; and
- provided to patients on or after the Operational Date and before the end of the Enhanced Discharge Services Period.

Future Discharge Requirements means any subsequent directions and/or guidance issued by HM Government and or the NHS in relation to the continuation, variation or cessation of the Discharge Requirements.

Operational Date means 19th March 2020.

1.3 The rules of interpretation set out in the Partnership Agreement apply to this Deed.

2 Variation

2.1 The Partners acknowledge agree and confirm that in accordance with clause 30 (Variation) of the Partnership Agreement (which provides that any variation shall

be recorded in writing and signed for and on behalf of each of the Partners) that the Partnership Agreement shall be amended on the Effective Date as follows:

- 2.2 Except as amended by this Deed and the Schedules of this Deed, the Partnership Agreement shall continue in full force and effect and this Deed shall not release or lessen any accrued rights, obligations or liability of any of the Partners under the Partnership Agreement.

3 Term

The Partners acknowledge, agree and confirm that the variations set out in Clause 2 shall take effect as from the Operational Date and shall continue in effect until the Covid-19 Hospital Discharge Scheme is terminated or varied in accordance with the provisions set out in Schedule 1 to this Deed to reflect future arrangements following the end of the Enhanced Discharge Services Period.

4 General

The provisions of the following clauses of the Partnership Agreement shall apply, mutatis mutandis, to this Deed: clause [15] (Audit and Access Rights), clause [23] (Dispute Resolution Procedure), clause [25] (Confidentiality) clause [26] (Freedom of Information and Environmental Protection Regulations), clause [29] (Notices) and clause [34] (Assignment and Sub-Contracting).

5 Severance

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

6 Third party rights

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

7 Entire agreement

- 7.1 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.
- 7.2 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 Partners.

8 Counterparts

This Deed 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 Deed for all purposes.

9 Governing law and jurisdiction

- 9.1 This Deed 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 and Wales.
- 9.2 Subject to clause 23 (Dispute Resolution) of the Partnership Agreement, the Partners irrevocably agree that the courts of England and Wales 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 Deed has been executed by the Partners on the date of this Deed

THE CORPORATE SEAL of **THE COUNCIL OF [•]**
was hereunto affixed in the presence of:

Signed for on behalf of [•]
CLINICAL COMMISSIONING GROUP

Authorised Signatory
Signed by the authorised signatory of

Schedule 1 Individual Scheme Specifications

The Partners have agreed the following new Individual Schemes and agreed the Scheme Specification as annexed to this Schedule:

- Covid-19 Hospital Discharge Scheme.

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ANNEX – Covid-19 Hospital Discharge Scheme Specification

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

1 OVERVIEW OF INDIVIDUAL SERVICE

- 1.1 This Service shall be known as the Covid-19 Hospital Discharge Service.
- 1.2 The Service is being introduced in response to the global Covid-19 pandemic and more specifically the Government's Discharge Requirements guidance to reduce pressure on those hospitals providing acute services.
- 1.3 The Partners have reviewed the Discharge Requirements and determined that the arrangements as set out in this Scheme Specification will permit them to implement the Discharge Requirements.
- 1.4 The Council will be the lead commissioner for this Service and shall comply with the requirements of this Scheme Specification.
- 1.5 A pooled budget will be established into which the funding for this Service will be paid.
- 1.6 The Host Partner for the Pooled Fund for Covid-19 Hospital Discharge is the CCG and the Pooled Fund Manager, being an officer of the Host Partner is David Hughes.

2 AIMS AND OUTCOMES

- 2.1 The Individual Scheme aims to ensure compliance with the Discharge Requirements by:
 - 2.2 Facilitating timely and effective discharge of patients who are clinically suitable for discharge;
 - 2.3 Facilitating rapid mobilisation of appropriate care and support packages;
 - 2.4 Maintaining capacity in acute and community hospitals for the care of patients with Covid-19 who require hospitalisation;
 - 2.5 Implementing the revised funding model for care and support packages in the Enhanced Discharge Services period.

3 THE ARRANGEMENTS

- 3.1 The Partners have agreed to implement the following arrangements in relation to the Covid-19 Hospital Discharge Service:
 - 3.1.1 Lead Commissioning; and
 - 3.1.2 the establishment of one or more Pooled Funds or Non Pooled Funds as may be required.

4 FUNCTIONS

4.1 For the purposes of implementing this Scheme the CCG delegates to the Council its functions under:

4.1.1 section 3(1)(b) of the 2006 Act of arranging for the provision of other accommodation for the purpose of any service provided under the 2006 Act;

4.1.2 section 3(1)(e) of the 2006 Act of arranging for the provision of such other services or facilities for the prevention of illness, the care of persons suffering from illness, and the after-care of persons who have suffered from illness as are appropriate as part of the health service.

In each case in so far as the Council considers such services/provision to be necessary to meet the requirements of the person for whom the care and support is provided.

4.2 The Partners agree that the above delegation from the CCG to the Council will:

4.2.1 likely lead to an improvement in the way in which these functions are discharged during the Covid-19 pandemic; and

4.2.2 improve health and well-being.

5 SERVICES

5.1 The Council shall arrange for the provision of the following services:

5.1.1 Short-term and long-term residential care and nursing care placements, domiciliary care packages and transport to facilitate timely and effective discharges from acute and community hospitals or to prevent avoidable admission to hospital. The costs of these services may include the additional costs of providing 24-hour nursing care to individuals who are “stepped up” from a community or residential care placement. Other services and interventions may also be commissioned from time to time and as required to achieve the purposes set out within the NHS Covid Discharges guidance (“**Enhanced Discharge Support Services**”).

5.2 The Council shall arrange the provision of the Enhanced Discharge Support Services for the benefit of:

5.2.1 those persons the CCG has responsibility to provide services for under Sections 3(1A) and 3(1B) of the 2006 Act; and

5.2.2 those persons the Council has responsibility to provide services for

and whose requirement for a Funded Package arises during the Enhanced Discharge Services Period.

6 COMMISSIONING, CONTRACTING, ACCESS

6.1 Commissioning Arrangements during the Enhanced Discharge Services Period

- 6.1.1 Long-term residential and nursing care placements and transport arrangements will be commissioned using existing service contracts and domiciliary care placements will be commissioned by call-off of services from the existing domiciliary framework agreement or by spot purchasing from alternative providers as required
- 6.1.2 Short-term (step-down or step-up) residential and nursing care placements will be commissioned where possible from available capacity under existing contracts funded through the Better Care Fund. Where this is not possible the Council will enter into new contracting arrangements for the required services.
- 6.1.3 The Council shall ensure that when commissioning Funded Packages it makes the patient and their families and/or carers aware that following the end of the Enhanced Discharge Services Period the patient may be required to pay for all or some of their future care needs.

6.2 Contracting Arrangements

- 6.2.1 Contracts will be managed by the Council in accordance with Clause 6.6 of the Framework Partnership Agreement relating to the commissioning of Health And Social Care Services in relation to the Sandwell Better Care Fund.
- 6.2.2 The Council shall ensure that it reimburses those providers providing the Enhanced Discharge Support Services in a timely fashion paying particular attention to the financial pressures on providers during the Covid-19 pandemic. In complying with this obligation, the Council shall refer to guidance issued by the Local Government Association, ADASS, and the Care Provider Alliance on social care provider resilience during Covid-19.

6.3 Access

- 6.3.1 The Enhanced Discharge Support Services will be accessed as appropriate by patients being discharged from hospital or who would otherwise be admitted into it.

7 FINANCIAL CONTRIBUTIONS

- 7.1 The Covid-19 Hospital Discharge Scheme is being implemented in response to the Covid-19 pandemic and to give effect to the Discharge Requirements.
- 7.2 During the Enhanced Discharge Services Period there will no eligibility assessments for beneficiaries of the services provided under the Covid-19 Hospital Discharge Scheme and the costs of care packages or enhancements to existing packages under the Covid-19 Hospital Discharge Scheme and also the costs of any other services or interventions commissioned to achieve the purposes set out within the NHS Covid Discharges guidance shall be fully funded from central funding provided to the CCG by NHS England & Improvement..
- 7.3 The Partners shall:

- 7.3.1 comply with any requirements and any guidance issued by HM Government and/or the NHS relating to the funding of the Covid-19 Hospital Discharge Scheme after the end of the Enhanced Discharge Services Period; and
- 7.3.2 work together in good faith to give effect to any such requirements and/or guidance.
- 7.4 The exact level of the CCG's contribution to the Pooled Fund for Covid-19 Hospital Discharge is not known at this time. The CCG's contribution will be based on the monthly expenditure submissions to NHS E&I and completed by the CCG and the Council.
- 7.5 The CCG shall fully reimburse the Council for all expenditure incurred on the services referred to in para. 5.1.1 within fourteen days of receiving the relevant funding from NHSE&I.

8 FINANCIAL GOVERNANCE ARRANGEMENTS

- 8.1 The financial arrangements for the Covid-19 Hospital Discharge Scheme shall generally be conducted and managed in accordance with the Framework Partnership Agreement relating to the commissioning of Health And Social Care Services in relation to the Sandwell Better Care Fund except for the following changes:

8.2 Audit Arrangements

- 8.2.1 As Host Partner the CCG will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Pooled Fund for Covid-19 Hospital Discharge, meeting all required accounting and auditing obligations.

8.3 Financial Management

The Council shall ensure that:

- 8.3.1 all support provided under the Covid-19 Hospital Discharge Scheme is recorded at individual level;
- 8.3.2 all agreed budgets funded through the Covid-19 Hospital Discharge Scheme are recorded at individual level;
- 8.3.3 any local authority funding, whether existing or new, which is transferred to the Pooled Fund for Covid-19 Hospital Discharge by the Council is separately identifiable and the support purchased with it is separately recorded;
- 8.3.4 All monitoring and/or reporting information required by the CCG to report to NHSE&I or the Department of Health and Social Care is provided to the CCG promptly and in any event within any time frames stipulated by the CCG.

8.4 Assurance and Monitoring

- 8.4.1 The Council will provide details of all expenditure on the Enhanced Discharge Services to the CCG by the 5th of each month. This expenditure will form the

basis of the CCG's monthly claim to NHSE&I for eligible expenditure on the Enhanced Discharge Services.

8.4.2 The Joint Partnership Board will meet prior to the submission of each monthly claim by the CCG to agree the expenditure to be reported within the claim.

9 GOVERNANCE ARRANGEMENTS

9.1 The governance arrangements set out in Clause 19 of the Framework Partnership Agreement relating to the commissioning of Health And Social Care Services in relation to the Sandwell Better Care Fund shall apply in respect of this Variation.

10 LEAD OFFICERS

Partner	Name of Lead Officer	Address	Telephone Number	Email Address
Council	Stuart Lackenby	Sandwell Council, Freeth Street, Oldbury	0121 569 5460	Stuart_Lackenby@sandwell.gov.uk
CCG	Michelle Carolan	SWBCCG, High Street, West Bromwich	0121 612 3830	mcarolan@nhs.net

11 INTERNAL APPROVALS

11.1 This Variation will be considered and approved as necessary by:

11.1.1 The Sandwell Joint Partnership Board, being the executive decision-making forum accountable to the Health and Wellbeing Board and responsible for the development, implementation and monitoring of the Framework Partnership Agreement Relating To The Commissioning Of Health And Social Care Services In Relation To The Sandwell Better Care Fund

11.1.2 The Sandwell Commissioning Committee of the CCG

11.1.3 The Council's Cabinet

11.1.4 The Health and Wellbeing Board

11.1.5 This Variation shall be signed by the Lead Officers for each Partner as set out in clause 10

12 DURATION AND EXIT STRATEGY

- 12.1 The arrangements for the Covid-19 Hospital Discharge Scheme may only be varied:
- 12.1.1 in accordance with the variation provisions in the Partnership Agreement; and
 - 12.1.2 where such variation complies with the requirements of the Discharge Requirements and/or any Future Discharge Requirements.
- 12.2 This Scheme may not be terminated otherwise than in accordance with the termination provisions in the Partnership Agreement
- 12.3 The Covid-19 Hospital Discharge Scheme shall, unless varied to give effect to Future Discharge Requirements, terminate on the date on which the Discharge Requirements cease to apply.
- 12.4 The Partners acknowledge that as at the date of this Agreement they are not in a position to determine all the exit arrangement for the Covid-19 Hospital Discharge Scheme. The Partners agree that except as otherwise set out in this clause they shall:
- 12.4.1 keep under review the Discharge Requirements and any Future Discharge Requirements;
 - 12.4.2 consider how to give effect to the requirements of any Future Discharge Requirements, where relevant; and
 - 12.4.3 develop and agree as appropriate an exit plan in relation to the end of the Enhanced Discharge Services Scheme which shall take into account and identify, where relevant;
 - (a) appropriate mechanisms for maintaining service provision;
 - (b) allocation and/or disposal of equipment;
 - (c) responsibilities for debts and ongoing service contracts;
 - (d) responsibility for any liabilities which have been accrued by the Host Partner or Lead Commissioner;
 - (e) premises arrangements;
 - (f) record keeping arrangements;
 - (g) information sharing arrangements and requirements;
 - (h) staffing arrangements
 - (i) appropriate processes to be initiated in the run up to and following the end of the Enhanced Discharge Services Period.
- 12.5 The Partners further agree that they shall meet within seven days of being notified of the end date for the Enhanced Discharge Support Service to:

- 12.5.1 implement any agreed exit plan or in the absence of an agreed exit plan agree and implement such a plan which shall include, as a minimum, arrangements to transfer the existing Funded Packages onto the future funding arrangements; and
 - 12.5.2 consider the need for any other Individual Schemes to be introduced as a result of the termination of this Individual Scheme.
- 12.6 The monies in the Pooled Fund which have been made available by the NHS pursuant to the Discharge Requirements may only be used to pay for the costs of those services which are listed in Annex A to the Covid-19 Financial Reporting Guidance as being eligible for this funding.

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