

**AMENDMENT HISTORY**

<b>Version</b>	<b>Author</b>	<b>Reason for change</b>	<b>Description of change</b>	<b>Date of change</b>
First Draft (v1)	P Moseley		First draft of 2020-21 BCF S75	6 June 2020
Second Draft (v2)	P Moseley		Second draft of 2020-21 BCF S75 following JPB amendments on 18 June 2020	19 June 2020

**REVIEWERS**

This document has been reviewed by:

<b>NAME</b>	<b>VERSION</b>	<b>TITLE/RESPONSIBILITY</b>	<b>DATE</b>
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**

<b>VERSION</b>	<b>BOARD/COMMITTEE</b>	<b>DATE</b>
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

2020

---

**SANDWELL METROPOLITAN BOROUGH COUNCIL**

and

**SANDWELL AND WEST BIRMINGHAM CLINICAL  
COMMISSIONING GROUP**

---

**FRAMEWORK PARTNERSHIP AGREEMENT RELATING  
TO THE COMMISSIONING OF HEALTH AND SOCIAL  
CARE SERVICES IN RELATION TO THE SANDWELL  
BETTER CARE FUND**

---

## Contents

Item		Page
	<b>PARTIES</b>	<b>1</b>
	<b>BACKGROUND</b>	<b>1</b>
1	DEFINED TERMS AND INTERPRETATION	3
2	TERM	8
3	GENERAL PRINCIPLES	9
4	PARTNERSHIP FLEXIBILITIES	11
5	FUNCTIONS	12
6	COMMISSIONING ARRANGEMENTS	13
7	ESTABLISHMENT OF A POOLED FUND	14
8	POOLED FUND MANAGEMENT	15
9	NON POOLED FUNDS	16
10	FINANCIAL CONTRIBUTIONS	16
11	NON FINANCIAL CONTRIBUTIONS	16
12	RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS	16
13	CAPITAL EXPENDITURE	17
14	VAT	17
15	AUDIT AND RIGHT OF ACCESS	17
16	LIABILITIES AND INSURANCE AND INDEMNITY	18
17	STANDARDS OF CONDUCT AND SERVICE	19
18	CONFLICTS OF INTEREST	19
19	GOVERNANCE	19
20	REVIEW	20
21	COMPLAINTS	21
22	TERMINATION & DEFAULT	21
23	DISPUTE RESOLUTION	22
24	FORCE MAJEURE	22
25	CONFIDENTIALITY	23
26	FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS	23
27	OMBUDSMEN	24
28	INFORMATION SHARING	24
29	NOTICES	24
30	VARIATION	25
31	CHANGE IN LAW	25
32	WAIVER	25
33	SEVERANCE	25
34	ASSIGNMENT AND SUB CONTRACTING	26
35	EXCLUSION OF PARTNERSHIP AND AGENCY	26
36	THIRD PARTY RIGHTS	26

<b>37</b>	<b>ENTIRE AGREEMENT</b>	<b>26</b>
<b>38</b>	<b>COUNTERPARTS</b>	<b>26</b>
<b>39</b>	<b>GOVERNING LAW AND JURISDICTION</b>	<b>26</b>
	<b>SCHEDULE 1 – GOVERNANCE</b>	<b>28</b>
	<b>SCHEDULE 2 - FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS</b>	<b>38</b>
	<b>SCHEDULE 3 – JOINT WORKING OBLIGATIONS</b>	<b>41</b>
	<b>Part 1 – LEAD PARTNER OBLIGATIONS</b>	<b>41</b>
	<b>Part 2 – OBLIGATIONS OF THE OTHER PARTNER</b>	<b>42</b>
	<b>SCHEDULE 4 – PERFORMANCE ARRANGEMENTS</b>	<b>43</b>
	<b>SCHEDULE 5 – BETTER CARE FUND PLAN</b>	<b>45</b>

---

**THIS AGREEMENT** is made on                    day of

2019

## **PARTIES**

- (1) **Sandwell Metropolitan Borough Council** (the "**Council**")
- (2) **Sandwell and West Birmingham Clinical Commissioning Group** (the "**CCG**")

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Sandwell.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act for registered patients of the CCG.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve 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.
- (D) 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.
- (E) 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 jointly deliver improvements to health and social care services through lead or joint commissioning arrangements. It is also the means through which the Partners will agree to pool funds and align budgets.
- (F) The aims of the Partners entering in to this Agreement include:
  - a) improving the quality and efficiency of the Services within the scope of the Agreement;
  - b) creation of a joint commissioning function for community-based services that:
    - i. supports the prevention of avoidable hospital admissions, readmissions and admissions to long term care home placements and efficiently manage the flow of patients;
    - ii. works closely with hospital discharge teams to efficiently manage the flow of patients out of hospital and back into the community;
    - iii. enables vulnerable people to avoid unnecessary admission to acute hospital beds through the provision of appropriate community services;
    - iv. supports improved community resilience and self-care.
  - c) meeting the requirements of national Better Care Fund Policy;
  - d) making more effective use of resources through the establishment and maintenance of a Pooled Fund for expenditure on the Services;
  - e) formalising collaborative commissioning arrangements;
  - f) ensuring effective collaborative working through clear and agreed accountabilities;
  - g) managing the deployment of the Sandwell Systems Resilience fund in collaboration with the A&E Delivery Board to support effective joint winter planning and ensuring community health and social

care services have sufficient capacity to maintain flexible and responsive provision during periods of high demand.

- (G) Partners plan to leverage the Better Care Fund to create an integrated support model based on local services to fully meet the identified health and social care needs of the population. This integrated approach has the benefit of commitment and support from health and social care partners; including, but not limited to, primary healthcare providers, secondary healthcare providers, Local Authority and social care, commissioners, voluntary sector agencies and volunteers. The benefits to the Partners from entering in to this Agreement include:
- a) Improved performance against local and national targets and ambitions;
  - b) Shared commitment and resources enabling people to receive the right services at the right time and in the right place through efficient care pathways that operate seamlessly across organisational and professional boundaries;
  - c) creation of flexible and responsive integrated community health and social care services able to meet the unique and changing needs of vulnerable people and communities.
- (H) 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 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement, and all other powers enabling.

## 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 Regulations** means the Environmental Information Regulations 2004.

**2006 Act** means the National Health Service Act 2006.

**Affected Partner** means, in the context of Clause 24, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event

**Agreement** means this agreement including its Schedules and Appendices, and any variation of it from time to time agreed between the Partners.

**Aligned Commissioning with CCG as Lead Partner** means the CCG is commissioning the Services in exercise of CCG Functions. There is no delegation of Functions from the Council to the CCG. However, the CCG and Council are co-operating in identifying and aligning services that need to be provided.

**Annual Report** means the annual report produced by the Partners in accordance with Clause 20 (Review).

**Approved Expenditure** means any expenditure approved by the Partners in writing in relation to an Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

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

**BCF Quarterly Report** means the quarterly report produced by the Partners and provided to the Health and Wellbeing Board.

**BCF 2016 Agreement** means the agreement between the Parties in respect of the Better Care Fund for the period commencing 1 April 2016.

**Better Care Fund** 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 Commissioning Group** means the membership to be constituted and responsible for the day-to-day commissioning of the Services.

**Better Care Fund Plan** means the plan agreed by the Partners for the relevant Financial Year setting out the Partners plan for the use of the Better Care Fund as attached as Schedule 5.

**Better Care Fund Requirements** means any and all requirements on the CCG and the Council in relation to the Better Care Fund set out in Law and guidance published by the Department of Health.

**Cabinet** means the body of that name established under the executive arrangements of the Council.

**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 Commencement Date.

**Commencement Date** means 00:01 hrs on [DD MM 2020].

**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 under a Services Contract as consideration for the provision of goods, equipment or services as required as part of the Services and which, for the avoidance of doubt, does not include any Default Liability.

**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) as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under a Services Contract or (ii) 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.

**Department of Health and Social Care** means the government department with responsibility for the Better Care Fund.

**Directions** means such statutory directions in respect of services as the Partners must follow.

**Financial Contributions** means the financial contributions made by each Partner to a Pooled Fund 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;
- (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,

in each case where such event is beyond the reasonable control of the Partner claiming relief.

**Functions** means the NHS Functions and/or the Health Related Functions (as the case may be).

**Health and Wellbeing Board** means the Health and Wellbeing Board established by the Council pursuant to Section 194 of the Health and Social Care Act 2012.

**Health Related Functions** means those of the health related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the commissioning of the Services.

**Host Partner** means for each Pooled Fund the Partner that will host the Pooled Fund and for any Non Pooled Fund the Partner that will host the Non Pooled 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 has been agreed by the Partners to be included within this Agreement using the powers under Section 75.

**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 Systems Planning Group (ISPG)** means the membership to be constituted and responsible for the day-to-day operation of the Services.

**Joint (Aligned) Commissioning** means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions from one Partner to the other pursuant to Section 75. However, the CCG and Council are co-operating in identifying and aligning services that need to be provided.

**Joint Partnership Board (JPB)** means the Joint Partnership Board responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 1 or such other arrangements for governance as the Partners agree.

**Joint Partnership Board Quarterly Reports** means the reports that the Pooled Fund Manager shall produce and provide to the Joint Partnership Board on a Quarterly basis.

**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 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 Health Related Functions.

**Lead Commissioner** means the Partner specified for any Services as being the Partner with authority to commission that service on its own behalf and that of the other Partner.

**Lead Funds** means a fund of monies (if any) as specified, in relation to each Scheme to be available in order to purchase those parts of the Services identified in the Schedule[s] as to be purchased from such Lead Fund.

**Lead Fund for Health Care** means the fund of monies provided by the CCG for the purposes of purchasing NHS health care in connection with NHS Functions.

**Lead Fund for Social Care** means the fund of monies provided by the Council for the purposes of purchasing Council health related care in connection with Health Related Functions.

**Lead Partner** means the Partner responsible for commissioning an Individual Service save in the case of Joint (Aligned) Commissioning where the following applies:

(i) Joint (Aligned Commissioning) with Council as Lead Partner. Here the Council is commissioning the Services in exercise of Health Related Functions. There is no delegation of Functions from the CCG to the Council. However, the CCG and Council are co-operating in identifying and aligning services that need to be provided.

(ii) Joint (Aligned Commissioning) with CCG as Lead Partner. Here the CCG is commissioning the Services in exercise of NHS Functions. There is no delegation of Functions from the Council to the CCG. However, the CCG and Council are co-operating in identifying and aligning services that need to be provided.

**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.

**Month** means a calendar month.

**National Conditions** mean the national conditions as set out in the National Guidance as are amended or replaced from time to time.

**National Guidance** means any and all guidance in relation to the Better Care Fund as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately.

**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.

**NHS England and NHS Inspection (NHSE&I)** means the single organisation arising from the integration of NHS England and NHS Inspection

**Non-financial Contributions** means those corporate services made available to the Partnership Arrangements and provided as appropriate by Partners, including but not limited to, senior management support, finance and HR, relevant estates and office facilities as required.

**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.

**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.

**Operating Principles** mean the intentions of the Partners in the operation of the arrangements set out within this Agreement as described in clauses 3.7 – 3.22 inclusive.

**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" or "Partnerships" shall be construed accordingly.

**Partnership Arrangements** means the arrangements as set out in this Agreement concerning the lead and the delegation of Functions or budgets as set out in this Agreement.

**Partnership Lead** means the officer responsible within the office of the Host Partner approved by the Board who shall be the chair of the Better Care Fund Commissioning Group for a particular Scheme.

**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** means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations.

**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, including the Council where the Council is a provider of any Services.

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

**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

1 January to 31 March

and "**Quarterly**" shall be interpreted accordingly.

**Regulations** means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended).

**Revised Annual Finance Agreement** means the written confirmation of finance contributions for operation of the Agreement.

**Revised Annual Plan** means an annual statement of agreed intentions which shall be the subject of expenditure from the Pooled Fund and Lead Funds for a Scheme. This shall include any objectives for change to Services delivery or expenditure arrangements to be implemented by the Host Partners on behalf of the Partners in the Financial Year. The Revised Annual Plan is to be prepared by the Pooled & Lead Funds Manager and to be approved by the Board.

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

**Services** means such health and social care services as agreed from time to time by the Partners as commissioned under the arrangements set out in this Agreement.

**Services Contract** means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of the Services in accordance with the relevant Individual Scheme.

**Service Users** means those individuals for whom the Partners have a responsibility to commission the Services.

**SOSHSC** means the Secretary of State for Health and Social Care

**Standing Orders and Standing Financial Instructions** means the standing orders and financial procedure rules (or equivalent) in force from time to time as approved under the constitutional arrangements applicable to the respective Partners.

**Term** means the period from the Commencement Date and ending on 31st March 2021 subject to earlier termination in accordance with the terms of this Agreement.

**Term Extension** means, in respect of any Scheme, a period as described in Clause 2.2.

**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 Joint Partnership Board.

**Underspend** means any expenditure from the Pooled Fund in a Financial Year which is less than the aggregate value of the Financial Contributions for that Financial Year.

**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 & Financial Dealings Act 1971.

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 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.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 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.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **2 TERM**

- 2.1 This Agreement shall come into force on the Commencement Date.

- 2.2 This Agreement shall continue until it is terminated in accordance with Clause 22.
- 2.3 The duration of the arrangements for each Individual Scheme shall be for the duration of this Agreement unless terminated earlier by the Partners.
- 2.4 This Agreement supersedes the BCF 2016 Agreement without prejudice to the rights and liabilities of the Partners under the BCF 2016 Agreement

### **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 COMMISSIONING PRINCIPLES**

- 3.4 Sandwell Health and Wellbeing Board recognises that integrating health and social care services is vitally important for improving the efficiency of public services and removing traditional organisational boundaries that make it difficult for people to access public services.
- 3.5 The Board is committed to building on the progress made in year one and two of the BCF, with Council and CCG partners agreeing to align their respective commissioning duties to deliver improved health and wellbeing for the people of Sandwell. Partners agree that the best solution is to develop a placed-based integrated care system that delivers better integration of General Practice, community health, social care, mental health and hospital services.
- 3.6 Commissioners and providers from the health, social and voluntary sectors will work better together to create service improvements that:
  - 3.6.1 deliver high quality care;
  - 3.6.2 present value for money;
  - 3.6.3 improve health outcomes of local people;
  - 3.6.4 support local health and care system resilience;
  - 3.6.5 enable integration and interoperability across providers;
  - 3.6.6 incorporate patient experience into the design.

### **3.7 OPERATING PRINCIPLES FOR COLLABORATION: INTRODUCTION**

- 3.8 Following the agreement of the Sandwell Health and Wellbeing Board to implement a placed-based health and care system for Sandwell, the arrangements set out within this Agreement reflect and formalise the collaborative aspirations of the Partners to deliver the preferred commissioning model for Sandwell and in so doing meet the national requirements for areas to integrate health and social care systems by 2020.
- 3.9 The Government and NHS England have made a range of commitments to integration, most notably through the development of Better Care Fund (BCF) policy implemented from April 2015 and the Five Year Forward View (FYFV) launched in October 2014.
- 3.10 The arrangements set out within this Agreement will support the delivery of the aspirations set out by the Sandwell Better Care Fund plan for 2017-2019 and the development of longer-term relationships between health and social care partners to deliver integrated services through effective joint commissioning.
- 3.11 It is anticipated that the arrangements set out within this Agreement will remain stable and in place for a number of years, subject to annual review. The arrangements for procuring and managing services and other collaborative activity will change over time to reflect the needs of the Partners and changing requirements. Similarly, additional collaborative activity can be agreed and appended to this document at any time.
- 3.12 The Partners agree that the terms of this Agreement may be reviewed from time to time and with amendments made in accordance with the established governance of the Better Care Fund Programme and in consultation with the Local Authority and CCG as appropriate.
- 3.13 Current National Guidance delivers a mandate for local areas to achieve integration of Health and Social Care by 2020. The National Guidance is underpinned by the provisions of the Health and Social Care Act 2012, which places a duty on commissioners to commission services effectively and efficiently. It is recognised by Sandwell Metropolitan Borough Council and Sandwell and West Birmingham CCG that best use of resources will be achieved by commissioners working collaboratively to commission a range of relevant health and social care services across Sandwell. Aligning commissioning arrangements in this way will deliver improvements to the quality and cost effectiveness of commissioned services whilst improving users' experience of care.
- 3.14 Sandwell Metropolitan Borough Council and Sandwell and West Birmingham Clinical Commissioning Group have a long history of working effectively together. These Operating Principles build on that history and seek to formalise these arrangements through a clear set of accountabilities to ensure that the partnership works effectively to achieve its shared aim of commissioning high quality, integrated services to deliver the best outcomes for local people.
- 3.15 These Operating Principles describe the arrangements under which Sandwell Metropolitan Borough Council and NHS Sandwell and West Birmingham Clinical Commissioning Group will work together to develop a collaborative approach to commissioning services.
- 3.16 Without prejudice to the generality of the provisions of this Agreement, nothing in these Operating Principles impacts upon the statutory duties and responsibilities of the Partners, or to their reporting responsibilities or their separate accountabilities. These Operating Principles do not place additional legal responsibilities on any Partner, nor does it imply any transfer of responsibility between the Partners.
- 3.17 The Partners will work collaboratively to resolve any issues that may arise from time to time during the operation of this agreement, through established networks and through governance provided by the Joint Partnership Board and the Health and Well-being Board.
- 3.18 OPERATING PRINCIPLES FOR COLLABORATION: AIMS AND BENEFITS OF COLLABORATION**

- 3.19 By working closely together the Partners expect to achieve a number of benefits to improve the quality of jointly commissioned services, including:
- 3.19.1 developing strength in a common voice to increase commissioners' ability to negotiate with and influence existing and new providers across health and social care markets;
  - 3.19.2 aligning strategy and resources as well as share skills, knowledge and expertise to increase the resilience of the Partners at a collective and individual level;
  - 3.19.3 realising savings from increased economies of scale;
  - 3.19.4 reducing the gaps in service provision across Sandwell;
  - 3.19.5 improving working relationships between health and social care professionals through greater mutual understanding of roles, responsibilities and challenges faced;
  - 3.19.6 robust joint winter planning to ensure continuous delivery of responsive, high quality community health and care services during periods of high demand;
  - 3.19.7 supporting community resilience and self-care.

3.20 **OPERATING PRINCIPLES FOR COLLABORATION: ACCOUNTABILITIES AND GOVERNANCE**

- 3.21 Throughout the collaboration the Partners will remain responsible and accountable for meeting their respective statutory duties. This Agreement covers a partnership arrangement between the Council and CCG under permitted flexibilities and is not intended to create a separate organisation. The Council remains accountable to its Cabinet and Council and the CCG remains accountable to its Governing Body. There is a joint responsibility on the Partners to ensure the partnership is successful.
- 3.22 All decisions made in relation to any service covered by these collaborative commissioning arrangements will be made in accordance with the governance arrangements set out in Clause 19 but nothing in these arrangements shall operate so as to fetter the Council's discretion in the exercise of its statutory powers or functions

**4 PARTNERSHIP FLEXIBILITIES**

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following commissioning mechanisms:

- 4.1.1 Lead Commissioning Arrangements;
- 4.1.2 Integrated Commissioning;
- 4.1.3 Joint (Aligned) Commissioning
- 4.1.4 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

- 4.2 Where there are Lead Commissioning Arrangements and the CCG is Lead Partner, 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 Where there are Lead Commissioning Arrangements and the Council is Lead Partner, 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 Scheme 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.<sup>1</sup>
- 4.5 At the Commencement Date the Partners agree that the following shall be in place:
- 4.5.1 The following Individual Schemes with Joint (Aligned) Commissioning with Council as Lead Partner:
- (a) Community Resilience
  - (b) Prevention
  - (c) Integrated Assessment & Reablement
  - (d) Hospital Avoidance & Discharge
  - (e) Integration Enablers
  - (f) Maintain FACS / Demographics
  - (g) iBCF - Protect Social Care
  - (h) iBCF - Timely & Effective Discharge
  - (i) iBCF - Enhancing Health in Care Homes
  - (j) iBCF - Integration Team
  - (k) iBCF - HUB
  - (l) iBCF - Supporting the Market
  - (m) Disabled Facilities Grant
- 4.5.2 The following Individual Schemes with Joint (Aligned) Commissioning with CCG as Lead Partner.
- (a) Intermediate Care

## 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 in writing from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.

---

<sup>1</sup> Parties should always check that the proposed services can be delegated before incorporating.



- 5.3 The introduction of any Individual Scheme will be subject to business case approval by the Joint Partnership Board in accordance with the variation procedure set out in Clause 30.

## **6 COMMISSIONING ARRANGEMENTS**

### General

- 6.1 The Joint Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.
- 6.2 The Partners shall comply with all relevant legal duties and statutory guidance applicable to Partners or either of them in relation to the Services being commissioned.
- 6.3 Each Partner shall keep the other Partner and the Joint Partnership Board 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.
- 6.4 Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
- 6.4.1 how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
  - 6.4.2 whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.)

### Integrated Commissioning

- 6.5 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:
- 6.5.1 the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
  - 6.5.2 both Partners shall work in cooperation and endeavour to ensure that the relevant Services within each Scheme are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

### Appointment of a Lead Partner

- 6.6 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:
- 6.6.1 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
  - 6.6.2 commission Services for individuals who meet the eligibility criteria set out by commissioners;

- 6.6.3 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;
- 6.6.4 comply with all relevant legal duties and statutory guidance applicable to both Partners or either of them in relation to the Services being commissioned and the award of contracts for those Services (including as to patient choice);
- 6.6.5 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" (as those terms are used under the NHS Standard Form Contract) with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations under such contract with all due skill and attention;
- 6.6.6 undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices (and in this context a "contract notice" means a notice provided for under the relevant contract requiring the service provider to remedy defects, or to submit to a mandatory service review or a notice to terminate the relevant contract for the default of the service provider) where Services fail to deliver contracted requirements;
- 6.6.7 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 6.6.8 keep the other Partner and Joint Partnership Board 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 A POOLED FUND**

- 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 agreed by the Partners. At the Commencement Date there shall be a single BCF Pooled Fund in respect of this Agreement.
- 7.2 The Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 Subject to Clause 7.4, it is agreed that the monies held in the 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 Third Party Costs where these are agreed in advance in writing by the Joint Partnership Board;
  - 7.3.4 Approved Expenditure as agreed in advance in writing by the Joint Partnership Board;
  - 7.3.5 Permitted Expenditure.
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of the Joint Partnership Board.
- 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 in accordance with Clause 7.4.
- 7.6 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for the Pooled Fund. The Host Partner shall be the Partner 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; and
- 7.6.3 appointing the Pooled Fund Manager;
- 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **8 POOLED FUND MANAGEMENT**

8.1 The Partners agree that:

- 8.1.1 The Council 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;
- 8.1.2 The Service Manager (Commissioning and Integration) shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations

8.2 The Pooled Fund Manager shall have the following duties and responsibilities which will be discharged through the activities of the Council finance team:

- 8.2.1 the day to day operation and management of the Pooled Fund;
- 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement;
- 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
- 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
- 8.2.5 reporting to the Joint Partnership Board as required by this Agreement and by the Joint Partnership Board;
- 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
- 8.2.7 preparing and submitting to the Joint Partnership Board periodic reports 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 and the Joint Partnership Board to monitor the effectiveness of the Pooled Fund and to enable the Partners 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 including (without limitation) compliance with any reporting requirements as may be required by relevant National Guidance;
- 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying periodic reports referred to in Clause 8.2.7 above to the Health and Wellbeing Board.

8.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall:

- 8.3.1 have regard to National Guidance and the recommendations of the Joint Partnership Board; and
- 8.3.2 be accountable to the Partners for delivery of those responsibilities.

8.4 The Joint Partnership Board may agree to amend the allocation of the Pooled Fund between Individual Schemes.

## **9 NON POOLED FUNDS<sup>2</sup>**

- 9.1 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners. 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.
- 9.2 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
- 9.2.1 which Partner if any<sup>3</sup> shall host the Non-Pooled Fund
- 9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 9.3 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.
- 9.4 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
- 9.4.1 the 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
- 9.4.2 the 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 Service in each Financial Year.

## **10 FINANCIAL CONTRIBUTIONS**

- 10.1 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out in Schedule 2.
- 10.2 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Partners.
- 10.3 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Joint Partnership Board minutes and recorded in the budget statement as a separate item.

## **11 NON FINANCIAL CONTRIBUTIONS**

- 11.1 Unless otherwise agreed by the Partners, each Partner shall provide the Non-financial Contributions for any Service that they are Lead Partner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. These contributions shall be provided at no charge to the other Partners or to the Pooled Fund.

## **12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS**

### **Risk share arrangements**

---

<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. The Lead Commissioner will still be responsible for managing the fund effectively.

<sup>3</sup> The non pooled fund can be a virtual pool with contributions identified but held separately. Transfers between partners for non pooled funds need to be made by S76/256 of the 2006 Act.

- 12.1 The Partners have agreed risk share arrangements as set out in Schedule 2, which provide for risk share arrangements arising within the commissioning of services from the Pooled Fund as set out in National Guidance.

#### **Overspends in Pooled Fund**

- 12.2 Subject to Clause 12.3, the Host Partner for the Pooled Fund shall manage expenditure from the Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
- 12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Joint Partnership Board in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Joint Partnership Board is informed as soon as reasonably possible and the provisions of Schedule 2 shall apply (excluding paragraph 6 of Schedule 2).

#### **Overspends in Non Pooled Funds**

- 12.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an overspend in relation to a Partners financial contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Joint Partnership Board but otherwise shall be responsible for the sufficiency of its financial contribution.
- 12.6 Where there is a Lead Commissioning Arrangement the Lead Partner is responsible for the management of the Non-Pooled Fund. The Lead Partner shall as soon as reasonably practicable inform the other Partner and the Joint Partnership Board of any actual or forecast overspend and the Joint Partnership Board will lead negotiations between the CCG and Council to formulate and agree a resolution.

#### **Underspend**

- 12.7 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 or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward and/or returned to the Partners and the provisions of Schedule 2 shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

### **13 CAPITAL EXPENDITURE**

- 13.1 Except as provided in Clause 13.2, neither Pooled Funds nor Non-Pooled Funds shall 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. If a need for capital expenditure or any other one-off expenditure on goods and/or services is identified to be paid from Pooled Funds or Non-Pooled Funds this must be agreed in writing by the Partners.
- 13.2 The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.

### **14 VAT**

The Partners shall agree the treatment of each Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.

### **15 AUDIT AND RIGHT OF ACCESS**

- 15.1 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 Fund and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.
- 15.2 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 relevant Partner 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.
- 15.3 The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

## **16 LIABILITIES AND INSURANCE AND INDEMNITY**

- 16.1 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 (including a Loss arising under an Individual Scheme) as a consequence of any act or omission of another Partner (“Other Partner”) which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 16.2 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 Joint Partnership Board.
- 16.3 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 may claim against the other indemnifying Partner will:
- 16.3.1 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;
  - 16.3.2 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);
  - 16.3.3 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.
- 16.4 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 and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement).
- 16.5 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.

## **Conduct of Claims**

- 16.6 In respect of the indemnities given in this Clause 16:
- 16.6.1 the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
  - 16.6.2 the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters.
  - 16.6.3 the indemnifying and indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

## **17 STANDARDS OF CONDUCT AND SERVICE**

- 17.1 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).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund 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.
- 17.3 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 Statutory Duties and clinical governance obligations.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

## **18 CONFLICTS OF INTEREST**

- 18.1 The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in the relevant provisions of Schedule 1 or as agreed by the Partners from time to time.

## **19 GOVERNANCE**

- 19.1 The overall strategic oversight of partnership working between the Partners is vested in the Health and Wellbeing Board, which for these purposes shall give directions to the Partners through the Joint Partnership Board as to any action it considers necessary.
- 19.2 The Partners have established a Joint Partnership Board (the JPB) to:
  - 19.2.1 Bring together senior leaders from health and social care commissioning partners for the purposes of providing strategic commissioning leadership to deliver the Sandwell Better Care Fund Plan and other collaborative commissioning arrangements that Partners may agree to enter into from time to time. Such arrangements may include, but are not limited to, formal pooled budget agreements and aligned commissioning arrangements.

- 19.2.2 To be accountable to the Sandwell Health and Wellbeing Board. Members will be responsible for ensuring any recommendations or decisions made at the JPB will be considered and ratified as required by appropriate forums of member organisations that may be affected by, or have an interest in, any decisions or recommendations made by the JPB.
- 19.3 The Joint Partnership Board is based on a joint working group structure. Each member of the Joint Partnership Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Joint Partnership Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 1.
- 19.4 The Joint Partnership Board acts as the principal executive decision-making forum for the Sandwell Better Care Programme and is advised by the Better Care Fund Commissioning Group and the Integrated Systems Planning Group, which are responsible for day to day management of the Individual Schemes. Decisions made by the Joint Partnership Board are reported to the Health and Wellbeing Board and internal governance forums of the Partners. The overall governance structure for the Programme is set out in Schedule 1
- 19.5 The terms of reference of the Joint Partnership Board, the Better Care Fund Commissioning Group and the Integrated Systems Planning Group shall be as set out in Schedule 1 and may be amended or varied by agreement of the Partners from time to time.
- 19.6 The business of the Sandwell Better Care Fund Programme will be overseen on a day to day basis by the Sandwell Better Care Fund Programme Manager with support from the Sandwell Better Care Fund Programme Directors as required.
- 19.7 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 19.8 The Joint Partnership Board shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 2.
- 19.9 The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.

## **20 REVIEW**

- 20.1 The Partners shall produce reports as required by the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Commissioning Board
- 20.2 Save where the Joint Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any Pooled Fund and Non Pooled Fund, and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.3 Subject to any variations to this process required by the Joint Partnership Board, Annual Reviews shall be conducted in good faith and in accordance with the governance arrangements set out in Clause 19.
- 20.4 The Partners shall within 30 Working Days of the annual review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Joint Partnership Board.
- 20.5 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.



20.6 The Partners shall review the operation of this Agreement on the coming into force (or anticipation of the coming into force) of any relevant legislation or guidance affecting the terms of this Agreement so as to ensure that the terms of this Agreement comply with such legislation or guidance.

## **21 COMPLAINTS**

21.1 The Partners' own complaints procedures shall apply to complaints arising under or by virtue of this Agreement. The Partners agree to assist one another in the management of complaints arising from this Agreement or the provision of the Services.

## **22 TERMINATION & DEFAULT**

22.1 This Agreement may be terminated by any Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.

22.2 Each Individual Scheme may be terminated by either Partner giving not less than 12 Months' notice in writing or such shorter notice period agreed between the Partners provided that:

22.2.1 such termination is possible in accordance with the National Guidance and Law; and

22.2.2 that the Partners ensure that the statutory Better Care Fund Requirements continue to be met, and

for the avoidance of doubt the operation of the Agreement shall continue in respect of the remaining Individual Services.

22.3 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.

22.4 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 this Agreement.

22.5 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.

22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:

22.6.1 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;

22.6.2 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;

22.6.3 the Lead Partner 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 Partner in repudiation or breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Partner 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.

- 22.6.4 where a Service Contract held by a Lead Partner 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 Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract (subject to such indemnities and provisions for the destination of liabilities as the Lead Partner may reasonably require having regard to the purpose and intent of this Agreement).
- 22.6.5 the Joint Partnership Board 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
- 22.6.6 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.

## **23 DISPUTE RESOLUTION**

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner (the "Originating Partner") may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 23.2 The Authorised Officers of the Partners shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute. It shall be the responsibility of the Originating Partner to convene such a meeting.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute. It shall be the responsibility of the Originating Partner to convene such a meeting.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 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.
- 23.5 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.

## **24 FORCE MAJEURE**

- 24.1 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.
- 24.2 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.

- 24.3 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 the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the 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.

## **25 CONFIDENTIALITY**

- 25.1 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:
- 25.1.1 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
- 25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
- (b) is obtained by a third party who is lawfully authorised to disclose such information.
- 25.2 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.
- 25.3 Each Partner:
- 25.3.1 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 the Agreement; and
- 25.3.2 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;
- 25.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

## **26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

- 26.1 The Partners agree 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, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.
- 26.2 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.

## **27 OMBUDSMEN**

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

## **28 INFORMATION SHARING**

The Partners will comply with the information governance protocol as agreed between the Partners from time to time.

## **28A DATA PROTECTION**

**The provisions of Schedule 6 shall apply.**

## **29 NOTICES**

29.1 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:

29.1.1 personally delivered, at the time of delivery;

29.1.2 sent by facsimile, at the time of transmission;

29.1.3 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

29.1.4 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.

29.2 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).

29.3 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:

29.3.1 if to the Council, addressed to the interim Director for Adult Social Care

Tel: 0121 569 5460

E.Mail: [stuart\\_lackenby@sandwell.gov.uk](mailto:stuart_lackenby@sandwell.gov.uk)

and

29.3.2 if to the CCG, addressed to the relevant Managing Director

Tel: 0121 612 3830

E.Mail: [mcarolan@nhs.net](mailto:mcarolan@nhs.net)

## **30 VARIATION**

30.1 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 subject to approval by the Joint Partnership Board as set out in this Clause.

30.2 Where the Partners agree that there will be:

30.2.1 a new Pooled Fund;

30.2.2 a new Individual Scheme; or

30.2.3 an amendment to a current Individual Scheme,

the Joint Partnership Board shall agree the new or amended Individual Scheme and this must be signed by the Partners. A request to vary an Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions may be made by any Partner but will require agreement from all of the Partners in accordance with the process set out in Clause 30.3. The notice period for any variation unless otherwise agreed by the Partners shall be 3 Months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.

30.3 The following approach shall, unless otherwise agreed, be followed by the Joint Partnership Board:

30.3.1 on receipt of a request from one of the Partners to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the Joint Partnership Board will first undertake an impact assessment and identify those Service Contracts likely to be affected;

30.3.2 the Joint Partnership Board will agree whether those Service Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Service Contract terms and conditions and ensuring that the Partners holding the Service Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;

## **31 CHANGE IN LAW**

31.1 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.

31.2 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.

31.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 23 (Dispute Resolution) shall apply.

## **32 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.

## **33 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.

## **34 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 Partners, 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.

## **35 EXCLUSION OF PARTNERSHIP AND AGENCY**

35.1 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 either Partner directly liable to any third party for the debts, liabilities or obligations of the other.

35.2 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:

35.2.1 act as an agent of the other;

35.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or

35.2.3 bind the other in any way.

## **36 THIRD PARTY RIGHTS**

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise except parties who are the successor bodies to the relevant NHS Functions or Health Functions as the case may be.

## **37 ENTIRE AGREEMENT**

37.1 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.

37.2 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.

## **38 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.

## **39 GOVERNING LAW AND JURISDICTION**

39.1 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 and Wales.

39.2 Subject to Clause 23 (Dispute Resolution), 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 Agreement has been executed by the Partners on the date of this Agreement

THE CORPORATE SEAL of **SANDWELL** )  
**METROPOLITAN BOROUGH COUNCIL** )  
was hereunto affixed in the presence of: )

\_\_\_\_\_  
Authorised Signatory – Stuart Lackenby

Signed for on behalf of **SANDWELL AND**  
**WEST BIRMINGHAM CLINICAL**  
**COMMISSIONING GROUP**

\_\_\_\_\_  
Authorised Signatory – Michelle Carolan

## SCHEDULE 1 – GOVERNANCE

### JOINT PARTNERSHIP BOARD

#### 1. Introduction & Purpose

- 1.1 Sandwell Metropolitan Borough Council on behalf of the Sandwell Health and Wellbeing Board (hereafter HWB) established the Sandwell Health and Adult Social Care Joint Partnership Board (hereafter JPB).
- 1.2 The JPB will bring together senior leaders from health and social care commissioning partners for the purposes of providing strategic commissioning leadership in relation to the Sandwell Better Care Fund Programme and other collaborative commissioning arrangements that Partners may agree to enter into from time to time. Such arrangements may include, but are not limited to, formal pooled budget agreements and aligned commissioning arrangements.
- 1.3 The JPB will be accountable to the Sandwell Health and Wellbeing Board. Members will be responsible for ensuring any recommendations or decisions made at the Board will be considered and ratified as required by appropriate forums of member organisations that may be affected by, or have an interest in, any decisions or recommendations made by the JPB.

#### 2. Responsibilities and duties

- 2.1 The JPB will be specifically responsible for:
  - Providing strategic direction to the Sandwell Better Care Fund Programme.
  - Decision-making in relation to commissioning proposals developed by Partners in respect of services funded through aligned or formally pooled budgets, including the Sandwell Better Care Fund, and made in accordance with nominated Lead Commissioners' respective financial schemes of delegation.
  - Approval of commissioning plans in respect of services funded through aligned or formally pooled budgets, including the Sandwell Better Care Fund.
  - Approval of pooled budget agreements, including those made in relation to the Sandwell Better Care Fund.
  - Ensuring Partners fulfil their respective obligations under the pooled budget agreements or aligned commissioning arrangements.
  - Annually reviewing the Terms of Reference for the Board.
  - Monitoring and control of workstreams funded through pooled or aligned commissioning budgets.
  - Managing risks, issues and dependencies of workstreams funded through pooled or aligned commissioning budgets.
  - Receiving relevant financial and activity information in relation to the BCF programme.
  - Reviewing the operation of the S75 Agreement and performance manage the services funded through the Sandwell Better Care Fund.
  - Agreeing such variations to the S75 Agreement from time to time as it thinks fit.
  - Ensuring expenditure on services funded through pooled or aligned commissioning budgets is managed within the agreed allocations.
  - Reporting performance of services funded by the Sandwell Better Care Fund and other formally pooled or aligned budgets through governance forums of the CCG and SMBC.
  - Reporting directly to the HWB on in accordance with relevant National Guidance.



- Cooperating with the BCF Programme Manager in meeting reporting requirements in accordance with relevant National Guidance.

## 2.2 Delegated Authority

- 2.3 The JPB is authorised within the limits of delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:
- Authorise commitments which exceed, or are reasonably likely to exceed, the agreed contributions of the Partners to the Sandwell BCF Pooled Fund or other pooled budgets or aligned commissioning arrangements Partners may enter into; and
  - Authorise a delegated commissioner to enter into any contract for services that the Board has approved for funding through pooled budgets or aligned commissioning agreements.

## 3. Membership and representation

- 3.1 Core membership is set out below:

<b>Job Title</b>	<b>Organisation</b>
Chief Executive	Sandwell Metropolitan Borough Council
Director of Adult Social Services	Sandwell Metropolitan Borough Council
Director of Public Health	Sandwell Metropolitan Borough Council
Service Manager for Commissioning and Integration	Sandwell Metropolitan Borough Council
Managing Director for Sandwell	Sandwell & West Birmingham CCG
Finance Business Partner	Sandwell Metropolitan Borough Council
Deputy Chief Officer	Sandwell & West Birmingham CCG
Chief Financial Officer	Sandwell & West Birmingham CCG
Sandwell Better Care Fund Programme Manager	Sandwell & West Birmingham CCG / Sandwell Metropolitan Borough Council

- 3.2 Core members may from time to time nominate a deputy to attend the group in their place. The deputy will have full authority to act or make decisions on behalf of the core member.

## 4. In attendance

Business Support Officer for minute-taking.

Guest attendees or contributors invited at the request of the JPB or HWB.

## 5. Quoracy

- 5.1 JPB meetings will be deemed quorate for decision-making purposes providing two officers from SWBCCG and two officers from SMBC are in attendance. These must include either the Chief Executive or Director

for Adult Social Services for SMBC, and either the Managing Director for Sandwell or the Deputy Chief Officer or equivalent for the CCG.

## **6. Meetings**

- 6.1 The Board will meet monthly, with a minimum of 10 scheduled meetings per year.
- 6.2 The meeting will be chaired by either the Director of Adult Social Services (SMBC) or the Managing Director for Sandwell (CCG) by agreement. In the event that neither will be in attendance, each will delegate a deputy of appropriate seniority to attend in their place.
- 6.3 All meetings will be minuted. The BCF Programme Manager and Service Manager for Commissioning and Integration will be responsible for setting the agenda and agreeing it with the Chair as appropriate.
- 6.4 Papers will in ordinary circumstances be issued not less than 5 working days prior to the meeting.

## **7. Chair's Action**

- 7.1 The Board shall authorise the Chair to act on behalf of the Board between meetings, in specific circumstances.
- 7.2 The Board empowers the Chair to act on its behalf when dealing with routine actions which would not normally merit an Agenda item at a Board meeting, for example the signing of routine documents on behalf of the Board.
- 7.3 Occasionally, the Chair will need to act on behalf of the Board between meetings on more important issues. Where possible authority will be given by the Board at a prior Board meeting and minuted accordingly to authorise the Chair's action(s).
- 7.4 Exceptionally, the Chair's action may be required on an urgent matter, where delay would have a significant negative impact. In such circumstances the Chair's action will be reported to the next Board meeting and recorded in the minutes of that meeting by way of ratification.

## **8. Dispute Resolution**

- 8.1 Decisions of the Joint Partnership Board shall be made unanimously. Where unanimity is not reached, the item in question will in the first instance be referred for resolution to the Chief Executive of the Council and either the Deputy Accountable Officer for the CCG or Accountable Officer if the Deputy is unavailable. If no unanimity is reached on this occasion, the matter shall be dealt with in accordance with the dispute resolution procedure set out in the S75 Agreement.

## **9. Conflicts of interest**

- 9.1 Members and officers of JPB partners should always be aware of the potential for conflict of interest not only in matters relating to their parent organisation but also to matters arising from jointly constituted endeavours, including pooled budget arrangements.
- 9.2 The Chair must invite members to declare any interests at the start of each meeting. In addition, members may declare an interest at any time during the meeting. Where a conflict of interest does arise, this must be discussed with the Chair who will determine if it represents a material conflict. The Chair may direct a member not to attend the meeting or may ask him/her to leave for the duration of the relevant part of the meeting.
- 9.3 All members of the JPB will act impartially and will not be influenced by social or business relationships.

9.4 All members and those attending/participating in meetings will be expected to adhere to the Nolan Seven Principles of Public Life<sup>4</sup>

**10. Relationship with the Health and Wellbeing Board, SMBC Cabinet and CCG Governing Body**

10.1 The JPB will assure the Sandwell Health and Wellbeing Board of the progress and effectiveness of workstreams and programmes for which it is responsible.

10.2 The JPB will also ensure that the Council Cabinet and CCG Governing Body are kept informed on the progress, risks and issues related to the programmes for which it is responsible.

**11. Review of JPB purpose and effectiveness**

11.1 The Terms of Reference will be reviewed annually and amended as required and as directed by the JPB.

---

<sup>4</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>, accessed on 22<sup>nd</sup> February 2018

## BETTER CARE FUND COMMISSIONING GROUP

### 1. Introduction & Purpose

- 1.1 Sandwell Metropolitan Borough Council and Sandwell and West Birmingham CCG jointly established the Sandwell Better Care Fund Commissioning Group (hereafter BCFCG).
- 1.2 The BCFCG will bring together senior commissioners from health and social care partners for the purposes of providing commissioning leadership in relation to the Sandwell Better Care Fund Programme and to oversee delivery of the Programme.
- 1.3 The BCFCG will be accountable to the Joint Partnership Board (JPB). The Group will be responsible for:
- 1.4 Formulating commissioning recommendations to the JPB to enable the Board to discharge its decision-making responsibilities with regard to the Sandwell Better Care Fund Programme.

### 2. Responsibilities and duties

- 2.1 The BCFCG will be specifically responsible for:
  - Development of commissioning recommendations for the JPB.
  - Identification of BCF investment opportunities for the JPB.
  - Quality assurance of commissioning proposals and business cases developed by commissioners for the JPB in respect of services funded through the Sandwell Better Care Fund
  - Monitoring and managing progress within workstreams, ensuring leads are supported to deliver the outcomes and benefits identified.
  - Identifying risks and issues in relation to the Sandwell Better Care Fund Programme and reporting these to the JPB as appropriate.
  - Ensuring that all commissioning proposals are supported by a detailed, evidence-based Project Initiation Document (PID) or equivalent.
  - Ensuring that Projects' progress are supported and evidenced by appropriate documentation based on the Prince2 methodology or alternative project management methodologies agreed by the Group.
  - To agree mitigating actions to address performance issues and other barriers to progress, and to provide leadership for contingency planning.
  - To ensure that the actions and outputs from BCFCG meetings are communicated and reported to the JPB and other stakeholders as appropriate.

### 3. Membership and representation

- 3.1 Core membership is set out below:

<b>Job Title</b>	<b>Organisation</b>
SMBC Service Manager for Commissioning and Integration	Sandwell Metropolitan Borough Council
CCG Deputy Chief Officer	Sandwell & West Birmingham CCG
Sandwell Better Care Fund Programme Manager	Sandwell & West Birmingham CCG / Sandwell Metropolitan Borough Council

Operations Manager for Commissioning	Sandwell Metropolitan Borough Council
Senior Commissioning Manager – Unplanned Care	Sandwell & West Birmingham CCG
Senior Commissioning Manager – Dementia	Sandwell & West Birmingham CCG / Sandwell Metropolitan Borough Council
Project Manager – Collaborative Commissioning	Sandwell Metropolitan Borough Council
Commissioning Manager for the BCF	Sandwell Metropolitan Borough Council
Public Health Consultant	Sandwell Metropolitan Borough Council
Finance Manager	Sandwell & West Birmingham CCG
Senior Accountant	Sandwell Metropolitan Borough Council

- 3.2 Core members may from time to time nominate a deputy to attend the group in their place. The deputy will have full authority to act or make decisions on behalf of the core member.

#### **4. In attendance**

Business Support Officer for minute-taking.

Guest attendees or contributors invited at the request of this Group, the JPB or HWB.

BCF Programme Project Leads.

#### **5. Quoracy**

- 5.1 Meetings require as a minimum the Service Manager for Commissioning and Integration and the Deputy Chief Officer (or their nominated representative), and a third person to make and record the agreed recommendations and actions.

#### **6. Meeting arrangements**

- 6.1 The BCFCG will meet monthly, with a minimum of 10 scheduled meetings per year.
- 6.2 The meeting will be chaired on a rotating basis by the Service Manager for Commissioning and Integration (SMBC) and the Deputy Chief Officer (CCG), with each taking on the role of Chair on behalf of the other on occasions where the scheduled Chair is absent. If neither the Service Manager for Commissioning and Integration (SMBC) or the Deputy Chief Officer (CCG) is able to chair, a joint decision will be made to either postpone the meeting or agree to nominate an officer of appropriate seniority to chair in their place.
- 6.3 All meetings will be minuted. The BCF Programme Manager and Service Manager for Commissioning and Integration (SMBC) will be jointly responsible for setting the agenda and agreeing it with the Chair as appropriate.
- 6.4 Papers will in ordinary circumstances be issued not less than 5 working days prior to the meeting.

#### **7. Dispute Resolution**

- 7.1 The BCFCG will seek to reach agreement on a consensus basis at all times. Where this is not

Possible, disputes will be referred to the Joint Partnership Board for resolution. Unresolved disputes will be referred to the appropriate governance forums of the CCG and SMBC before being brought back to the Joint Partnership Board for further consideration.

## **8. Conflicts of interest**

- 8.1 Members and officers should always be aware of the potential for conflict of interest not only in matters relating to their parent organisation but also to matters arising from jointly constituted endeavors, including pooled budget arrangements.
- 8.2 The Chair must invite members to declare any interests at the start of each meeting. In addition, members may declare an interest at any time during the meeting. Where a conflict of interest does arise, this must be discussed with the Chair who will determine if it represents a material conflict. The Chair may direct a member not to attend the meeting or may ask him/her to leave for the duration of the relevant part of the meeting.
- 8.3 All members of the BCFCG will act impartially and will not be influenced by social or business relationships.
- 8.4 All members and those attending/participating in meetings will be expected to adhere to the Nolan Seven Principles of Public Life<sup>5</sup>.

## **9. Review of BCFCG purpose and effectiveness**

- 9.1 The Terms of Reference will be reviewed annually and amended as required and as directed by the BCFCG.

---

<sup>5</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>, accessed 22/2/2018

## INTEGRATED SYSTEM PLANNING GROUP

### 1. Introduction & Purpose

- 1.1 The Sandwell Health and Adult Social Care Joint Partnership Board gave permission to establish the Integrated System Planning Group.
- 1.2 The Integrated System Planning Group brings together the Operational Manager's and Better Care Fund Senior Managers for the purpose of discussing, sharing and advising on the integrated hub, operational issues and concerns that are raised within the teams.
- 1.3 The Integration System Planning Group will be accountable to the Joint Partnership Board. The group will provide updates to the BCF Commissioning Group on an ad-hoc basis as required. Members will be responsible for ensuring any recommendations will be considered and ratified as required by appropriate forums of member organisations that may be affected by, or have an interest in.

### 2. Responsibilities and duties

- 2.1 The Integrated System Planning Group has no delegated authority or decision-making ability. It can only provide advice and make recommendations to the Joint Partnership Board or the BCF Commissioning Group.
- 2.2 The integrated system planning group will be focused on:
- Discussing operational issues within the Teams involved in Hospital Discharge and Intermediate Care within the Council and the CCG.
  - Supporting and informing the development of commissioning plans in respect of services funded through aligned or formally pooled budgets, including the Sandwell Better Care Fund.
  - Developing the integrated satellite hubs and long term hub.
  - Annually reviewing the Terms of Reference for the Group.
  - Reporting the performance of services funded by the Sandwell Better Care Fund and other formally pooled or aligned budgets through governance forums of the CCG and SMBC.

### 3. Membership and representation

- 3.1 Core membership is set out below:

Job Title	Organisation
Service Manager for Commissioning and Integration	Sandwell Metropolitan Borough Council
Deputy Chief Officer	Sandwell & West Birmingham CCG
Sandwell Better Care Fund Programme Manager	Sandwell & West Birmingham CCG / Sandwell Metropolitan Borough Council
Collaboration Project Manager	Sandwell & West Birmingham CCG / Sandwell Metropolitan Borough Council
Operations Managers	Sandwell Metropolitan Borough Council
Team Manager, Hospital Team	Sandwell Metropolitan Borough Council
Commissioning Managers	Sandwell Metropolitan Borough Council
Commissioning Managers	Sandwell & West Birmingham CCG
CHC Lead	Sandwell & West Birmingham CCG
Service Manager for Stores	Sandwell Metropolitan Borough Council

Community Health Clinician	Sandwell and West Birmingham Hospitals Trust
----------------------------	--

3.2 Core members may from time to time nominate a deputy to attend the group in their place. The deputy will have full authority to act or make decisions on behalf of the core member.

#### **4. In attendance**

4.1 Business Support Officer for action-taking.

4.2 Guest attendees or contributors will be invited at the request of the Integrated System Planning Group.

#### **5. Quoracy**

5.1 Integrated System Planning meetings will be deemed quorate providing one officer from SWBCCG and one officer from SMBC are in attendance, and at least one of either the Service Manager for Commissioning and Integration or the Deputy Chief Officer from the CCG is present.

#### **6. Meeting arrangements**

6.1 The Integrated System Planning meetings will be held every month, with a minimum of 10 scheduled meetings per year.

6.2 The meeting will be chaired by the Service Manager for Commissioning and Integration (SMBC) or the Deputy Chief Officer (CCG) in absentia. In the event that neither will be in attendance, each will delegate a deputy of appropriate seniority to attend in their place.

6.3 All meetings will have action notes. The Service Manager for Commissioning and Integration will be responsible for setting the agenda.

#### **7. Conflicts of interest**

7.1 Members and officers of Integrated System Planning Group should always be aware of the potential for conflict of interest not only in matters relating to their parent organisation but also to matters arising from jointly constituted endeavours, including pooled budget arrangements.

7.2 The Chair must invite members to declare any interests at the start of each meeting. In addition, members may declare an interest at any time during the meeting. Where a conflict of interest does arise, this must be discussed with the Chair who will determine if it represents a material conflict. The Chair may direct a member not to attend the meeting or may ask him/her to leave for the duration of the relevant part of the meeting.

7.3 All members of the Integrated System Planning will act impartially and will not be influenced by social or business relationships.

7.4 All members and those attending/participating in meetings will be expected to adhere to the Nolan Seven Principles of Public Life (see Appendix 1).

#### **7.5 Review of ISPG purpose and effectiveness**

7.6 The Terms of Reference will be reviewed annually and amended as required and as directed by the JPB.



**Overarching governance structure for the Sandwell Better Care Fund Programme 2020/21:**



## SCHEDULE 2 - FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS

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 The Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule

### 3 Financial Contributions

3.1 The financial allocations and Partner contributions are set out as follows:

	<b>2020/21</b>
<b>Revenue:</b>	£'000
Better Care Fund (Core)	26,827
Improved Better Care Fund (iBCF)	22,345
Underspend b fwd from 2019/20 (iBCF)	10,709
BCF Gross Revenue Expenditure	59,881
<b>Capital:</b>	
Disabled Facilities Grant (DFG)	4,168
Total BCF Budget	64,049
<b>Partner Funding Contributions:</b>	
CCG - Better Care Fund (Core)	(26,827)
SMBC - Improved Better Care Fund (iBCF)	(22,345)
SMBC - Underspend carried forward from 2019/20 (iBCF)	(10,709)
SMBC - Disabled Facilities Grant (DFG)	(4,168)
Total BCF Funding	(64,049)

3.2 The Local Authority receives the iBCF and DFG grants directly from Government in accordance with the national arrangements established in respect of those funds.

3.3 In respect of the CCG Minimum Allocation to the BCF Pool, Sandwell and West Birmingham CCG will transfer this over to the Local Authority on a monthly basis net of any amounts relating to payments for services within the Schemes for which the CCG is Lead Commissioner.

### 4 Pooled Fund Management

4.1 Partners agree that the Pooled Fund should be considered a closed fund whereby each Partner will accept the risk on overspends arising in respect of any service or services within a Scheme for which that Partner is Lead Commissioner, **unless otherwise agreed by the Joint Partnership Board.**

4.2 Partners agree that underspends arising in respect of any service or services funded by the Pooled Fund will be retained within the Pool **unless otherwise agreed by the Joint Partnership Board.**

4.3 The Pooled Fund & Lead Funds Manager shall ensure that action is taken to manage any projected under or over spends from the Pooled Fund, reporting on the variances and the actions taken or proposed to the Joint Partnership Board.

4.4 If at any time during the Financial Year there is forecast a projected under or overspend on the Pooled Funds, the Pooled Fund & Lead Funds Manager will prepare an action plan to manage the under or overspend, for presentation to the Joint Partnership Board as quickly as possible. The Joint Partnership Board will consider the action plan, amend as appropriate and agree the actions to be taken.

4.5 The Pooled Fund & Lead Funds Manager will provide to the Joint Partnership Board monthly progress reports or any appropriate frequency as determined by the Joint Partnership Board on

implementation of any such action plan, until such time that the under or overspend has been dealt with to the satisfaction of the Joint Partnership Board.

- 4.6 The Partners through the management of this Agreement by the Joint Partnership Board shall be jointly responsible for any costs, claims, expenses or liabilities in excess of the Pooled Fund arising at any time in relation to a Scheme
- 4.7 The Partners will ensure:
- 4.7.1 The Pooled Funds are used efficiently to deliver agreed outcomes;
  - 4.7.2 The expenditure and income within the Pooled Funds remain within budget, and that any exceptions to this are reported to the relevant Board in a timely manner;
  - 4.7.3 A high level of probity in financial management arrangements;
  - 4.7.4 Resources allocated to Pooled Funds are adequately protected
- 4.8 The benefit of any surplus in the Pooled Fund at the end of any Financial Year shall;
- 4.8.1 Firstly, where the Partners agree, remain within the Pooled Fund to be used to meet such other expenditure as the Joint Partnership Board may determine.
  - 4.8.2 Secondly, where carry forward is not agreed in full or in part, the benefit shall be distributed to the Partners pro rata to their contributions for the relevant Financial Year.
- 4.9 Any costs, claims, expenses or liabilities in excess of the Pooled Fund for the relevant Financial Year shall be agreed in advance by the Partners. The Partners shall take mitigating action as appropriate to ensure expenditure remains within the limit of the Pooled Fund and neither party shall act unreasonably to expose the other to undue financial risk.
- 4.10 Save:
- 4.10.1 To the extent that a party's liability arises pursuant to Clause 16; and/or
  - 4.10.2 To the extent agreed between the parties in writing.
- 4.11 The Partners shall be jointly responsible (in accordance with any stated risk sharing arrangements for the Better Care Fund schemes respective of the contributions of the Pooled Fund for the relevant Financial Year) for any such costs, claims, expenses or liabilities incurred in accordance with the terms of this Agreement.
- 4.12 A deficit in any Lead Fund will be the sole responsibility of the Partner for which that Lead Fund supports the costs of arranging Services insofar as it has authorised any such additional spend prior to its expenditure by the Host Partner.
- 4.13 The benefit of any surplus in the Lead Fund at the end of any Financial Year shall remain in the Lead Fund.
- 4.14 The Pooled Fund & Lead Funds Manager will submit to the Partners monthly financial performance reports detailing performance against agreed funding. The report will include a variance analysis for the period and expected forecast outturn and where required, an explanatory note setting out actions being taken to tackle areas where performance requires corrective action. Annual statements of performance against the Pooled Funds and Lead Funds will also be provided in line with statutory timescales required by either Partner.
- 4.15 The Pooled Fund & Lead Funds Manager shall maintain and provide other than above when requested by either of the Partners at the expense of that Partner such information as shall be

appropriate to describing the cost of services notwithstanding any notice of termination in accordance with Clause 22.

- 4.16 All redundancy costs arising in relation to the Sandwell Better Care Fund Programme Team shall be funded from the Better Care Fund Pooled Budget in the year in which they are incurred. Such costs are not expected to exceed the sum of £250,000.

## **SCHEDULE 3 – JOINT WORKING OBLIGATIONS**

### **Part 1 – LEAD PARTNER OBLIGATIONS<sup>6</sup>**

Terminology used in this Schedule shall have the meaning attributed to it in the NHS Standard Form Contract save where this Agreement or the context requires otherwise.

- 1 The Lead Partner shall notify the other Partners if it receives or serves:
  - 1.1 a Change in Control Notice;
  - 1.2 a Notice of an Event of Force Majeure;
  - 1.3 a Contract Query;
  - 1.4 Exception Reportsand provide copies of the same.
- 2 The Lead Partner shall provide the other Partners with copies of any and all:
  - 2.1 CQUIN Performance Reports;
  - 2.2 Monthly Activity Reports;
  - 2.3 Review Records; and
  - 2.4 Remedial Action Plans;
  - 2.5 JI Reports;
  - 2.6 Service Quality Performance Report;
- 3 The Lead Partner shall consult with the other Partners before attending:
  - 3.1 an Activity Management Meeting;
  - 3.2 Contract Management Meeting;
  - 3.3 Review Meeting;and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.
- 4 The Lead Partner shall not:
  - 4.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
  - 4.2 vary any Provider Plans (excluding Remedial Action Plans);
  - 4.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;

---

<sup>6</sup> These are illustrative only of the sorts of things that the Partners may want to have reported, agreed etc. It is based on the NHS Standard Contract so will need to be amended to reflect the fact that Councils are likely to commission some services on their own contracts. The Partners need to consider/amend these and consider whether there are other restrictions or requirements that need to be imposed. Also consider if consent would be needed from all Partners or just relevant Partners (e.g. dependant on the type of services affected)

- 4.4 give any approvals under the Service Contract;
  - 4.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
  - 4.6 suspend all or part of the Services;
  - 4.7 serve any notice to terminate the Service Contract (in whole or in part);
  - 4.8 serve any notice;
  - 4.9 agree (or vary) the terms of a Succession Plan;
- without the prior approval of the other Partners (acting through the [JCB]) such approval not to be unreasonably withheld or delayed.
- 5 The Lead Partner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.
  - 6 The Lead Partner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution
  - 7 The Lead Partner shall share copies of any reports submitted by the Service Provider to the Lead Partner pursuant to the Service Contract (including audit reports)
  - 8 [INSERT]

## **Part 2 – OBLIGATIONS OF THE OTHER PARTNER<sup>7</sup>**

Terminology used in this Schedule shall have the meaning attributed to it in the NHS Standard Form Contract save where this Agreement or the context requires otherwise.

- 1 Each Partner shall (at its own cost) provide such cooperation, assistance and support to the Lead Partner (including the provision of data and other information) as is reasonably necessary to enable the Lead Partner to:
  - 1.1 resolve disputes pursuant to a Service Contract;
  - 1.2 comply with its obligations pursuant to a Service Contract and this Agreement;
  - 1.3 ensure continuity and a smooth transfer of any Services that have been suspended, expired or terminated pursuant to the terms of the relevant Service Contract;
- 2 No Partner shall unreasonably withhold or delay consent requested by the Lead Partner.
- 3 Each Partner (other than the Lead Partner) shall:
  - 3.1 comply with the requirements imposed on the Lead Partner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;
  - 3.2 notify the Lead Partner of any matters that might prevent the Lead Partner from giving any of the warranties set out in a Services Contract or which might cause the Lead Partner to be in breach of warranty.

---

<sup>7</sup> These are illustrative only of the sorts of things that the Partners may want to have reported, agreed etc. The Partners need to consider/amend these and consider whether there are other restrictions or requirements that need to be imposed. Also consider if consent would be needed from all Partners or just relevant Partners (e.g. dependant on the type of services affected)

## SCHEDULE 4 – PERFORMANCE ARRANGEMENTS

The Sandwell Better Care Fund Programme was nationally monitored during 2019-20 against the following measures set out in the Plan as follows:

### Delayed Transfers of Care

	19/20 Plan	Overview Narrative
Delayed Transfers of Care per day (daily delays) from hospital (aged 18+)	9.7	Sandwell was ranked no. 1 in England for DToC in May and 2nd for July 2019. The new council-run health and social care centre planned for 2021 will be a further step towards our ambition to eliminate DToCs for Sandwell residents. In the interim BCF funding, including the Winter Grant, is being used to commission sufficient capacity for step-down and intermediate care to ensure that DToC performance is maintained throughout this coming winter and beyond.

As at April 2020 Sandwell remains the leading area in the country for performance on delayed transfers of care.

### Care home admissions

		18/19 Plan	19/20 Plan	Comments
Long-term support needs of older people (age 65 and over) met by admission to residential and nursing care homes, per 100,000 population	Annual Rate	731	905	Rises in care home admission rates remain high as Sandwell has low levels of appropriate housing for older people and an older population living with poorer health than the England average. However, our plans to establish a broader range of intermediate care services and increase the hospital admission avoidance service capacity whilst investing significantly in social prescribing are expected to impact positively on this metric
	Numerator	360	450	
	Denominator	49,258	49,742	

The introduction of new measures to implement the High Impact Change Model will support timely hospital discharge through developing additional capacity for step-down beds, needs assessments and reablement care. By better managing flow between acute and community settings and helping people to maintain functionality through more effective reablement care and timely discharge supported by Trusted Assessors, we expect more people to leave hospital with fewer care needs and greater independence, which will in turn reduce the rate of admission to care homes.

### Reablement

		18/19 Plan	19/20 Plan	Comments
Proportion of older people (65 and over) who were still at home 91 days after discharge from hospital into reablement / rehabilitation services	Annual (%)	80.2%	74.0%	Significant investments in a range of intermediate and reablement care options during 2019/20 in addition to an improved social support offer will strengthen community resilience and support vulnerable people to live independently for longer. These measures will increase the number of people living independently 91 days following discharge from hospital. The target for 2019/20 has been set at a realistic and achievable level.
	Numerator	199	222	
	Denominator	248	300	

Investment in additional reablement capacity through increased step-down provision, improved community wrap-around care and redesign of the Local Authority-run Short Term Assessment and Reablement service to meet demand across 7 days is expected to deliver significant improvements to current reablement performance.

At the time of writing the performance monitoring measures and thresholds for 2020-21 are unknown. These will be set out in the BCF Policy Framework and Planning Guidance for 2020-21 which will be published in due course. Once these are available and approved through the planning process this Agreement will be updated accordingly.



## **SCHEDULE 5 – BETTER CARE FUND PLAN**

The Better Care Fund Plan and Planning Return will be produced in line with the BCF Policy Framework and Planning Guidance for 2020-21 which is awaiting publication. These will be appended to this Agreement following the regional and national approval process.

## SCHEDULE 6 – GENERAL DATA PROTECTION REGULATION CLAUSES

### SCHEDULE 6: DATA PROTECTION

The parties will negotiate together in a timely manner and in good faith to agree a data sharing agreement to take effect from 25<sup>th</sup> May 2018 in accordance with the provisions set out in Part 1 and Part 2 of this Schedule

#### Part 1 GDPR Provisions

##### GDPR CLAUSE DEFINITIONS

**Relevant Partner** : a Partner who is required to comply with Data Protection Legislation in respect of Personal Data in undertaking its functions under this Agreement. Where the context so admits this may include both Partners to this Agreement

**Agreement** : this Agreement;

**Law** : means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Relevant Partner is bound to comply;

**Relevant Partner Personnel** : means all directors, officers, employees, agents, consultants and contractors of the Relevant Partner and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

**Data Protection Legislation** : (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**Data Protection Impact Assessment** : an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller , Processor , Data Subject , Personal Data , Personal Data Breach , Data**

**Protection Officer** take the meaning given in the GDPR.

**Data Loss Event** : any event that results, or may result, in unauthorised access to Personal

Data held by the Relevant Partner under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Subject Access Request** : a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018** : Data Protection Act 2018

**GDPR** : the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**LED** : Law Enforcement Directive (*Directive (EU) 2016/680*)

**Protective Measures** : appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor** : any third Party appointed to process Personal Data on behalf of the Relevant Partner related to this Agreement

## **1. DATA PROTECTION**

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the either or both Partners will be a Data Controller and/or a Data Processor.

that the Relevant Partner is authorised to do is listed in Part 2 of this Schedule

1.2 A Relevant Partner shall notify the other Partner immediately if it considers that any of the other's instructions infringe the Data Protection Legislation.

1.3 A Relevant Partner shall provide all reasonable assistance to the other in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the other Partner, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

- (b) an assessment of the necessity and proportionality of the processing operations in relation to the performance of the Agreement;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

1.4 A Relevant Partner shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Part 2 of this Schedule, unless the Relevant Partner is required to do otherwise by Law. If it is so required the Relevant Partner shall promptly notify the other Partner before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the other Relevant Partner as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that :

(i) Personnel do not process Personal Data except in accordance with this Agreement (and in particular Part 2 of this Schedule);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Relevant Partner's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the

Relevant Partner or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and

do not publish, disclose or divulge any of the Personal Data to any

third Party unless directed in writing to do so by the other Relevant Partner in respect of that Personal Data or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and

handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of

the Relevant Partner (if the other Partner) has been obtained and the following conditions are fulfilled:

(i) appropriate safeguards are provided in

relation to the transfer (whether in accordance with GDPR Article 46 or

LED Article 37) as determined by the Relevant Partner;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) its obligations under the Data Protection Legislation are complied with by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Relevant Partner complies with any reasonable instructions notified to it in

advance by the other Relevant Partner with respect to the processing of

Personal Data;

(e) at the written direction of the Relevant Partner, delete or return Personal Data (and

any copies of it) to the other Relevant Partner if applicable on termination of the Agreement unless the

Relevant Partner is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Relevant Partner shall notify another Relevant Partner immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other

regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

(f) becomes aware of a Data Loss Event.

1.6 The obligation to notify under clause 1.5 shall include the provision of further information in phases, as details become available.

1.7 Taking into account the nature of the processing, a Relevant Partner shall provide another Relevant Partner with full assistance in relation to either Party's obligations under Data

Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Relevant Partner) including by promptly providing:

(a) full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably required to enable another Relevant Partner to comply with a Data Subject Access Request within the relevant

timescales set out in the Data Protection Legislation;

(c) on request, another Relevant Partner with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested following any Data Loss Event;

(e) assistance as requested with respect to any request from the Information Commissioner's Office, or any consultation with the Information Commissioner's Office.

1.8 The Relevant Partner shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

1.9 The Relevant Partner shall allow for audits of its Data Processing activity by another Relevant Partner or its designated auditor.

1.10 The Relevant Partner shall designate a data protection officer if required by the Data

Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Relevant Partner must:

- (a) notify any other Relevant Partner in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Re;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
- (d) provide the other Relevant Partner with such information regarding the Sub-processor as they may reasonably require.

1.12 The Relevant Partner shall remain fully liable for all acts or omissions of any Sub-processor of it

1.13 A Relevant Partner may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. A Relevant Partner may on not less than 30 Working Days' notice to the other Relevant Partner amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Part 2: Schedule of Processing, Personal Data and Data**

### **Subjects**

1. A Relevant Partner shall comply with any further written instructions with respect to processing by another Relevant Partner where applicable.
2. Any such further instructions shall be incorporated into this Part.

Description	Details
-------------	---------

<p>Subject matter of the processing</p> <p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i></p>	<p>Incidental processing in respect of the arrangement under the Agreement</p>
<p>Duration of the processing</p> <p><i>[Clearly set out the duration of the processing including dates]</i></p>	<p>The term of the Agreement or if shorter, the period until Personal Data is no longer required for the purpose of the Service Provider's performance of its relevant obligations under this Agreement</p>
<p>Nature and purposes of the processing</p> <p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as</i></p> <p><i>collection, recording, organisation, structuring, storage,</i></p> <p><i>adaptation or alteration, retrieval, consultation, use,</i></p> <p><i>disclosure by transmission, dissemination or otherwise</i></p> <p><i>making available, alignment or combination, restriction,</i></p> <p><i>erasure or destruction of data (whether or not by automated</i></p> <p><i>means) etc.</i></p> <p><i>The purpose might include: employment processing,</i></p> <p><i>statutory obligation, recruitment assessment etc]</i></p>	<p>Incidental processing in respect of the arrangements under the Agreement</p>



<p>Type of Personal Data <i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i></p>	<p>Names of Authority staff, positions held, locations of work, contact details including emergency/out of hours contact details</p> <p>Names of service users, addresses, contact details including emergency/out of hours contact details, sensitive personal data</p>
<p>Categories of Data</p> <p>Subject</p> <p><i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i></p>	
<p>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</p> <p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>	<p>To be securely destroyed at the termination of the contract howsoever occurring</p>