

## Health and Wellbeing Board

5<sup>th</sup> July, 2018

### HWBB Joint Commissioning Report - Better Care Fund Update

#### Responsible Officer

Email: Penny.bason@shropshire.gov.uk

Tel:

Fax:

---

#### 1. Summary

- 1.1 This report provides an update on the progress on the Better Care Fund (BCF) development and development of the section 75 Partnership Agreement (pooled budget), and asks for delegated authority to the HWB Joint Commissioning/ Delivery Group to take the detailed work forward.
- 1.2 At the last HWBB (24<sup>th</sup> May) the Board agreed key actions to take the development of the BCF and implementation of the section 75 Partnership Agreement. The details can be found in section 4, Background of this report. Since the last Board a considerable amount of work has been undertaken to revise the Draft Partnership Agreement and this is attached as **Appendix A**.
- 1.3 . The draft agreement sets out the mechanism through which the Partners will work together to establish one or more of the following (section 4 of the agreement):
  - 1.3.1 Lead Commissioning Arrangements;
  - 1.3.2 Integrated Commissioning
  - 1.3.3 Joint (Aligned) Commissioning
  - 1.3.4 the establishment of one or more Pooled Funds
- 1.4 Key differences to the previous draft agreement includes:
  - 1.4.1 the introduction of the management of pooled funds and non-pooled funds (sections 8 and 9 of the agreement),
  - 1.4.2 reiteration through the agreement that while the HWBB must agree and oversee the Better Care Fund plan, the responsibility for agreeing and commissioning the work remains with Shropshire CCG and Shropshire Council.
- 1.5 While significant work has gone into updating the agreement, and effort has gone into updating and agreeing the schedules of the agreement, there are a number of schedules that still need further work. These are:
  - 1.5.1 Schedule 1, the Plan will be updated in accordance with Schedule 3, partially complete.
  - 1.5.2 Schedule 2, the Governance to be updated, partially complete
  - 1.5.3 Schedule 3, the final sums have been agreed, however the schedule of schemes require final agreement; the Risk Sharing agreement needs to be updated, partially complete
  - 1.5.4 Schedule 5, local metrics are needed in addition to the national metrics, which will be reported on quarterly, to be developed
  - 1.5.5 Schedule 6, the Plan – needs to be developed in conjunction with schedule 1, partially complete

- 1.5.6 Schedule 8, the system agreed Information Governance agreement protocol is out of date, to be updated
- 1.6 Discussing each schedule in turn; Schedule 1, the plan and schedule of work needs to be updated to reflect the financial contributions in Schedule 3.
- 1.7 Schedule 2, Governance; the Health and Wellbeing Joint Commissioning Group have requested that the Terms of Reference of the Joint Commissioning Group be updated to rename the group, the HWBB Delivery Group, and that a focussed Joint Commissioning Group be formed to manage the pooled funds of the BCF. This Joint Commissioning Group would report through the HWB Delivery Group to the Board, and would report as needed through Shropshire CCG Governance processes and Shropshire Council governance processes. The key element here is to ensure that the BCF and pool resources are jointly agreed and monitored, while allowing the 2 organisations to maintain final decision making on commissioning arrangements, and contract monitoring.
- 1.8 Schedule 3, Finance and Risk Sharing; schemes need final agreement; the risk sharing agreement requires work to develop the detail. It is proposed that this work be undertaken by the proposed Joint Commissioning Group in conjunction with legal advice. In schedule 3 attached there are 3 options proposed for discussion. The options are examples from other agreements from elsewhere in the country.
- 1.9 Schedule 5, local metrics would be agreed by Joint Commissioning Group and ratified by the HWB Delivery Group.
- 1.10 Schedule 8, Information Governance, needs to be reviewed and updated in accordance with new data protection legislation and guidance, however a timetable for this work hasn't been agreed.
- 1.11 Progress on BCF Manager Post; the post is currently being advertised and it is expected that an appointment will be made in July.
- 1.12 As set out in recommendation 2.1 HWBB are being asked to agree the current draft partnership agreement. Once the final terms have been agreed by the Joint Commissioning/Delivery Group it will be necessary for the CCG and Council to seek respective approval from their executive bodies.

## **2. Recommendations**

- 2.1 The HWBB to approve the Draft Partnership Agreement found in Appendix A, and delegate Authority to the HWB Joint Commissioning/ Delivery Group to determine the detail of the schedules as described above (points 1.5 to 1.10);
- 2.2 Provide comment on the schedules and recommendations for taking the work forward.

## **REPORT**

### **3. Risk Assessment and Opportunities Appraisal**

- 3.1. (NB This will include the following: Risk Management, Human Rights, Equalities, Community, Environmental consequences and other Consultation)
- 3.2. The HWB Strategy requires that the health and care system work to reduce inequalities in Shropshire. All decisions and discussions by the Board must take into account reducing inequalities.
- 3.3. The schemes of the BCF and other system planning have been done by engaging with stakeholders, service users, and patients. This has been done in a variety of ways including through patient groups, focus groups, ethnographic research.

3.4. Currently a key risk in this system is a lack of resource to support the BCF and lack of a Section 75 Partnership Agreement. Mitigation as described above.

## 4. Background

- 4.1 The Better Care Fund Plan outlines the HWBBs ambition for increased integration. The Board agreed a very broad approach to integration that offers the ability to take into account a number of ways of working. The statement says that, *“Shropshire’s HWBB believes integration is about putting Shropshire people at the heart of decision making. The Board uses evidence that is gathered through data and through engagement to develop a common purpose and agreed outcomes for people, with people; it is about taking a whole system approach to leading, designing and delivering services.”*
- 4.2 The HWBB agreed that during 2017/18 the Shropshire Health and Care economy would focus on developing the Better Care Fund as a tool that fully supports integration. In line with the agreed statement above, this has meant that officers are working to make best use of our limited resources in a way that makes sense for people in Shropshire; working to maximise opportunities for joint working and minimise confusion for people as they navigate the system.
- 4.3 The BCF plan had final approval in November and through December, January and February, colleagues from the Council and the CCG have reviewed each line of the Better Care Fund spend and worked towards making recommendations for taking work and integration forward. An action plan has been developed to ensure that what is in the Better Care Fund are key pieces of work that will make a real difference to integration.
- 4.4 The Better Care Fund is seen nationally as a stepping stone to support system planning and integration, and as such high level conversations have been taking place about how the Shropshire system can make best use of pooling our resources to improve services and support the population’s health and wellbeing, linking to the STP planning cycle. System leaders are working towards using the BCF to support a broader agenda, in line with our ambition for integration. This includes care navigation, Continuing Health Care (CHC), facilities management, equipment stores, and the system planning of the STP.
- 4.5 This new emphasis and ambition requires Shropshire Council and Shropshire CCG to take stock of where we are and where we want to get to, in order to make a real and positive contribution to the health and wellbeing of Shropshire people. As such, the HWBB agreed at the 24<sup>th</sup> May HWBB, that we would:
- 4.5.1 Update Terms of Reference (ToR) for the Joint Commissioning Group – with more regular meetings and focus on pooled budgets and integration;
  - 4.5.2 Appoint a new post for Better Care Fund manager hosted by the local authority– with increased emphasis on integration, as well as project support for a range of joint commissioning developments;
  - 4.5.3 Convene a joint working group (LA and CCG officers) to determine how to fully implement a pooled funding arrangement and section 75 Agreement.

### **BCF and Pooled budgets:**

- 4.6 The “Integration and BCF planning requirements for 2017 -19” sets out the NHS England’s requirements on developing BCF plans in local areas. The NHS Act 2006, requires that in each area the CCG transfer minimum allocations into one or more pooled budgets established under section 75. For Shropshire the minimum sum for 2018/19 is £20.021m. Of this figure the CCG is required to spend £5.689m on out of hospital services and £7.779m on social care, leaving

£6.553m to be allocated to out of hospital services, social care, other services, or a combination of those.

4.7 The BCF Plan, including at least the minimum contributions specified in the BCF allocations must be signed off by the HWBB. It was agreed by Shropshire Council Cabinet in 2013 that a Section 75 pooled budget agreement would be developed to support the delivery of the BCF and that the Council would host this.

4.7.1 To date Shropshire has operated an “aligned budget” with joint decision making at the Joint Commissioning Group (previously HWB Delivery Group) and the Shropshire Health and Wellbeing Board. With no new money at the outset of the Better Care Fund, the initial plan focussed on drawing together areas of spend that aligned.

4.7.2 Despite this good progress, the HWBB and Joint Commissioning Group recognised that much more could be done to improve services and support for Shropshire people. In 17/18 the focus was on working through each line of the budget to understand real value for money and consider where more joint working would provide better support for the community and reduce spend. The key areas that are recommended for development in this way are:

Prevention:

- VCSE Grants
- Care Navigation/ Social Prescribing
- Falls
- Carers
- Early Help

Admission Avoidance/ Delayed Transfers:

- Integrated Community Services
- Housing/ step down
- Assistive tech/ telecare/health/ equipment

### **System Planning:**

4.7 There is opportunity to connect BCF into the wider system planning of the STP. The aims of the STP are:

1. To build resilience and social capital
2. Integrated care across the NHS and Social Care
3. More appropriate use of hospital care
4. Working as one health system
5. Sustainable workforce
6. Sustainable finances

The BCF can help support these aims by providing the legal framework for pooling budgets and supporting locality based working based on evidence and local need.

4.8 The STP is charged with developing and supporting system plans including:

- Future Fit – hospital reconfiguration
- Neighbourhood working and Out of Hospital programmes
- Embedding prevention in all system plans
- Workforce
- Estates management
- Back office functions
- Digital planning and delivery (including integrated care records)

The STP Programme Management Office (PMO) works with system strategic planners to support this work and there is opportunity to connect more closely with the Better Care Fund

planning for both Shropshire and Telford and Wrekin. There is huge opportunities across the system to draw together programmes and support integrated planning and delivery.

## 5. Financial Implications

5.1 The Proposed Better Care fund financial commitment for 2018/19 is explained in the chart below. This will be the basis for discussing and implementing the s75 Pooled budget.

<b>BCF Funding Summary</b>	<b>2018/19</b>	<b>Trail of Funding</b>
<b>Revenue</b>		
Schemes Commissioned and Funded by the CCG	£12,241,702	Provided by NHS England to the CCG. The CCG commissions this spend.
Schemes Commissioned and Funded by Shropshire Council	£699,637	Provided by Central Government to SC. SC commissions or delivers schemes
Schemes Commissioned by Shropshire Council with CCG Funding	£7,779,302	Provided by NHS England to the CCG and then to SC. SC commissions or delivers schemes.
Schemes Commissioned by Shropshire Council with iBCF Funding	£8,288,253	Provided by Central Government to SC. SC commissions or delivers schemes.
<b>Capital</b>		
Disabled Facilities Grants Funded and Commissioned by Shropshire Council	£2,974,155	Comes from Central Government to SC. SC allocates the grant in the form of the DFG.
<b>Total BCF 2017/18</b>	<b>£31,983,049</b>	

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

For the final BCF plan please see HWBB paper [here](#)

**Cabinet Member (Portfolio Holder)**  
Cllr Lee Chapman

**Local Member**  
n/a

**Appendices**  
Appendix A: Shropshire Section 75 Partnership Agreement

Dated .....2018

---

Shropshire Council

and

NHS Shropshire Clinical Commissioning Group

**V8 Draft for 2018**

---

**FRAMEWORK PARTNERSHIP AGREEMENT RELATING TO THE  
COMMISSIONING OF HEALTH AND SOCIAL CARE SERVICES**

---

## Contents

Item	Page
<b>PARTIES</b>	<b>3</b>
<b>BACKGROUND</b>	<b>3</b>
<b>1 DEFINED TERMS AND INTERPRETATION</b>	<b>4</b>
<b>2 TERM</b>	<b>11</b>
<b>3 GENERAL PRINCIPLES</b>	<b>11</b>
<b>4 PARTNERSHIP FLEXIBILITIES</b>	<b>12</b>
<b>5 FUNCTIONS</b>	<b>13</b>
<b>6 ESTABLISHMENT OF A POOLED FUND</b>	<b>15</b>
<b>7 POOLED FUND MANAGEMENT</b>	<b>16</b>
<b>8 MANAGEMENT OF NON POOLED FUNDS</b>	<b>17</b>
<b>9 FINANCIAL CONTRIBUTIONS</b>	<b>18</b>
<b>10 NON FINANCIAL CONTRIBUTIONS</b>	<b>18</b>
<b>11 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS</b>	<b>18</b>
<b>12 CAPITAL EXPENDITURE</b>	<b>20</b>
<b>13 VAT</b>	<b>20</b>
<b>14 AUDIT AND RIGHT OF ACCESS</b>	<b>20</b>
<b>15 LIABILITIES AND INSURANCE AND INDEMNITY</b>	<b>20</b>
<b>16 STANDARDS OF CONDUCT AND SERVICE</b>	<b>22</b>
<b>17 CONFLICTS OF INTEREST</b>	<b>22</b>
<b>18 GOVERNANCE</b>	<b>.</b>
<b>19 REVIEW</b>	<b>23</b>
<b>20 COMPLAINTS</b>	<b>23</b>
<b>21 TERMINATION &amp; DEFAULT</b>	<b>24</b>
<b>22 DISPUTE RESOLUTION</b>	<b>25</b>
<b>23 FORCE MAJEURE</b>	<b>26</b>
<b>24 CONFIDENTIALITY</b>	<b>26</b>
<b>25 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS</b>	<b>27</b>
<b>26 OMBUDSMEN</b>	<b>27</b>
<b>27 INFORMATION SHARING</b>	<b>27</b>
<b>28 NOTICES</b>	<b>28</b>
<b>32 VARIATION</b>	<b>29</b>
<b>33 CHANGE IN LAW</b>	<b>30</b>
<b>34 WAIVER</b>	<b>31</b>
<b>35 SEVERANCE</b>	<b>31</b>
<b>36 ASSIGNMENT AND SUB CONTRACTING</b>	<b>31</b>
<b>37 EXCLUSION OF PARTNERSHIP AND AGENCY</b>	<b>31</b>
<b>38 THIRD PARTY RIGHTS</b>	<b>31</b>
<b>39 ENTIRE AGREEMENT</b>	<b>31</b>
<b>40 COUNTERPARTS</b>	<b>32</b>

<b>41</b>	<b>GOVERNING LAW AND JURISDICTION</b>	<b>32</b>
	<b>SCHEDULE 1 – SCHEME SPECIFICATION</b>	<b>34</b>
	<b>34</b>	
	<b>SCHEDULE 2 – GOVERNANCE</b>	<b>35</b>
		<b>35</b>
	<b>SCHEDULE 3 - FINANCIAL RISK SHARE AND OVERSPENDS</b>	<b>45</b>
	<b>SCHEDULE 4 – JOINT WORKING OBLIGATIONS</b>	<b>50</b>
	<b>Part 1 – LEAD COMMISSIONER OBLIGATIONS</b>	<b>50</b>
	Schedule 5	



**THIS AGREEMENT** is made on ..... 2018

## **PARTIES**

- (1) **SHROPSHIRE COUNCIL** whose offices are at Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the "**Council**")
- (2) **NHS SHROPSHIRE CLINICAL COMMISSIONING GROUP** William Farr House, Mytton Oak Rd, Shrewsbury SY3 8XF (the "**CCG**")

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of Shropshire within its administrative area.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the county of Shropshire within the administrative area of the Council.
- (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 secure the future position of health and social care services through lead or joint commissioning arrangements. It is also a means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
  - a) improve the quality and efficiency of the Services;
  - b) meet the National Conditions and Local Objectives as set out in the Better Care Fund plan;
  - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.
- (G) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

## 1 DEFINED TERMS AND INTERPRETATION

1. 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.

**2014 Act** means the Care Act 2014.

**2018 Act** means the Data Protection Act 2018

**Affected Partner** means, in the context of Clause 23, 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.

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

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

**Associated Person:** means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest; OR any other body that substantially performs any of the functions of the Council that previously had been performed by the Council

**Authorised Officers:** means an officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement and notified by each Partner to the other in writing. The Authorised Officers at the Commencement Date are: the Accountable Officer for and on behalf of the CCG and the Director of Adult Social Care for and on behalf of the Council.

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

**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 Assurance Framework:** is the framework used to assess Better Care Fund Plan in accordance with national guidelines.

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

**Better Care Fund Plan** means the plan attached at Schedule 6 setting out the Partners plan for the use of the Better Care Fund.

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

**Care Act** means the Care Act 2014 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

**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 of this Agreement

**Commencement Date** means 00:01 hrs on XXXXXXXX 2018.

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

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

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

**Data Protection Legislation:** this includes:

- a) Prior to 25<sup>th</sup> May 2018:

the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive)

Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; and

b) After 25<sup>th</sup> May 2018:

(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

**Default Liability** means any sum which is agreed or determined by Law or in accordance with the terms of a Services Contract) to be payable by any Partner(s) to the Provider as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under the relevant 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, liable to the provider.

**Expiry Date:** means the last date of the Term following the expiry of a notice to terminate this Agreement given by one Partner to the other in accordance with clause 22

**Financial Contributions** means the financial contributions made by each Partner to a Pooled Fund or which are made the subject of a Non Pooled Fund for expenditure on the Services 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 the Health Related Functions

GDPR: means the General Data Protection Regulations coming into force in the UK with effect from 25<sup>th</sup> May 2018

**Health Related Functions** means those of the health related functions of the Council, specified in Regulation 6 of the Regulations (as amended or replaced by the Care Act) as relevant to the commissioning of the Services and which may be further described in the relevant Scheme Specification.

**Health and Wellbeing Board** means the Health and Wellbeing Board (HWBB) established by the Council pursuant to Section 194 of the Health and Social Care Act 2012 and which is responsible for the performance and oversight of this Agreement as set out in Schedule 2 (Governance).

**Healthy Lives Prevention Programme:** is the Shropshire partnership prevention programme that focuses on taking a whole system approach to reducing demand on services and relies on working together in partnership to deliver activity; it works across organisations and partnership groups and supports integration across health and care as set out in the Health and Wellbeing Strategy.

**Health and Wellbeing Strategy** is the strategy produced by the HWBB to describe key local health and care issues and explaining the role of the HWBB towards making improvements to these issues

**Improved Better Care Fund (IBCF)** the IBCF was first announced in the 2015 Spending Review, and is a paid as a direct grant to local government, with a condition that it is pooled into the local BCF plan.

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

**Local Objectives:** Objectives as set out in the Better Care Fund Plan

**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 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 and which may be further described in each Service Schedule

**Non Pooled Fund** means the budget detailing the Financial Contributions of each of the Partners which are not included in the Pooled Fund but which will be spent to fund the Individual Schemes as set out in the relevant Scheme Specifications and in accordance with any Joint (Aligned) Commissioning Arrangements.

**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 8.3

**Overspend** means any expenditure from a Pooled Fund or a Non- Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year.

**Out of Hospital Programme (also known as Care Closer to Home):** is the programme of work to redesign health and care provision in communities across Shropshire.

**Out of Hospital Programme (also known as the Care Closer to Home Board):** is the Board that governs the Care Closer to Home work and puts forward proposals for transformation to health and care provision to the CCG governing body.

**Partner** means each of the CCG and the Council, and references to "**Partners**" shall be construed accordingly and such reference shall include each Partner's employees (paid or unpaid) agents, servants, consultants and contractors.

**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 prior to 25<sup>th</sup> May 2018: Personal Data as defined by the 1998 Act and after 25<sup>th</sup> May 2018, Personal Data as referred to in the GDPR.

**Pooled Fund** means any pooled fund established from the Financial Contributions of the Partners as particularly set out in Schedule 3 and maintained by the Partners as a pooled fund in accordance with the Regulations in order to fund an Individual Scheme, as more particularly described in the relevant Scheme Specification.

**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 8

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

**Prohibited Act:** the following constitute Prohibited Acts:

a) to directly or indirectly offer, promise or give any person working for or engaged by the Partners a financial or other advantage to:

- i) induce that person to perform improperly a relevant function or activity; or
- ii) reward that person for improper performance of a relevant function or activity;

b) to directly or indirectly request, agree to receive or accept any financial or other advantage as a inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

c) committing any offence:

i) under the Bribery Act  
ii) under legislation creating offences concerning fraudulent act;  
iii) at common law concerning fraudulent acts relating to this Agreement and any other contracts with the [Partners]; or

d) defrauding, attempting to defraud or conspiring to defraud the [Partners]

**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 or replaced by the Care Act

**Regulated Activity:** in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006

**Regulatory Body:** those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the Parties

**Regulated Provider:** as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006

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

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

**Scheme Specification** means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement. and set out in Part 2 of Schedule 1.

**Section 75** means section 75 of the 2006 Act.

**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 and more specifically defined in each Scheme Specification.

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

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

**Shropshire Together:** Shropshire Together is the brand that supports the Health and Wellbeing Board and partnership communication activity across health and care (including Healthy Lives Prevention Programme)

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

**Sustainability and Transformation Partnership (Plans) – STP** - The NHS and local councils have formed partnerships in 44 areas covering all of England, to improve health and care. Each area has developed proposals built around the needs of the whole population in the area, not just those of individual organisations.

**Term:** means the period commencing on the Commencement Date and expiring on the Expiry Date

**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 Commissioning Group.

**TUPE:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

**Underspend** means any expenditure from a Pooled Fund or Non Pooled Fund in respect of an Individual Scheme in a Financial Year which is less than the Financial Contributions allocated to that Individual Scheme for that Financial Year

**VCSA:** is the Voluntary and Community Sector Assembly and is a membership organisation that acts as the voice of the VCSE sector in Shropshire, and supports partnership working between the statutory and community sectors

**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.

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 there under 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.



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.
4. Any reference to the Partners shall include their respective statutory successors, employees and agents.
5. In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
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.
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.
8. In this Agreement, words importing the singular only shall include the plural and vice versa.
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.
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.
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.
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**

1. This Agreement shall take effect from the Commencement Date.
2. This Agreement shall continue until it is terminated in accordance with Clause 22.
3. The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification and for the avoidance of doubt the duration of each Individual Scheme shall not go beyond the duration of this Agreement.

## **3 GENERAL PRINCIPLES**

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; or
  - 3.1.2 any power or duty to recover charges for the provision of any services in the exercise of any local authority function.
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. For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

#### **4 PARTNERSHIP FLEXIBILITIES**

1. This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:
  - 4.1.1 Lead Commissioning Arrangements;
  - 4.1.2 Integrated Commissioning
  - 4.1.3 Joint (Aligned) Commissioning
  - 4.1.4 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

2. Where there is Lead Commissioning Arrangements and the CCG is Lead Commissioner 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.
3. Where there is Lead Commissioning Arrangements and the Council is Lead Commissioner, 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. 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 Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.
5. [At the Commencement Date the Partners agree that the following shall be in place:

- 4.5.1 The following Individual Schemes with Lead Commissioning with Council as Lead Commissioner:
- (a)
- 4.5.2 The following Individual Schemes with Lead Commissioning with CCG as Lead Commissioner
- (a)
- 4.5.3 The following Individual Schemes with Aligned Commissioning with Council as Lead Commissioner:
- (a)
- 4.5.4 The following Individual Schemes with Aligned Commissioning with CCG as Lead Commissioner.
- (a)
- 4.5.5 Integrated Commissioning:
- (a)
- 4.5.6 Integrated Commissioning Unit [with CCG/Council as Lead Commissioner] [under joint arrangements] [established using s.113 of the Local Government Act 1972]

## **5 FUNCTIONS**

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.

5.1.1 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission or otherwise secure provision of the Services in accordance with their obligations under this Agreement.

5.1.2. The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 1 Part 2
2. Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 and shall be completed and agreed between the Partners, through working groups and governance set out in . The Scheme Specification current at the date of this Agreement is set out in Schedule 1
3. The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.

4. The introduction of any Individual Scheme will be subject to business case approval by the Joint Commissioning Group or by delegated authority as directed by the Health & Wellbeing Board, and the Shropshire CCG and Shropshire Council governing processes as appropriate. The business case will also recommend the commissioning arrangements in relation to new schemes.

## **6. COMMISSIONING ARRANGEMENTS**

### **General**

1. The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification
2. The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
3. Each Partner shall keep the other Partner and the Joint Commissioning Group and where applicable, the Health and Wellbeing 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.

### **Integrated Commissioning / Joint (Aligned) Commissioning**

4. Where there are Integrated or Joint (Aligned) Commissioning arrangements in respect of an Individual Scheme, both Partners shall work in cooperation and shall endeavour to ensure that the Functions are able to be exercised by the relevant Partner in compliance with its statutory duties and so as to ensure that the Services are commissioned and provided with due skill, care and attention. Where there is Integrated or Joint (Aligned) Commissioning then prior to any new Service Contract being entered into the Partners shall agree in writing how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme
5. In Integrated Commissioning Arrangements, the Partners agree that they shall both be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract, details to be described in schedule 3.
6. Both Partners shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.
7. Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.
8. The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification. Where one Partner is acting as Provider or sole commissioner as part of a Joint (Aligned) Commissioning arrangement, it shall ensure that the Services which are the subject of those arrangements are commissioned and (where appropriate) provided with due skill, care and attention and in accordance with any Scheme or Service Specification. A Partner acting as a Provider or sole commissioner of a Service in a Joint (Aligned)

Commissioning arrangement shall report to the Health and Well Being Board and the relevant governance arrangements for Shropshire Council and Shropshire CCG, for the delivery and commissioning of the relevant Services in accordance with the National Conditions and the Local Objectives.

9. The Joint Commissioning Group will report back to the Health and Wellbeing Board as required by its Terms of Reference.

#### Lead Commissioner

10. Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:

- 5.10.1 list of exercise the Functions as identified in the relevant Scheme Specification;
- 5.10.2 endeavour to ensure that the Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
- 5.10.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 5.10.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
- 5.10.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 5.10.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the “Commissioner” and “Co-ordinating Commissioner” with all due skill care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- 5.10.7 perform the obligations of the Commissioner with all due skill, care and attention
- 5.10.8 undertake performance management and contract monitoring of all Service Contracts;
- 5.10.9 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 5.10.10 keep the other Partner regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund and if applicable, a Non Pooled Fund.

## 6 ESTABLISHMENT OF A POOLED FUND

1. In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.

2. Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
3. It is agreed that the monies held in a Pooled Fund may only be expended on the following:
  - 6.3.1 the Contract Price;
  - 6.3.2 the Permitted Budget;
  - 6.3.3 Performance Payments;
  - 6.3.4 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in writing by the Joint Commissioning Group or the Health and Wellbeing Board following authorisation from the Partners, further to clause 8.22 below, where appropriate
  - 6.3.5 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Joint Commissioning Group or the Health and Wellbeing Board when required

("Permitted Expenditure")
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 each Partner or Joint Commissioning Group and if required, by the Health and Wellbeing Board.
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.
6. The Host Partner for the Better Care Fund Pooled Budget is agreed as the Council. The Host Partner shall be the Partner responsible for:
  - 6.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partner;
  - 6.6.2 providing the financial administrative systems for the Pooled Fund; and
  - 6.6.3 appointing the Pooled Fund Manager;
  - 6.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.
  - 6.6.5 any other expenditure connected with the provision of the Services and approved by the Partners

## **7 POOLED FUND MANAGEMENT**

1. The Pooled Funds identified as part of the Better Care Fund will be managed by the Pooled Fund Manager and shall have the following duties and responsibilities:
  - 7.1.1 the day to day operation and management of the Pooled Fund;

- 7.1.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
  - 7.1.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund and reporting processes;
  - 7.1.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
  - 7.1.5 reporting to the Joint Commissioning Group and the Health & Wellbeing Board as required;
  - 7.1.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
  - 7.1.7 preparing and submitting to the Joint Commissioning Group and the Health & Wellbeing Board Quarterly reports (as required or more frequent reports if required) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Health & Wellbeing Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns;
  - 7.1.8 ensuring that the Partners are able to meet all of their statutory financial reporting requirements arising in connection with this Agreement including the Partners' own audit obligations (the time frame for the delivery of such reporting requirements, to be agreed by the Joint Commissioning Group in accordance with the Partners' respective requirements); and
  - 8.1.9 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance.
2. In carrying out its responsibilities as provided under Clause 8.1 the Pooled Fund Manager shall have regard to National Guidance and the directions of the Joint Commissioning Group and/or Health & Wellbeing Board as applicable and shall be accountable to the Partners for delivery of those responsibilities.
- 7.2.1 The Partners shall provide all information necessary to the Pooled Fund Manager to enable it to comply with its obligations set out in Clause 8.1
  - 7.2.2 The virement of Financial Contributions within Pooled Funds allocated to Individual Schemes shall only be permitted if recommended by the Health and Wellbeing Board (or the Joint Commissioning Group through delegated authority) and authorised by the Partners further to their own respective governance arrangements.
3. Subject to clause 8.2.2, the Joint Commissioning Group may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.

## **8 MANAGEMENT OF NON- POOLED FUNDS**



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.
2. When introducing a Non- Pooled Fund, the Partners shall agree:
  - 1.1.1. which Partner if any shall host the Non- Pooled Fund; and
  - 9.2.2 how and when Financial Contributions shall be made to the Non- Pooled Fund.
3. Each Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund for which they are the host, meeting all required accounting and auditing obligations.
4. Both Partners shall ensure that any Services commissioned or provided, using a Non- Pooled Fund are commissioned or provided (as applicable) solely in accordance with the relevant Scheme Specification.
5. Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
  - 9.5.1 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 or Individual Scheme in each Financial Year; and
  - 9.5.2 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 or Individual Scheme in each Financial Year.

## **9 FINANCIAL CONTRIBUTIONS**

1. The Financial Contribution of the CCG and the Council to the Pooled Fund or Non-Pooled Fund shall be as set out in Schedule 3
2. The Partners agree that they shall commence negotiations regarding the financial contributions to be made to each Individual Scheme for the first Financial Year following 31st March 2019 by no later than 6 months prior to that date and that they shall use their reasonable endeavours to reach agreement on those Financial Contributions no later than 3 months prior to that date. The provisions of this clause shall apply mutatis mutandis in respect of subsequent Financial Years.
3. Each Scheme Specification and Schedule 3 shall be updated by way of a variation to this Agreement in accordance with Clause 34 below to reflect any new or revised Financial Contributions to be made during the Term.
4. Financial Contributions will be paid as set out in each Scheme Specification.
5. With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Joint



Commissioning Group minutes and recorded in the budget statement as a separate item.

## **10 NON- FINANCIAL CONTRIBUTIONS**

1. Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Commissioner 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.
2. Each Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Service Contracts and the Pooled Fund).

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

### **Risk share arrangements**

1. The Partners have agreed risk share arrangements as set out in Schedule 3 , which provide for risk share arrangements arising within the commissioning of services from the Pooled Funds as set out in National Guidance and the financial risk to the pool arising from the payment for performance element of the Better Care Fund.
  - 12.1 the Partners agree that, in order to comply with the National Conditions, they shall establish the Pooled Funds that are described in Clause 7, out of which payments may be made, in accordance with the provisions of this Agreement to secure delivery of the Services (as described in the Scheme Specifications). The Partners will work together to achieve the Local Objectives in ensuring the delivery (or provision) of those Services out of the monies that are allocated to the Pooled Funds and the Non-Pooled Funds.
  - 12.2 Details of the Pooled Funds and Non-Pooled Funds and the Scheme Specifications to which they relate are set out in Schedule 3 of this Agreement.

### **Overspends in Pooled Fund**

2. 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.
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 Commissioning Group and the other partner and decision making groups.
4. In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Joint Commissioning Group and Partners are notified as soon as practicably possible and adhere to Schedule 3

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

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 Commissioning Group.
6. Subject to clause 9.3 where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled Fund. The Lead Commissioner shall as soon as reasonably practicable inform the other Partner and the Joint Commissioning Group

## **Underspends in Pooled Fund**

7. In the event that expenditure from any 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 (through the Joint Commissioning Group) how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the Performance Payment Arrangement.

## **12 CAPITAL EXPENDITURE**

1. Except as provided in clause 13.2, neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners and respective Partner processes must be exercised in order to obtain the required capital to fund the identified capital expenditure.
2. The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.

## **13 VAT**

1. The Partners shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.
2. Subject to Clause 14.1, Services commissioned by the Council will be subject to the VAT regime of the Council and Services commissioned by the CCG will be subject to the VAT regime of the National Health Service.

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

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.

2. All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner 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.
3. The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

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

1. Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or a Services Contract 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 the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
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 Commissioning Group and/or Health & Wellbeing Board.
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:
  - 15.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
  - 15.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
  - 15.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
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).

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.
6. Neither Partner shall be liable to the other Partner for claims arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.

7. Conduct of Claims in respect of the indemnities given in this Clause 16:

16.7.1 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;

16.7.2 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.

16.7.3 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.

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

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).
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.
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.
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.

## **17 CONFLICTS OF INTEREST**

The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in Schedule 7 Policy for the Management of Conflicts of Interests

1. Overall strategic oversight of partnership working between the Partners is vested in the Health and Wellbeing Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
2. The Health and Wellbeing Board, Healthwatch and the overview and scrutiny committees have signed a memorandum of understanding to ensure good lines of communication and a collective understanding of each other's roles

## **19 GOVERNANCE**

1. Overall strategic oversight of partnership working between the Partners is vested in the Health and Well Being Board, which for these purposes shall agree the BCF Plan and make recommendations to the Partners as to any action it considers necessary. For the avoidance of doubt, It s the responsibility of Shropshire CCG and Shropshire Council to approve and deliver the BCF plan.
2. The Partners have established a Joint Commissioning Group to ensure implementation of the Better Care Fund plan and conduct financial and performance monitoring
3. The Joint Commissioning Group is based on a joint working group structure and its purpose is to drive the development and delivery of the health and wellbeing work/action plans including the Better Care Fund plan. It.is made up of the relevant directors and senior representatives of the Partners who will have individual delegated responsibility from the Partner employing them to make decisions together with representatives from other stakeholder organisations (as set out in Schedule 2) which enable the Joint Commissioning Group to carry out its objects, roles, duties and functions as set out in this clause 19 and the terms of reference for this group are set out in Schedule 2 of this Agreement
4. It is the responsibility of the Joint Commissioning Group and the Health and Wellbeing Board (HWBB) in conjunction with partners in the STP, to ensure that strategic objectives across health & the local authority are aligned. Strategic issues are resolved through the HWBB and its subgroups, and the STP and its subgroups.
5. Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties are complied with and HWBB shall be responsible for the overall approval of the BCF Plan, ensuring compliance and the strategic direction of the Better Care Fund.
6. Each Service Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the HWBB.

## **20 REVIEW**

1. The Partners shall produce a BCF Quarterly Report which shall be provided to 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
2. Save where the Joint Commissioning Group agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review (“**Annual Review**”) of the operation of this Agreement, the Pooled Fund, and, if applicable, the Non-Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.
3. Subject to any variations to this process required by the Joint Commissioning Group, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements.
4. The HWBB will receive regular reports on the Better Care Fund throughout the year, with a final annual report on the Better Care Fund, the Pooled budget, the Non-Pooled Fund and this Agreement.
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.

## **21 COMPLAINTS**

- 1 Subject to the remaining provisions of this clause 21 a Partners’ own complaints procedures shall apply to complaints received by it in connection with the Services commissioned or provided by it pursuant to this Agreement or in connection with its obligations pursuant to this Agreement.
- 2 Each Partner will endeavour to put in place reasonable and proportionate procedures to report complaints that they receive to the other Partner. The Partners agree to consult with and to assist one another in connection the management of complaints generally and to respond collectively where appropriate.
- 3 The Partners shall comply with National Guidance and local complaints protocols developed from time to time in determining how to address and manage complaints.

## **22. TERMINATION & DEFAULT**

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.
2. Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification and contracting arrangements of the Lead Commissioner, provided that the Partners ensure that the Better Care Fund requirements continue to be met.
3. If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other Partner may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partner 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.

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 any terms of this Agreement which either expressly or by implication survive termination of this Agreement
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.
6. Upon termination of this Agreement for any reason whatsoever the following shall apply:
  - 21.6.1 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;
  - 21.6.2 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;
  - 21.6.3 where necessary, the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
  - 21.6.4 where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract (for the avoidance of doubt, where Joint (Aligned) Commissioning arrangements are in place and one Partner is the sole commissioner of a Service, the commissioning Partner shall be entitled to continue to commission that Service under the relevant Service Contract at its own cost, following termination of this Agreement);
  - 21.6.5 the Joint Commissioning Group 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

21.6.6 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.

7. In the event of termination in relation to an Individual Scheme or Service the Partners shall ensure that the Better Care Fund requirements of the Partners can continue to be met and the provisions of Clause 22.5 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

## **22 DISPUTE RESOLUTION**

1. In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute. In order to commence the dispute resolution procedure set out in this Clause 23.
2. The Authorised Officer 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.
3. If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective chief executives or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
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 a 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.
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.

## **23 FORCE MAJEURE**

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.



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.
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.
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.

## 24 CONFIDENTIALITY

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:
  - 24.1.1 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
  - 24.1.2 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.
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.
3. Each Partner:
  - 24.3.1 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
  - 24.3.2 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;

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

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

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 Act 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.
2. Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act and the Local Authority Transparency Code 2015.

## **26 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.

## **27 INFORMATION SHARING**

The Partners will follow the Information Governance Protocol set out in Schedule 8, and in so doing will ensure that the operation of this Agreement complies with Law, in particular the 1998 Act, 2000 Act and the 2004 Act, GDPR and the 2018 Act and will at all times observe the Data Protection Legislation and honour the confidentiality of any data supplied for the performance of this Agreement and in so far as such data constitutes Personal Data within the meaning prescribed by the Data Protection Legislation will at all times comply fully with the 1998 Act and GDPR principles as are applicable at the relevant time and relative thereto and will at all times indemnify each other from and/or against any cause of action which may be brought against either Partner consequent to any breach or non-observance by the other Partner

## **28 NOTICES**

1. Any notice to be given under this Agreement shall either be delivered personally, 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:

28.1.1 personally delivered, at the time of delivery;

28.1.2 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

- 28.1.3 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.
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 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).
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:

28.3.1 if to the Council, addressed to the Chief Executive:

Shropshire Council  
Shirehall  
Abbey Forgate  
Shrewsbury  
Shropshire  
SY2 6ND

Tel: 0345 678 9000

Email: [customer.service@shropshire.gov.uk](mailto:customer.service@shropshire.gov.uk)

and

28.3.2 if to the CCG, addressed to the Chief Executive;

Shropshire Clinical Commissioning Group  
William Farr House  
Mytton Oak Road  
Shrewsbury  
Shropshire  
SY3 8XL

Tel: 01743 277500

### **30. PROHIBITED ACTS**

- 1 Neither Partner shall commit a Prohibited Act
- 2 If either of the Partners commits any Prohibited Act or commits any offence under the Bribery Act with or without the knowledge of the other Partner in relation to this Agreement, the non-defaulting Partner shall be entitled:
  - a) Exercise its right to terminate this Agreement and to recover from the defaulting Partner the amount of any loss resulting from the termination; and

- b) To recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- 3 Each Partner must provide the other Partner upon written request with all reasonable assistance to enable that Partner to perform any activity required for the purposes of complying with the Bribery Act. Should either Partner request such assistance the Partner requesting assistance must pay the reasonable expenses of the other Partner arising as a result of such request.
- 4 The Partners must have in place an anti-bribery policy for the purposes of preventing any of its employees, agents servants consultants or contractors from committing a prohibited act under the Bribery Act and must be enforced where applicable.
- 5 Should either Partner become aware of or suspect any breach of this clause, it will notify the other Partner immediately. Following such notification, the defaulting Partner should respond promptly and fully to any enquiries of the other Partner, co-operate with any investigation undertaken by the non-defaulting Partner and allow the non-defaulting Partner to audit any books, records and other relevant documentation.

### **31 SAFEGUARDING**

The Partners shall ensure that all Providers have appropriate Safeguarding policies in place and shall require such policies to be implemented where applicable. Where the services or activities being undertaken with respect to any Individual Scheme are Regulated Activities the Partners shall require Providers to comply with all relevant requirements of the Disclosure and Barring Service.

### **32 HEALTHWATCH**

- 1. The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision making concerning the Services commissioned.
- 2 The Partners shall ensure that its contracts with Providers require co-operation with Local Healthwatch where applicable

### **33 STAFFING (TUPE, SECONDMENT AND PENSIONS) – Not Used**

### **34. VARIATION**

- 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.
- 2. Where the Partners agree that there will be:
  - 34.2.1 a new Pooled Fund;
  - 34.2.2 a new Individual Scheme; or
  - 34.2.3 an amendment to a current Individual Scheme,

the Joint Commissioning Group 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 or other matters set out in the relevant Scheme Specification may be made by any Partner but will require agreement from all of the Partners in accordance with the process set out in Clause 34.3. 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.

3. The following approach shall, unless otherwise agreed, be followed by the Joint Commissioning Board:

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

34.3.2 the Joint Commissioning Group 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;

34.4.3 wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and

34.4.4 should this not be possible and one Partner is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed, be shared equally between the Partners.

### **35 Change in Law**

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.

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.

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.

### **36 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.

### **37 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.

### **38 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 PROVIDED that this shall not apply to any assignment to a statutory successor of all or part of a Partner's statutory functions or where the Council wishes to assign any of its rights under this Agreement; or transfer all of its rights or obligations by novation to another person where such assignment, transfer or novation is to an Associated Person of the Council.

### **39 EXCLUSION OF PARTNERSHIP AND AGENCY**

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.

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:

39.2.1 act as an agent of the other;

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

39.2.3 bind the other in any way.

### **40 THIRD PARTY RIGHTS**

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

### **41 ENTIRE AGREEMENT**

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.

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.

### **42 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.

#### **43 GOVERNING LAW AND JURISDICTION**

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.
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

Signed for on behalf of **SHROPSHIRE COUNCIL**

---

Authorised Signatory  
**Andy Begley**  
**Director, Adult Services**

Signed for on behalf of **SHROPSHIRE CLINICAL COMMISSIONING GROUP**

---

Authorised Signatory  
**Simon Freeman,**  
**Accountable Officer, Shropshire CCG**



## SCHEDULE 1 SCHEDULE 1 – SCHEME SPECIFICATION – UNDER DEVELOPMENT

1. The Scheme Specification for the Individual Schemes which make up the Better Care Fund plan are found here in two parts; the first is narrative, as found in the Better Care Fund plan. The narrative describes:
  - The Aims and Outcomes of the Individual Schemes,
  - The Service that the Individual Scheme delivers,
  - The governance arrangements,
  - The outcome measures,
  - The schedule for performance monitoring.
  - Action plan for BCF Development
2. The second part is the BCF planning template which identifies:
  - BCF budget lines and amounts
  - Funding sources
  - Performance metrics
  - National conditions
  - Guidance

Please find Part 1 & 2 attached here

Part 1	Link to <a href="#">2017-19 BCF Plan</a>
Part 2	In development

3. The Partners agree that they shall commence negotiations regarding the Individual Schemes and Scheme Specifications to be included in the BCF Plan for each Financial Year following 31st March 2019 by no later than 6 months prior to that date and that they shall use their best endeavours to reach agreement on those Individual Schemes and Scheme Specifications no later than 3 months prior to that date. The provisions of this clause shall apply mutatis mutandis in respect of subsequent Financial Years.

## SCHEDULE 2 SCHEDULE 2 – GOVERNANCE – UNDER DEVELOPMENT

Further to clause 19 of the main terms of this Agreement, the governance of the Better Care Fund is as set out in this Schedule 2. It should be noted that these are the existing governance arrangements and that these will be reviewed in light of the Health and Wellbeing Board strategy and governance review.

### 1. HEALTH AND WELLBEING BOARD:

#### 1.1 Health and Wellbeing Board Aim and Vision (from the Joint HWB Strategy):

##### 1.1.1 Our Aim:

*To improve the population's health and wellbeing; to reduce health inequalities that can cause unfair and avoidable differences in people's health; to help as many people as possible live long, happy and productive lives by promoting health and wellbeing at all stages of life.*

##### 1.1.2 Our Vision:

*For Shropshire people to be the healthiest and most fulfilled in England*

The Health and Wellbeing Strategy can be found via this [link](#)

### 1.2 TERMS OF REFERENCE:

#### 1.2.1 Purpose

The purpose of the Health and Wellbeing Board (HWBB) is to bring together key leaders from local health and care organisations to work together to improve the health and wellbeing of local people and to reduce inequalities that are the cause of ill health. HWBB members work together to understand their local community's needs, agree priorities, and make decisions to improve the health and wellbeing of local people in Shropshire.

#### 1.2.2. Health and Wellbeing Board Aim and Vision

##### Our Aim:

*To improve the population's health and wellbeing;*

*to reduce health inequalities that can cause unfair and avoidable differences in people's health;*

*to help as many people as possible live long, happy and productive lives by promoting health and wellbeing at all stages of life.*

##### Our Vision:

*For Shropshire people to be the healthiest and most fulfilled in England*

The HWBB believes we need a new approach to health and care that nurtures wellness and encourages positive health behaviour at all stages of people's lives and across all communities. We need to:

**Start Well** – parents make good choices for their bumps and babes; early years and schools support good mental and physical health and wellbeing; services are available when and if they are needed;

**Live Well** – we make good choices for ourselves as we become adults to keep well and healthy, both physically and mentally; accessing support from services when and if they are needed;

**Age Well** – making good choices as an adult means that as Shropshire people age they are as fit and well as they can be; people continuing to make good lifestyle choices throughout their lives can prevent many long term conditions such as dementia and heart disease.

### 1.2.3. Role

The HWBB will develop and implement a five year Health & Wellbeing Strategy (HWBS); it will also develop, implement and annually refresh the HWB Action Plan. It will carry out this role through:

- ☐ Taking a system leadership approach and working with partners across the health and wellbeing system to implement the vision and priorities as set out in the HWBS;

- ☐ Working with and influencing partners across Shropshire, and along Shropshire's boundaries, who make decisions that impact the wider determinants of health and wellbeing; these include but are

not limited to planning, housing, transport, business and other partnership groups. The Board will do this in order to implement and deliver the vision and priorities as set out in the HWBS;

- ☐ Working with the people of Shropshire to support and promote healthy lifestyles at all stages, to improve the health and wellbeing of all people, but especially with those who need it most;

- ☐ Working with the people of Shropshire and service users to design and develop sustainable services;

- ☐ The Health and Wellbeing Delivery Group and its subgroups, are tasked with delivering key elements of the strategy; this may involve convening any necessary task and finish groups;

The HWBB is responsible to deliver the Better Care Fund programme in accordance with national guidelines and will hold accountability for delivery of the Better Care Fund Plan, its associated metrics and budget in accordance with the local Partnership Agreement.

The HWBB will deliver integration and the joint commissioning of health and social care services for children, families and adults in Shropshire, through the Better Care Fund pooled budget arrangements.

The HWBB will be innovative in its approach to deliver integration and the joint commissioning of health and social care services for children, families and adults in Shropshire.

The HWBB will keep under review, the financial and organisational implications of joint and integrated working across health and social care services, ensuring that performance and quality standards for health and social care services to children, families and adults are met and represent value for money across the whole system.

The HWBB will deliver its statutory obligations including oversight of the Care Act, Children and Adults Safeguarding Boards, joint commissioning arrangements of the SEND reforms; input into the CCG planning processes and its 5 Year Plan; and the Pharmaceutical Needs Assessment.

The Board will respond to any further legislative requirements as described through national policy and legislative changes.

The HWBB will develop a shared understanding of the needs of the local community through the development of an agreed Joint Strategic Needs Assessment (JSNA); the JSNA will analyse local need through locally collected quantitative and qualitative information.

The HWBB will work with Healthwatch Shropshire and through the Board's Communication and Engagement Group to ensure that appropriate communication, engagement and involvement takes place and contributes to the JSNA and decision making processes.

The Health and Wellbeing Board will regularly work with Shropshire Council statutory boards including the Children's Trust, the Safer Stronger Communities Board, the Safeguarding Adults Board, and the Safeguarding Children's Board.

The Health & Wellbeing Board will act as a key forum for local democratic and public accountability of health, care and wellbeing promotion and services within Shropshire.

#### **1.2.4. Principles**

To drive a genuinely collaborative approach to the commissioning and delivery of services which improve the health and wellbeing of local people, the board will abide by the following principles:-

- ☐ The Health & Wellbeing Board will work primarily to improve the health and wellbeing of the citizens of Shropshire;
- ☐ The Health & Wellbeing Board will work collaboratively and consensually;
- ☐ The Health & Wellbeing Board will add value over and above our current arrangements to really tackle key priorities and delivery outcomes for our communities;
- ☐ Members of the Health & Wellbeing Board will have genuine levels of trust and an open and honest willingness to work collaboratively;

☐ Will develop creative and constructive challenge to ensure that the Board is always working to

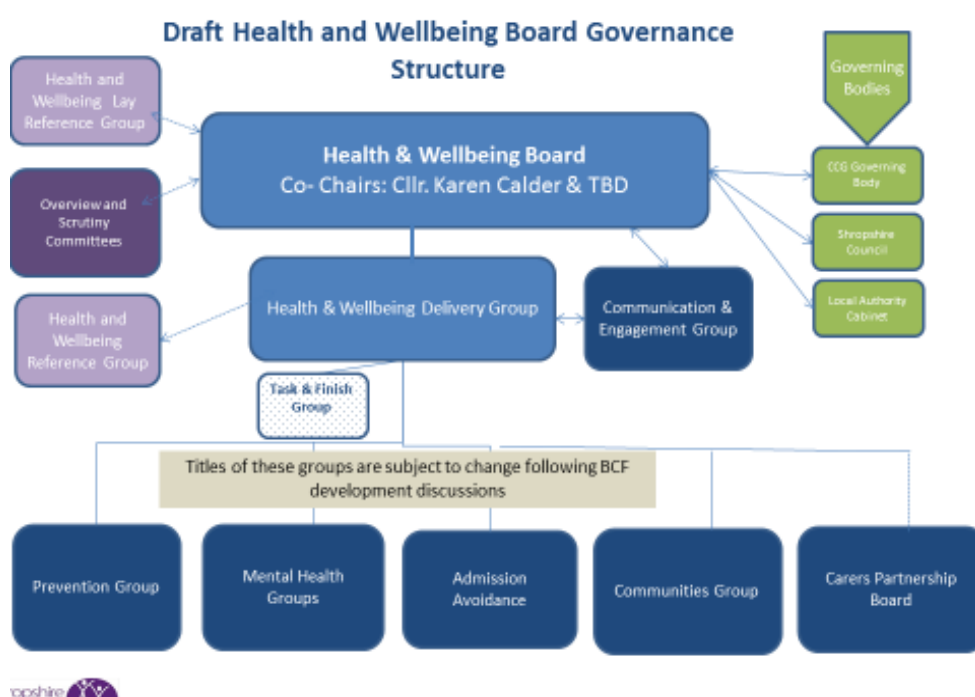
maximise its potential as partners;

☐ Will be pro-active by developing collaborative working to deliver the HWB strategy, whilst maintaining appropriate flexibility to respond to issues as they arise;

☐ Responsibility and accountability – to our members, our staff and our public;

☐ The role and functioning of the Health & Wellbeing Board is evolving and will be subject to regular review.

### 1.2.5. Governance



The Health and Wellbeing Board also works with our Partnership Boards to deliver the HWB Strategy, this includes the Children's Trust who deliver elements of the strategy to support the health and wellbeing of children and families, the Safeguarding Children's Board, the Safeguarding Adults Board, and the Safer Stronger Communities Board.

### 1.2.6. Membership

Voting Members

☐ Cabinet Member – Portfolio Holder Health

☐ Cabinet Member – Portfolio Holder Adult Social Care

☐ Cabinet Member – Portfolio Holder Children's Services

- ☐ Clinical Commissioning Group –
- ☐ Clinical Commissioning Group –
- ☐ Clinical Commissioning Group –
- ☐ Clinical Commissioning Group –
- ☐ Director of Children's Services
- ☐ Director of Adult Services
- ☐ Director of Public Health
- ☐ Representative from Healthwatch
- ☐ Voluntary and Community Sector Assembly – Chair
- ☐ NHS England

#### System Leaders/ Non-Voting Members

- ☐ Shrewsbury and Telford Hospital NHS Trust – Chief Executive
- ☐ Shropshire Community Health NHS Trust – Chief Executive
- ☐ South Staffordshire & Shropshire Foundation NHS Trust – Chief Executive
- ☐ Shropshire Partners in Care – Chief Officer
- ☐ GP Federation – Chair
- ☐ Business Board – Chair

☐ System leaders (from all sectors) will be invited to discuss relevant issues as needed

#### **1.2.7. Meeting Arrangements**

Co- Chair – the Board will operate a co-chair arrangement selected and agreed by the Board; one Portfolio Holder HWBB Member and one CCG HWBB member.

Notice of Meetings – meetings of the Board will be arranged 5 full working days in advance by Shropshire Council, who will also provide the clerking and recording of the meeting.

Quorum – Quorum for all meetings of the Health and Wellbeing Board is 50% of voting members with at least two representatives from Shropshire Council, at least two from the CCG, and at least one other.

Substitutes – Nominating groups may appoint a substitute member for each position; notification of the named substitute member must be made prior to the meeting start. Substitute members will have full voting rights.

Meeting Frequency – The Board will meet at least quarterly.

Status – Meetings of the Board will be open to the press and public and the agenda reports and minutes will be available on the Council's website at least five working days in advance of each meeting. There will be an opportunity for members of the public to ask questions, however this must be done in writing at least 2 full working

days in advance. A response to the question will be tabled and a brief opportunity will be provided to the member of the public to ask a follow-up question. Guidance for this process is available on the Shropshire Council website.

Confidential Items – Members of the public and press may only be excluded either in accordance with the Access to Information Rules as set out in Part 4 of Shropshire Council's Constitution or Rule 26 (Disturbance by the Public).

### **1.2.8. Election, Roles and Responsibilities of the Co-Chairs**

Election – The Co-Chairs of the HWBB are elected from the group of Portfolio Holder HWBB Members and the HWBB Members annually.

Responsibilities – Represent views of the Board as required; allow views to be heard fairly and cultivate an atmosphere of true collaboration.

Decision making – it is expected that decisions will be reached by consensus; however, if a vote is required it will be determined by a simple majority of members present and voting. If there are equal members for or against, the Chair will have a casting vote

### **1.2.9. Member Responsibilities**

Represent views of the Board as required; adhere to the principles of the Board and behave in a manner conducive to partnership working and collaboration

### **1.2.10. Reporting Mechanisms/Accountability**

The Health and Wellbeing Board, as a Committee of the Council, will report to Full Council as required.

The actions of the Health and Wellbeing Board will be subject to independent scrutiny by the relevant members of the Overview and Scrutiny Committee of the Council.

The Terms of Reference will be reviewed annually to ensure that the Board is fit for purpose and able to respond to the changes in the way we work.

## **2. JOINT COMMISSIONING GROUP:**

### **2.1. Purpose**

The purpose of the Joint Commissioning Group is to drive forward system transformation; to develop and deliver joint commissioning for the Shropshire STP Out of Hospital work. The



group will work to the vision and aims of the Health and Wellbeing Board and take a whole system approach to improving population health.

## **2.2 Principles**

- 2.2.1 The Group will follow principles as agreed by the HWBB.
- 2.2.2 To work primarily to improve the health and wellbeing of the citizens of Shropshire.
- 2.2.3 To work collaboratively and consensually.
- 2.2.4 To add value over and above our current arrangements to really tackle key priorities and delivery outcomes for our communities.
- 2.2.5 To have genuine levels of trust and an open and honest willingness to work collaboratively.
- 2.2.6 To communicate, listen and engage with the communities we serve, actively seeking ways to enable stakeholders help define and develop the work that we do.
- 2.2.7 Decisions will be based on evidence (both qualitative and quantitative) and data sharing will be the norm.
- 2.2.8 To develop creative and constructive challenge to ensure that we are always working to maximise its potential as partners.
- 2.2.9 To be pro-active by developing collaborative working to deliver system transformation and commissioning intentions, whilst maintaining appropriate flexibility to respond to issues as they arise.
- 2.2.10 Responsibility and accountability - to our members, our staff and our public.

## **2.3. Membership of the Joint Commissioning Group:**

1.1 The membership of the Joint Commissioning Group will be as follows:

### **1.1.1 2.3.1 For the CCG:**

- 2.3.1.1 Director of Contracting & Planning
- 2.3.1.2 Director of Delivery & Performance
- 2.3.1.3 Director of Finance
- 2.3.1.4 Clinical Director, Better Care Fund
- 2.3.1.5 Better Care Fund Manager

or a deputy to be notified to the Chair in advance of any meeting;

### **1.1.2 2.3.2 For the Council:**

- 2.3.2.1 Director of Public Health
- 2.3.2.2 Director of Children's Services
- 2.3.2.3 Director of Adult Services
- 2.3.2.4 Senior Finance Business Partner
- 2.3.2.5 Housing Lead
- 2.3.2.6 Integration Lead, Public Health

#### 2.3.2.7 Locality Manager

or a deputy to be notified in writing to Chair in advance of any meeting;

#### 2.3.3 Additional membership organisations:

- 2.3.3.1 West Mercia Police
- 2.3.3.2 Fire Service
- 2.3.3.3 Healthwatch

### 3. Role of Joint Commissioning Group

2 The Joint Commissioning Group shall:

- 2.1.1 3.1 Provide strategic direction on the Individual Schemes
- 3.2 To support the strategic direction of both the Health and Wellbeing Board and the Shropshire STP Out of Hospital work;
- 3.3 To lead on the development and delivery joint commissioning intentions;
- 3.4 To lead the development and implementation of the Healthy Lives Prevention Programme and provide joint commissioning recommendations and decisions;
- 3.5 To lead on the development, delivery and implementation of the Better Care Fund Programme, ensuring financial and performance monitoring and reporting to the HWBB;
- 2.1.2 3.6 receive the financial and activity information;
- 3.7 To manage the Better Care Fund Assurance Framework, ensuring that any areas of concern are reported to the Health and Wellbeing Board and mitigating actions are agreed and implemented;
- 3.8 To develop a genuinely collaborative approach to commissioning of improved health and care services which improve the health and wellbeing of local people;
- 3.9 To review the work plans (actions plans) and performance of the Out of Hospital work to identify areas for joint work, joint commissioning, and connectivity to cross organisational strategic planning and service delivery;
- 3.10 To ensure that appropriate stakeholders, including commissioners, provider organisations, patient and participation groups, and the VCSA, are involved with the development and delivery of the Out of Hospital work programme;
- 3.11 To ensure that stakeholders have appropriate methods for engagement including providing ideas, concerns, and feedback on action plans and Health and Wellbeing developments;
- 3.12 To discuss Health and Social Care issues affecting service delivery in Shropshire items and their relevance to the Health and Wellbeing Board and the Out of Hospital Programme Board;
- 3.13 review the operation of this Agreement and performance manage the Individual Services;
- 3.14 agree such variations to this Agreement from time to time as it thinks fit;
- 3.15 review and agree annually a risk assessment;
- 3.16 review and agree annually revised Schedules as necessary;

- 3.17 request such protocols and guidance as it may consider necessary in order to enable the Pooled Fund Manager to approve expenditure from a Pooled Fund;
- 3.18 cooperate with the Pooled Fund Manager in meeting reporting requirements in accordance with relevant National Guidance.
- 3.19 report directly to the HWBB on a Quarterly basis in accordance with relevant National Guidance.

#### **4. Governance**

The Joint Commissioning Group will report to the Health and Wellbeing Board and the STP Programme Board. The group will also discuss and make recommendations to all partnership groups as needed. For the avoidance of doubt any financial decisions agreed by the Joint Commissioning Group will be subject to final agreement by the Partners own respective governance arrangements

### **3 5. Joint Commissioning Group Support:**

The Joint Commissioning Group will be supported principally by Shropshire Together and by officers from the Partners from time to time.

### **4 6. Meetings**

- 6.1 Co-Chair – Meetings will be operated by a co-chair arrangement, one from the Council and one from the CCG; to be elected annually.
- 6.2 Notice of Meetings –Shropshire Together will provide administration
- 6.3 Meeting Frequency –meet minimum bi-monthly
- 6.4 Agenda and Papers – Partners are encouraged to provide agenda items and papers for the Group; and papers will be provided to the group at least 2 days in advance.
- 6.5 The Joint Commissioning Group will meet Quarterly at a time to be agreed within following receipt of each Quarterly report of the Pooled Fund Manager.
- 6.6 The quorum for meetings of the Joint Commissioning Group shall be a minimum of one representative from each of the Partner organisations.
- 6.7 Decisions of the Joint Commissioning Group shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Joint Commissioning Group. If no unanimity is reached on the second occasion it is discussed then the matter shall be dealt with in accordance with the dispute resolution procedure set out in the Agreement.
- 6.8 Where a Partner is not present and has not given prior written notification of its intended position on a matter to be discussed, then those present may not make or record commitments on behalf of that Partner in any way.
- 6.9 Minutes of all decisions shall be kept and copied to the Authorised Officers within seven (7) days of every meeting.

### **5 7. Delegated Authority**

- 5.1 7.1 The Joint Commissioning Group is authorised within the limited of delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:

5.1.1            7.1.1 to authorise commitments which exceed or are reasonably likely to lead to exceeding the contributions of the Partners to the aggregate contributions of the Partners to any Pooled Fund; and

5.1.2            7.1.2 to authorise a Lead Commissioner to enter into any contract for services necessary for the provision of Services under an Individual Scheme

## **6      8.                      Information and Reports**

Each Pooled Fund Manager shall supply to the Joint Commissioning Group on a Quarterly basis the financial and activity information as required under the Agreement.

## **7      9. Post-termination**

The Joint Commissioning Group shall continue to operate in accordance with this Schedule following any termination of this Agreement but shall endeavour to ensure that the benefits of any contracts are received by the Partners in the same proportions as their respective contributions at that time.

## SCHEDULE 3 – FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS - UNDER DEVELOPMENT

- 1 Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of Agreement.
- 2 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule 3

### Financial Contributions

3

<b>BCF Total Budget 2018/19</b>	<b>£31,983,049</b>
<b>Total Pooled Fund Amount 2018/2019</b>	<b>£7,779,302</b>
<b>Total Non-Pooled Amounts 2018/2019</b>	<b>£24,203,747</b>
Non Pooled Amounts as follows:	
CCG Revenue Schemes	£12,241,702
Shropshire Council Revenue Schemes (including iBCF Schemes)	£8,987,890
Disabled Facilities Grants	£2,974,155

<b>CONTRIBUTING PARTNER ORGANISATION</b>	<b>POOLED FUND CONTRIBUTION AMOUNT</b>	<b>CONTRIBUTIONS TO BE PAID TO THE HOST AUTHORITY:</b>	<b>NON-POOLED FUND CONTRIBUTION</b>	<b>TOTAL BCF CONTRIBUTION 2018/19</b>
--	--	--	---	---

	<b>2018/19</b>		<b>AMOUNT 2018/19 (TO BE HELD BY THE CONTRIBUTING PARTNER)</b>	
SHROPSHIRE COUNCIL	-	-	£11,962,045	£11,962,045
SHROPSHIRE CCG	£7,779,302	MONTHLY FOLLOWING RECEIPT OF AN INVOICE FROM THE HOST ORGANISATION	£12,241,702	£20,021,004

[Refer to the withholding of any Risk Share Element and when this will be paid in once determined in accordance with Para 4 below].

#### 4. Risk Share – in Development and for discussion through joint working

##### Option 1 for consideration:

The areas of risk identified within this Agreement are as follows:

1. Under or overspending of budgets within Better Care Fund budget lines
2. Risk of exceeding affordable levels of care outside the Better Care Fund

The following details proposals for the sharing of risks relating to the Better Care Fund.

##### 4.1 The areas of risk identified within this Agreement are as follows:

- 4.1.1 Under or overspending of budgets within Better Care Fund budget lines
- 4.1.2 Risk of exceeding affordable levels of care outside the Better Care Fund

##### 4.2 The following details proposals for the sharing of risks relating to the Better Care Fund.

##### 4.2.1 Under or overspending of budgets with Better Care Fund budget lines

The Pooled Budget in total includes an amount of £0.0m as a risk pool. In applying the risk pool funding it is important to have a jointly agreed approach and the following provides a proposal for consideration across both the Pooled and Non-Pooled funds and by both Partners.

##### 4.2.2 Risk sharing proposal:

4.2.2.1 It is proposed that the Joint Commissioning Group is the forum where decisions on the application of risk pool funding for either the Pooled or Non-Pooled funds are made.

4.2.2.2 Risk is attributable to the scheme commissioner pro rata to the proportion of that scheme commissioned. This is to reflect where the levers for change and control sit.

4.2.2.3 Similarly, where the scheme is joint and there is one Lead Commissioner, the risk should be shared pro-rata to the proportion of that scheme commissioned.

##### 4.3 Overspend / Underspend treatment

##### 4.3.1 If an overspend is identified the following approach will be taken:

- 4.3.3.1 Seek to cover the overspend from areas of underspend identified within either the Pooled or Non-Pooled fund;
- 4.3.3.2 Utilise the risk pool funding;
- 4.3.3.3 Reduce uncommitted scheme allocations;
- 4.3.3.4 Cover from resources outside the Pooled fund.

##### 4.3.2 If an underspend is identified the following approach will be taken:

- 4.3.2.1 Underspends remain within the pooled arrangement to support overspends elsewhere in the pool;
- 4.3.2.2 Further joint schemes within budget lines to be proposed in year which can utilise the resources in year.



In all of these scenarios the Joint Commissioning Group shall be the forum where decisions would be made.

#### **4.4 Risk of exceeding affordable levels of care outside the BCF**

The use of the BCF Pooled Fund is anticipated to deliver greater outcomes for patients and the public, as well as anticipated reductions in non-elective spend. In the event that demand for acute non-elective care exceeds affordable levels it is proposed that the approach suggested above is taken.

- 4.4.1 Seek to cover the reduction from areas of underspend identified within either the Pooled or Non-Pooled funds;
- 4.4.2 Utilise risk pool funding;
- 4.4.3 Reduce uncommitted scheme allocations;

#### **Option 2 for consideration:**

The Partners have agreed that the responsibility for financial and operational risks associated with the delivery of a Service shall remain the responsibility of the Partner, who in accordance with its statutory functions, is responsible for commissioning or providing that Service.

#### **Option 3 for consideration:**

1. The Partners agree that Overspends shall be apportioned in accordance with this Schedule 3.

#### **Pooled Fund Management**

2. The Pooled Fund Manager for each scheme within the Better Care Fund Plan will be responsible for quarterly reporting of income and expenditure for each scheme. Clause 8.1.7 of this Agreement defines this responsibility. The income and expenditure reports for each scheme will be incorporated into the Quarterly Performance Report submitted to the Joint Commissioning Group.

#### **Overspend**

3. Where potential or actual Overspends are reported in respect of any individual scheme the Joint Commissioning Group shall give consideration to the following options for remediating,:
  - agreeing an action plan to reduce expenditure in the relevant scheme or schemes;
  - identifying Underspends that can be vired from any other fund maintained under this Agreement or outside of this Agreement;
  - agreeing additional investment by the respective Partners (in so far as the delegated authorities to Joint Commissioning representatives allow for this);
  - if no suitable investment or reduction in expenditure can be identified, agreeing a plan of action, which may include decommissioning all or any part of the Individual Service to which the Pooled Funds relate.

4. The Joint Commissioning Group shall act reasonably having taken into consideration all relevant factors including, where appropriate, the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints in agreeing appropriate action in relation to Overspends.

5. The Partners agree to co-operate fully in order to establish an agreed position in relation to any

Overspends for which it is not possible or reasonable to identify mitigating action.

6. Subject to any continuing obligations under any Service Contract entered into by either Partner, either Partner may give notice to terminate a Service or Individual Scheme where the Scheme Specification provides and where the Service does not form part of the Better Care Fund Plan.  
Underspend

7. Any underspends shall be reported to the partnership and any reallocation of resources agreed mutually.

## **SCHEDULE 3SCHEDULE 4 – JOINT WORKING OBLIGATIONS**

### **Part 1Part 1 – LEAD COMMISSIONER OBLIGATIONS**

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 Commissioner shall notify the other Partners if it receives or serves:
  - 1.1 A Change in Control Notice;
  - 1.2 a Notice of a Event of Force Majeure;
  - 1.3 a Contract Query;
  - 1.4 Exception Reports and provide copies of the same.
- 2 The Lead Commissioner 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 Commissioner shall consult with the other Partners before attending:
  - 2.7 an Activity Management Meeting;
  - 2.8 Contract Management Meeting;
  - 2.9 Review Meeting and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings
- 3 The Lead Commissioner shall not:
  - 3.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
  - 3.2 vary any Provider Plans (excluding Remedial Action Plans);
  - 3.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
  - 3.4 give any approvals under the Service Contract;
  - 3.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
  - 3.6 suspend all or part of the Services;
  - 3.7 serve any notice to terminate the Service Contract (in whole or in part);
  - 3.8 serve any notice;
  - 3.9 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.
- 4 The Lead Commissioner 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.
- 5 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution

7. The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

## **Part 2 – OBLIGATIONS OF THE OTHER PARTNER**

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 Commissioner (including the provision of data and other information) as is reasonably necessary to enable the Lead Commissioner 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 Commissioner.
- 3 Each Partner (other than the Lead Commissioner) shall:
  - 3.1 Comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;
  - 3.2 Notify the Lead Commissioner of any matters that might prevent the Lead Commissioner from giving any of the warranties set out in a Services Contract or which might cause the Lead Commissioner to be in breach of warranty.



## SCHEDULE 4SCHEDULE 5– PERFORMANCE ARRANGEMENTS – LOCAL METRICS UNDER DEVELOPMENT

These arrangements are in the process of being reviewed.

Local Metrics need to be agreed.

The Council's performance results based on National Metrics is as set out below:

**Better Care Fund** – measures delivered by Shropshire Council

**Long-term support needs of older people (age 65 and over) met by admission to residential and nursing care homes, per 100,000 population.**

### Number of residential admissions is reducing

The following table shows

the rate of admissions per 100,000 people

2017/18	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Profile (target)	150	300	450	600.3
Actual	83.5	150.8	317.7	449.7*
Performance	✓	✓	✓	✓

\* Provisional end of year figure subject to year-end checks and audit

Performance is better than the profiled target. The number of people entering residential care during the year was 334 (449.7 per 100,000). This is a reduction of when compared to last year, 347 people (500.7 per 100,000). The service reiterates that its priority is to ensure that the most appropriate care package is provided at the right time to meet people's needs.

### **Proportion of older people (65 and over) who were still at home 91 days after discharge from hospital into reablement / rehabilitation services**

This measure is reported in arrears.

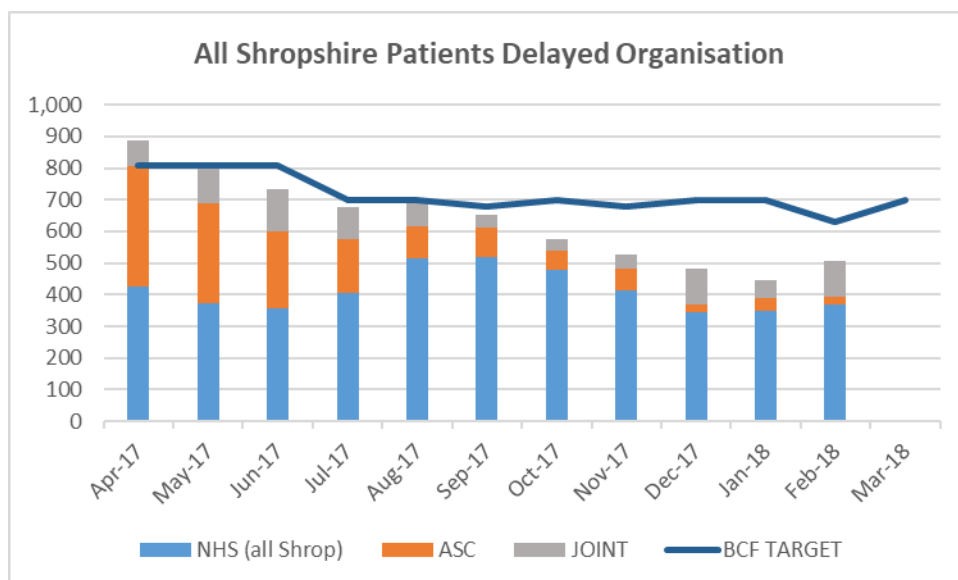
2017/18	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Target	82%	82%	82%	82%
Actual	83.2%	81.09%	82%	
Performance	✓	✗	✓	

Performance throughout the year have remained around the 82% range and is in line with the target. As at the end of the period the percentage of older people who are still at home 91 days after discharge from hospital to reablement is on target. The age of patients and their complexity of conditions makes this a challenging measure to achieve. The service confirms their commitment to deliver support packages to ensure as many people as possible are able to remain safely in their homes. This measure is reported 3 months in arrears, those leaving hospital in quarter 4 will be surveyed in quarter 1 of 2018/19.

### **Delayed Transfers of Care (delayed days) from hospital per 100,000 population (aged 18+).**

This is a joint measure with the NHS which records the combined number of patients who are delayed in their transfer of care from hospital.

The following chart shows the total monthly number of delayed days by organisation  
Finalised Q4 data will be published 10<sup>th</sup> May 2018



During the current year the monthly number of delayed bed days has reduced. Jointly attributed delays have shown a recent increase in numbers. As a percentage of delays the joint delays are higher than regional and national rates. BCF performance for Q4 is better than target and is forecast to achieve the end of year targets.



**ASC - 93% reduction  
in delayed patients\* \*\***

\* April 2017 to February 2018





2017/18	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Target	2425	2077	2077	2031
Actual	2425	2035	1580	On target
Performance	✓	✓	✓	

The Better Care Fund targets for delayed transfer of care were established in July as part of the national improvement programme. Quarter 1 target was based on actual performance as data had been published at the time of target setting. Quarter 2 is in line with the target. Q3 is better than target whilst Q4 is forecast to also be better than target.

#### Non-Elective Admissions – Shropshire CCG Q2 – Q4 17/18

Month	Number of Non-Elective Admissions	Target and Total for Quarter
April	2552	
May	2705	
June	2651	<b>Target = 8327</b>



		<b>Total = 7,908</b> 
July	2,714	
August	2,567	
September	2,468	<b>Target = 8,080</b> <b>Total = 7749</b> 
October	2726	
November	2762	
December	2588	<b>Target = 8,729</b> <b>Total = 8,076</b> 
January	2903	
February	2528	
March	2760	<b>Target = 8,475</b> <b>Total = 8191</b> 

#### **BCF Plan Non-Elective Admissions Targets**

Q1 17/18	Q2 17/18	Q3 17/18	Q4 17/18
<b>8,327</b>	<b>8,080</b>	<b>8,729</b>	<b>8,475</b>

#### **Data Source**

NHS England

<https://www.england.nhs.uk/statistics/statistical-work-areas/hospital-activity/monthly-hospital-activity/mar-data/>

### **SCHEDULE 6 – BETTER CARE FUND PLAN – UNDER DEVELOPMENT**

This section includes the final draft of the Shropshire Health and Wellbeing Board's Better Care Fund submission. Template 1 of the submission includes the following sections:

- The Vision
- A case for change,
- Plan of Action
- Risks and Contingencies
- Alignment
- National Conditions
  - Protecting Social Care Services
  - 7 Day Services to Support Discharge
  - Data Sharing
  - Joint Assessment & Accountable Lead Professional
- Engagement
- Scheme Specifications

Template 2 includes:

- Outcome measures and targets
- Financial Contribution Matrix

Please find Template 1 & 2 attached here -

Template 1	Under development
Template 2	Under development

## SCHEDULE 7– POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

Both Shropshire Council and Shropshire CCG have established and practiced Conflicts of Interest policies in place. For the purpose of this Agreement the Partners agree to adopt the following principles in the governance and delivery of the Better Care Fund Plan.

**Doing business appropriately.** If Commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;

**Being proactive, not reactive.** Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity, for instance by:

- considering potential conflicts of interest when electing or selecting individuals to join the governing body or other decision-making bodies;
- ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest.
- They should establish and maintain registers of interests, and agree in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise;

**Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest.** Rules should assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there should also be prompts and checks to reinforce this;

**Being balanced and proportionate.** Rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair, but not constrain people by making it overly complex or cumbersome;

**Openness.** Ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch, in relation to proposed commissioning plans;

**Responsiveness and best practice.** Ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice – securing ‘buy in’ from local stakeholders to the clinical case for change;

**Transparency.** Documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident;

**Securing expert advice.** Ensuring that plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes;

**Engaging with Providers.** Early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population;

**Creating clear and transparent commissioning specifications** that reflect the depth of engagement and set out the basis on which any contract will be awarded;

**Each Partner shall follow its own legal arrangements and procurement processes in accordance with their respective constitutional and governance arrangements**, including even-handed approaches to providers;

**Ensuring sound record-keeping, including up to date registers of interests;** and

**A clear, recognised and easily enacted system for dispute resolution.**

## **SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL**

The Information Governance Protocol needs to be reviewed and updated in accordance with new data protection legislation and guidance, however a timetable for this work hasn't been agreed.

- existing protocol to be used while this work is in train.