# REPORT FOR DECISION

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|---|---|
| **DECISION OF:** | **Overview and Scrutiny Committee**<br>**Cabinet** |
| **DATE:** | **10th March 2020**<br>**11th March 2020** |
| **SUBJECT:** | **Bury Integrated Commissioning Fund** |
| **REPORT FROM:** | **Councillor O'Brien, Cabinet member for Finance and Housing** |
| **CONTACT OFFICER:** | **Mike Woodhead, Joint Chief Finance Officer** |
| **TYPE OF DECISION:** | **CABINET KEY DECISION** |
| **FREEDOM OF INFORMATION/STATUS:** | This paper is within the public domain |
| **SUMMARY:** | On 4 September 2019, the Cabinet approved the proposed expansion of the health and social care commissioning pooled budget and the creation of a wider integrated commissioning fund (ICF). Cabinet delegated to the Chief Executive, Chief Finance Officer and Council Solicitor in consultation with the Cabinet Member for Finance and Housing the power to finalise the terms of the Section 75 (s75) and the Financial Framework.<br><br>Due to the large financial sums involved, it is appropriate to bring the Section 75 and Financial Framework back to Cabinet for formal approval.<br><br>The s75 Agreement and Financial Framework have been shared and discussed with the external auditors of both organisations. They are based very closely on documentation already in use over recent years in other localities where similar arrangements exist. Auditors have not raised any concerns of note. The Council's legal team have satisfied themselves regarding the legitimacy and robustness of the documentation.<br><br>A variation in financial contributions is allowed for in the |

terms of the s75 Agreement and Financial Framework and is standard practice in these kinds of arrangements. The proposed variation is:

| | 2019/20 £m | 2020/21 £m | **TOTAL £m** |
|---|---|---|---|
| Council | +10.5 | -10.5 | **0.0** |
| CCG | -10.5 | +10.5 | **0.0** |
| **TOTAL** | **0.0** | **0.0** | **0.0** |

By agreeing to this variation, the Council will enable the CCG to achieve its statutory financial duties in 2019/20 and hit financial control totals, thereby accessing c£4m of historic surplus funds that it would not otherwise receive in 2020/21.

Any perceived risk regarding the CCG refusing or being unable to increase their contribution in 2020/21 is mitigated by:

- The Section 75 being a legally binding document
- The Joint Accountable Officer and Joint CFO posts having authority in the CCG
- The CCG being a public sector, publicly funded and underwritten body
- Any request to further alter the 2020/21 contributions would require full agreement from both organisations.

Therefore, the risk to the Council is negligible.

The increased Council contribution can be funded from earmarked reserves, much of which are in place to cover risks and won't be called on in the current financial year. This is acceptable on the basis that these reserves will effectively be fully replenished in a very short time scale (April 2020) with the increased CCG contribution. We can also take comfort from the knowledge that there are significant increases coming into reserves on April 1, from the Collection Fund Surplus, as agreed in the Budget passed at Full Council in February 2020.

**OPTIONS & RECOMMENDED OPTION**

This paper recommends that Cabinet:

- Approve the s75 Agreement and Financial Framework attached to this report
- Approve a variation in the financial contributions (outlines above and in this paper) to be made to the pool by the Council and the CCG during 2019/20 and 2020/21

| **IMPLICATIONS:** | |
|---|---|
| **Corporate Aims/Policy** | Do the proposals accord with the Policy |

| | | |
|---|---|---|
| **Framework:** | Framework? Yes | |
| **Statement by the S151 Officer: Financial Implications and Risk Considerations:** | The risks and mitigations are fully laid out in the report. Risks to the Council are negligible. The Bury Locality will benefit in 2020/21 by c£4m. | MW … |
| **Health and Safety** | n/a | |
| **Equality/Diversity implications:** | No | |
| **Considered by Monitoring Officer:** | Yes Comments<br><br>Section 75 partnership agreements provided by the National Health Service Act 2006 allow budgets to be pooled between local health and social care organisations and authorities. Resources and management structures can be integrated and functions can be reallocated between partners. The legal mechanisms allowing budgets to be pooled under the section 75 partnership agreement enable greater integration between health and social care. This legislative provision enables a strategic and more efficient approach to commissioning local services across organisations and a basis to form new organisational structures that integrate health and social care.<br>The associated Financial Framework Agreement attached to this report makes provision for governance and accountability of an integrated commissioning fund, responsibilities of each partner organisation, management responsibilities, budgeting and budgetary control. | JH |
| **Wards Affected:** | | |
| **Scrutiny Interest:** | Overview and Scrutiny | |

**TRACKING/PROCESS** **DIRECTOR:**

| Chief Executive/ Strategic Leadership Team | Cabinet Member/Chair | Ward Members | Partners |
|---|---|---|---|
| | | | |
| Scrutiny Committee | Committee | Council | |
| | | | |

## Bury Integrated Commissioning Fund

### 1. Executive Summary

**1.1.** On 4 September 2019, the Cabinet approved the proposed expansion of the health and social care commissioning pooled budget and the creation of a wider integrated commissioning fund (ICF). Cabinet delegated to the Chief Executive, Chief Finance Officer and Council Solicitor in consultation with the Cabinet Member for Finance and Housing the power to finalise the terms of the Section 75 (s75) and the Financial Framework.

**1.2.** Due to the large financial sums involved, it is appropriate to bring the Section 75 and Financial Framework back to Cabinet for formal approval. This paper recommends that Cabinet:

- Approve the s75 Agreement and Financial Framework attached to this report
- Approve a variation in the financial contributions to be made to the pool by the Council and the CCG during 2019/20 and 2020/21

**1.3.** The s75 Agreement and Financial Framework have been shared and discussed with the external auditors of both organisations. They are based very closely on documentation already in use over recent years in other localities where similar arrangements exist. Auditors have not raised any concerns of note. The Council's legal team have satisfied themselves regarding the legitimacy and robustness of the documentation.

**1.4.** A variation in financial contributions is allowed for in the terms of the s75 Agreement and Financial Framework and is standard practice in these kinds of arrangements. The proposed variation is:

| | 2019/20 £m | 2020/21 £m | **TOTAL £m** |
|---|---|---|---|
| Council | +10.5 | -10.5 | **0.0** |
| CCG | -10.5 | +10.5 | **0.0** |
| **TOTAL** | **0.0** | **0.0** | **0.0** |

**1.5.** By agreeing to this variation, the Council will enable the CCG to achieve its statutory financial duties in 2019/20 and hit financial control totals, thereby accessing c£4m of historic surplus funds that it would not otherwise receive in 2020/21.

**1.6.** Any perceived risk regarding the CCG refusing or being unable to increase their contribution in 2020/21 is mitigated by:

- The Section 75 being a legally binding document
- The Joint Accountable Officer and Joint CFO posts having authority in the CCG
- The CCG being a public sector, publicly funded and underwritten body
- Any request to further alter the 2020/21 contributions would require full agreement from both organisations.

Therefore, the risk to the Council is negligible.

**1.7.** The increased Council contribution can be funded from earmarked reserves, much of which are in place to cover risks and won't be called on in the current financial year.

This is acceptable on the basis that these reserves will effectively be fully replenished in a very short time scale (April 2020) with the increased CCG contribution. We can also take comfort from the knowledge that there are significant increases coming into reserves on April 1, from the Collection Fund Surplus, as agreed in the Budget passed at Full Council in February 2020.

## 2. Background

2.2. In September 2015, NHS Bury CCG and Bury Metropolitan Borough Council signaled their ambition to work more closely to ensure better outcomes for the Borough of Bury through the most economic, efficient and effective use of the Bury pound to improve outcomes for the residents of the Borough. This ambition is very much in keeping with the advent of health and social care devolution

2.3. The Bury Locality Plan for Health and Social Care Transformation 2017-21 further reinforced this ambition and set out the desire to form a 'One Commissioning Organisation' (OCO) which would have a remit to:

- Bring together health and social care commissioning functions of the CCG and Council into one structure
- Create pooled and aligned budget arrangements for health and social care;
- Develop a single health and social care commissioning strategy;
- Create a shared approach to maximizing social value;
- Strategically commission for outcomes against a wide ranging and dynamic local evidence base; and
- Recognise the role of the new Local Care Organisation as a single provider accountable for delivering all age services at a neighborhood level.

2.4. During the last 2 years, work has been undertaken to progress and develop the arrangements needed to enable this, and a number of significant developments have established a more solid base from which future developments can be shaped, including:

- Co-location of the CCG and Council staff members within the Bury Campus from June 2018;
- Establishment of an OCO Shadow Partnership Board in April 2018 which includes Clinicians, Lay Members, Executives and Elected Members
- Reviewed 4 areas to test how commissioning would work through an integrated model – Mental Health, CHC and LD, Carers and SEND;
- Established a single Joint Executive Team across both CCG and Council;
- Appointed a single CCG Chief Executive and CCG Accountable Officer in October 2018; and
- Appointed a single Chief Finance Officer across both the CCG and LA in June 2019.
- Approval to establish the Strategic Commissioning Board as a sub-committee of the Governing Body and Council Cabinet.

2.5. Key principles that underpin the establishment of the OCO are that:

- strong and effective clinical and political leadership must be maintained; and
- a place-based approach, focusing on outcomes, engaging communities and using community assets must be embraced;

2.6. As part of the wider Public Service Reform agenda and the devolution arrangements

within Greater Manchester there is also a move to integrate public services more widely, joining up not only health and social care services but health services with the full range of Council functions; and together with wider public service and community partners.

2.7. By joining up CCG functions with 'everything the Council does', the Council and CCG are able to set joined-up objectives to improve further the health and wellbeing of the people of Bury and bring to bear the full powers, influence, resources and capability of the CCG and Council, working together to achieve those objectives.

2.8. Many of the localities in Greater Manchester have made significant progress in integrating health and social care commissioning, and with the wider integration agenda. Our proposals for Bury have learned from their experiences, whilst adapting them to be right for Bury.

2.9. By creating the Bury OCO the CCG and Council can work together better to:

- Improve health and wellbeing outcomes for and with the people of Bury, and reduce inequalities
- Provide a single and consistent commissioning voice to providers, including the Locality Care Organisation
- Enable commissioning staff to work together to commission more joined up services which are more cost effective and possibly less costly
- Make a real shift towards enabling and supporting people to stay well and independent in their own communities.

2.10. The benefit of the OCO is a place-based approach to:

- common strategic and operational business plans;
- making best use of available resources;
- providing a more effective and efficient service to the Bury population;
- having an efficient means to jointly commissioning services; and
- retaining and building on the key strengths of each respective organisation to further enhance performance and delivery.

2.11. It is essential that appropriate financial arrangements and mechanisms are in place between the Council and CCG to support the OCO. This paper sets out those arrangements.

2.12. It is important to note that each organisation remains accountable as a statutory body for discharging its duties.

## 4 Governance

**4.1** The Integrated Commissioning Fund is overseen by the Bury Strategic Commissioning Board (SCB), a sub-committee of the CCG Governing Body and Council Cabinet. Its membership includes equal representation from the CCG and Council.

**4.2** The SCB terms of reference are included at appendix 5.

## 5 s75 Agreement

**5.1** Appendix 6 shows the final s75 Agreement. At its meeting on 4 September 2019, the Cabinet delegated to the Chief Executive, Chief Finance Officer and Council Solicitor (in consultation with the Cabinet Member for Finance and Housing) the power to

finalise the s75 and associate Financial Framework. However, due to the large financial sums involved, it is appropriate to seek formal Cabinet approval for the final documents.

**5.2** s75 Agreements have been in use since 2006 and are widespread between CCGs and Councils (all English CCGs and Councils have at least one s75). The CCG and Council have already managed a s75 Agreement for 5 years (the Better Care Fund).

**5.3** The s75 Agreement and Financial Framework have been shared and discussed with the external auditors of both organisations. They are based very closely on documentation already in use over recent years in other localities where similar arrangements exist. Auditors have not raised any concerns of note. The Council's legal team have satisfied themselves regarding the legitimacy and robustness of the documentation.

**5.4** There are restrictions on the functions that can legally be held within a s75 arrangement as set out in detail at Appendices 1-4. For that reason, the s75 Agreement does not, in itself, cover the full range of funds and activities of the ICF.

## 6 Structure of the Integrated Commissioning Fund

**6.1** Whilst the simplest approach would be to pool all health and social care commissioning current constraints of s75 legislation prevents the inclusion of some council and CCG functions. Section 75 is applicable only to prescribed health related functions. CCGs cannot delegate functions related to the commissioning of surgery, radiotherapy, termination of pregnancies, endoscopy, class 4 laser treatments or other invasive treatments, emergency ambulance services or delegated family health services. Meanwhile councils cannot delegate specific functions relating to adoption services, appointment of the director of adult social services, approving MHA mental health professionals, recovery of costs, charging for accommodation and parts of the Children's Act as set out in detail at Appendices 2 and 4.

**6.2** Alongside this there are health and social care services for which the Council and CCG report and hold budgets but the governance arrangement is either collaboratively with other GM organisations or with a lead commissioner e.g. ambulance services and delegated co-commissioning budgets. The SCB would therefore be unable to make a binding decision on these service related funds.

**6.3** Therefore, the Bury ICF comprises 3 categories of budget: pooled, aligned, and in-view. Each category has its own governance protocols.

| Category | Description | Governance |
|---|---|---|
| Pooled | Formal agreement provided for under Section 75 of the NHS Act 2006 | Decisions about the utilisation of the pooled budget is made by the SCB. |
| Aligned | Covers all other locality health related functions, where it is either not currently legally possible to pool or the locality is not yet in a position to pool. | Recommendations on utilisation of the aligned funds are made by the SCB with decision taken by the appropriate sovereign commissioner. |
| In View | Areas of health and social care resource that are influenced but | Decisions about the utilisation of in view health |

| | | |
|---|---|---|
| | not directly commissioned by the locality e.g. the delegated primary care co-commissioning budget, GM ambulance commissioning.<br>Potentially non health related functions elements of the Council to health and social care. | and social care budgets are made by committees/bodies outside of Bury e.g. NHSE, GMJCB and lead commissioners.<br>This will be shared for information purposes only with the SCB. |

**6.4** In summary the SCB is wholly accountable for the pooled element of the fund; considers and make recommendations on the aligned element of the pool; and is provided with reports on the in-view element of the fund to support the function of the board.

**6.5** The following table summarises the makeup of the ICF (excluding any agreements to vary contributions, as set out in section 8 of this report).

| Integrated Commissioning Fund | Section 75 Pooled Budget £000 | Aligned Budget £000 | In View Budget £000 | Total Integrated Commissioning Fund £000 |
|---|---|---|---|---|
| Bury CCG Budgets | 194,653 | 75,663 | 36,561 | **306,877** |
| Bury LA Budget - Direct Expenditure | 171,717 | 165,096 | 0 | **336,814** |
| | | | | |
| **TOTAL Expenditure Resource** | **366,370** | **240,760** | **36,561** | **643,691** |
| | | | | |
| Bury LA Budget - Income Budgets | -76,248 | -121,703 | 0 | -197,952 |
| | | | | |
| **TOTAL Income Resource** | **-76,248** | **-121,703** | **0** | **-197,952** |
| | | | | |
| **NET Resources** | **290,121** | **119,056** | **36,561** | **445,739** |

**6.6** To note, where a decision is required above service level e.g. at a contract level containing services spanning more than one category of budget, it will be taken by the appropriate sovereign commissioner.

## 7 Integrated Commissioning Fund Financial Framework

**7.1** A s75 agreement needs to be underpinned by a detailed Financial Framework outlining the approach to:

- Financial regulations
- Risk management and audit
- Basis of contribution and contingency
- Treatment of underspends
- Reporting on financial and operational performance
- Conditions of entry and exit from the pool
- Exit strategy
- VAT, insurance & legal implication

**7.2** The Financial Framework applies to the **whole** ICF rather than just the s75 pool, i.e. it applies to both the pooled and aligned budgets.

**7.3** Appendix 7 details the Financial Framework. As with the s75, Cabinet previously delegated to the Chief Executive, Chief Finance Officer and Council Solicitor (in consultation with the Cabinet Member for Finance and Housing) the power to finalise this framework. However, due to the large financial sums involved, it is appropriate to seek formal Cabinet approval for the final documents.

## 8 Variation to s75 Contributions

**8.1** A variation in financial contributions is allowed for in the terms of the s75 Agreement and financial framework and is standard practice in these kinds of arrangements. The proposed variation is:

| | 2019/20 £m | 2020/21 £m | **TOTAL £m** |
|---|---|---|---|
| Council | +10.5 | -10.5 | **0.0** |
| CCG | -10.5 | +10.5 | **0.0** |
| **TOTAL** | **0.0** | **0.0** | **0.0** |

**8.2** By agreeing to this variation, the Council will enable the CCG to achieve its statutory financial duties in 2019/20 and hit its financial control totals, thereby accessing c£4m of historic surplus funds that it would not otherwise receive in 2020/21. This is at no risk to the Council, as the proposed variation gives an equal and opposite benefit to the Council in 2020/21.

**8.3** Any perceived risk regarding the CCG refusing or being unable to increase their contribution in 2020/21 is mitigated by:

- The Section 75 being a legally binding document
- The Joint Accountable Officer and Joint CFO posts having authority in the CCG
- The CCG being a public sector, publicly funded and underwritten body
- Any request to further alter the 2020/21 contributions would require full agreement from both organisations.

Therefore, the risk to the Council is negligible.

**8.4** The increased Council contribution can be funded from earmarked reserves, much of which are in place to cover risks and won't be called on in the current financial year. This is acceptable on the basis that these reserves will effectively be fully replenished in a very short time scale (April 2020) with the increased CCG contribution. We can also take comfort from the knowledge that there are significant increases coming into reserves on April 1, from the Collection Fund Surplus, as agreed in the Budget passed at Full Council in February 2020.

## 9 Recommendations

**9.1** Cabinet is asked to:

- Approve the s75 Agreement and Financial Framework attached to this report
- Approve the variation (per para 8.1) in the financial contributions to be made to the pool by the Council and the CCG during 2019/20 and 2020/21

**Mike Woodhead**

**Joint CFO**

**Appendix 1: Functions of NHS Bodies that <u>can</u> be subject to S75 partnership arrangements**

| Legislation | Function |
|---|---|
| *Sections 3 & 3A of the NHS Act 2006 (NHS Act)*<br><br>**Note these functions need to be read together with the exclusions in Annex 2* | Duty of a CCG to arrange for the provision of the following to the extent it considers necessary to meet the reasonable requirements of the persons for whom it has responsibility:<br>• hospital accommodation;<br>• other accommodation for the purposes of any service under the NHSA;<br>• medical, dental, ophthalmic, nursing and ambulance services;<br>• such other services or facilities for the care of pregnant women, women who are breastfeeding and young children as the CCG considers are appropriate as part of the health service;<br>• such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as the CCG considers are appropriate as part of the health service;<br>• such other services or facilities as are required for the diagnosis and treatment of illness.<br><br>Power of a CCG to arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement:<br>• in the physical and mental health of the persons for whom it has responsibility; or<br>• in the prevention, diagnosis and treatment of illness in those persons.<br><br>NB: This includes rehabilitation services and services intended to avoid admission to hospital. |
| *Section 3B of the NHS Act*<br><br>**Note these functions need to be read together with the exclusions in Annex 2* | Regulations may require NHS England (NHSE) to arrange the provision, to such extent as it considers necessary to meet all reasonable requirements, for the provision as part of the health service of:<br>• dental services of a prescribed description;<br>• services or facilities for members of the armed forces or their families;<br>• services or facilities for persons who are detained in prison or in other accommodation of a prescribed description;<br>• such other services or facilities as may be prescribed. |

| Legislation | Function |
|---|---|
| *Section 83 of the NHS Act* | From 1 April 2016 the function of arranging the provision of primary medical services where these are commissioned under an APMS contract. |
| *Section 117 of the Mental Health Act 1983 (MHA)* | Duty of the CCG to arrange for the provision of, in co-operation with relevant voluntary agencies, after-care services for persons who are:<br>• detained under section 3 of the MHA; or<br>• admitted to a hospital in pursuance of a hospital order made under section 37 of the MHA; or<br>• transferred to a hospital in pursuance of a hospital direction made under section 45A of the MHA; or;<br>• a transfer direction made under section 47 or 48 of the MHA;<br>and then cease to be detained and (whether or not immediately afterwards) leave hospital, until such time as the CCG and the local social services authority are satisfied that the person concerned is no longer in need of such services (but they shall not be so satisfied in the case of a community patient while he remains such a patient). |
| | Function of providing the after-care services referred to above. |
| *Section 12A(1) of the NHSA* and the *National Health Service (Direct Payments) Regulations 2013* | The function of making direct payments |
| *Regulation 8A of the Healthy Start Scheme and Welfare Foods (Amendment) Regulations 2005* | The function of arranging the provision of Healthy Start vitamins. |
| *Schedule 1A of the Mental Capacity Act 2005* | Functions relating to the Deprivation of Liberty |

**Appendix 2**: **Functions of NHS Bodies that <u>cannot</u> be the subject of Section 75 partnership arrangements**

| Legislation | Function |
|---|---|
| *Sections 3, 3A & 3B of the NHS Act 2006 (NHSA)* | The function of arranging the provision of:<br>• surgery;<br>• radiotherapy;<br>• termination of pregnancy;<br>• endoscopy;<br>• the use of Class 4 laser treatments and other invasive treatments;<br>• emergency ambulance services. |
| *Sections 83*, 92 & 99 of the NHSA* | The function of arranging the provision of:<br>• primary medical services<br>• primary dental services<br>(*From 1 April 2016 the function of arranging the provision of primary medical services where these are commissioned under an APMS contract will be able to be the subject of a S75 partnership arrangement.) |

**Appendix 3: Functions of local authorities (Health-Related Functions) that <u>can</u> be the subject of S75 partnership arrangements**

| Legislation | Function |
|---|---|
| *Schedule 1 of the Local Authority Social Services Act 1970*<br>**Note these functions need to be read together with the exclusions in Annex 4* | This Schedule covers a wide range of social services functions. If you require any further details, please let us know. |
| *Regulation 8A of the Healthy Start Scheme and Welfare Foods (Amendment) Regulations 2005* | The function of providing Healthy Start vitamins. |
| *Sections 7 or 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986* | • Duty to arrange an assessment for persons on discharge from hospital, having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months, of their needs for healthcare services. (This duty is not yet in force).<br>• Duty of local authority to take into account abilities of a carer |
| *Section 19 of the Local Government (Miscellaneous Provisions) Act 1976* | The functions of providing or securing the provision of recreational facilities. |
| | The functions of local authorities under the Education Acts as defined in section 578 of the Education Act 1996; |
| *Part I of the Housing Grants, Construction and Regeneration Act 1996 and under Parts VI and VII of the Housing Act 1996* | Functions of local housing authorities. |
| *Section 126 of the Housing Grants, Construction and Regeneration Act 1996* | Functions relating to regeneration and development. |
| *Environmental Protection Act 1990* | Functions of waste collection or disposal. |

| Legislation | Function |
|---|---|
| *Sections 180 & 181 of the Local Government Act 1972* | Functions of providing environmental health services. |
| *Highways Act 1980 and Section 39 of the Road Traffic Act 1988* | Functions of local highway authorities. |
| *Sections 63 & 93 of the Transport Act 1985* | Functions relating to passenger transport and travel concession schemes. |
| Sections 22, 23(2) & 26 of the National Assistance Act 1948 (NAA) | Where the partners enter into a Section 75 partnership arrangement in respect of the provision of accommodation under S21 or 26 of the NAA the function of charging for that accommodation |
| Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (1983 Act) | Where the partners enter into a Section 75 partnership arrangement in respect of the provision of welfare services under any enactment mentioned in Section 17(2)(a) to (c) of the 1983 Act, the function of charging for those services. |
| Functions under or by virtue of Sections 2B or 6C(1) of, or Schedule 1 to, the NHSA | • Functions relating to the improvement of public health;<br>• Public-health functions of the Secretary of State (where local authorities are required by Regulations to exercise these);<br>• Local authority functions under Schedule 1 of the NHSA, including:<br>- medical inspection and treatment of pupils; and<br>- weighing and measuring of children. |

**Appendix 4: functions of local authorities that <u>cannot</u> be the subject of S75 partnership arrangements**

| Legislation | Nature of Function |
|---|---|
| *Sections 22, 23(3), 26(2) (but note exception in Annex 3 – see *) 26(3),26(4), 43, 45 and 49 of the National Assistance Act 1948* | Functions relating to charging for accommodation, recovery of costs of providing certain services and defrayment of expenses for local authority officer applying for appointment as deputy for certain patients. |
| *Section 6 of the Local Authority Social Services Act 1970* | Function of appointing an officer, to be known as the director of adult social services. |
| *Section 3 of the Adoption and Children Act 2002* | Function of maintaining an adoption service and providing the requisite facilities for that purpose. |
| *Sections 114 & 115 of the Mental Health Act 1983 (MHA)* | Function of approving a person to act as an approved mental health professional for the purposes of the MHA.<br>Power of an approved mental health professional to enter and inspect premises. |
| *Parts VII to IX and Section 86 of the Children Act 1989* | Functions relating to:<br>• the provision of accommodation for children by voluntary organisations;<br>• private children's homes/ limits on number of foster children;<br>• privately fostered children;<br>• children accommodated in care homes or independent hospitals. |

**Appendix 5: Strategic Commissioning Board Terms of Reference including governance structure**

**Strategic Commissioning Board**
**Terms of Reference**

## Context

1. As part of the Bury Locality Plan for Health and Social Care Transformation 2017 to 2021 and to progressing the wider public service reform agenda there is a commitment to full alignment and integration between the Council and the Clinical Commissioning Group to form Bury Health and Social Care OCO.

2. As part of this commitment the statutory bodies have agreed to form a single "Strategic Commissioning Board" in Bury to bring together the integrated governance of health and social care commissioning in its widest sense.

3. The following document sets out the terms of reference for the Strategic Commissioning Board (SCB).

4. Any changes to these Terms of Reference must be approved by the Council Cabinet and the CCG Governing Body

## Statutory Framework

5. The SCB is not a statutory body. It is not intended to replace any of the existing statutory bodies in the locality; instead it is a joint committee of the two statutory organisations, Bury Metropolitan Borough Council ("the Council") and NHS Bury Clinical Commissioning Group ("the CCG"). The SCB will have overarching responsibility for all powers as have been delegated to it by the two statutory organisations (subject to any reserved matters) and set out in the associated Scheme of Delegation.

## Role of the Strategic Commissioning Board

6. The SCB will be responsible for setting the principles and high-level strategic direction across the full responsibilities of health and care commissioning that is the responsibility of the two partners and will align wider Council, CCG and public services by inclusion so far as possible.

7. The SCB has been established to make decisions on the objectives, priorities, strategic design, commissioning and overall delivery of health and care services, including the oversight of their effectiveness, quality and performance.

8. In performing its role, the SCB will exercise its functions in accordance with duties delegated to it to support the delivery of the Bury Locality Plan for Health and Social Care Transformation 2017 to 2021, and its successor strategies and plans; including the Bury Strategy.

9. Members of the SCB have a collective responsibility for its operation. In undertaking its role, clinical and democratic accountability will be implicit within all decisions, as will respect for all professional areas of knowledge and expertise. Decisions will be based on achieving better outcomes and experience for the residents of Bury and those that use services within the Borough, better quality and better value.

10. The ethos of partnership working will underpin the programme of work, recognising that on occasion, difficult decisions may be required to benefit the population of Bury.

11. The SCB will have responsibility for providing a Bury response to Greater Manchester commissioning matters.

**Core Business**

12. As the SCB will operate as a "place based", strategic, outcomes-based commissioner, the items of business for the SCB are likely to be:
    a) Understanding the aspirations, strengths and needs of Bury communities
    b) Leading collaboratively agreement of priorities for improvement
    c) Leading collaboratively the agreement of commissioning and enabling strategies and associated use of financial and other resources
    d) Enabling and supporting others to fulfil their roles within the system
    e) Providing oversight and gaining assurance in respect of outcomes, quality, performance and finance
    f) Providing leadership, oversight and assurance in respect of the development of an effective "OCO"

13. The items of business for the SCB are unlikely to include detailed plans for operational service design and re-design.

**Membership**

14. The Strategic Commissioning Board shall consist of the following members:
    - Councillors – Cabinet Members of the Council to include no more than 7 voting Cabinet Members;
    - CCG Governing Body Members – 9 members to include 7 voting members, of which the majority will be clinicians; and 2 non-voting members;
    - The joint Chief Executive and Accountable Officer;
    - The joint Chief Finance Officer (including S151 responsibilities); and
    - The joint Director of Strategic Commissioning.

15. In addition, other Officers and representatives will be invited to the SCB, and will be recognised as in attendance, enabled to participate fully in discussions to inform the decisions of the SCB, but will not hold voting rights. This will include, but is not limited to:
    - 2 opposition party representatives;
    - additional members of the CCG Governing Body (who are not members of the SCB)
    - additional members of the CCG/Council Joint Executive Team or any such equivalent successor team (who are not members of the SCB)

**Chair**

16. The SCB will be jointly chaired by the Council's Leader on behalf of the Council and the CCG Chair on behalf of the CCG, with chairing responsibility rotated between meetings.

17. In the event of the Chair of the SCB being unavailable for all or part of the meeting, the following deputising arrangements will apply:
    - The Deputy Council Leader will deputise for the Council Leader; and
    - The CCG Chair will nominate a deputy drawn from the CCG members of the SCB.

**Quorum**

18. The meeting will achieve quoracy if the following requirements are satisfied:
    - A minimum of 3 elected members, of which 1 must be the Leader or Deputy Leader of the Council;
    - A minimum of 3 Governing Body representatives, of which 2 must be practicing clinicians; and
    - At least one joint Officer.

**Voting**

19. It is anticipated that decisions will be made by consensus, however in the event that this cannot be achieved, a vote will be undertaken. Each voting member of the SCB will have one vote and a simple majority vote will be sufficient to carry the decision. In the event that the vote is tied, the presiding Chair of the SCB meeting in session will have a casting vote which will be exercised in such a way that is respectful of the partnership arrangements under which the SCB is established.

**Deputies**

20. Deputies are only permitted in respect to the Chairing of the SCB or Officer members.

21. With the exception of deputising arrangements for the Chair of the SCB, nominated deputies will not hold a vote nor will they count towards quoracy.

**Frequency of meetings**

22. The SCB will routinely meet at monthly times; a schedule of pre-arranged meeting dates will be distributed on an annual basis with a proposed annual calendar of business.

23. The meetings of the SCB shall be held in public:
    a) subject to any exemption provided by law

    b) the SCB may resolve to exclude the public from a meeting that is open to the public (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special

reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by both the Public Bodies (Admission to Meetings) Act 1960 (as amended or succeeded from time to time) and the Local Government Act 1972.

**Attendance**

24. Members are expected to attend every meeting.

25. Where a member is unable to attend a meeting, apologies should be notified in advance to the Chair of the meeting.

**Conduct of Meetings**

26. The SCB will give no less than five clear working days' notice of its meetings.

27. The agenda and supporting papers will be published at least 5 clear working days in advance of the meeting, not including the publication day and the day of the meeting. Authors of papers presented must use the required template. Papers must be received by the committee secretary in line with the published deadlines unless, in exceptional circumstances, explicit agreement has been reached with the SCB Chair.

28. The SCB will be appropriately resourced to ensure the timely distribution of papers, production of minutes, action and decision tracking, and the maintenance of the formal record and documentation of the business of the SCB.

29. Presenters of papers can expect all SCB members to have read the papers and should keep to a summary that outlines the purpose of their paper/report and key issues arising since the time of publication which may materially influence the decision or actions of the SCB. SCB members and others in attendance may question the presenter.

**Conflict of Interest**

30. As a statutory Joint Committee formed by the two statutory organisations, the SCB must comply with the standards set by the Local Government Act 2000 as set out in Part 5(a) of the Council's Constitution and Section 140 of the National Health Service Act 2006 (as amended) as set out in Section 6 of the CCG Constitution.

31. In addition, the Register of Interests will be maintained for the members of the SCB and published on the Council and CCG websites.

**Reporting**

32. A highlight report from the SCB will be submitted to the Governing Body and Cabinet meetings, drawing the attention of the respective Statutory Committee to any items where further action is required. The SCB minutes will be included as an appendix to this report.

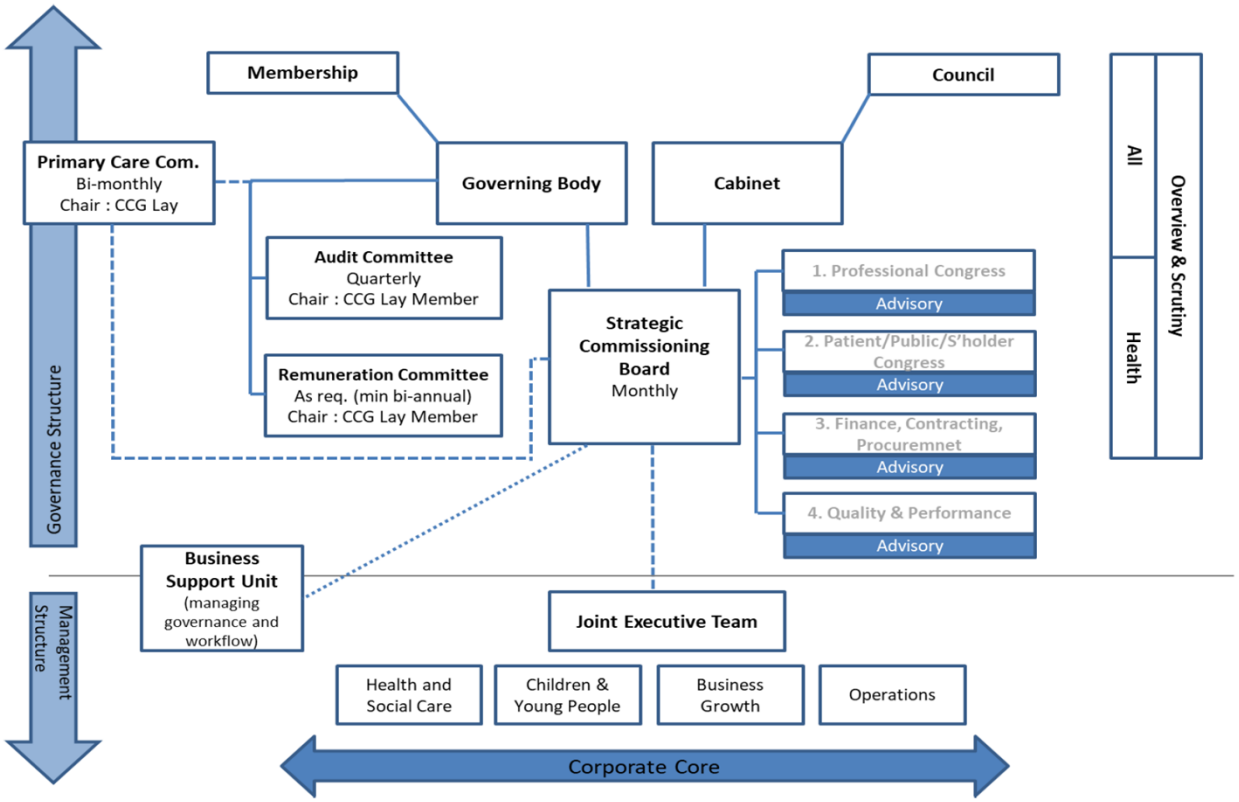
## Monitoring Compliance

33. Meetings of the SCB shall be conducted in accordance with the provisions of both bodies Constitutions, Standing Orders, Scheme of Reservation and delegation of the respective partners and the duties delegated.

34. The SCB shall submit an annual report to the Governing Body and Council, incorporating progress, reporting arrangements, frequency of meetings and membership attendance. A summary of which will be included within the respective Governance Statements.

35. A review of effectiveness of the SCB will be undertaken at the end of the first year of operation and at further intervals as agreed appropriate.

36. The Terms of Reference of the SCB will be reviewed at least annually and submitted through the appropriate Governance arrangements for approval.



**APPENDIX 6: Section 75 Agreement**

**Dated: 1st October 2019**

**The Council of the Metropolitan Borough of Bury**
**and**

**NHS Bury Clinical Commissioning Group**

# PARTNERSHIP AGREEMENT RELATING TO THE COMMISSIONING OF HEALTH AND SOCIAL CARE SERVICES (INCLUDING THE BETTER CARE FUND)

**Contents**

**THIS AGREEMENT** is made on 1st day of October 2019

**PARTIES**

(1) **The Council of the Metropolitan Borough of Bury** of the Town Hall, Knowsley Street, Bury, BL9 0SW (the **"Council"**)

**NHS Bury Clinical Commissioning Group of** Townside Primary Care Centre, 1 Knowsley Place, Knowsley Street, Bury, BL9 0SN (the "**CCG"**)

**BACKGROUND**

(A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Bury.

The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Bury.

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 the means through which the Partners will pool funds and align budgets as agreed between the Partners.

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.

(B) 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) improve the outcomes for Service Users

c) meet the National Conditions and Local Objectives; [and]

d) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.

(C) The Partners have jointly carried out consultations on the proposals for this Agreement with persons likely to be affected by the arrangements. Additional consultations will be undertaken as necessary, and in line with each Partner's obligations regarding consultation with affected parties, in respect of any future proposals to vary the Individual Services.

(D) 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

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

**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.

**2012 Act** means the Health and Social Care Act 2012.

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

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

**Annual Report** means the annual report produced by the Partners in accordance with Clause 19 (Review)

**Approved Expenditure** means any expenditure approved by the Partners in writing or as set out in the Service Specification above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

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

**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.

**Quarterly Report** means the quarterly report produced by the Partners and provided to the Strategic Commissioning Board

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

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

**Commencement Date** means 00:01 hrs on 1st October 2019

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

(a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history;

(b) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or

(c) which is a trade secret.

**Contract Price** means any sum payable under a Services Contract as consideration for the provision of goods, equipment or services as required as part of the Services and which, for the avoidance of doubt, does not include any Default Liability or Performance Payment with the exception on CQUIN on NHS Contracts.

**Data Protection Legislation** means:

a) The Data Protection Act 2018 )
b) The General Data Protection Regulation EU 2016/679
c) The Law Enforcement Directive EU 2016/680; and
d) All applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable

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

**Financial Contributions** means the financial contributions made by each Partner to a Pooled Fund in any Financial Year.

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

**Force Majeure Event** means one or more of the following:
(a) war, civil war (whether declared or undeclared), riot or armed conflict;

(b) acts of terrorism;

(c) acts of God;

(d) fire or flood;

(e) industrial action;

(f) prevention from or hindrance in obtaining raw materials, energy or other supplies;

(g) any form of contamination or virus outbreak; and
(h) any other event,

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

**Functions** means the NHS Functions and the Health Related Functions.

**Health Related Functions** means those of the health related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the commissioning of the Services and which may be further described in the relevant Service Specification.

**Host Partner** means the Partner that will host the Pooled Fund. For this pooled fund Bury MBC will be the host partner.

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

**Individual Service** means one of the Services which has been agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Service Specification.

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

**Joint (Aligned) Commissioning** means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions pursuant to Section 75.

**Law** means:

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

(b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;

(c) any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and

(d) any judgment of a relevant court of law which is a binding precedent in England.

**Lead Commissioning Arrangements** means the arrangements by which one Partner commissions Services in relation to an Individual Service on behalf of the other Partner in exercise of both the NHS Functions and the Health Related Functions.

**Lead Commissioner** means the Partner responsible for commissioning an Individual Service under a Service Specification.

**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 Guidance** means any and all guidance in relation to the Service Specifications, as issued from to 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 the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Service Specification

**Non-Recurrent Payments** means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause [9.4].

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

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

**Strategic Commissioning Board** means the Strategic Commissioning Board responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 2 or such other arrangements for governance as the Partners agree.

**Strategic Commissioning Board Quarterly Reports** means the reports that the Pooled Fund Manager shall produce and provide to the Strategic Commissioning Board on a Quarterly basis

**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 (including the budgets for all the commissioning staff of each party).

**Permitted Expenditure** has the meaning given in Clause 7.2.

**Personal Data** means Personal Data as defined by the Data Protection Act 2018.

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

**Pooled Fund Manager** means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Service 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 [including the Council where the Council is a provider of any Services].

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

**Service Specification** means a specification setting out the arrangements for a particular Service within a Commissioning Plan agreed by the Partners to be commissioned under this Agreement.

**Sensitive Personal Data** means Sensitive Personal Data as defined in the Data Protection Act 2018.

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

**Services Contract** means an agreement entered into with a Provider by one or more Partners in accordance with the relevant Commissioning Plan.

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

**SOSH** means the Secretary of State for Health and Social Care.

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

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

**Working Day** means 9.00am to 5.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.

1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.

1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.

1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.

1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.

1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.

1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.

1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.

1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.

1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## 2 TERM

2.1 This Agreement shall come into force on the Commencement.

2.2 This Agreement shall continue until it is terminated in accordance with Clause [22].

2.3 The duration of the arrangements for each Service shall be as set out in the relevant Service Contract.

2.4 This Agreement supersedes the BCF 2017 Agreement without prejudice to the rights and liabilities of the Partners under the BCF 2017 Agreement.

## 3 GENERAL PRINCIPLES

3.1 Nothing in this Agreement shall affect:

3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions); or

3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.

3.2 The Partners agree to:

3.2.1 treat each other with respect and an equality of esteem;

3.2.2 be open with information about the performance and financial status of each; and

3.2.3 provide early information and notice about relevant problems.

## 4 PARTNERSHIP FLEXIBILITIES

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

4.1.1 Lead Commissioning Arrangements;

4.1.2 Integrated Commissioning;

4.1.3 Joint (Aligned) Commissioning

4.1.4 the establishment of one or more Pooled Funds

in relation to Individual Services (the "Flexibilities")

4.2 Where there is Lead Commissioning Arrangements and the CCG is Lead Partner, the Council delegates to the CCG and the CCG agrees to exercise on the Council's behalf the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.

4.3 Where there is Lead Commissioning Arrangements and the Council is Lead Partner, the CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of

performing its obligations under this Agreement in conjunction with the Health Related Functions.

4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Service 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 FUNCTIONS

5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.

5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.

5.3 Where the Partners add a new Commissioning Plan to this Agreement it will need to be agreed by both Parties in accordance with the governance arrangements set out in this Agreement and include as a minimum details of who will act as the lead commissioner, the budget and other resource contribution of each party.

5.4 The Partners shall not enter into a Commissioning Plan unless they are satisfied that the Commissioning Plan in question will improve health and well-being in accordance with this Agreement.

## 6 COMMISSIONING ARRANGEMENTS GENERAL

6.1 The Partners shall comply with the commissioning arrangements as set out in the relevant Service Specification

6.2 The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.

6.3 Each Partner shall keep the other Partner and the Strategic Commissioning Board regularly informed of the effectiveness of the arrangements including any Overspend or Underspend in the Integrated Commissioning Fund.

6.4 Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Service then prior to any new Services Contract being entered into the Partners shall agree in writing:

6.4.1 how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Service; and

6.4.2 whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts

(Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Service.)]

6.5 The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Service Specification, which shall include where applicable arrangements in respect of the Service Contracts.

Integrated Commissioning

6.6 Where there are Integrated Commissioning arrangements in respect of Individual Services:

6.6.1 Both Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.

6.6.2 Each Partners shall be responsible for compliance with and making payments of all sums due from them to a Provider pursuant to the terms of a Service Contract.

6.6.3 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Service Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

6.6.4 The Partners shall comply with the arrangements in respect of the Aligned and In View Commissioning as set out in the relevant Service Specification.

Appointment of a Lead Partner

6.7 Where there are Lead Commissioning Arrangements in respect of the Service the Lead Partner shall:

6.7.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the Service Specification;

6.7.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.

6.7.3 commission Services for individuals who meet the eligibility criteria set out in the Service Specification;

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

6.7.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;

6.7.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;

6.7.7 undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;

6.7.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and

6.7.9 keep the other Partner and Strategic Commissioning Board regularly informed of the effectiveness of the arrangements including any Overspend or Underspend in a Pooled Fund

## 7 ESTABLISHMENT OF A POOLED FUND

7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Partners. At the Commencement Date there shall be a single Pooled Fund in respect of this Agreement which is inclusive of the Better Care Pooled Fund.

7.2 Subject to Clause 7.3, it is agreed that the monies held in a Pooled Fund may only be expended on the following:

7.2.1 the Contract Price;

7.2.2 where the Council is to be the Provider, the Permitted Budget;

7.2.3 Third Party Costs where these are set out in the relevant Service Specification or as otherwise agreed in advance in writing by the Strategic Commissioning Board

7.2.4 Approved Expenditure as set out in the relevant Service Specification or as otherwise agreed in advance in writing by the Strategic Commissioning Board

7.2.5 The management costs in relation to hosting arrangements including but not limited to audit costs.

7.3 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 *Strategic Commissioning Board]*.

7.4 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 7.3.

7.5 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for the Pooled Funds the Host Partner shall be the Partner responsible for:

7.5.1 administering the records of the funds contributed to the Pooled Fund on behalf of itself and the other Partners;

7.5.2 administering the records of the funds expended from the Pooled Fund on behalf of itself and the other Partners;

7.5.3 administering the records of the funds contributed and expended by the Parties in relation to Aligned and In View funds

7.5.4 appointing the Pooled Fund Manager;

7.5.5 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

7.5.6 For the avoidance of doubt each Partner shall administer its own financial transaction initially within its own accounting ledger and see reimbursement from the Host Partner out of the Pooled Fund.

## 8 POOLED FUND MANAGEMENT

8.1 The Partners hereby agree that the Host Partner shall appoint an officer to act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations, subject to the consent of the other Party (such consent not to be unreasonably withheld).

8.2 The Pooled Fund Manager shall have the following duties and responsibilities (and shall have the power to delegate any of these functions to suitably qualified staff subject to the terms of the Financial Framework):

8.2.1 the day to day operation and management of the Pooled Fund;

8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Commissioning Plans;

8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;

8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund and liaising with internal and external auditors as necessary;

8.2.5 reporting to the Strategic Commissioning Board as required by this Agreement and by the Strategic Commissioning Board;

8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;

8.2.7 preparing and submitting to the Strategic Commissioning Board Quarterly Reports (or more frequent reports if required by the Strategic Commissioning Board) 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 Strategic Commissioning Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met including (without limitation) comply with any reporting requirements as may be required by relevant National Guidance and as agreed between the Partners;

8.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall comply with the Financial Framework; have regard to National Guidance and the recommendations of the Strategic Commissioning Board; and be accountable to the Partners for delivery of those responsibilities.

8.4 The Strategic Commissioning Board may agree to amending the allocation of the Pooled Fund between Individual Services.

## 9 FINANCIAL CONTRIBUTIONS

9.1 The Financial Contribution of the CCG and the Council to the Pooled Fund shall be as set out in each Commissioning Plan. For the first Financial Year of operation shall be as set out in Schedule 3.

9.2 The Financial Contribution of the CCG and the Council to any Pooled Fund for each subsequent Financial Year of operation will be determined by the Parties and set out in writing on or before the 31 March of the preceding year in accordance with the Financial Framework.

9.3 No provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Integrated Commissioning Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Strategic Commissioning Board minutes and recorded in the budget statement as a separate item.

Any grant conditions (or other ring fenced funding) shall be subject to the relevant conditions that apply, and both parties hereby agree to comply with those conditions.

## 10 NON FINANCIAL CONTRIBUTIONS

10.1 Both Parties shall review non-financial contributions toward the Integrated Commissioning Fund 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 Services Contracts and the Pooled Fund) as part of the annual review.

## 11 FUTURE BUDGET SETTLEMENTS RISK

11.1 In the event that financial settlements and budget uplifts for future years are insufficient to meet rising demands and rising costs. Possible scenarios for which include but are not limited to:

- Local Government grant funding from government (Revenue Support Grant) is projected to reduce significantly
- NHS allocation growth is significantly less than anticipated plans;
- Both Partners may be required to produce medium term efficiency plans in order to receive multi-year financial settlements;
- Greater Manchester Health and Social Care Partnership impose additional requirements.

11.2 The principles of response to these risks and future pressures will be:

- As far as is possible, the value of the single budgets will be kept at their equivalent current value
- Treatment of remaining resource gaps will be addressed within the single consolidated fund during the period to 2022/2023 with both Partners agreeing to vary contributions over 4 years to mitigate variable pressures in health and care services. It is agreed that Bury MBC will increase the value of Bury MBC resources within the ICF by a maximum sum of £12.0 million in 2019/2020 and the CCG will make a reciprocal contribution in 2020/21 should this be necessary.

## 12 RISK SHARE ARRANGEMENTS OVERSPENDS AND UNDERSPENDS

### Risk share arrangements

12.1 The Partners have agreed risk share arrangements as set out in the Financial Framework, which provide for risk share arrangements arising within the commissioning of services from the Integrated Commissioning Fund. The agreement from commencement of this agreement is that each organisation will share financial risk on a 50:50 basis. The variance to the total net budget allocation at the end of each financial year will be financed on a 50:50 basis.

### Overspends in Pooled Fund

12.2 The Host Partner for the Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.

12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure that the only expenditure from the Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Strategic Commissioning Board in accordance with Clause 12.4.

12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Strategic Commissioning Board is informed as soon as reasonably possible.

**Overspends in Non-Pooled Funds**

12.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an overspend in relation to a Partners Financial Contribution to a Non-Pooled Fund or Aligned Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Strategic Commissioning Board.

12.6 Where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled Fund (Aligned Fund). The Lead Commissioner shall as soon as reasonably practicable inform the other Partner and the Strategic Commissioning Board.

**Underspend**

12.7 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Service is less than the agreed allocation to that particular Individual Service the Partners shall agree how the 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.

## 13 CAPITAL EXPENDITURE

13.1 Neither Pooled Funds nor Aligned and In View 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 the capital expenditure must comply with applicable grant conditions.

## 14 VAT

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

## 15 AUDIT AND RIGHT OF ACCESS

15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the Pooled Fund.

15.2 The Host Partner shall keep and maintain until six years after the agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the agreement including:

15.2.1 the Services provided under it;

15.2.2 all expenditure reimbursed by the Partners;

15.2.3 all payments made by the Partners.

15.3 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 or member of the relevant Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

15.4 The Partners shall comply with relevant NHS and the Council's finance and accounting obligations as required by relevant Law.

## 16 LIABILITIES AND INSURANCE AND INDEMNITY

16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Service) as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.

16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Strategic Commissioning Board.

16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:

16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;

16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);

16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.

16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this

Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement)

16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

**Conduct of Claims**

16.6 In respect of the indemnities given in this Clause 16:

16.6.1 the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;

16.6.2 the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters.

16.6.3 the indemnifying and indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

## 17 STANDARDS OF CONDUCT AND SERVICE

17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Constitutions, Standing Orders, Standing Financial Instructions and Codes of Conduct).

17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Integrated Commissioning Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

17.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Integrated Commissioning Fund are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.

17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop

these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

## 18 CONFLICTS OF INTEREST

18.1 The Partners shall comply with their respective policies for identifying and managing conflicts of interest.

18.2 The Strategic Commissioning Board shall maintain a register of conflicts of interests. In the event of a conflict arising between the Parties' respective policies the matter shall be referred to the Accountable Officer for resolution. This acknowledges that there is one Accountable Officer over the 2 statutory organisations. Should the Accountable Officer be unable to reach a resolution the matter shall be determined as a dispute in accordance with Clause 23.

## 19 GOVERNANCE

19.1 Section 75 of the 2006 Act states that the partner organisations retain the statutory responsibilities and remain accountable for the prescribed services set out for each in various legislation.

19.2 Overall strategic oversight of the development of Integrated Commissioning is vested in the Councils Executive Cabinet and the CCG Governing Body, which shall remain the statutory decision making bodies.

19.3 The Parties have established the Strategic Commissioning Board to provide oversight and leadership for delivery of Integrated Commissioning.

19.4 The Strategic Commissioning Board is based on a joint working group structure. Each member of the Strategic Commissioning Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Strategic Commissioning Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2. The Strategic Commissioning Board will ensure compliance with both Parties' Constitutions, standards of clinical and corporate governance and management and behavioural standards expected.

19.5 The Parties will ensure membership and attendance is appropriate to carry out the required functions of the Strategic Commissioning Board.

19.6 The senior management and officers delivering Integrated Commissioning will be given sufficient relevant delegated authority to carry out their role.

19.7 The terms of reference of the Strategic Commissioning Board shall be as set out in Schedule [2] as may be amended or varied by written agreed from time to time.

19.8 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

19.9 The Strategic Commissioning Board shall be responsible for making decisions related to the Pooled Fund in accordance with the relevant standing financial instructions and scheme of delegation.

19.10 The Strategic Commissioning Board shall be responsible for the overall approval of Commissioning Plans and business cases.

19.11 The Strategic Commissioning Board shall report to the CCG Governing Body and Council Cabinet.

19.12 The Service Specification shall confirm the governance arrangements in respect of the Individual Service and how that Individual Service is reported to the Strategic Commissioning Board.

## 20 REVIEW

20.1 The Partners shall produce a Quarterly Report which shall be provided to the Strategic Commissioning Board in such form and setting out such information as required by Strategic Commissioning Board including but not limited to:

20.1.1 the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and

20.1.2 any forecast overspend or underspend of the Financial Contributions.

20.2 Save where the Strategic Commissioning Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, the Integrated Commissioning Fund and the provision of the Services within 3 Months of the end of each Financial Year.

20.3 Subject to any variations to this process required by the Strategic Commissioning Board, Annual Reviews shall be conducted in good faith.

20.4 The Partners shall within [20] Working Days of the annual review prepare an Annual Report for submission to each of the Parties respective Governing Bodies including but not limited to:

20.4.1 the performance of the Partnership Arrangements against the Aims and Outcomes;

20.4.2 the performance of the individual Services against the Service Levels and other targets contained in the relevant contracts;

20.4.3 plans to address any underperformance in the Services;

20.4.4 actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;

20.4.5 review of plans and performance levels for the following year;

20.4.6 plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements;

20.4.7 a review of the non-financial contributions and whether to withdraw or substitute such non-financial contributions as agreed;

20.4.8 review of targets and priorities for the forthcoming Financial Year.

## 21 COMPLAINTS

21.1 In this Agreement "complaints" shall include complaints, concerns and comments that come to the attention of the Parties through any source and in any medium; and shall include complaints about any aspect of the Services commissioned and about the function of commissioning.

21.2 The Partners' own complaints procedures shall apply to this Agreement. The Partners agree to assist one another in the management of complaints arising from this Agreement or the provision of the Services and shall keep records of all complaints and provide the same for review by the Strategic Commissioning Board every Quarter of this Agreement (or as otherwise agreed between the Partners).

21.3 Complaints will be handled in accordance with the policies of the most appropriate Party. In the event of there being a dispute over which is the most appropriate Party, the role shall fall to the Lead Commissioner for the service involved.

## 22 TERMINATION & DEFAULT

22.1 This Agreement may be terminated by either Partner giving not less than 3 Months' notice in writing to terminate this Agreement.

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

22.3 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of Clauses
15 (Audit and Right of Access), 16 (Liabilities and Insurance and Indemnity), 22 (Termination & Default), 25 (Confidentiality), 26 (Freedom of Information and Environmental Protection Regulations) and 28 (Information Sharing).

22.4 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.

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

22.5.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint

activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;

22.5.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;

22.5.3 the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Partner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.

22.5.4 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.

22.5.5 the Strategic Commissioning Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and

22.5.6 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.

22.6 In the event of termination in relation to an Individual Service the provisions of Clause 22.5 shall apply mutatis mutandis in relation to the Individual Service (as though references as to this Agreement were to that Individual Service).

## 23 DISPUTE RESOLUTION

23.1 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.

23.2 The following principles are to be adhered to for any dispute resolution.

23.2.1 The resolution agreement must be in the best interests of the population of Bury. It must maintain the quality of health and social care provision now and in the future, deliver the best possible outcomes, support innovation where appropriate, make care more cost-effective, and allocate risk fairly.

23.2.2 The resolution agreement must promote transparency and accountability. It should hold the Parties.to the Agreement accountable to each other and to patients and citizens and facilitate the sharing of appropriate Information to achieve the ambition of the Locality Plan.

23.2.3 The Parties must engage constructively with each other within the dispute resolution process when working to reach agreement.

23.3 This dispute resolution process operates in three stages:

23.3.1 The first stage Involves advice and/or mediation by the Parties clarifying which points are in dispute and the basis for the dispute for each disputed point. A mediator Is to be agreed by the Parties and, in default of such agreement by the Parties, the mediator shall be a person nominated by Greater · Manchester Health and Social Care Partnership. All relevant information should be exchanged between the Parties to ensure that a clear understanding of the disputed points Is established as a basis for reaching an agreement cognisant of the above-mentioned principles, to avoid the requirement to enter into the second or third stages. It Is expected that this process will be conducted within a two week period. If the Parties reach an agreement this will be binding upon each Party.

23.3.2 The second stage involves more formal negotiation between the Parties with the aim of reaching a negotiated position which is acceptable to both Parties. This stage will utilise the information shared during the stage one process as well as any additional pertinent Information. This stage will be facilitated by a mediator to be nominated by the Greater Manchester Health and Social Care Partnership (at this stage the mediator is being appointed for the Parties on the basis that the mediation facilitated by the self-chosen mediator at stage one was unsuccessful). It is expected that the process will be conducted within a two-week period. If the Parties reach an agreement this will be binding upon each Party. It Is anticipated that both Parties would agree to the appointment of the mediator, In the event that one or both Parties do not agree the nominee a further nominee would be sought from the Greater Manchester Health and Social Care Partnership.

23.3.3 The third stage involves formal arbitration which will be affected by means of a mediation panel appointed by the Strategic Commissioning Board following nomination by the Greater Manchester Health and Social Care Partnership. In the event that one or both Parties do not agree the nominee a further nominee would be sought from the Greater Manchester Health and Social Care Partnership

23.4 Each of these panel representatives will not be conflicted by the. disputed points under question, with conflicts of interest defined in the following categories:

23.4.1 Financial interests: Where an individual" may get direct financial benefits from the consequences of a decision.

23.4.2 Non-financial professional interest: Where an Individual may obtain a non-financial professional benefit from the consequences of a decision.

such as Increasing their professional reputation or status or promoting their professional career.

23.4.3 Non-financial personal interests: Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit.

23.4.4 Indirect Interests where an individual has a close association with an individual who has a financial Interest, a nonfinancial professional interest or a non-financial personal interest in a decision (as those categories are described above).

23.5 The mediation panel will meet to review the disputed points that have been identified by the Parties In the first stage process. The panel may call on expert advice and/or on the disputed parties at their discretion. No member of the panel will have a strong prior relationship with any organisation or of the key staff involved in the dispute.

23.6 Arbitration will be conducted using the 'pendulum principle' for each issue. This means that the mediation panel can only find wholly in favour of one of the disputed parties for each disputed point; they can neither propose a different solution nor split the difference. If there are multiple areas of dispute these will be considered separately.

23.6.1 The agreed rationale for the pendulum principle - Application of the pendulum principle is designed to reduce the need for arbitration in the first place. The Party whose proposal will be accepted will be the one whose stance is most consistent with. This Agreement and the principles of the Locality Plan. In matters where this Agreement and the principles of the Locality Plan do not clearly determine the adjudication the accepted proposal is that which is closest to what the mediation panel believes is reasonable.

23.6.2 The mediation panel will apply the pendulum principle to the most recent proposal made by each Party. It is required that each Party is aware of the proposals of the other Party. Where there are multiple areas of dispute between the Parties these will normally be treated separately by the mediation panel and the pendulum principle applied to each Individual Issue of dispute. However, the mediation panel may at its discretion decide to adjudicate only once across a number of issues it perceives to be linked.

23.7 In making its decision the mediation panel will consider the relative reasonableness of the final· offer proposals. In so doing it will act in accordance with the overarching principles as detailed above, which Will be updated to include any principles established as a result of previous arbitrations. The decisions of the mediation panel will be binding upon the Parties.

23.8 Once the mediation panel has reached its decisions it will write jointly to the Parties within one Working Day of the panel date informing them of the outcome of the arbitration. It is expected that this third stage process will be completed within a four-week period.

23.9 Parties involved in any formal dispute have recourse to existing routes to challenge if the dispute process has not been followed correctly.

## 24 FORCE MAJEURE

24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs, and it is prevented from carrying out its obligations by that Force Majeure Event.

24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.

24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.

24.4 If the Force Majeure Event continues for a period of more than [sixty (60) days], either Partner shall have the right to terminate the Agreement by giving [fourteen (14) days] written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

## 25 CONFIDENTIALITY

25.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and

25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:

(a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or

(b) is obtained by a third party who is lawfully authorised to disclose such information.

25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or

by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.

25.3 Each Partner:

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

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

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

## 26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

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

26.2 Where a Party receives a request for information specifically in relation to a function of the other Party, it shall direct the request for information to the other Party as soon as practicable after receipt and in any event within two working days of receiving the request for information.

26.3 Where the request relates to functions of both Parties, the Party receiving the request for will share the request with the other Party as soon as practicable after receipt and in any event within two working days of receiving the request. The receiving Party will assist and co-operate with the other as is necessary for it to respond to the request within the time for compliance.

26.4 The Partners acknowledge that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the 2000 Act and the 2004 Regulations is a decision ultimately for the Receiving Partner.

26.5 The Partners accept and acknowledge that the final decision regarding the disclosure of information under the 2000 Act or 2004 Regulations rests with the Receiving Partner.

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

## 27 OMBUDSMEN AND PROHIBITED ACTS

27.1 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.

27.2 Neither Partner shall do any of the following:

a) offer, give, or agree to give the other Partner (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement or any other contract with the other Partner, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the other Partner; and

b) in connection with this Agreement, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Partner,

(together "**Prohibited Acts**" for the purposes of Clauses 27.2 to 27.6).

27.3 If either Partner or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Partner in relation to this Agreement, the non-defaulting Partner shall be entitled:

a) to exercise its right to terminate under clause 22 and to recover from the defaulting Partner the amount of any loss resulting from the termination; and

b) to recover from the defaulting Partner the amount or value of any gift, consideration or commission concerned; and

c) to recover from the defaulting Partner any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

27.4 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 2010. 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.

27.5 The Partners must have in place an anti-bribery policy for the purposes of preventing any of their staff from committing a prohibited act under the Bribery Act 2010. If either Partner requests the other Partner's policies to be disclosed, then the Partners shall endeavour to do so within a reasonable timescale and in any event within 20 Working Days.

27.6 Should the Partners become aware of or suspect any breach of Clauses 27.2 to 27.5, it will notify the other Partner immediately. Following such notification, the Partner must respond promptly and fully to any enquiries of the other Partner, co-operate with any investigation undertaken by the Partner and allow the Partner to audit any books, records and other relevant documentation.

## 28 INFORMATION SHARING AND DATA PROTECTION

28.1 In all instances where the Parties share information with each other; and in the functioning of the Strategic Commissioning Board, the Parties will adhere to the relevant policies and information governance protocols of each Party. In doing so, the Parties will ensure that the operation of this Agreement complies with Law, In particular the Data Protection Legislation.

28.2 Subject to the following provisions of this section the Parties shall work together to establish effective arrangements to permit and control the exchange of information to support the Integrated Commissioning arrangements.

28.3 Without prejudice to any other provision of this Agreement each party shall at all times comply with the requirements of the Data Protection Legislation in respect of any Personal Data howsoever acquired or processed for the purposes of, or in the operation of, the Integrated Commissioning arrangements and no Personal Data collected or processed for any purposes connected with this Agreement will not be disclosed to any other person otherwise than in strict accordance with the provisions of the Data Protection Legislation

28.4 Each Party shall ensure that in order to process any information for the purposes of this Agreement lawfully and fairly in accordance with the first data protection principle that it shall notify the subject of such personal information of the purposes for which it is gathered and for which it may be disclosed. Where necessary, the Parties will obtain the consent of Service Users and other data subjects to disclose personal information to be used for the purposes of this Agreement.

28.5 Any data disclosed by a Party to the other for use in carrying out the purposes of this Agreement will be held and processed strictly in accordance with the Data Protection Legislation and any common law obligation of confidentiality.

28.6 The Parties shall:

28.6.1 Keep confidential any information obtained in connection with this Agreement and personal service user data, subject to the Data Protection Legislation ; and

28.6.2 Take appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of or damage to such Personal Data.

## 29 NOTICES AND PUBLICITY

29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by first class post or electronic mail. The address for service of each

Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:

29.1.1 personally delivered, at the time of delivery;

29.1.2 posted, at the expiration of forty-eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and

29.1.3 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.

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

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

29.3.1 if to the Council, addressed to the Chief Executive Geoff Little Town Hall, Knowsley Street, Lancashire, BL9 0SW

Tel: 0161 253 5000
Email: [ ]

and

29.3.2 if to the CCG, addressed to the Accountable Officer, Geoff Little Town Hall, Knowsley Street, Lancashire, BL9 0SW

Tel: 0161 253 5000
Email: [

29.4 Without prejudice to Clause 26, except with the written consent of the other Partner, (such consent not to be unreasonably withheld or delayed), the Partners must not make any press announcements in relation to this Agreement in any way.

29.5 The Partners must take all reasonable steps to ensure the observance of the provisions of Clause 29.4 by their staff, servants, agents, consultants and sub-contractors.

## 30 VARIATION

30.1 Subject to Clause 30.2, no variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Parties.

30.2 The members of the Strategic Commissioning Board may choose to exercise their delegated powers on behalf of their employer organisation (for the avoidance of doubt in each case must either be the CCG or the Council) to:

30.2.1 agree the addition of Commissioning Plans or Integrated Commissioning Strategies to this agreement following the approval of a detailed business case by each of the Parties; and

30.2.2 carry out an Annual Review of this Agreement pursuant to Clause 20 and implement necessary changes following the review.

## 31 CHANGE IN LAW

31.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.

31.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.

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

## 32 WAIVER

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

## 33 SEVERANCE

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

## 34 ASSIGNMENT AND SUB CONTRACTING

The Partners shall not sub contract, assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partners, which shall not be unreasonably withheld or delayed. This shall not apply to any

assignment to a statutory successor of all or part of a Partner's statutory functions.

## 35 EXCLUSION OF PARTNERSHIP AND AGENCY

35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.

35.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

## 36 THIRD PARTY RIGHTS

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

## 37 ENTIRE AGREEMENT

37.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.

37.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

## 38 COUNTERPARTS

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

## 39 GOVERNING LAW AND JURISDICTION

39.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

39.2 Subject to Clause 23 (Dispute Resolution), the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

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

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

Signed for on behalf of **[ ] CLINICAL COMMISSIONING GROUP**

_____

Authorised Signatory

## SCHEDULE 1– COMMISSIONING STRATEGY – LOCALITY PLAN

## SCHEDULE 2– GOVERNANCE – STRATEGIC COMMISSIONING BOARD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## SCHEDULE 3 – FINANCIAL FRAMEWORK AND POOLED BUDGET 2019/2020

See appendix 7 to this report

## SCHEDULE 4 - JOINT WORKING OBLIGATIONS

## 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 Party if it receives or serves:

1.1 a Change in Control Notice (or equivalent to using a Council standard contract);

1.2 a Notice of an Event of Force Majeure (or equivalent If using a Council standard contract);

1.3 a Contract Query (or equivalent if using a Council standard contract);

1.4 Exception Reports and provide copies of the same (or equivalent if using a Council standard contract).

2 The Lead Commissioner shall provide the other Party with copies of any and all:

2.1 CQUIN Performance Reports (or equivalent If using a Council standard contract);

2.2 Monthly Reports (or equivalent if using a Council standard contract);

2.3 Review Records (or equivalent if using a Council standard contract); and

2.4 Remedial Action Plans (or equivalent If using a Council standard contract);

2.5 JI Reports (or equivalent if using a Council standard contract);

2.6 Service Quality Performance Report (or equivalent If using a Council standard contract);

3 The Lead Commissioner shall consult with the other Party before attending:

3.1 an Activity Management Meeting (or equivalent If using a Council standard contract);

3.2 Contract Management Meeting (or equivalent If using a Council standard contact);

3.3 Review Meeting (or equivalent to using a Council standard contact); and to the extent the Service Contract permits, raise issues reasonably requested by a Party at those meetings.

4 The Lead Commissioner shall not without the prior approval of the other (acting through the Strategic Commissioning Board), such approval not to be unreasonably withheld or delayed:

4.1 permanently or temporarily withhold or monies pursuant to the Withholding and Retaining of Payment Provisions;

4.2 vary any Provider Plans (excluding Remedial Action Plans (or equivalent if using a Council standard contract));

4.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan (or equivalent if using a Council standard contract);

4.4 give any approvals under the Service Contract;

4.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);

4.6 suspend all or part of the Services;

4.7 serve any notice to terminate the Service Contact (In whole or in part);

4.8 serve any notice;

4.9 agree (or vary) the terms of a Succession Plan (or equivalent if using a Council standard contract);

5 The Lead Commissioner shall advise the other Party 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 Parties as part of that process.

6 The Lead Commissioner shall notify the other Party of the outcome of any Dispute that is agreed or determined by Dispute Resolution

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

**OBLIGATIONS OF THE OTHER PARTNER**

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

8 Each Party 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:

8.1 resolve disputes pursuant to a Service Contract;

8.2 comply with its obligations pursuant to a Service Contract and this Agreement;

8.3 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;

9 No Party shall unreasonably withhold or delay consent requested by the Lead Commissioner.

10 Each Party (other than the Lead Commissioner) shall:

10.1 comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Party;

10.2 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 5 - PERFORMANCE ARRANGEMENTS

## INTEGRATED PERFORMANCE MANAGEMENT FRAMEWORK FOR COMMISSIONING

### 1. INTRODUCTION

This Agreement between the Council and the CCG establishes a framework for joining together the commissioning, provision, finances, performance management, and governance for the services covered by the Agreement. This schedule outlines the arrangements for the performance management framework for the Agreement.

### 2. PURPOSE

This schedule aims to ensure that Parties adopt an Integrated performance management framework to ensure they plan, deliver, review and act on relevant information to commission improved outcomes for the people of Bury. This approach will ensure that the actions and Investment of Parties will lead towards the achievement of national, regional and local performance targets as well as Improving outcomes for the people of Bury.

### 3. DEFINITION

Performance management Is the overall process that integrates planning, action, monitoring and review. Performance management means knowing:

- What you are aiming for (e.g. purpose, mission, corporate aims, strategic goals etc).
- What you have to do to meet these alms (e.g. business plan, project plan, etc).
- What the priorities are and ensuing that there are sufficient resources (inputs).
- What the current performance Is through monitoring and reporting.
- How to review progress, detect problems and act in a timely manner to ensure the outcome/target is achieved.

### 4. BENEFITS

Effective performance management enables relevant staff throughout the Partnership to:

- Be clear whet the strategic objectives are for commissioning.
- Be clear what outcomes are to be delivered in any one Financial Year.

thereby ensuring better quality Services are delivered to local people.

### 5. OUTLINE FRAMEWORK

Essentially the performance management framework consists of three processes in relation to Joint commissioning.

### 5.1 BUSINESS PLANNING PROCESS

a) Integrated Commissioning Plans; that state the strategic objectives and key performance measures for a period of three to five Financial Years, and commissioning intentions for those objectives with timescales for achievement.

b) Contracts that state how performance will be monitored, reported, reviewed and necessary action taken, Including performance Indicators.

## 5.2 REPORTING AND REVIEW PROCESS

a) Overall against delivery of the outcomes in the Integrated Commissioning Plans.

b) Overall progress against delivery on the contracts and identification of reasons for under performance.

## 5.3 PERFORMANCE IMPROVEMENT PROCESS

a) Ensuring action is taken where the continuation of current performance would lead to an outcome/target not being met.

b) Application of a range of tools and techniques to improve overall performance.

# 6 FRAMEWORK DETAIL

## 6.1 BUSINESS PLANNING PROCESS

6.1.1 It is the responsibility of the relevant Host Partner to develop, and annually review a Commissioning Plan on a rolling three Financial Year basis for the particular service to be commissioned. Each strategy will be developed by adherence to 'commissioning cycle' and in consultation with service users and carets.

6.1.2 It is the responsibility of the relevant Host Partner to develop an annual Commissioning Plan. This plan will state the outcomes to be achieved, by when and what the risks are If they are not achieved.

6.1.3 Each outcome in the Commissioning Plan should be aligned to one of the strategic objectives. Any outcome that is not so aligned should be as to why it is being considered.

6.1.4 The Host Partner should then go through a process of developing, negotiating and agreeing a contract with each third-party provider regarding the outcomes they are to deliver. It will be clear which Services are to be discontinued e.g. in the advent of a budget reduction.

6.1.5 Contracts with third party providers should:

Take account of the requirements the Better Care Plan and the agreed commissioning strategies and annual plans of the Council and the CCG.

Include a requirement on the provider to develop a detailed service plan (e.g. stating what, by when, by who and the risk associated with not achieving the outcome) as to how the provider intends achieving the said outcomes. It should also require the provider to regularly measure progress against achieving the outcomes, to report this to the Host Partner in a timely manner to an agreed

frequency (e.g. monthly),' and to provide a Performance Improvement Plan or Recovery Plan where financial under performance is significantly under par.

Include a process whereby outcomes may be added I removed as a result of changing needs.

## 6.2 REPORTING AND REVIEW PROCESS

6.2.1 Regular meetings should be held between the Host Partner and the provider to review performance.

6.2.2 The Host Partner will monitor services, as part of a basket of measures that contribute to the delivery of key outcome, having regard to national, regional and local key performance indicators such as:

- Best Value Performative indicators
- Performance Assessment Framework indicators
- National Performance Indicators
- Public Service Agreement target (LPSA)
- Audit and Inspection recommendations
- Self-Assessment Statement actions
- Relevant Operational Plan indicators
- NHS Operating Framework targets
- Vital Signs indicators.

6.2.3 These key indicators form part of a basket of performance measures. Activity and Financial Indicators will be another part of the complete basket.

6.2.4 The basket of performance Indicators will be monitored and reported to the Strategic Commissioning Board using, wherever possible, existing performance reports generated within either the Council or the CCC and making it clear where the areas of good performance and those of concern are, i.e. using a simple traffic light scheme with exception reporting on the key issues.

## 6.3 PERFORMANCE IMPROVEMENT PROCES

6.3.1 Where necessary the Host Partner should seek the provider to undertake specific performance improvement initiatives where performance Is significantly under par.

## SCHEDULE 6 – CORPORATE POLICIES

### CCG Corporate Policies

- including Information Governance, Conflicts of Interest and Standards of Business Conduct

https://www.buryccg.nhs.uk/your-local-nhs/plans-policies-and-reports/corporate-policies/

### Council Corporate Policies

To be included

**APPENDIX 7: Financial Framework**

# FINANCIAL FRAMEWORK

Between

NHS Bury Clinical Commissioning Group and

Bury Metropolitan Borough Council

This is the Bury Clinical Commissioning Group and Bury Metropolitan Borough Council Financial Framework signed on 11 March by:

……..

**Authorised Signatory** on behalf of NHS Bury Clinical Commissioning Group

……..

**Authorised Signatory** on behalf of Bury Metropolitan Borough Council

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**Defined Terms**

Save for the following, defined terms in this Financial Framework shall have the same meaning as those in the s75 Agreement.

**Aligned Fund** means budgets for commissioning prescribed services that the statutory organisations or Regulations specify shall not be pooled, but which will be managed alongside the Pooled Fund and decisions taken by the appropriate statutory organisation.

**CCG** – Bury Clinical Commissioning Group, one of two partners to the Integrated Commissioning Fund and the s75 agreement. The CCG provides health services to the GP registered population of Bury

**DHSC** – Department of Health and Social Care.

**Financial Framework** – (this document) describes the ground rules under which the financial decisions relating to the Integrated Commissioning Fund will be made.

**In View Fund** means budgets for commissioning prescribed services are not directly controlled by the statutory organisations including the delegated primary care co-commissioning budgets from NHS England.

**Integrated Commissioning Fund** means the total of the Pooled Fund, Aligned Fund and In-View Fund.

**Partners –** the CCG and BMBC are partners to the section 75 agreement and the Integrated Commissioning Fund.

**Pooled Fund** means any pooled fund established and maintained by the Parties as a pooled fund in accordance with section 75 of the NHS Act 2006.

**Pooled Fund Host** means the Partner that will host and provide the financial administrative systems for the Pooled Fund and undertake to perform the duties for which they will be responsible, as set out in paragraph 7(4) and 7n(5) of the Regulations

**Pooled Fund Manager** means the Chief Financial Officer of the Strategic Commissioning Board

**Section 75 agreement (s75)** – section 75 of the NHS Act 2006: the legislation that allows the establishment of pooled funds between NHS bodies and local authorities at a local level. Decisions will be taken by the Strategic Commissioning Board.

**Strategic Commissioning Board** – A Board where each statutory organisation makes joint decisions which are binding on each other. It will act under the delegated authority on behalf of the statutory organisations.

**SoDA** – Schedule of delegated authorities, or equivalent, of the CCG, BMBC and the Integrated Commissioning team.

**Bury Health and Wellbeing Board** – established as a BMBC committee under s194 of the Health and Social Care Act 2012, the purpose of which is to promote more joined up delivery of services and involves oversight of achievement of the objectives of the integrated commissioning function; and oversight of proper governance of the integrated commissioning function

**The Accountable Officer** – this is the Chief Executive of BMBC and the Accountable Officer of NHS Bury Clinical Commissioning Group.

**The Greater Manchester Health and Social Care Partnership** - is the body made up of the 35 NHS organisations and local authorities in the city region, which is overseeing devolution and taking charge of the £6bn health and social care budget.

**BMBC** – Bury Metropolitan Borough Council, one of two partners to the Integrated Commissioning Fund and the s75 agreement

**Terms of the Financial Framework – Bury Economy**

## 1. Consultation and approval

1.1. The process for consulting on management and oversight of the Integrated Commissioning Fund and the Section 75 agreement (s75) agreement will include, as a minimum:

- Approval of the CCG Governing Body
- Approval of the BMBC Executive Cabinet
- Strategic Commissioning Board

1.2. This Financial Framework is to be referred to, in the s75, as an adopted document, by both the CCG and BMBC, but will not necessarily be appended to the s75. This approach allows for regular update of the Financial Framework, as required, under agreed delegated arrangements.

1.3. The process of consultation for the Financial Framework will be aligned with the development of the s75 agreement and the arrangements for the development of the Integrated Commissioning Fund. It will be considered by both Partners, as part of the document pack supporting the s75 agreement

## 2. Frequency of review and renewal

2.1. This Financial Framework will be reviewed and revised, as necessary on an annual basis. This review will involve the designated financial leads and governance leads of both Partners. The Strategic Commissioning Board will recommend approval of the reviewed Financial Framework to the:

- The CCG Governing Body
- The BMBC Executive Cabinet

2.2. The Partners may, at some point in the future, agree to extend the period between formal review and adoption of the Financial Framework and s75 Agreement. Any changes will be subject to approval as above.

2.3. Detailed guidance about specific aspects of this Financial Framework may be issued from time to time. This guidance will be approved by the Strategic Commissioning Board, or by specific groups or individuals as delegated.

2.4. Amendments to the framework will require approval of each constituent organisation.

## 3. Scope of this Financial Framework

3.1. This Financial Framework lays out the general rules and sets the scope for the management and expenditure of public sector funds originating from NHS and Local Government sources.

3.2. It supports the relationship between the Partners via the s75 Agreement and the use of Aligned Funds. It:

- Provides detail of the framework of the formal relationship with regard to the management of the Integrated Commissioning Fund;

- Sets the expectation that the Partners will continue to work closely together; and with Providers, to ensure that the best quality care is provided and best value is achieved in the use of resources;
- Recognises the statute and regulations under which the Pooled Fund is established i.e. section 75 of the National Health Services Act 2006 and NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

3.3. This Financial Framework sets out the requirements and makes provision for governance and accountability of:

- The Integrated Commissioning Fund;
- Authorities and responsibilities delegated from the Partners
- Financial planning and management responsibilities;
- Budgeting and budgetary control, including forecasting.

3.4. This Financial Framework identifies the responsibilities of each Partner to:

- Support and facilitate the achievement of the objectives of the Integrated Commissioning Fund;
- Ensure that the objectives and functions of the Partners and of the Integrated Commissioning Fund are complementary and mutually supportive;
- Ensure due diligence and appropriate oversight of financial decisions;
- Ensure the achievement of the Partners' objectives.

## 4. Objectives of the Partners

4.1. The Single Outcomes Framework has been developed as the shared outcome based approach for Bury. Within this five level outcomes have been identified, that all partners have signed up to.

- All people of Bury live healthier, resilient lives and have ownership of their wellbeing.
- Bury people live in a clean and sustainable environment.
- People of Bury at all ages have high level and appropriate skills.
- All Bury people achieve a decent standard of living (and are provided with opportunities through growth.
- Bury is a safe place to live with all people protected (and feel protected from harm).

## 5. Objectives of the Strategic Commissioning Board

5.1. Section 24 of the National Health Services Act 2006 sets out the requirement of the CCG to prepare a plan to improve:

- The health of people for whom it is responsible;
- The provision of health-care to those people,

5.2. The s75 Agreement states that:

*The aims and benefits of the Parties in entering in to this Agreement are to:*

(A) improve the quality and efficiency of the Services;

(B) improve the outcomes for Service Users

(C) meet the National Conditions and Local Objectives; [and]

*(D)* make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.

5.3. The key objectives of the arrangements are to deliver Integrated Commissioning that will focus on developing joined up, population based, public health, and preventative and early intervention strategies and adopt an asset based approach to providing a single system of health and wellbeing, focusing on increasing the capacity and assets of people and place.

5.4. To support the delivery of the Bury Locality Plan

5.5. The overall project is linked to and delivering the objectives of the Bury Better Care Funds but also addresses a significantly larger remit of Integrated Commissioning and the wider single commissioning of health and social care services.

5.6. These objectives are reflected in the terms of reference of the Strategic Commissioning Board.

## 6. Objectives and targets of Integrated Commissioning

6.1. Both Partners shall recognise the Integrated Commissioning objectives, targets and decisions that are shared

6.2. The mandated objectives include:

- NHS Constitution requirements (statute);
- Targets and performance measures identified by NHS England (regulation) / GM H&SCP;
- Standards set by external agencies, e.g. CQC, Ofsted and NICE (regulation).
- Adherence to the associated terms of the GM Health & Social Care Partnership Investment Agreement

6.3. Advised objectives include:

- Best practice identified by external agencies, e.g. NICE and GM Medicines Management Group

6.4. Locally defined objectives include:

- To achieve financial sustainability for the Bury health and social care economy.
- Adherence to the Mental Health Investment Target
- Outcomes based Commissioning
- Delivery of efficiencies to address the Bury Locality Plan.

6.5. The CCG and BMBC have agreed that there will be no change to the executive powers of the CCG Governing Body, or the BMBC Executive Cabinet.

***Responsibilities***

## 7. Partner responsibilities

7.1. The Partners have stated their commitment to developing Integrated Commissioning whilst ensuring the financial health of both Partners; and of other organisations in the local health and wellbeing economy.

7.2. The Partners recognise their obligation to comply with statute and regulations.

7.3. The Partners recognise that each Partner's ultimate responsibility for service provision and delivery is not changed. However, they will delegate decision making and administration, where this improves the way that services are commissioned and where it is feasible. The Partners will identify limitations and restrictions clearly.

7.4. The Partners recognise specific responsibilities regarding services included within Integrated Commissioning:

- Obligations and commitments to the residents of; and patients registered within Bury;
- Obligations and commitments to the wider population of patients within Bury, who are aligned to the Bury care economy;
- Obligations to the Provider community; delivering pace of change whilst creating a sustainable provider market.

## 8. Responsibilities of the Partner organisations' leadership

8.1. The Partners will agree and approve the strategic objectives for Integrated Commissioning. They will:

- Seek assurance that these are incorporated within the strategic priorities for Integrated Commissioning.

8.2. The Partners will approve the policy and performance framework (business plan) for Integrated Commissioning and will:

- Ensure the adequacy of the Integrated Commissioning function's business plan and alignment with the partners' plans
- Approve the adequacy of organisation, staffing and management of Integrated Commissioning

## 9. Responsibilities of the Partner organisations' Accountable Officer and Chief Financial Officer

### 9.1 The Accountable Officer

- The Chief Executive and Accountable Officer is responsible for:
    - Signing approval of changes to the s75 Agreement;
    - Ensuring the record of minutes of meeting of the Strategic Commissioning Board is maintained.
- The scope of this role will be subject to approval of each constituent organisation.
- The Accountable Officer is a member of the Strategic Commissioning Board.

### 9.2 Chief Financial Officer

9.2.1 The overriding responsibility of the Chief Financial Officer is to gain assurance as to the satisfactory standard of financial management, accounting and reporting of the Integrated Commissioning Fund. The Chief Financial Officer will:

- Ensure that the Integrated Commissioning arrangements are appropriate and sufficiently secure to safeguard public funds;
- Ensure that financial governance and internal controls conform to the requirements of regularity, propriety and good financial management; sufficient to deliver successful operations;
- Ensure that reporting of Integrated Commissioning on strategic, operational and financial performance, budgetary control and risk management is adequate and reliable.

9.2.2 The Chief Financial Officer will ensure that the specific obligations of the s151 officers are delivered in respect of transactions involving the funds of the Council.

9.2.3 The Chief Financial Officer will ensure the adequacy of arrangements to deliver new services, programmes and projects.

9.2.4 The Chief Financial Officer will report assurance to respective Audit Committees.

9.2.5 The Chief Financial Officer is a member of the Strategic Commissioning Board.

## 10. Responsibilities of the Host Partner

10.1 For the Pooled Fund Bury Metropolitan Council has been appointed as the Host Partner.

10.2 The scope of role of the Host Partner is determined, in the first instance, by the decision to seek to minimise organisational change resulting from the development of the Integrated Commissioning arrangement. As a minimum, the Host Partner will deliver the regulatory requirements:

- Appoint the Chief Financial Officer as Pooled Fund Manager;
- Deliver the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 7(4) and 7(5) requirements:
  - Accounts and audit
  - Managing the fund
  - Reporting to the partners and reporting frequency
  - Exercise NHS and health-related functions

## 11. Responsibilities and role of the Chief Financial Officer as the designated Pooled Fund Manager

11.1 The Chief Financial Officer designated as the Pooled Fund Manager by the Host Partner in accordance with requirements of the Section 75 Agreement and associated regulations. The appointee attends the Strategic Commissioning Board and reports to the Accountable Officer. The responsibilities of the Pooled Fund Manager as set out in the legislation and Regulations (7(4)) are limited and specific: -

- Managing the Pooled Fund

- Submitting monthly reports, and an annual return, about the income of, and expenditure from, the Pooled Fund and other information by which the Partners can monitor the effectiveness of the Pooled Fund.

11.2 The Chief Financial Officer alongside other Executive Directors will report to the Strategic Commissioning Board and will be responsible for the implementation of the Integrated Commissioning Strategy; direct procurement of services; and managing contract performance.

11.3 Other responsibilities, which will be delegated as necessary and as agreed by the Strategic Commissioning Board, will include:

- Compiling the annual Integrated Commissioning Strategy;
- Reporting monthly finance and activity performance to the Joint Executive Team;
- Manage delivery of contracts, including outcomes and quality standards checks;
- Delivering value for money and effective performance of the Integrated Commissioning Fund.

11.4 The Chief Financial Officer will oversee the day to day operation and management of the Pooled Fund and will oversee the day to day operation and management of the Aligned Fund.

11.5 Financial governance arrangements will ensure expenditure complies with the contractual specifications. Specific responsibilities include to be assured of the arrangements for:

- VAT;
- accounts timetable;
- charging arrangements;
- ledger arrangements.

11.6 The Chief Financial Officer will be responsible for maintaining the joint financial position of the Pooled Fund:

- Ensuring the adequacy and completeness of financial records;
- Ensuring action is taken over projected over and underspends;
- Reporting performance to the Partners and the Strategic Commissioning Board.

## 12. Dissolution of the Section 75 Agreement

12.1 The legal position is set out within the s75 Agreement, as are the mechanisms for dissolution of the s75 Agreement. This Financial Framework identifies the scale of risks that both Partners will accept, before considering the need to reduce the scale of the Integrated Commissioning Fund, dissolve the s75 Agreement and/or this Financial Framework.

12.2 The s75 Agreement identifies a period of notice of three months, subject to the Partners' ability to implement secure alternative arrangements for commissioning of each of the Services included within the Integrated Commissioning Fund.

12.3 The Partners will agree the scale of financial pressures that either Partner will be willing to accept, before considering the need to dissolve the s75 Agreement or this Financial Framework.

12.4 The Partners will agree mechanisms for entering emergency arrangements to reverse adverse trends, including:

- protocol for suspending the Host Partner's management arrangements for the Pooled Fund;
- structure of governance and management of the s75 Agreement or this Financial Framework in emergency measures.

## 13. Cessation of the Pooled Fund

13.1 Where the Pooled Fund is to be ceased, due to the dissolution of the s75 Agreement from the Partner(s) decision to end the arrangement, the ownership of assets, liabilities and commitments will revert to the relevant Partner. If the relevant Partner is not clearly identified, ownership will fall to the Partner acting as the Lead Commissioner. This applies to:

- Ownership of invested assets;
- Ownership of consequential service obligations.

13.2 Where the s75 Agreement is to be dissolved due to financial insolvency, the Partners will agree the stages for realising the losses accumulated by the Pooled Fund. The stages are:

- apportionment of financial risk;
- allocation and apportionment of financial risk as agreed between Partners;
- agreement of continuation of Services to Service Users.

***Scope and description of the Fund***

## 14. Scope of Integrated Commissioning

14.1 The Partners have agreed that the scope of the Integrated Commissioning Fund shall be the maximum commissioning resource that it makes sense to pool, or align to deliver joined-up commissioning:

- a formal Pooled Fund has been established where possible;
- Aligned Funds will be used where there are specific barriers to pooling (including legislative and regulatory barriers).

14.2 Commissioning funding will be pooled or aligned, at service and/or contract level. In the first instance, the service area, or contracts will be mapped entirely to either the Pooled Fund or the Aligned Fund. Contracts will only be split where there is value in disaggregating the commissioning arrangement and where this can be managed effectively. The Partners' financial ledger record will be designed to allow for the pooled, aligned and in view elements of the fund to be identified and disaggregated clearly.

14.3 Either Partner will be allocated the Lead Commissioner role for each service area, or contract, based on the most logical and effective design for the commissioning function.

14.4 The Partners agree in principle that further Services may be added to the Integrated Commissioning Fund; or specific Services may be removed from the Integrated Commissioning arrangements, in future. The decision and approval approach to this process will follow best practice in business case development, analysis and challenge.

## 15. Better Care Fund

15.1 The Better Care Fund (BCF) is mandated by government. It was launched through the Spending Round in June 2013, with the objective to deliver integration of services and improve outcomes for patients and service users and carers. The BCF is set up as a Pooled Fund, with the NHS commissioner and the local authorities contributing an agreed level of resource into a single pool that is then used to commission or deliver joined up health and social care services.

15.2 The BCF (and improved Better Care Fund) is an element of the wider Pooled Fund for Bury. The Pooled Fund, in turn, is combined with the Aligned Funds and In View Funds to make up the total value of the Integrated Commissioning Fund.

## 16. Value of the Integrated Commissioning Fund

16.1 The Integrated Commissioning Fund (ICF) comprises the Pooled Fund and Aligned Fund which it makes sense to plan and manage in a coordinated way where legislation allows. In view funds are also included.

16.2 The establishment of an ICF and pooled funds was formally approved at the Council Cabinet meeting of 4 September 2019 and at the CCG Governing Body Meeting of 24th September 2019.

16.3 The stated intention is to maximise the resources and the scale of commissioning to be included in the Integrated Commissioning Fund, as either a Pooled Fund or Aligned Fund. The prescribed services that cannot be pooled, as summarised in SI(2000)617: NHS Bodies and Local Authorities Partnership Arrangements Regulations includes:

**NHS**

- Acute surgical;
- Emergency ambulance;
- Radiotherapy;
- Termination of pregnancies;
- Endoscopy;
- Laser treatments (class 4);
- Other invasive treatments.

**Local Government**

- Adoption services (Adoption & Childcare Act, 2003);
- Appointment of mental health professional (MHA, 1983);
- MHP powers of entry (MHA, 1983);
- Safeguarding children in care homes (Children Act, 1989);
- Appointment of director of social services (LASSA, 1970).

16.4 Where possible, these services will be included in the Integrated Commissioning Fund as an Aligned Fund.

## 17. Range of the Pooled Fund (cross boundary flows and issues)

17.1 The populations served by the Pooled Fund are not consistent between the Partners; and essential Integrated Commissioning extends beyond the boundaries of the Pooled Fund. The Partners agree to seek to avoid creating unnecessary barriers or inequalities of access for Service Users. They agree to seek to avoid creating perverse incentives in the design of commissioned and provided services.

17.2 Funding inconsistencies are created by:

- BMBC residents registered with GPs outside of the Bury area;
- Non-BMBC residents registered with GPs within the Bury borough;
- Individuals not resident; and not registered with GPs in the area requiring services within the scope of the Integrated Commissioning arrangement;
- Service Users who receive Services who are not physically present in the borough.

17.3 Unwanted barriers and incentives to commissioning are created by:

- The 'footprint' of the main providers of NHS services extending into neighbouring areas,

17.4 Potential service level boundaries and inconsistencies may also occur as a result of the range of local government commissioned services that remain with BMBC.

***Statutory reporting requirements***

## 18. Annual financial accounts

18.1 The value of the budget for the Pooled Fund, as described in the s75 Agreement, will be material to both Partners; and as such will be subject to appropriate levels of external and internal audit scrutiny.

18.2 The annual financial accounts of both Partners will be required to include sufficiently detailed notes of the financial performance and records of the Integrated Commissioning arrangement:

- The structure of reporting to be followed for a "Joint Operation", such as this Integrated Commissioning arrangement, is prescribed by the International Financial Reporting Standards (IFRS) in IFRS11(Joint arrangements) and IFRS 12 (Disclosure of interests in other entities);
- The Statement of Financial Performance of the formal Pooled Fund is to be reported in the Host Partner's accounts and reflected in the other Partner's accounts;
- The financial performance of the Aligned and In Collaboration Funds are to be reported within the body of the relevant Partner's accounts;
- The financial performance of the entirety of the Integrated Commissioning Fund; and the associated risk share arrangement, is to be reported as an explanatory note in both Partners' accounts.

18.3 Due to the annual accounts reporting timetables of both Partners, the risk share will be calculated on the basis of the month 11 forecast position for month 12.

Any correction to the value of the risk share will be recognised at the start of the next financial year.

18.4 Planning for accounts preparation and required audit arrangements will take account of:

- Timetables for producing the annual accounts, their audit and reporting requirements; recognising the earlier reporting deadlines for NHS accounts. It is acknowledged that BMBC reporting deadlines are susceptible to change;
- The scope of required reporting, including the contribution to the CCG Quality Account; and to BMBC's Annual Report;
- The evidence required to support the annual statement on governance; and for reporting any financial concerns with the Integrated Commissioning Fund;
- The evidence required to support the Head of Internal Audit Opinion and the external audit Regularity Opinion.

18.5 The annual financial accounts will be delivered within the requirements of the financial regimes and rules of each Partner, specific to over and underspending:

- CCG – must operate within a Resource Allocation Budgeting control total determined by NHS England.
- BMBC – not allowed to carry forward overspend for the year. Overspending to be met from reserves.

## 19. Arrangements for audit and counter fraud

19.1 The Partners agree that they will seek a joint approach and joined up arrangements for the internal audit of the Integrated Commissioning function and associated budget resources:

- Access arrangements for internal auditors will be agreed as part of the annual audit planning and scoping exercise;
- Deliver combined assurance to the CCG and BMBC where possible;
- Deliver each Head of Internal Audit (HoIA) opinion and shared assurance for both Partner organisations.

19.2 In terms of the external audit legal and regulatory requirement:

- The Integrated Commissioning arrangements will represent a material and significant element of each Partner organisation's audit;
- The audit will account for the Pooled Fund fully within the Host Partner's accounts, with the required narrative note in the accounts of other Partner;
- The audit will address the aligned and in collaboration elements of the fund within the accounts of the Partner with the originating budget, or the Partner to which the funds were transferred through s76 or s256 of the National Health Services Act 2006, if such transfers occur;
- A note will be included in the accounts of both Partners setting out the results; and the risk share impacts, for the entirety of the Integrated Commissioning Fund.

19.3 The assurances required for the sign off of the audit of both sets of financial accounts will be agreed by the external auditors.

## 20. Anti-Fraud

20.1 The NHS Counter Fraud Authority is the national body tasked to lead the fight against fraud, bribery and corruption in the NHS. The Partners agree that coverage of counter fraud culture and issues within the Integrated Commissioning arrangement will be joined up, as far as is practicable:

- The CCG and BMBC will agree arrangements for sharing the approach to promoting the counter fraud culture; and for investigating and addressing instances of suspicion of illegal activity;
- BMBC counter fraud functions will continue to be delivered by its internal audit provider and specific fraud team. NHS anti-fraud will continue to be provided by its local counter fraud provider, Mersey Internal Audit Agency (MIAA) under NHS Counter Fraud Authority regulations.

***Budget Setting***

## 21. Budget setting ground rules

21.1 The Policy for commissioning through the Integrated Commissioning Fund is compatible with and delivers effectively the strategic priorities of both Partners.

21.2 Funds can only be used to commission prescribed services (as described in various legislation); and services that the Partners agree will contribute to the effective delivery of the commissioning priorities.

21.3 Delivery of a balanced outturn is a pre-requisite of commissioning decisions.

21.4 Budgets will be subject to specified limitations; and budget resource will be transferrable between the Partners, to enable optimum delivery of commissioned services and ensure best value in the use of resources. This will be recognised within each Partner's medium term financial strategy.

21.5 The Partners agree that the Integrated Commissioning Fund will be reviewed annually and updated accordingly in recognition of national funding decisions of the Government and associated agencies together with funding decisions taken by BMBC and the CCG.

21.6 Commissioning decisions take account of the potential impact on services retained by the Partners.

21.7 Commissioning decisions are sensitive to the potential impact on the wider community of Providers.

## 22. Budget setting methodology

22.1 Both Partners need to be satisfied that the other Partner's methodology for setting the annual budget is robust and reliable. If they are not, the issue shall be escalated through the appropriate governance arrangements. The factors that will be considered include:

- Clarity of the Services to be included in the Integrated Commissioning arrangement and risk share (Pooled Fund and Aligned Fund);
- Verification of budget determined for each Service;
- Assumed and modelled trends in demand;
- Deliverability of the savings targets applied;

- Sufficiency of the budget applied (e.g. compared with previous year outturn).

22.2 The Partners will agree:

- A transparent approach to setting budgets shared between the Partners;
- Validation of the key assumptions and approaches used by each Partner to determine the budget;
- Plans for migration to a more consistent approach to budget setting and demand forecasting that recognises the modelling challenges specific to each organisation.

22.3 Both Partners recognise the risk to resources from unmet need and rationed Services from previous years.

## 23. Accuracy of activity projections, trends and interventions

23.1 The CCG approach is based on totals agreed in contract negotiations with Providers.

23.2 The BMBC approach is based on cost and volume analysis of likely trends in demand for Services. As part of this, BMBC will:

- Determine the access eligibility thresholds for health related services, as defined by the Care Act 2014 and any flexibilities allowed;
- Determine the charges to be levied against Service Users, where this is an option.

## 24. Accuracy of cost projections

24.1 BMBC commissioning budgets will be recognised in gross value, as well as in net value:

- Other budgets, where costs are partially offset by income from fees and charges and grants, will be included at their net value in the risk share calculations.

24.2 BMBC's scope to assess the eligibility thresholds for access to services; and to set fees for services, will be taken into account when negotiating relevant contracts.

## 25. Addressing conflicts in budget setting priorities

25.1 It is expected that the Integrated Commissioning budget planning process will not adversely impact on the other commissioning obligations of the Partner:

- The Partners' oversight and scrutiny functions (CCG Governing Body, Executive Cabinet) will have the opportunity to challenge any changes proposed;
- The scheme of delegations will provide a level of control over the approval of changes;
- Arrangements will be adopted for administering proposals for significant re-engineering; and compliance with business planning and investment proposal discipline, including comprehensive consultation.

25.2 It is expected that changes in the strategic direction of the Partners will not impact adversely on each other.

## 26. Use of Integrated Commissioning Funds

- Integrated Commissioning Funds shall only be used for Permitted Expenditure.

## 27. Future budget settlements

27.1 In the event that financial settlements and budget uplifts for future years are insufficient to meet rising demands and rising costs. Possible scenarios for which include but are not limited to:

- Local Government grant funding from government (Revenue Support Grant) is projected to reduce significantly;
- NHS allocation growth is significantly less than anticipated plans;
- Both Partners may be required to produce medium term efficiency plans in order to receive multi-year financial settlements.
- Greater Manchester Health and Social Care Partnership impose additional requirements.

27.2 Principles of response to these risks and future pressures:

- As far as is possible, the value of the single budgets will be kept at their equivalent current value
- Treatment of remaining resources gaps will be addressed within the single consolidated fund during the period to 2022/2023 with both Partners agreeing to vary contributions over a 4 years to mitigate variable pressures in health and care services. It is agreed that Bury MBC will increase the value of Bury MBC resources within the ICF by a maximum sum of £12.0 million in 2019/2020 and the CCG will make a reciprocal contribution in 2020/21 should this be necessary.

## 28. Boundaries to the Fund

28.1 Budget setting will take account of boundaries on a number of planes:

- Pooled Fund versus retained funds;
- Pooled Fund versus aligned funds;
- Non-resident patients registered with GPs in Bury;
- Bury residents registered with GPs outside of Bury;
- Budgets allocated to the Bury locality on a per-capita basis.

28.2 Budget setting will also to take account of patients registered with GP Practices in the Greater Manchester area, whilst recognising that they are outside of the Integrated Commissioning Fund arrangement.

## 29. Finalising the prior year position

29.1 Both Partners acknowledge that the financial performance of the relevant budgets in the current year should be regarded as a key indicator of future years' risks; and of the scale of the savings targets agreed between the Partners. The following constraints will need to be accommodated:

- Current year out-turn position will not be known until very late in the process.

29.2 The value of the Integrated Commissioning Fund will be based on the budget allocations

- Savings targets will be identified by the Partners.

## 30. Treatment of historical overspends

30.1 CCG would account for prior year deficit as a negative balance on the RAB (Resource Account Budgeting) settlement.

30.2 BMBC cannot record a year-end deficit; and must fund remaining overspends from reserves.

## 31. Prior year and in-year overspends

31.1. The Partners recognise that differences in funding regimes and freedoms result in a different response to recorded "overspends":

- The CCG must deliver a control total determined by NHS England. In circumstances of financial distress the control total can be adjusted such that the CCG can set a budget that delivers a planned overspent position but is expected to achieve balance over a 3 to 5 year period.
- BMBC cannot record an overspend at the year-end; and has to account for overspent budgets through its reserves. But the reserves are limited and should be replaced through budget targets set in the subsequent year.

31.2. The Partners agree, in principle, that they will use these differing "flexibilities" in a combined approach to maximise protection to the Integrated Commissioning function.

## 32. Treatment of underlying and emerging deficit:

32.1 Underlying and emerging deficit will include:

- Unidentified deficit:
  - unmet need
  - unmet demand
- Identified deficit:
  - undelivered services
  - service delivery backlogs
  - waiting lists

32.2 The CCG and BMBC agree to work together to identify responses to the threat of emerging unfunded demand pressures and growth in demand.

32.3 The first point of responsibility for addressing pressures through contracts will be the Lead Commissioner. A Lead Commissioner will be identified for each Service Contract.

32.4 Escalation arrangements will be agreed for Service Contracts and commissioning arrangements that appear to be overheating and indicate future losses. These arrangements will be agreed by the Strategic Commissioning Board and will be determined by the value and percentage growth indicated.

## 33. Setting subsequent years' budgets

33.1 The s75 Agreement specifies that the Integrated Commissioning Fund will be subject to annual review. This will be alongside the medium term financial plans of each Partners.

33.2 The Partners agree to shared approach to:

- Identifying and agreeing future trends in demand and service design;
- Checking sufficiency of growth funding;
- Identifying and accounting for changes in cost pressures;
- Identifying and agreeing savings and efficiency approaches. Ensuring the robustness of planned savings programmes;
- Setting criteria for values for savings targets:
  - Minimum and maximum allowed;
  - Reality checked and deliverable.

33.3 The Partners agree to design a robust business case approach to service redesign; and to its financial impact. This will involve:

- Robust analysis of overall savings projections;
- Robust analysis of comparative impact on Partners; and recognition of the need to reflect (compensate) for these impacts in future budget setting;
- Agreement on the impact on the risk share.

***Risk Sharing Framework***

## 34. Scenarios of operational pressures and risks in budget setting

34.1 The following sections set out a range of scenarios of risk:

## 35. Pressures on Partners' budgets

### *35.1. Risk: Pressures within either Partner which results in shortfall in growth funding and/or increased savings targets*

- Possible scenarios are:
  - Shifting priorities in Council directorates and services;
  - Internal pressure on overall CCG position resulting in pressure on budget allocation for Bury patients;
  - Changes in targets set (externally) for performance in specific service area(s) within the Integrated Commissioning Fund.
  - Increased savings targets set (externally).
- Principles of response to these risks and future pressures:
  - Impacts due to shifts in internal policy and priority have to be discussed by both Partners
    - Partners will agree to apply accumulated savings;
  - Impacts due to external policy and target changes to be regarded as required changes; and partners to agree response

- Accumulated savings can be applied to offset, but need to recognise limited resource

*35.1.* ***Risk: Available resources and budgets do not address current demand***

- Possible scenarios are:
    - Growth rates in demand for services exceed available funding increase;
    - New commissioning arrangements and single approach to commissioning identifies previously un-met need;
    - Providers are carrying backlogs in activity that need to be delivered and need to be funded.

- Principles of response to these risks and future pressures:
    - The Integrated Commissioning Fund must achieve a balanced financial out-turn;
    - Providers of services will be encouraged, including through contracting, to manage service delivery costs within the allotted amount;
    - Where possible, Services will be prioritised and needs assessed. Non-statutory services may be withdrawn, if impact is less significant than effect of rationing funds to areas of demand growth. Service rationing will not be organisation specific;
    - Funds will be made available to promote more effective and streamlined provision of Services.

## 36. Savings targets, reserves and contingencies

*36.1.* ***Risk: Efficiency savings targets applied within budgets are undeliverable***

- Possible scenarios are:
    - A Partner is unable to show robust plans for achieving the savings expectations;
    - Savings target exceeds sensible levels;
    - Savings proposals would have an adverse and costly effect on other elements of the overall service delivery.

- Principles of response to these risks and future pressures:
    - Agreed process for identifying efficiency savings targets:
        - From service delivery re-design;
        - From QIPP expectations;
        - From benefits expected of merged commissioning;
        - From share of organisation's overall target;
    - Agreed approach to identifying benefit shares with Providers.
    - Agreed process for verifying likelihood of delivery of the savings targets:
        - Arrangements for assessing schemes to deliver;
        - Risk assessment for schemes; and response to higher risk proposals.
    - Agreed arrangements for sharing the risk of under-delivery of efficiency savings targets;

- Arrangements for allowing late amendments to budgets and savings target:
  - e.g. QIPP schemes determined late.

*36.2.* ***Risk: Insufficient resources to allow for a contingency or reserve to be set***

- Principles of response to these risks and future pressures:
  - Partners will agree rules specifying whether contingency (both recurrent and non-recurrent) is a required element of the annual budget; and what this level is:
    - Proportion of annual total allocation designated to contingency target to be agreed;
    - Arrangements for agreeing contingency that is lower than the agreed target;
  - Partners agree proposed treatment of any reserves brought into the Integrated Commissioning Fund:
    - Budgeted from savings in previous year(s);
    - Agreement of priorities and triggers for calls upon reserves;
  - Treatment of unspent contingency, or other underspend of the total budget to be determined by the Partners:
    - Proportion, or target value to retain within the Integrated Commissioning Fund;
    - Treatment of any underspend to be returned to the Partners;
  - Agreement on accounting for reserves.

**36.3 Risk Sharing Arrangements**

36.3.1 The agreement from 1st October 2019 is that each organisation will begin to share financial risk on a 50:50 basis.

36.3.2 The variance to the total net budget allocation at the end of each financial year will be financed on a 50:50 basis.

**37. Governance and delivery of outcomes**

37.1 The Bury Local Care Organisation (LCO) is at the heart of health and care reform in Bury. The new approach requires a stronger focus on outcomes based service delivery, highlighted by collaborative work between the One Commissioning Organisation (OCO) and LCO on the development of an outcomes framework within clearly defined timescales.

37.2 New models of neighbourhood working will require the alignment of intelligence resource across health and social care. This will facilitate a whole system view of performance (alongside care models) to ensure strategic and operational management is underpinned by robust, forward looking insight and intelligence.

37.3 The LCO are key to the delivery of the Bury Locality Plan which will lead to a clinically and financially sustainable health and care system, whilst simultaneously improving healthy life expectancy and outcomes for our residents.

37.4 Bury's approach to commissioning for outcomes is in development. The OCO expect the LCO to engage in the further development of and pay 'due regard' to the system wide outcomes framework as it further develops. This will include the development of outcome measures which will determine the impact of the Healthy

Neighbourhood model and point towards the shifts associated with self-care and person centred approaches.

37.5 The economy works together to address the areas identified as areas for improvement from a financial efficiency and quality perspective in the NHS Right Care programme. The economy also ensures outcomes are agreed in line with the NHS Long Term Plan.

37.6 The OCO and LCO will engage in a system approach to the delivery of these priorities, which cover the following areas:

- Sustainability Transformation Plans
- Finance
- Primary Care
- Urgent and emergency care
- Referral to treatment times and elective care
- Cancer
- Mental health
- People with learning disabilities
- Improving quality in organisations

## 38. Curtailing services

38.1. The existing contractual design allows BMBC and the CCG options to curtail service commissioning mid-year. There is scope to review the notice period (BMBC traditionally uses a 3 month notice period; CCG 1 year), but there is scope for earlier curtailment in event of failure to deliver the commissioned service).

38.2. The Service redesign procedure will include the requirement to identify and consider the likely knock-on and consequential effects of the proposed service.

## 39. Value of financial risk from the other Partner

39.1. The Partners recognise the high risk of overspending of the Integrated Commissioning Fund. This is based on the Partners' budgetary performance in recent years.

39.2. The Partners will be jointly responsible for the delivery of an annually balanced ICF during the period to the end of 2022/2023.

39.3. Contributions between Partners may vary in individual years to meet differing financial pressures in health and social care but the Partners will ensure the Integrated Commissioning Fund is in balance each year and individual Partner contributions will be fully restored and balanced by year ending 2022/23. (please refer to section 27.1)

***Managing the transactions of the Pooled Fund***

## 40. Transactions within the Pooled Fund

40.1 Funding management arrangements, at the transaction level, will be designed in line with the principle of limited change and aim for consistency with the administrative approach of the previous year: Where practicable funds will remain with the respective Partner; and relevant transactions will be handled by

them. If required, to fulfil specific s75 Pool rules, recharges will be applied to ensure that the entirety of the Pooled Fund record is accounted for within the Pooled Fund.

40.2 The mechanism of "cash" flow and contribution to the Pooled Fund is managed in accordance with the documented procedure for the Better Care Fund in the Group Accounting Manual (GAM). An extract of this procedure is provided at **Appendix 1.**

40.3 Expenditure from the Integrated Commissioning Fund:

- Contractual arrangements will be unchanged from the Partners' existing arrangements, unless evolving integration necessitates redesign.
- A Lead Commissioner will be identified for each contractual arrangement.

40.4 Specific arrangements and rules will be determined for the "direct payments" processes for Service Users (use of a holding bank account and "debit cards").

40.5 Any potential impact of VAT regime differences will be reduced through the planned consistency of approach to:

- Identify the scale and scope of the issue;
- Ensure that the correct VAT regime is applied to each transaction;
- Identify NHS service elements versus health related service elements.

40.6 The governance of transactions will reflect the constitution and financial regulations (SOs, SFIs, SoDA) of the Lead Commissioner, which initiates and processes the expenditure and payment transactions.

40.8 The Partners agree that transactions for Aligned Funds will continue to be undertaken in accordance with the appropriate Partner's existing mechanisms and procedures.

***Managing Financial Performance***

**41. Budget management general arrangements**

41.1 The Strategic Commissioning Board will be responsible for decisions to approve the expenditure proposed from the Pooled Fund:

- Each Partner will introduce arrangements whereby the annual allocation of funds to the Pooled Fund is agreed in accordance with their Constitution or governance requirements;
- Each Partner will approve commissioning contracts, where it is the Lead Commissioner.

41.2 The financial regulations (SFIs, SoDA) of each Partner will be reviewed for consistency. Where required, the regulations will be amended to enable the proposed structures and responsibilities to be implemented

***Review of in-year budget allocation***

41.3 The basic principle is that budget allocations to the Integrated Commissioning Fund will not change (in-year) once they have been agreed. However both Partners agree that they will be updated in recognition of national funding

decisions of the Government and associated agencies together with funding decisions taken by BMBC and the CCG.

41.4 Resources identified during the year, and specific to the services in the agreement and to the population served, will be adjusted accordingly. Examples include:

- Specific grants;
- Funding from DH, NHS England, other government sources;
- Successful bids from Greater Manchester Health and Social Care Partnership.

41.5 The Partners have agreement on a model whereby they retain the right to revisit allocations during the year

- Risks arising from external sources (protocol for responding to pressures, faced by either partner, from external sources);
- Risks arising from internal sources.

## 42. In-year financial performance

### Local operating rules

42.1 The Partners have implemented administrative arrangements based on existing arrangements, and that will be developed, where beneficial, for the strategic commissioning function as a whole.

42.2 For individual schemes, the arrangements will reflect:

- Any legislative / funding restrictions or requirements
- strategic priority restrictions

42.3 Reporting of performance (financial, contracts, quality etc.) will be delivered in terms of gross income and expenditure.

42.4 The forecasting approach for the Pooled Fund and the wider Integrated Commissioning Fund will be determined by the Partners.

### Monitoring performance

42.5 The Partners have developed a model for monitoring monthly performance of the Integrated Commissioning Fund. This model includes :

- Actual and forecast expenditure and income;
- Monitoring of service backlogs
- Monitoring against agreed contract outcomes.

## 43. Responding to overspend trends

### Alerting Partners of the likely overspend

43.1 The Partners have developed an agreed approach to addressing trends towards overspending in the Integrated Commissioning Fund. Design of the tool for alerting partners of likely overspend includes :

- Triggers and thresholds;

- Agreed sensitivity measures;
- Trend analysis and alerts;
- Analysis of impact of/on related activities;
- Impact of progress along the annual timeframe – forecasting and sensitivity analysis over the medium term.

43.2 Escalation rules will address

- Scope for managing the situation within the Strategic Commissioning Management Team, including agreed delegations;

43.3 The Partners' approach to responding to adverse trends will vary, depending on the value of the potential overspend and the progress along the annual timeline:

- differentiating response (scale, threshold etc.) according to progress through the financial year.

**Managing potential overspends**

43.4 Escalation arrangements for responding to overspends forecast through the year includes assessment of options for:

- Management of contracts (and contract adjustments);
- Management of demand;
- Service redesign.

43.5 The procedure includes arrangements for agreeing the response to; and flexibility allowed within the Integrated Commissioning Fund for changes in allocations, in-year:

- Both Partners options to curtail the Service at any point during the year.

43.6 Where elements of the trend to overspend are specific to one Partner, the Partners will agree:

- The priority of demand on available funds to offset overspends;
- The approach to allocating and apportioning risk (in year and forecast outturn) between the Partners.

43.7 Where elements of the trend to overspend exist within Integrated Commissioning elements i.e. where both Parties would otherwise separately contribute to the Service, contributions between Partners will vary in individual years to meet differing financial pressures in health and social care but the Partners will ensure the Integrated Commissioning Fund is in balance each year and individual Partner contributions will be fully restored and balanced over a 4 year rolling average period.

43.8 The Partners will agree arrangements for emergency management of any recovery position, including:

- suspension of Host Partner's management of the Integrated Commissioning Fund;
- agreed amendments to the structure of governance and management of the Integrated Commissioning Fund in emergency measures.

## 44 Responding to annual overspends

44.1 The Partners will develop arrangements for addressing Overspends not recovered at the year-end and/or projected in future years as outlined in paragraph 43.7.

44.2 BMBC's inability to carry-forward an overspent position will be addressed through use of reserves, which will be recovered in the subsequent year(s).

## 45 Responding to annual underspends

45.1 The Partners will identify underspends as generated:

- By whole Pooled Fund;
- By specific Pooled Fund elements;
- By Partner responsibility.

45.2 Options for addressing underspends recorded at the year-end will include:

- Allocate to investment fund;
- Carry forward to next year's budget:
  - Legal restrictions (CCG RAB budgeting);
  - BMBC's scope to hold balances, but CCG to prove no draw-down in advance of need;
- Off-set against next year's budget;
- Return to Partners:
  - Mechanism for agreeing share of returns.

***Other financial Considerations***

## 46 Design of the financial ledger

46.1 Both Partners will design processes that deliver a clear audit trail of each element of the Integrated Commissioning Fund.

- Assurance on the accuracy and completeness of the records will be provided by the Partners;
- Assurance of compliance with s75 may be through a self-assessment and self-certification. But the Partners agree that this will be subject to an Internal Audit review, as a minimum.

## 47 Financial reporting responsibilities of the Host Partner and the Chief Financial Officer

47.1 The Partners will agree the arrangements for administering and managing the financial records of the Pooled Fund. Elements specific to the set-up of financial record include:

- Ledger and consolidations (developing the arrangement for combining the Integrated Commissioning Fund records of the Partners);
- Transactions (delivering the audit trail to show the transactions making up the Integrated Commissioning Fund record);
- Reporting.

47.2 The Partners will agree the financial performance reporting needs of each, including providing analysis and summaries of the financial performance of the strategic commissioning function, in accordance with the Partner organisations' requirements

- In accordance with timetables agreed by both Partners;
- Providing the details required by both Partners;
- Designed to meet the needs of the differing audience(s).

47.3 The Chief Financial Officer will ensure the proper treatment specific aspects of the Pooled Fund and its transactions:

- Ring-fenced budgets, specific schemes and funding restrictions:
- VAT;
- Year-end treatment of surpluses;
- Audit.

47.4 The Chief Financial Officer will ensure the provision of the annual return to Partners, identifying separately and in total: BCF and Pooled Fund

- Contributions to the Pooled Fund:
- Expenditure from the Pooled Fund:
- Treatment of the difference / risk share;
- Detail for ring fenced schemes and restricted funds;
- Reporting deadlines.

**Requirements of partner organisations**

47.5 The Partners will agree their respective requirements for the monitoring and reporting of the financial position:

- Financial contribution to the Integrated Commissioning Fund:
- Expenditure and commitments;
- Contract performance ;
- Overall performance of the Integrated Commissioning Fund.

47.6 Assurance framework requirements:

- Sources of assurance;
- Specific funding and ring fencing requirements in respect of appropriateness of spend.

47.7 Overview of management of the Integrated Commissioning Fund:

- Review arrangements;
- Access to records, including audit access;
- Ad hoc reviews.

47.8 And year-end requirements:

- Deadlines specific to NHS/Local Government (LG) and specific reporting requirements;
- Accountable Officer / s151 Officer assurance requirements;
- IFRS reporting requirement;
- Governance statement requirements.

## 48 Managing the cash position

48.1 The Host Partner will:

- Hold monies contributed to the Pooled Fund that are required for transactions generated from the Host Partner:
- The timing of contributions will align to payment obligations
- Administer the payment processes for its own transactions;
- Administer the consolidation of the financial records of the Pooled Fund.

48.2 The Partners will adhere to the rules and restrictions applying to them:

- The CCG is required to limit cash draw-down to the monies required, when they are required:
  - Not allowed to draw excess cash;
  - Not allowed to earn interest, or investment income;
  - Not allowed to have a cash balance at the year-end;
- BMBC is allowed to invest available cash to earn income on its own resource allocation:
  - BMBC will determine how interest income is used; and is not obliged to include any part of that interest income in the Integrated Commissioning Fund.

48.3 Banking arrangements will reflect existing arrangements.

48.4 Transaction payments from the CCG and BMBC will be unchanged from current arrangements. BMBC should not suffer a reduced capacity to generate investment income from retained cash and investment balances. But, BMBC will not be able to derive investment advantage through early draw-down of CCG funds.

## 49 Payment mechanisms

49.1 The Partners acknowledge responsibility for paying all sums due to Providers, in compliance with contract terms.

49.2 The Partners will agree arrangements for making payments to Providers, such that Providers are not affected by any changes to the structure of commissioning from the Integrated Commissioning Fund.

49.3 The design of payment mechanism will ensure that the Integrated Commissioning Fund structure delivers the full process of receipt of invoice, confirmation of service delivery and standards compliance, confirming amount due to invoice amount, instructing payment.

49.4 Providers will not be affected adversely by any specific rules that apply to certain services managed through the Integrated Commissioning Fund.

49.5 Any specific arrangements for LG and NHS to comply with will be identified and addressed, as necessary.

## 50 Direct Payments

50.1 The Partners recognise the growing importance and impact of direct payments to Service Users for purchasing their own agreed packages of care.

50.2 The design of the resource allocation arrangements will deliver:

- Discipline over approval of proposed care plans and direct payments approach;
- Security of funding ahead of spend by Service Users (e.g. "debit card", pre-approved spend)
- Approach to recovering unused funding from individual Service Users.
-
- Income opportunities

50.3 **Grants and sponsorship**

50.3.1 The partners will seek to maximise uptake of opportunities of funding offered, including:

- Government Grant funding:
  - As an annual allocation;
  - Through one-off projects;
- Grants from other organisations;
- Sponsorship;
- Opportunities to charge for enhanced services commissioned.

50.4 **Chargeable health related services**

50.4.1 BMBC will retain responsibility for assessing the contribution (to a provided social service) to be paid by Service Users.

50.4.2 BMBC will retain responsibility for collecting the assessed contribution.

## 51 Insurance and VAT

51.1 **Insurance**

51.1.1 The NHS element of the Integrated Commissioning Fund will continue to be risk-shared by the NHS Litigation Authority.

51.1.2 BMBC will maintain its approach to insuring its service commissioning role.

51.1.3 Providers will be contractually required to prove that they have adequate and sufficient insurance cover for the services that they deliver.

51.2 **VAT**

51.2.1 The Partners will set out the details of the treatment of VAT in respect of the Services commissioned through the Integrated Commissioning Fund:

- Identify range of services for which VAT is reclaimable;
- Identify charged services which have to be subject to VAT;
- Identify controls for ensuring that VAT is treated correctly.

## 52 Capital investment

52.1 The financial arrangements for the Integrated Commissioning Fund will recognise and allow for BMBC's approach to delivering future service improvement through

capital grants to achieve improved quality, lower cost accommodation for services e.g.

- Disabled Facilities Grant

52.2 BMBC will retain ownership of any assets that are to be retained.

52.3 BMBC has the option to arrange on behalf of both Partners unsupported borrowing to support capital investment in the Bury economy.

**Appendix 1**

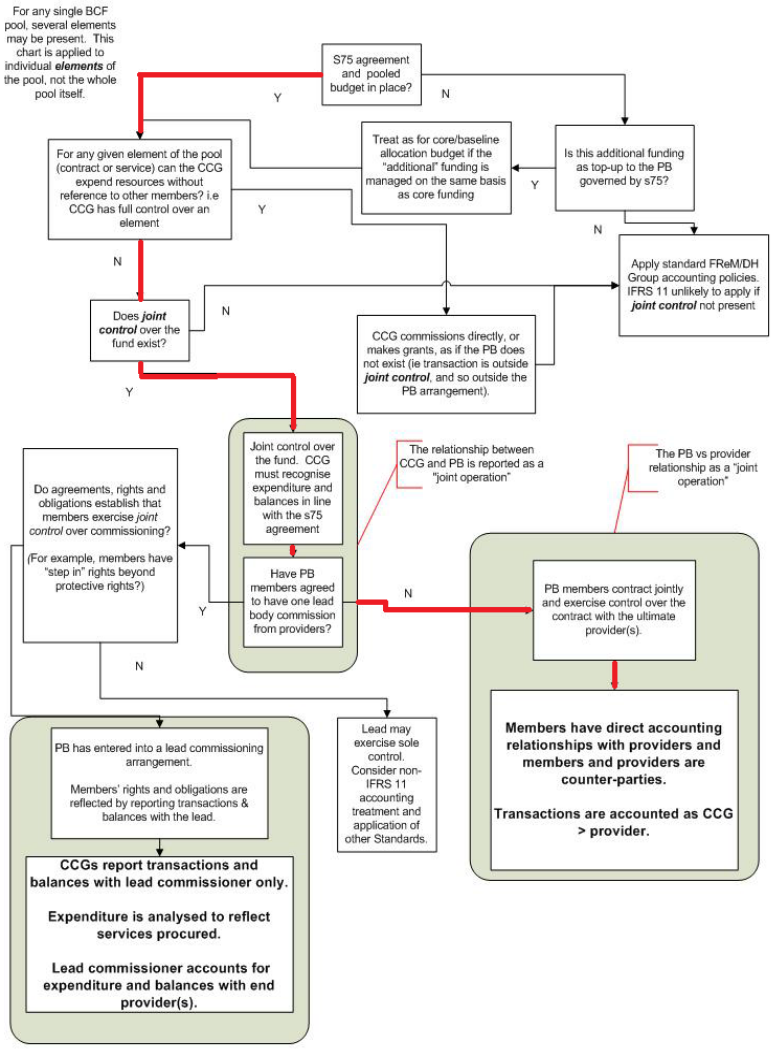
**Extract from the Group Accounting Manual (formerly Manual for Accounts)**

**Accounting for Section 75 agreements**

The DHSC manual for accounts (MfA) recently superseded by the Group Accounting Manual (GAM) but underpinned by the same accounting principles reports:

*There is no requirement to physically transfer cash from any entity to the host in order to have a pooled budget arrangement under s75. The Pooled budget is an accounting concept that does not have to be represented by the creation of a pooled cash resource.*

Given the above, and based on the decision tree extract, from the DH SC Manual For Accounts, members will have direct accounting relationships with providers. This will eliminate the CCG risk associated with NHS England consolidation, as well as simplify the Agreement of Balances process, and ensure that each member accounts for its own share of assets and liabilities. This will, however, result in the requirement of a memorandum to each of the members accounts, detailing the consolidation of the 'pooled' funds




Transfer of cash will only take place where services are commissioned on behalf of a member, by another member and will only be transacted as required, supported by detailed cash flow information, and not in advance of need.