

Dated

2024

WILTSHIRE COUNCIL

and

**NHS BATH AND NORTH EAST SOMERSET, SWINDON
AND WILTSHIRE (BSW) INTEGRATED CARE BOARD
1 April 2024 - 31 March 2032**

**SECTION 75 AGREEMENT RELATING TO THE
COMMISSIONING OF HEALTH AND SOCIAL CARE
SERVICES**

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PARTIES

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge. BA14 8JN (the "**Council**")
- (2) **NHS BATH AND NORTH EAST SOMERSET, SWINDON AND WILTSHIRE INTEGRATED CARE BOARD** of Kempthorne House, St. Martins Hospital, Clara Cross Lane, Bath. BA2 5RP (the "**ICB**")

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the county of Wiltshire (excluding the administrative area of Swindon Borough Council).
- (B) The ICB has the responsibility for commissioning health services pursuant to the 2006 Act in the county of Wiltshire (excluding the administrative area of Swindon Borough Council).
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the ICB and the Council establish a pooled fund for this purpose. The Parties wish to extend the use of pooled funds to include funding streams from outside of the Better Care Fund.
- (D) Section 75 of the 2006 Act gives powers to local authorities and integrated care boards to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Parties have agreed to collaborate and to establish a framework through which the Parties 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 Parties will pool funds and align budgets as agreed between the Parties.
- (F) The aims and benefits of the Parties in entering into this Agreement are to:
 - a) improve the quality and efficiency of the Services;
 - b) meet the National Conditions and Local Objectives;
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services;
 - d) enable more robust and flexible joint commissioning structures between the Council and BSWICB that are better placed to respond to the personalisation agenda or other policy shifts;
 - e) improve financial decision making and essential operational efficiencies across the whole system of health and social care;
 - f) develop services closer to home responding to expert opinion, good practice and Service Users and carers needs, and delivering the strategic objectives of each party;
 - g) facilitate easier integration of preventative services with intermediate and high dependency care packages across the health and social care spectrum to provide a more seamless service to Service Users and their carers;
 - h) provide an integrated point of contact for other health and social care professionals, in order that they can influence strategic commissioning decisions;
 - i) promote greater local decision making across localities about adult health and social care services that secures more innovative ways of providing support and services;
 - j) promote ways of combating social exclusion, tackle inequalities and improve the health and social wellbeing of local communities; and

- k) ensure service users and their carers receive coherent integrated packages of support so avoiding the anxiety of having to navigate a complicated bureaucracy and these services are of a high quality, safe, and supportive.
- (G) The Parties 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:

2018 Act means the Data Protection Act 2018.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

Affected Party means, in the context of Clause 23, the Party 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 Parties in accordance with Clause 20 (Review).

Approved Expenditure means any expenditure approved by the Parties in writing or as set out in the Scheme Specification in relation to an Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

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

BCF 2023 Agreement means the agreement between the Parties in respect of the Better Care Fund for the period commencing 1 April 2023

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 Parties.

Better Care Fund Plan means the plan agreed by the Parties for the relevant Financial Year setting out the Parties plan for the use of the Better Care Fund as attached as Schedule 6.

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 which relates to the powers, duties and responsibilities of the Parties which must be complied with, implemented or otherwise observed by the Parties, in England after the Commencement Date,

Commencement Date means 00:01 hrs on 1 April 2024.

Confidential Information means information, data and/or material of any nature which any Party 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 Party or the interests of a Service User respectively; or
- (c) which is a trade secret.

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

Default Liability means any sum which is agreed or determined by Law or in accordance with the terms of a Services Contract to be payable by any Party(s) as a consequence of (i) breach by any or all of the Parties 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 Parties are, under the terms of the relevant Services Contract, liable to the Provider.

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 Party 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 Scheme Specification.

Host Party means for each Pooled Fund the Party that will host the Pooled Fund and for any Non Pooled Fund the Party that will host the Non Pooled Fund

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

ICB Statutory Duties means the Duties of the ICB pursuant to Sections 14P to 14Z2 of the 2006 Act.

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

Individual Scheme means one of the schemes which has been agreed by the Parties to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification.

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

Joint (Aligned) Commissioning means a mechanism by which the Parties 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 Party(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 Party(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 Party commissions Services in relation to an Individual Scheme on behalf of the other Party in exercise of both the NHS Functions and the Health Related Functions.

Lead Party means the Party responsible for commissioning an Individual Service under a Scheme Specification.

Locality Commissioning Group means the Locality Commissioning Group 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 Parties agree.

Locality Commissioning Group Quarterly Reports means the reports that the Pooled Fund Manager shall produce and provide to the Locality Commissioning Group on a Quarterly basis.

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

Month means a calendar month.

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

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

NHS Functions means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the ICB 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 Parties which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification.

Non-Recurrent Payments means funding provided by a Party to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 10.4.

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

Party means each of the ICB and the Council, and references to "Parties" shall be construed accordingly.

Permitted Budget means in relation to a Service where the Council is the Provider, the budget that the Parties have set in relation to the particular Service.

Permitted Expenditure has the meaning given in Clause 7.3.

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

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

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

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

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).

Scheme Specification means a specification setting out the arrangements for an Individual Scheme agreed by the Parties to be commissioned under this Agreement as agreed and may be updated in accordance with the terms of this Agreement.

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

Services means such health and social care services as agreed from time to time by the Parties as commissioned under the arrangements set out in this Agreement and more specifically defined in each Scheme Specification.

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

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

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

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

Working Day means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

- 1.2. In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3. Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4. Any reference to the Parties 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 Parties shall be in writing.
- 1.11. Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12. All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2. TERM

- 2.1. This Agreement shall come into force on the Commencement Date.
- 2.2. Subject to Clause 23, this Agreement shall continue until 31 March 2032 or unless it is terminated earlier in accordance with Clause 21.
- 2.3. No later than three (3) months before 31 March 2032, the Parties may mutually agree to extend this Agreement by a further period of two (2) years. Where this Agreement is extended in accordance with this Clause 2.3, this Agreement shall continue on the same terms (subject always to any variations as may be agreed in accordance with this Agreement).
- 2.4. The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Parties.
- 2.5. This Agreement supersedes the BCF 2023 Agreement without prejudice to the rights and liabilities of the Parties under that Agreement.

3. GENERAL PRINCIPLES

- 3.1. Nothing in this Agreement shall affect:
 - 3.1.1. the liabilities of the Parties to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions);
 - 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; or
 - 3.1.3. the Council's power to determine and apply eligibility criteria for the purposes of assessment under the National Health Service and Community Care Act 1990.
- 3.2. The Parties agree to:
 - 3.2.1. act at all times in good faith towards either other;
 - 3.2.2. treat each other with respect and an equality of esteem;
 - 3.2.3. be open with information about the performance and financial status of each; and
 - 3.2.4. provide early information and notice about relevant problems.
- 3.3. For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

4. FLEXIBILITIES

- 4.1. This Agreement sets out the mechanism through which the Parties will work together to commission services. This may include one or more of the following commissioning mechanisms:
 - 4.1.1. Lead Commissioning Arrangements
 - 4.1.2. Integrated Commissioning
 - 4.1.3. Joint (Aligned) Commissioning
 - 4.1.4. the establishment of one or more Pooled Funds
in relation to Individual Schemes (the "Flexibilities")
- 4.2. Where there is Lead Commissioning Arrangements and the ICB is Lead Party the Council delegates to the ICB and the ICB 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 Party, the ICB delegates to the Council and the Council agrees to exercise on the ICB'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 Party to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Parties shall agree arrangements designed to achieve the greatest degree of delegation to the other Party necessary for the purposes of this Agreement which is consistent with the statutory constraints.
- 4.5. At the Commencement Date the Parties agree that the Individual Schemes as set out in Schedule 1 shall be in place.
- 4.6. Scheme Specifications for the Individual Schemes referred to at Clause 4.5 are set out in Schedule 1.

5. FUNCTIONS

- 5.1. The purpose of this Agreement is to establish a framework through which the Parties 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 Parties as are necessary to commission the Services in accordance with their obligations under this Agreement.
- 5.3. Where the Parties add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed and approved by each Party in accordance with the variation procedure set out in Clause 30 (Variations). Each new Scheme Specification shall be substantially in the form set out in Schedule 1.
- 5.4. The Parties shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.5. The introduction of any Individual Scheme will be subject to business case approval by the Locality Commissioning Group in accordance with the variation procedure set out in Clause 29 (Variations).

6. COMMISSIONING ARRANGEMENTS

General

- 6.1. The Parties shall comply with the commissioning arrangements as set out in the relevant Scheme Specification.
- 6.2. The Locality Commissioning Group will report back to the Health and Wellbeing Board as required by its Terms of Reference.

- 6.3. The Parties shall comply with all relevant legal duties and guidance of both Parties in relation to the Services being commissioned.
- 6.4. Each Party shall keep the other Party and the Locality Commissioning Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.
- 6.5. Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Parties shall agree in writing:
 - 6.5.1. how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
 - 6.5.2. whether the Services Contract should give rights to third parties (and in particular if a Party is not a party to the Services Contract to that Party, the Parties shall consider whether or not the Party 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 Party entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.).
- 6.6. The Parties shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Services Contracts.
- 6.7. Where a Services Contract expires or terminates for any reason, the parties shall review the associated Individual Scheme and determine whether to:
 - 6.7.1. recommission the Service and update the relevant Scheme Specification;
 - 6.7.2. amend the arrangements associated with the Service and update the relevant Scheme Specification; or
 - 6.7.2. remove the relevant Individual Scheme and Scheme Specification from this Agreement.

6.8. The Parties shall comply with the Joint Working Obligations set out in Schedule 4.

Integrated Commissioning

- 6.9. Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:
 - 6.9.1. the Parties 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.
 - 6.9.2. Both Parties shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Parties Financial Contribution in respect of that Service in each Financial Year.

Appointment of a Lead Party

- 6.10. Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Party shall:
 - 6.10.1. exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 6.10.2. endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Party in relation to each particular Service in each Financial Year.

- 6.10.3. commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 6.10.4. contract with Provider(s) for the provision of the Services on terms agreed with the other Party;
- 6.10.5. comply with all relevant legal duties and guidance of both Parties in relation to the Services being commissioned;
- 6.10.6. where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- 6.10.7. 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 ;
- 6.10.8. make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 6.10.9. keep the other Party and Locality Commissioning Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

7. ESTABLISHMENT OF A POOLED FUND

7.1. In exercise of their respective powers under Section 75 of the 2006 Act, the Parties have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Parties. At the Commencement Date there shall be the following Pooled Funds:

7.1.1. Better Care Fund

7.1.2. Improved Better Care Fund

7.2. Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.

7.3. Subject to Clause 7.4, it is agreed that the monies held in a Pooled Fund may only be expended on the following:

7.3.1. the Contract Price;

7.3.2. where the Council is to be the Provider, the Permitted Budget;

7.3.3. the Joint Commissioning roles listed at Clause 4.5;

7.3.4. Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Locality Commissioning Group;

7.3.5. Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Locality Commissioning Group

("Permitted Expenditure")

7.4. The Parties may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Party.

7.5. For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Parties in accordance with Clause 7.4.

7.6. Pursuant to this Agreement, the Parties agree to appoint a Host Party for each of the Pooled Funds set out in the Scheme Specifications. The Host Party shall be the Party responsible for:

7.6.1. holding all monies contributed to the Pooled Fund on behalf of itself and the other Parties.

7.6.2. providing the financial administrative systems for the Pooled Fund; and

7.6.3. appointing the Pooled Fund Manager;

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

8. POOLED FUND MANAGEMENT

8.1. When introducing a Pooled Fund, the Parties shall agree:

8.1.1. which of the Parties shall act as Host Party for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund; and

8.1.2. which officer of the Host Party shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.

8.2. The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:

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 Scheme Specification;

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

8.2.4. ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;

8.2.5. reporting to the Locality Commissioning Group as required by this Agreement and by the Locality Commissioning Group;

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 Locality Commissioning Group Quarterly Reports (or more frequent reports if required by the Locality Commissioning Group) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Parties and the Locality Commissioning Group to monitor the effectiveness of the Pooled Fund and to enable the Parties to complete their own financial accounts and returns. The Parties 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

8.2.8. preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying Quarterly Reports referred to in Clause 8.2.7 above to the Health and Wellbeing Board.

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

8.3.1. have regard to National Guidance and the recommendations of the Locality Commissioning Group; and

8.3.2. be accountable to the Parties for delivery of those responsibilities.

8.4. The Locality Commissioning Group may agree to the wiring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.

9. NON POOLED FUNDS

9.1. Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Parties. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.

9.2. When introducing a Non Pooled Fund in respect of an Individual Scheme, the Parties shall agree:

9.2.1. which Party if any shall host the Non-Pooled Fund; and

9.2.2. how and when Financial Contributions shall be made to the Non-Pooled Fund.

- 9.3. The Host Party will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.
- 9.4. Both Parties shall ensure that any Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification.
- 9.5. Where there are Joint (Aligned) Commissioning arrangements, both Parties shall work in cooperation and shall endeavour to ensure that:
 - 9.5.1. the NHS Functions funded from a Non-Pooled Fund are carried out within the ICB Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and
 - 9.5.2. the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

10. FINANCIAL CONTRIBUTIONS

- 10.1. The Financial Contribution of the ICB and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out in Schedule 3.
- 10.2. The Financial Contribution of the ICB and the Council to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Parties as part of each organisation's annual budget process.
- 10.3. Financial Contributions will be paid as set out in Schedule 3.
- 10.4. With the exception of Clause 13, no provision of this Agreement shall preclude the Parties from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Locality Commissioning Group minutes and recorded in the budget statement as a separate item.

11. NON FINANCIAL CONTRIBUTIONS

- 11.1. Unless set out in a Scheme Specification or otherwise agreed by the Parties, each Party shall provide the non-financial contributions for any Service that they are Lead Party or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. These contributions shall be provided at no charge to the other Parties or to the Pooled Fund.
- 11.2. Each Scheme Specification shall set out non-financial contributions of each Party 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).

1 RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 11.3. The Parties have agreed risk share arrangements as set out in Schedule 3, which provide for risk share arrangements arising within the commissioning of services from the Pooled Funds as set out in National Guidance.

Overspends in Pooled Fund

- 11.4. Subject to Clause 12.3, the Host Partner for the relevant 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.
- 11.5. The Host Party shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Locality Commissioning Group in accordance with Clause 12.4.
- 11.6. In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Locality Commissioning Group is informed as soon as reasonably

possible and the provisions of Clause 4, the relevant Scheme Specification and Schedule 3 shall apply. In the event of conflict, the terms of the Scheme Specification shall prevail.

Overspends in Non Pooled Funds

11.7. Where in Joint (Aligned) Commissioning Arrangements either Party forecasts an Overspend in relation to any Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Party and the Locality Commissioning Group and the provisions of Clause 4, the relevant Scheme Specification and Schedule 3 shall apply. In the event of conflict, the terms of the Scheme Specification shall prevail.

11.8. Where there is a Lead Commissioning Arrangement the Lead Party is responsible for the management of the Non-Pooled Fund. The Lead Party shall as soon as reasonably practicable inform the other Party and the Locality Commissioning Group of any forecasted Overspend and the provisions of Clause 4, the relevant Scheme Specification and Schedule 3 shall apply. In the event of conflict, the terms of the Scheme Specification shall prevail.

Underspend

11.9. In the event that expenditure from any Pooled Fund or Non-Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Parties shall agree how the monies shall be spent, carried forward and/or returned to the Parties and the provisions of Clause 4 and Schedule 3 shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Parties.

12. CAPITAL EXPENDITURE

12.1. Except as provided in Clause 12.2, neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Parties. If a need for capital expenditure is identified this must be agreed by the Parties.

12.2. The Parties agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.

13. VAT

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

14. AUDIT AND RIGHT OF ACCESS

14.1. All Parties shall promote a culture of probity and sound financial discipline and control. The Host Party shall arrange for the audit of the accounts of the relevant Pooled Fund and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.

14.2. All internal and external auditors and all other persons authorised by the Parties will be given the right of access by them to any document, information or explanation they require from any employee, member of the relevant Party 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.

14.3. The Parties shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

15. LIABILITIES AND INSURANCE AND INDEMNITY

15.1. Subject to Clause 16.2, and 16.3, if a Party ("First Party") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme) as a consequence of any act

or omission of another Party ("Other Party") which constitutes negligence, fraud or a breach of contract in relation to this Agreement then the Other Party shall be liable to the First Party for that Loss and shall indemnify the First Party accordingly.

- 15.2. Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Party contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Party acting in accordance with the instructions or requests of the First Party or the Locality Commissioning Group.
- 15.3. If any third party makes a claim or intimates an intention to make a claim against either Party, which may reasonably be considered as likely to give rise to liability under this Clause 16. The Party that may claim against the Other Party will:
- 15.3.1. as soon as reasonably practicable give written notice of that matter to the Other Party specifying in reasonable detail the nature of the relevant claim;
 - 15.3.2. not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Party (such consent not to be unreasonably conditioned, withheld or delayed);
 - 15.3.3. give the Other Party 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 Party and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary, defending the relevant claim.
- 15.4. Each Party 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).
- 15.5. Each Party 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

- 15.6. In respect of the indemnities given in this Clause 15:
- 15.6.1. the indemnified Party shall give written notice to the indemnifying Party 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.
 - 15.6.2. the indemnifying Party 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 Party, the indemnifying Party shall consult with the indemnified Party about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Party informed of all material matters.
 - 15.6.3. the indemnifying and indemnified Parties 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.
- 15.7. Subject to 16.1, the Parties shall share in proportion with each party's proportion of the relevant funding liability as set out in each Scheme Specification or if not stated in the Scheme Specification on an equal basis all costs, expenses, damages, losses and liabilities for any claims relating to this Agreement and any proposed or actual Services Contract made under this Agreement save and to the extent to which any costs, expenses, damages, losses and liabilities are incurred as of a consequence of a breach of this Agreement where in such circumstances the breaching Party shall bear any resulting costs, expenses, damages, losses and liabilities resulting from any such breach.

16. STANDARDS OF CONDUCT AND SERVICE

- 16.1. The Parties will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Parties respective Standing Orders and Standing Financial Instructions).

- 16.2. The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Parties will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 16.3. The ICB is subject to the ICB Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the ICB Statutory Duties and clinical governance obligations.
- 16.4. The Parties are committed to an approach to equality and equal opportunities as represented in their respective policies. The Parties will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

17. CONFLICTS OF INTEREST

- 17.1. The Parties shall comply with their respective organisation's Conflicts of Interest Policy for identifying and managing conflicts of interest and as such policies are updated from time to time during the term of this Agreement.

18. GOVERNANCE

- 18.1. Overall strategic oversight of partnership working between the Parties is vested in the LCG and Health and Wellbeing Board, which for these purposes shall make recommendations to the Parties as to any action it considers necessary.
- 18.2. The Parties have established a Locality Commissioning Group which has the Terms of Reference set out in Schedule 2.
- 18.3. The Locality Commissioning Group is based on a joint working group structure. Each member of the Locality Commissioning Group shall be an officer of one of the Parties and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Locality Commissioning Group to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.
- 18.4. The terms of reference of the Locality Commissioning Group shall be as set out in Schedule 2 as may be amended or varied by written agreed from time to time.
- 18.5. The Locality Commissioning Group is accountable to the ICB Governing Body, which is governed by the Scheme of Reservations and Delegation and the ICB Constitution which can be found here: <https://www.bswICB.nhs.uk/docs-reports/policies-and-governance>
- 18.6. Each Party has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Parties' own statutory duties and organisation are complied with.
- 18.7. The Locality Commissioning Group shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 3.
- 18.8. The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 18.9. Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Locality Commissioning Group and Health and Wellbeing Board.

19. REVIEW

- 19.1. The Parties shall produce a BCF Quarterly Report which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Commissioning Board.
- 19.2. Save where the Locality Commissioning Group agree alternative arrangements (including alternative frequencies), the Parties shall undertake an annual review ("Annual Review") of the operation of this

Agreement, any Pooled Fund and Non Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.

- 19.3. Subject to any variations to this process required by the Locality Commissioning Group, Annual Reviews shall be conducted in good faith.
- 19.4. The Parties shall within 20 Working Days of the annual review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Locality Commissioning Group.
- 19.5. In the event that the Parties fail to meet the requirements of the Better Care Fund Plan and NHS England the Parties shall provide full co-operation with NHS England to agree a recovery plan.

20. COMPLAINTS

- 20.1. The Parties' own complaints procedures shall apply to this Agreement. The Parties agree to assist one another in the management of complaints arising from this Agreement or the provision of the Services.

21. TERMINATION & DEFAULT

- 21.1. This Agreement may be terminated by any Party giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.
- 21.2. If any Party ("Relevant Party") fails to meet any of its obligations under this Agreement, the other Parties (acting jointly) may by notice require the Relevant Party to take such reasonable action within a reasonable timescale as the other Parties may specify to rectify such failure. Should the Relevant Party fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 21.3. Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Parties' rights in respect of any antecedent breach and any terms of this Agreement that expressly or by implication survive termination of this Agreement.
- 21.4. In the event of termination of this Agreement, the Parties 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 service users.
- 21.5. Upon termination of this Agreement for any reason whatsoever the following shall apply:
 - 21.5.1. the Parties 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 Parties is carried out smoothly and with as little disruption as possible to service users, employees, the Parties and third parties, so as to minimise costs and liabilities of each Party in doing so;
 - 21.5.2. where either Party has entered into a Service Contract which continues after the termination of this Agreement, both Parties shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
 - 21.5.3. the Lead Party 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 Party in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Party shall not be required to make any payments to the Provider for such amendment or termination unless the Parties shall have agreed in advance who shall be responsible for any such payment.
 - 21.5.4. where a Service Contract held by a Lead Party relates all or partially to services which relate to the other Party's Functions then provided that the Service Contract allows the other Party may request that the Lead Party assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.

21.5.5. the Locality Commissioning Group shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and

21.5.6. Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Party already accrued, prior to the date upon which such termination takes effect.

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

22. DISPUTE RESOLUTION

22.1. In the event of a dispute between the Parties arising out of this Agreement, either Party may serve written notice of the dispute on the other Party, setting out full details of the dispute.

22.2. The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 22.1, at a meeting convened for the purpose of resolving the dispute.

22.3. If the dispute remains after the meeting detailed in Clause 22.2 has taken place, the Party's respective head of service or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

22.4. If the dispute remains after the meeting detailed in Clause 22.3 has taken place, then the Parties will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation, either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). The Parties will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

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

23. FORCE MAJEURE

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

23.2. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party 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 Party and any action proposed to mitigate its effect.

23.3. As soon as practicable, following notification as detailed in Clause 24.2, the Parties 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.

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

24. CONFIDENTIALITY

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

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

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

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

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

24.2. 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.

24.3. Each Party:

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

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

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

25. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

25.1. The Parties agree that they will each cooperate with each other to enable any Party 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 Parties as appropriate and responding to any requests by the Party receiving a request for comments or other assistance.

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

26. OMBUDSMEN

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

27. INFORMATION SHARING

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

28. NOTICES

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

28.1.1. personally delivered, at the time of delivery;

- 28.1.2. posted, at the expiration of forty-eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities;
- 28.2. 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).
- 28.3. The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Party in writing:
- 28.3.1. if to the Council, addressed to the Director of Joint Commissioning at County Hall, Bythesea Road, Trowbridge. BA14 8JN.
- 28.3.2. if to the ICB, addressed to Kempthorne House, St. Martins Hospital, Clara Cross Lane, Bath. BA2 5RP.

29. VARIATION

- 29.1. No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Parties subject to approval by the Locality Commissioning Group as set out in this Clause.
- 29.2. Where the Parties agree that there will be:
- a) a new Pooled Fund;
 - b) a new Individual Scheme; or
 - c) an amendment to a current Individual Scheme,
- the Locality Commissioning Group shall agree the new or amended Individual Scheme and this must be signed by the Parties. A request to vary an Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions or other matters set out in the relevant Scheme Specification may be made by any Party but will require agreement from all of the Parties in accordance with the process set out in Clause 30.3. The notice period for any variation unless otherwise agreed by the Parties shall be 3 Months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.
- 29.3. The following approach shall, unless otherwise agreed, be followed by the Locality Commissioning Group:
- 29.3.1. on receipt of a request from one Parties to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the Locality Commissioning Group will first undertake an impact assessment and identify those Service Contracts likely to be affected;
- 29.3.2. the Locality Commissioning Group will agree whether those Service Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Service Contract terms and conditions and ensuring that the Parties holding the Service Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;
- 29.3.3. wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and
- 29.3.4. should this not be possible and one Party is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed, be shared equally between the Parties.

30. CHANGE IN LAW

- 30.1. The Parties 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.
- 30.2. On the occurrence of any Change in Law, the Parties shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Parties 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.

30.3. In the event of failure by the Parties to agree the relevant amendments to the Agreement (as appropriate), the Clause 22 (Dispute Resolution) shall apply.

31. WAIVER

31.1. No failure or delay by any Party 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.

32. SEVERANCE

32.1. 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.

33. ASSIGNMENT AND SUB CONTRACTING

33.1. The Parties shall not sub contract, assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Parties, 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 Party's statutory functions.

34. EXCLUSION OF PARTNERSHIP AND AGENCY

34.1. 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 Parties or render either Party directly liable to any third party for the debts, liabilities or obligations of the other.

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

34.2.1. act as an agent of the other;

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

34.2.3. bind the other in any way.

35. THIRD PARTY RIGHTS

35.1. 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.

36. ENTIRE AGREEMENT

36.1. The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Parties 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 Party.

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

37. COUNTERPARTS

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

38. GOVERNING LAW AND JURISDICTION

38.1. 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.

38.2. Subject to Clause 23 (Dispute Resolution), the Parties 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 Parties on the date of this Agreement

THE COMMON SEAL OF WILTSHIRE COUNCIL

was hereunto affixed

in the presence of:

Authorised Signatory

Signed for on behalf of **NHS BATH AND
NORTH EAST SOMERSET, SWINDON
AND WILTSHIRE
INTEGRATED CARE BOARD**

Authorised Signatory

SCHEDULE 1 – SCHEMES AND LIABILITIES

1 - Funding Source	Funding 2024/25 £
Improved Better Care Fund	10,242,097
Disabled Facilities Grant	4,050,899
Minimum ICB Contribution	40,335,427
Additional ICB Contribution	2,102,263
Additional LA Contribution	5,080,155
Discharge Fund - ICB	3,807,000
Discharge Fund - LA	2,393,210
	68,011,051

2 - Funding Split	2024/25 Budget £
iBCF	10,242,097
BCF	47,517,845
Disabled Facilities Grant	4,050,899
Discharge Fund	6,200,210
	68,011,051

3 - Scheme Allocation BCF	2024/25 Budget £	Function and Overview	Pooled	Host Partner	Lead Commissioner	Funding Liabilities	
						WC %	ICB %
IC Therapy (WHC ACS)	991,137	Pathway 2 bed therapy support	Yes	Wiltshire Health & Care	ICB	50%	50%
Access to Care inc SPA	1,086,519	Assesses and coordinates support for service users who have been directly referred to the service.	Yes	Medvivo	ICB	50%	50%
Patient Flow (WHC ACS)	184,485	Flow Hub managed by Wiltshire Health and Care	Yes	Wiltshire Health & Care	ICB	50%	50%
WH&C In Reach	248,572	Hospital based in-reach service	Yes	Wiltshire Health & Care	ICB	50%	50%
Pathway 2 Beds GP Cover	162,263	Pathway 2 Beds specific GP support	Yes	GP Surgeries	ICB	50%	50%
Pathway 2 Beds GP Cover - a	95,627	Pathway 2 Beds specific GP support	Yes	GP Surgeries	ICB	50%	50%
Step Up Beds (WHC ACS) Community Hospital Beds	1,037,532	Community Hospital Beds. Contribution to costs. Part of the community services contract	Yes	Wiltshire Health & Care	ICB	50%	50%
Community Services - Community contract (WHC ACS)	4,513,239	Funds a range of community services provided by Wiltshire Health and Care	Yes	Wiltshire Health & Care	ICB	50%	50%
Rehabilitation Support Workers (WHC ACS)	1,475,637	HomeFirst staff	Yes	Wiltshire Health & Care	ICB	50%	50%
Integrated Equipment - CCG (excluding continence)	2,824,304	Community Equipment provision	No	Medequip	ICB	0%	100%
EOL - 72 hour pathway Discharge Service (Dorothy House)	225,191	Block bed contract	Yes	Dorothy House	ICB	50%	50%
Community geriatrics (WHC ACS)	135,056	Community geriatrician service - contracted under WH&C to work with the acutes to divert appropriate cases to community services.	Yes	Wiltshire Health & Care	ICB	50%	50%
Home first WHC	846,380	HomeFirst service funding	Yes	Wiltshire Health & Care	ICB	50%	50%
Discharge service staffing WHC	429,374	Flow Hub staff	Yes	Wiltshire Health & Care	ICB	50%	50%
Overnight Nursing WHC	732,862	Part of the Community Services Contract	Yes	Wiltshire Health & Care	ICB	50%	50%
Integrated Equipment - Local Authority (Adults)	1,635,089	Community Equipment provision	No	Medequip	LA	100%	0%
Integrated Equipment - Local Authority (Children)	310,112	Community Equipment provision	No	Medequip	LA	100%	0%
Homefirst Plus - Local Authority Contribution	414,994	HomeFirst service funding	Yes	Wiltshire Council	LA	50%	50%
Homefirst Plus - Local Authority Contribution - a	279,824	HomeFirst service funding	Yes	Wiltshire Council	LA	50%	50%
Carers - LA contribution to Pool (Adults)	706,425	Carer Support contracts	Yes	-	LA	50%	50%
Carers - LA contribution to Pool (Childrens)	76,787	Carer Support contracts	Yes	-	LA	50%	50%
Protecting Adult Social Care - maintaining services A	1,936,748	Contribution to locality team funding	Yes	-	LA	50%	50%
Protecting Adult Social Care - maintaining services B	8,680,786	Contribution to locality team funding	Yes	-	LA	50%	50%
Care Act - maintaining services C	3,288,177	Contribution to staffing costs and packages of care	Yes	-	LA	50%	50%
Medvivo - Telecare Response and Support	1,285,359	Provides a physical response service for the Telecare contract and the Urgent Care at Home service Wiltshire Council run from 1/8/24	Yes	-	LA	50%	50%
Website Data Admin & Content Officers	67,869	Staffing costs to maintain website	Yes	-	LA	50%	50%
Complex care packages	526,108	Contribution to Learning Disabilities complex care packages	Yes	-	LA	50%	50%
ASC transformation	408,153	Contribution to commissioning team salaries	Yes	-	LA	50%	50%
Hospital Social Care Discharge Services	1,920,856	Hospital based Social Care teams	Yes	-	LA	50%	50%
Homefirst Plus - CCG Contribution	694,296	HomeFirst Staffing	Yes	-	LA	50%	50%
Carers - ICB contribution to Pool (CCG)	858,015	Carer Support contracts	Yes	-	LA	50%	50%
Trusted Assessors	196,944	Provides a free assessment service to care providers in acute and community settings, carrying out patient assessments on behalf of providers	Yes	-	LA	50%	50%
BCF Support Team	157,522	Contribution to commissioning and management resource for the BCF	Yes	-	LA	50%	50%
Resource Specialists	340,482	Brokerage support - specific to self-funder support	Yes	-	LA	50%	50%
Urgent Care at Home Domiciliary Care	1,006,189	An integrated rapid health and social care responder service.	Yes	-	LA	50%	50%
Home from hospital - ageing well	442,755	Short term service for support following hospital discharge on PW0 and PW1.	Yes	-	LA	50%	50%
Bed review co-ordinator	11,349	Part of Brokerage funding	Yes	-	LA	50%	50%
Step Up/Down Beds - IR Beds (Pathway 2 Hub)	3,723,748	Bedded care that supports hospital discharge. Beds provide a rehabilitation setting to enable people to recover their independence	Yes	-	LA	50%	50%
Council reablement capacity	433,163	Increased capacity in Reablement service	Yes	-	LA	50%	50%
TF Dom Care - in house - a	270,901	Wiltshire Support at Home	Yes	-	LA	50%	50%
Contingency	207,016	-	Yes	-	LA	50%	50%
Urgent Community Response (carer Breakdown)	400,000	-	Yes	-	LA	50%	50%
Wiltshire P1 (Home First Winter)	1,640,000	-	Yes	-	LA	50%	50%
P1 Complex (Winter)	300,000	-	Yes	-	LA	50%	50%
WH&C In Reach - a	310,000	-	Yes	Wiltshire Health & Care	ICB	50%	50%
	47,517,845						

4 - Scheme Allocation iBCF	2024/25 Budget £	Function and Overview	Pooled	Host Partner	Lead Commissioner	WC %	ICB %
Home first Plus - WHC	467,152	HomeFirst Service	No	Wiltshire Health & Care	LA	100%	0%
Providing stability and extra capacity in the local care system - Home Care services -b	2,803,170	Contribution to staffing costs and packages of care	No	-	LA	100%	0%
Investigation Officers	139,800	Staffing costs for Investigation Officers	No	-	LA	100%	0%
Providing stability and extra capacity in the local care system - Accommodation (b)	927,200	Staff costs and packages of care	No	-	LA	100%	0%
Prevention & Wellbeing Team	652,900	Contribution to staff costs.	No	-	LA	100%	0%
New : Providing stability and extra capacity in the local care system - Complex Cases	1,014,700	Staffing costs for locality teams	No	-	LA	100%	0%
Providing stability and extra capacity in the local care system - Accommodation (i) iBCF	972,900	Staffing costs for locality teams	No	-	LA	100%	0%
Providing stability and extra capacity in the local care system - Accommodation (ii) iBCF	1,342,300	Staffing costs for locality teams	No	-	LA	100%	0%
Transformational Staff Charges - iBCF	151,800	Support roles	No	-	LA	100%	0%
Contribution to System Management Roles	100,000	Contribution to staff costs.	No	-	LA	100%	0%
Additional Adult Care LA Provision	1,670,175	Staff costs and packages of care	No	-	LA	100%	0%
	10,242,097						

5 - DFG	2024/25 Budget £	Function and Overview	Pooled	Host Partner	Lead Commissioner	WC %	ICB %
Disabled Facilities Capital Grant	4,050,899	National funding - specific requirements on spend	No	Various - Capital Grant	LA	100%	0%
	4,050,899						

6 - Discharge Funding - ICB	2024/25 Budget £	Function and Overview	Pooled	Host Partner	Lead Commissioner	WC %	ICB %
Integrated Equipment - CCG (excluding continence) - a	800,343	Community Equipment provision	No	Medequip	ICB	0%	100%
TF Dom Care - in house - a - Discharge Fund - ICB	829,378	Wiltshire Support at Home	Yes	-	LA	50%	50%
Dom - Care - Rapid response - a - Discharge Fund ICB	1,100,279	Reablement Service	Yes	-	LA	50%	50%
Brokerage Support	190,000	Brokerage staffing	Yes	-	LA	50%	50%
W Council in - reach (Discharge Hubs)	339,000	-	Yes	-	LA	50%	50%
WC Flow Staffing supports rapid response (Urgent Community Response)	320,000	-	Yes	-	LA	50%	50%
W Council reablement staffing	228,000	Contribution to Reablement service	Yes	-	LA	50%	50%
	3,807,000						

7 - Discharge Funding - WC	2024/25 Budget £	Function and Overview	Pooled	Host Partner	Lead Commissioner	WC %	ICB %
Wiltshire Council Discharge Fund PW3	2,393,210	Funding of bedded care for PW3 hospital discharges	Yes	-	LA	50%	50%
	2,393,210						

SCHEDULE 2 - GOVERNANCE

Wiltshire Locality Commissioning Group Terms of Reference

1. Introduction

- 1.1 In accordance with the BSW ICB's Constitutions and Standing Orders, the BSW Board established this Wiltshire Locality Commissioning Group (the Committee). The BSW ICB's Delegated Financial Limits, and Scheme of Reservations and Delegations, apply.
- 1.2 The Committee may operate in common with relevant Committees of other organisations in the interests of integration.
- 1.3 This Committee is accountable to the BSW ICB Board and Cabinet. The Committee will, where appropriate, act as an advisory and decision making body, to the two commissioning organisations, making recommendations to the ICB and Cabinet for change in commissioned services, and making decisions within the remit of these ToR.
- 1.4 The Committee has delegated authority from the BSW ICB Board and Cabinet to make decisions on all matters related to areas within the pooled budget and where there is joint funding between the ICB and Local Authority. The Committee represents the partnership of social care commissioners and health across Wiltshire to build on a shared vision for the commissioning and development of services, taking into account:
- Local needs and local priorities, as set by the Wiltshire Health and Wellbeing Board (HWB) through the JSNA and the Joint Health and Wellbeing Strategy.
 - An evidence-base of what works to deliver the best outcomes for local people.
 - A focus on early, creative preventive approaches, based in local communities.
 - A shared understanding of risk.
 - A need for improved information, advice and signposting about services available to people, including services available from the voluntary and community sectors.
 - National direction and national outcomes and frameworks for the NHS and social care.
- 1.5 The members of the Committee will ensure that any of their commissioning decisions are:
- Evidenced based.
 - Co-produced and co-ordinated around the individual
 - Based on continuous engagement and collaboration with the population
 - Sustainable, productive and affordable
 - Outcome-focused
 - Improving access and egress to/from services at the right time

- Improving customer experience, individual to tell their story only once.
- Improving operating consistency
- Focus on early intervention and prevention.
- Align with ICA priorities.

1.6 These Terms of Reference set out the membership, remit, responsibilities and reporting arrangements of the Committee.

2. Responsibilities/Duties

2.1 The BSW ICB Board and Cabinet delegates to the Committee the responsibilities for the BSW ICB's and Council's commissioning activities in the Wiltshire locality, including collaborative and joint commissioning arrangements, as permitted, with Wiltshire Council. The Committee has decision-making powers, delegated to it by the BSW ICB Board and Cabinet, to whom the Committee is accountable.

2.2. Within this remit, the Committee shall cover the following areas:

Commissioning of health and social care and care services in the Wiltshire

locality:

- a. Collaborating with relevant partners through the Wiltshire Alliance Governance Structure to develop the locality's strategy for the development and delivery of health and care services, and the locality's commissioning strategy, for approval by the ICB's Board and Cabinet.
- b. Develop, and recommend to the ICB's Board and Cabinet, the locality's financial, business and operational plans including risk sharing / risk management arrangements, as applicable.
- c. Ensure that local commissioning, including integrated / collaborative / joint commissioning, complies with the ICB's and the Council's legal and statutory obligations.
- d. Within the framework set by the ICB's, Council's Business Plan and the locality's strategies, make commissioning decisions and sign off procurement processes and outcomes for services, or recommend commissioning decisions and procurement processes to other decision-making bodies, as appropriate.
- e. Monitor the performance of commissioned services and agree performance management actions as required.
- f. Provide Cabinet and the BSW ICB Board with assurance that all commissioning arrangements in the locality (including integrated / collaborative / joint commissioning with Wiltshire Council and / or other partners) are appropriately governed and managed.
- g. Ensure, and assure Cabinet and the ICB's Board, that all statutory requirements regarding public engagement and consultation are met in the locality's health and social care commissioning activities.
- h. Approve and ensure implementation of locality policies as may be required to support integrated / collaborative / joint commissioning, following consultation with the ICB's Board and the Council's Cabinet, and ensuring alignment and compliance with Council and BSW ICB policies.
- i. Commissioning of integrated services with the ICB under the terms of the Wiltshire section 75 agreement.
- j. Continuously develop integrated commissioning, agree areas for an integrated approach, and mitigate against any negative impacts of such an approach.
- k. Within the section 75 arrangements between the Council and the ICB, make commissioning decisions for new and existing services.

- I. Manage the section 75 arrangements, including.
 - i. Regular review of said arrangements to ascertain they continue to meet identified need and deliver the intended outcomes.
 - ii. Monitoring the performance of jointly commissioned services and agree performance management actions as required.
 - iii. Risk management within the parameters set by the BSW ICB and Wiltshire Council.
 - iv. Within the parameters set by the BSW ICB and Wiltshire Council, develop and agree annual business, financial and operational plans.
 - v. Management of pooled funds, including.
 - regularly receive and review reports, and an annual return, about the income and expenditure from the Pooled Fund together with such other information as may be required to monitor the effectiveness of the Pooled Fund.
 - agree to the viring of funds between Pooled Funds.
 - approve Individual Services under the Better Care Fund, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
 - monitor the Better Care Fund.
 - receive notification of any projected underspends in the Better Care Fund and agree use of such underspends.
 - agree funding of overspends if such funding can be met from the available pooled fund and available resources, or otherwise recommend the funding request to Council and ICB approval processes.
 - vi. In the context of agreeing and managing pooled funds, facilitate the ICB's and the Council's mutual understanding of each organisation's savings and delivery plans.

3. Membership

- 3.1 The following are members of the Committee, i.e., they have the right to receive meeting documents and to vote:
 - Corporate Director of People
 - Director of Adult Social Services (DASS)
 - Head of Finance (Wiltshire Council)
 - Director of Commissioning
 - Place Director for Wiltshire
 - Member of the combined Place team or nominated by the Place Director
 - Head of Finance (ICB)
- 3.2 The following normally attend Committee meetings, i.e., they receive meeting documents but cannot participate in the Committee's decision-making and must not vote:
 - Better Care Fund Lead
 - Commissioning or Transformation leads as invited
- 3.3 The Chair, on behalf of the Committee, may invite such individuals to the Committee's meetings as are considered necessary to enable the Committee to conduct its business effectively. For the avoidance of doubt, such invited attendees cannot participate in the Committee's decision-making and must not vote.
- 3.4 The Corporate Director of People and the Place Director (Wiltshire locality) will jointly chair this Committee.

4. Quorum

- 4.1 The quorum for this Committee shall be three members, one of whom must be a finance professional.
- 4.2 If the meeting becomes inquorate, it shall either be suspended, or decisions ratified at the next meeting of the Committee.

5. Reporting

- 5.1 The Committee will report through its Chair to the ICB's Board, Cabinet and HWB about business transacted and decisions taken. Reports will be in the form of standard cover sheet, highlighting reporting items as agreed by the Committee at each meeting, together with the minutes of that meeting.
- 5.2 To report as appropriate to the BSW ICB Finance Committee and Cabinet to enable the monitoring of performance of any joint/collaborative arrangements with the local authority such as Better care Fund.
- 5.3 In addition, and as agreed with the Committee, the Chair shall report on any matters within the remit of this Committee which in the Chair's view require the ICB's Board's or Cabinet's attention.

6. Authority

- 6.1 In furtherance and support of its business, this Committee is authorised to request and review reports from external experts, and from individual functions within the ICB and the Council, as appropriate.
- 6.2 In accordance with the BSW ICB Constitution and Standing Orders, the Committee may establish sub-groups as appropriate to support the Committee in discharging its responsibilities.

7. Frequency of Meetings

- 7.1 Meetings shall normally be held monthly, and otherwise as required.

8. Secretary

- 8.1 The Secretariat for the Committee is provided by the BCF Secretariat. The Secretariat shall:
 - Provide Committee members with governance advice as required.
 - Ensure timely provision of meeting papers / materials to Committee members.
 - Record in formal minutes the business transacted, and decisions taken by the Committee.

9. Conduct of meetings

- 9.1 Committee meetings will be conducted in accordance with the Council's and BSW ICB's Constitution and Standing Orders.

- 9.2 Members of the Committee will
- Conduct the Committee's business in accordance with any national guidance and relevant codes of conduct / good governance practice, including the Nolan principles of public life.
 - Comply with the standards of business conduct, including the protocols for managing conflicts of interest, as determined in the Council's and ICB's Constitution, Standards of Business Conduct Policy, and other relevant policies / guidance on good and proper meeting conduct for public organisations.
- 9.3 Before each meeting of the Committee, a written notice of the meeting, specifying the business proposed to be transacted at it, will be delivered to every member (by email) so as to be available to them 5 working days before the meeting. Want of service of the notice to any member will not affect the validity of a meeting.
- 9.4 The Chair will agree the agenda in advance of each meeting. The agenda and supporting papers will normally be circulated 5 working days in advance of the meeting.
- 9.5 A meeting is constituted when members attend face-to-face, via telephone or video conferencing, any other electronic means, or through a combination of the above. Quoracy rules apply in any case. For the avoidance of doubt, this provision applies to and facilitates the Committees' decision making by email, should this be required to expedite an urgent decision.
- 9.6 The Committee is expected to reach decisions by consensus. For clinical and service delivery items, the Committee will assure itself that it has received such clinical advice / input as it requires to make an informed decision.
- 9.7 Where consensus cannot be reached on an item that requires a decision, and a vote is necessary, a simple majority of members present in a quorate meeting is required to pass a decision. The quoracy rules as set out in point 5 above apply. In the case of equality of votes, the Chair will have a casting vote.
- 9.8 The minutes of the proceedings of a meeting of the Committee shall be circulated to members in a timely manner following each meeting and shall formally be approved at the next ensuing meeting of the Committee. No discussion will take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendments to the minutes must be agreed and recorded at this meeting.
- 9.9 In the event an urgent decision of the Committee is required outside of a meeting, the Chair may share papers by email to the members of the Committee and request a decision within a specified period of time. If a majority of the members reply in accordance with the agreed decision making arrangements set out in paragraph 9.8, within the time period, the Chair may make the decision and record this to be presented at the next meeting of the Committee.

10. Review

- 10.1 The Committee will regularly review its performance, its membership and these terms of reference, and recommend to the ICB's Board any amendments it considers necessary to ensure it continues to discharge its business effectively.

Effective date: 14 November 2023

Review date: November 2024 **Contact:** bswicb.governance@nhs.net

BSW ICB Governing Body and Wiltshire Council Cabinet:

As the executives of the two organisations pooling budgets, these bodies are responsible for signing off the s75 agreement and agreeing the procurement of significant new initiatives (above the limits set out in the respective organisations' scheme of delegation).

In respect of the Better Care Plan, it is referred to as the 'decision making body' in the s75 agreement and as such the JCB receives regular reports from the Better Care Board (although jointly agreed recommendations have to go through the usual decision-making process for the respective organisations). A copy of the full terms of reference is included at Appendix 1. These include provision for establishing executive delivery groups.

SCHEDULE 3 – FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS

1 Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of Agreement.

2 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule 3.

3 FINANCIAL CONTRIBUTIONS AND MANAGEMENT OF THE POOLED FUND

3.1 In relation to the first Financial Year following the Commencement Date, the Parties have agreed the Financial Contributions for the Individual Schemes that are included as part of the Agreement as at the Commencement Date and these are set out in Schedule 1. Amendments to these Financial Contributions shall be agreed in accordance with Clause 10, Clause 20 (Review) and Clause 30 (Variation) of the Agreement.

3.2 The Host Party shall manage expenditure from the Pooled Fund in accordance with the terms of the Agreement including (without limitation): Clauses 8 (Pooled Fund Management) and 12 (Risk Sharing Arrangements, Overspends and Underspends), the relevant Scheme Specification and this Schedule 3.

3.3 The Pooled Fund Manager shall develop and maintain appropriate systems to monitor progress on each Individual Scheme and for alerting the Locality Commissioning Group, of any risks to delivery and the actions being taken to mitigate the likelihood of the risk to delivery occurring or impact on delivery of Better Care Fund outcomes, including the financial impact.

3.4 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with Clause 12 (Risk Sharing Arrangements, Overspends and Underspends) and this Schedule 3.

3.5 The Parties agree to co-operate fully in order to establish an agreed position in relation to any Overspends or Underspends. Any decision of the Parties regarding an Overspend or Underspend shall be made in accordance with the terms of this Agreement and shall be subject to the Law and the internal governance requirements of each Party. All decisions made by the Locality commissioning Group will be exercised in accordance with the delegated authority of the individual members of the Locality Commissioning Group.

4 REPORTING ARRANGEMENTS

4.1 Subject to Paragraph 5 below, whenever an Overspend or Underspend is projected within a Financial Year, the Parties shall use best endeavours to agree how to manage the variance in order to achieve financial balance, taking into account the circumstances and reasons for the variance. The Parties shall keep the position under review, in line with the Better Care Fund Plan budget monitoring arrangements, acting in good faith and in a reasonable manner in agreeing the management of the Overspend or Underspend.

4.2 Subject to Paragraph 5 below, in the event that the Pooled Fund Manager identifies an actual or projected Overspend or Underspend:

4.2.1 the Pooled Fund Manager shall notify the Locality Commissioning Group as soon as reasonably possible at least within 10 Working Days of identification of an actual or projected Overspend; and

4.2.2 the Locality Commissioning Group and the Parties shall act in accordance with the provisions of this Schedule 3 and the relevant Scheme Specification for that Individual Scheme in taking a decision about how to manage the Overspend or Underspend.

4.3 Following the notification in accordance with paragraph 2.1.1 above, the Parties shall act through the Locality Commissioning Group to prepare a joint action plan for the management of the Overspend or Underspend, which shall be prepared:

4.3.1 as soon as practicable after the Overspend or Underspend is notified and in any event at the next Locality commissioning Group meeting; and

- 4.3.2 save as otherwise agreed by the Parties or set out in the relevant Scheme Specification, in accordance with Paragraphs 3 or 4 below as appropriate.

5 MANAGEMENT OF OVERSPENDS

- 5.1 Pursuant to Paragraph 2.2 above and subject to Paragraph 5 below, actual or projected Overspends, shall be managed as set out below (in order of precedence):
- 5.1.1 first, the relevant Party that is responsible for commissioning the Individual Scheme will take action, wherever possible, to contain expenditure;
- 5.1.2 secondly, the Locality Commissioning Group will consider whether it is appropriate for the Party responsible for commissioning the Individual Scheme to vire Underspends from any other Individual Scheme for which it is responsible within the Pooled Fund;
- 5.1.3 thirdly, the Locality Commissioning Group whether it is appropriate to use any Underspend from within that element of this Agreement that comprises the Improved Better Care Fund grant.
- 5.1.4 fourthly, the Locality Commissioning Group will consider whether other Underspends within the Pooled Fund including the uncommitted / contingency funds, and any Underspends in Individual Schemes for which the other Party is responsible, can be vired to the Individual Scheme that has an Overspend;
- 5.1.5 fifthly, subject to any continuing obligations under any Service Contract entered into by either Party, the Parties may agree to vary or terminate a Service where the Scheme Specification provides and in accordance with the terms of Clause 22 (Termination) and 30 (Variations) of the Agreement.
- 5.2 Unless otherwise agreed by the Locality Commissioning Group (which will consider all remaining options), any Overspend will be recovered from the Parties at the end of the relevant Financial Year in proportion with their respective Financial Contributions to the relevant Individual Services.

6 MANAGEMENT OF UNDERSPENDS

- 6.1 Pursuant to Paragraph 2.2 above and subject to Paragraph 5 below, actual or potential Underspend shall be managed as set out below (in order of precedence):
- 6.1.1 first, spent, vired between, and/or utilised to manage an Overspend as referred to Paragraphs 3.1.2 and 3.1.3 above;
- 6.1.2 secondly, save as otherwise agreed by the Parties, the Underspend shall be divided equally between the Parties.

7 EXCEPTIONS

- 7.1 The following exceptions apply to the provisions above:
- 7.1.1 Prior to the Commencement Date, the ICES Pooled Budget was operated as an aligned budget within the Joint Business Arrangements. On and from the Commencement Date, the ICES Pooled Budget will be added to the Pooled Fund in order to achieve efficiencies through joint management of spend under the BCP. The Joint Commissioning Board agreed at its meeting of 8 February 2017 that this transfer was on a non-risk basis so that the provisions of Schedule 3 relating to Overspends and Underspends do not apply to the ICES Pooled Budget. Each Party shall continue to have responsibility for its own contribution to the ICES Budget so that each Party shall be liable for any Overspend in relation to its contribution, and each Party shall have discretion to determine the use of any Underspend in relation to its contribution.
- 7.1.2 Any Underspend in relation to the Carers Pooled Budget shall be ringfenced and carried forward to the next Financial Year;
- 7.1.3 The IBCF shall be treated as a Non-Recurrent Payment for the purposes of Clause 10.4 so that the provisions of this Schedule shall not apply and the Council shall have the sole

discretion to determine the use of any Underspend of the IBCF. The Council must comply with the grant conditions set out in the IBCF grant determination made under Section 31 of the Local Government Act 2003. The Parties acknowledge that the IBCF must not be used to replace, and must not be offset against, the WICB minimum contribution to the BCF; and

- 7.1.4 Any Underspend of DFG shall be carried forward and any Overspend of DFG shall be the responsibility of the Council. The Council must comply with the grant conditions set out in the DFG grant determination made under Section 31 of the Local Government Act 2003.



SCHEDULE 4 – JOINT WORKING OBLIGATIONS

PART 1 – LEAD PARTY 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. Where other forms of Service Contract are used, the list below shall be construed by the most relevant equivalent terminology.

- 8 The Lead Commissioner shall notify the other Party if it receives or serves:
 - 8.1 a Change in Control Notice;
 - 8.2 a Notice of an Event of Force Majeure;
 - 8.3 a Contract Query;
 - 8.4 Exception Reports - and provide copies of the same.
- 9 The Lead Commissioner shall provide the other Party with copies of any and all:
 - 9.1 Monthly Activity Reports;
 - 9.2 Scheme Updates;
 - 9.3 Joint Performance Dashboards;
 - 9.4 Remedial Action Plans; and
 - 9.5 Service Quality Performance Report;
- 10 The Lead Commissioner shall not without the approval of both Parties:
 - 10.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
 - 10.2 vary any Provider Plans (excluding Remedial Action Plans);
 - 10.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
 - 10.4 give any approvals under the Service Contract;
 - 10.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
 - 10.6 suspend all or part of the Services;
 - 10.7 serve any notice to terminate the Service Contract (in whole or in part);
 - 10.8 serve any notice;
 - 10.9 agree (or vary) the terms of a Succession Plan; without the prior approval of the other Party (acting through the Joint Commissioning Board) such approval not to be unreasonably withheld or delayed.
- 11 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 Party as part of that process.

Part 2 – OBLIGATIONS OF THE OTHER PARTY

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. Where other forms of Service Contract are used, the list below shall be construed by the most relevant equivalent terminology.

- 12 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:
 - 12.1 resolve disputes pursuant to a Service Contract;
 - 12.2 comply with its obligations pursuant to a Service Contract and this Agreement;
 - 12.3 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;
- 13 No Party shall unreasonably withhold or delay consent requested by the Lead Commissioner.
- 14 Each Party (other than the Lead Commissioner) shall:
 - 14.1 comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Parties;
 - 14.2 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 6 – BETTER CARE FUND PLAN

Please see attachment 1 for full copy of Better Care Plan



SCHEDULE 7 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

Council's Conflict of interest policy

[Staff register of interests and gifts – conflicts of interest \(sharepoint.com\)](#)

BSW ICB's Policy on Conflicts of Interests is contained within "BSW Standards of Business Conduct Policy"

[BSW-ICB-Standards-of-Business-Conduct-Policy.pdf](#)

3.2 Conflicts of interest

3.2.1 Overview

A conflict of interest is a set of conditions/circumstances in which an individual's ability to exercise judgement, or act in a role is, could be, or is seen to be impaired or otherwise influenced by their involvement in another role or relationship and must be managed to maintain probity and public trust.

A conflict of interest can occur when there is the possibility that an individual's judgement regarding their primary duty to NHS patients may be influenced by a secondary interest they hold. Such a conflict may be:

- Potential – there is the possibility of a material conflict between one or more interests in the future
- Actual – there is a material conflict between one or more interests
- Perceived – an observer could reasonably suspect there to be a conflict of interest regardless of whether there is one or not.

Conflicts can occur with interests held by the individual or their close family members, close friends and associates and business partners (dependant on the circumstances and the nature of such relationships).

The ICB requires clear and robust mechanisms for effective management of actual, potential and perceived conflicts of interest. With good management, clear governance and appropriate assurance mechanisms, confidence in the probity of commissioning decisions and the integrity of the clinicians will be promoted.

To support this, the ICB will:

- Do business appropriately by ensuring that the rationale for all decision making is clear and transparent and will withstand scrutiny;
- Identify and minimise the risk of conflicts of Interest at the earliest possible opportunity;
- Set rules that are clear and robust but not overly prescriptive or restrictive so as to ensure that decision making is transparent and fair whilst not being overly constraining, complex or cumbersome;
- Aid transparency by clearly documenting the approach and decisions taken at every stage of the commissioning cycle so that a clear audit trail is evident;
- Create an environment and culture where individuals feel supported and confident in declaring relevant information and raising any concerns;
- Acknowledge that a perception of wrongdoing, impaired judgement or undue influence can be as detrimental as any of them actually occurring;
- Assume the existence of a conflict of interest, if in doubt, and manage it appropriately rather than ignore it;
- Accept that for a conflict of interest to exist, financial gain is not necessary.

Conflicts of interest are inevitable, but in most cases it is possible to handle them with integrity and probity by ensuring they are identified, declared and managed in an open and transparent way.

3.2.2 Defining a conflict of interest

There can appear to be a conflict of interest when an individual's ability to exercise judgement in one role is impaired or perceived to be impaired by their obligations or competing interests.

The ICB needs to be aware of all situations where an individual has interests outside their role, where that interest has potential to result in a conflict of interest between the individual's private interests and their ICB duties.

Where an individual has an interest or becomes aware of an interest which could lead to a conflict of interest where the ICB is considering an action or decision, this must be declared as soon as possible, and within 28 days of the conflict arising. Declarations should be made to the Assistant Director of Corporate Affairs or their nominee, using the form provided in Appendix 1.

A conflict of interest has been defined in 'Managing Conflicts of Interest in the NHS: Guidance for Staff and Organisations 2017' and could include:

a) **Financial interests:** where an individual may get direct financial benefits from the consequences of a decision their organisation makes. This could include:

- A director (including a non-executive director) or senior employee in another organisation which is doing, or is likely to do business with a health or social care organisation, including involvement in a new care model;
- A shareholder, partner or owner of an organisation which is doing, or is likely to do business with a health or social care organisation;
- Someone in outside employment;
- Someone in receipt of secondary income;
- Someone in receipt of a grant;
- Someone in receipt of other payments (e.g. honoraria, day allowances, travel or subsistence);
- Someone in receipt of sponsored research funding.

b) **Non-financial professional interests:** where an individual may obtain a non-financial professional benefit from the consequences of a decision their organisation makes, (for example, increasing their professional reputation or status or promoting their professional career). This could include situations where the individual is:

- An advocate for a particular group of patients;
- A clinician with a special interest;
- An active member of a particular specialist body;
- An advisor for the Care Quality Commission (CQC) or National Institute of Health and Care Excellence (NICE);
- A research role.

a) **Non-financial personal interests:** where an individual may benefit personally from a decision their organisation makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where the individual is:

- A member of a voluntary sector board or has a position of authority within a voluntary sector organisation;
- A member of a lobbying or pressure group with an interest in health and care.

d) **Indirect interests:** where an individual has a close association with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest who would stand to benefit from a decision they are involved in making. This would include:

- Close family members and relatives;
- Close friends and associates;
- Business partners (including fellow GP partners).

Whether an interest held by another person gives rise to a conflict of interests will depend on the nature of the relationship and the role of the individual within the ICB. If in doubt, the individual should assume that a potential conflict of interest exists and make a declaration. To provide additional illustration of what conflicts of interest are, case studies can be found here, and additional advice can be sought from the ICB Conflicts of Interest Guardian or Assistant Director of Corporate Affairs.

Management of conflicts of interest

The ICB will facilitate an environment where all individuals feel able, encouraged and obliged to be open, honest and upfront about actual or potential conflicts. This will lead to effective identification and management of conflicts. In deciding whether any role or relationship or interest would impair or otherwise influence the individual's judgement or actions in their role within the ICB, the ICB will exercise discretion and consider each case separately. Where there is doubt, the existence of a conflict of interest will be assumed and managed accordingly.

The ICB will proactively manage potential conflicts of interest by:

- Maintaining and reviewing Registers of Declarations of Interest;
- Managing membership of formal committee and decision making bodies supporting the ICB;
- Implementing clear meeting and decision making procedures;
- Working within the Constitution, Standing Orders, Prime Financial Policies and Scheme of Reservations and Delegations;
- At meetings, being aware of the law and good practice.

While conflicts of interest cannot always be avoided, we will proactively identify and manage conflicts of interest by:

- Having a well governed framework for decision-making – needs assessments, consultation mechanisms, commissioning strategies and procurement procedures in place from the outset;
- Being proactive not reactive – minimise the risk of potential conflicts of interest when electing or selecting individuals;
- Being balanced and proportionate – decision-making is transparent and fair but not overly cumbersome or complex;
- Being open – early engagement on plans with relevant stakeholders and, in some circumstances, providers;
- Being responsive and using good practice – commissioning intentions are informed by recognised local health needs, and decision-making evidences good practice;
- Transparency – clearly documenting each stage of the decision-making process;
- Securing independent expert advice – from appropriate health, social care, and other relevant professionals;
- Engaging with providers – early engagement over potential changes to services;
- Creating clear and transparent commissioning specifications – setting out the depth of engagement and basis on which contract will be awarded;
- Following proper procurement processes and legal arrangements;
- Ensuring sound record-keeping - including registers of interests;
- Having a clear, recognised and easily enacted system for dispute resolution.

3.2.3 Declarations of interests

All applicants for any appointment to a senior role in the ICB or its Governing Body and committees, will be required to declare any relevant interests. The ICB will request this declaration as part of the 'Other supporting information' section of the application form.

On appointing Governing Body members, committee members and senior colleagues, the ICB will need to consider whether conflicts of interest should exclude individuals from being appointed to the relevant role. This will need to be considered on a case-by-case basis assessing the materiality of the interest, in particular, whether the individual (or any person with whom they have a close association) could benefit (whether financially or otherwise) from any decision the ICB might make. This will be particularly relevant for Governing Body, committee, and Executive / senior management roles.

The ICB will also need to determine the extent of the interest and the nature of the appointee's proposed role within the ICB. If the interest is related to an area of business significant enough that the individual would be unable to operate effectively and make a full and proper contribution in the proposed role, then that individual should not be appointed to the role.

On appointment to their position and on changing their role within the ICB, a formal declaration of interests must be made and recorded. Where there are no interests to declare a nil return is required. Any subsequent interests shall be declared as soon as reasonably practicable and by law within 28 days after the interest arises.

All ICB colleagues, including consultants, students, trainees, agency, seconded colleagues, and members of the ICB Governing Body will be asked on an annual basis to declare any potential conflicts of interests.

Decision makers must ensure that the Register of Interests is updated correctly reflecting their declaration. Members of the ICB, including practice GP partners/directors, practice representatives and Practice Managers will also be asked to make an annual declaration.

The agenda for all Governing Body, committee, or group meetings will contain a standing item, at the commencement of each meeting, requiring members to declare any interests relating specifically to the agenda items being considered including those interests already formally declared and recorded in the Register of Interests. Minutes of the meeting must detail all declarations made and any new declarations must be recorded in the Register of Interests (within 28 days). Failure to disclose an interest may render the individual liable to disciplinary action which could ultimately result in termination of employment.

As soon as interests arise or change, an updated declaration should be made (by law within 28 days). This is the responsibility of the individual. The following reiterates the points at which a declaration should be made.

When to make a declaration of interests:

- On application for a post
- On appointment
- On changing role or responsibility
- As an annual refresher
- Within 28 days of an interest arising (or an interest ceasing)
- At meetings where your interest may have some bearing on an agenda item

The Declaration of Interests form is available at Appendix 1.

3.2.4 Register of Declarations of Interests

The ICB's Register of Declarations of Interests is held by the Assistant Director of Corporate Affairs. The Register details interests declared by individuals that may be actual or potential conflicts of interests. All declared interests will be transferred promptly to the Register of Interests.

It is the responsibility of the Assistant Director of Corporate Affairs to ensure that the ICB's register is up-to-date.

Interests remain on the public register for six months after the interest has expired, or the individual has left. A historic record of interests is retained for a minimum of six years from the date on which it expired or the individual left.

The Register of Interests will give the following information:

- Name of individual;
- Position within, or relationship with, the ICB;
- Type of interest;
- Description of interest;
- Relevant dates relating to the interest;
- Action taken to mitigate risk.

The Register of Interests will be published on the ICB website at least annually. All decision making colleagues, will be informed in advance that the Register will be published, by means of a fair processing notice. In exceptional circumstances, where the public disclosure of information could give rise to a real risk of harm, and where authorised by the Conflicts of Interest Guardian, an individual's name may be redacted from the public register. The individual must believe that substantial damage or distress may be caused to themselves or somebody else by the public disclosure, and a request to withhold from publication, in writing, can be made to the Conflicts of Interest Guardian. Decisions not to publish information are made by the Conflicts of Interest Guardian, who should seek appropriate legal advice where required, and who will inform the ICB's Governing Body of any such decision. The ICB should retain a confidential un-redacted version of the register.

The register will be reviewed at least three times a year by the ICB Governing Body in public and will be published within the Annual Report and Annual Governance Statement by a link to the website. Individuals will be able to request copies of information held about them by making a data subject access request under the General Data Protection Regulations 2016.

The Assistant Director of Corporate Affairs or their nominee, discussing with the Conflicts of Interest Guardian where appropriate, will consider every interest declared on appointment, on refreshed declarations of interest, and any declared new interests. There will be occasions where an individual declares an interest in good faith but, upon closer consideration, it is clear that this does not constitute a genuine conflict of interest, due to the

nature, relevance and materiality of the interest and/or the ability of the individual to influence decisions, award contracts or expend financial resources. In these situations the Assistant Director of Corporate Affairs or their nominee will retain the declared interest but will not record the interest on the register. Reasoning for this decision will be recorded.

There may be occasions when the conflict of interest is profound and acute. The Assistant Director of Corporate Affairs will bring this to the attention of the Conflicts of Interest Guardian and it may be decided that the interest is not manageable. In order to manage such a conflict of interest, an individual may be required to step down from a particular role or move to another role within the ICB. Section 21 of the standard employment contract supports action required in this regard.

3.2.5 Managing membership

The Conflicts of Interest Guardian will, with the Assistant Director of Corporate Affairs, ensure that for every interest declared on appointment or declared as a new interest, arrangements are in place to manage the potential conflicts of interest, to ensure the integrity of the decision making process and to protect individuals and the resources and reputation of the National Health Service (NHS).

Any individual who has a material interest in an organisation which provides, or is likely to provide, substantial services to the ICB (whether as a provider of healthcare or commissioning support services, or otherwise) should recognise the inherent conflict of interest risk that may arise and should not be a member of the Governing Body or of a committee or strategic decision making group of the ICB, in particular if the nature and extent of their interest and the nature of their proposed role is such that they are likely to need to exclude themselves from decision-making on so regular a basis that it significantly limits their ability to effectively perform that role.

Where a significant interest is declared, the individual should not be a voting member of a committee if a contract is already in place with the relevant provider or if it is likely that a contract **may** be considered in the future.

For previously recorded declarations of interest, steps will be taken to ensure that Committee membership supports decision making as far as is reasonably practicable.

Should the situation arise that a significant number of individuals (more than 50%) are deemed to be prevented from taking part in a meeting because of conflicts of interests, the Chair (or deputy) will determine whether or not the discussion can proceed. In making this decision, the Chair will consider whether the meeting is quorate, in accordance with the number and balance of membership set out in the ICB Standing Orders and approved committee Terms of Reference.

3.2.6 Management of meetings and decision making

The Chair of a meeting should consider ahead of each meeting what conflicts are likely to arise and how they should be managed. Through the meeting minutes, the Chair should document management action which could include:

- Requiring the member not to attend the meeting;
- Ensuring the member does not receive meeting papers for the relevant item;
- Requiring the member to not attend all or part of the discussion and decision on the relevant item; In private meetings, this could include requiring the individual to leave the room and in public meetings to either leave the room or join the audience in the public seating area;
- Allowing the individual to participate in some or all of the discussion when the relevant matter(s) are being discussed but requiring them to leave the meeting when any decisions are being taken in relation to those matter(s). This may be appropriate where, for example, the conflicted individual has important relevant knowledge and experience of the matter(s) under discussion, which it would be of benefit for the meeting to hear, but this will depend on the nature and extent of the interest which has been declared;
- Noting the nature and extent of the interest but judging it appropriate to allow the member to remain and participate in both the discussion and in any decision;
- Removing the member from the group or process altogether.

The agenda for all strategic decision making groups will contain a standing item, at the commencement of each meeting, requiring members to declare any interests relating specifically to the agenda items being considered including those interests already formally declared and recorded in the Register of Interests.

The Chair of the meeting will decide whether there is a conflict of interest and ensure that the appropriate course of action is taken. The Chair may consult with the Conflicts of Interest Guardian.

Failure to disclose an interest may render the individual liable to disciplinary action which could ultimately result in termination of employment or office. Where others at the meeting are aware of facts or circumstances which may give rise to a conflict of interests which has not been declared, this must be brought to the attention of the Chair to take the appropriate course of action.

Where the Chair of a meeting has a personal interest, previously declared or otherwise, in relation to the scheduled or likely business of the meeting, they must make a declaration and the Vice Chair (or other nominated individual if the Vice Chair is also conflicted) will act as Chair for the relevant part of the meeting.

Where a quorum cannot be convened from the membership of the meeting, owing to the arrangements for managing conflicts of interest or potential conflicts of interest, the Chair of the meeting shall consult with the Assistant Director of Corporate Affairs on the action to be taken. This may include:

- requiring another of the ICB's committees which can be quorate to progress the item of business, or if this is not possible a recommendation on decision can still be taken by remaining members and referred to the ICB's Audit Committee for verifying proposed recommendations.
- inviting on a temporary basis one or more of the following to make up the quorum (where the Constitution permits these to be members of the committee / sub-committee in question) so that the ICB can progress the item of business:
 - an individual appointed by a Member of the ICB to act on its behalf in the dealings between it and the ICB;
 - a member of the Health and Wellbeing Board;
 - a member of another ICB's Governing Body or Committee.

Advisory committees bring together experts from a specific field of practice and often draw from a relatively small pool of individuals. It is likely that these advisors will have interests relevant to the subject matter. The chair should not normally have any specific direct or indirect financial or non-financial interests. Advisors must declare their interests on being invited to participate and, where there are material interests, should be allowed to participate but must not participate in decision making.

Minutes of meetings must detail all declarations made along with the course of action taken and any new declarations must be recorded in the Register of Interests. The minute will include:

- who has the interest;
- the nature and magnitude of the interest and why it gives rise to a conflict;
- the item(s) on the agenda to which it relates;
- how the conflict was agreed to be managed;
- evidence that the conflict was managed as intended (recording the time/point at which individuals left the room and returned).

3.2.7 Members of the ICB

GPs, and their practice staff, by nature of their profession have an immediate conflict as providers of primary care services and this of course does not exclude them being involved in the running of the ICB. All relevant interests, including those of practice staff who are involved in direct ICB work, must be declared and openly disclosed in the conduct of business to ensure it is handled appropriately.

Members should conform to the published guidelines of the General Medical Council (GMC) 'Good Medical Practice' Financial and Commercial Arrangements and Conflicts of Interest (2013), which states:

77. You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.

78. You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients.

79. If you are faced with a conflict of interest, you must be open about the conflict, declaring your interest formally, and you should be prepared to exclude yourself from decision making.

80. You must not ask for or accept – from patients, colleagues or others – any inducement, gift or hospitality that may affect or be seen to affect the way you prescribe for, treat or refer patients or commission services for patients. You must not offer these inducements.

[HR Direct - Code of Conduct policy and procedure.pdf - All Documents \(sharepoint.com\)](#)

SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL

BSW ICB IG Framework

INFORMATION GOVERNANCE FRAMEWORK

1.0 INTRODUCTION & PURPOSE

This framework sets out the approach taken within BaNES, Swindon and Wiltshire (BSW) ICB for embedding information governance and details the continuous improvements that BSW is working towards. The organisation must have a robust information governance management framework to provide the clarity and context for its information governance activities.

The framework identifies how BSW will deliver its strategic information governance responsibilities by identifying the accountability structure, processes, interrelated policies, procedures, improvement plans, reporting hierarchy and training within the ICB. BSW will also ensure that the future management and protection of organisational information is in compliance with legislative and Government process and procedure including the NHS Digital 10 Data Security Standards.

2.0 SCOPE & DEFINITIONS

2.1 SCOPE

This document applies to all directly and indirectly employed colleagues within BSW ICB and other persons working within or on behalf of the organisation. This document applies to all third party contractors or those with similar relationships through their contractual agreement with the ICB.

‘Information governance’ describes the approach taken within which information standards are developed, implemented and maintained by the ICB and ensures best practice applies, in particular to all information relating to the organisation and individuals.

Information governance management ensures that data is sourced, held and used legally, securely, efficiently and effectively, in order to deliver the best possible care in compliance with legislation and advice received from bodies including NHS Digital. Information is a vital asset to the organisation supporting the effective management of commissioned services and resources. Therefore it is essential that all organisational information be managed effectively within a robust information governance management framework.

The organisation requires accurate, timely and relevant information to enable it to commission the highest quality healthcare and to operate effectively and meet its objectives. It is the responsibility of all ICB colleagues to ensure that information is accurate and current and is used proactively in the conduct of its business. Accurate information that is dependable plays a key role in both corporate and clinical governance, strategic risk, performance management and service planning.

In order to assist colleagues with understanding their responsibilities under this framework, the following types of information and their definitions are applicable:

2.2 DEFINITIONS

Personal Data (derived from the GDPR)	Any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
‘Special Categories’ of Personal Data (derived from the GDPR)	‘Special Categories’ of Personal Data is different from Personal Data and consists of information relating to: (a) The racial or ethnic origin of the data subject (b) Their political opinions (c) Their religious beliefs or other beliefs of a similar nature (d) Whether a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1998

	(e) Genetic data (f) Biometric data for the purpose of uniquely identifying a natural person (g) Their physical or mental health or condition (h) Their sexual life.
Personal Confidential Data	Personal and Special Categories of Personal Data owed a duty of confidentiality (under the common law). This term describes personal information about identified or identifiable individuals, which should be kept private or secret. The definition includes dead as well as living people and 'confidential' includes information 'given in confidence' and 'that which is owed a duty of confidence'. The term is used in the Caldicott 2 Review: Information: to share or not to share (published March 2013).
Commercially confidential Information	Business/Commercial information, including that subject to statutory or regulatory obligations, which may be damaging to BSW ICB or a commercial partner if improperly accessed or shared. Also as defined in the Freedom of Information Act 2000 and the Environmental Information Regulations.

3.0 PROCESS/REQUIREMENTS

3.1 Implementation objectives

To develop information quality assurance standards in alignment with the content of this framework to support:

- Corporate governance (which ensures organisations achieve their business objectives and meet integrity and accountability standards);
- Clinical governance (ensuring continuous improvements in the quality of healthcare);
- Research governance (which ensures compliance with ethical standards).

The strategic implementation of this framework will promote continuous improvements in information handling underpinned by clear standards. BSW will be able to ensure that all colleagues manage personal information in compliance with NHS Digital regulations for governance.

Colleagues will be aware that their records will not be disclosed inappropriately, which will lead to greater confidence in NHS working practices.

The information governance framework should be seen as a tool that will aid the ICB in embedding a 'robust governance framework'. Information governance contributes to other standards by ensuring that data required to support decisions, processes and procedures is accurate, available and endures.

3.2 Reporting

A report shall be presented to the Finance Committee in quarter one of each year including details of the annual Data Security and Protection Toolkit self-assessment submission and the terms of reference for the Information Governance Steering Group (IGSG).

The IGSG will receive updates on progress with information governance audits, training and toolkit evidence requirements, will note completed Data Protection Impact Assessments (DPIA), will oversee incidents that may have occurred, and will consider and make recommendations on information governance issues. The group will also identify and allocate any associated resource implications incurred by the implementation of the information governance framework, policy and improvement plan, bringing this to the attention of the Finance Committee where necessary.

The annual internal audit of information governance shall be reported to the Audit Committee together with any recommendations identified and the associated improvement plans.

3.3 Improvement programme

Risks and issues will be identified where they may impact upon delivery of the IG improvement programme which will be monitored by the IGSG.

Implementation of robust information governance arrangements will deliver improvements in information handling by following the Department of Health standards (known as the 'HORUS' model), these standards require that information will be:

Held securely and confidentially
Obtained fairly and efficiently
Recorded accurately and reliably
Used effectively and ethically
Shared appropriately and lawfully

Information governance is a framework to provide consistency and best practice for the many different information handling requests and associated guidance. These principles are equally supported by the Caldicott Principles which have been subsumed into the NHS Code of Confidentiality.

There are five interlinked principles, which serve to guide these information governance responsibilities:

- Openness
- Legal compliance
- Information security
- Quality assurance
- Proactive use of information.

Where it is necessary to make a high level decision regarding the acquiring, processing, sharing, storage or deletion of information outside the DPIA process, Caldicott Guardian, SIRO and DPO will record their decision(s) in the IG Decision Log (Appendix 4).

4.0 ROLES & RESPONSIBILITIES

Accountable Officer

The Accountable Officer (ICB Chief Executive) is the 'information governance lead' and has overall responsibility for compliance with information governance legislation and best practices, and the requirements within the 'Data Security & Protection toolkit' (DSPT). The Accountable Officer is responsible for the overall management of the organisation and for ensuring appropriate mechanisms are in place to support service delivery and continuity. Information governance is the key to supporting this within the organisation.

Senior Information Risk Owner (SIRO)

The SIRO is a member of the Executive Management Team, chairs the Information Governance Steering Group and is accountable to the Finance Committee for the use of information. They ensure that the organisation conducts its business in an open, honest and secure manner, updating the Finance Committee in respect to the annual report, the statement of internal controls and any changes in the law or potential risks. The SIRO is supported by the Caldicott Guardian, the Deputy SIRO, and the Information Asset Owners (IAO).

Caldicott Guardian

The Caldicott Guardian is a member of the Executive Management Team and a senior health or social care professional with responsibility for promoting clinical governance or equivalent functions. The Caldicott Guardian, acting as the conscience of the organisation, plays a key role in ensuring that the ICB satisfies the highest practical standards for handling patient/colleague identifiable information. The Caldicott Guardian is supported by the Deputy Caldicott Guardian.

Data Protection Officer (DPO)

This role has the responsibilities as set out in the GDPR. The Data Protection Officer (DPO) reports directly to the Governing Body in matters relating to data protection assurance and compliance, without prior oversight by their line manager. The DPO must ensure that their responsibilities are not influenced in any way and should a potential conflict of interest arise, report this to the highest management level.

Their primary duties are to:

- Inform and advise the organisation and colleagues of their IG responsibilities;
- Monitor compliance with the GDPR and the DPA 2018;
- Provide advice, where requested, regarding the Data Protection Impact Assessment, and monitor performance;
- Cooperate with the supervisory authority;
- Be the contact point with the Information Commissioners Office;
- Ensure that where an incident is likely to result in a risk to the rights and freedoms of Data Subjects that the ICO is informed no later than 72 hours after the organisation becomes aware of the incident.

They must give due regard to the risks associated with the processing of data undertaken by the organisation and work with the SIRO and Caldicott Guardian to achieve this.

Information asset owners (IAO)

Within BSW, IAO are senior colleagues who are owners of one or more identified information assets or data flows of the organisation (Terms of Reference at Appendix 3). There are IAO working in a variety of senior roles to support the SIRO by recording and risk assessing their assets in order to:

Provide assurance to the SIRO on the security and use of these assets through contribution to an annual report;

- Understand and address risks to the information assets and flows that they 'own' facilitated by the completion of DPIA.

Information Asset Administrator (IAA)

Within BSW, IAA are colleagues who assist IAO in the management of their Information Assets (Terms of Reference at Appendix 3). IAA serve as local records managers and are responsible for assisting in the co-ordination of all aspects of information governance requests in the execution of their duties, which include:

- providing support to their IAO;
- ensure that policies and procedures are followed locally;
- recognising potential or actual IG security incidents;
- undertaking relevant IG audit tasks;
- consulting their IAO on incident management;
- ensuring that data flow maps and information asset registers are accurate and maintained.

SCW CSU Information Governance service

SCW provides IG support services in line with the information governance service specification under any Service Level Agreement for IG Services to customers.

The SCW CSU IG Consultant will undertake all operational activities in support of the Service Level Agreement.

The Information Governance Steering Group (IGSG)

- Provides a forum for the scrutiny of the IG management framework and assurance model;
- Manages and reviews DSP toolkit action plans;
- Oversees the annual Data Security and Protection Toolkit assessment for sign off by SIRO;
- Agrees and oversees the organisation's IG improvement programme;
- Ensures that the organisation's approach to IG is communicated to all colleagues and made available to the public as appropriate;
- Ensures that the Caldicott Guardian is offered support, advice and guidance in order for them to fulfil their obligations under the Caldicott Function;
- Ensures that the Data Protection Officer is supported and given a forum and mandate to provide appropriate advice and guidance to the ICB as is required under the Data Protection Legislation;
- Ensures that the SIRO is informed of information risks or activities that have or could lead to the escalation of information risks within BSW;
- Monitors the organisation's information processing activities to ensure compliance with Data Protection Legislation and guidance;
- Ensures that training made available by the organisation is taken up by colleagues to support their role;
- Ensures that records management standards are developed and implemented within the organisation;
- Provides a focal point for the resolution and/or discussion of IG issues;
- Reviews the flows of information to ensure they are appropriate and supported by relevant documentation especially those involving any transfer of personal data and special categories of personal data;
- Ensures that activities include the completion of a Data Protection Impact Assessment (DPIA) where required under Data Protection Legislation;
- Ensures that Business Continuity plans for services include appropriate reference to information assets and continuity/recovery activities;
- Supports the work of the SIRO, Caldicott Guardian (CG), Data Protection Officer, Information Asset Owners (IAO) and Information Asset Administrators (IAA);
- Reviews all information and information security incidents;
- Reviews information and information security risks/issues and escalates where appropriate within the organisation;
- Develops, provides direction and maintains IG policies and guidance.

5.0 TRAINING

It is the responsibility of the ICB to ensure that all new colleagues are provided with information governance, information security, freedom of information and records management training as part of their induction. The Information Governance Handbook is issued upon notification of a new starter. Requirements for initial and ongoing IG training, which is periodically reviewed by the IGSG, is detailed in Appendix 2 to this document and from the latest Training Needs Analysis available on the ICB intranet.

All new colleagues must use the NHS Digital E-Learning for Health (e-lfh) online IG training tool: nhsdigital.e-lfh.org.uk to undertake the Data Security Awareness training and they will access this through the ConsultOD learning and development portal.

This on-line training must be undertaken on an annual basis by all ICB colleagues by 31 December.

BSW, through its learning and development commitment ensures that appropriate annual training is made available to colleagues and completed as necessary to support their duties. In addition to the Data Security Awareness annual training all IAO, all IAA, the DPO, the Caldicott Guardian and SIRO are required to have undertaken any additional training associated with their identified roles as detailed in the BSW Training Needs Analysis (TNA) Protocol (Appendix 2).

Following an incident, further training may be delivered as a mandatory requirement. Disciplinary procedures may be used where it is proven that a colleague has acted in breach of the terms of their contract.

6.0 EQUALITY AND DIVERSITY

An Equality Impact Assessment (EIA) has been completed for this framework and no significant issues were identified.

7.0 SUCCESS CRITERIA / MONITORING EFFECTIVENESS

The performance of the framework will be monitored in two ways:

- Against the criteria set in the Data Security and Protection Toolkit, using the annual submission on 31 March and associated improvement plan.
- The internal audit process and subsequent report to the Audit Committee.

8.0 REVIEW

This framework will be reviewed on an annual basis by the Information Governance Steering Group. The document will be reviewed earlier in line with changes to Information Governance legislation, on the advice of the SCW CSU and/or where there are organisational changes.

9.0 REFERENCES AND LINKS TO OTHER DOCUMENTS

Legislation

All colleagues are required to comply with Data Protection Legislation. This includes:

- the General Data Protection Regulations (GDPR) 2016;
- the Data Protection Act (DPA) 2018;
- the Freedom of Information Act (FOIA) 2000;
- the Access to Health Records Act (AHRA) 1990;
- the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any applicable national Laws implementing them as amended from time to time.

In addition, consideration will also be given to all applicable law concerning privacy confidentiality, the processing and sharing of personal data including:

- the Human Rights Act 1998;
- the Health and Social Care Act 2012 as amended by the Health and Social Care (Safety and Quality) Act 2015;
- the common law duty of confidentiality; and
- the Privacy and Electronic Communications (EC Directive) Regulations.

Consideration must also be given to the:

- Computer Misuse Act 1990 and as amended by the Police and Justice Act 2006 (Computer Misuse);
- Copyright, Designs and Patents Act 1988;
- Regulation of Investigatory Powers Act 2000;
- Electronic Communications Act 2000;
- Other relevant Health and Social Care Acts;
- Fraud Act 2006;
- Bribery Act 2010;
- Criminal Justice and Immigration Act 2008;
- Equality Act 2010;
- Terrorism Act 2006;
- Malicious Communications Act 1988;
- Counter-Terrorism and Security Act 2015;
- Digital Economy Act 2010 and 2017.

Guidance

- [ICO Guidance](#)
- [Dept. of Health and Social Care 2017/18 Data Security and Protection Requirements](#)
- [Records management: Code of Practice for Health & Social care](#)
- [Confidentiality: NHS Code of Practice - Publications - Inside Government - GOV.UK](#)
- [Confidentiality: NHS Code of Practice - supplementary guidance](#)
- [NHSX Information Governance](#)

10.0 REVIEW HISTORY

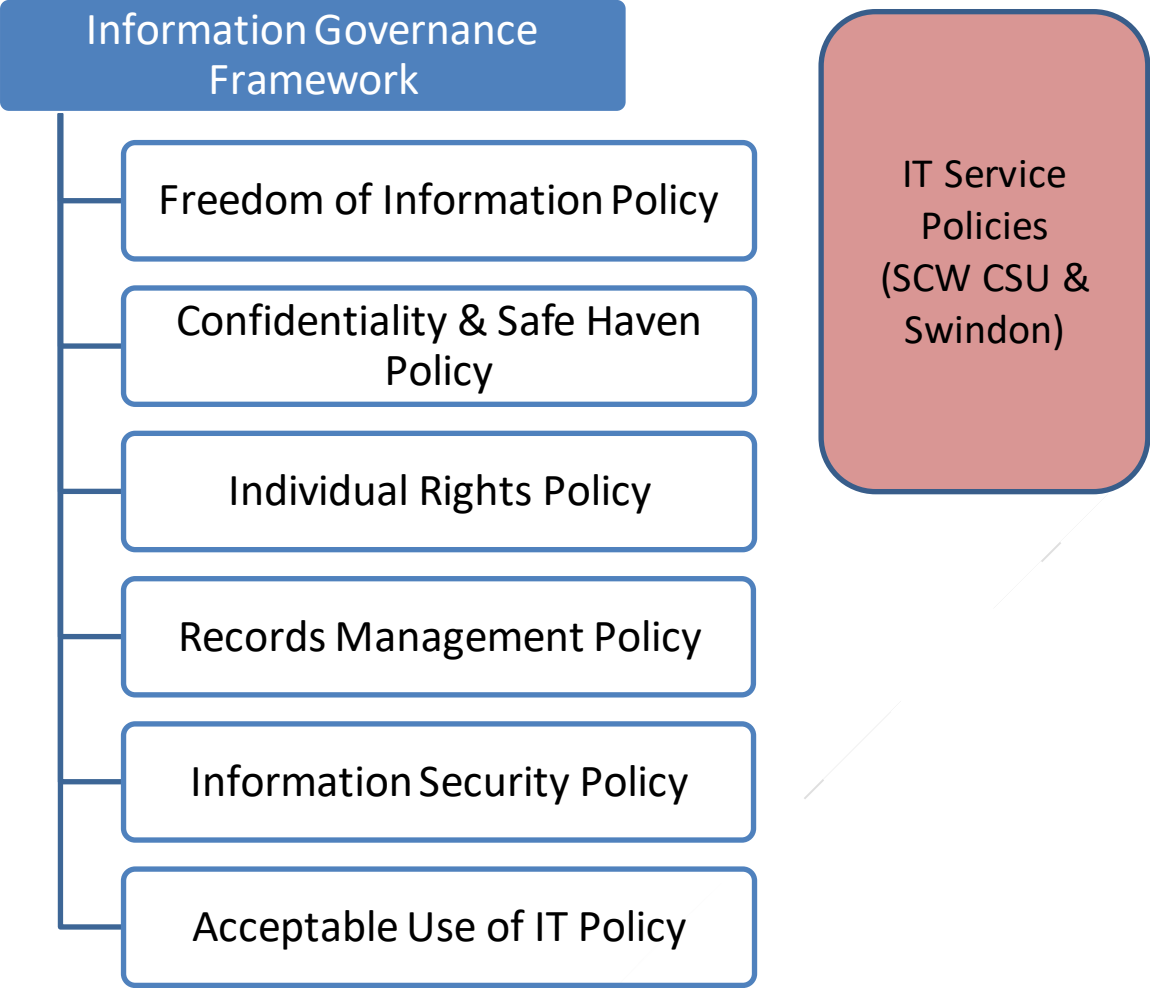
Version	Review Date	Reviewed By	Changes Required? (If yes, please summarise)	Changes Approved By	Approval Date
V0.1	Jan'20	IGSG	Addition of IAO/IAA nomination letters & ToR; Addition of TNA; Addition of IG Decision Log.	IGSG	
V0.2	Apr'20	Gov Body	None	Gov Body	9/4/20
V1.1	Mar'21	IGSG	Removal of formal appointment for IAO/IAA, update to TNA V3 & Minor changes	IGSG	10/3/21
V1.2	Apr'21	Finance Committee	None	Finance Committee	6/5/21

11.0 ACKNOWLEDGEMENT OF EXTERNAL SOURCES / ASSISTANCE

Title/Author/Individual	Institution/Organisation	Comment / Link
Information Governance Framework and Strategy V5.1 7/9/18	SCW CSU	Document provided as a GDPR compliant template

12.0 LINKS WITH OTHER ICB DOCUMENTS

Document title
See Appendix 1



POLICIES

Freedom of Information Policy

This policy outlines the organisation’s responsibilities in complying with the Freedom of Information Act (2000), the Environmental Information Regulations (2004), the Re-use of Public Sector Information and the relation to the Data Protection Legislation. This policy is a statement of what the ICB intends to do to ensure and maintain compliance with the Act and regulations. It is not a statement of how compliance will be achieved; this will be a matter for operational procedures.

Confidentiality and Safe Haven Policy

This document describes the ICB policy on data protection and confidentiality together with employees' responsibilities for the safeguarding of confidential information held both manually (non-computer in a structured filing system) and on computers. This policy also aims to ensure that the ICB operates procedures to safeguard the privacy and confidentiality of information by ensuring that information sent to or from the ICB is handled in such a way as to minimise the risk of inappropriate access or disclosure.

Individual Rights Policy

This document details how the organisation will handle requests for personal information including health records for living persons (Subject Access Request), deceased persons (Access to Records) and staff records, as well as the other rights under the GDPR. This policy will be accompanied by a standard operating procedure to support staff in processing such requests.

Records Management Policy

This policy is written to give the organisation clear information and a records management framework, which includes advice and guidance on all aspects of records management and data quality to inform staff of their operational and legal responsibilities.

Information Security Policy

The purpose of this Information Security Policy is to protect, to a consistently high standard, all information assets, including patient and colleague records and other NHS corporate information, from all potentially damaging threats, whether internal or external, deliberate or accidental.

Acceptable Use of IT Policy

BSW ICB recognises the need to secure its data, protect its colleagues and patients and have strict control over data in transit. This policy describes how we must use our IT systems and equipment to communicate both internally and externally in a safe, consistent and professional manner.

IT Services Policies

IT services provide and support the information systems and networks used by the ICB. IT services are currently provided by SCW CSU and Swindon IT. This includes a suite of policies covering various aspects of IT and information security.

Wiltshire Council Information Governance Framework is provided below, further policies are available at: [Information Governance Policies - Wiltshire Council](#)

Information Governance Management Framework



Document Control

1. Reference Number	2. Version 2.0	3. Status Published	4. Sponsor(s)/Author(s) 5. Tim Way, Sarah Davis-Solan
6. Amendments	7. Regular review		
8. Document objectives: To set out how the Council will effectively manage Information Governance, as a key component of Corporate Governance			
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19. Contact for Review		20. Information Governance	
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Associated Documentation

Policies

Listed within policy

Legal framework

Listed within policy

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1. Introduction

This Information Governance Framework document aims to capture Wiltshire Council's (the council's) approach to information governance. Information Governance (IG) requires clear and effective management and accountability structures, governance processes, documented policies and procedures, trained staff and adequate resources. This Framework will be approved by the council's Corporate Leadership Team and reviewed annually.

This IG Framework must be read in conjunction with the IG Policy. IG includes the following:

- Data Protection Act 1998
- Human Rights Act 1998
- Children Act 2004
- Freedom of Information Act 2000
- Caldicott Guardian Action Plan
- Public Records Act 1958
- Other Records Management standards and legislation
- Mental Capacity Act 2005
- Common Law Duty of Confidentiality
- Confidentiality NHS Code of Practice (for social care and health)
- International information security standard: ISO/IEC 27001: 2013
- Other Information Security standards
- Health and Social Care Information Centre Information Governance Toolkit vs. 13, for Local Authorities
- Computer Misuse Act 1990
- Copyright, Designs and Patents Act 1988

The council must complete the NHS Information Governance Toolkit (IGT) annually. There requirements of the IGT cover four main areas of information governance:

- Information Governance Management
- Confidentiality and Data Protection Assurance
- Information Security Assurance
- Care Records Assurance

2. Strategic Objectives

The aim of this Framework is to set out how the Council will effectively manage Information Governance, as a key component of Corporate Governance. We intend to

- Establish robust information governance processes that conform to the IGT and which are compliant with the legal framework, regulations and with the council's policies;
- Establish, implement and maintain policies for the effective use and management of information, including the quality of that information;
- Ensure that clear information is provided for service users, families and carers about how their personal information is recorded, handled, stored and shared;
- Work with partner organisations such as Health and Wiltshire Police to ensure that we use information on behalf of individuals to secure good, integrated services and care for them;
- Provide clear training, advice and guidance to staff members to ensure that they understand and apply the principles of information governance to their working practice;
- Develop, and continually improve, an IG culture through increasing awareness;
- Minimise the risk of breaches of personal data by ensuring that all staff members have received ongoing information governance training and that we work securely;
- Develop and implement IG action plans to ensure continued improvement, following IGT submission and audit.

3. Roles and Responsibilities

Council Corporate Directors

The Corporate Directors have overall responsibility for Information Governance within the council. As such, they are responsible for the management of IG and for ensuring appropriate mechanisms are in place to support service delivery and continuity. IG provides a framework to ensure information is used appropriately and is held securely. The Corporate Directors will ensure that the IG Board is established with terms of reference to enable the council to meet the strategic objectives in relation to IG.

4. Policies and procedures

These include:

- Information Governance policy;
- Data Protection and Subject Access Policy;
- Information Security Policy;
- Records Management Policy;
- Corporate Governance Policy;
- Freedom of Information Act and Environmental Information Regulations Policy;
- Information Incident Management Policy.

5. Governance Framework

IG is cascaded throughout the organisation by ensuring that there is a requirement clearly set out in the staff contracts, contracts with third parties, IAO arrangements and that each member of staff understands his or her own role in relation to IG.

6. Senior Information Risk Owner (SIRO)

The Senior Information Risk Owner (SIRO) role is to be held by a Corporate Director. The SIRO role is accountable to the council for ensuring that information risk is managed within the council. The SIRO will identify and manage the information risks to the council and with its partners. This includes oversight of the organisation's information security incident reporting and response arrangements. To do this, the SIRO will identify IAOs and IALs. The SIRO will ensure that there is an Information Asset Register and a risk assessment process adopted for the council

7. Caldicott Guardians

The Caldicott Guardians are the senior social care professionals who are responsible for protecting the confidentiality of service-user information and enabling appropriate information sharing. Acting as the 'conscience' of an organisation, the Caldicott Guardian actively supports work to enable information sharing where it is appropriate to share, and will advise on options for lawful and ethical processing of information. The Caldicott Guardian will also have a strategic role which involves representing and championing IG requirements and issues at executive team level and where appropriate, at a range of levels within the organisation's overall governance framework.

8. IG Manager

The IG Manager will be responsible for ensuring that the following are in place:

- Developing and maintaining the IGT and reporting to the SIRO;
- Ensuring that there is top level awareness and support for IG resourcing and implementation of improvements within the council by effective working with the SIRO and the Caldicott Guardians;
- Establishing working groups, if necessary, to co-ordinate the activities of staff given IG responsibilities and progress initiatives;
- Ensuring annual assessments and audits of IG and other related policies are carried out, documented and reported;
- Data Protection, Freedom of Information and the Environmental Information Regulations are implemented and information requests managed in a compliant manner;
- Ensuring appropriate and effective records management in line with council standards and guidance;
- Ensuring that the annual assessment and improvement plans are prepared for approval by the SIRO and Governing Body in a timely manner;
- Ensuring that the approach to information handling is communicated to all staff and made available to the public;
- Ensuring that appropriate training is made available to staff and completed as necessary to support their duties. For Local Authorities this will need to be in line with requirements of the IGT [currently 95% staff members];
- Liaising with other committees, working groups and programme boards to promote and integrate IG standards;
- Monitoring information handling activities to ensure compliance with law and guidance;
- Providing a focal point for the resolution and/or discussion of IG issues.

9. Other Key IG professionals

These include:

- Freedom of Information Lead;
- Data Protection Lead;
- Information Security Lead;
- Records Management Lead.

10. Information Asset Owners and Leads

The SIRO has established a network of Information Asset Owners and Leads (IAOs and IALs) to carry out information asset logging, risk assessment, mitigation and regular reports to enable assurance to the organisation.

IAOs and IALs carry out Privacy Impact Assessments, put in place Information Sharing Protocols, determine access to (with the involvement of the Caldicott Guardian where appropriate) the information asset, check that all those accessing the asset have received the right training to do so reliably, operate with the change control policy of the council, carry out data flow mapping, manage the information in accordance with the records management policy, plus other important activities.

11. All Staff

All staff, whether permanent, temporary, contracted or contractors are responsible for ensuring that they are aware of their responsibilities in respect of IG.

12. Training & Guidance

There are clear guidelines to ensure that staff understand what is expected of them in terms of managing information on behalf of the council, as well as the consequences of failing to follow policies and procedures.

Training is available for all staff, including those with specialist IG roles.

13. Incident Management

There are documented procedures for guiding staff on the management of information governance incidents. These are readily available. These include reference to the HSCIC Checklist 'Guidance for the Reporting, Managing and Investigating IG and Cyber Security Incidents Requiring Investigation' and PSN reporting requirements.

14. Resources

The key staff required, as outlined above, have roles and responsibilities clearly articulated. There is a dedicated budget and high level plan for expenditure, including outsourcing to external resources or contractors.