

**Wiltshire Council**

**Health and Wellbeing Board**

**16 January 2014**

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**Joint Business Agreement**

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**Executive Summary**

The Joint Business Agreement (JBA) is an overarching business agreement between Wiltshire Council and Wiltshire Clinical Commissioning Group (CCG) which sets out the terms and conditions which will apply to the s75 and s256 schedule arrangements which sit underneath it. s75 and s256 arrangements are made under the NHS Act 2006:

- A s75 arrangement enables the CCG (or other NHS bodies) and the Council to enter into partnership arrangements for exercising the functions of the CCG and the health related functions of the Council.
- A s256 arrangement enables the CCG (or other NHS bodies) to make a payment to the Council in connection with the provision of any local authority function, which affects the health of individuals, or has an effect on, is affected by, or is connected with, any NHS function.

The value of the arrangements covered by the JBA is approximately £16.5 million (in 2013/14 budgets). The JBA provides a clear framework for financial agreements between the Council and CCG. Alongside the JBA, Health Gains transfer funding from NHS England to Wiltshire Council is providing support to health related social care services.

**Proposal(s)**

It is recommended that the Board:

- i. Endorses the Joint Business Agreement and asks relevant CCG and council officers to implement the arrangements;
- ii. Endorses the use of the s256 agreement between the Council and NHS England to enable the Health Gains transfer to take place.

**Reason for Proposal**

The Joint Commissioning Board (JCB) recommends that the Health and Wellbeing Board authorises the relevant CCG and Council officers to sign off the main Agreement and schedules attached at Appendix 1 and 2.

**Maggie Rae**  
**Corporate Director**  
**Wiltshire Council**

**Deborah Fielding**  
**Chief Officer**  
**Wiltshire Clinical Commissioning Group**

**Joint Business Agreement**

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**Purpose of Report**

1. To seek formal endorsement from the Health and Wellbeing Board for the signing of the Joint Business Agreement and Health Gains transfer.

**Background**

2. The Joint Business Agreement (JBA) is an overarching business agreement between Wiltshire Council and Wiltshire Clinical Commissioning Group (CCG) which sets out the terms and conditions which will apply to the s75 and s256 schedule arrangements which sit underneath it. s75 and s256 arrangements are made under the NHS Act 2006:

- A s75 arrangement enables the CCG (or other NHS bodies) and the Council to enter into partnership arrangements for exercising the functions of the CCG and the health related functions of the Council.
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The value of the arrangements covered by the JBA is approximately £16.5 million (in 2013/14 budgets).

3. For the Health Gains transfer, the 2011-12 Operating Framework for the NHS in England set out the Department of Health commitment that Primary Care Trusts would receive allocations in 2011-12 and 2012-13 to support social care services. For Wiltshire, this funding was £4.8m in 2011-12 and £4.6m in 2012-13. From 2013-14, the funding transfer to local authorities will be carried out by NHS England. The allocated sum for Wiltshire is £6.525m. The payment is to be made under Section 256 of the 2006 NHS Act. There are a number of national conditions for the use of the 2013-14 funds, which are summarised below:
  - The funding must be used to support adult social care services in each local authority, which also has a health benefit
  - The funding may support existing services or programmes of transformation where they are of benefit to the wider health and care system, provide good outcomes for service users, or would be reduced due to budget pressures in local authorities without this investment.

- The local authority must be able to demonstrate how the funding will improve services and outcomes for service users, compared to service plans in the absence of the funds
- The use of the funding must be agreed locally between the local authority and the clinical commissioning group and the use of funding must have regard to the local Joint Strategic Needs Assessment and existing commissioning plans for health and social care
- Health and Wellbeing Boards are seen as the natural place for discussion and sign off of the transfer arrangements

### **Main Considerations**

4. Wiltshire Council and Wiltshire CCG have developed a JBA to enable central coordinated governance and reporting of all arrangements made under the NHS Act 2006.
5. The Council and the CCG have previously agreed that the JBA will be underpinned by the following principles:
  - All Services provided by the Host Party on behalf of the Parties shall be on the basis of full cost recovery only. (For some Services where this is not the case, negotiations will need to take place within the first year of the term of the Agreement).
  - Payment arrangements shall be standardised and meet the requirements laid down in the Host Party's Financial Regulations.
  - Clear performance monitoring and reporting systems to be in place to ensure the Parties are able to meet their statutory and other obligations.
  - A clearly defined termination and dispute resolution process will be developed.

(Note: The "Host Party" is the Party which is responsible for commissioning and / or providing the joint Service and for most arrangements is currently the Council).
6. The main Agreement is sufficiently worded to cover s75 and s256 arrangements, hence eliminating the requirement for separate agreements and making it easier to facilitate the amendment, removal or addition of individual joint arrangements. It also provides one central version that provides one clear centrally controlled "way of working" between the Council and the CCG.
7. The Agreement (Appendix 1) is supported by the following sub-appendices:
  - Appendix 1 – Governance Protocol
  - Appendix 2 – Financial arrangements
  - Appendix 3 – Change request, Authorisation and Control Process
  - Appendix 4 – Dispute Resolution Process
  - Appendix 5 – Third Party Claims and Complaints
  - Appendix 6 – Information Sharing Strategic Agreement
  - Appendix 7 – Quality Performance Monitoring and Reporting (specifies the minimum requirements)

- Appendix 8 – No longer applicable
  - Appendix 9 – Joint Arrangements Outside the Scope of this Agreement. Appendix 9 has been included because it enables the Council and the CCG to take an overview of ALL joint arrangements between them. Arrangements which will fall within the scope of Appendix 9 are any which are not S75 or S256. These could be arrangements such as Memorandums of Agreement (MoA) or arrangements where the Council and the CCG have a joint contract with a provider but pay the provider separately, rather than one of the parties hosting the arrangement and making payments on behalf of the other.
8. All s75 and s256 arrangements that currently exist between the CCG and the Council (Adult Social Care) have been identified and have been described in individual “Service Schedules” (s75) and “Transfer Schedules” (s256) – Appendix 2 to this paper. There is a separate agreement between the CCG and Children’s Services within the Council for the Associate Director for Commissioning, Performance and School Effectiveness and her commissioning team to lead on commissioning of children’s community health services and Child and Adolescent Mental Health Services. This agreement has been in place for a number of years (with the Primary Care Trust) and a new three year agreement was signed in April 2013. The requirement for joint commissioning between the CCG and the Council is now set out in the forthcoming Children and Families Bill.
  9. Whilst the Schedules are governed by the provisions of the main Agreement, there is some flexibility for Council and the CCG to agree additional terms in relation to the Schedules. Individual arrangements can be added or removed from the main Agreement without affecting its integrity.
  10. The Joint Commissioning Board (JCB) will oversee the JBA and the individual arrangements which sit beneath it. The JCB will receive a quarterly report on the JBA and this will identify:
    - New or obsolete arrangements
    - Significant changes to the terms of the overarching agreement and/or individual schedules
    - An update on delivery against the business outcomes of the overarching agreement (as per Appendix 7)
    - By exception, an update on delivery against the business outcomes of the individual schedules
    - By exception, an update regarding disputes between the Council and the CCG
  11. The JBA will also support the community transformation programme by providing clear contractual terms relating to the transfer, and use of funds.
  12. Alongside the JBA, Wiltshire Council and CCG have agreed the use of the Health Gains transfer funds from NHS England. In 2013-14, the majority of the funds have been allocated to fund ongoing costs of services funded from

the original transfer in 2011. The breakdown of allocation of the £6.525m is as follows:

- **£4.4m** - additional care home placements for people discharged from hospital. This investment is a continuation of the use of the 2011-12 transfer and equates to approximately 147 placements at any one time.
- **£1.315m** – Telecare and telecare response service. This provides 3 telecare response hubs, operating 24/7 365 days per year, and a visiting response service. The service is provided regardless of eligibility for financial support from the Council. Outcomes will be: a reduction in the need for other services to go into the person's home; a delay in the need for admission to care home; reduction in the number of inappropriate emergency ambulance call-outs; avoidance, through the use of falls alarms, of emergency admissions to hospital following a fall.
- **£0.250m** – Hospital Social Work Service - additional staffing capacity. This provides additional Level 3 and Level 4 social workers in each of the three hospital-based teams, and additional management capacity for that service. Additional staff are required to meet the increasing demand for assessments for social care services, and the increasing acuity/complexity of patients, for example, who may require assessments under the Mental Capacity Act or who are the subject of a safeguarding alert.
- **£0.350m** – Quality Assurance and Safeguarding. This provides additional staffing capacity to the Specialist Commissioning Team. This capacity is directed at one post to drive the delivery of the Winterbourne View Action Plan; one post to support quality assurance as part of safeguarding; 5 posts to monitor and support quality in care homes across the County.
- **£0.210m** – Community Transformation Programme. This provides additional resources to support joint aspects of the programme.

13. The Joint Commissioning Board for Adult Care considers the Health Gains transfer as a standing item and has developed a performance dashboard to enable its monitoring. From 2015, the transfer will be replaced and supplemented and will form a fund called the Integration Transformation (Better Care) Fund. Plans for the allocation of this Integration Transformation Fund will require formal sign-off by the Health and Wellbeing Board by March 2014.

### **Risk Assessment and Financial Implications**

14. Until the main JBA and individual Schedules are signed the Council and the CCG are operating without the benefit of clear contractual terms and conditions relating to the joint arrangements listed in Appendix 2 of this paper. This places both parties at risk in respect of their business arrangements with each other and also at risk in relation to the legal requirements around the transfer of monies under S75 and S256. The risk is greater to the transferring party which in all but one arrangement is the CCG.

15. The JBA supports a more robust and consistent governance process with clear monitoring & reporting systems.

16. Where staffing costs are included in joint arrangements, full cost recovery for those staff is calculated at 22.15%, reflecting direct on-costs. Indirect organisational overheads (office space, IT etc) are not currently included, on

the basis that joint commissioning arrangements hosted by either the CCG or the Council would apply this consistently. This arrangement will need to be kept under review as joint commissioning arrangements for learning disabilities and mental health services are developed.

17. The £6.525m Health Gains transfer is part of a national arrangement, and NHS England is obliged to make the transfer to the local authority. The allocation has already been considered within the Council's financial planning processes and funds have been spent and/ or committed by the Council and reported to the Joint Commissioning Board as set out above. The CCG has expressed support for the transfer to take place and NHS England has confirmed that the transfer can take place once the allocation has been reported to the Health and Wellbeing Board. The Board is therefore asked to endorse the proposals.

**Maggie Rae**  
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### **Background Papers**

No unpublished documents have been relied on in the preparation of this report:

### **Appendices**

Appendix 1: The Joint Business Agreement (with sub-appendices 1-9)

Appendix 2: Service Schedules and Transfer Schedules