

**SUPPLEMENT TO THE AGENDA FOR**

# **Cabinet**

**Thursday 16 May 2013**

**2.00 pm**

**The Council Chamber, Brockington, 35 Hafod Road, Hereford**

SUPPLEMENT TO AGENDA ITEM 5: SECTION 75 PARTNERSHIP AGREEMENT  
BETWEEN HEREFORDSHIRE COUNCIL AND HEREFORDSHIRE CLINICAL  
COMMISSIONING GROUP

REVISED REPORT AND REVISED APPENDIX 1



<b>MEETING:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>16 MAY 2013</b>
<b>TITLE OF REPORT:</b>	<b>SECTION 75 PARTNERSHIP AGREEMENT</b>
<b>REPORT BY:</b>	<b>ASSISTANT DIRECTORS CHILDREN'S AND ADULTS SERVICES – PEOPLE'S SERVICES DIRECTORATE</b>

### 1. Classification

Open

### 2. Key Decision

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.

It is also a Key Decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the County.

Notice has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

### 3. Wards Affected

County-wide

### 4. Purpose

To approve the financial schedule between Herefordshire Council and Herefordshire Clinical Commissioning Group for 2013 to 2014 attached as Appendix D to the Section 75 and agree the extension to the existing Section 75, until the 30<sup>th</sup> June 2013, whilst work continues to develop a 'fit-for-purpose' new Partnership Agreement for 2013/16.

### 5. Recommendation(s)

**THAT:**

- (a) **The financial schedule for 2013/14 in Appendix D page 26 is approved on behalf of the Council**

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Further information on the subject of this report is available from Chris Baird 01432 260264 or Marie Seaton 01432 260232

- (b) **An extension and novation of the existing Section 75 is agreed until June 30<sup>th</sup> 2013**
- (c) **The work in progress on a new Section 75 Agreement is endorsed, with a final document to be approved by 1<sup>st</sup> June.**

## **6. Key Points Summary**

- The Section 75 Agreement provides the legal basis for the Council and Herefordshire Clinical Commissioning Group (HCCG) to design and deliver services within the budgets available to meet the needs of the people of Herefordshire. The Section 75 Agreement removes organisational barriers which may get in the way of effective commissioning. This Section 75 is completely separate from the Section 75 agreements with Wye Valley and 2gether.
- The Section 75 agreement will support the delivery of Herefordshire's Health and Wellbeing Strategy, allowing long term arrangements to be developed and put in place. The agreement covers lead commissioning, integrated provision, pooled budgets.
- The Section 75 builds on the previous work of the Council and the Primary Care Trust, which enabled integrated commissioning of a range of adults, children and family health and local authority services. It also enabled joint commissioning of private and third sector providers. A number of these arrangements continue, but the changes in the NHS and the creation of the HCCG provide an opportunity to develop a new relationship between the council and health in commissioning services.
- Section 75 arrangements are designed to ensure that 'partnerships' are properly constructed and supported within the legislation that permits their use. They cover purpose, governance and accountability, to avoid issues of liability or responsibility being unclear at the point of individual assessment or care when staff of one agency act for another body in carrying out its duties, whilst under instruction.
- Flexibility across health and social care budgets allows resources to be used where they are most needed. For instance health money could be used for preventative community services. The legal freedom for partners through the Section 75 has the potential to make service design more tailored to local population needs.
- A Section 75 partnership provides an opportunity to develop integrated care pathways and locally tailored services focused on individual needs. This allows a seamless transition between service providers e.g. intermediate care services. The arrangements allow commissioning for existing or new services, as well as the development of provider arrangements, to be joined-up. They were previously referred to as Section 31 (1999) Health Act flexibilities. The Section 75 should be used to develop services which deliver against the priorities of the Health and Wellbeing Strategy.
- The specific objectives for implementing Section 75 agreements are:
  - to facilitate a co-ordinated network of health and social care services, allowing flexibility to fill any gaps in provision
  - to ensure the best use of resources by reducing duplication (across organisations) and achieving greater economies of scale; and
  - to enable service providers to be more responsive to the needs and views of users, without distortion by separate funding streams for different service inputs.

- Appendix C sets out the Financial Arrangements between the two parties, including areas of underspends, overspends and termination of service.
- The Financial Schedule within the attached report (Appendix D) demonstrates the key service areas which are jointly funded by the CCG and HC for the financial period 2013/14. These services have been identified as priority areas for joint funding arrangements and aim to serve the people of Herefordshire with seamless, cost effective, quality services. In terms of Appendix D the financial schedule demonstrates the areas covered by Section 256, which allows the CCG to make payments to the Local Authority towards expenditure on Community Services.
- Memorandum items are outside the Section 75 in financial terms but are listed as issues which are being addressed by HCCG and the council. The second pooled budget is a proposal only at this stage for short breaks for children which should come into effect in October – the figures included are indicative full year figures and an in year variation will have to be agreed for 6 months later in the year when the commissioning of the service has been completed

## **7. Alternative Options**

- 7.1 The Council and the HCCG could decide not to pursue a Section 75, and have separate approaches to commissioning and service provision. This would however not be in the best interests of people in Herefordshire, with the potential to create fragmented services, and inefficient use of resources. This would also make it more difficult to deliver the Health and Wellbeing Strategy.

## **8. Reasons for Recommendations**

- 8.1 To ensure that the Council and the HCCG have a legal basis for joint, effective commissioning.

## **9. Introduction and Background**

- 9.1 Herefordshire Council had a Section 75 Agreement between the Council and the Primary Care Trust (PCT) from 2009. This provided the legal agreement for the Council to carry out functions on behalf of the PCT, and for the PCT to do likewise on behalf of the Council. This led to integrated arrangements which provided a single approach, benefiting individual service users and providers and making an effective use of resources available. The creation of HCCG and the demise of the PCT require a new section 75 to be put in place. The extension and novation of the existing Section 75 Agreement provides an opportunity for the Council and the CCG to agree design principles; outcomes and robust governance arrangements for the new Section 75, which is attached as a draft to this report
- 9.2 In order for joint working to be effective, decision making needs to be timely, transparent, and unambiguous. Where organisations work together the requirements of their separate governance structures and ways of working can inhibit these outcomes. To counter this it is essential to maximise the alignment of decision making processes.
- 9.3 Appendix B sets out the overall governance structure for the S75. Central to this will be the operation of the S75 Board. This will comprise the Director of People's Services, the Herefordshire CCG Accountable Officer and support functions to be agreed. The remit of the Board will cover performance management and monitoring the Agreement and it will report through the CCG Board and Cabinet to the Health and Wellbeing Board. This will be an

improvement on previous arrangements and will provide greater transparency and oversight of effectiveness.

- 9.4 Joint commissioning groups (JCGs) will be responsible for delivering each aspect of the S75 using whatever flexibilities are deemed appropriate by the Partners. Commissioners will focus on outcome based commissioning in the planning and development of services; prepare business cases that outline proposed services, activity and financial implications with identified cashable savings or cost avoidance measures. A consistent business case template will be used across the partnership, and will only be presented to the JCG after financial and performance have validated the assumptions used. The JCG's Adults and Children's and Families will endorse any proposals, which will then be presented to the S.75 Board for onward approval through the governance process of the Council and CCG: Cabinet/CCG Board. The JCG's will implement the strategy, priorities and any approved service developments. The JCG's will provide regular monitoring reports to the Sec 75 Board. The summary schedule is included in Appendix D.
- 9.5 The Board will initially review any changes in year to the S75 agreement and these will be approved, where material, by the CCG Board and Cabinet. Further escalation will be made where necessary to the Health and Wellbeing Board.

## **10. Key Considerations**

- 10.1 Children, young people, adults, families and carers benefit by having integrated services which maximise understanding and common delivery across a range of service areas. Providers of services benefit from having single conversations with commissioners at a local level, and resources can be used most effectively when combined around common aims. The Health and Wellbeing Strategy establishes the overarching aims to improve the lives of people in Herefordshire and a joint commissioning approach between two of the main commissioning public organisations provides a powerful vehicle to delivery within the finances available.
- 10.2 Without a novation agreement in place the CCG would not be able to release funding to the Council to enable them to discharge services. This potentially poses a risk to current service delivery.
- 10.3 The Council has duties and powers to commission and provide care to people resident within Herefordshire (the "Resident Population"): under s.74 of the National Health Service Act 2006 (the "2006 Act") which requires local authorities to make services available to NHS bodies acting in its area so far as is reasonably necessary and practicable to enable the NHS body to discharge its functions under this act and under the Local Government Act 2000 the Council has "Well Being Power" which allows it to do anything it considers likely to promote the economic, social and environmental well-being of the area unless explicitly prohibited elsewhere in legislation. In guidance, Local Authorities and previously, Health Trusts, have been encouraged to consider partnership working by using flexibilities under Section 75 of the 2006 Act. These partnership arrangements will in future be made between Local Authorities and the Clinical Commissioning Groups.
- 10.4 A partnership agreement enables Herefordshire Council and Clinical Commissioning Group to contribute to the delivery of the Health and Wellbeing Strategy's Vision. This will be achieved by strategically aligning resources and redesigning services. This facilitates more fundamental change through a redoubling of effort to manage the demand for formal health and social care interventions: help people who may be at risk of needing health and social care support to remain independent for as long as possible; build the capacity of communities to support people in new ways; prioritise the development of services that support people's recovery

after an accident or episode of ill-health (including reablement, intermediate care, crisis response and telecare); ensure that personalisation works for those with on-going needs so they are able to plan and direct their own support and have a choice of cost effective solutions.

- 10.5 The legal flexibilities provide a clear opportunity for the Herefordshire Council and the Clinical Commissioning Group (CCG) to commission and develop integrated services. The legislation is versatile, leaving localities to shape new systems of governance and provision to suit the capacity of local partners and the needs of their populations. National evidence suggests that integrated services have several beneficial outcomes for users and can make efficiency savings by avoiding duplication.
- 10.6 A new Section 75 Agreement allows both the CCG and Herefordshire Council the opportunity to revise all services currently within the agreement that was originally created by Herefordshire Council and Herefordshire Primary Care Trust in 2011. It allows the opportunity to assess whether these remain key priority service areas for both partner organisations,, whether they are now aligned to other external partner organisations, if there are better ways of working as key business partners i.e. less transactional processes equates to less administration proving more cost effective. Additionally, it allows for priorities to be aligned with the Health and Wellbeing Board with the intention of increased flexibility of working together in Partnership to deliver the right outcomes for the People of Herefordshire over the three year period.

## **11. Community Impact**

- 11.1 The Section 75 will have significant community impact. Many of the service areas are particularly targeted at those with additional needs, or who are vulnerable. A number of the service areas focus specifically on early intervention, to support children, adults, families and carers and to prevent the reliance on higher cost, more specialised services, some of which exist outside of Herefordshire. Specific service areas are detailed in the agreement
- 11.2 There are promising indications from individual projects that joint working leads to positive outcomes for service users. The impacts of integrated care pathways have been highly commended in localities and include: improved accessibility to intermediate care, occupational therapy, physiotherapy and district nurses; faster rates of assessment, provision of care and installation of home equipment; and reduced use of acute hospital services, meaning improved outcomes for the people of Herefordshire.

## **12. Equality and Human Rights**

- 12.1 Services commissioned under the section 75 will have due regard to the need to
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it." in terms of service delivery and in commissioning of the services themselves, including contract monitoring and management.

## **13. Financial Implications**

- 13.1 £858k due from the CCG to the local authority and £555k payable from the authority to the CCG, excluding section 256 funding (which allows the CCG to make payments to the Local Authority towards expenditure on Community Services) of £3,152k which is pass ported to the authority via the CCG. Details of the components of these amounts are set out in the Section 75 and financial schedule.
- 13.2 Within the current services covered by the section 75 arrangement most services are fixed cost contributions by one partner to the other, but the variable costs of the Complex Needs pooled budget risks are shared in ratio to the current agreed contributions which are 3/7<sup>th</sup> local authority/ 3/7<sup>th</sup> education and 1/7<sup>th</sup> CCG.

## **14. Legal Implications**

- 14.1 Set out any identified legal implications of the proposal.
- 14.2 Under the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 there are a number of criteria which have to be fulfilled before a partnership agreement can be entered into.
- (a) The partnership must be likely to lead to an improvement in the exercise of NHS and/or Local Authority health functions.
- (b) The partnership arrangements must fulfil the objectives of the health improvement plan of the Health Authority in whose area the partnership is to operate. With the abolition of Strategic Health Authorities it is not clear if this criterion remains relevant.
- (c) The partners must undertake a joint consultation of persons likely to be affected by the proposed arrangements. Therefore the Council and the CCG should consider whether any persons are likely to be affected by the arrangement or if it is purely an administrative measure with no effect on service users or staff.
- 14.3 The current version of agreement included in the Appendices is very much a first draft and concentrates primarily on the Council and the CCG's aspirations for the services. The final version will be legal document in a standardised format with specific detail on the services included, their operation and funding.

## **15. Risk Management**

- 15.1 The Section 75 will be overseen by the Director of People Services on behalf of the Council, and by the Chief Operating Officer on behalf of the HCCG. The Director of Finance for the Council will monitor the financial performance of the Section 75 and promote action as required.
- 15.2 Operational and financial risks would increase if a Section 75 was not in place as it would create a twin track independent approach to service delivery and commissioning by both the Council and Clinical Commissioning Group



## **16. Consultees**

- 16.1 To date key stakeholders/ consultees in the development of the Section 75 are:  
Herefordshire Council - Chief Finance Officer, Adults and Children's Assistant Directors.  
Herefordshire Clinical Commissioning Group – Head of Commercial Development  
Public Health –Director and Consultant

## **17. Appendices**

- 17.1 Section 75 between Herefordshire Council and the Herefordshire Clinical Commissioning Group and accompanying financial schedule.

## **18. Background Papers**

- 18.1 None identified.



1 **SECTION 75**

2  
3 Partnership Arrangements under Section 75  
4 of the National Health Service Act 2006  
5 relating to the Commissioning and Delivery of Services  
6 in the County of Herefordshire  
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10 **PARTNERSHIP FRAMEWORK**  
11 **AGREEMENT**  
12 **Between**  
13 **Herefordshire Council**  
14 **And**  
15 **Herefordshire Clinical Commissioning Group**  
16 **2013/16**  
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**SECTION 75 PARTNERSHIP ARRANGEMENTS**

**1. NAMES OF STATUTORY PARTNERS**

Herefordshire Council  
Herefordshire Clinical Commissioning Group

**2. DATE OF AGREEMENT**

March 2013

**3. DATE WHEN PARTNERSHIP IS INTENDED TO START**

**1<sup>st</sup> April 2013**

**4. TITLE OF OFFICER RESPONSIBLE FOR THE PARTNERSHIP**

Director of People’s Services  
Herefordshire Council  
Accountable Officer  
Herefordshire Clinical Commissioning Group

**5. CONTACT NAME**

Chris Baird – Herefordshire Council  
Mike Emery – Herefordshire Clinical Commissioning Group

**6. CONTACT TELEPHONE NUMBER**

01432 260264 (Herefordshire Council)  
01432 263787 (Herefordshire Clinical Commissioning Group)

**7. WHICH FLEXIBILITIES ARE BEING USED**

- Lead Commissioning (LC)
- Integrated Provision (IP)
- Pooled Budgets (PB)

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## Summary

Section 75 arrangements are designed to ensure that ‘partnerships’ are properly constructed and supported within the legislation that permits their use covering essential matters of purpose, governance and accountability, thus avoiding issues of liability or responsibility being unclear at the point of individual assessment or care when staff of one agency act for another body in carrying out its duties whilst under instruction.

Flexibility across health and social care budgets allows resources to be used where they are most needed. For instance health money could be used for preventative community services. The legal freedom for partners through the Section 75 has the potential to make service design more tailored to local population needs.

A Section 75 partnership provides an opportunity to develop integrated care pathways and locally tailored services focused on the individual needs. This allows a seamless transition between service providers e.g. intermediate care services. The arrangements allow commissioning for existing or new services, as well as the development of provider arrangements, to be joined-up. They were previously referred to as Section 31 (1999) Health Act flexibilities.

The specific objectives for implementing Section 75 agreements are:

- to facilitate a co-ordinated network of health and social care services, allowing flexibility to fill any gaps in provision
- to ensure the best use of resources by reducing duplication (across organisations) and achieving greater economies of scale; and
- to enable service providers to be more responsive to the needs and views of users, providing integrated services that are not distorted by separate funding streams for different service inputs.

Section 75 partnership agreements, legally provided by the NHS Act 2006, allow budgets to be pooled between health and social care planners/providers, as well integration of resources and management structures Most NHS Trusts, Care Trusts and councils have some form of pooled funding arrangements, with pooled funds amounting to around 3.4% of the total health and social care budget.

Legislation was drafted nationally and followed the previous (1999) Health Act. Joint working and the use of legal flexibilities, such as the Section 75 Partnership Agreement, were encouraged through national policy agendas such as World Class Commissioning, ‘Strong and Prosperous Communities’ (2006), ‘Our Health, Our Care, Our Say’ (2006), ‘Putting People First’ (2007) and ‘Transforming Community Services’ (2009).

The benefits are highlighted, for example, for people with long term conditions where community services rather than residential care settings have most potential to be developed through pooled budgets and joint action plans. Such services have been seen to enhance access to community health professionals such as physiotherapists and speed up the assessment process and distribution of assistive technologies within people’s homes.

There is much consensus that setting up a partnership agreement and implementing organisational change is a complex, labour intensive task which presents challenges for differing organisational cultures whilst roles and responsibilities are redefined. However,

154 evidence of efficiencies gained by use of Section 75 flexibilities gives incentives to embark  
155 upon the route of aligned budgets and integrated arrangements.

156

157 There are promising indications from individual projects that joint working leads to positive  
158 outcomes for service users. The impacts of integrated care pathways have been highly  
159 commended in localities and include: improved accessibility to intermediate care,  
160 occupational therapy, physiotherapy and district nurses; faster rates of assessment,  
161 provision of care and installation of home equipment; and reduced use of acute hospital  
162 services.

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164 The legal flexibilities provide a clear opportunity for the Herefordshire Council and the  
165 Clinical Commissioning Group (CCG) to commission and develop integrated services. The  
166 legislation is versatile, leaving localities to shape new systems of governance and provision  
167 to suit the capacity of local partners and the needs of their populations. National evidence  
168 suggests that integrated services have several beneficial outcomes for users and can make  
169 efficiency savings by avoiding duplication.

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171 This partnership agreement enables Herefordshire Council and Clinical Commissioning  
172 Group to contribute to the delivery of the Health and Wellbeing Strategy's Vision and Guiding  
173 Principles:

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175 **Vision:** Herefordshire residents are resilient; leading fulfilling lives; are emotionally  
176 and physically healthy and feel safe and secure.

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178 **Overall Outcome:** To increase healthy life expectancy, and reduce differences in life  
179 expectancy between communities.

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181 We will do this by strategically aligning our resources and redesigning services. This  
182 facilitates more fundamental change through a redoubling of effort to manage the demand  
183 for formal health and social care interventions by: promoting prevention, self health and  
184 reablement; helping people who may be at risk of needing health and social care support to  
185 remain independent for as long as possible; building the capacity of communities to support  
186 people in new ways; prioritising the development of services that support people's recovery  
187 after an accident or episode of ill-health (including reablement, intermediate care, crisis  
188 response and telecare); ensuring that personalisation works for those with on-going needs  
189 so they are able to plan and direct their own support and have a choice of cost effective  
190 solutions.

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## 193 1 **National and Local Context**

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195 1.1 The 2012 Health and Social Care Act, the 2012 NHS Outcomes Framework, the  
196 2012 NHS Mandate and the Care and Support Bill 2012 emphasise that collaboration  
197 between local government and the NHS is crucial to the future success of clinical  
198 commissioning, as part of the wider health and care system locally.

199 1.2 Health and Wellbeing Boards play a critical role in bringing together councillors, local  
200 authority chief officers, CCGs, the NHS Commissioning Board, Local Area Teams  
201 and local communities in partnership to improve health and care outcomes for the  
202 local population. This is achieved through collaboration and integrated approaches  
203 that tackle the wider determinants of health such as transport, housing and  
204 education. In Herefordshire the Health and Wellbeing Board is the system leader,  
205 and will hold the Council and the CCG to account through an outcome based  
206 approach to strategic commissioning.

207 1.3 In October 2012 the Local Government Association and the National Commissioning  
208 Board signed a Concordat. Together they identified three priorities for 2012/13 and  
209 beyond:

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- shared system leadership
- joint planning
- sector led improvement and innovation.

215 1.4 Running through all three priorities is a theme of integration – both integrated delivery  
216 of services and integrated commissioning of services for children, young people and  
217 adults. The aim is to enable partners to join together to design and deliver services  
218 around the needs of service users, carers and communities. It is important to ensure  
219 that a holistic, whole life course approach is used to commission services. There is  
220 evidence that the closer integration of resources can secure long term gains in  
221 efficiency, quality and productivity. The Operating Framework for the NHS in England  
222 2012/13 is explicit about an expectation that the NHS and local government should  
223 work together to achieve cashable savings and efficiency gains over the longer term.  
224

225 1.5 In Herefordshire commissioning arrangements have previously been within the  
226 framework of a “deep partnership arrangement” between the Primary Care Trust  
227 (NHS Herefordshire) and the local authority. These arrangements provide enable a  
228 sound foundation for partnership working between the CCG and Council, by  
229 establishing ‘fit-for-purpose’ commissioning capacity which is well placed to respond  
230 to current and future challenges. Service users, their carers and the wider  
231 communities of Herefordshire will continue to experience integrated services that  
232 effectively meet their needs whilst making best use of resources. The CCG and  
233 Herefordshire Council are committed to sustaining this effective partnership to deliver  
234 improved outcomes for local people over forthcoming years.  
235

236 1.6 The authorisation of the Herefordshire Clinical Commissioning Group as the statutory  
237 commissioning body in April 2013; the development and the implementation of the  
238 Health and Well-Being Strategy; personalisation in Adult Social Care and Children  
239 with Disabilities all provide an opportunity for effective commissioning that delivers  
240 integrated, cost efficient, high quality and sustainable support for the citizens of  
241 Herefordshire.  
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243 1.7 The purpose of the Authorisation process currently being undertaken by the NHS is  
244 to establish Clinical Commissioning Groups as the new statutory health bodies that  
245 will have duties and powers to provide care services and to commission health  
246 services on behalf of their resident populations. The Herefordshire Clinical  
247 Commissioning Group will have these duties in respect of the residents of  
248 Herefordshire.  
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## 251 **2. Legislative Framework: Partnership Arrangements**

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253 2.1 The Council has duties and powers to commission and provide care to people  
254 resident within Herefordshire (the “Resident Population”): under S.74 of the National  
255 Health Service Act 2006 (the “2006 Act”) which requires local authorities to make  
256 services available to NHS bodies acting in its area so far as is reasonably necessary  
257 and practicable to enable the NHS body to discharge its functions under this act.  
258 Under the Local Government Act 2000 the Council has “Well Being Power” which  
259 allows it to do anything it considers likely to promote the economic, social and

260 environmental well-being of the area unless explicitly prohibited elsewhere in  
261 legislation. In guidance, Local Authorities and previously, Health Trusts, have been  
262 encouraged to consider partnership working by using flexibilities under Section 75 of  
263 the 2006 Act. These partnership arrangements will in future be made between Local  
264 Authorities and the Clinical Commissioning Groups.  
265

266 2.2 The arrangements, which have been in use since April 2000, allow for the joining up  
267 of commissioning for existing or new services and similarly for the development of  
268 integrated provider arrangements. The arrangements are commonly referred to as  
269 Section 75 flexibilities and include:

- 270 • Lead Commissioning
- 271 • Integrated Provision
- 272 • Pooled Budgets
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275 2.3 The purpose of this Agreement is to provide a robust framework under which  
276 Herefordshire Council and Herefordshire CCG can undertake partnership working to  
277 jointly commission and ensure provision of integrated health and social care services.  
278 This will ensure the agreed strategic direction can be implemented in 2013/14. Local  
279 priorities will be agreed in line with the Health & Well Being Strategy allowing longer  
280 term improvements and approaches to be put in place that promote and maintain the  
281 health of the population of Herefordshire.  
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### 283 **3. Objectives**

284 3.1 The objective of this Framework Agreement is to secure better outcomes through  
285 effective integrated commissioning of Education, Social Care and Health Services for  
286 the population. By doing so, the Partners aim to:

- 287 • promote the independence of people (applies to children and families too)  
288 through a strategic shift to, health promotion, prevention, early intervention  
289 and supported self-management to produce better outcomes and greater  
290 efficiency for the health and social care system;
- 291 • focus on helping people who may be at risk of needing health and social care  
292 support to remain independent for as long as possible;
- 293 • prioritise the development of services that support people's recovery after an  
294 accident or episode of ill-health (including reablement, intermediate care,  
295 crisis response and telecare);
- 296 • ensure that personalisation works for those with on-going needs so they are  
297 able to plan and direct their own support and have a choice of cost effective  
298 solutions;
- 299 • tailor interventions and support services which better understand and respond  
300 to the needs of the whole person and those of their carers;
- 301 • make access to education, social care and support services as easy as  
302 possible for the people with assessed eligible needs;
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- 312 • ensure that each person who needs education, social care and support  
313 services can identify a single professional who has overall responsibility for  
314 the arrangements being made to help them, and who is in a position to deal  
315 rapidly and effectively with changes in the person's circumstances;
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- 317 • ensure that decisions about the level and nature of the services are made in a  
318 manner that is fair and easy to understand, importantly these will be jointly  
319 agreed so there is no dispute about one party making decisions which affect  
320 the other over such issues as eligibility for care
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- 322 • promote wide involvement of voluntary and community organisations, patients  
323 and service users, professionals and other staff in the development of  
324 approaches that promote well-being and prevent the need for acute and  
325 intensive interventions;
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- 327 • facilitate the development of a skilled and motivated health and social care  
328 and early intervention workforce, with easy access to high quality training and  
329 development opportunities, with clearly defined pathways and  
330 communications between health and social care to ensure a seamless  
331 customer journey;
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- 333 • actively involve people using the service and their carers in decisions about  
334 their care and proposed developments of services
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- 336 • maintain good governance and transparency to drive effective partnership  
337 working;
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- 339 • make the most effective possible use of the overall funding and resources  
340 available in responding to service users' needs;
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- 342 • ensure the interdependencies of each partner's strategic plans are addressed  
343 in the delivery of better outcomes:
- 344
- 345 • ensure there is clarity on decision-making and accountabilities for effective  
346 operation and management of the partnership
- 347

#### 348 **4. Care Groups Served by the Framework Agreement**

349 4.1 Initially, it is intended that this agreement relates to the development of elements that  
350 we must do together. The agreement we develop from this set of principles will be  
351 used as a template for all future joint working arrangements e.g eligibility for  
352 Continuing Health Care or social care funding, particularly governance  
353 arrangements, for additional joint working arrangements which may in future include  
354 out of hospital/Community Services/community teams for the following group of  
355 individuals:

- 356 • Mental Health Services – all ages
- 357 • Substance Misuse (Drugs and Alcohol) – all ages
- 358 • Learning Disabilities
- 359 • Children and Young people with additional and complex needs, SEN and the  
360 commissioning and provision of equipment
- 361 • Older People – 65+ but covering some 55+ years
- 362
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- Carers – all ages
  - Physical and Sensory Disability – all ages
  - Children and Young People’s Services including early help and support such as paediatric therapies
- 366
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370 4.2 It is proposed that this document provides an overarching agreement in principle  
371 between Herefordshire Clinical Commissioning Group and Herefordshire Council  
372 under which all jointly commissioned services between the partners will be  
373 undertaken.

374

375

376 **5. Nature and purpose of Joint Working**

377

378 5.1 The Herefordshire Council and the Herefordshire CCG wish to continue to achieve  
379 integrated arrangements through a process of alignment and joint working rather  
380 than through the appointment of a lead body and the delegation of functions via a  
381 joint commissioning team or through a single formal contract for commissioning  
382 services. This framework is intended to signal an ambition to facilitate the strategic  
383 shift towards preventative approaches and a commitment to the further development  
384 of effective joint working. Clarity of roles, responsibilities and accountabilities and  
385 collaborative ways of working allows the two organisations to work together efficiently  
386 and effectively towards their common aims.

387

388 5.2 The 2012 Health and Social Care Bill requires the establishment of a Health and  
389 Wellbeing Board to bring together local commissioners of health and social care,  
390 elected representatives and representatives of Health Watch to agree a joint strategy  
391 for improving local health and wellbeing. It places a duty on both organisations to  
392 consider integrated approaches to meet this objective. The Health & Wellbeing Board  
393 will operate at a strategic level approving plans and priorities and promoting strategic  
394 coherence.

395

396

397 **6. Content of framework**

398

399 6.1 This framework sets out:

400

- A commitment to working together and creating a joint culture and vision
  - Expectations of ways of working
  - Mechanisms in support of joint working including governance
  - Opportunities for developing further and arrangements for reviewing
- 405

406 Creating a Culture

407

408 6.2 Developing a shared vision and culture and environment to support and encourage  
409 joint working is a key factor in achieving effective arrangements. The Herefordshire  
410 CCG vision is for a ‘high quality, sustainable and integrated Herefordshire health  
411 economy with the public and patients at the heart of everything we do’. As stated in  
412 the Strategic Delivery Plan for Transforming Adult Services 2012-2015, Herefordshire  
413 Council’s vision for health and wellbeing is:

414

415 ‘Working with people in Herefordshire to live independently and to be safe and well’

416 'We will do this by encouraging people, and their communities, to help themselves  
417 and, where necessary, ensure access to advice, care and support which is financially  
418 sustainable, of high quality, timely, accessible and innovative'.  
419

420 6.3 Herefordshire's Yes We Can Plan to support children, young people and families  
421 contains the partnership vision:  
422

423 "Our vision in Herefordshire is for children and young people to grow up healthy,  
424 happy and safe with supportive families and carers and to make sure they have the  
425 best education and opportunities."  
426

427 The vision for joint working is that by working together, both organisations are  
428 stronger; can achieve more together; and effectively drive forward the delivery of the  
429 strategic aims of the Health and Wellbeing Board.  
430

431 6.4 Herefordshire Council and NHS have a history of integrated working developed over  
432 the last three years.  
433

434 6.5 The GPs working as the Herefordshire Clinical Commissioning Group will be taking  
435 on responsibility for commissioning most health services from 1 April 2013 whilst  
436 local Public Health is transferring and becoming the Council's responsibility. It is  
437 therefore both timely and necessary to review and refresh the joint working  
438 arrangements to reflect the organisational arrangements that will be in place from 1  
439 April 2013 and to ensure that they are fit for purpose to deliver best outcomes in  
440 future.  
441

442 6.6 This agreement therefore acts as a partnership framework and sets out some  
443 principles for joint working which bring together the commissioning of key services for  
444 Adults, Children and Young People. This will ensure we are maximising our ability to  
445 promote positive lives for everyone in our communities and working together to  
446 ensure that people receive the services they need, provided in a joined up way  
447 around them and their families.  
448

449 6.7 This framework expresses a clear aspiration to extend and further develop the joint  
450 working arrangements including the use of pooled budgets over time to deliver better  
451 outcomes for our population.  
452

453 6.8 It is proposed therefore that the Council and CCG establish a Section 75 Board. This  
454 will oversee the operation of all joint working arrangements, pooled budgets and  
455 proposals for further development of the framework, as well as acting as a route to  
456 escalate disputes if necessary. The arrangements proposed will ensure that each  
457 organisation can fulfil its statutory obligations and also continue to collaborate with  
458 other key partners as appropriate. The core membership of this Board will be the  
459 Chief Officer of the CCG and the Director of People Services supported by  
460 Commissioning leads and other functions such as finance and performance.  
461

## 462 **7. Mechanisms to support Joint Working**

463 7.1 Under the following arrangements both the Herefordshire Council and the  
464 Herefordshire CCG retain their statutory functions. No responsibility or authority is  
465 delegated from one party to another.  
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### 469 Leadership

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- 7.2 The Section 75 Board will be established to oversee the operation of all joint working arrangements with the terms of reference to be agreed. This Board will report on a bi-annual basis to the CCG Board and the Cabinet and then to the Health and Wellbeing Board.

Aligned Decision Making

- 7.3 In order for joint working to be effective, decision making needs to be timely, transparent, and unambiguous. Where organisations work together the requirements of their separate governance structures and ways of working can inhibit these outcomes. To counter this it is essential to maximise the alignment of decision making processes.

- 7.4 The Health and Wellbeing Board will have a system wide focus for Herefordshire and will approve strategic plans and priorities, including those for substantial service change to benefit the whole population.

Shared and Coordinated Management Arrangements

- 7.5 Appendix B sets out the overall governance structure for the S75. Central to this will be the operation of the S75 Board. This will comprise the Director of People's Services, the Herefordshire CCG Accountable Officer and support functions to be agreed. The remit of the Board will cover performance management and monitoring the Agreement and it will report through the CCG Board and Cabinet to the Health and Wellbeing Board.

- 7.6 Joint commissioning groups will be established consolidating the governance structures of both the CCG and the LA and these will be responsible for delivering each aspect of the S75 using whatever flexibilities are deemed appropriate by the Partners. Commissioners will focus on outcome based commissioning in the planning and development of services; prepare business cases that outline proposed services, activity and financial implications with identified cashable savings or cost avoidance measures. A consistent business case template will be used across the partnership, and will only be presented to the JCG after financial and performance have validated the assumptions used. The JCG's Adults and Children's and Families will endorse any proposals, which will then be presented to the S.75 Board for onward approval through the governance process of the Council and CCG: Cabinet/CCG Board. The JCG's will implement the strategy, priorities and any approved service developments. The JCG's will provide regular monitoring reports to the Sec 75 Board. A standard template containing all the detail for each Section 75 has been developed and an example of this can be found in Appendix E of this Agreement for Children's Services. The summary schedule is included in Appendix D.

- 7.7 The Board will initially review any changes in year to the S75 agreement and these will be approved, where material, by the CCG Board and Cabinet. Further escalation will be made where necessary to the Health and Wellbeing Board.

Financial Framework

- 522  
523 7.8 The Herefordshire Council and the Herefordshire CCG will continue to retain  
524 separate accountability for their use of financial resources and will have separate  
525 director level finance representation and audit arrangements. Apart from pooled  
526 budgets where agreed, health and social care funding will be held in separate  
527 budgets, although these may be managed in an aligned way to facilitate joint  
528 approaches.  
529
- 530 7.9 Where practical and cost-effective, shared or hosted financial arrangements,  
531 including policies, procedures, processes and staffing will be developed. Audit  
532 outcomes will be shared, where they relate to joint areas of responsibility and where  
533 this would be beneficial in delivering improvements. It is important that resources are  
534 identified for inclusion in the S75 at the time of its sign off. However the deployment  
535 of these resources will be subject to the normal service development processes  
536 within both partner organisations centred around the approval of robust business  
537 cases.  
538
- 539 7.10 The following principles will be applied in reaching a decision on joint working of any  
540 type which has a financial impact on one or both parties, and are specified in  
541 Appendix C:  
542
- 543 • The proposed arrangement should bring qualitative, productivity or direct financial
  - 544 benefits which demonstrate a sound return on any investment required
  - 545 • The sharing of the benefits between the parties is clearly articulated and agreed
  - 546 • The balance of risk between the parties is clearly articulated along with plans for
  - 547 mitigation or sharing of risk
  - 548 • The mechanism for either party to withdraw from the arrangement and the allocation
  - 549 of responsibility for exit costs and residual liabilities are explicit.
  - 550 • The financial principles, mechanisms and frequency of reporting and reviewing
  - 551 financial and performance are included at Appendix C, and the financial position
  - 552 reported quarterly to the Section 75 Board.
- 553  
554 Alignment of Business Support Systems  
555
- 556 7.11 Where possible, future arrangements should provide an opportunity to maximise the  
557 efficiency and effectiveness of commissioning arrangements by simplifying cross-  
558 organisational working and delivering value for money.  
559
- 560 7.12 Appendix A contains further detailed information on the arrangements and  
561 mechanisms to support joint working, namely:  
562
- 563 • Care Governance
  - 564 • External Inspection and Monitoring
  - 565 • Eligibility Criteria
  - 566 • Community Engagement, Consultation and Communication
  - 567 • Complaints and investigations
  - 568 • Insurance
  - 569 • Legal Liabilities and Indemnities
  - 570 • Data protection and Information Sharing
  - 571 • Freedom of Information
  - 572 • Anti-discriminatory and Equal Opportunity

- 573 • Publicity
- 574 • Variations
- 575 • Disputes
- 576 • Legal Advice
- 577 • Termination Provisions
- 578 • Miscellaneous

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**8. Conclusion**

- 8.1 It is intended that this framework will be in place until such time as the Herefordshire CCG and Herefordshire Council decide otherwise. The framework and its supporting schedules will be reviewed annually by the S75 Board.
- 8.2 This document reflects the aspiration and commitment of the Herefordshire Council and Herefordshire CCG to maximise the benefits of joint working, and sets out both the intent around joint working and the mechanisms by which this can be achieved. The operation and development of the Framework will be reviewed annually by the Section 75 Board.

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## Appendix A

### 1.CARE GOVERNANCE

The partners will make arrangements to ensure that all service users are safeguarded and their welfare is promoted. The Partners will lead and support the organisation and development of the Herefordshire Safeguarding Children Board and the Herefordshire Safeguarding Adults Board. They will ensure services commissioned have clear safeguarding policies with policies/procedures agreed by the Herefordshire Safeguarding Children Board and the Herefordshire Safeguarding Adults Board.

Partners will ensure services commissioned adhere to safeguarding policies, and procedures which will be made clear in all contracts and framework agreements. These will be monitored and action will be taken where breaches occur.

The Partners will also be able to demonstrate that they have:

- Clear priorities for early intervention (including the use of Common Assessment Framework), safeguarding and promoting the welfare of children, young people and vulnerable adults in their strategic plans
- A clear commitment by senior managers to the importance of early intervention, safeguarding and promoting children, young peoples and vulnerable adult's welfare and the need to work across organisations to be effective in safeguarding the public.
- That the responsibilities to safeguarding and promoting the welfare of children, young people and adults are integral to each member of staff's work and are integrated into Corporate Plans.
- A culture of listening to and engaging dialogue with children, young peoples and vulnerable adults seeking their views in ways appropriate to their age and competency and taking account of these in individual decisions and the establishment or development and improvement of services
- Clear plans (whether corporate or for individual service users) which demonstrate that personalised care is central to all clinical or social interventions
- Clear lines of accountability and governance across the organisation for the provision of services which take account of early intervention, safeguarding and promoting children, young peoples and vulnerable adult's welfare

v2 Amended 15 May 2013

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- Arrangements to work effectively across organisations including clear policies and protocols regarding sharing information to enable staff to safeguarding and promoting the welfare of children, young people and vulnerable adults
- Clear policies to safeguard and promote the welfare of children, young people and vulnerable adults including effective complaints policies, whistle blowing policies and procedures for dealing with allegations against a member of staff or volunteers which members of staff/volunteers are made aware of.
- There are clear care pathways and care plans for times of transitions for children/young people and adults who receive treatment both within and outside Herefordshire.
- Arrangements to ensure all staff receive the appropriate training (and refresher training) to equip them to carry out their responsibilities with regard to safeguarding effectively
- That there is an effective complaints process in place and available to all staff
- That there is a clear equality and diversity statement in place and training is available to staff.
- There is a process for recording incidents, concerns and referrals in relation to children, young people and vulnerable adults and the actions that result from these
- Effectively implemented mental health legislation including the Mental Health Act 2007 and the Mental Capacity Act 2005 and have a system for reporting on the effectiveness of the processes.

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## **2.EXTERNAL INSPECTION AND MONITORING**

The Partners will ensure that commissioning arrangements with providers will ensure providers:

- comply with any statutory inspection requirements in relation to Services and will liaise as required with the Care Quality Commission, Monitor, Ofsted and/or other relevant regulatory bodies;
- provide commissioners with appropriate information and data to support the production of any self-assessment or review required by regulators
- provide appropriate access and information to any external body empowered by statute to inspect or monitor the discharge of the Services;

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## **3.ELIGIBILITY CRITERIA FOR THE PROVISION OF CARE AND HEALTH SERVICES**

The Partners will when commissioning:

- ensure that the Government's Guidance on "Fair Access to Care" is fully implemented and that the Eligibility Criteria Thresholds as agreed by the Council are consistently applied
- ensure that they comply with the Eligibility Criteria Threshold for the provision of care

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services which can only be changed in agreement with the Cabinet

- ensure that the current National Framework and any regional Guidance on Continuing Care and Funded Nursing Care is fully implemented and consistently applied;
- ensure that the criteria for the provision of Continuing Care and funded nursing care are in line with the NHS Continuing Care Guidance and good practice
- ensure compliance with legislation and policy surrounding Child Protection, Deprivation Of Liberty and Safeguarding and the Mental Capacity Act
- Ensure effective discharge of the statutory responsibilities of the Director of People's Services role.

#### **4.COMMUNITY ENGAGEMENT, CONSULTATION AND COMMUNICATION**

From the Commencement Date the Partners will retain their individual responsibility for statutory consultation in relation to Services.

Where any proposed consultation relates to services provided by the Partners outside this Agreement, they agree to work together to establish the arrangements under which such consultation takes place.

The Section 75 Board will consider whether the Partners should undertake joint arrangements for statutory and other consultation which relates exclusively to Services commissioned under this Agreement and the responsibility for any additional costs involved.

The Partners will consult each other before communicating with representatives of the media, Members of Parliament and the public generally in relation to any issues which might arise in relation to the Services. Where any action or omission of the CCG or the Council relating to Services is, or is likely to be, the subject of media comment, the Partners will endeavour to consult each other prior to making any response to the media, Member of Parliament or the public.

The Partners will work to the principles and definitions set out in the Community and Public Involvement Strategy for Herefordshire in all aspects of public involvement in commissioning and service development.

The Partners will work to principles of best practice in all commissioning and contracting with external agencies including the principles and definitions set out in the Voluntary Sector Compact in all aspects of work with the Third Sector.

## **5.COMPLAINTS AND INVESTIGATIONS**

Subject to statutory requirements, the Partners will deal with complaints about Services commissioned in accordance with the complaints procedures of the Host Partner of the Services concerned (which shall include where appropriate the jointly agreed protocol for PCT and ASC in 2009 in line with the new legislative requirements) and the procedures of the CCG for the Purchase of NHS-Funded Nursing Care. Complaints made in respect of Continuing Healthcare and about health care staff shall be dealt with in accordance with the Complaints Procedure of the CCG.

Upon notification of an investigation to be undertaken by any Ombudsman, each Partner will use their best endeavours to ensure that the provider of the Services responds to requests for information and/or interview within time limits set by the Ombudsman and provide access to relevant records.

The Partners will ensure that all safeguarding complaints are investigated in line with the Partners statutory responsibilities and best practice. The outcomes of the complaints and the investigations will be reported to the appropriate bodies, including progress against any remedial actions.

The Partners will keep these arrangements under review with the aim of establishing a fully integrated process for handling all complaints about Services.

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## **6.INSURANCE**

The Partners shall follow the Guidance and Protocol which was issued by the Department of Health in respect of claims associated with NHS bodies and local authorities implementing partnership arrangements under Section 31 of the Health Act 1999 and any future Guidance issued under Section 75 of the 2006 Act.

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## **7.LEGAL LIABILITIES AND INDEMNITIES**

In this section reference to a Partner includes its employees, agents or sub-providers/contractors.

### CLAIMS WHICH RELATE TO EVENTS BEFORE THE COMMENCEMENT DATE

The Partners shall not be responsible under this Agreement for any legal liabilities to third parties arising from the other's provision of Services prior to the 1<sup>st</sup> April 2013 except where such responsibility is transferred by statute.

### CLAIMS WHICH RELATE TO EVENTS DURING THIS AGREEMENT

Save in so far as otherwise prescribed by statute each Partner will keep the other indemnified against any damages, claims, liabilities costs and expenses arising from a breach of this Agreement or from negligence in the commissioning of Services for which

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they are the responsible Host Partner save to the extent that the damages etc. arose from the other Partner's negligence or breach of this Agreement.

#### CLAIMS WHICH RELATE TO EVENTS BOTH BEFORE AND AFTER THE COMMENCEMENT DATE

Where a claim is made after the 1<sup>st</sup> April 2013 in respect of a matter that relates to events both before and after the 1<sup>st</sup> April 2013, such a claim will be managed by the Host Partner for the Service concerned. Each Partner agrees to provide assistance, access to records (subject to the provisions of the Data Protection Act) and personnel free of charge within a reasonable time limit in connection with the claim. The Partners agree to use their best endeavours to reach agreement on the apportionment of any liability arising in consequence thereof and if they cannot agree the dispute resolution provisions of section 29 will apply.

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### **8. DATA PROTECTION AND INFORMATION SHARING**

When it obtains access to Personal Data (as defined in the Data Protection Act) obtained by or in the possession of any other Partner, each Partner and its employees will duly observe all their obligations under the Data Protection Act which arise in connection with this Agreement.

The Partners agree that any sharing of information about Service Users in order to improve the quality of care commissioned shall be subject to the Data Protection Act, the Information Sharing Memorandum of Understanding and the joint Generic Information Sharing Protocol between the Council, the PCT and the Trust, dated 24<sup>th</sup> January 2008 as amended from time to time by the Integrated Governance Committee. The Protocol applies to disclosures where consent has been obtained. (need to check that the information sharing protocol needs to be re-signed)

Guidance for disclosing without consent is contained in The Risk of Harm Protocol and/or The Crime and Disorder Protocol, and is posted on the intranets of both the CCG and Council, along with the agreed joint Information Sharing Policy.

Subject to the following provisions of this section the Partners shall work together to establish effective arrangements to permit and control the exchange of information to support the Partnership Arrangements.

Each Partner shall use its best endeavours to keep in strict confidence (and shall bind its employees and agents to keep in strict confidence) any personal or other information of a confidential nature relating to this Agreement.

Neither Partner shall use or disclose any such personal or confidential information other than as permitted by the Data Protection Act.

Without prejudice to any other provision of this Agreement, each Partner shall at times comply with the requirements of the Data Protection Act in respect of any personal data howsoever acquired or processed for the purposes of, or in the operation of, the Partnership Arrangements and no personal data collected or processed for any purposes connected with this Agreement will be disclosed to any other person otherwise than in strict accordance with the provisions of the Data Protection Act

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Each Partner shall secure that it has notified the Information Commissioner in respect of any personal data processed by it for the purposes of this Agreement.

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

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

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## **9.FREEDOM OF INFORMATION**

The CCG and the Council both being public bodies are subject to the Freedom of Information Act 2000 (“the Act”). In compliance with the Act the Partners agree that requests under the Act will be dealt with as follows:

- When the request is received by a Partner (the Receiving Partner) that Partner is responsible for the reply to the request.
- However, if the request relates solely to information held by the other Partner the request will be transferred to that Partner for response;
- If the request relates to information being held by one Partner on behalf of another Partner the Partners will consult on the request but the responsibility for the request will remain with the Receiving Partner.

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## **10.ANTI-DISCRIMINATION AND EQUAL OPPORTUNITY**

In Commissioning the Services, the Partners shall:

- adopt and maintain anti-discriminatory and equal opportunity policies and practices and shall provide copies of all such policies to the other Partner promptly on request;
- take account of the Human Rights Act 1998 and in performing the Agreement not do anything in breach of that Act.
- Have due regard for the requirements of the public sector equality duty as contained in Chapter 1 Part 11 of the Equality Act 2010.

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## **11. VARIATIONS**

v2 Amended 15 May 2013

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This Agreement may, following consultation with the Health and Wellbeing Board, be varied by the Partners at any time by agreement in writing and such variations may include the revision, deletion or addition of Schedules for the commissioning of Services. Any variation involving this Agreement arising from the Partners entering into a partnership arrangement for the commissioning of a new service, shall require the variation of Section 7 to include the functions required to be delegated for the commissioning of such new service.

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## **12.DISPUTES**

In the event of a dispute in relation to this Agreement which cannot be resolved by the S75 Board within 16 weeks of the dispute arising it will be referred for a resolution to the Chief Officers of either organisation.

Should the Chief Officers then consider it appropriate, they may refer the dispute to the Local Government Association or the Local Area Team (LAT) for a recommendation. If a Partner does not accept the recommendation or if one is not made only then may it commence legal proceedings.

Each organisation is accountable to its statutory body for all financial commitments in line with any identified risk sharing agreements. Any major issues that cannot be resolved equitably will be referred for resolution to the Local Government Association or the LAT.

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## **13.LEGAL ADVICE**

Either Partner may obtain their own legal advice on any aspect of this Agreement.

14.2 Under the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 there are a number of criteria which have to be fulfilled before a partnership agreement can be entered into.

- a) The partnership must be likely to lead to an improvement in the exercise of NHS and/or Local authority health functions.
- (b) The partnership arrangements must fulfil the objectives of the health improvement plan of the Health Authority in whose area the partnership is to operate. With the abolition of Strategic Health Authorities it is not clear if this criteria remains relevant.
- (c) The partners must undertake a joint consultation of persons likely to be affected by the proposed arrangements. Therefore the Council and the CCG should consider whether any persons are likely to be affected by the arrangement or that it is purely an administrative measure with no effect on service users.

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v2 Amended 15 May 2013

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#### **14. TERMINATION PROVISIONS**

Within 13 weeks of termination of this Agreement any surplus or uncommitted monies held in a Pooled Fund shall be returned to the Partners pro-rata their contributions to the Pooled Fund during the 12 months' period preceding termination subject to a retention or additional contributions of sufficient funds by Host Partners to:

- (a) meet continuing contractual commitments incurred under this Agreement;
- (b) make suitable alternative arrangements for Service Users and
- (c) subject to section 15.5 below and complying with their policies on finding suitable alternative employment within their organisations, to cover the costs of any unavoidable redundancies, the amounts of such retention or additional contributions to be determined in accordance with section 13 in the event of disagreement.

If a Partner grants the other Partner permission to use vehicles, equipment, furniture or other assets the permission will terminate at the end of this Agreement and the assets shall be returned to the Partner that owns them unless otherwise agreed. The Partners will have agreed inventories and schedules of condition for transferred assets and the assets will be returned at the end of this Agreement in as good a condition as at the start, fair wear and tear accepted or replacement assets will be provided.

Premises will be returned in accordance with the terms of the lease or licence for their use, including with the terms of the existing lease between the Partners of the premises at Belmont, Plough Lane and Brockington the terms of which are available from the Council's Legal section.

Confidentiality and data protection obligations shall survive termination of this Agreement.

In the event of termination, Partners will still be responsible for any indemnity given under this Agreement for a claim arising from a matter that occurred prior to termination.

The Partners will ensure that any alternative arrangements made with third parties for Service Users following termination of this Agreement will be in accordance with Guidance and Directions applicable to the transfer of employees and to the protection of pension rights.

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#### **15. MISCELLANEOUS**

No forbearance or delay by either Partner in enforcing its respective rights will prejudice or restrict the rights of that Partner, and no waiver of any rights or of any breach of a contractual provision will be deemed to be a waiver of the right to subsequently enforce the same right in relation to a different matter or to enforce any other right or to be a waiver of any other breach.

Any notice required to be given under this Agreement shall be in writing and may be served by sending the same by hand delivery or by first class post to the other Partner at the address given in this Agreement, for the attention of their Chief Officer or at such other address as a Partner may notify to the other Partner for the purpose of such service.

This Agreement does not give rights to any other person under the Contracts (Rights of Third

v2 Amended 15 May 2013

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Parties) Act 1999.

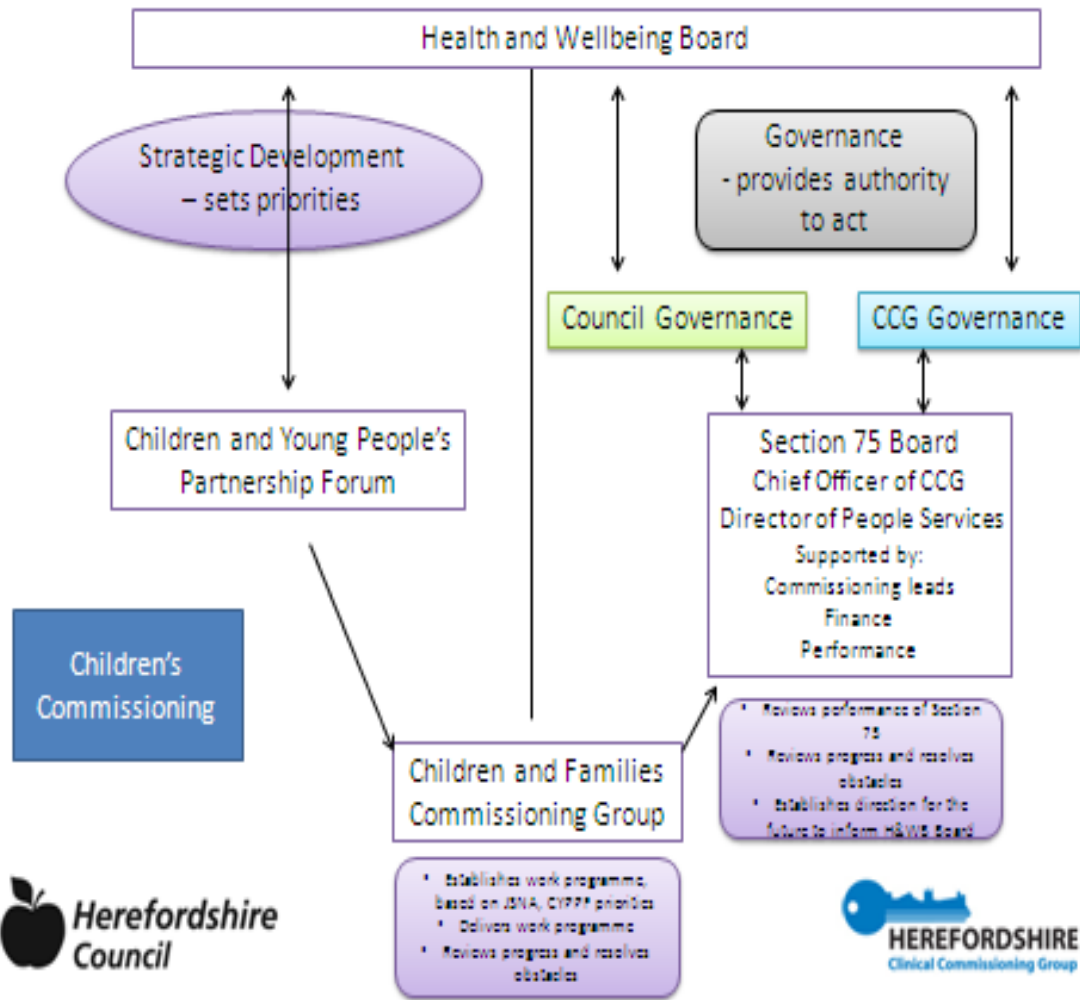
Subject to the prior consent of the Partners, this Agreement and the documents referred to in it are made for the benefit of the Partners and their successors and permitted assigns, and are not intended to benefit anyone else.

Subject to Clauses 16.6, 16.7 and 16.8, neither Partner may assign, transfer, charge or otherwise dispose of any interest in this Agreement without the prior written consent of the other Partner.

The CCG and the Council hereby acknowledge and agree that this Agreement and any other agreement in connection with these partnership arrangements to which both the CCG and the Council are a Partner shall be binding on, and shall ensure to the benefit of, the CCG and the Council and their respective successors and permitted transferees and assigns.

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**Appendix B**



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## 702 **Appendix C – Financial Arrangements**

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### 704 **1) Budget Setting**

- 705 a) Budgets will run for a full financial year from 1<sup>st</sup> April to 31<sup>st</sup> March and will be  
706 reviewed and agreed annually by both parties, and will be formally approved the  
707 authority and CCG 30 days prior to the start of each financial year.
- 708 b) The agreed budgets will be formally approved by both parties in accordance with the  
709 reporting arrangements outlined in this agreement preferably before the start of the  
710 financial year, but within 3 months of the start of the financial year.
- 711 c) Budgets agreed retrospectively will be deemed to be in effect from 1<sup>st</sup> April of the  
712 financial year unless an alternative commencement date is jointly agreed by both  
713 parties and ratified by the board.
- 714 d) In the event that internal cost reductions or efficiency schemes of either party will  
715 give rise to a reduction in contributions to the S75 agreement this should be notified  
716 in writing to the board and other partner no later than three months before the  
717 commencement of the financial year in which the reduction will take effect. This is to  
718 enable effective alternative financial arrangements to be put in place.
- 719 e) In the event that budgets are not jointly agreed prior to the start of the year financial  
720 year a provisional budget will be agreed and finalised within 3 months of the start of  
721 the financial year.
- 722 f) In the event that financial agreement cannot be reached on funding for a particular  
723 service within the period specified that service will cease to be part of the s75  
724 arrangements, at the end of the 3 month provisional budget period.
- 725 g) The joint budget setting discussions will consider and agree on the impact of the  
726 section 75 budgets of:
- 727 i) Inflation assumptions
- 728 ii) Demographic or other population assumptions
- 729 iii) Efficiency or cost savings requirements from either party
- 730 iv) Any other changes having a financial impact on the budget under consideration
- 731 h) The authority will provide details of planned expenditure on S256 funds within the  
732 same timescale to the HCCG to provide assurance that funds will be disbursed on  
733 activities of joint benefit to both health and social care.

### 734 **2) Budget Monitoring and Reporting**

- 735 a) Each party has a duty to remain within the budget set. All parties will endeavour to  
736 maximise Value for Money and efficient and effective use of funds.
- 737 b) A quarterly finance and budget review meeting will meet to consider cumulative  
738 expenditure and income and projected expenditure and income for the remainder of  
739 the year for the S75 budgets.
- 740 c) The local authority will also provide a quarterly summary of actual and planned  
741 expenditure on the S256 funds passported from the CCG to the LA.
- 742 d) Where specific services have a monthly reporting schedule (eg Complex Needs)  
743 these reports will be distributed to partners and form part of the overarching quarterly  
744 finance report.

v2 Amended 15 May 2013

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- 745 e) Prior to the quarterly finance meetings the responsible partner will produce a report  
746 detailing year to date income and expenditure vs budget and projected outturn  
747 together with a narrative reporting on current financial performance and any  
748 anticipated movements. The report should flag any under or over spends as soon as  
749 they emerge with the reasons for the changes so that action can be taken to mitigate.
- 750 f) Following the quarterly finance meetings a consolidated finance report will be drafted  
751 for presentation to the next board meeting.
- 752 g) UNDERSPENDS
- 753 i) In the event that a service is likely to deliver an under spend this will be  
754 monitored and reported. At the end of the financial year the under spend will be  
755 shared between the partners in the ratio of contributions agreed for the service.
- 756 h) OVERSPENDS
- 757 i) No service is expected to overspend its budget but in the event that an over  
758 spend is predicted to arise the responsible partner should take whatever  
759 mitigating action is practicable to minimise the impact on the budget.
- 760 ii) In the event that the over spend (or income shortfall) cannot be fully mitigated the  
761 risk share arrangements must be agreed in the quarterly finance review meeting.  
762 The default will be that the risk share is in the ratio of partner's contributions to  
763 the service, unless the over spend has arisen through the specific demands of  
764 either partner in which case the partner responsible for the over spend bears the  
765 full additional cost.

### 766 3) Contract Variations

- 767 a) In year contract variations will be actioned where fixed budget contributions have  
768 been agreed by both parties to under / over spend.
- 769 b) In year contract variations will also be raised where both parties agree to the  
770 commencement of a new service from a date other than 1<sup>st</sup> April of the financial year.
- 771 c) Or termination of a service where both parties agree a service will change or  
772 terminate prior to the end of the financial year.

### 773 4) Payment of Contributions

- 774 a) All partners are expected to make contributions promptly (including transfer of S256  
775 moneys) ie within 30 days of commencement of financial year for pooled budget  
776 arrangements (or start date if not full year arrangement), or of receipt of funds (S256  
777 money).
- 778 b) All invoices to be settled within 30 days of issue. In the event that an invoice is  
779 disputed and remains unresolved after 60 days this should be raised for resolution at  
780 the next quarterly finance review.
- 781 c) Either party may reserve the right to charge late payment interest in the event of  
782 invoices not being paid by the due date

### 783 5) Year End and Audit Arrangements

- 784 a) Accounts will be produced under accruals accounting methodology.
- 785 b) Both parties will provide final financial reporting information in accordance with the  
786 financial reporting timetable and requirements of both parties.
- 787 c) A final outturn report for all S75 expenditure will be prepared and presented to the  
788 Board within 3 months of the year end.

v2 Amended 15 May 2013

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789 d) Access to financial information will be made available to the auditors of either party  
790 as required.

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793 **6) VAT**

794 a) The VAT regime applied will seek to maximise the recovery of tax incurred within  
795 these arrangements.

796 b) The Parties will jointly endeavour to minimise the complexity of VAT and other  
797 taxation.

798 c) The Parties shall comply with HM Customs and Excise guidance dated March 2003  
799 in respect of the pooled fund. The Council shall consult with HM Customs and Excise  
800 to agree an appropriate scheme for recovery of VAT.

801 **7) Termination of Services**

802 In the event that one party gives notice to withdraw from contributing to a service included  
803 within the S75 arrangements notice must be given in writing and 3 months prior to any  
804 change taking effect. In the event that the withdrawal results in the necessity to make staff  
805 redundant or incurs other costs solely arising from the termination these costs will be borne  
806 by the partner withdrawing unless the agreement to terminate is mutual in which case the  
807 costs will be borne in ratio to the partners

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827 **Appendix D**

828 **Section 75 Summary Financial Schedule between Clinical Commissioning Group and Herefordshire**  
829 **Council 2013/14**

830 Section 75 Summary Schedule – Agreed Value Arrangements

Ref	Service Area	Description	Estimated Annual Value 20 13/14 (£)	Total Budget (Gross) (£)	Lead Responsible Officer
1	Adults	Carers Hub	50,000	225,380	HC Lead Commissioner
2	Adults	Community Equipment Store – CCG 30%	164,470	548,230	HC Lead Commissioner
4	Adults	Bed at Broomyhill	104,602	N/A	HC Lead Commissioner
6	Adults	Contribution to Adults Safeguarding Board		TBC	HSCB/HSAB Business Manager
7	Children	Complex Needs Solution	494,190	3,459,330	Head of Provider Services (Additional Needs)
8	Children	Contribution towards Children’s Safeguarding Board	45,203	208,754	HSCB/HSAB Business Manager
	<b>TOTAL</b>		<b>858,465</b>		

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832 Summary of funding received by CCG from Herefordshire Council

Ref	Service Area	Description	Estimated Annual Value 2013/14 (£)	Total Budget (Gross) (£)	Lead Responsible Officer
27	Adults	Contribution towards MIND contract	152,463	TBC	CCG Lead Commissioner
28	Adults	Contribution towards Alzheimers contract	36,352	TBC	CCG Lead Commissioner
29	Adults	Kington Court	366,318	TBC	CCG Lead Commissioner
	<b>TOTAL</b>		<b>555,133</b>		

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Ref	Service Area	Description	Estimated Annual Value 2013/14 (£)	Total Budget (Gross) (£)	Lead Responsible Officer
24	Adults	Reablement DOH Passport funded	TBC	TBC	HC Assistant Director
25	Adults	To support Social Care DOH Passport funded	3,151,863	3,151,863	HC Assistant Director
26	Adults	Winter Pressures	TBC	TBC	HC Assistant Director

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**S256 Arrangements – Funding from National Commissioning Board to Local Authority via Clinical Commissioning Group**

845 **Pooled Budget Arrangements – Overall Budget Totals**

Complex Needs	Budget Value 13/14	Lead Responsible Officer
Education	1,482,570	Head of Provider Services (Additional Needs)
Children’s Social Care	1,482,570	Head of Provider Services (Additional Needs)
Health as above	494,190	Head of Provider Services (Additional Needs)
<b>Total Budget CNS</b>	<b>3,459,330</b>	

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**Proposed Pooled Budget from October 2013 (indicative full year from Herefordshire Council)**

Short Breaks	Budget Value 13/14	Lead Responsible Officer
Children’s Services	543,000	HC -Head of Children’s Commissioning
Health	813,000	CCG - Clinical Programme Manager
<b>Total Budget Short Breaks</b>	<b>1,356,000</b>	

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v2 Amended 15 May 2013

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850 **Key Points**

851 • Funding from CCG to local authority confirmed as £903,668 but may be in year  
852 variation for new pooled budget arrangements.

853 • Funding from local authority to CCG of £555,133, at 12/13 budget but inflation  
854 assumptions to be confirmed by CCG.

855 • Pooled budget for Complex Needs confirmed at £3,459,330.

856 • New pooled budget for short breaks services to be introduced from October 2013,  
857 indicative full year pooled budget £1.356m but subject to confirmation and in year pro  
858 rata adjustment.

859 • Still awaiting details of re-ablement funding for 13/14

860 • Interpreting costs now held by Local Area Team.

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**Appendix E – Example of Detailed Schedule**

**SECTION 75 - TEMPLATE**

<b>SECTION 75 - TEMPLATE</b>							
<b>S75 Service Line reference and Description</b>	18	Children's					
<b>Lead Partner</b>	<b>Budget Holder</b>		<b>Annual budget</b>	<b>Reporting Period</b>			
Herefordshire Council	Herefordshire Council		£45,203	Apr-13			
<b>Overview of Service Provided</b>				<b>REPORT APPROVED BY</b>			
Herefordshire Clinical Commissioning Group has a statutory responsibility to resource Herefordshire Safeguarding Children Board, along with the Board's other partners, in terms of appropriate attendance and finance to enable HSCB to be strong and effective.				<b>Signature</b>			
<b>Details of main responsibilities within the service provision for each partner</b>							
<p><b>Financial:</b> The CCG, sharing its responsibility equitably with other member organisations, has an obligation to provide reliable financial resources to enable HSCB to be strong and effective.</p> <p><b>Personnel:</b> The CCG has an obligation to provide suitable personnel to progress the work of the Board and contribute fully to its meetings, including appropriate membership of its sub groups, agreed in discussion with the Board's Independent Chair.</p>							
Details of type and level of resources deployed (ie: staff; level of funding from each partner; buildings; equipment; grants to 3rd parties etc)							

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<b>Financial:</b> The CCG should contribute to the Board at the level agreed by all parties, based upon the agreed budget for the year and the proportion of the budget made by health in previous years. Based on figures from previous years it is likely that the CCG will contribute 23-30% of the Board's total budget. In 13/14 this amounts to £45,203. Personnel: Members of HSCB should be people with a strategic role in relation to safeguarding and promoting the welfare of children within their organisation. They should be able to: - speak for their organisation with authority; - commit their organisation on policy and practice matters; and - hold their own organisation to account and hold others to account.										
<b>Details of monitoring mechanism</b>										
Financial Contributions to the Board are made once a year, in April and will be invoiced by the Board's Business Unit. Personnel Contributions will be monitored by the Board's Steering Group in terms of attendance and actions taken from meetings.										
<b>Details of payment mechanisms</b>										
The Board's Business Unit will invoice the CCG for their agreed contribution annually, in April.										
Outcomes Expected			Outcome Measurement Criteria				Date:			
		Description	Measure Owner	Target measure	Frequency	Tolerance	Current Forecast	Achieved to Date	Balance to Achieve	RAG status
Quantifiable	1	Annual Financial Contribution at a level agreed by the Board.	Dave McCallum	tba	Annually	0	-	-	-	Complete
Quantifiable	2	Regular attendance at Board meetings and appropriate sub groups	Jo Davidson	100%	Quarterly	80%	-	-	-	On track
Quantifiable	3									Behind target



Quantifiable	4									Not achieved
Quantifiable	5									Not started
			<b>Measure Owner</b>	<b>Success Criteria</b>	<b>Frequency</b>	<b>Tolerance</b>				
Qualitative	1									Complete
Qualitative	2									On track
Qualitative	3									Behind target
Qualitative	4									Not achieved
Qualitative	5									Not started
<b>ADDITIONAL INFORMATION</b>										
<b>RISKS</b>										

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