



Adult Social Care and Health Committee

Date:	Monday, 18 January 2021
Time:	6.00 p.m.
Venue:	Virtual

Contact Officer: Patrick Sebastian
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AGENDA

1. MINUTES (Pages 1 - 8)

To approve the accuracy of the minutes of the meeting held on 19 November 2020.

2. APOLOGIES

3. MEMBER DECLARATIONS OF INTEREST

Members are asked to consider whether they have any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

4. PUBLIC QUESTIONS, STATEMENTS AND PETITIONS

PUBLIC QUESTIONS

QUESTIONS BY MEMBERS

STATEMENTS AND PETITIONS

SECTION A - DECISIONS

5. WIRRAL EVOLUTIONS (Pages 9 - 16)

6. FUTURE SAFEGUARDING ARRANGEMENTS (Pages 17 - 64)

7. EXTRA CARE HOUSING CAPITAL REPORT (Pages 65 - 70)
8. EXTRA CARE HOUSING TENDER (Pages 71 - 320)

SECTION B - BUDGET REPORTS

9. BUDGET CONSULTATION (Pages 321 - 328)
10. REVENUE BUDGET MONITORING (Pages 329 - 334)

SECTION C - PERFORMANCE REPORTS

11. ADULT SOCIAL CARE AND HEALTH PERFORMANCE REPORT (Pages 335 - 360)

SECTION D - REVIEWS / REPORTS FOR INFORMATION

12. STRATEGIC DEVELOPMENTS IN THE NHS (Pages 361 - 380)
13. 111 FIRST (Pages 381 - 386)
14. COVID-19 RESPONSE UPDATE (Pages 387 - 394)
15. DEPRIVATION OF LIBERTY RELATING TO PEOPLE WHO ARE DEEMED UNABLE TO MAKE DECISIONS ABOUT THEIR CARE AND SUPPORT NEEDS (Pages 395 - 406)
16. QUALITY ASSURANCE- CARE HOMES (Pages 407 - 414)
17. COMMITTEE WORK PROGRAMME - ADULTS COMMITTEE (Pages 415 - 422)

ADULT SOCIAL CARE AND HEALTH COMMITTEE

Thursday, 19 November 2020

Present: Councillor Y Nolan (Chair)

Councillors B Berry P Gilchrist
D Burgess-Joyce M Jordan
M Collins M McLaughlin
T Cottier T Usher
S Frost

10 MEMBER DECLARATIONS OF INTEREST

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state what they were.

The following declarations were made:

Councillor Michael Collins	Personal interest in item 5 (proposed Public Health Commissioning Intentions 2021-22) as a Governor of Wirral University Teaching Hospital, and as his daughter works for the Hospital as well.
Councillor Mary Jordan	Personal interest in item 5 (proposed Public Health Commissioning Intentions 2021-22) as she works for the NHS, was a Trustees of IncuBabies and had a son working for the NHS.
Councillor Tom Usher	Pecuniary interest in item 5 (proposed Public Health Commissioning Intentions 2021-22) as an employee of Autism Together
Councillor Moira McLaughlin	Personal interest in item 5 (proposed Public Health Commissioning Intentions 2021-22) as she had a daughter working for the NHS

11 MINUTES

Resolved – That the accuracy of the minutes of the meeting held on 13 October 2020 be agreed.

12 PUBLIC QUESTIONS

The Head of Legal Services informed the Adult Social Care and Health Committee that no Public questions, or requests to make a statement had been received.

13 PROPOSED PUBLIC HEALTH COMMISSIONING INTENTIONS 2021-22

Julie Webster, The Director of Public Health, introduced a report that sought agreement to progress Public Health's proposed commissioning intentions for 2021-2022.

The proposals in the report linked to the delivery of the Wirral Plan 2025 and the statutory responsibilities of the local authority in respect of public health: *services which helped people live happy, healthy, independent and active lives, with public services there to support them when they needed it.*

The report set out that the Health and Social Care Act (2012) gave Wirral Council statutory duties across three "domains" of Public Health, as described in the Public Health Outcomes Framework. These duties covered the following components:

- Health improvement – including reducing lifestyle related ill-health and inequalities in health, and addressing the underlying determinants of health;
- Health protection – ensuring that comprehensive plans are in place across the local authority, NHS and other agencies to respond to infectious disease outbreaks and other public health emergencies;
- Health service improvement - providing NHS Commissioners, including Clinical Commissioning Groups (CCGs), with expert advice and support to improve and evaluate the quality and efficiency of health services.

It was noted that the Joint Strategic Needs Assessment (JSNA) should both inform and influence the commissioning plans of the Council and so influence how the Public Health grant was attributed. These responsibilities were delivered through a combination of external contracts, internal investment and running costs.

The Director of Public Health informed that the report was intended to provide transparency in relation to commissioning intentions that were delivered through external contracts, emphasising that it was funded through ringfenced grants.

Members questioned the timescales and specific areas such as drug/alcohol support.

Officers noted that the figure given in the recommendation (2) (£1,811,483) should actually read £1,548,858.

Resolved – That

- (1) the Director of Public Health be authorised to:**

- i re-commission a Stop Smoking Service totalling up to £4,884,600 (£697,000 per annum) for an initial five-year contract (1 October 2021 – 30 September 2026) with the option of two one-year extensions.
 - ii re-commission a Black and Asian Minority Ethnic (BAME) Programme totalling up to £262,625 (£52,525 per annum) for an initial three-year contract (1 October 2021 – 30 September 2024) with the option of two one-year extensions.
 - iii extend a further 11 contracts in 2021/22 as detailed in Appendix 1 to the report.
- (2) the decision to re-commission contracts totalling £1,548,858 for four Children’s Public Health Programmes, for initial one year contracts (1 September 2021 – 31 August 2022) with the option of a one year extension for each to be made by Children, Young People and Education Committee be noted.

14 **PROPOSAL FOR ROLL OUT OF LATERAL FLOW TESTING IN WIRRAL**

Julie Webster, the Director of Public Health, introduced a report that outlined a proposal for the roll out of Lateral Flow Tests (LFTs) in Wirral. The Wirral: Mass asymptomatic Testing – Lateral Flow Antigen Testing paper was attached as an appendix to the report.

The report informed that LFTs were a simple-to-use point of care solution for rapid COVID-19 testing. LFTs offered rapid turnaround time (20-30 mins) without the need for laboratory processing. As part of the Tier 3 agreement with Liverpool City Region LFTs were being offered to Directors of Public Health (DsPH), to enable local teams to direct and deliver community testing based on their local knowledge. 10,000 had been offered initially, which would be aimed at high risk populations.

The proposal was to utilise LFTs locally to:

- Identify & isolate infected people more quickly than relying upon symptomatic testing alone. Done well, this had the potential to reduce transmission.
- Reducing the probability that anyone present was infectious and would allow more time-limited contact between people, supporting economic and social stability.

In order to gain maximum population benefit from this new technology the proposal was to undertake multiple pilots within Wirral across a variety of settings. This approach would allow the benefits to be evaluated and the consequences of the use of LFTs within different settings across the Borough.

In this way it would build in a phased way towards the appropriate use of mass asymptomatic testing within the Borough.

Members had questions about some details such as the precise accuracy of tests and the numbers who could be reached. It was emphasised that people with a positive result would be offered a further, more accurate, test.

Resolved – That

- 1) the recent developments regarding Lateral Flow testing be noted.**
- 2) the proposals for the roll out of Lateral Flow Testing in Wirral be supported.**

15 **DEVELOPMENT OF CONTACT TRACING IN WIRRAL**

Julie Webster, the Director of Public Health, introduced a report that provided options and made a recommendation for the future direction for contact tracing in Wirral.

Members discussed the options in the report and queried the issue of borders, but it was explained that with contact tracing people could travel and still be contacted.

Resolved: That the option to deliver locally supported contact tracing, plus targeted local contact tracing where intelligence identifies high transmission risks, be supported.

16 **ADULT SOCIAL CARE AND HEALTH PERFORMANCE REPORT
QUARTER 2 2020-21**

A report of the Director of Adults, Health and Strategic Commissioning provided the 2020/21 Quarter 2 (July-September) performance report in relation to Adult Social Care and Health. The report was designed based on discussion with Members and an initial draft reviewed by the Committee at the meeting 13 October 2020. The Committee approved that report and requested it as an agenda item at future committees.

Jason Oxley, Assistant Director Care and Health Commissioning for People, introduced the report and statistics on performance.

Members questioned the numbers of care homes below 'good' status, and also those not paying the Real Living Wage, and the limited influence we had to improve standards. They appreciated the style of the report but suggested a working group to consider data analysis and data reporting.

Members also queried the Deprivation of Liberty Safeguards and their use at end of life. Members requested that further information on current practice in relation to Deprivation of Liberty be presented to committee members.

Resolved: That the content of the report be noted.

17 **WORK PROGRAMME**

Members gave consideration to the report of the Director of Care and Health that set out the proposed Adult Social Care and Health Committee Work Programme 2020/21 as detailed in the appendix to the report.

The Adult Social Care and Health Committee, in co-operation with the other Policy and Service Committees, was responsible for proposing and delivering an annual committee work programme. The work programme aligned with the corporate priorities of the Council, in particular the delivery of the key decisions which are within the remit of the Committee.

Members were aware that the plan required review as the Covid-19 pandemic developed.

Resolved: That the proposed Adult Social Care and Health Committee work programme for the remainder of the 2020/21 municipal year be noted.

18 **COVID UPDATE**

A report of the Director of Public Health referenced to the published surveillance data for Wirral in relation to the impact of the Covid-19 pandemic.

Julie Webster, Director of Public Health presented the report and spoke about the daily monitoring and the rates of increase which had dramatically increased to a peak of 226 on 19 October but decreased since then to around 74 at the last record, showing that there was still widespread community transmission. Christmas was considered a difficult time and restrictions may have to continue until Spring or until the majority of people had been vaccinated, although it was unlikely to disappear and would need to be managed in the future.

Members commented on the value of local testing and contact tracing.

Resolved: That the report be noted.

19 **FEEDBACK AND COMMENTS FOR BUDGET WORKSHOP**

The Chair added this item as urgent business as the decision was required before the next scheduled meeting of the Committee. It was to consider

feedback from the private Budget Workshops held since the last meeting and to consider which of the options.

Graham Hodgkinson, Director of Adults, Health and Strategic Commissioning, explained the context of the budget process, explaining that the Council was under considerable budget pressure as a result of the pandemic and was seeking ways to reduce debt and costs with the aim to get the budget balanced within five years.

Councillor Kate Cannon moved the following Motion, seconded by Councillor Samantha Frost:

Adult Care and Health Committee wishes to protect services where a reduction in budget would lead to more costly demand pressures occurring subsequently.

Adult Care and Health Services will contribute significantly to savings over the next 5yrs by aspiring to delivering it's services efficiently, to a high standard and in a way that ensures people can be independent for as long as possible.

Committee has considered all of the options and wishes to proceed with;

Budget Option 2- £500,00 saving from Wirral Evolutions

Budget Option 3- Strength based assessments as well as all of the in year savings to be re-profiled into 21/22

For the reasons stated above, them being that cuts impacting on the quality of services will lead to greater costs in future years.

We therefore reject;

Budget Option 1- Rationalising contracts to the voluntary community and faith sector.

Budget option 4- Discontinuing paying the real living wage fee rate to care providers.

Budget option 5- Reduction of NHS care providers- Social care contracts.

Budget option 6- Adult social care staffing reduction

Budget option 7- Public Health staffing reduction.

Members debated this Motion, how it affected partnership working and suggested internal processes around contracts be reviewed too.

Councillor Phil Gilchrist move an amendment, Seconded by Councillor Mary Jordan:

committee believes steps should be taken that will ensure a more effective operation of the shared aids and adaptation services with a view to a co-ordinated and improved services.

Councillor Kate Cannon accepted the amendment.

Resolved: That

(1) Adult Care and Health Committee wishes to protect services where a reduction in budget would lead to more costly demand pressures occurring subsequently.

(2) Adult Care and Health Services will contribute significantly to savings over the next 5yrs by aspiring to delivering it's services efficiently, to a high standard and in a way that ensures people can be independent for as long as possible.

(3) Committee has considered all of the options and wishes to proceed with;

Budget Option 2- £500,00 saving from Wirral Evolutions

Budget Option 3- Strength based assessments as well as all of the in-year savings to be re-profiled into 21/22

For the reasons stated above, them being that cuts impacting on the quality of services will lead to greater costs in future years.

(4) We therefore reject;

Budget Option 1- Rationalising contracts to the voluntary community and faith sector.

Budget option 4- Discontinuing paying the real living wage fee rate to care providers.

Budget option 5- Reduction of NHS care providers- Social care contracts.

Budget option 6- Adult social care staffing reduction

Budget option 7- Public Health staffing reduction.

(5) Committee believes steps should be taken that will ensure a more effective operation of the shared aids and adaptation services with a view to a co-ordinated and improved services.

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

Monday, 18 January 2021

REPORT TITLE:	REVIEW OF DAY SERVICES CONTRACT FOR PEOPLE WITH A LEARNING DISABILITY
REPORT OF:	GRAHAM HODKINSON, DIRECTOR OF CARE AND HEALTH

REPORT SUMMARY

Wirral Council's budget has reduced overall due to lower levels of grant funding being available to the Council from Government. This has in turn led to the requirement for adult social care to deliver effectively within the resources available to it, and within the context of increasing demand due to a significantly ageing population.

The Council continues to spend a comparatively higher amount of its social care resource for people with learning disabilities than other Councils and continues to have a comprehensive day service offer alongside other services. Day care offers a valued service to people with disabilities and their carers which improves their quality of life.

Wirral Evolutions was created to expand the customer base and to increase income opportunities outside of the social care contract. Subsequently Wirral Evolutions has retained a block contract with the Council to deliver Day Services for People with a Learning Disability since 2015.

In February 2020, the Adult Care and Health Overview and Scrutiny Committee requested that a review should be conducted to explore all available options for future provision of day services for people with a learning disability, including the potential for bringing services back 'in-house' to address the financial challenges currently facing the service.

Wirral Evolutions have delivered the contract for five years, and costs have continued to increase, and therefore the Council is reviewing whether the service should stay in the same format. A financially sustainable service model for day services is required. An internal review was conducted over a three-month period from October 2020 to December 2020 and it is proposed that the Council should continue to commission day services from Wirral Evolutions.

The Council has commenced the formal budget process, as set out in the constitution and in accordance with the legal requirements to set a balanced and sustainable budget for

2021 to 2022. The Council have formally commenced consultation on the budget in relation to the Contract for Day Services for People with a Learning Disability, with the intention of removing an over contract spend amounting to £0.5m. This will be used to set the annual contract value in line with the budget allocation to social care a value of £5.015m for 2021 to 2022. The Council has a responsibility to ensure that public money is used to deliver cost-effective sustainable outcomes. Commissioned services must provide value for money and deliver good outcomes for residents.

The Policy and Resources Committee must recommend a 2021 to 2022 balanced Budget proposal to the Council for its meeting in March 2021. It is good practice for the residents of Wirral to have their say on budget proposals therefore the proposal to remove an over contract spend amounting to £0.5m will go to public consultation. It is imperative that the Council works in partnership with Wirral Evolutions and people who access their services and their family members throughout the consultation period.

The Council's Budget supports the delivery of the Wirral Plan and is key to ensuring the Council is financially stable. Our residents and businesses expect to be informed and consulted about how services are going to be run and how their money is going to be raised and spent.

RECOMMENDATIONS

The Adult Social Care and Health Committee is recommended to:

1. Agree that the Council should continue to deliver Day Services through the current contract with Wirral Evolutions.
2. Invite Wirral Evolutions to present to the Adult Social Care and Health Committee the company's proposals to modernise the current operating model and reduce the operating costs to ensure delivery of the service within the existing contract at the current contract price of £5.015m for 2021 to 2022.
3. Invite Wirral Evolutions to present to the Adult Social Care and Health Committee quarterly reports to update the Committee on its progress, with a six-month formal review of progress against allocated spend under the contract.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 Our current day service offer for people with a learning disability is primarily building based and follows a traditional “day centre” model that provides services for adults. Wirral Council commissions Wirral Evolutions to deliver day services for people with a learning disability. There are no concerns about the quality of current service, and the Council does not want to cause unnecessary upset to people who access services or their family members however it is clear that the current way of commissioning day service is very traditional and is not financially affordable or sustainable to the Council at the current time.
- 1.2 Wirral Evolutions have submitted a proposal to the Council to bring the operating costs back in line with the contract value which the Council supports as part of the Budget consultation process.
- 1.3 Wirral Evolutions delivers days services across nine venues which are owned by the Council, which is higher in comparison to neighbouring Councils who utilise less council assets and have a reduced building-based day services offer. There has been a significant shift from the over concentration on building-based day services towards more personalised community-based day opportunities which offer more activities in settings such as workplaces, colleges, sports and leisure centres and community centres or local hubs based within local communities. This in turn can enable people to develop more independent living skills.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 A range of options have been explored as part of the service review:
 - Option 1 - Continue to commission with Wirral Evolutions.
 - Option 2 - Bring the Day Care Service Inhouse.
 - Option 3 - Go to external procurement to commission with market (competitive tendering).
- 2.2 The primary purpose of the options appraisal is to help develop a value for money solution for the Council by making comparisons of different options. Good decision-making for local government interventions is facilitated by a robust appraisal of the options available. As part of the review, an option appraisal was conducted to assist the Council in taking the right decisions by ensuring that the service review explores advantages and disadvantages of each option against the critical success factors.

2.3 Wirral Council and Wirral Evolutions have discussed a range of options to modernise the current operating model, to align the operating costs to the budgeted amount of £5.015m for 2021 to 2022.

3.0 BACKGROUND INFORMATION

3.1 In February 2020 the Adult Care and Health Overview and Scrutiny Committee requested that the Cabinet explore all available options for future provision of day services, requesting that work commenced as soon as practicable to understand how this could be achieved within a reasonable timeframe. The review was delayed due to the COVID-19 outbreak and commenced from October 2020 to December 2020.

3.2 Wirral Council conducted a review of the Contract for Day Services for People with a Learning Disability in Wirral. The scope of the review relates to the main Service Provider named Wirral Evolutions, who holds a block contract with the Council to deliver Day Services for People with a Learning Disability.

3.3 The Council previously delivered Day Services to People with Learning Disability inhouse until Wirral Evolutions was created and awarded the contract on 1st December 2015, and the staff transferred from the Council to Wirral Evolutions.

3.4 Wirral Evolutions Ltd was incorporated in 2015 as a private company limited by shares and trading as a Local Authority Trading Company (LATCo) to provide personalised day services and opportunities for adults with a wide range of learning and physical disabilities.

3.5 It should be noted that there are no concerns about the quality of service delivered by Wirral Evolutions however the cost of delivering Day Services for People with a Learning Disability has continued to increase over the previous five years and is no longer financially sustainable to continue in its current form.

4.0 FINANCIAL IMPLICATIONS

4.1 The Council continues to face huge financial pressures, resulting from a combination of reduced national funding, the COVID-19 pandemic and the continually increasing demand on services.

4.2 As part of the Budget Proposals the Council intend to reduce the Contract overspend for Day Services for People with a Learning Disability by £0.5m to an annual budget of £5.015m for 2021 to 2022. Wirral Evolutions had a saving proposal in 2020 to 2021 that was delayed by COVID-19 and has therefore been presented for public consultation alongside the 2021 to 2022 proposals.

- 4.3 The table shows the previous year's funding made available by the Council for the provision of Day Care Services by Wirral Evolutions and the proposed forthcoming budget for 2020 to 2021.

Year	Income Amount funding by Wirral Council
Year 6 – 2020 - 2021	£5.015m
Year 5 – 2019 - 2020	£5.41m
Year 4 – 2018 – 2019	£5.20m
Year 3 – 2017 – 2018	£5.14m
Year 2 – 2016 – 2017	£4.90m
Year 1 - 2015 - 2016 Commenced 01/12/2015	£1.80m

- 4.4 The contract with Wirral Evolutions also included a commitment to buy back support services from the Council. The value of these support services is £0.78m per annum.
- 4.5 As the Landlord, Wirral Council is responsible for maintaining the nine venues currently used, which includes all the additional building maintenance costs.

5.0 LEGAL IMPLICATIONS

5.1 The following legislation will be relevant to the service review:

- Local Authorities (Goods and Services) Act 1970
- Local Government Act 1999
- Local Government Act 2003
- Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
- Localism Act 2011
- Care Act 2014

5.2 Wirral Council do not have a legal duty to provide day services but do have a legal duty to meet the assessed needs of adults requiring care and support.

5.3 It is essential, as a matter of prudence, that the financial position continues to be closely monitored. Members must satisfy themselves that sufficient mechanisms are in place to ensure both that savings are delivered, and that new expenditure is contained within the available resources. Accordingly, any proposals put forward must identify the realistic measures and mechanisms to produce those savings.

5.4 The consultation process, including the Council's consideration of the responses, is required to comply with the following overarching obligations:

- Consultation must be at a time when proposals are at a formative stage.
- The proposer must give sufficient reasons for its proposals to allow consultees to understand them and respond to them properly.
- Consulters must give sufficient time for responses to be made and considered.

- Responses must be conscientiously taken into account in finalising the decision.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 Wirral Council and Wirral Evolutions have discussed a range of options to modernise the current operating model, to align the operating costs to the budgeted amount of £5.015m for 2021 to 2022. Wirral Evolutions has submitted a proposal as part of the service review to restructure the service.
- 6.2 The Communications team will deliver the consultation exercise as part of their usual work plan.

7.0 RELEVANT RISKS

- 7.1 The Council will mitigate risks by developing a multi-functional project team that gains insight into all areas of risk and puts mitigating actions in place to reduce the impact of risk.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 A communication plan will be developed to ensure all key stakeholders are fully engaged for the consultation period. The Council will set up a range of engagement activities/approaches to seek the views of those individuals who access Wirral Evolutions services as part of the review and consultation process.
- 8.2 The Council is very mindful of the support needs of the people who access the Day Services commissioned through the existing contract with Wirral Evolutions, and the Council will fully engage with individuals and their family members to ensure they have a strong voice when designing the new service model to be implemented in 2021.
- 8.3 It is proposed that formal consultation commences with people with a learning disability and their Carers, including all other key stakeholders in relation to removing a contract overspend of £0.5m for Day Services. It is also extremely important that we work with people with a learning disability and their carers at a reasonable and supportive pace to ensure that future models of support are firstly what they want, and secondly that they really work. The Council will commence the formal budget consultation and is keen to engage with Wirral Evolution Staff, Wirral Evolution Board Members and Management Team, People who access services and Families and Parent Carer Groups, Advocacy Groups, Elected Members and Trade Union Officials and other key stakeholders.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone.
- 9.2 Wirral Evolutions has an equality, diversity and inclusion policy in place and promotes the rights of people living with a disability.
- 9.3 An Equality Impact Assessment will be conducted once the formal consultation period has been concluded.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 Wirral Council is committed to carrying out its work in an environmentally responsible manner, and Wirral Evolutions will consider environment and climate implications associated with delivering Day Services across multiple venues in Wirral. The Day Services currently operates from nine Council owned buildings, that are rented by Wirral Evolutions. The review considered how the buildings utilised for Day Services can be more efficient by reducing carbon emissions, waste and energy use.

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APPENDICES

BACKGROUND PAPERS

- Adult Care and Health Overview and Scrutiny Committee - February 2020

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Adult Care and Health Overview and Scrutiny Committee	February 2020
Adult Social Care and Health Committee	19th November 2020
Standards and Constitutional Oversight Committee	26th November 2019
Policy and Resources Committee	18 th December 2020

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

18 JANUARY 2021

REPORT TITLE	<i>Future Safeguarding Arrangements</i>
REPORT OF	Director of Care and Health

REPORT SUMMARY

The purpose is to inform the Committee that a decision has been made by the constituent partners of Merseyside Safeguarding Adults Board (MSAB) to step down the regional arrangement and establish a Local Safeguarding Adults Boards in each area. This report links into the former Wirral Plan 2020 priority: 'Wirral is a place where the vulnerable are safe and protected, every child gets a good start in life and older residents are respected and valued' and affects all Wards within the Borough.

This report constitutes a key decision before members.

RECOMMENDATION/S

The Committee are asked to agree in principle that a Wirral Local Safeguarding Adults Board be established to fulfil the statutory requirements that are currently being met and managed by the Merseyside Safeguarding Adults Board (MSAB).

The committee are asked to receive a further report at a future meeting outlining the plans to establish a Wirral Local Safeguarding Adults Board

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Following a Safeguarding Board Peer Challenge Review in 2019 led by the Local Government Association (LGA) which made a number of recommendations about how the Board operates and meets its statutory duties, safeguarding partners have considered whether the MSAB was the most appropriate arrangement for their respective local areas. The conclusion was that the present arrangements under the MSAB should cease as a sub-regional board and therefore a Local Safeguarding Adults Board is required to fulfil the statutory duties under the Care Act 2014 and related Statutory Guidance.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council could enter into a partnership with another local area to establish a Safeguarding Adults Board, this would not give the same level of focus that a Wirral board would have. The Council must have a Safeguarding Adults Board to fulfil its statutory duties under the Care Act 2014.
- 2.2 There is an option to retain some non-statutory work across the sub-region. It is expected that the positive benefits of performance comparison and best practice development will continue to be supported at a Liverpool City Region level using the project support available across the City Region footprint.

3.0 BACKGROUND INFORMATION

- 3.1 From April 2017, the existing Safeguarding Adults Boards in Wirral, Liverpool, Sefton and Knowsley formed the Merseyside Safeguarding Adults Board to work together to achieve more effective and personalised safeguarding. The combined board is currently in its third year and has built on the work of the previous Safeguarding Adults Boards and the valued contributions of partner agencies.
- 3.2 Using the experiences and advice of our communities together with the expertise of its' members, the Board leads adult safeguarding arrangements and oversees and co-ordinates the effectiveness of the safeguarding work of its member and partner agencies.
- 3.3 There have been advantages to having worked as a combined safeguarding board, which include providing learning opportunities from family's experiences, assurance through safeguarding audit activity and the positive inclusion of user led groups.
- 3.4 These positive advantages have all been pointed out in the Peer Challenge Review (Appendix 1) as positive outcomes from this Board approach. There have also been positives in sharing practice and challenging practice. The four Local Authorities and related safeguarding partners are looking at how they can continue to work with and build on the benefits of the MSAB approach. MSAB is supported by a Business Unit that provides resources to support the delivery of the Board's strategic plan. The Business Unit staff are Wirral Council employees, as Wirral has hosted the resource and the majority of staff were formally employees of the Council prior to the inception of MSAB.

- 3.5 Following the Peer Challenge Review recommendations, partner members of the MSAB have considered their position in relation to future safeguarding and have decided not to continue with the sub regional safeguarding Board approach. One of the key issues for Local Authority partners has been a need for greater assurance around safeguarding locally.
- 3.6 Moving forward, in relation to a Local Safeguarding Adults Board, Wirral Council will be looking to develop closer local links with the domestic abuse strategy and services, Channel Panel, PREVENT and the Children's safeguarding arrangements, promoting the think family agenda.
- 3.7 Wirral officers lead a North West ADASS safeguarding network to share good practice, support service development and facilitate peer support. The group are also represented in the National Safeguarding Policy Network.

4.0 FINANCIAL IMPLICATIONS

- 4.1 A change from the MSAB to local arrangements will mean that Wirral will no longer receive the income from the region that part funds the MSAB Business Unit and this presents a cost pressure.

5.0 LEGAL IMPLICATIONS

- 5.1 S.43(1) Care Act 2014 states that each Local Authority must establish a Safeguarding Adults Board (SAB) for its area. Without having arrangements to have a SAB, Wirral will not fulfil its statutory duties. This will also affect S.44 and the role for the safeguarding adults board to ensure that Safeguarding Adults Review (SAR) are managed within the local area.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 The MSAB Business Unit are all Wirral employees with substantive contracts/posts with the Council. There is one exception where the post is fixed-term.

7.0 RELEVANT RISKS

- 7.1 If a board were not in place, Wirral Council would be at risk of not fulfilling its statutory functions under S.43/S.44 Care Act 2014. This could place members of the community at risk of harm or abuse and/or neglect. These risks are mitigated by having a Safeguarding Adults Board.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Consultation and discussion has occurred with partners within MSAB to reach the decision not to continue with the regional approach to Safeguarding Adults Boards.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help Council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity. This report is for information to Members and there are no direct equality implications. The operational development of a Wirral Local Safeguarding Adults Board will include an Equality Impact Assessment.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications.

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APPENDICES

Appendix 1 - LGA MSAB Peer Challenge Report (January 2020)

REFERENCE MATERIAL

2017 Memorandum of Understanding - Combined Safeguarding Adults Board

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

Merseyside Safeguarding Adults Board **Peer Challenge Report**

January 2020

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Executive Summary

The Merseyside Safeguarding Adults Board (MSAB) requested that a peer challenge be undertaken by the Local Government Association. The work was commissioned by Sue Redmond, Independent Chair of the Merseyside Safeguarding Adults Board as a planned review of the Board since its inception. On behalf of all the partners involved Sue was seeking an external view of the effectiveness of the MSAB which included the relationships with the three statutory partners and an assessment of their collective will to move forward together. MSAB intends to use the findings of this peer challenge as a marker on its journey of improvement. The specific scope of the work was:

Scope:

- 1. How does the new combined board deliver against the original ambitions agreed in 2017?**
- 2. How does the new combined board work for members...the benefits and challenges of working across a wider footprint?**

There is a shared ambitious vision to work together to keep people safe across Merseyside. The peer challenge team had the privilege of hearing from many of the partners involved in safeguarding adults across Merseyside and conclude from what was read, heard and seen that MSAB is in a strong position with the relationships around the table and is ambitious to keep the people of Merseyside safe. Over the past eighteen months there have been improvements in terms of the Board's direction, the amount of activity of the Board and some of its sub-groups and the level of challenge between members.

Sue Redmond is the Independent Chair of MSAB and is an experienced ex-DASS who understands safeguarding adults and the work of health and social care. She understands her role well bringing energy and commitment that is recognised and welcomed by partners.

As an improvement tool peer challenge is, in part, an assessment of self-awareness. The MSAB self-assessment was written as the result of a development session with contributions from across the partnership and was open, honest and accurately informed by the partnership survey. The issues described in it are understood across the partnership and have been raised by the Independent Chair with each of partners in turn in order to move the SAB forward and is a good basis from which to improve.

From the evidence that the peer team read, heard and saw whilst onsite there are lots of positives about the work of MSAB and there is much enthusiasm across the partnership. One example is the strong commitment to the work of the sub-groups which have a wide coverage of activity and attendance.

The areas for improvement recommended by the peer challenge team include: the opportunity to clarify the role and function of MSAB and its sub-groups to deliver on strategic assurance and its additionality, clarify the role and function of the four locality partnerships to ensure a whole system approach and progress the intent to create pan-Merseyside policies and procedures including multi-agency training and development. There is also the chance to create a multi-agency performance framework and to review the way providers are represented in the Merseyside

safeguarding system and ensure that the role and function of the business unit is aligned to deliver the strategic function of MSAB. Finally MSAB could look at how key messages about safeguarding adults are communicated through a variety of media across the whole system.

With these adjustments to its work there is the opportunity for MSAB to build on its achievements. Further details and discussion on the strengths and areas for improvement are included in the main body of the report.

Report

Background

1. The Merseyside Safeguarding Adults Board (MSAB) requested that a peer challenge be undertaken by the Local Government Association. The work was commissioned by Sue Redmond, Independent Chair of the Merseyside Safeguarding Adults Board as a planned review of the Board since its inception. On behalf of all the partners involved Sue was seeking an external view of the effectiveness of the MSAB which included the relationships with the three statutory partners. MSAB intends to use the findings of this peer challenge as a marker on its journey of improvement. The specific scope of the work was:

Scope:

1. How does the new combined board deliver against the original ambitions agreed in 2017?

2. How does the new combined board work for members...the benefits and challenges of working across a wider footprint?

2. A peer challenge is designed to help an organisation and its partners assess current achievements, areas for development and capacity to change. The peer challenge is not an inspection. Instead it offers a supportive approach, undertaken by friends – albeit ‘critical friends’. It aims to help an organisation identify its current strengths, as much as what it needs to improve. But it should also provide it with a basis for further improvement.
3. The benchmark for this peer challenge was the Safeguarding Adults Board Improvement Tool (Appendix 1). These were used as headings in the feedback with an addition of the scoping questions outlined above. The headline themes were:
 - Outcomes for, and the experiences of, people who use services
 - Leadership, Strategy and Working Together
 - Commissioning, Service Delivery and Effective Practice
 - Performance and Resource Management
4. The members of the peer challenge team were:
 - **Ann Baxter**, Independent Chair, Teeswide Safeguarding Adults Board
 - **Moira Wilson**, Care and Health Improvement Adviser, Yorkshire and Humberside, LGA
 - **Councillor Rebecca Charwood**, Executive Member for Health, Wellbeing and Adults, Leeds City Council
 - **Paula Youell**, Head of Adult Safeguarding and Principal Social Worker Adult Services, Suffolk County Council
 - **David Culy**, Business Manager, Lincolnshire Safeguarding Adults Board, Lincolnshire County Council
 - **Marcus Coulson**, Challenge Manager, Local Government Association

5. The team were on-site for three days from Wednesday 22nd January to Friday 24th January 2020. The programme for the on-site phase included activities designed to enable members of the peer team to meet and talk to a range of partners and stakeholders. These activities included:
 - interviews and discussions with councillors, officers and partners, especially those on the MSAB and people involved in the delivery of frontline services
 - reading documents provided by the MSAB, including a self-assessment
6. The peer challenge team would like to thank all the partners on the Board, their staff and elected members as well as those involved in keeping adults safe across Merseyside for their open and constructive responses during the review process. The team was made very welcome and would like to thank Sue Redmond, the Independent Chair, Alison Marchini, Board Manager and Gaynor Dysart, Business Administrator all from MSAB for their invaluable assistance in planning and undertaking this challenge.
7. Our feedback to the MSAB on the last day of the challenge gave an overview of the key messages. This report builds on the initial findings and gives a detailed account of the challenge.
8. The Care Act 2014 has placed Safeguarding Adults Boards on a statutory footing. The Care and Support Statutory Guidance defines adult safeguarding as “protecting a person’s right to live in safety, free from abuse and neglect”. The Care Act requires that each local authority must:
 - make enquiries, or ensure others do so, if it believes an adult is, or is at risk of, abuse or neglect. An enquiry should establish whether any action needs to be taken to other appropriate adult to help them.
 - cooperate with each of its relevant partners (as set out in section 6 of the Care Act) in order to protect adults experiencing or at risk of abuse or neglect
9. The aims of adult safeguarding are:
 - To prevent harm and reduce the risk of abuse or neglect to adults with care and support needs.
 - To safeguard individuals in a way that supports them in making choices and having control in how they choose to live their lives.
 - To promote an outcomes approach in safeguarding that works for people resulting in the best experience possible.
 - To raise public awareness so that professionals, other staff and communities as a whole play their part in preventing, identifying and responding to abuse and neglect.
10. There are six key principles that underpin all safeguarding adults work:
 - **Empowerment** – Personalisation and the presumption of person-led decisions and informed consent. “I am asked what I want as the outcomes from the safeguarding process and these directly inform what happens.”
 - **Prevention** – It is better to take action before harm occurs. “I receive clear and simple information about what abuse is, how to recognise the signs and what I can do to seek help.”

- **Proportionality** – Proportionate and least intrusive response appropriate to the risk presented. “I am sure that the professionals will work for my best interests, as I see them and they will only get involved as much as needed.”
- **Protection** – Support and representation for those in greatest need. “I get help and support to report abuse. I get help to take part in the safeguarding process to the extent to which I want and to which I am able.”
- **Partnership** – Local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse. “I know that staff treat any personal and sensitive information in confidence, only sharing what is helpful and necessary. I am confident that professionals will work together to get the best result for me.”
- **Accountability** – Accountability and transparency in delivering safeguarding. “I understand the role of everyone involved in my life.”

Key Messages

11. There is a shared ambitious vision to work together to keep people safe across Merseyside. The peer challenge team had the privilege of hearing from many of the partners involved in safeguarding adults across Merseyside and conclude from what was read, heard and seen that MSAB is in a strong position with the relationships around the table and is ambitious to keep the people of Merseyside safe. Over the past eighteen months there have been improvements in terms of the Board's direction, the amount of activity of the Board and some of its sub-groups and the level of challenge between members.
12. As an improvement tool peer challenge is, in part, an assessment of self-awareness. This can enable a partnership to understand where it is, what its strengths are and how improve. If this is widely shared it makes the process of improvement easier and more fruitful. In the case of the MSAB self-assessment, it was written as the result of a development session with contributions from across the partnership and was open, honest and accurately informed by the partnership survey. If one wanted to understand the state of the partnership it would be possible to appreciate where it is from this document, and it therefore a good basis from which to improve.
13. Sue Redmond is the Independent Chair of MSAB and is an experienced ex-DASS who understands safeguarding adults and the work of health and social care. She understands her role well bringing energy and commitment that is recognised and welcomed by partners.
14. MSAB includes a partnership of four local authorities (Liverpool, Knowsley, Wirral and Sefton Councils) including the four elected members with responsibility for adult social care and safeguarding. They know and understanding each other and have a good working relationship.
15. From the evidence that the peer team read, heard and saw whilst onsite there are lots of positives about the work of MSAB and there is much enthusiasm across the partnership. One example is the strong commitment to the work of the sub-groups which have a wide coverage of activity and attendance.
16. The peer challenge team met with a range of partners from across Merseyside and it is fair to day that there has been some mixed feedback from aspects of the partnership. Two of the statutory partners in the Police and Clinical Commissioning Group representatives are very positive about MSAB, its leadership and work however two of the four DASS have differing expectations of MSAB which has an impact on how the partnership works and its future. Of the four DASS who set up MSAB two have moved on and the new colleagues have brought some challenge in their expectations and understanding of its added value. This is based around a level of confusion over the role and function of MSAB, particularly around how strategic or operational its activity should be and the need for local arrangements in each local authority.
17. As a result, it is clear to the peer team that MSAB needs to prioritise its strategic and assurance functions in everything it does and then make sure that this stance is explained, repeated and understood by all those involved in it. A good example of how this could be done was the Voices Project that the peer team were made aware of. This is a very good piece of work created by an

experienced social worker seconded to MSAB with excellent links into several local communities. In it, those who have experienced safeguarding recount that experience which has been captured on video. This is a good and novel piece of work that celebrates the experience of those involved and helps others understand their perspective. However, MSAB has done this itself whereas if it was solely focused on assurance, and not doing, an alternative approach would have been to commission partner organisations to do this work and present it to MSAB as a way of assuring the Board that they are effectively delivering safeguarding. It is a subtle but important difference in the Board's activity. MSAB needs to maintain a strategic assurance role in its work rather than do the business of safeguarding adults itself. This then fulfils its original intent of providing additionality across a larger footprint within a wider safeguarding framework of partnership activity.

18. A secondary, but closely linked point, is that the local partnerships (based on the four council footprints) need to formalise their local assurance, delivery and quality functions and thereby clarify their relationships with MSAB. There needs to be legitimacy in their role of local assurance. It has become lost as MSAB's role has become less clear. With a clearly strategic Board there is then the need for each locality, with all its partners, managing the business of safeguarding to assure the elected members who hold the political responsibility and each DASS who holds statutory responsibility that people are being kept safe locally. This should be seen as an essential part of the whole safeguarding adults system.
19. As the Board moves forward it needs to consider how effectively it collects multi-agency data. At the moment it is driven by local authority data rather than being intelligence led. To add value in a clearly articulated assurance role the emphasis needs to be on the analysed implications of data rather than the data itself. The sub-groups would be a key place where this should be played out.
20. It was clear to the peer team that if there is the collective will amongst the partners there is the opportunity for the role and function of MSAB to be clarified and re-stated. This should be within a wider framework of sub-group activity that is led by informed analysis and significant locality-based arrangements where elected members and officers holding statutory responsibility can be assured that their arrangements are effective. These revised positions should add value together as a comprehensive safeguarding adults systems across Merseyside.

Leadership, Strategy and Working Together

21. MSAB has been in existence for over two years now and as a result positive relationships have been built so that partners are now more able to pick up the phone to sort issues out and the Board is generally seen as value for money by partners.
22. The peer team heard about some good engagement with local universities to do research which is an example of its additionality and strategic function and there was an often-expressed desire and willingness to learn, by those involved in this enterprise.
23. When speaking with the respective four elected members it was clear that there are no political barriers to joint policies and procedures across the organisations, which should enable closer working across the partnership in the future.
24. The peer team recommend that in the MSAB literature the key priority of keeping people safe requires a clearer emphasis.
25. MSAB should also consider how to make and improve links across the safeguarding system that includes: Health and Wellbeing Boards, Community Safety Partnerships, the new and emerging Children's arrangements, local NHS Providers across Merseyside, the Voluntary and Community Sector and all commissioned providers. The general approach should be how to involve these stakeholders effectively. The peer team were made aware that there are twelve NHS Provider Trusts in Merseyside who will come into contact with a significant number of vulnerable people in a variety of settings. The peer team suggest that they need to be brought into the Merseyside safeguarding adults arrangements more formally and effectively as they manage a great deal of risk for all partners.
26. MSAB needs to enable a culture of open and honest dialogue across all partners in the safeguarding system. This should include how the Board and sub-groups function both in and outside meetings. This should also realise the greater benefits of constructive challenge on a pan Merseyside basis.

Outcomes for and the experiences of people who use services

27. It was clear to the peer team from the work that we saw beforehand and whilst onsite that MSAB is committed to hearing the voice of people who use safeguarding services as well as to hearing the voice of frontline practitioners. This positive attitude will enable the Board to keep the experiences of these groups at the heart of what it does, giving it validity.
28. Voluntary and Community Sector colleagues from across Merseyside are involved and supported in the safeguarding of adults and all four Healthwatch's across the partnership are keen to contribute their knowledge and involvement in local community networks to give feedback on the quality of service delivery. This helps to promote "safeguarding as everyone's business" and the preventive role that the community networks can undertake in bringing the voice of the service user to the fore.
29. As one of the active MSAB sub-groups the Safeguarding Adults Review (SAR) group provides added learning opportunities between different partners across Merseyside from family's experiences of safeguarding. This maximises opportunities to understand where the multi-agency system has not worked as effectively as required, and where improvement is needed. This makes it easier for professionals to understand key themes from SARs across the region and be able to take steps to learn from them to improve safeguarding practice. MSAB should continue to support the work of the SAR sub-group so that the sharing of recommendations shapes system change within and across agencies to seek to prevent similar occurrences.
30. A good example of how MSAB can assure itself of safeguarding adults activity was the shared response to Safeguarding Week. There was a decision to use the week to raise the profile of adult safeguarding across Merseyside through a Merseyside wide programme of social media events and activities. Feedback enabled all partners to gain a wider understanding of key issues for local people.
31. MSAB needs to consider the range of ways it can ask partner organisations to assure the Board that they collect and hear the views of those who use services and, when this happens, ensure these are delivered through genuine coproduction. MSAB has prioritised the importance of hearing the views of people who use services and their families. This assurance can be given in feedback from a wide range of initiatives across the area. This links the strategic role of the Board with the reality of service delivery in communities.
32. Furthermore, MSAB needs to be assured that the information from user led activity informs the development and direction of services. MSAB has to be assured that preventive work is taking place, delivered by local partners and a wide range of service providers.
33. When the Board creates a multi-agency performance framework it should design it so that it includes feedback and outcomes from people who use safeguarding services. Thereby creating and maintaining an improvement feedback loop in the system.

34. Whilst all Councils, Clinical Commissioning Groups and Voluntary and Community Sector groups are heavily involved in prevention work (and more recently NHS Trusts as well) MSAB should develop a strategic approach to prevention that delivers assurance to MSAB and delivers the Care Act recommendation that SABs should have a strategic overview with processes of assurance. The benefits of a pan Merseyside approach are that good practice examples of preventive work can be shared across a wider footprint.

Commissioning, Service Delivery and Effective Practice

35. When MSAB was set up the anticipated benefits were that it would provide financial efficiencies, additional strategic level opportunities for the sharing of safeguarding practice, and that such a structure is a real strength for health and police organisations who typically (but not always) work on a larger footprint and would therefore only have to attend one meeting rather than four. This is still the case. It is also the case that people use services across geographical and organisational boundaries, so there are advantages in MSAB understanding the whole system. Having a Merseyside wide safeguarding system helps people who may be more vulnerable.
36. The Chapter 14 Audit is a good piece of multi-agency work where each organisation was asked to self-assess against a set of criteria. It was led by the Quality Assurance sub-group and completed by all MSAB members. The sub-group then conducted peer reviews of the responses and had challenge meetings where evidence was not robust, and where necessary verifying scores and requesting action plans for areas of development. The overall collated scores were presented to the Board and these were then used to set a baseline for understanding of "how safe are we" across the patch. This work is supported by all partners and provides assurance to MSAB of effective practice and that all agencies are benchmarking themselves against the Care Act Standards.
37. The Self Neglect Toolkit is succinct guidance for practitioners to assist them when considering what practicable options are available to support those who self-neglect. It was developed by involving a wide range of service providers and people who use services.
38. MSAB should create a strong communication and dissemination approach for key messages from meetings and on a range of policies that could be distributed to a significant audience across Merseyside using its website, newsletters via email and on social media platforms such as Twitter. This would serve a preventative and educational function and raise the profile of MSAB and its work.
39. The Care Act requires MSAB to address emerging patterns of abuse in its future strategic plans such as modern slavery, exploitation, hoarding and self-neglect. MSAB should also develop further the links with local children's safeguarding arrangements to understand the impact of adverse childhood trauma on adults and how to support those people.

Performance

40. The performance and quality sub-group is valued by members and has been recently well led in the absence of a chair.
41. There is a clear recognition of the need to progress the multi-agency approach to performance management to understand the trends across the whole safeguarding system and inform future priorities and plans for MSAB. It is not unusual for the focus on performance to be very local authority centric. MSAB needs to think about wider assurance information to come from such areas as rough sleeper deaths, LeDeR, suicides, etc.
42. Whilst there is good sharing of data from partner organisations on the Board and within the Board itself it is recognised that there is the opportunity to broaden data collection across all partnership organisations. Therefore creating an opportunity to increase its level of assurance of safeguarding adults having accurately analysed data.
43. When revising the role and function of MSAB consider the skill mix required to support it provided by the business unit.
44. The MSAB needs a pan Merseyside multi-agency training and development plan to maximise economies of scale and shared learning opportunities. This would enable MSAB to be assured that staff in all partner organisations are receiving safeguarding training appropriate to the skills needed for their specific roles. With a multi-agency training plan there is the opportunity to build an understanding of how other agencies deal with safeguarding as well as building relationships across agencies.

Recommendations

45. It was clear to the peer team that MSAB needs to re-position itself so that its role and function are clear. This should include what additional value it adds to the safeguarding adults' system in Merseyside. This role should be focused on strategic assurance and its additionality and include the work of its sub-groups. The Board should concentrate upon asking partners to assure MSAB that people are being kept safe rather than get involved in the activities themselves. This change needs to go through every aspect of MSAB work, in terms of agenda setting, discussions and questions at Board as well as in the work of the sub-groups.
46. When MSAB clarifies its role and function it then would give clarity to the role and function of the four locality partnerships that focus on safeguarding adults to ensure a whole system approach. It was unclear to the peer team exactly what arrangements existed or were planned in the four local government areas and that if these were ongoing how they linked to MSAB activity. It is quite understandable that those with statutory responsibility for safeguarding adults want to ensure that activity in their local organisations and with local partners is delivering on the intent to keep people safe. This change will give legitimacy to the locality arrangements and bring into clearer focus what additional role MSAB therefore plays.
47. MSAB has a stated desire to create pan-Merseyside policies and procedures including multi-agency training and development. This work needs to move forward at pace to bring consistency across the partnership to safeguarding adults work and enable colleagues to more easily work together and share their successes and the ability to manage risk.
48. Aligned to the above is the need to create a multi-agency performance framework to then be able to effectively compare activity from different partners in the system to the same standard. This will then enable MSAB to draw out themes and trends to inform future priorities.
49. Whilst onsite the peer team heard the reasons for the present membership and structure of the Board including how providers are represented. In the light of this the peer team recommend that MSAB review the way providers are represented in the Merseyside safeguarding system. This should seek to ensure that these organisations (particularly NHS Trusts) who deal with many people who are often unwell and potentially vulnerable are fully represented. Then they can work to assure MSAB that they are keeping people safe.
50. As MSAB changes it is important to review the role and function of the business unit that plays a key role in supporting MSAB to deliver its strategic and assurance functions. The business unit needs to be able to drive MSAB effectively, with an appropriate culture and skill mix.
51. A further recommendation is for MSAB to look at how it communicates key messages across the whole system. This could be done in a number of ways such as; regular email updates after MSAB meetings to large numbers of people involved in safeguarding, Newsletters addressing issues of the day, a website that is actively updated to reflect the unfolding issues as well as use of Twitter

and other social media platforms. This these ways MSAB would be more able to speak to the wide audience involved in safeguarding adults across Merseyside.

On behalf of the Peer Challenge Team:

Marcus Coulson

Programme Manager – Adults Peer Challenges

Local Government Association

February 2020

Appendix 1 – Presentation bullet points

Key Messages

- There is a shared, ambitious vision to work together to keep people safe across Merseyside
- The self-assessment was honest and accurately informed by the partnership survey
- Independent Chair brings energy and commitment to the role
- There are lots of positives about the work of MSAB and there is much enthusiasm across the partnership
- There is a strong commitment to the work of the sub-groups
- There are good working relationships between the four elected members
- There has been some mixed feedback
- The four DASS have differing expectations of MSAB
- There is some confusion over the role and function of MSAB
- MSAB needs to prioritise its strategic and assurance functions
- The local partnerships need to formalise their local assurance, delivery and quality functions and their relationships with MSAB
- MSAB is presently data driven rather than intelligence led
- If there is the collective will – there is the opportunity for the role and function of MSAB to be clarified and re-state

Leadership, Strategy and Working Together

Strengths

- Board is seen as value for money generally
- Positive engagement with universities
- Willingness to learn
- No political barriers to joint policies and procedures

Areas for Consideration

- Emphasise your focus on keeping people safe
- Consider how to make and improve links across the safeguarding system that includes: HWB, Community Safety Partnerships, Children's arrangements, NHS Providers, VCS, Commissioned providers
- Cultivate an open and honest dialogue to develop the strategic assurance of safeguarding

Outcomes for and the experiences of people who use services

Strengths

- Committed to hearing the voice of people who use safeguarding services
- Committed to hearing the voice of frontline practitioners
- Voluntary and Community Sector colleagues are involved and supported in safeguarding
- All four Healthwatch's across the partnership are keen to contribute their knowledge and involvement of local community networks to support safeguarding
- Positive inclusion of user led groups
- The SAR group provides added learning opportunities across areas from family's experiences of safeguarding
- Shared response to Safeguarding Week shared locally

Areas for Consideration

- MSAB needs to be assured that there are a range of ways to collect and hear the views of those who use services and ensure it is coproduced
- MSAB needs to be assured that the information from user led activity informs the development and direction of services
- The multi-agency performance framework should include feedback and outcomes from people who use safeguarding services
- Develop a strategic approach to prevention that delivers assurance to MSAB

Commissioning, Service Delivery and Effective Practice

Strengths

- MSAB structure is a real strength for health and police organisations
- Cross boundary patient flow is supported by pan-Merseyside working
- The Chapter 14 Audit is a good piece of work supported by all partners and provides assurance to MSAB of effective practice and that all agencies are benchmarking themselves against the Care Act Standards
- The Self Neglect Toolkit was developed inclusively and is viewed positively by practitioners

Areas for consideration

- Create a strong communication and dissemination approach for key messages e.g. website, newsletters, Twitter
- Continue to strengthen and share learning from all SARs
- Emerging themes need to be included in future strategic plans, e.g. modern slavery, exploitation

Performance

Strengths

- Performance and quality sub-group is valued by members
- There is good sharing of data

- Recognition of the need to progress the multi-agency approach to performance management

Areas for consideration

- Broaden data collection across all partnership organisations
- When revising the role and function of MSAB consider the skill mix required to support it
- Need for pan-Merseyside strategic multi-agency training and development plan

Recommendations

- Clarify the role and function of MSAB and its sub-groups to deliver on strategic assurance and its additionality
- Clarify the role and function of the four locality partnerships to ensure a whole system approach
- Progress your intent to create pan-Merseyside policies and procedures including multi-agency training and development
- Create a multi-agency performance framework
- Review the way providers are represented in the Merseyside safeguarding system
- Review the role and function of the business unit to deliver the strategic function of MSAB
- Look at how you communicate key messages across the whole system

Safeguarding Adults Board resources

1. LGA Safeguarding Adults resources web page

<http://www.local.gov.uk/topics/social-care-health-and-integration/adult-social-care/safeguarding-resources>

2. Safeguarding Adults Board resources including the Independent Chairs Network, Governance arrangements of SABs and a framework to support improving effectiveness of SABs

<http://www.local.gov.uk/topics/social-care-health-and-integration/adult-social-care/resources-safeguarding-adults-boards>

3. LGA Adult Safeguarding Knowledge Hub Community of Practice – contains relevant documents and discussion threads

<https://khub.net/web/adultsafeguardingcommunityofpractice>

4. Adult Safeguarding Peer Challenge

<http://www.local.gov.uk/our-support/peer-challenges/peer-challenges-we-offer/safeguarding-adults-and-adult-social-care>

5. Making links between adult safeguarding and domestic abuse

<http://www.local.gov.uk/topics/social-care-health-and-integration/adult-social-care/safeguarding-and-domestic-abuse>

6. Making Safeguarding Personal

<http://www.local.gov.uk/topics/social-care-health-and-integration/adult-social-care/making-safeguarding-personal>

7. Social Care Institute for Excellence (SCIE) pages on safeguarding.

<http://www.scie.org.uk/adults/safeguarding/index.asp>

Contact details

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Read the Adults Peer Challenge Reports here: <https://www.local.gov.uk/our-support/peer-challenges/peer-challenges-we-offer/safeguarding-adults-and-adult-social-care-0>

Appendix 1 – Safeguarding Adults Board Improvement Tool

Overview

There are four key themes for the standards, with a number of sub-headings as follows:

Themes	Outcomes for, and the experiences of, people who use services	Leadership, Strategy and Working Together	Commissioning, Service Delivery and Effective Practice	Performance and Resource Management
Elements	<p>1. Outcomes</p> <p>2. People’s experiences of safeguarding</p> <p>This theme looks at what difference to outcomes for people there has been in relation to Adult Safeguarding and the quality of experience of people who have used the services provided</p>	<p>3 Collective Leadership</p> <p>4.Strategy</p> <p>5 Local Safeguarding Board</p> <p>This theme looks at:</p> <ul style="list-style-type: none"> • the overall vision for Adult Safeguarding • the strategy that is used to achieve that vision • how this is led • the role and performance of the Local Safeguarding Board • how all partners work together to ensure high quality services and outcomes 	<p>6. Commissioning</p> <p>7. Service Delivery and effective practice</p> <p>This theme looks the role of commissioning in shaping services, and the effectiveness of service delivery and practice in securing better outcomes for people</p>	<p>8. Performance and resource management</p> <p>This theme looks at how the performance and resources of the service, including its people, are managed</p>

Safeguarding Adults Board Improvement Tool here: <http://www.local.gov.uk/sites/default/files/documents/adult-safeguarding-improv-ddd.pdf>

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Safeguarding is everybody's business

Combined Safeguarding Adults Board

Memorandum of Understanding

1. Aim

To ensure effective co-ordination of services to safeguard and promote the welfare of adults in accordance with the Care Act 2014 and Care and Support Statutory Guidance 2014.

The Combined Safeguarding Adults Board (the Board) aims to achieve its objectives whilst supporting individuals in maintaining control over their own lives and in making informed choices without coercion. In achieving this, the following six key principles must be followed:-

- **Empowerment**
Presumption of person led decisions and informed consent
- **Prevention**
It is better to take action before harm occurs
- **Proportionality**
The least intrusive response appropriate to the risk presented
- **Protection**
Support and representation for those in greatest need
- **Partnership**
Local solutions through services in the community
- **Accountability**
Accountability and transparency in delivering safeguarding

2. Objectives

The Board's objective is to improve safeguarding arrangements and ensure partnerships act to support and protect adults at risk of, or experiencing, abuse and/or neglect. The Board is a multi-agency strategic board that will co-ordinate strategic development of adult safeguarding across geographical footprint of the Board and ensure the effectiveness of the work undertaken by all partners in the area.

Whilst the Board has a role in coordination and ensuring the effectiveness of work undertaken by individuals and organisations in relation to adult safeguarding and promoting the welfare of adults it is not accountable for partners' operational work. Each partner agency has their own existing lines of accountability for adult safeguarding and promoting the welfare of adults by their services. The Board does not have the power to direct other organisations.

The Board will receive and scrutinise regular performance management and quality assurance improvement reports from individual agencies annually (as a minimum requirement) to identify good practice and highlight any areas for development. If shortcomings are identified the Board and the agency in question will agree a remedial action plan. The implementation and resulting impact of the action plan will be reviewed by the Board.

3. Functions

The core duties of the Board are set out in Chapter 14 of the Care Act Statutory Guidance issued under S78 of the Care Act 2014 which requires the Board to:

- Publish a Strategic Plan for each financial year detailing how it will meet its main objective and what members will do to achieve this
- Publish an Annual Report detailing what the Board has done during the year to achieve its objectives and implement its Strategic Plan and what members have done to implement the Strategy
- Arrange Safeguarding Adults Reviews in accordance with S44 of the Care Act 2014

In order to fulfil its core duties the Board will develop initiatives, plans, policies and procedures for safeguarding adults in relation to:

- The role, responsibility, authority and accountability with regard to the action each agency and professional group should take to ensure the protection of adults
- Establish ways of analysing and interrogating data on safeguarding concerns and completed enquiries which increase the Board's understanding of prevalence of abuse and neglect locally that builds a picture up over time

- Establish how it holds partners to account to gain assurance of the effectiveness of its arrangements
- Determine its arrangements for peer review, self-audit, performance monitoring, bench marking, continual analysis and lessons learnt
- Establish mechanisms for developing policies and strategies for protecting adults which should be formulated, not only in collaboration and consultation with all relevant agencies but takes account of the views of adults who have needs for care and support, their families, advocates and carer representatives
- Develop preventative strategies that aim to reduce the instances of abuse and neglect
 - Identify types of circumstances giving grounds for concern and when they should be considered as a safeguarding concern to the relevant local authority, including referral pathways for appropriate and proportionate intervention
- Formulate guidance about arrangements for managing adult safeguarding and in dealing with complaints, grievances and professional and administrative malpractice in relation to safeguarding adults
- Develop strategies to deal with the impact of issues of race, ethnicity, religion, gender and gender orientation, sexual orientation, age, disadvantage and disability on abuse and neglect
- Balance the requirements of confidentiality with the consideration that, to protect adults, it may be necessary to share information on a 'need to know' basis
- Identify mechanisms for monitoring and reviewing implementation and impact of policy and training
- Carry out Safeguarding Adults Reviews and advise the Board on lessons to be learned
- Produce a Strategic Plan and an Annual Report
- Evidence how Board members have challenged one another and held other agencies to account
- Review and comment on the impact of safeguarding of individual member agencies operational strategic decision making, including budgetary considerations and
- The Board will engage in any other activity that facilitates or is conducive to, the achievements of its objectives.

The Board will:

- Have a Safeguarding Adults Review (SAR) Framework and a learning and development strategy which is shared across organisations that work with adults
- Monitor and evaluate the effectiveness of action plans arising from any SAR and of all training for professionals

In activities the Board will promote the equality of opportunity to meet the diverse needs and wishes of adults at risk across the region.

4. Relationships with others

The Board recognise other partnerships and organisations work across the region and have responsibilities to address issues relevant to safeguarding adults at risk. To ensure effective communication and lead accountability in issues which traverse groups, the Board will develop working protocols with:

- The Health and Wellbeing Board
- The Community Safety Partnership
- Local Safeguarding Children Boards
- All other relevant Boards

The Board will play a strong role in supporting information sharing between and within organisations and addressing any barriers to this, ensuring that a culture of information sharing is developed and supported as necessary by multi-agency training.

It is expected that all Board members will make formal contribution to the annual report and provide professional challenge to partners on their contributions.

5. Independent Chair and Responsibility

The Board will have an Independent Chair in order to hold all members to account. The Directors of Adult Social Care and, the Elected Lead Members will hold the Chair to account for the effective working of the Board in consultation with Board members. It is the responsibility of the host Council's Chief Executive to remove the Chair in consultation with regional counterparts.

The Chair will work closely with all partners and particularly with the DASS Leadership Group.

The Chair will be responsible for publishing a Strategic Plan for each financial year; this plan will address both short and longer term priorities. The plan will also specify necessary action required by members. When preparing the plan the Board must consult Healthwatch.

The Chair will be responsible for publishing an annual report on the Board's activities including an assessment of the effectiveness of safeguarding arrangements and the challenges for the next year. The annual report will also provide information about Safeguarding Adults Reviews (SARs) undertaken by the Board. The report will demonstrate how the Board is monitoring progress against

policies and demonstrate intention to deliver the Strategic Plan. The annual report will cover activity undertaken in the preceding financial year. This should fit with agencies planning, commissioning and budget cycles. The report will be submitted to the following:

- Chief Executive and Leader of each member authority Police and Crime Commissioner and the Chief Constable
- Healthwatch from each member authority
- Chair of the Health and Wellbeing Board and
- CCG Executives

6. Activities of the Board

In pursuit of its aims the Board will:

- Adopt the financial year
- Hold meetings at least six times a year, two of which will be development days
- Appoint a Vice Chair from the membership of the Board to support the role of the Independent Chair
- Require a quorum of at least 75 per cent of members, including at least two statutory partners, in order to have a fully constituted meeting
- Always seek to operate on a consensus basis. If it is not possible to reach a consensus, the Independent Chair will make the final decision
- Review and agree Terms of Reference for sub groups on an annual basis at the first meeting of each financial year
- Keep a written record of all Board meetings and meetings of sub groups
- Any member of the Board may submit items to be included in the agenda of the meeting of the SAB supported by a written statement / report to the Chair at least 10 working days before the meeting.
- Agenda and reports will be circulated at least five days prior to the meeting;

The Board will also operate sub groups which will carry out the day to day operational functions of the Board. All sub groups will have an annual work plan which will derive from the Board's annual business plan to support the operational functions of the Board.

In order to carry out these functions the following sub groups will liaise regularly, as appropriate:

- Performance Management
- Quality Improvement Safeguarding Adults Review
- Workforce Development
- Policy and Procedures
- Communication and Engagement
- Safeguarding Adults Reviews

Time limited task and finish groups may be convened to deliver on priority areas of work according to the business plan of the Board.

Chairs of the sub groups will provide regular progress reports to the Board. Chairs of the subgroups will also provide exception reports to the Board.

The Board delegates responsibilities to the sub-groups to:

- Carry out work related to the different sections of the Strategic Plan;
- Undertake consultation as appropriate
- Take a decision in reference to a specific item on behalf of the Board where authority to do so has been properly delegated by the Board
- Prepare a response to consultation matters on behalf of the Board
- Investigate a particular issue

7. Membership

Schedule 2 of the Care Act 2014 defines which statutory board partners are required to have membership of the Board. Membership of the Board will include other persons as considered appropriate.

Board partners will designate a named person in a strategic position within their organisation to represent them on the Board to ensure consistency and continuity. The representative must also be able to represent their counterparts across the region

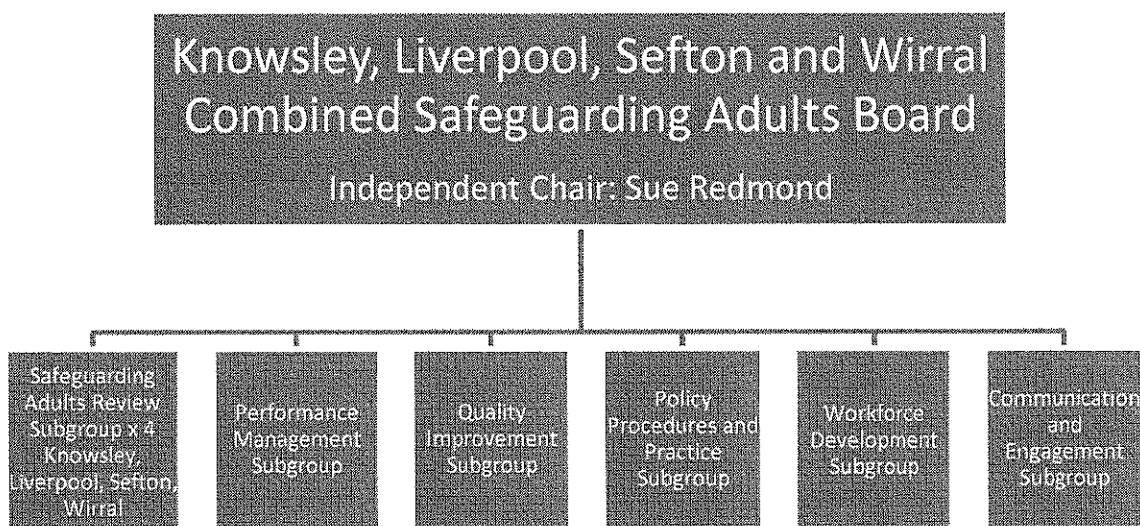
Members will have a strategic role in relation to safeguarding and promoting the welfare of adults within their own organisations. They will be able to:

- Speak for their organisations with authority
- Commit their organisations on policy and practice matters
- Hold their organisations to account.

Members will prioritise attendance at all Board meetings. In exceptional circumstances a suitable alternative representative may be nominated in agreement with the Independent Chair. Any deputies attending must have authority to commit their organisation to decisions. It is the responsibility of the Board member to ensure that their deputy receives the agenda and all associated papers.

The Board will request involvement of other relevant organisations, either by invitation for representation at Board, or sub group level. In addition invitation will be extended to others to contribute to discussion on specific issues.

At the discretion of the Chair of the Board, observers can attend and address Board meetings.



8. Memorandum of Understanding

Members of the Board will operate in accordance with the Memorandum of Understanding.

9. Required resource

The Board statutory members will contribute annually towards resources at an agreed level.

Members may, in addition, be required to provide resources such as staffing and accommodation.

10. Financial/resource arrangements

Statutory Partners have agreed the establishment and maintenance of a Pooled Fund pursuant to Schedule 2 of the Care Act 2014. This fund will include provision of a business unit to support the infrastructure of the Combined Safeguarding Adults Board. The fund will be managed by the host authority during 2017/18 financial year who will provide financial reports to the Board on a quarterly basis.

The dedicated business unit and budget for the Combined Safeguarding Adults Board will be managed by the host authority.

11. Disputes and complaints

The Board is intended to be a collaborative, co-operative body and needs to ensure that no particular sector or member is unduly favoured. Problems and issues should normally be debated and resolved at Board meetings.

a. Disputes

If there is a dispute between Board members the Independent Chair and the host Director of Adult Social Care will convene a joint meeting with the parties. This should take place within 28 days of determining that the dispute exists. In most cases the Independent Chair will chair these meetings. The agenda will be agreed jointly by the parties in the dispute.

If no agreement can be reached, either party to the dispute may suggest to the Chair that an independent mediator be appointed in a further attempt to resolve the dispute. If parties are not in agreement with this and no resolution has been identified within 28 days then the Independent Chair may refer the dispute to a Chartered Institute for Arbitrators to be resolved.

If there is a dispute between the Independent Chair and a Board partner or any other Board a similar process will be followed. The host Director of Adult Social Care will convene a joint meeting of the parties as above. If no agreement can be reached, either party to the dispute may suggest that an independent mediator be appointed in a further attempt to resolve the dispute. If parties are not in agreement with this and no resolution has been identified within 28 days then the host Director of Adult Social Care may refer the dispute to a Chartered Institute for Arbitrators to be resolved.

The Board can require a person or body to comply with a request for information. This can only take place where the information is essential to carry out Board statutory functions. Any requests for information about individuals must be 'necessary' and 'proportionate' to the reasons for the request. The Board will be

mindful of the burden of requests and should explain why the information is required.

b. Complaints

The Board shall refer all complaints from members of the public in relation to the provision or performance of any function of a member organisation to the Board partner's own internal complaints handling process.

Complaints regarding the operation of the Board should be addressed to the Chair who will investigate and attempt to reach a satisfactory resolution with the complainant.

12. Non compliance

The work of the Board will be set out in the Strategic Plan in time for the start of each financial year. All partner organisations will agree their commitment to fulfil their obligation to safeguard and promote the welfare of adults. This will include the commitment to fulfilling their role within the Board.

Issues of non-compliance will, be referred to the Independent Chair who will investigate and attempt to reach a satisfactory resolution through discussion with the representative of the agency concerned

13. Monitoring and evaluation

The Board's role is to receive assurance about the effectiveness of work to safeguard and promote the wellbeing of adults at risk of abuse or neglect by member organisations and as such the Board will monitor and evaluate this through its work. The Board will publish performance against objectives set out in the Strategic Plan within the Annual Report.

14. Overview and Scrutiny

The Board and its members will co-operate with any reasonable request in respect of its Overview and Scrutiny functions under Section 21 Local Government Act 2000 to provide independent dialogue on adult safeguarding.

(Partner signature)

Date:

(Partner name, organisation, position)

(Partner signature)

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DUE Redman

Redman

24/4/17

(Partner name, organisation, position)

Date:

(Partner signature)

(Partner name, organisation, position)

Date:

(Partner signature)

(Partner name, organisation, position)

SIMON GARRER WIRRAL COUNCIL
SAFEGUARDING LEAD

Date: 24/04/2017

(Partner signature)

Simon Garra

(Partner name, organisation, position)

LUCIE MOSS, KMBC, DASS

Date: 24/4/17

(Partner signature)

LMOSS

(Partner name, organisation, position)

Jane Calveley, Healthwatch Knowsley, IL

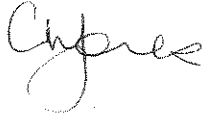
24/4/17

J Calveley

(Partner name, organisation, position) WIRRAL BOROUGH COUNCIL
CABINET MEMBER FOR ADULT CARE

Date: 24.4.17

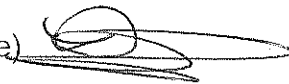
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(Partner name, organisation, position) DEBBIE FAGAN - CHIEF NURSE
SOUTH SEFTON CCG

Date: 24.4.17

(Partner signature)



(Partner name, organisation, position) DEBBIE FAGAN - CHIEF NURSE
SOUTHPCET + FORMBY CCG

Date: 24.4.17

(Partner signature)




(Partner name, organisation, position)

Date:

(Partner signature)

(Partner name, organisation, position)

SANDRA OLUNYE NATIONAL PROBATION SERVICE, ASSISTANT CHIEF OFFICER
(Partner name, organisation, position)

(Partner signature) 
~~_____~~

Date: 24/4/17

PHILIP BARTLEY, CARE QUALITY COMMISSION, INSPECTION MANAGER
(Partner name, organisation, position)

(Partner signature) 

Date: 24/04/2017

CATHERINE CHALLINOR, CARE QUALITY COMMISSION, INSPECTION MANAGER
(Partner name, organisation, position)

(Partner signature) 

Date: 24/4/17

(Partner name, organisation, position)

(Partner signature)

Date:

(Partner name, organisation, position)

LORNA QUIGLEY - WCCG DIRECTOR OF QUALITY &
(Partner name, organisation, position) PT SAFETY

Date:

(Partner signature)

L Quigley

24th April 2017

(Partner name, organisation, position)

RICHIE SALTER, MERSEYSIDE POLICE - Detective Superintendent

Date:

24/4/2017

(Partner signature)

[Signature]

(Partner name, organisation, position)

Liverpool City Council

S. ROGERS AD Adult Social

Date:

24/4/17

(Partner signature)

Care

[Signature]

(Partner name, organisation, position)

Date:

(Partner signature)

(Partner name, organisation, position)

GRAMM HODKINSON, OASS

(Partner name, organisation, position) WIRRAL COUNCIL

(Partner signature)



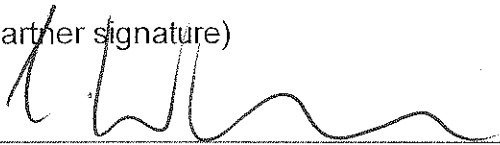
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(Partner name, organisation, position)

TINA WILKINS SEFTON COUNCIL

(Partner signature)



Date:

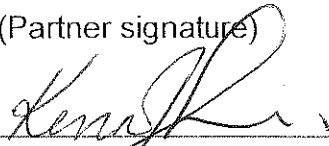
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(Partner name, organisation, position)

KEVIN JOANSON

MERSEYSIDE FIRE & RESCUE SERVICE

(Partner signature)



Date:

24/4/17

(Partner name, organisation, position)

PAUL ARMSTRONG

MERSEYSIDE COMMUNITY & REHABILITATION COMPANY

(Partner signature)



Date:

24/4/17

(Partner name, organisation, position)

(Partner name, organisation, position)

NTS LIVERPOOL CLINICAL COMMISSIONING GROUP
CHIEF NURSE.

Date: 24th April 2017

(Partner signature)

J. Hunt

(Partner name, organisation, position)

Date:

(Partner signature)

(Partner name, organisation, position)

Date:

(Partner signature)

(Partner name, organisation, position)

Date:

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(Partner name, organisation, position)



ADULT SOCIAL CARE AND HEALTH COMMITTEE

18 JANUARY 2021

REPORT TITLE	<i>Extra Care Housing Capital</i>
REPORT OF	Director of Care and Health

REPORT SUMMARY

This report concerns the funding requirements for a development of Extra Care Housing. This is in line with Council plans and includes a request for authorisation of a payment of a grant of £3,685,400 to enable the delivery of 80 extra care housing units by Housing 21. The report details the funding requirements and conditions of the proposed scheme. The scheme will contribute to reducing future demands for more expensive forms of care.

This is a key decision.

RECOMMENDATION

The Adult Social Care and Public Health Committee are recommended to

- a) Authorise payment of a grant of up to £3,685,400 to Housing 21 (H21) from the Council Extra Care Capital Programme to enable the delivery of 80 Extra Care Housing units by Housing 21.
- b) Note that the Council will hold nomination rights and that appropriate legal agreements will be put in place to ensure that the Council's financial contribution and nomination rights are protected.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The strategic priority to deliver extra care has been both a priority for the former Wirral 2020 Plan and the Wirral Housing Strategy. The former Wirral Plan committed to the development of 300 extra care units by 2020. The scheme being proposed relates to that commitment. This work also supports the delivery of the current Wirral Plan 2025 'Active and Healthy Lives' theme: "Working for happy, active and healthy lives where people are supported, protected and inspired to live independently."

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The council is required to comply with the current legal requirements under Article 5 ECHR. Other specialist housing options for people with assessed needs under the Care Act include sheltered accommodation, residential and nursing care.

3.0 BACKGROUND INFORMATION

- 3.1 The approved 2020/21 Capital Programme includes £3.586 million of funding related to Extra Care Housing. This involves developing extra care housing units in Wirral with Strategic Housing Delivery Partners to support people to live independently. This will contribute significantly to the shift required from residential and nursing care placements to community-based living and will reduce the proportion of adult social care expenditure for people aged 65+ on residential / nursing care. Housing partners are registered social landlords who support the provision and development of specialist housing.
- 3.2 Extra Care Housing is housing designed with the needs of frailer older people in mind and with varying levels of care and support available on site. People who live in Extra Care Housing have their own self-contained homes, their own front doors and a legal right to occupy the property. Extra Care Housing is also known as very sheltered housing, assisted living, or simply as 'housing with care'. It comes in many built forms, including blocks of flats, bungalow estates and retirement villages. It is a popular choice among older people because it can sometimes provide an alternative to a care home. The Strategic Housing Market Analysis identifies a need for 2,985 additional units of specialist older persons accommodation up to the period 2035. Specialist older people's accommodation is made up of age exclusive housing, sheltered, enhanced sheltered housing, extra care housing and residential care and nursing care.
- 3.3 The total estimated cost to develop out this scheme is £15,156,210. Housing 21 are approaching Homes England for grant and are themselves contributing £7,470,810 of their own resources. There is still a shortfall in funding of up to £3,685,400 (£46,068 per unit) which they have requested from Wirral Council in order to make the scheme financially viable.
- 3.4 If successful in securing grant and securing planning permission, H21 intend to start building works in late summer 2021. It is estimated that this scheme will be completed and ready for occupation in early 2023

- 3.5 Housing 21 have requested support via a formal funding agreement. The funding needs to be available and awarded for this scheme before it can progress towards planning application, primarily due to the risk of abortive costs. A decision is therefore required urgently in this case to ensure Housing 21 can purchase the land whilst their option to purchase the land remains open.
- 3.6 Officers confirm that the scheme has been taken through an assessment process that has reviewed the Extra Care Housing scheme against essential criteria for grant funding including strategic fit, value for money, nominations into the scheme, delivery, design and quality and affordable rent levels. This includes an assessment to ensure the scheme meets strict State Aid rules. At the time of writing, the position on State Aid is due to be updated and this will further inform the assessment. The scheme will contribute to reducing future demands for more expensive forms of care.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The request is for a grant of up to £3,685,400 (£46,068 per unit) for Housing 21's proposed extra care housing scheme on Moreton Road Upton. The financial profile of this investment will be £2,764,080 in 2021-22 and £921,360 in 2022-23. This investment will be met from the current approved capital programme.
- 4.2 The scheme will also contribute to reducing future demands and cost pressures relating to more expensive forms of care. The cost of extra care can be on average a third of the cost of residential care at Local Authority rates.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council will have a funding agreement in place with Housing 21 in relation to the grant provided, which will ensure the scheme is developed as agreed and full nomination rights are in place for Wirral Council to place appropriate people into this scheme via the current Extra Care Allocation procedures.
- 5.2 The grant requested has been assessed by the Director of Finance as meeting state aid requirements

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The resource implications are the support Council staff provide to enabling developments of this type of housing, commissioning the care provision that is on site and that people with care act eligible needs access the tenancies.

7.0 RELEVANT RISKS

- 7.1 The key risk at this stage is that the scheme may not be able to progress without the Council's support and insufficient extra care schemes in Wirral increase the likelihood of people having to move to residential care, as their care and health needs increase.

7.2 In addition, a funding agreement would be drawn up, if agreement is secured to provide grant funding for this scheme, which would clearly protect Wirral Council's financial commitment in terms of having 100% nomination rights into this scheme for eligible applicants that Housing 21 also need to secure Homes England Affordable Housing Programme funding to deliver this scheme on top of any Council funding secured. If they do not secure that funding then the scheme will not be able to progress

8.0 ENGAGEMENT/CONSULTATION

8.1 There has been consultation with key partners on the needs for extra care in Wirral. There is also a Strategic Housing Market Analysis that identifies this need.

8.2 Wide consultation on the proposed scheme will take place as part of the Planning decision process.

9.0 EQUALITY IMPLICATIONS

9.1 There is an existing Equality Impact Assessment for Extra Care Housing, which will be refreshed.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 The proposed development will increase the number of housing units in the borough by 80, increasing carbon emissions from the housing sector. However, the emissions from these extra units will be below the average for new homes due to the property type being apartments. The properties will have a minimum Energy Performance Certificate Band B rating upon completion.

10.2 However, as thermal fabric standards are being specified that are above current building regulations, along with higher levels of air tightness and mechanical heat recovery ventilation, the housing units may reach an EPC A rating. Housing 21 will not be specifying gas heating for the proposed development and as part of the design brief will be seeking innovative solutions that will meet the required heating strategy of providing non-fossil fuel, individual heating systems as an alternative to electric panel heaters.

10.3 A Whole Life Carbon Assessment will be undertaken of the design proposals to enable construction options to be considered to reduce embodied carbon.

10.4 A minimum of two electric vehicle charging points are to be provided within the communal parking area.

REPORT AUTHOR: Simon Garner
Lead Commissioner All Age Independence
telephone: (0151) 666 3726
email: simongarner@wirral.gov.uk

BACKGROUND PAPERS

Wirral Plan 2020

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

18 JANUARY 2021

REPORT TITLE	<i>Extra Care Housing Tender - Commission of Care and Support in Poppyfields</i>
REPORT OF	Director of Care and Health

REPORT SUMMARY

The purpose of the report is to update the committee on the award of the tender for the Care and Support service within the new Extra Care Housing Scheme, Poppyfields, which has been awarded to Provider F (see Appendix D).

This matter affects all wards within the Borough as placement can be made from anywhere in Wirral.

RECOMMENDATION/S

Adult Social Care and Health Committee are asked to agree the award of the Care and Support contract for Poppyfields Extra Care Housing Scheme to the Provider who is Provider F (see Appendix D).

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The Procurement exercise has been completed on 10 December 2020 with the award being made to Provider F (see Appendix D).

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Officers have procured from the established Liverpool City Region (LCR) Flexible Purchasing system, as per current local agreements because this gives a wider choice of providers and has recently been through a regional procurement exercise to establish the framework.
- 2.2 Officers could have chosen to procure via a stand-alone procurement exercise or to tender from the Wirral only Care and Support Framework.

3.0 BACKGROUND INFORMATION

- 3.1 The Wirral Plan: A 2020 Vision included a target of an additional 300 extra care units for older people and people with learning disabilities and/or autism, by 2020.
- 3.2 Extra Care Housing enables older people and people with a disability to live in a home of their own in a designated development, with 24-hour care and support services on site. People are enabled to live in their own accommodation with care on site for when they need to access it. Extra Care Housing will be increasingly used as an alternative to residential care.
- 3.3 Wirral currently have 250 units of Extra Care Housing accommodation in operation. This accommodation has been developed as an alternative to residential care and is a valued resource across the Borough.
- 3.4 Wirral Health and Care Commissioning are working jointly with developers and housing associations to develop Extra Care Housing schemes across the Borough to meet the future demand of Wirral's residents.
- 3.5 The Council's expectation is that any Provider of care and accommodation works to a nomination's agreement with the council so that placements can be prioritised based on local need.
- 3.6 A nomination agreement sets out an agreement to allocate properties to applicants whose details are supplied by another organisation, in this case Wirral Council. For these schemes, the Council, will be entitled to 100% nomination rights on the first let of a property and 100% nomination rights for subsequent re-letting of void properties.
- 3.7 The 24-hour provision of care and support for Extra Care Housing is commissioned by the Local Authority.

LCR Extra Care Housing Flexible Purchasing system

3.8 In 2018/19 Knowsley, Sefton and Liverpool jointly procured a system to purchase care and support services in extra care housing. Commissioners agreed a single service specification and contract. Work continues on developing a joint performance framework, with a full set of metrics, whilst the framework was developed with commissioners from the Liverpool Tripartite agreement (Liverpool, Sefton and Knowsley), all six LCR authorities are named parties and therefore have the option to draw down services from the framework.

Wirral have called off this framework for the new development at Poppyfields. The procurement timescales are detailed below

Week Commencing	Procurement Timescales
20 November 2020	Window opens for mini competition
3 December 2020	Window closed
4 December 2020	Evaluations
14 December 2020	Clarification interviews
4 January 2021	Provisional Award made (pending decision at ASC&H Committee on 18 January 2021)
18 January 2021	ASC & Health Committee
25 January 2021	Award Made
25 January – 14 March 2021	Mobilisation
15 March 2021	Contract starts

3.9 The duration of the Contract is 5 Years, starting 15 March 2021, ending 14 March 2026].

Poppyfields has been built and is owned and managed separately through a landlord - Alpha Living. The scheme has 78 self-contained flats (one and two bedrooms).

3.10 The Care Provider is to ensure 24-hour background support is available in the scheme to all residents (Band 1). In addition to the 24-hour support, some residents will also receive additional support based on assessed level of need. These are categorised into 5 care bands as per below.

Band 1	Band 2	Band 3	Band 4	Band 5
Between 0 and ½ hour	Over ½ and up to 5 hours	Over 5 and up to 10 hours	Over 10 and up to 15 hours	Over 15 hours

3.11 The service will ensure that at all times at least one member of staff is on site, this will be kept under review dependant on the need of the tenants. This will include waking night staff, that will be required to carry out planned care tasks and respond to emergencies throughout the night.

3.12 The Council evaluated submissions on 100% quality, as the price is set from the framework and the Provider with the highest score will be the one who will be awarded.

7 Providers made applications, and these were evaluated week commencing 7 December 2020 by Wirral Health and Care Contracts and Commissioning officers supported by Corporate Procurement Team

3.13 The Council have requested that the Care Provider is to be at 50% staffing capacity on 15 March 2021, with 100% staffing within 8 weeks from 15 March 2021.

4.0 FINANCIAL IMPLICATIONS

4.1 The Council is currently paying an in-year enhancement up to 31 March 2021 for Providers who are paying the real living wage, the incumbent Provider is currently paying the Real Living Wage (RLW).

4.2 Below is estimated costs for one year (based on this year's rate or £14.66 including the RLW). We can only estimate the spot hours based on filling the scheme on a 30% Low, 40% medium and 30% High care needs, the actuals may vary.

	Hours	Rate	21-22
Block costing	168	£14.66	£128,414.56
Spot hrs - 30% Low (23.4 units)	2.5	£14.66	£44,715.79
Spot hrs - 40% Med (31.2 units)	10	£14.66	£238,484.19
Spot hrs - 30% High (23.4 units)	15	£14.66	£268,294.71
			£679,909.25

The overall cost of the Contract for 5 years at the rate of £14.66 is **£3,399,546.25**

The existing rate for Provider's who do not pay the RLW is £13.60

Block costing	168	£13.60	£119,129.47
Spot hrs - 30% Low (23.4 units)	2.5	£13.60	£41,482.58
Spot hrs - 40% Med (31.2 units)	10	£13.60	£221,240.45
Spot hrs - 30% High (23.4 units)	15	£13.60	£248,895.50
S6420 R312 32354			£630,748.01

The overall cost of the Contract for 5 years at the rate of £13.60 is **£3,153,740.05**

- 4.3 The Council will in the final quarter of the financial year 2020/21 undertake its annual rate and fees negotiations and the final rate will be agreed at that point.
- 4.4 If the successful Provider does not commit to paying the RLW, they will not receive the enhanced rate once agreed by Committee.

5.0 LEGAL IMPLICATIONS

- 5.1 The commission of the services detailed in this report will need to be undertaken in accordance with The Public Contract Regulations 2015 and the Council's Contract Procedure Rules. Using the framework detailed in this report will meet these requirements.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 No implications arising directly from this Tender exercise

7.0 RELEVANT RISKS

- 7.1 Mobilisation of the Care Provider in time for Poppyfields opening; therefore, awards will be provisionally made week commencing 4 January 2021, pending sign off by ASC and Health Committee on 18 January 2021.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Alpha Living undertook engagement and consultations with the public and local residents before development begun.
- 8.2 A Presentation was published on the CHEST detailing the Scheme and key points in the specification along with Procurement timescales. This was available to Providers on the Flexible Purchasing System, for care and support in Extra Care Housing

9.0 EQUALITY IMPLICATIONS

9.1 Equality implications are embedded into the procurement and tender processes used as part of the application process and are taken into account when evaluating tender applications. Equalities implications are also part of the decision-making process when an award is made.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 Staff are situated on site, therefore low impact emissions as no travel is required.

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Wirral Health and Care Commissioning

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APPENDICES

N/A

BACKGROUND PAPERS

Appendix A –
Individual Specification for Poppyfields - submitted on the CHEST 20 November 2020

Appendix B –
LCR Specification for Care and Support within Extra Care Housing (FPS)

Appendix C –
T&C's for the LCR Care and Support within Extra Care Housing

Appendix D –
Provider information **(Commercially Sensitive for Legal Privilege Only) EXEMPT?**

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

Appendix A - Care & Support in Extra Care Housing – Poppyfields

Specification

Contract Reference:

RETURN OF INVITATION TO TENDER RESPONSE

The closing date for tender submissions is:

12 noon on 03/12/2020

<http://www.the-chest.org.uk>

Tenderers must read the “Instructions for Tenderers” attached on The Chest.

CONTACT AND QUERIES

If any tenderer wishes to raise any queries which may have a bearing on the offer to be made or have any specific questions regarding this process, please liaise with Wirral Council Corporate Procurement **via The Chest** at the earliest opportunity, and in any case **not later than 12 noon, 3 working days prior to the closing date**. Questions raised after this time may not be responded to. Tenderers must ensure anonymity when raising questions.

Tenderers are advised that where such enquiries have been made, and it is appropriate to do so, the Council will distribute to all tenderers a copy of the enquiry and the written reply, with anonymity preserved, via The Chest. It is the tenderers responsibility to ensure that they check for any new information.

PLEASE DO NOT CONTACT OFFICERS VIA ANY OTHER METHOD AS A RESPONSE WILL NOT BE PROVIDED.

Tenderers or bidders are required to indicate those parts of their submission that they regard as commercially sensitive in the event that information requests are received from third parties.

USING THE CHEST

Supplier Guides on how to use The Chest can be found by clicking on the “Help” button at the top right hand side of the screen.

In the event of any TECHNICAL problems using The Chest, please contact:

nwsupport@due-north.com

Telephone: 0845 293 0459
(08:30 - 17:30)

Section 1 – Liverpool City Region (LCR) Flexible Purchasing System (FPS) for Care and Support in Extra Care Housing (ECH)**1.1 Call off (mini competition)**

This is an individual specification specific to an Extra Care Scheme it works in conjunction with the FPS to which you are signed up to for Care & Support in Extra Care Housing.

When using a mini competition, the evaluation criteria for that specific service will be advertised with the individual call off. All mini competitions will be evaluated against the evaluation criteria in section 5 of this document.

If there is any conflict between the two specifications, this individual specification will take precedence.

1.2 Scope

This contract is primarily for delivery of goods or services on behalf of Wirral Council. Wirral is a Metropolitan Borough of Merseyside in the North West of England with a population of approx 300,000 over 60 square miles. Further information about Wirral is available on our website (www.wirral.gov.uk).

Wirral Council Adult Social Services Commissioners and the NHS Wirral Clinical Commissioning Group have come together under the brand “Wirral Health & Care Commissioning” WHCC (*whilst retaining separate legal entities*). Wirral Council is lead commissioner for his service. For the purpose of this part of the document the term WHCC will be used

Extra Care Housing is designed to accommodate people who need to be able to access care and support over a 24-hour period based upon assessed individual need and therefore not all interested applicants will qualify for this type of housing.

To be eligible for Extra Care Housing, applicants.

- Will have a local connection with Wirral through residence, family or employment;
- Will be adults with care and support needs who meet the eligibility criteria under the Care Act 2014; *and/or*
- Be an older carer with a son, daughter or dependant with a learning/physical disability who requires care and support.
- Must agree to be financially assessed to determine if they should make a contribute towards the 24-hour support that is available.
- Will have an identified housing need for Extra Care
- Couples are eligible for Extra care where both parties meet the criteria outlined below. Or if only one of the couple meet the criteria then in addition the spouse or partner of the applicant should normally be aged 50 or over though cases will be considered on a case by case basis).

- Will need to be aged 55 years or over (however, someone below this age with a long-term disability, for example following a stroke, will also be considered for the rented units on a case by case basis); and the criteria will be applied flexibly and will be person-centred (i.e. focusing on the individual and the principles of respect, dignity and choice).

Extra Care Housing offers residents the security and privacy of their own home with a range of facilities on the premises. Within Extra Care schemes, we aim to ensure that residents will have a range of dependency levels which are reflected in the care and support service specification and are as follows.

- 30% of residents who require low levels of care and support (0 up to 5 hours per week)
- 40% of residents who require medium levels of care and support (5 up to 15 hours per week)
- 30 % of residents who require high levels of care and support (alternative to residential care) (15+ hours per week)

Depending however on the number of cases and the priority of applicants, this remains flexible to respond to demand.

Wirral NHS Health & Care Foundation Trust (WCT) & Cheshire Wirral Partnership (CWP) who acts on behalf of the Council will assess, match, and prioritise people to available vacancies in Extra Care Housing in Wirral, as per Wirral allocation procedure.

The NHS Trust will review the current level of need in each scheme as per above, to ensure where possible the optimum balance is maintained.

CQC define extra care housing as purpose-built (or purpose adapted) single household accommodation that is owned or occupied under an occupancy agreement. The accommodation is in a building or campus of similar households specifically designed to facilitate the delivery of care to people, either now or when they need it in the future. These schemes are also known under other labels; for example 'sheltered housing' or 'assisted living', or 'retirement homes' Supported living and extra care housing are where:

- People live in their own home and receive care and support to promote their independence.
- Care and support can be continuous or periodic, but is always tailored to meet the supported person's individual needs.
- It should enable people who need personal care to live as independently as possible in accommodation that is genuinely 'their own'.
- There is a real separation between the care a person receives and their accommodation.
- The legal agreements for the provision of care and accommodation are separate.

https://www.cqc.org.uk/sites/default/files/20151023_provider_guidancehousing_with_care.pdf

The Care Act 8.36 says "Where the care planning process has determined that a person's needs are best met in a care home, the local authority must provide for the person's preferred choice of accommodation, subject to certain conditions. This also extends to shared lives, supported living and extra care housing settings.

Determining the appropriate type of accommodation should be made with the adult as part of the care and support planning process <https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance#using-the-care-act-guidance>

Standards. The Contractor will be CQC Registered as a Domiciliary Care Agency at the time of bidding and for the duration of the Contract with a rating of good or outstanding URL link. <http://www.cqc.org.uk/organisations-we-regulate>.

The service will have a Registered Manager recruited under the checks in Schedule 3 of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Contractors who are also the landlord / acting for the landlord will satisfy National Development Team for Inclusions (NDTi) 'Real Tenancy Test', that there is a genuine separation.

https://www.cqc.org.uk/sites/default/files/20151023_provider_guidance-housing_with_care.pdf

<https://www.ndti.org.uk/resources/publications/the-real-tenancy-test1>

1.3 Contract Duration

The duration of the Contract is [3] Years Starting [15 March 2021, Ending 15 March 2024], [+ 2 (1 x 12 + 1 x12) month extension options taking the Contract up to 15 March 2025 / 2026]. (subject to scheme being ready for handover)

The contract includes a right for the Council to terminate it on a "no fault" basis on not less than 12 months' notice in writing. This is included as the Council constantly reviews its strategies, needs to be flexible and to be able to respond to developments and the vision of Wirral Health & Care Commissioning (Wirral Council) WHCC and the NHS Wirral CCG

Section 2 – Wirral Specification

2 Specification

This specification is for a Contract to provide a 24/7 Care and Support Service at [Poppyfields Extra Care Housing (ECH) based in Saughall Massie, Wirral.

The ECH is provided separately through a landlord [Alpha Living]. The scheme has [78 self-contained Flats (one & two bedrooms) of which at the time of going out to tender [0] have a Care and Support Plan and 100% have access to technology to summon help in the event of an emergency. During the Contract period, the Purchaser will be working with the Landlord to increase the number of flats occupied by tenants meeting the Care and Support Service eligibility criteria

In Extra Care Housing Schemes, people who have been identified as having a care need (of whom will meet the eligibility criteria for care services), live within their own self-contained flats, Appropriate support, including personal and social care and support provision is provided by staff employed by the care provider, in accordance with an on-going

assessment of need. This domiciliary care is provided with a reablement focus (where appropriate), to each individual in their own home, by promoting their independence and well-being.

The Care Provider is to ensure 24-hour background support is available in the scheme to all residents (Band 1). In addition to the 24 hours support some residents will also receive additional support based on assessed level of need. These are categorised into 5 care bands as per below.

Band 1	Band 2	Band 3	Band 4	Band 5
Between 0 and ½ hour	Over ½ and up to 5 hours	Over 5 and up to 10 hours	Over 10 and up to 15 hours	Over 15 hours

The Service will ensure that at all times at least one member of staff is on site which will be kept under review. This will include waking night staff that will be required to carry out planned care tasks and respond to emergencies throughout the night

WHCC is looking to procure Care and Support services from Providers with an appetite for transformation, innovation, and a strong ethos of collaborative working.

The Care Provider is to be at 50% staffing capacity on 15th March 2021 with 100% staffing within 8 weeks from 15th March 2021

WHCC reserves the right to review the services to be provided in respect of this specification as the Health and Social Care economy develops within the lifetime of the contract.

2.1 Service Model

The provider will employ a service model which:

- a. Ensure care staff are available within the Extra Care Housing scheme 24 hours a day, 7 days a week, 52 weeks a year to provide appropriate care and support to the people who live there
- b. Have a designated Care Coordinator / Senior Officer for the scheme
- c. will be responsible for monitoring installed telecare and responding to emergency calls from pendants, pull-cords, falls monitors, bed sensors, etc.
- d. delivers the objectives and outcomes of the service detailed below
- e. ensures collaborative working and communication with other services to provide a seamless service for the service user
- f. forms part of a seamless continuum of services linking health & wellbeing promotion, preventative services, primary care, community health services, social care, and support for carers and acute hospital care
- g. works with the re-ablement model to support people using the service to achieve personal goals and achieve as high a level of independence as possible for their own particular circumstances.

- h. facilitates engagement of the person being supported (at an appropriate level in relation to their need and ability) in day to day activities, including self-care, to ensure independence
- i. works with local health professionals (including GP practices) to ensure the medical needs of people using the service are met, including access to medication or other supplies they may need
- j. Adapt a Trusted Assessor approach by working collaboratively with key partners to promote independence, reduce dependency and work collaboratively on streamlined business processes.

2.2 Objectives and Outcomes

The **objectives** of this service are to:

The provider will employ a service model which:

- a. ensures collaborative working and communication with other services to provide a seamless service for the service user e.g. linking health & wellbeing promotion, preventative services, primary care, community health services, social care, and support for carers and acute hospital care
- b. ensures a person-centred approach, appreciating the experiences of individuals and their cultural needs
- c. provides a response service to people using the 24-hour call service
- d. encourages relatives and carers to take an active role in supporting the customer
- e. ensures a reablement focus to maximise each customers potential for independence, with appropriate support to regain an optimal level of functional independence and encouraging self-care wherever possible.
- f. ensures the safety and dignity of people using the service
- g. monitors day to day changes in people's capacity, and responds to changing needs as necessary
- h. encourages and facilitates people's participation in activities both within the scheme and the wider community

The Provider will deliver the Services in such a way to achieve the outcomes set out below:

- **OUTCOME 1 - Improved health and emotional wellbeing:**
Services will promote and facilitate the health and emotional well-being of Service Users who use the service.
- **OUTCOME 2 - Increased choice and control:**
Service Users, and their careers, have access to choice and control of good quality services, which are responsive to Service User needs and preferences.
- **OUTCOME 3 - Improved quality of life:**
Services will promote independence, and support Service Users to live a fulfilled life making the most of their capacity and potential.

- **OUTCOME 4 - Feeling safe, secure and free from discrimination or Harassment.**
Users have equal access to services without hindrance from discrimination or prejudice; they feel safe and are safeguarded from harm.
- **OUTCOME 5 - Maintaining personal dignity and respect:**
Services will be sensitive to personal beliefs and preferences and will respect confidentiality, helping to preserve dignity at all times.
- **OUTCOME 6 - Making a positive contribution:**
Service Users who use the Service are encouraged to participate fully in their community and feel that their contribution is valued equally with other people.
- **OUTCOME 7 - Economic wellbeing:**
Service Users are not disadvantaged financially and have access to economic opportunity and appropriate resources to achieve this.

These outcomes will also demonstrate:

- That people have real control over their care and support, actively engaging residents, carers, local communities and partners in the co-design and development of support packages.
- The difference that they are making to people's lives through an asset-based approach celebrating and facilitating people's gifts, talents and aspirations.
- That they seek solutions that actively plan to avoid or overcome crisis and focus on people within their natural communities, rather than service and organisational boundaries.
- That they enable people to develop networks of support within the Extra Care scheme and increase local community connections.
- That they take time to listen to a person's own voice, particularly those whose views are not easily heard.
- That they fully consider the needs of the family and Care & Support at Home workers when planning support and care.
- That they ensure that support is culturally sensitive and relevant to diverse communities.
- That they take into account a person's whole life, including their physical, mental, emotional, and spiritual requirements, including insight into an individual's past, present and future aspirations.

The Provider will ensure that care and support is delivered by skilled and compassionate workers, employed by providers who offer excellent services to Wirral residents based on responsible and supportive employment practise, in return for a comprehensive and evidenced reward and support package.

2.3 Service Requirements

The provider must:

- a) Be able to demonstrate expertise in and / or experience of providing domiciliary care services and or in Extra Care Housing
- b) Possess the appropriate CQC registration and rated either “good” or “outstanding” as per the compliance set out in the FPS.
- c) Ensure staff have appropriate professional registration and maintain the required standards through on-going professional development
- d) Ensure staff possess appropriate qualifications, have access to regular training and supervision to fulfil their role, including moving / handling and use of relevant equipment
- e) Ensure staff are fully aware of current North West Safeguarding policy and procedure <https://wbcnet.wirral.gov.uk/sites/default/files/media/docs/Business%20Support/Adult%20Social%20Services/Adult%20Social%20Services%20Policies%20and%20Procedures/North-West-Safeguarding-Adults-Policy-V4-9-2.pdf>
- f) appendix B)
- g) Ensure appropriate administrative systems, processes and recording using electronic support planning / Call monitoring systems
- h) Ensure appropriate performance measurement and reporting
- i) Ensure an appropriate line management structure for delivery of the service
- j) Ensure clinical and professional governance for the service
- k) Ensure a staffing model which provides 24-hour cover within the Extra Care scheme
- l) Ensure a risk assessment framework (with mitigations) to safely support staff end users for the periods of time that the service is operating
- m) Work with the housing provider to ensure care starts on the date the individual moves into the scheme
- n) Work in partnership with Wirral Health & Care Commissioning, Social Care Partners, other professionals, carers and family members to review people’s support on a regular basis. The person being supported must be central to this
- o) Capture and record agreed activity and monitoring reports (to be agreed) demonstrating successful outcomes in line with organisational requirements in relation to each person supported using electronic support planning and call monitoring
- p) Co-operate with all reasonable requests for data capture, reporting and audit in line with commissioner and monitoring requirements
- q) adhere to the Allocations Procedure for Extra Care schemes within the Wirral.
- r) Encourage participation in service user led / social activities within the scheme and local community
- s) Demonstrate good working relationships with key stakeholders
- t) Facilitate introductory visits of new potential tenants
- u) Support residents with nutritional needs including support to access the restaurant

2.4 Charges and housing management

- a. There is zero cost for the use of the property for the provision of Care & Support at Poppyfields on the basis that the Care Provider signs a partnership agreement with the Housing Provider which defines roles and responsibilities.(draft attached, still to be finalised) The arrangement will be with the Housing Provider “Alpha Living”
- b. The Care Provider will have a shared occupancy/office accommodation alongside any staff that may be on site from the housing provider.
- c. The Poppyfields site will also be used as a local headquarters for “Alpha Living”

Section 3 – T & C’s Works Order

3.1 Details of Flexible Purchasing System: Care and Support in Extra Care Housing and Local Communities (Liverpool City Region 2018)

These Terms and Conditions apply to each Individual Contract entered under the Flexible Purchasing System see specific work order for Poppyfields

Section 4 – Performance Indicators

ID	KPIs/AMs	Unit
KPI 1	Supporting a balance of levels of need based on 30% high, 40% Medium & 30% Low needs	%
KPI 2	Time critical calls within 30 minutes	%
KPI 3	Reliability of Delivery - Frustrated Calls	No.
KPI 4	Reliability of Delivery - Missed Calls	No.
KPI 5	Reliability of Delivery - Late Calls (>30mins of start time)	No.
KPI 6	Outcomes	n/a
KPI 7	Trusted assessor - Reviews completed in 5 days	%
KPI 8	Trusted assessor - Annual Reviews completed	%
KPI 9	Trusted assessor - Reviews - Cases increased	%
KPI 10	Trusted assessor - Reviews - Cases decreased	%
KPI 11	Satisfaction Survey - Service Users – Annual	%
KPI 12	Satisfaction Survey - Provider Staff – Annual	%
KPI 13	No of complaints	No
KPI 14	No Safeguarding	No

Section 5 – Evaluation

3.1 Evaluation

The award of this Contract will be on the basis of:

Quality 100%

The evaluation may consist of 2 stages:

- ITT submission / method statement
- Interview see 3.3

3.2 Scoring Mechanism

The scoring mechanism for scored questions in this tender will be as follows: -

Score	Rating	Definition
0	Unacceptable	Nil response or no relevance to the requirement
1	Poor	Response has insufficient relevance and provides no detail or explanation of how the requirement will be met
2	Inadequate	Response has partial relevance and addresses some aspects but with deficiencies with the detail or explanation of how the requirement will be met
3	Acceptable	Response is relevant and acceptable. The response addresses a broad understanding of the requirement but may lack details on how the requirement will be fulfilled in certain areas.
4	Good	Response has significant relevance and is good overall. The response is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled.
5	Excellent	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirement and provides details of how the requirement will be met in full. Response adds value and may contain innovative solutions

If tenderers score less than a 3 on 2 or more of the method statements, Wirral Council reserves the right to exclude the tenderer.

Compliance questions - Tenderers are required to confirm their level of compliance with each of the requirements selecting the appropriate box. The Compliance questions will be marked as *pass* or *fail*. If you do not "Fully Comply" with any of the requirements, please provide details of why in the "Comments" section on the Online Supplier Questionnaire where the Evaluation Team will consider if your response is acceptable.

3.3 Interviews

Clarification Interviews will be held week commencing 14th December 2020 You may be selected for interview so please keep this date free. There will be no presentation required at the interview.

Although not scored on a separate basis, the session will be used to verify the tender submissions. As such, scores achieved during the written Tender evaluation may be adjusted down and the consolidated score of a Bidder amended.

MS No.	Weighting %	MS Description
1	35	Please outline the innovative and creative methods you will use to deliver the specified service, including structure, management, administrative and care staff, on call, and out of hours availability (including arrangements for planned and unplanned absences) <i>(1000 words max)</i>
2	20	Please describe your mobilisation plan for this scheme and how you would ensure you have adequate staffing levels to assist full capacity within 8 weeks of scheme opening <i>(500 words max)</i>
3	20	Please describe how you respond to individual customer needs and requests, encourage their independence and positive risk taking, and lessen social isolation. Please provide examples <i>(700 words max)</i>
4	15	Please describe your approach to working collaboratively and flexibly with both partners and commissioners. Provide examples, including conflict resolution <i>(500 words max)</i>
5	10	Please tell us how you ensure good communication with customers, families, and partners, including customer experience and feedback. Please give examples <i>(250 words max)</i>
Weightings must total 100%		

Section 7 - Pricing Schedule

Pricing Schedule

Poppyfields requires 24/7 presence broken down as:

- Block Night-time support – 63 hours per week
- Block Day time support – 105 hours per week

The Provider will receive a block payment for the **168 core hours** and will be expected to submit actuals for all support provided, Providers will be paid for any additional hours over the above core

Properties will be allocated on the basis below,

- 30% of residents who require low levels of care and support (0 up to 5 hours per week)
- 40% of residents who require medium levels of care and support (5 up to 15 hours per week)
- 30% of residents who require high levels of care and support (alternative to residential care) (15+ hours per week)

The current rate payable for this contract is **£13.60/hr** from April 2020 to 31st March 2021. The Council is currently paying an enhanced rate of **£14.66** for providers who have committed to paying the Real Living Wage of £9.30 to front line staff up to 31st March 2021. Thereafter this is subject to annual review and fee setting by the council

Providers are expected to submit actuals based on service delivered via Provider Portal. Invoices are paid at the end of each 4-week period detailed in the table below.

<u>Domiciliary Care, Re-ablement, Extra Care & Mobile Nights 2020/21</u>	
Period No	Period Dates
1	02/03/2020 - 29/03/2020
2	30/03/2020 - 26/04/2020
3	27/04/2020 - 24/05/2020
4	25/05/2020 - 21/06/2020
5	22/06/2020 - 19/07/2020
6	20/07/2020 - 16/08/2020
7	17/08/2020 - 13/09/2020
8	14/09/2020 - 11/10/2020
9	12/10/2020 - 08/11/2020
10	09/11/2020 - 06/12/2020
11	07/12/2020 - 03/01/2021
12	04/01/2021 - 31/01/2021
13	01/02/2021 - 28/02/2021

Section 8 - Declaration

I/We the undersigned, hereby quote to supply the goods / service / products detailed in this tender, at the respective prices quoted. (Prices must not include VAT).

I certify that as far as I know, the information I have supplied is accurate.

I/We agree that this tender shall remain open to be accepted or not by the Council for a period of six months from the closing date for the receipt of tenders.

I/We agree that the Council may discontinue the tendering arrangements at any time before a tender has been accepted.

I/We accept the specification and standard terms and conditions embodied in the request for tender and undertake to be bound by them if my/our tender is accepted by Wirral Borough Council.

I/We certify that I/we have not now or will in the future, canvassed or solicited any member, officer or employee of the council and any other companies in the group of which the council forms part, in connection with this tender and that to the best of our knowledge and belief no person employed by me/us or acting on my/our behalf has done such an act.

I/We understand that the Council is not bound to accept any tender and will not be liable under any circumstances whatsoever for the costs I/we have incurred in preparing the tender.

The tender submitted herewith is a bona fide tender intended to be competitive. We have not fixed or adjusted the amount of the tender by or under or in accordance with any collusive agreement or arrangement with any other person.

NAME OF CONTACT:	
DESIGNATION:	
COMPANY NAME:	
ADDRESS (including postcode)	
TELEPHONE:	
FAX:	
EMAIL:	
SIGNATURE:	
DATE:	



**FLEXIBLE PURCHASING SYSTEM FOR CARE AND
SUPPORT IN EXTRA CARE HOUSING (ECH) SETTINGS
AND, WHERE REQUESTED, THEIR SURROUNDING
AREAS IN THE LIVERPOOL CITY REGION**

APPENDIX B

GENERAL SPECIFICATION

SUMMARY

A) PURPOSE OF THE FLEXIBLE PURCHASING SYSTEM

To create a list of suitably qualified providers who are willing and able to deliver care and support in Extra Care Housing (ECH) settings and, where requested, the local area in which these schemes are located.

B) FLEXIBLE PURCHASING SYSTEM PERIOD

The flexible purchasing system (FPS) is due to commence on 11 August 2018 and is estimated to be operational for 5 years with an option to extend for a further 5 years but the Lead Council may continue thereafter indefinitely, for as long as the Lead Council wishes to conduct it. Knowsley MBC, Liverpool CC and Sefton MBC intend to use the FPS for a minimum of five years. Whilst this is the intention, there is no legal obligation for these authorities to use the FPS.

The contract period for the call off of services purchased using the FPS will be specified in the individual specifications for that specific service.

C) NEW ENTERANTS TO THE FPS

The FPS is an open list which means that more providers can join the list during the lifetime of the FPS. The opportunities to apply to join the list are expected to be:

- **The first intake:** the application deadline will be published in the application form, but is expected to be **16th May 2018**.
- **The second intake:** the application deadline will be published in the application form, but is expected to be **30th November 2018**
- **Subsequent intakes:** each Flexible Purchasing System is expected to be constantly open after **1st December 2018**. The frequency of intakes will be not more than 12 months after the previous intake.

D) REVIEW DATE

The FPS will be reviewed in the fifth year of operation and following this, a decision on whether to continue to use the FPS will be communicated to providers on the FPS list.

E) LOCATION AND POPULATION

Services will be located in Liverpool City Region (LCR). The LCR includes Halton MBC, Knowsley MBC, Liverpool CC, Sefton MBC, St Helens MBC and Wirral MBC. In addition to providing care in the ECH scheme, some services may also provide care and support to the local community surrounding the scheme.

The care and support services will be targeted at people aged 16 years or older. This will include older people (aged 55 years or older) with support needs and younger adults (aged 18 to 54 years) with support needs. Services may also include young adults people aged 16 to 18 with support needs. All of these groups may include people with physical, learning, sensory and mental health needs (including organic mental illnesses such as dementia as well as functional mental illness such as depression, schizophrenia, mood disorders and anxiety).

F) FUNDING

The total estimated value of the care and support contracts purchased using the FPS is estimated £45 million over the initial five year period. However, there is no guarantee of this level of expenditure.

Payment of contract funding for individual ECH services will be from the Purchasing Authority to the Provider. Details of payment value and frequency of payments will be in the individual specifications for the call offs.

G) AWARD OF CONTRACTS

Contracts will be awarded following the procedures described in Flexible Purchasing System Rules. This can include direct award to providers on the FPS list as long as the criteria for this has been met. The criteria is described in Flexible Purchasing System Rules. Where this criteria has not been met the Purchasing Authority will award contract following mini competition. When using a mini competition the evaluation criteria for that specific service will be advertised with the individual call off. All mini competitions will be evaluated against the evaluation criteria in the call off competition documentation.

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SECTION 1 – INTRODUCTION AND BACKGROUND

1.0 INTRODUCTION

This is the general specification for the Flexible Purchasing System (FPS) for Care and Support in Extra Care Housing (ECH) Settings and, where requested, their surrounding areas. This specification works in conjunction with individual specifications for specific services purchased using this FPS. If there is any conflict between the two specifications, the individual specification will take precedence.

This FPS can be used by any of the six local authorities in the Liverpool City Region (Halton MBC, Knowsley MBC, Liverpool CC, Sefton MBC, St. Helens MBC and Wirral MBC) as well as any company where these local authorities are a sole shareholder or co-shareholder. Although these organisation can use the FPS, only Knowsley MBC, Liverpool CC and Sefton MBC have stated their intention to use it at the start of the Agreement. Whilst it is estimated the FPS will be operational for 10 years, Knowsley MBC, Liverpool CC and Sefton MBC have stated their intention to use this FPS for an initial minimum of five years, however there is no legal obligation for them to do so.

1.2 What is Extra Care Housing?

ECH Schemes are specialist housing provision designed to offer a safe, private and secure environment. Service users are able to retain the independence of having their own home whilst enjoying the benefits of having staff on hand to provide planned and unplanned care and support. The aim of extra care housing is to provide high quality housing, support, and care services which enable, support and encourage people to live independently for as long as they wish to and are able to. This will include additional support and care to avoid admission to hospital or long term care where possible. Care and support in ECH settings has a number of characteristics:

- The **care** includes personal care such as assistance with washing and dressing, preparation of food, assistance to eat and drink, help with toileting and administering medication; and

- The **support** includes assistance with shopping, paying bills, help to maintain their homes (e.g. cleaning, laundry), advice on their tenancy rights and responsibilities; and
- Includes **community support** to such as facilitating a wide range of activities in ECH settings that reflect service users interests, encouraging service users to participate in activities, supporting service users to attend activities outside of the scheme and be part of the wider community.

Appendix 1 contains a list of care and support tasks. Rather than being a definitive list, this list helps to illustrate the nature and competency levels required from services.

1.3 Who are the Tripartite Authorities?

The Liverpool City Region

In April 2014 Halton MBC, Knowsley MBC, Liverpool CC, Sefton MBC, St. Helens MBC and Wirral MBC formed the Liverpool City Region Combined Authority to bring together, through an overarching governance structure, six local authorities to work collaboratively to promote economic growth, improving transport links, increase availability of good quality housing, reform public services and improve the health and wellbeing of people living in the area.

The Tripartite

In particular Knowsley MBC, Liverpool CC and Sefton MBC have several features in common. These include ageing populations, high levels of deprivation, common NHS providers working across the areas, similar aspirations in terms of multidisciplinary working as well as pressure to maintain and improve the quality services whilst identifying efficiencies. For these reasons, these authorities have chosen to develop a programme of collaborative work that focuses on adult social care services. The aim of this programme of work is of minimise the impact of demographic and fiscal pressures on already strained Local Authority budgets. There are three areas that these are authorities are looking at first. These are domiciliary care, extra care and residential care (including nursing). These three local authorities working together are known as the 'Tripartite'.

The area covered by the Tripartite is 136.4² miles running along the Irish Sea coast from Southport in Sefton to Speke in the Liverpool. Along its breadth, it ranges from

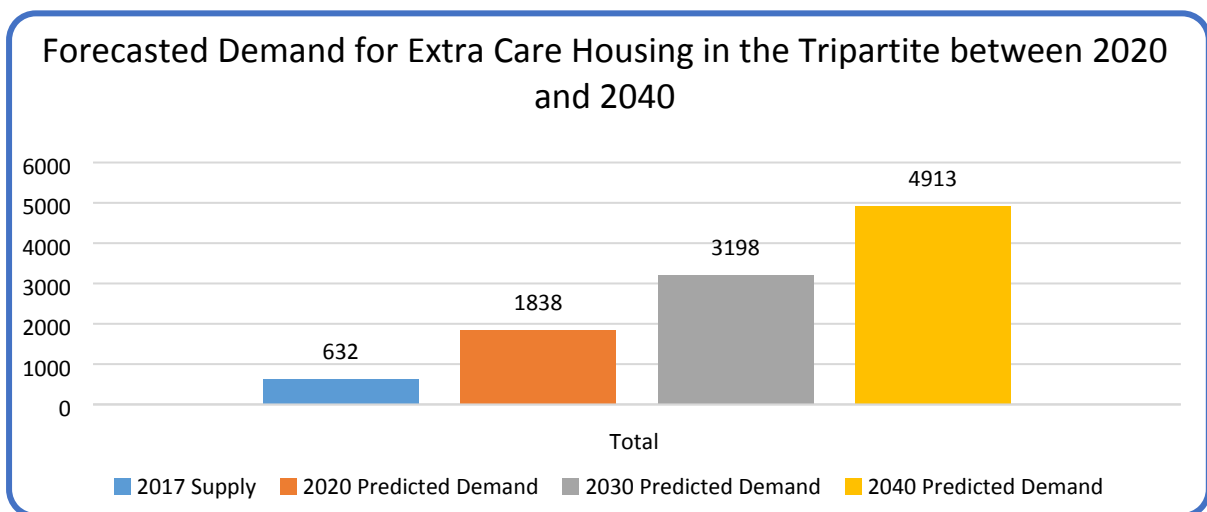
Liverpool city centre in the west to Whiston in the borough of Knowsley. It has a population of 906,754 people of which 160,100 are aged 65 years or older. Although it varies across the area, each authority is projecting an increase in the population of older people in their area. By 2025, the 65+ population is expected to increase by the following numbers across the Tripartite; from 25,200 to 29,900 in Knowsley, from 71,500 to 81,600 in Liverpool and from 63,400 to 71,900 in Sefton. In total, this is a 14.6% increase across the three authorities.

1.4 Existing Commissioned ECH Services in the Tripartite.

There are twelve ECH schemes commissioned by the Tripartite for older people located in different parts of the tripartite area, with notable differences between the demographics and affluence of areas. The schemes have a combined capacity of 632 and currently support 621 people. Details of these schemes are in Appendices 2.

1.5 Future Demand for ECH Services

Each of the tripartite authorities are anticipating an increase in demand for ECH in their areas. Over the next 20 years it is estimated that they will require approximately 5,000 units of ECH across the three authorities.



More information on forecasted demand in each area is available Appendix 3 (Tripartite Adult Social Care Commissioning Intentions for Care and Support in Extra Care Housing 2017-2022).

2.0 PURPOSE OF FPS AND SHARED PRINCIPLES

2.1 Purpose of the Flexible Purchasing System

To create an approved list of suitably qualified providers who are willing and able to provide good quality care and support in ECH settings, and where requested, the surrounding areas to the schemes.

2.2 Shared Principles

Whilst individual services purchased using the FPS vary in their specific requirements, the following principles will apply to all services.

- **Promoting people's independence to enable them to live at home for as long as possible.** This includes adopting an approach that supports people to do things for themselves (where they are able) rather than doing things for them. Services will support people to maximise their independence, delay the onset of care needs and reduce the escalation of needs. Use assistive technology will help people live independently by enabling support to be provided at the time that it is needed. By promoting people's independence services will delay and prevent the need for long term residential care.
- **Working in partnership with the landlord to ensure that schemes are vibrant hubs of activity** with a range of both formal organised activities as well as informal gatherings. There will be service user led activities, where people in schemes organise and run their own activities (with support from providers where needed). Services will maximise community assets to ensure that there will be external agencies and local community led groups involved in running activities in schemes. Services will work with other ECH schemes to offer a diverse range of activities.
- **Helping people to stay well for as long as possible.** Services will support people to look after their physical and mental wellbeing. This will include support to administer medication and support to attend medical appointments. There will be strong links with community health services such as district nursing and GPs. Services will also include proactive support such as opportunities to help people be more active through activities such as gardening, walking groups, boccia and other chair based exercises. Mental wellbeing is also important. There is a growing body of evidence that loneliness can contribute to both poor mental and physical health. Services will support

people to develop and maintain natural networks of friendship both within the scheme as well as with families and friends outside the scheme.

- **Supporting people with more complex needs.** Services will support more people with more complex needs such as people with physical, learning, sensory and mental health needs (including organic mental illnesses such as moderate levels of dementia as well as functional mental illness such as depression, schizophrenia, mood disorders and anxiety). This may include both younger adults (aged 18 to 54 years old) and older adults (aged 55 years or older). There will be variation in the needs of people between schemes. The needs of each scheme will be detailed in the individual specifications.
- **Providing excellent end of life care** that enable people to choose to die at home if that is their wish. Staff will have the both practical and emotional skills to support people, and their families, through this difficult period in their life. There will be strong links with community health services such as district nursing and GPs.

SECTION 2 - SERVICE DESCRIPTION AND SERVICE DELIVERY

1.0 HOW THE SERVICES WILL BE PROVIDED

The fundamental approach to supporting service users will be one of enablement. It is based on the principle that most people can live more independently if they are provided with the right kind of assistance, at the right time and the right kind of environment. The Provider will promote service user's independence by supporting people do things for themselves where this is possible (using aids, adaptations and technology where this can assist) rather than doing things for them.

2.0 LOCATION OF SERVICES

Services will be located in Liverpool City Region (LCR). The LCR includes Halton MBC, Knowsley MBC, Liverpool CC, Sefton MBC, St Helens MBC and Wirral MBC. In addition to providing care in the ECH scheme, some services may also provide care

and support to the local community surrounding the scheme. The location of services will be specified in the individual specification.

3.0 ELIGIBILITY CRITERIA AND POPULATION

Services purchased using this FPS will be for at people aged 16 years or older. This will include older people (aged 55 years or older) with support needs and younger adults (aged 18 to 54 years) with support needs. Services may also include young people aged 16 to 18 with support needs. All of these groups may include people with physical, learning, sensory and mental health needs (including organic mental illnesses such as moderate levels of dementia as well as functional mental illness such as depression, schizophrenia, mood disorders and anxiety). The eligibility criteria for specific services will be specified in the individual specifications.

The individual specifications will detail the preferred range of service users' needs in specific schemes and definition for each level of need.

For illustrative purposes only

A scheme may aim to have 30% of people with low needs, 40% with medium levels needs and 30% with high level needs.

Low level needs could be defined as people requiring less than 5 hours care and support a week

Medium level needs could be defined as are people who require between 5 and 14 hours support a week

High level needs could be defined as are people who require more than 14 hours a week.

4.0 MODEL OF SERVICE DELIVERY

The model of service delivery will be specified in the individual specifications. This can include, but is not limited to:

- **Task and time model** where we specify what care and support tasks are provided for each service user and at what times of the day and night these tasks are delivered. Payment for these service may be on a
 - Block basis where we agree a set number of hours over an agreed period of time; or
 - Spot purchase where we agree a unit cost and payment is made based on the volume of units provided; or
 - Block and volume where we agreed a block of hours over an agreed period of time and a unit cost for services provided in excess of the block.

- **Flexible budget model** where we specify what care and support tasks are provided but do not specify the time they need to be completed. The Provider and service user agree when support will be provided and this may change from week to week. In this model a budget is agreed for each person over a set period of time, usually 4 weeks.

- **Trusted Assessor model** which builds upon the task and time model or the flexible budget model but enabling the Provider to increase and / or decrease the agreed amount of support for service users based on set criteria and competency of staff undertaking that assessment.

- **Block Contract model** where we agree a staffing structure for a service that meets the needs of all service users. Care and support provided to each service user changes with their needs.

- **Outcome focused model** where we agree outcomes for the service user and / or service. Payment may be made on a block basis, on achievement of these outcomes or combination of the two.

- **Assistive Technology.** Regardless of the service model the Purchasing Authorities expect all services to ensure they make the best possible use of technology to support its service users to live independent, connected and healthy lives, in meeting their health and care needs and in enabling their access to all commonly available media. We will specify how want assistive technology to be used in specific schemes in the individual specifications.

5.0 STANDARDS OF SERVICE

The Provider must deliver services in accordance with the registration requirements of the Care Quality Commission, and any organisation that may replace them; complying with all relevant regulations, the National Minimum Standards and best practice guidelines at all times. Further guidance and information is available on the Care Quality Commissions web site via the following URL link.

<http://www.cqc.org.uk/organisations-we-regulate>

For the full duration of the FPS and, any subsequent contract procured using the FPS, the Provider must be registered with the Care Quality Commission (CQC) as a Domiciliary Care Agency, and any regulatory organisation that may replace the Commission.

The Provider will comply with the standards set out in this Specification to be complementary to the CQC Inspection Framework. All standards contained with the CQC Fundamental Standards must be met as part of this Agreement.

In circumstances where the requirements stipulated within this Specification impose any standard which is higher than any equivalent standard contained within the Fundamental Standards, then the Provider will comply with the relevant higher standard.

The Provider will be mindful of CQC registration requirements for certain regulated activities in relation to 'accommodation for persons who require nursing or personal care' and should satisfy the Purchasing Authority that there is clear and sufficient separation between the provision of the accommodation and the provision of the care in delivery of the contract.

The Provider will ensure that they are registered with the Information Commissioners Office as data controllers in line with the requirement of the General Data Protection Regulation 2016.

6.0 PARTNERSHIP WORKING

The Provider will work in partnership with the relevant landlord for the designated ECH scheme to provide a seamless care, support and housing service. The Provider will enter into a Management Agreement with the landlord for the ECH scheme for the duration of the Agreement, which clearly establishes roles and responsibilities. The Provider will ensure that there are appropriate protocols and procedures in relation to the following:

- Dealing with Housing Applications, monitoring Waiting Lists and overseeing Allocations (in line with the requirements of the Referral Pathway)
- Issuing and signing of Tenancy Agreements to Service Users
- Completing and submitting Housing Benefit documentation (or its replacement) and resolving any issues e.g. backdated claims in relation to Benefits
- Arranging for the cleaning and clearing of void units when vacated by Service Users
- Reporting of repairs Void Management
- Housing Management functions and activities
- Any other activity as agreed with the landlord that would form part of the Management Agreement

The Services will be provided notwithstanding the pending signing of the Management Agreement. The Provider will work in partnership with the landlord to ensure that matters relating to the Management Agreement are progressed quickly.

The Provider will develop effective and meaningful relationships with other partner agencies, including the Purchasing Authority. The Provider will identify and engage

with key partners and agree working protocols, where required. The Provider will work with a full range of partners to meet the holistic needs of Service Users and to provide the Services to their full potential. This will include:

- Assessment and Care Management within the Purchasing Authority
- Hospitals and Intermediate Care Services
- GPs surgeries and primary care facilities
- Voluntary Sector Agencies
- Community organisations and advocates
- Telecare Service
- Police
- Fire and Rescue Service
- Welfare Benefits Agencies
- Carer's Organisations and Services
- Leisure Services
- Community Integrated Equipment Service

The Provider will establish and maintain effective links (including referral links) with both statutory and voluntary support and advice agencies to meet the full needs of Service Users and establish and maintain comprehensive links to a range of relevant activities, services and facilities that will benefit service users.

The Provider will support Service Users to access other services which meet their needs. This may involve practical support to access other services including arranging meetings and appointments. The Provider will also ensure that the relevant agencies are informed about changes in the Service User's situation.

The Provider will promote ECH amongst partner agencies and local community organisations. Service promotion includes producing clear, widely available and

accessible publicity material including the eligibility criteria. This may be done in partnership with the relevant landlord.

Targeted Recruitment and Training requirements and Targeted Supply Chain opportunities will be determined by the Purchasing Authority from time to time and the Provider will work in partnership in responding to these opportunities as requested.

7.0 NOMINATION RIGHTS, REFERRALS AND ALLOCATION OF CARE AND SUPPORT

Nomination rights for each ECH scheme will be specified in the individual specifications. How referrals to services are made and how care and support is allocated in each scheme will be specified in the individual specifications. Where care and support is provided in the local community the individual specification will also specify how referrals are made to the services and how decisions are made on who receives the service.

8.0 NEEDS AND RISK ASSESSMENT

Prior to delivering care and support the Provider will ensure that they have all necessary Care Planning documentation from the Purchasing Authority, which sets out the needs of the Service User, the Services to be provided and identifies targets and outcomes to be achieved.

The Provider will also ensure that they have assessed service user's needs prior to the provision of a care and support services. These assessments will take into account the service users aspirations and personal goals, needs, choices and preferences in relation to the way in which care & support is provided and their own chosen lifestyle. The Provider will document these assessments in a Care and Support Plan. Preferences in how service users want to be cared for and supported should be revisited during reviews to take account of any changes in needs, for example: following illness or bereavement, or in response to decreasing mobility or mental health.

The Provider, will work jointly with NHS clinicians where relevant to certain Service Users with mental health needs. Clinicians will be involved in many aspects of assessment and risk assessment, monitoring and review.

To minimise the risk of accidents and harm occurring to Service Users and Staff, the Provider will:

- Assess the potential risks to the Service User and Staff associated with delivering service. The assessment should be carried out before the Staff member commences direct work with the Service User and should be updated at least annually or more frequently if necessary. If it is not possible to complete a risk assessment before commencement of the Service; it must be completed as soon as possible but not later than 72 hours from commencement.
- Ensure the assessment includes the risks for the Service User in maintaining their independence and daily living skills.
- The assessment must contain a balance that accounts for a service user's personal choices and freedoms. The provider will take a positive attitude towards risk that seeks to enable the service user to fulfil their personal choices and freedoms.
- Ensure the assessment is appropriate to the identified needs of the Service User that the views of the Service User are taken into account and the assessment and the Support Plan are signed by the Service User where possible.
- Support the Service User to take agreed risks, whilst enabling them to understand all the information and the implications of their choices.
- Explore opportunities to use assistive technology to promote independence and manage risk.
- Ensure a separate moving and handling risk assessment is undertaken if required by a member of Staff who is trained for the purpose, as required under the Manual Handling Operations Regulations 1992 and current Care Standards legislation and guidance.
- Implement a risk management plan as part of the Care and Support Plan and ensure this is reviewed annually or more frequently if required by the Authority.

- Ensure a procedure is in place for reporting new risks which arise, including defective appliances, equipment and fixtures.
- Undertake a security assessment if necessary.
- Respond appropriately to physical and verbal aggression by a Service User, their relatives or friends and ensure this is responded to by using non-physical intervention. Physical intervention can only be used as a last resort, within the framework of the law and current guidance issued by Department of Health.
- Ensure that any limitations on choice or rights to prevent self-harm or self-neglect, or abuse or harm to others, are made only in the Service User's best interests, or to minimise risk of harm to others, consistent with the Provider's responsibilities in law and as described in the Support Plan.

The Provider will immediately inform the local authority, if they have a reason to believe that a resident is at risk either through self-neglect, or as a result of behaviour/lifestyle, or because of the actions or behaviour of others.

9.0 CARE PLANNING

The Provider will ensure that the service provided is compatible with the service user's Care Plan as produced by the Purchasing Authority.

The Care & Support Plan will refer to means of empowering, facilitating choice, regaining or acquiring skills and/or maintaining existing skills. The Care & Support Plan will clearly define the service to be delivered by the Provider showing how the service will be delivered to meet assessed needs and how the service will promote independence and support service users to live a fulfilled life making the most of their capacity and potential. This will include:

- How the resident wishes to be addressed
- The service users desired outcomes to be achieved and what the resident will be able to do as a result of the service provided

- What actions will be taken, by when and by whom, to ensure the outcomes are achieved
- The date when the Care & Support Plan will be reviewed by the Provider and other professionals (where appropriate) with the resident
- How health and/or social needs will be met
- How any intimate physical care will be provided, and by whom
- How cultural and spiritual needs will be met
- How social and community engagement needs will be facilitated
- Any specialist equipment needed
- How any special communication needs will be met
- Arrangements for taking medication
- How any special dietary needs/preferences will be met
- The next of kin and emergency contact numbers
- A risk assessment
- The resident's named key worker
- What assistive technology the service user uses

The Care and Support Plan will be signed by the service user, or nominated representative where the resident is unable to sign, and a copy will be held by the service user (unless there are clear and recorded reasons not to do so), and will be available in a language and format chosen by the service user that the service user can understand. The Care and Support Plan will be reviewed regularly. Initially after 6 weeks of the start of the Service and then as a minimum at regular 12 monthly intervals thereafter. The review may be initiated by the Service User/carer, Provider or the Purchasing Authority. If there is a change in the way the service users prefers to be supported, this will be updated in the Care and Support Plan as soon as it practically possible by the Provider. If there is a significant change need identified by the Provider, the Provider will notify the Purchasing Authority as this may require a reassessment of need by the Purchasing Authority. All reviews and their outcomes must be recorded on the Service User's file.

Information from the assessment of need and risk assessment, the Care and the Support Plan will be made available to staff so that they are aware of any special needs, the activities they are required to undertake, the purpose of the activities, the frequency and duration agreed, the outcomes to be achieved and any applicable time frames. The Provider, will be available to participate in any review by the Authority, of Service User Care Plans.

The Provider will have in place a means of recording action taken to meet objectives and outcomes and staff will record the acquisition of new skills and the achievement of goals by the service user.

10.0 DELIVERY OF CARE AND SUPPORT

Service user are helped to exercise choice and control over their lives and are supported in maintaining and increasing their independence wherever possible. To achieve this service users will be provided with information, assistance and support where needed.

Service users will be enabled to understand all the information and the implications of their choices. The Provider supports service users in making their own decisions and respectfully gives advice as and when the service user requires. Where appropriate the Provider will signpost service users to other services for specialist advice.

Wherever possible staff will carry out tasks with the service user, not for them, minimising intervention, increasing independence and reducing the risk of creating dependency. The service users will be supported to take agreed risks, as set out in the Care and Support Plan.

Service users and their carers or other representatives are informed about independent advocacy services who can act on their behalf.

The Provider will ensure that sufficient information is held in the service user's home to enable the service to be delivered in accordance with the Care and Support Plan and any associated risk assessments.

The Provider will have the capacity to provide services designed to meet requirements and specified outcomes as stated in the Care and Support Plans of individual service users as well as the overall needs of the service. There will be sufficient competent staff on duty, who are appropriately trained and experienced to ensure that the service user's needs are met. The Provider will ensure that a sufficient reserve of trained, competent and reliable Staff is available to cover Staff holidays, sickness or absence for any other reason to ensure consistency, reliability and competency of Staff. The Provider will conduct regular reviews of staffing levels, rotas and resources. The Provider will have an appropriate system for communicating information between staff at the beginning and end of any shift changes.

Sufficient levels of Staff should be available to respond to both planned care and support needs and emergency situations, including those who require short term interventions. This includes the ability to accompany Service Users to hospital in the case of an emergency. The Provider will ensure that care and support is provided as normal over any holiday periods, including Bank Holidays and school holiday periods.

The Provider will ensure that only Staff employed to deliver Services enter or use any part of the Service Users home in order to provide the Services. Staff enter a service user's home when they are invited by the service user and carers themselves. Their status is as an employee of an agency. Staff will recognise this and act accordingly respecting the rules of the house and the wishes of the service user.

The Provider shall ensure that minimal reliance is placed on bank or agency cover to maintain staffing levels.

The Provider will ensure that Staff engaged in and about the provision of the Service are at all times adequately supervised and properly perform their duties to the required standard. The Provider will ensure that Staff have access to, or means of contacting, a supervisor at all times.

The Provider will provide Services in the least intrusive way, ensuring that the dignity of the Service User is maintained at all times so that the wishes and preferences of Service Users are taken into account and respected.

The needs and preferences of minority ethnic communities, social/cultural or religious groups catered for are respected, understood and met in full. Where necessary training will be provided to ensure support is provided in a culturally sensitive way.

The communication needs of individual service users and their preferred method of communication are understood and used by staff. Effective communication to ensure choice, control and participation by all service users take place.

Staff are reliable and dependable with the necessary skills and competencies to be able to respond flexibly to the day to day needs and preferences of service users. Staff will be multi-skilled so that one person can meet a wide range of needs and maximise continuity of care for Service Users receiving care and support under. If required, training on specialist services such as peg feeds, catheters and convenes must be given prior to service commencing.

The Provider will ensure that service users have a consistent team of staff who support them. Providers will balance the need to ensure the team is small enough that the service user knows the staff with the need to have enough staff to ensure a reliable service (for example to cover sickness, annual leave and training). Service users, and carers, where appropriate, are consulted in advance wherever possible about a change of Care Worker. Other than in very exceptional circumstances changes to a service should be planned and agreed at least 24 hours before the service is due to be provided. Where there are specific requirements on consistency (such as ratios of staff to volume of hours) these will be specified in the individual specifications.

The gender of the staff team will be appropriate to provide choice of gender for intimate personal care.

The Provider will have procedures in place for occasions when a Service User refuses Services. The procedure will include the requirement for the Provider to notify the Purchasing Authority where this is happens on multiple occasions.

The Provider will have a procedure in place for supporting Staff should they experience physical abuse or other forms of oppression from a Service User. If such a situation arises which cannot be resolved, then the Provider will contact the Purchasing Authority within 24 hours to request a review.

The Provider will supply all Staff with a means of identification showing their photograph, with an expiry date which should not exceed 36 months from the date of issue. The identity card should also show their name and signature, the name of the Provider and a telephone number that can be used to verify this information. Identification must be shown at the request of the Service User or their representative, or of authorised officers of the Authority. The Provider will recover this identification from the Staff members when they are no longer employed.

The Provider will keep a record of all Staff and of the hours worked. Each member of Staff must complete timesheets reflecting the accurate times and dates that they have provided a Service. Records must also be maintained in the Service User's accommodation. The Provider will make these records available to the Purchasing Authority to inspect if requested.

The Purchasing Authorities are keen to explore ways in which enable services to be more responsible to changes in service user's needs. This includes introducing Trusted Assessor models where Providers are given more autonomy to increase and / or decrease how much support service users receive. Where the Purchasing Authorities wish to use this model of service delivery it will be specified in the individual specification.

The Provider must ensure that it has effective systems in place to manage staff that are lone working. The Provider is required to draw up policies on Lone working that set out procedures to minimise the risks to people working alone. Where staff work alone with a service user risk assessments must be undertaken which specifically

address the risks faced by lone workers. These policies must be brought to the attention of every employee or volunteer. Service users' risk assessment will assess the risks to staff working alone with that individual both in the service user's home, communal areas and in the community.

The Provider must be able to evidence information governance policies and procedures that are compliant with General Data Protection Regulation (GDPR) obligations

Care and support tasks are detailed in Appendix 1. Rather than being a definitive list, this list helps to illustrate the nature and competency levels required from services.

11.0 CONTROL AND SUPERVISION OF PROVIDER'S STAFF

The Provider will issue Staff with written standards of behaviour that are expected in delivering care and support to address the particular demands working with Service Users in ECH schemes.

The Provider and their Staff will accept that they are visitors in the Service User's accommodation, and will respect that person's privacy, possessions and way of life. Providers' Staff will maintain a professional relationship with the Service User and Service Users families, friends and visitors.

The Provider will inform the Purchasing Authority promptly and confirm in writing, any instances of activity or omission on the part of the Purchasing Authority which prevent or hinder, or may prevent or hinder the Provider from complying with the Contract. The provision of information under this Condition shall not in any way release or excuse the Provider from any of his/her obligations under the Contract.

The Provider will ensure that their Staff:

- Perform their duties in an orderly and professional manner and in as quiet a manner as may reasonably be practicable with regard to the nature of the duties being performed by them.
- Are not affected by alcohol or drugs when they arrive for work, and do not consume such substances while at work. Substance includes both illegal drugs and legal medication if the medication affects their ability to carry out their duties in a safe and sufficient manner. Staff must not drink alcohol while they are on duty.
- Observe the security of all secured areas of the ECH scheme.
- Do not smoke whilst they are on duty.
- Do not take family members, friends or pets into the ECH scheme.
- Are properly and presentably dressed in appropriate uniforms or work wear as agreed with the Purchasing Authority.

The Provider will ensure that all Staff, when requested to do so, or when communicating with other persons as a representative of the Provider in the performance of the Service, disclose his/her identity and shall not attempt to avoid so doing.

The Provider will ensure that where the Purchasing Authority's policies, rules, procedures, or standards require any special or protective clothing or footwear to be worn, such clothing or footwear is provided for and worn by his/her Staff. Such special or protective clothing or footwear shall be maintained and replaced as necessary by the Provider at the Provider's cost.

The Provider will ensure that all staff (including supervisory staff) receive regular formal supervision (not less than every 3 months) which must be recorded in a standardised way. The supervision sessions will cover all aspects of their working role and an opportunity to discuss specific task/Service User related issues. Supervision must also allow the identification of training needs. The Provider should offer support to Staff both formally in planned sessions and informally through the day to day management. All staff will have their standard of practice appraised at least annually.

The Provider must ensure that direct observations of staff are conducted at various days/times of the week, including weekends, early morning and evenings. All care staff should be subject to at least four direct observations per year.

12.0 INCIDENT NOTIFICATION

The purpose of this procedure is to set out the process for the Provider to report to the Purchasing Authority any Incident that takes place in a Service.

12.1 Definition of a serious incident

The definition of an Incident is broad and the process of reporting them and an explanation of what they mean must be covered within the Provider's Risk Management Policy. This must include all incidents involving the following:

- Serious crime or violence to Service Users, Staff or members of the public.
- Serious threats to Service Users, Staff or members of the public.
- Death or serious injury within the Services.
- Unexpected emergency admission to hospital.
- Housing management incidents that lead to a serious disruption of a Service including fire, flood, power failure, in particular those which lead to the building or part of the building being unoccupied.
- Any incident that leads to a Safeguarding Adults / Children Alert being raised.
- Any other incident which compromises the Provider's ability to provide the Service to any Service User in accordance with the Agreement.

12.2 Reporting Incidents

The Provider will report all Incidents to the Purchasing Authority as soon as possible following the Incident and in any event within 24 hours of the occurrence of the incident. This initial report will record all details that are known including:

- Date of Incident

- Description of Incident
- All parties involved
- Involvement of emergency services
- Immediate action taken
- Further action required
- Service User group (e.g. Older People)
- Service name and Service ID number

The method used to report incidents will be specified in the individual specification.

The Provider will provide the Purchasing Authority with regular updates on the status of the Serious Incident and how it is being dealt with. This information must be sufficient to enable the Purchasing Authority to either close or escalate the Serious Incident as appropriate.

The report will provide an opportunity for the Provider to learn from the incident and reduce any contributory factors for the future

The Provider will have a Risk Management Policy that details the process for describing, managing, recording, investigating, and reporting Incidents, as well as reviewing outcomes of any incident. This must be examined when the Service is reviewed.

The Provider will ensure that the requirements of the Purchasing Authority's Safeguarding Procedures are adhered to if any Incident requires their use and that the Purchasing Authority is advised if any potential Adult or Child Safeguarding alerts are raised.

The Provider will also comply with any CQC requirements for notifying them of incidents.

13.0 HEALTHCARE NEEDS

Service User will be confident that their health, independence and well-being are addressed by the service as defined in their Care & Support Plan and that access to other services such as Intermediate Care, are available when required for rehabilitation.

The Provider will ensure that service user's healthcare needs are addressed where appropriate, and support is offered in accessing the full range of healthcare services as identified in their Care and Support Plan. Service users are helped to understand where possible how to stay healthy and independent and are encouraged and supported to do so.

The Provider will make every effort to ensure that, wherever possible, service user will not be excluded from a service because of healthcare needs. Service users will be supported to register with a GP, dentist and optician.

Where identified as part of a care and support plan, staff will inform and encourage all service users to access preventative healthcare such as screening, immunisation, and regular check-ups. Staff will support service users to contact healthcare professionals if requested to do so.

Staff will ensure that arrangements are in place for the service users to take any necessary medication in a way that respects their dignity and privacy and complies with the organisation's medication policy and that their policy adheres with the authority's medication policy. Services will have their medication policy reviewed and monitored as part of the CQC regulatory function.

Staff will discuss any concerns they have about service user's health and well-being with the service user before involving any other agency or carer/family member. If these concerns indicate any potential abuse of the service user then these must be reported through Safeguarding arrangements.

14.0 MEDICATION

The Provider's policies on medication and health related matters protect service users and assists them to maintain responsibility for their own medication wherever possible. The health and emotional well-being of service users is promoted and facilitated.

The Provider must ensure that Staff adhere to written policy and procedures for the obtaining, recording, handling, using, safe keeping, dispensing, safe administration and disposal of medicines. The policy must be provided to the Purchasing Authority on request and must comply with all CQC requirements identified in Outcome 9 (Regulation 13) – Management of Medicines and NICE Guidance “Managing medicines for adults receiving social care in the community”, March 2017.

The Provider must also ensure that its policy and procedures comply with the Essential Standards of Quality and Safety for medication management and that medicines in the custody of the Provider are handled according to the requirements of the Medicines Act 1968, guidelines from the Royal Pharmaceutical Society, the requirements of the Misuse of Drugs Act 1971, The Handling of Medicines in Social Care Settings-RPSGB October 2007 and NICE guidelines relating to the managing of medicines for people receiving social care services in the community.

The policy and procedure must include:

- The extent and circumstances in which staff may or may not be involved in prompting or assisting service users to take medication, or in its administration.
- The policy should ensure that only competent and confident staff are assigned where medication is required and should enable support workers to refuse to administer medication if they have not received suitable training and do not feel competent to do so.
- The limitations of assistance with prescribed and non-prescribed medication and which tasks the support worker must have specialist training before undertaking.

- The arrangements necessary to ensure the safe handling and administration of medication.
- Records to be maintained where staff support residents to take medication.

Staff likely to be involved in administering medication will receive training in the policy, procedures and the administering of medication as part of their induction and on an ongoing basis. Medication Administration training must be accredited as specified by CQC. Staff will have been assessed as being competent. Knowledge, skills and competencies should be assessed annually.

The Provider will have a formal procedure to assess whether staff are sufficiently competent in medication administration before being assigned to a task where this is required.

Service users will normally be regarded as responsible for the administration of their own medication. If the Provider is required to assist with the administration of medication, this must be recorded clearly in the Service User's Care and Support Plan. The Provider must help the Service User, if necessary, to understand any given information about their medication.

If the Provider is supporting service users to take their own medication they should have a robust process in place to be assured of the 6 rights (R's) of administration which include:

- a) Right person
- b) Right medicine
- c) Right route
- d) Right dose
- e) Right time
- f) Persons right to decline

The service user, or their representative must agree to have a care worker administer medication and consent should be documented in the service user's Care and Support Plan. If the service user is unable to communicate informed consent, the prescriber must indicate formally that the treatment is in the best interest of the individual and the prescriber must follow the requirements of the Mental Capacity Act.

Administration of any medicine may include or all of the following:

- I. When the support worker selects and prepares medicines for immediate administration, including selection from a monitored dosage system or compliance aid.
- II. When the support worker selects and measures a dose of liquid medication for the resident to take.
- III. When the support worker applies a medicated cream/ointment, inserts drops to ear, nose or eye and administers inhaled medication.

Taking account of any risk assessment around medication the service user's Care and Support Plan must determine and document the following:

- The nature and extend of support and/or assistance that the service user needs to manage their medication.
- A current list of prescribed medicines for the service user, including the dose and frequency of administration; method of assistance; and arrangements about the filling of compliance aids if these are used.
- Details of arrangements for medication storage in the service user's home and access by the service user, relatives or friends.
- Details of any possible side effects and procedures to follow in such instances.

Where service user is unable to manage their own medication the Provider will have a safe and secure system for the storage of the service user's medication. The provider will include in their policy and procedures to provide a medication log.

The Provider must maintain records of all medicines received and administered, or disposed of, to ensure that there is no mishandling. This includes prescribed and non-prescribed medication. A record must be maintained of current medication for each Service User. Receipt, administration and disposal of controlled drugs must be recorded in a controlled drugs register. When a Service User dies, medicines must be retained for a period of seven days, in case there is a coroner's inquest.

The Provider must ensure its staff have access to, and understand the Care Quality Commission Guidance on the management of medicines.

15.0 SOCIAL ACTIVITIES AND COMMUNITY SUPPORT

The Provider will, in partnership with the landlord, ensure that ECH schemes are vibrant hubs of activity with a range of both formal organised activities as well as informal gatherings. Activities will reflect the interests and hobbies of the people living in the schemes and will happen during the day time, evening and weekends. Maximising the use of community assets, the Provider will seek out external agencies, groups and individuals to offer activities within the Service as Service Users wish. The Provider will also support Service Users to run such activities as appropriate. Services will provide opportunities for social contact and will minimise the risk of social isolation. The Provider will provide support to Service Users who may experience barriers to involvement (e.g. due to language, disability etc.) to help them engage in activities that are of interest to them. The individual specification will specify if the Provider is responsible for organising and running activities directly.

Where the Provider is responsible for organising and running activities they will make sure these are widely publicised with sufficient notice to service users for them to be able to plan if they want to take part. Publicity materials will consider the communication needs of people living in schemes so that they are accessible to them.

The Provider will ensure people living in the service will also be given regular opportunities to participate in social activities outside the scheme. The individual specification will specify if it is the responsibility of the Provider to support people outside the scheme. Service users will be able to choose which activities they would like to be involved in, with support if needed. If a service users is unable to take part in any activity, the reasons for this will be fully discussed with them.

The individual specification will specify if the Provider will ensure that there are resident led activities in schemes. Where this is required and service users need support to organise and run their own activities, Providers will help them develop the skills they need to do this. This can include practical support such as booking the use of communal facilities, helping to publicising events as well as advice on how to set up committees and mentoring for service users who take on key responsibilities in groups. The aim is to provide support initially with this withdrawing as the group becomes more skilled and their independent.

The Provider will help service users to attract external agencies and local community led groups to run activities in schemes that are of interest to the people living in the scheme.

The Purchasing Authorities are seeking to make ECH schemes the hubs of their local communities. The ambition is for people from outside of schemes to access social activities in the scheme. Some schemes are more suited to this than others therefore where we want this to happen we will specify it in the individual specifications.

16.0 SERVICE USER AND CARER ENGAGEMENT

The Provider will ensure Service User's views are at the forefront of Service development and delivery. The Provider will consult and engage with Service Users in all appropriate decisions regarding Service delivery through developing effective and meaningful mechanisms to facilitate Service User involvement which is appropriate to ECH. The Provider will demonstrate the positive impact of Service User involvement in Service delivery.

The Provider will help service users and carers to set up their own committee for each service so that the collective views of the people living in the scheme and their carers can be listened to and acted upon by the Provider. The Provider will help the committee agree how the group operates and the frequency that the group meets. Ideally the service user and carer committee will meet at least quarterly.

The Provider will also engage will service users and carers on a one-to-one basis to ensure the views of individuals are also listened to acted upon. The Provider will undertake a survey of customer satisfaction at least annually. This will include informal carers of people living in the scheme. A copy of this report will be provided to the Purchasing Authority within 2 months of completion.

17.0 COMMUNITY ALARM PROVISION WITHIN ECH

The Provider will be responsible for working in partnership with the relevant Registered Provider of Housing to provide a Community Alarm service within the designated ECH scheme. A Community Alarm service provides peace of mind for Service Users whilst in their own self-contained accommodation as a means of summoning help and assistance when required, usually in an emergency.

The Community Alarm equipment can take a variety of forms:

- By pulling a cord in the home
- By pressing a button on a neck pendant
- By pressing a button on a wrist band

The Provider will work with the relevant landlord to ensure systems and processes are in place for the reporting of equipment faults and the maintenance of equipment. The management agreement will the landlord describe each party's responsibility.

The Provider will develop systems in partnership with the landlord to respond to alerts raised by the Community Alarm system 24 hours a day, 365 days per year. In the first instance, alerts raised will be directed automatically to the on-site care and support team. The Provider, in partnership with the landlord, will ensure there is secondary or 'back-up' response, which may include diversion to an off-site Monitoring Centre in cases of an emergency where the on-site care and support team are unable to respond.

The Provider will work with Service Users to ensure that they are aware of how to use the Community Alarm in an emergency and to minimise inappropriate use of the Community Alarm.

Providers will ensure they make the best possible use of technology to support its service users to live independent, connected and healthy lives, in meeting their health and care needs and in enabling their access to all commonly available media.

In the event of an emergency, the Provider will adhere to on-call policies and procedures.

18.0 WRITTEN INFORMATION FOR SERVICE USERS AND CARERS

The Provider must ensure that the Resident Guide is dated, reviewed annually and updated as necessary.

The Provider will have an accessible introductory information pack for potential service users moving into ECH who have care needs; this may be combined with the information provided by the landlord for each ECH. This will comprise of basic information as below, and the Provider will ensure that the information is in place and available to service users. The information pack will be in an accessible format e.g. large print, appropriate language, photographs, audio tape, Braille, easy read, video etc and in plain language and will be made available to service users and their carers and will include:

- Aims and objectives of the service and its underpinning principles
- Service provision, the type of service, facilities, and range of activities in the scheme
- Cultural; and social needs catered for and support for carers.
- Any relevant CQC Inspection Reports or information detailing that the Report is available on request and where a copy can be obtained.
- Details of any charges, what they are and to whom and when they are payable and when they are reviewed
- A statement of resident's rights to self-determination and responsibilities and consequences of unacceptable behaviour.
- Complaints procedure and appeals procedure
- Arrangement to cover holidays and sickness
- Procedures for the prevention of abuse (including both adults and children)
- Procedures for the protection of money and property
- Procedures for assistance with medication
- Names and roles of care and support team
- Emergency procedures including out of hours contact numbers
- The process of Quality Assurance

This information must be made available to the Purchasing Authority when requested.

19.0 MOVING ON

Service users will be confident that their move on from the service, for whatever reason, is a positive and supported experience. Any need or wish to move on from the service will be reviewed with the service users and the Provider and Social Worker.

Any move will be properly planned and discussed with the service user, their carer, family or advocate as appropriate, staff from the new service if applicable, and Care Manager.

A transition plan (re-assessment of need) will be agreed between the service user, Purchasing Authority and provider which will include arrangements for visiting any new service if applicable. A copy of the transition plan will be provided for the service user and their carer, if appropriate.

The service user's own records will be updated, agreed with the service user and a copy of the records passed to the new service if appropriate and agreed by the service user, before being passed to the new Provider.

20.0 STAFFING REQUIREMENTS

20.1 Staff Terms and Conditions

The Provider must adhere to the following ethical standards of employment for all staff delivering services as part of this contract;

- Staff must have a written contract that describes their entitlement to minimum annual leave and bank holidays. Where staff choose to opt out of bank holiday entitlement this must be recorded in their personnel file.
- Staff must be offered a contract that guarantees them a minimum number of hours a week or month or 4 week period.
- Staff must receive comprehensive induction, training and information. All training will be conducted in work time (including induction training) and be at no cost to the member of staff.
- Staff must be paid **at least** National Living Wage and that this is not eroded through costs incurred in their employment such as:
 - Incurring costs for travelling between calls (excluding travel to the first call of their shift and travel home after their final call)
 - Paying for uniforms (excluding footwear)

- Paying for personal protective equipment, for example aprons, gloves etc.
- Paying for telephone calls made to the office, other staff or service users as part of the work being undertaken for the organisation
- If staff pay for their own DBS checks, then they must be reimbursed for the cost if they have continuous employment with the provider for 6 months. This cost must be reimbursed within 7 months of commencing employment

The Provider will ensure that staff are offered a work place pension in line with statutory requirements and fulfil their employer's obligation to the pension schemes in place. They will also ensure that staff who are eligible are paid statutory sick pay to cover periods of sickness.

The Provider should work pro-actively with Trade Unions. The Purchasing Authorities believe that effective workplace union organisation has a key role to play in improving the care sector as;

- a) Organised staff will have more confidence to speak out and share best practice
- b) Unions can assist in better monitoring of employment standards in care and through providing high quality staff training – often free of charge to the employer
- c) Unionised staff will be better able to share their stories publicly

In order to support this, the Provider should;

- a) Respect the right of staff to organise a union in their workplace and do nothing to undermine the reasonable efforts of staff to organise a union
- b) Allow access to accredited union representation and officials for membership recruitment activity. The Provider should engage positively with union requests for access to staff and, where necessary, agree arrangements that do not disrupt service delivery
- c) Pursue a partnership approach to employee relations. The Provider is expected to engage constructively with the union including a recognition and facilities agreement to underpin collective working
- d) Ensuring that information from the Trade Unions is readily accessible the workforce and that staff members are able to have with them Trade Union representation at any formal meetings such as disciplinary hearings.

20.2 Recruitment and Selection

The Provider is required to have a recruitment and selection policy and process which take account of all current legislation, including equalities and Human Rights legislation. The policy shall cover recruitment, advertising and interviewing. It must also establish the competencies and qualifications of new Staff and ensure that two written references are routinely obtained and checks made to confirm referees status before new Staff begin work in services.

The two referees must be from the two most recent employers unless the applicant has had only one or no previous job. In these instances a reference shall be sought from a reputable member of the community. Referees must be asked to declare for how long, and in what capacity (e.g. supervisor) they have known the applicant. References from family and friends are not acceptable. Any gaps in employment history must be checked and records kept demonstrating that these checks have been made together with any corroborative evidence. References must be on company letterheads, accompanied by the company compliment slip or stamped with the company's logo and should be verified with a telephone call to the referee's landline wherever possible.

A standard application form is to be completed. It should be made explicit that a failure to disclose previous offences, no matter how old, will be regarded as gross misconduct. Potential Staff should be made aware that the position they are applying for is exempt from the provisions of the Rehabilitation of Offenders Act 1974, Exceptions Order 1975, and they shall therefore declare all criminal convictions, even if in other circumstances such convictions would be regarded as spent. The DBS check needs to be in place before employment is confirmed and must be renewed every three years. All Staff are confirmed in post only following the completion of satisfactory checks. These checks include:

- Verification of identity
- Disclosure and Barring Checks
- Work permit (when appropriate)
- Driving licence (when appropriate)
- Training and qualifications claimed

The management structure must allow sufficient flexibility to respond to changing needs and circumstances of people receiving care and to maintain an effective quality control system.

The Provider will also pay due regard to their duty as employers contained within the Immigration, Asylum and Nationality Act 2006 in relation to all staff including agency or temporary staff.

The Provider will ensure that there are no significant delays in recruiting staff to key posts, (8 weeks for support posts and 12 weeks for managerial posts)

The Provider's Representative will be required to have a minimum of 12 months' experience in a senior management position with a social care organisation or related care service position. The Provider is required to notify in writing to the Authority's Commissioning and Contracts Manager of any proposed changes to the position of Responsible Person at the earliest opportunity. The Provider will be in breach of this agreement if they are without a manager for more than 3 months.

The Provider is required to be entirely responsible for the employment and conditions of service of the Staff.

The Provider will be entirely responsible for the employment and conditions of service of the staff. Where agency or temporary staff are required; e.g. for emergency cover, the Provider will satisfy themselves (and the Purchasing Authority if requested) that these staff have been properly vetted and are suitably trained prior to working in the service users home.

The Provider will ensure that they meet all requirements of the Disclosure and Barring Service established under the Protection of Freedoms Act 2012. More information about the Disclosure and Barring Service can be found at the following link: <http://www.homeoffice.gov.uk/agencies-public-bodies/dbs/>

The Provider will issue all staff with a contract of employment, a detailed job description and a person specification. The Provider will operate in accordance with employment legislation and the Provider must not discriminate within the meaning or

scope of the Equality Act 2010, the Rehabilitation of Offenders Act 1974 or any statutory modification or re-enactment thereof.

Volunteers will be recruited according to the skills and ability they have to perform the required tasks, will receive a full induction to the service and training will be offered to address any skills shortfall. Volunteers working with service users must undergo checks made through POVA (where appropriate), and the DBS service. Providers must complete these checks for volunteers prior to contact with service users and / or sensitive information.

The Provider will ensure that the service has a Registered Manager. The individual specification will specify if a whole time equivalent Registered Manager is required for that service or if this person can cover more than one service. The Provider is required to ensure that the Registered Manager has been recruited under the checks in Schedule 3 of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

20.3 Staff Skills, Development and Training

The Registered Manager will have the necessary qualifications and/or experience specified by CQC requirements of registration for personal care at home. They should have the management skills and at least 12 months experience of senior management in a social care setting to ensure the service is delivered to meet the Essential Standards.

All managers of services will be suitably experienced and qualified in order to effectively run the service. It is required that the Manager responsible for overall day to day management of the service will hold a minimum of a Level 4 certificate in principles of Leadership and Management in Adult Care or equivalent.

Staff will have the necessary training, skills, competencies, personal qualities and caring attitudes to enable them to meet the needs of individual service users. Skills and experience of care staff will be matched to the needs of each service user they

support. Care staff will hold or be working towards a minimum of a level 2 Diploma in Health and Social Care (formerly NVQ).

Where the individual specification requires Co-ordinators, Supervisors, Team Leaders, senior care staff, these Staff will have as a minimum Level 3 diploma in Adult Care or equivalent within 12 months of appointment to the post.

The Provider will ensure provision of a structured induction process, which includes the Care Certificate, is completed by all new staff, and a basic training programme for staff or volunteers appropriate to the needs of the service user group, within an agreed period of taking up appointment. More information on the Care Certification can be found on the Skills for Care website. The URL is <http://www.skillsforcare.org.uk/Learning-development/Care-Certificate/Care-Certificate.aspx>

The Provider will shadow experienced Staff for a minimum of 30 hours until they are deemed to be competent.

The Provider will undertake a training needs analysis for each new member of staff and this will be incorporated into the staff training and development plan. The Provider will keep a training record for each Staff member.

The need for refresher and updating training is identified at least annually and incorporated into the staff development and training programme. There is a requirement to ensure up to date records of all training undertaken by staff are retained.

Staff will receive regular training (not less frequently than every 2 years) to carry out all aspects of their role, including:

- Principles of Extra Care Housing, its aims and objectives
- Personal Care requirements

- Administration of medication
- Communication skills
- Dealing with violence and aggression
- Equalities and diversity awareness
- Emergency first aid
- Food Hygiene and basic cooking skills
- Health and safety
- Safeguarding adults
- Delivering enabling and person centred care and support
- Risk assessment and management
- Understanding long-term conditions
- Dementia care
- Safer moving and handling
- Handling Service User's finances
- Policy on Gifts and Hospitality
- Safeguarding children and adults
- Confidentiality and access to information
- Complaints procedure
- Awareness/Safety of fire/gas/electricity/hazardous substances
- Dealing with serious incidents
- Accident Reporting Procedure
- Appropriate Code of Dress, taking into account cultural observance in relation to uniforms (for example, in relation to the wearing of hijab, turbans etc.)

The Provider will ensure that written policies are in place and are implemented, to ensure that Staff are trained and aware of the above issues

The Provider's induction and basic training programmes will be submitted to the Purchasing Authority on request within 10 working days.

The Provider will ensure that Staff involved in the moving and handling of a Service User are suitably trained and that any requirement to assist someone is explicit, including the method and equipment used. If a moving and handling risk is identified, a request for re-assessment will be made by the Provider.

The Provider shall ensure that Staff providing direct care to Service Users are able to communicate with them competently in the Service User's own language, (including community languages and British Sign Language, where necessary). The Provider is required to support training in ESOL (English as a Second or Other Language), for Staff members who are not competent in speaking English. Where Service Users speak a language other than English the Provider must recruit Staff who speak that language.

20.4 Skills for Care – National Minimum Dataset for Social Care

The Provider must be registered with the Skills for Care National Minimum Dataset for Social Care (NMDS-SC) and the following three criteria must be met:

The Provider will complete a NMDS-SC organisational record and must update all of its organisational data at least once in the financial year

The Provider must fully complete individual NMDS-SC worker records for a minimum of 90% of its total workforce (this includes any staff who are not care-providing).

Individual records for staff which are included in the 90% calculation must be both fully completed and updated at least once in the financial year.

21.0 POLICIES AND PROCEDURES

As a Provider of services, and as an Employer, the Provider is governed by a complex range of legislative requirements, standards, guidance and codes of Practice. The Provider will meet these obligations. Some key Acts and Regulations are referred to in this Specification, this is not exhaustive and there are others that will apply to the Provider that have not been listed. As new legislation is introduced, or existing legislation is amended, this will be adhered to by the Provider.

The Provider will have written policies and procedures manual (or equivalent) covering all aspects of Service delivery that clearly outline the expectation of actions to be taken by members of Staff in all situations. Policies will be dated, regularly monitored, reviewed at least every 2 years and amended when required. The Provider will ensure that staff understand and have access to up to date copies of all relevant policies and process and codes of practice. All written policies, procedures and written records must be made available on request to an authorised representative of the Purchasing Authority. This will include as a minimum the areas outlined below:

- Code of conduct
- Accidents and incidents
- Moving and Handling including appropriate training
- Health and Safety – complying with all relevant health and safety legislation including the recording of incidents and maintaining appropriate records
- Holding Service User's keys
- Working with infectious diseases
- Medication/self-medication
- An Equal Opportunities policy, which applies to all Staff and Service Users
- Basic first aid training for Staff
- Dealing with suspected abuse
- Bullying and harassment
- Safeguarding adults and children including whistle blowing
- Complaints / Compliments / Comments

- Confidentiality
- Managing people's finances, including the acceptance of Gifts or Gratuities, Wills, Appointee ship and Power of Attorney. As a general guideline, dealing with Service User's finances must be kept to an absolute minimum.
- Service property and valuables.
- Gifts and gratuities
- Written procedures that incorporate the Food Safety Act 1990
- Failure to gain access
- Dealing with violence/behaviour that challenges/restraint
- Confidential/data protection/freedom of information act
- Exclusions
- Fire
- Recording of personal information
- Risk assessment and management
- Smoking
- Transport
- Service User and Carer Engagement
- Harassment Policy
- Disciplinary and grievance procedures
- Working with volunteers
- Financial Management
- Lone working
- Control of infection
- End of Life Care
- Working with the Registered Provider of Housing

This is not an exhaustive list and is only a sample of the procedures that will be required to operate the Services.

The Provider will meet the requirements associated with the Care Quality Commission (CQC) in particular, the Code of Conduct, Induction Programme and Health and Safety.

Staff must notify the Provider's Representative if they are unable to gain access to a Service User's accommodation. In such circumstances the Provider's representative will take appropriate action as per their written policies.

The Provider will have clear procedures for Staff to follow in case of a non-response or discovery of an accident to the Service User on arrival at the Service User's accommodation or other emergency situation (see also Incident Reporting procedure at Section 12).

22.0 SAFEGUARDING ADULTS AND CHILDREN

The Provider will provide clear written guidance for all Staff setting out measures to prevent all forms of abuse, which includes physical, psychological, financial, sexual abuse, discriminatory abuse and neglect to Service Users. The guidance must be in line with Purchasing Authority's Policies and Procedures.

The Provider's internal guidance will clearly define the roles and responsibilities of all Staff members in relation to safe-guarding adults and children. The Provider's internal guidance will set out the procedure for reporting and dealing with concerns, allegations and disclosures of abuse which identifies the role and involvement of Adult Social Care and external organisations, including the police. The Provider will act as an alerting agency in the first instance and therefore will not begin an investigation. A decision must be made by the Purchasing Authority in the screening process in relation to the Contractor as investigator.

The Provider will record details of all incidents or suspected incidents of abuse and the action to be taken and the written record must be available to the Purchasing Authority at all times. The Provider's records will demonstrate that the Provider's representative has checked that the necessary action has been taken.

23.0 SERVICE USERS FINANCE/PROPERTY

The Provider will have clear policies and procedures in place for Staff on the safe handling of money and property belonging to Service Users including

- Payment of bills
- Shopping
- Collection of pensions and banking
- Safeguarding the property of service users whilst undertaking support tasks
- Reporting the loss or damage to property whilst providing support

The Provider will ensure that Service Users are encouraged, enabled and empowered to manage their own financial affairs. The Provider's Staff will only handle Service Users finances if it is defined within the Care and Support Plan. The amount and purpose of all financial transactions undertaken on behalf of the Service User will be recorded appropriately on the visit record and signed and dated by the Staff member. Checks will be made periodically by senior members of Staff to oversee this.

Service user's money shall be kept separately from the care worker's personal money at all times. Service user's money must never be saved up and kept in a support worker's or Provider's bank account.

The Provider is required to have in place written guidance for staff which explicitly states that staff are not allowed to;

- Act as appointees;
- Involve themselves or members of their family, in the making of or benefitting from, Service User's wills or soliciting any other form of

bequest or legacy or acting as witness or executor or being involved in any way with any other legal document;

- Use loyalty cards except those belonging to the Service User;
- Make personal use of the Service User's property, e.g. Telephone;
- Borrow from or loan money to the customer;
- Receive money or any other gifts from the Service User
- Sell or dispose of goods belonging to the Service User
- Transport the Service User in the staff members personal transport, without previously confirming that they have suitable motor insurance, and that the vehicle is suitable to transport the Service User
- Sell goods or services to the Service User
- Incur a liability on behalf of the Service User
- Take responsibility for looking after any valuables on behalf of the Service User
- Take any unauthorised person (including Children) or pets into the Service User's home.

The Provider will ensure that no cash gratuities are accepted by Staff. The Provider will ensure that Staff have a written policy on the acceptance of gifts from a Service User, which will include a clear statement that cash cannot be accepted under any circumstances. Staff will not act as trustee nor assume Power of Attorney on behalf of a service user.

The Provider, Support Workers, other staff, or their families, must not become involved in any personal financial transaction with any service user, including sale or purchase of goods or services, borrowing or lending of money or goods except where charges directly relate to the service provided e.g. payment for meals/refreshments provided. Any such transactions will be fully recorded.

The Provider will have clear protocols in place in relation to entering and leaving the accommodation of Service Users. Keys will not be held by the Provider except in

exceptional circumstances. With the focus on dignity and respect, access arrangements will be agreed with the Service User

In the event of key holding being an essential requirement of the Service, the written consent of the Service User and/or their Carers and the approval of the Care Manager will be obtained by the Provider in advance. Wherever possible, access to keys should be through a key safe arrangement, with the permission of the landlord for the ECH scheme. The Provider will have adequate records and security covering such arrangements. Key holders will at all times be kept to a minimum. In the event of keys being misplaced by a Provider then this will be reported immediately to the Service User and arrangements made to change the locks at the Provider's expense with the necessary financial reimbursement made to the landlord for the ECH scheme.

Staff will assist the resident (where appropriate) in relation to maximising their entitlement to benefits and budget management.

Staff will not make personal use of the service user's property e.g. the telephone.

Staff will not involve the service user in gambling syndicates (e.g. national lottery, football pools etc.)

Staff will not incur a liability on behalf of a service user.

Staff will not take responsibility for looking after any valuables on behalf of a service users.

The Provider will have procedures in place to prevent staff from personal benefit when working with vulnerable people. This will be in the form of a documented risk assessment addressing the potential for personal benefit through abuse, e.g. in the provision of financial advise, Power of Attorney, handling resident's money, and the actions in place to minimise identified risks.

The Provider will have a policy and procedure for the investigation of allegations of financial irregularities and the involvement of the police, the Purchasing Authority and professional bodies.

Where a service user does not have the capacity to manage their financial affairs and there is no family to provide the support within the legal framework, the Provider will notify the Purchasing Authority who will ensure that the service user's finances are managed on their behalf. Where necessary, Purchasing Authority shall be responsible for determining, or arranging for the determination of, the mental capacity of a service user.

24.0 BEHAVIOUR THAT CHALLENGES SERVICES

Some service users may present behaviour that challenges services. The Provider will have a policy and procedures in place which describes what acceptable and unacceptable behaviour is and the policy and procedures should be understood and complied with by all staff. Staff will be made aware of these as part of their induction and will have regular training updates, minimum every two years.

Staff understand that the purpose of having a policy on behaviour that challenges services and that the importance of its successful implementation is partly to avoid the need for restraining measure and sanctions.

Where service user's may present behaviour that challenges services it is essential that a risk assessment is undertaken to be able to evaluate the potential for harm to service users and staff. This should be done in partnership with other agencies involved so a clear, consistent approach is adopted and a procedure set in place to respond to such behaviour, taking into account information in the service user's Care and Support Plan. All procedures should be listed in the service user's care and support Plan.

Service users, their carers where appropriate and the Purchasing Authority are provided with information by the Provider about how the Provider intends to manage behaviour that challenges the service. Information must be in an accessible format and language that everyone understands.

Staff will have an understanding of service user's emotional and physical needs. They will be aware of warning signs and "trigger" points which result in particular behaviour. Staff will have skills in anticipating, diverting or diffusing challenging incidents. Staff will have appropriate listening skills and be familiar with strategies which enable them to minimise challenging behaviour.

Staff are trained and supported by appropriately skilled professional staff when responding to behaviours that challenge e.g. psychiatrists.

25.0 RESTRAINT/PHYSICAL INTERVENTION

The Provider will have a policy and procedure in place about restraint and physical intervention and all staff will receive training on its implementation during induction. Staff will understand that restraint in this context means restricting someone's liberty, preventing them from doing something they want.

The Provider will have a pro-active approach to behaviour that challenges services which minimises the need for restraining measures. Support from appropriate professionals must be sought at the earliest opportunity.

The decision to use restraining measures should be a last resort and is only taken with the agreement of all relevant parties. E.g. Team Manager responsible for the service user and/or other appropriate professionals (e.g. psychiatrist), the Care Manager, the service user's representative/carer and where possible, the resident). The decision to use restraining measures should only be made when all other options have been considered.

The decision to use restraining measures must be recorded in the C Care and Support Plan, be supported by a full written Multi-Disciplinary Team risk assessment evaluating the risks and include:

- A review date for all restraining measures employed
- The need to be met, or the objective, of employing restraining measures
- The restraining measures to be employed (nature, frequency of application, duration etc.)

In employing any restraining measure the aim must be to obtain only the minimum amount of restraint necessary for the shortest amount of time. This should be evidenced in the risk assessment.

Staff may only employ restraining methods after they have received training from appropriately skilled professionals. Where the Provider considers employing restraining techniques they must ensure that any course/training they intend to provide to staff is undertaken with a specialist training provider.

The Provider will regularly check and monitor the use of restraining activity, and will inform the relevant Care Management Service, and service user's representative in writing within 1 working day when restraining measures have been employed that exceed that described within the service user's Care and Support Plan, or where restraint is not mentioned within a Care and Support Plan.

Wheelchair straps must only be used for postural support as detailed in a service user's Care and Support Plan and for safety reasons during transit only, not as a method of restraint.

The Provider will maintain a written record of all occasions where restraint is used and the record will be made available to the Purchasing Authority if required within 3 working days.

26.0 COMPLIMENTS, COMPLAINTS AND COMMENTS

Service users, their carers and advocates are confident that their complaints or concerns will be listened to, taken seriously and acted upon. The Provider will have a Compliments, Complaints and Comments Policy and Procedure regarding the Services provided that is well publicised and in an accessible format. The procedure will enable people with low literacy levels to make formal complaints without the need to write a letter. The Provider will make this procedure available to all Service Users and their family/Carers. The Provider will make clear that the Service User will not jeopardise their entitlement to Services by making a complaint. The Provider will also notify Service Users and their family / Carers of advocacy services that may also be able to support them with their concerns.

The Provider will ensure that the Service User is informed that they are entitled to complain directly to the Purchasing Authority.

The Provider's Policy will adhere to the Purchasing Authority's Complaints procedure. This information will be provided in the individual specification.

In addition, the Provider will:

- Have a written complaints procedure, which will include a role for a person who is independent of the organisation, as either an investigator or decision maker at an appeal stage.
- Bring this procedure to the attention of Service Users, their family and Carers. A copy of the complaints procedure will be provided to the Purchasing Authority.
- Ensure the policy sets out the arrangements for dealing with conflicts of interest.
- Attempt to resolve complaints by informal discussions with the Service User and their family/other carers/advocate where appropriate. If discussions fail to provide a solution satisfactory to both the Provider and the Service User, a full written report will be submitted to the Purchasing Authority who will designate a representative to investigate the complaint.
- Keep a complete record of all complaints made by Service Users or their representatives ensuring that Service User's files contain a copy of the complaint and the outcome which will be provided to the Purchasing Authority immediately on request.
- Ensure Service Users are aware that they can complain to the Purchasing Authority about the commissioned Services if they wish to do so

27.0 BUILDING SAFETY, SECURITY AND PHYSICAL ENVIRONMENT

The landlord shall ensure that the building is suitable for the purpose, that the building is properly maintained, and has the relevant certificates, licences and insurances as required which enable the service to operate. The Provider will establish formal written links with the landlord to raise issues and to **assist** with ensuring that:

- The grounds and outside of the environment are not identifiable in a way that stigmatises the people who attend but promotes integration and inclusion
- The premises are fully compliant with requirements under the Equalities Act 2010
- The premises comply with current fire regulations, health and safety requirements and environmental health regulations
- The building is well maintained and repairs are undertaken quickly.
- The provider has the necessary insurance for employees, public liability, building and contents.
- The premises are kept clean, hygienic, comfortable and warm
- All notices and signage will be in an appropriate format to meet the communication needs of individual service users.
- All appropriate security measures will be in place; any “locked door” policy must only be considered when all other measures have proved unsuccessful. This policy must be agreed by senior management and any appropriate regulatory body, and reviewed at least every 6 months.
- The design of the premises and fittings will help service users to maintain and increase their independence
- Provision is made for service user with a higher level of support needs of suitable equipment and assistive technology if required.
- The premises will comprise appropriate rooms/spaces for group and individual activities to be provided
- A range of recreational equipment will be available, and where practicable, full use will be made of the grounds around the buildings
- Service users are able to come and go and move around the premises freely, with arrangements in place for their safety and well-being, as identified in their individual Care and Support Plan.
- Where appropriate service users will be involved in the design and maintenance of the gardens or grounds.

28.0 HEALTH AND SAFETY

The Provider will ensure that systems and procedures are in place to comply with the requirements of Health and Safety Legislation. Copies of policies and procedures will be available to the local authority on request within 10 working days.

The Provider will have a comprehensive health and safety policy and written procedures for health and safety management defining:

- Individual and organisational responsibilities for health and safety matters
- Responsibilities and arrangements for risk assessment
- Arrangements to implement safe systems of work and to safeguard the welfare of service users, staff and others involved in the provision of support, taking into account the findings in risk assessments.
- Procedures to be followed when safe systems of work identified as necessary to safeguard the service users, staff and others involved in the provision of the service cannot be implemented
- Responsibility and procedure for reporting and investigating accidents and dangerous occurrences including those specified under RIDDOR for both service users and staff.
- Reporting procedure to follow when either a resident or member of staff has a known transmittable disease or infection.
- The provision and wearing of protection clothing.
- Content of training on health and safety to be given to support workers

Providers will also note the specific requirements with regards to manual handling. The format for moving and handling assessments is not prescribed by the Purchasing Authorities, but without prejudice to the generality of health requirements all assessments must conform to the guidance in the Manual Handling Operations Regulations 1992 as amended. To fulfil legal requirements assessments must:

- i. Take account of load, task, environment, and individual capacity
- ii. Identify the level of risk

- iii. Identify measures to avoid, or if not reduce the risk

The Provider will draw up a written moving and handling assessment for Staff assisting a Service User which will be dated and signed. This will be made available to all Staff members involved, and a copy left with the Service User in the home.

The Provider will ensure that assessment of risk is undertaken by suitably competent persons.

The Provider's representative must be able to demonstrate:

- i. A detailed knowledge of the Manual Handling Operations Regulations 1992 (as amended)
- ii. Knowledge of high risk manual handling activities.
- iii. The ability to make a systematic assessment of all factors affecting risk.
- iv. The ability to evaluate the magnitude of risk.
- v. Knowledge of a wide range of measures to effectively reduce risk.
- vi. The ability to provide clear written instructions.

The Provider's Staff must be able to demonstrate:

- i. Knowledge of the Manual Handling Operations Regulations 1992 (as amended), and how to report situations where there is a risk of injury.
- ii. Knowledge of how to avoid high risk manual handling operations, including an understanding of postural awareness and back care.
- iii. The ability to promote independence in mobility and transfers.
- iv. Competence in the particular techniques and safe use of equipment required by the assessment of an individual Service User.

The Provider will exercise reasonable care when using any equipment within the ECH scheme. The Provider will ensure that equipment appearing in any way faulty is not

used until it has been reported to, checked by and deemed safe by a qualified person from the appropriate service.

The Provider will inform the local authority within 3 working days if there are any incidents that necessitate the involvement of the Health and Safety Executive and CQC as required.

32.2 The Provider will have clear procedures regarding an emergency. All staff will be instructed in these emergency procedures. The Provider will ensure a competent person is on call and contactable at all times. The provider will inform the resident of the emergency procedures.

32.3 Any equipment used in connection with the provision of the service must be regularly maintained in accordance with the manufacturer's requirements.

32.4 The Provider will ensure that all organisational records relating to health and safety matters are accurate and kept up to date.

29.0 EQUALITIES

The Provider will meet the requirements of the Equality Act (2010).

The Provider's will ensure that the needs of the Purchasing Authorities diverse communities are met in delivering the Services. In doing this, the Provider will:

- Work with partner agencies to promote the Services to all diverse communities / groups within the local authority area of the individual service specification.
- Ensure that appropriate translation and interpretation services are available, where required; and ensure that the availability of these services is promoted.

- Ensure that an up to date and accurate description of the Services including eligibility criteria is available which is actively promoted.
- Employ accessible promotion and communication methods which engage and are appropriate to the needs of specific groups.
- Ensure that personal care is delivered in a culturally appropriate manner which promotes dignity.
- Ensure that under-represented groups within the Services are identified and develop an Equality and Diversity action plan to address under-representation.
- Conduct Equality Impact Assessments on any changes to Service delivery and policies.

30.0 PROTECTION OF SERVICE USERS HUMAN RIGHTS

The Provider will protect the Human Rights of Service Users as set out in The Human Rights Act 1998. The Provider and their Staff will ensure that they are aware of the following key areas of risk where the provision of personal care and support might compromise an individual's human rights:

Dignity and security:

- Physical wellbeing – including freedom from physical abuse or neglect, protection from pharmaceutical/medical abuse and sexual abuse
- Psychological and emotional wellbeing – including freedom from bullying and threats, or disrespectful treatment, and respect for cultural heritage and religion
- Financial security/security of possessions – including protection from financial abuse and, for those without mental capacity, decisions taken in one's best interests

Autonomy and choice:

- Self-determination – including the right to live as independently as possible, to make routine decisions and to be consulted about professional decisions
- Support for decision-making about care – including information and advice about options and being given meaningful choices

Privacy:

- Respect for privacy – including modesty when dressing/bathing and privacy when one’s personal circumstances are discussed by others
- Respect for private correspondence – letters, phone calls, private documents

Social and civic participation:

- Maintaining relationships with friends and family
- Participation in community events, groups and associations, religious or non-religious activities
- Civic participation – including the right to vote in elections.

The Provider will familiarise themselves and comply with the Equality and Human Rights Commission’s 2011 report “Close to Home”.

More information about the Inquiry and its recommendations can be viewed at the following link: <http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people>

31.0 ACCESS TO INFORMATION

The Provider will be required to sign a Data Sharing Contract with Purchasing Authority that will identify the roles and responsibilities of all parties.

The Provider will ensure that all information relating to Service Users is kept in confidence and only shared as necessary on a need to know basis in accordance with the Clauses in the Agreement.

However, the Provider will make available to the Purchasing Authority with 24 hours' notice all relevant information in an electronic format, i.e. scanned. This will include but is not limited to:

- Service Users Care Plans
- Service Users Support Plans
- Records of delivery of care and support to Service Users
- Staff training and employment records
- Staff rota's
- Records of Complaints

This list is not exhaustive and will include any other records or information that may be required to enable the Purchasing Authority to ensure the safety and wellbeing of Service Users and/or to ensure that the Services are being delivered in accordance with the Agreement.

The Provider will keep all Services Users' records in a secure place and treat them as confidential. The Provider will keep all records in a locked, fireproof filing cabinet. The Provider will grant access to electronic records only to authorised Staff by means of a password.

The Provider will ensure that the collection, storage and retention of Service User records meets the requirements of , General Data Protection Regulation 2016,

including ensuring that Service Users are aware of their right to know what information is held about them and how to request access to it.

32.0 RECORD KEEPING

The Provider will maintain all the records required for the protection of service users and the efficient running of the business for the requisite length of time. The requisite length of time may be defined in the individual specification, scheme contract document or through other legislative requirements.

Records will be secure, up to date and in good order and are constructed, maintained and used in accordance with the , General Data Protection Regulation 2016, and other statutory requirements and are kept for the requisite length of time.

Personal data may also be required to be supplied to the Purchasing Authority's information management staff for analysis purposes in order for the Purchasing Authority to fulfil its statutory duties and statistical reporting requirements. The supply of this information by the Provider and their staff falls within one or more proper purposes in the, General Data Protection Regulation 2016. This data must be provided within 10 working days.

Service Users or their representatives have access to their records and information held about them by the Provider and are facilitated in obtaining access when necessary.

33.0 RECORDS KEPT IN SERVICE USER'S HOMES:

Staff record the date and time of every visit, the support provided and any significant occurrence. Records will include:

- Assistance with medication
- Financial transactions undertaken

- Details of changes in the resident's circumstances, support needs, health condition etc.
- Any accident to the resident and/or support worker
- Any other untoward incidents
- Activities undertaken and any particular achievements
- Any information that will assist the next Support Worker to ensure consistency in the service provision.

Records will be factual, legible, signed and dated by the care worker and service user where possible / practicable and kept in a safe place as agreed with the service user. Where records are stored digitally these records will be accessible to the service user and Purchasing Authority using technology that is widely available and affordable.

Service users will be informed about what is written and will have access to it.

Where paper records are used they will be kept in the home for a minimum period of one month after which they will be retained by the Provider. Paper records will be available to the Purchasing Authority on request.

Where paper records are used Service Users will be encouraged to have these records kept in their home. Where a service user does not agree, the Provider will record this refusal on the personal file held by the Provider.

Where digital records are used Service User and their carers / families (where appropriate) will be encouraged to view these using appropriate widely available and affordable technology.

34.0 CONFIDENTIALITY & INFORMATION GOVERNANCE

The Provider will ensure that appropriate policies and procedures on confidentiality are in place and that staff are trained appropriately regarding their responsibilities. These policies shall apply equally to employed staff and volunteers.

The Provider will need to obtain information about individuals, this will usually be contained in the referral and care plan information, and the Provider must ensure that:

- The service user is provided with adequate information and support including being told why their information is being collected (privacy notice)
- The views of the service user are known before making decisions which affect them including gaining consent where appropriate
- Service Users are provided with choice and that they are able to participate in the decision-making processes
- The civil rights of service users are safeguarded and respected by others and that their legal rights and entitlements are observed
- Access and signposting to other services where appropriate and necessary is facilitated
- Their information is dealt with appropriately and securely by adequately trained staff

The Provider will record information about service users which includes both personal and sensitive personal information. Therefore the Provider must comply with all statutory legislation and legal obligations covering information governance, especially data protection and rights of confidentiality.

The Provider will ensure that all appropriate measures are taken to maintain resident's privacy in accordance with the, General Data Protection Regulation 2016, Freedom of Information Act 2000, The Mental Capacity Act 2005, and the data processing agreement. The Provider will have written policies concerning the management of information in accordance with, General Data Protection Regulation 2016.

Service users and their carers or representatives will be made aware of the need to hold records of their individual information and the appropriate processes for accessing the information. Records will be confidential and secure and access to them will only be permitted in controlled circumstances.

The Provider will ensure that permission is obtained, and recorded, from service users to share confidential information about them, unless there is existing legislation or guidance which states otherwise.

Service user will have the right to receive a copy of any information held about them in the Provider's files, provided that this does not breach third party or legislative guidelines.

Service users will be able to discuss their needs in confidence and privacy with a member of staff if they wish to.

Service users can be confident that staff will not speak publicly about them unless it has been agreed with the service user beforehand.

Discussions about a service user's personal care and other sensitive matters must be held in private.

Copies of the Providers policies and procedures on confidentiality, including the process for dealing with breaches of confidentiality, will be available to service users and their representatives if requested.

35.0 QUALITY ASSURANCE

The Provider will have a system in place to identify and put in place sustainable improvements in the quality of the service. The Provider will maintain an effective system for Quality Assurance based on the outcomes for service users, in which standard and indicators to be achieved are clearly defined and regularly monitored.

The Provider will:

- Maintain high standards of personal behaviour and job performance in carrying out the Services.
- Promote the Services in a manner consistent with the Purchasing Authority's Vision and Values.

- Ensure that they are operating working practices which comply with legislation relating to employment, equality of opportunity, health and safety at work and any other statutory provisions.
- Ensure that competent experienced and/or qualified Staff, as appropriate, are employed to carry out the tasks required in the Agreement.
- Ensure that they have in place their own quality assurance and control system which monitors their performance against the Specification.
- Participate in progress meetings as required by the Purchasing Authority to ensure the Service is appropriate and meets the requirements of this Specification and Agreement.
- Maintain sufficient records to evidence compliance with the specification. Records must include service user contact time, medication and a personal record monitoring progress against the Care and Support Plan, and staffing records. These records must be retained and kept up-to-date and made available on request for inspection by a nominated representative of the Purchasing Authority.

The Provider will co-operate with any quality reviews or compliance visits carried out by the Purchasing Authority.

36.0 OUTCOME AND PERFORMANCE MONITORING

The Purchasing Authorities are developing an outcome and performance monitoring framework which will be used across all services. Once developed the Provider will submit evidence to demonstrate how well the service has performed.

36.1 Outcomes Framework

The outcome monitoring framework is currently being developed and this section will therefore be subject to change. The Provider will not unreasonably object to the introduction of the outcome monitoring framework. The table below is illustrative of the type of information that will be requested, the frequency with which it will be

requested and the amount of time the Provider will have to collate the information before it is to be submitted.

Data	Method	Frequency of Reporting	Deadline for Reporting
Promoting Independence <ul style="list-style-type: none"> - Reduction in support packages 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.
Positive experience of care and support <ul style="list-style-type: none"> - Self-reported feeling of wellbeing - Number of people support to die at home (if this is their preferred place) 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.
Improve and maintain physical and mental health <ul style="list-style-type: none"> - Reduction in falls - Reduction in hospital admissions - Reduction in GP appointments - Self-reported feeling of wellbeing - Functional ability 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.
Protecting people from harm <ul style="list-style-type: none"> - Number of safeguarding alerts - Number of serious incidents 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.

Positive Contribution to Community <ul style="list-style-type: none"> - Participation in social activities - Number of service user led activities 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.
Economic Wellbeing <ul style="list-style-type: none"> - Benefit maximisation 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.

36.2 Performance Monitoring

The performance monitoring framework is currently being developed and this section will therefore be subject to change. The Provider will not unreasonably object to the introduction of the performance monitoring framework. The table below is illustrative of the type of information that will be requested, the frequency with which it will be requested and the amount of time the Provider will have to collate the information before it is to be submitted.

Data	Method	Frequency of Reporting	Deadline for Reporting
Incidents	Verbally as soon as possible following the incident. Written report via emailed to Purchasing	Ad hoc	As soon as possible following the Incident and in any event within 12 hours of the occurrence

	Authority within 12 hours.		of the incident
List of current service users <ul style="list-style-type: none"> - Name - Address - Commissioned hours (ASC) - Adjusted hours (where trusted assessor model is used) - Actual hours provided - Reason for variation in hours provided verses commissioned - Any requests for ASC involvement 	Excel spreadsheet emailed to Purchasing Authority	Monthly	15 th day of the following month
Safeguarding Alerts 1	Defined in individual spec	Ad hoc	As soon as possible following the concern.
Safeguarding Alerts 2 <ul style="list-style-type: none"> - Nature of safeguarding alert e.g. physical abuse - Stage of alert e.g. under investigation - Outcome of alert 	Word document emailed to Purchasing Authority	Monthly	15 th day of the following month
Unplanned Care <ul style="list-style-type: none"> - Number of falls in the service 	Excel spreadsheet emailed to Purchasing Authority	Monthly	15 th day of the following month

<ul style="list-style-type: none"> - Number of urinary tract infections - Number ambulance calls outs - Number of unplanned hospital admissions 			
<p>Throughput</p> <ul style="list-style-type: none"> - Number of new service users and previous location e.g. hospital - Number of people leaving the service, how long they have lived in ECG and destination e.g. nursing home 	Spreadsheet emailed to Purchasing Authority		
<p>Complaints</p> <ul style="list-style-type: none"> - Nature of complaint - Stage of Providers complaints process the complaint is at - Findings / Outcome of complaint 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the following month
<p>Management Report</p> <ul style="list-style-type: none"> - Top 3 presenting issues for Provider for the service - Service user feedback 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.
<p>Summary of Social Activities</p> <ul style="list-style-type: none"> - Description of activity - Who facilitated the activity 	Word document emailed to Purchasing Authority	Quarterly	15 th day of the May, July, October, January.

<ul style="list-style-type: none"> - How many people attended from the ECH scheme - How many people attended from the community 			
<p>Workforce</p> <ul style="list-style-type: none"> - Number of staff employed by type and home location e.g. care worker, Liverpool resident - Number of new staff by type - Number of staff leaving by type - Training matrix - Supervision and appraisal matrix - Disciplinarys, Grievances and Dismissals 	<p>Spreadsheet emailed to Purchasing Authority</p>	<p>Quarterly</p>	<p>15th day of the May, July, October, January.</p>

37.0 CONTRACT MONITORING

The methods used and frequency of contract monitoring will be specified in the individual specifications.

38.0 SOCIAL VALUE

Provider will be expected to demonstrate how they add social value to Purchasing Authority and wider Liverpool City Region. The social value model applicable to the service will be specified in the individual specification.

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Terms and Conditions

Details of Flexible Purchasing System: Care and Support in Extra Care Housing and Local Communities (Liverpool City Region 2018)

These Terms and Conditions apply to each Individual Contract entered under the Flexible Purchasing System

Version: 2018 version 1

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Introduction

1. Background

<p>1.1 To what these Terms and Conditions relate</p>	<p>They form part of the contractual terms and conditions of a particular Individual Contract entered from time to time between:</p> <ul style="list-style-type: none"> • The Permitted Purchasing Body referred to in the Work Order of the Individual Contract; and • The Provider referred to in that Work Order,
<p>1.2 What is the 'Individual Contract' described in these Terms and Conditions</p>	<p>It is the contract entered</p> <ul style="list-style-type: none"> • Under a Work Order that cross-references the relevant Flexible Purchasing System to which these Terms and Conditions relate • Between the Permitted Purchasing Body and the Provider described in that Work Order • In relation to Services described in that Work Order.
<p>1.3 What are the terms and conditions of the Individual Contract</p>	<p>As follows (with inconsistencies between them resolved under section 126)</p> <ul style="list-style-type: none"> • The Individual Specification. • A sufficiently-completed Work Order. • The General Specification applicable to the relevant Flexible Purchasing System. • These Terms and Conditions as they are at the time the Individual Contract is entered. <p>As any of these are amended according to section 72 in these Terms and Conditions.</p>

2. Associated Documents

<p>2.1 Each Associated Document in relation to the Individual Contract</p>	<p>As indicated in the relevant Work Order.</p>
<p>2.2 How any inconsistency between</p> <ul style="list-style-type: none"> • The Associated Document and • The terms of the Individual Contract (as described in item 1.3) <p>is to be resolved</p>	<p>See section 126.</p>
<p>2.3 Incorporation of these Terms and Conditions and/or a relevant Work Order into each Associated Document (if the Permitted Purchasing Body and the Provider are the only parties to that Associated Document)</p>	<ul style="list-style-type: none"> • This terms of these Terms and Conditions and/or a relevant Work Order (including any definitions and rules for interpretation) shall apply to each Associated Document. • Exception: to the extent otherwise clearly indicated in the Associated Document.
<p>2.4 Effect of the expiry or early termination of these Terms and Conditions on each Associated Document (if the Permitted Purchasing Body and the Provider are the only parties to that Associated Document)</p>	<ul style="list-style-type: none"> • The Associated Document terminates at the same time as these Terms and Conditions expires or terminates. • Exception: to the extent otherwise clearly indicated in the Associated Document.

3. Service Users

3.1 Service Users for whose benefit the Services are to be provided (**'Service Users'**)

As indicated in the Work Order.

3.2 Restrictions on the Provider's right to **enter into unrelated business dealings with any Service User** introduced to the Provider in connection with the Individual Contract
E.g. any restrictions on the Provider's right to offer the Service User goods and/or services for payment, other than the Services required under the Individual Contract

No restrictions.

4. Third Party Beneficiaries of the Services

4.1 Persons **in addition to the Permitted Purchasing Body** to whom the Provider owes a duty of care under the Individual Contract in carrying out the Provider's obligations under the Individual Contract (each of them a **'Third Party Beneficiary'**)

Each of the following

- Each Service User described in item 3.1 but only in relation to Services provided to that Service User.
- Each Affiliate of the Permitted Purchasing Body.

About the Services

5. Description of the Services

5.1 Description of the Services which the Provider must provide under the Individual Contract

As indicated in the following:

- The General Specification; and
- The Individual Specification.

6. Contract Standards

6.1 Indicate the specific standards, service levels, KPIs (or the like of any of these) (each of them is a **'Contract Standard'**) which the Provider must ensure are met in carrying out the Services

As indicated in the following:

- The General Specification; and
- The Individual Specification.

7. Operating Manuals

7.1 Description of each operating manual in relation to the Services (**'Operating Manual'**, which includes that manual as amended from time to time)

- The initial Operating Manual in relation to the Individual Contract as approved by the Permitted Purchasing Body according to item 7.2
- As amended (or replaced in its entirety) from time to time with the written approval of the Permitted Purchasing Body (such approval not to be unreasonably withheld).

7.2 About the initial Operating Manual described in item 7.1

(a) The Provider's initial obligations

The Provider must submit a first draft of an Operating Manual to the relevant Permitted Purchasing Body for its approval.

(b) Whether the Provider may use an existing operating manual used at the scheme as a basis for the first draft

It may do so, on the assumption it has not been approved by the relevant Permitted Purchasing Body unless the Permitted Purchasing Body has indicated otherwise, in writing/

(c)	Due date for submitting the first draft	6 weeks after the date the Individual Contract is entered.
(d)	Purpose of submission	<ul style="list-style-type: none"> • For the approval of the Permitted Purchasing Body. • The approval of the Permitted Purchasing Body cannot be unreasonably withheld.
(e)	Obligations of the Permitted Purchasing Body if approval is not given	To give the Provider timely feedback to enable it to submit the next draft.
(f)	Until the approval of the Permitted Purchasing Body is given	<ul style="list-style-type: none"> • The Provider must resubmit further drafts of the Operating Manual until the approval of the Permitted Purchasing Body is given. • The Provider must do so in a timely manner. • The Provider must give proper regard to any feedback given to it by the Permitted Purchasing Body.
(g)	If the parties cannot agree on a particular Operating Manual (or any amendment) proposed by the Provider for the approval of the Permitted Purchasing Body	It shall be a dispute for the purposes of section 119.
7.3	The Provider's obligations in relation to each Operating Manual	<p>As indicated in the following:</p> <ul style="list-style-type: none"> • The General Specification; and • The Individual Specification.
7.4	Rights of the Permitted Purchasing Body to have access to each Operating Manual	
7.5	<p>Arrangements regarding changes to each Operating Manual from time to time e.g.</p> <ul style="list-style-type: none"> • Any consent of the Permitted Purchasing Body required • Any obligation of the Provider to communicate the changes to the Permitted Purchasing Body 	
7.6	Arrangements in relation to each Operating Manual when the Individual Contract expires or is terminated early	See item 110.7 in relation to the Provider's obligations in relation to the Operating Manual as part of the Provider's exit obligations.
8.	Fitness for purpose	
8.1	Purposes for which the Provider must ensure the Services are to be fit	To ensure the safety and general welfare of each Service User in receiving the Services, insofar as these are affected by the Services.
9.	Obligation to meet outcomes	
9.1	Outcomes, benefits (or the like of any of these) which the Provider is contractually obliged to ensure the Services achieve	As indicated in the Work Order of the Individual Contract.

10. Novation or assignment of third party contracts

10.1 The Permitted Purchasing Body and the Provider must use reasonable endeavours (working cooperatively) to arrange the assignment or novation of the following contracts from the Permitted Purchasing Body to the Provider

Contract details	Third party to the contract	Whether assigned or novated	Whether assignment or novation is <u>required or permitted</u>
As indicated in the Work Order	As indicated in the Work Order	As indicated in the Work Order	As indicated in the Work Order
10.2	Consequences if the third party to a contract described in item 10.1 does not agree to the assignment or novation		The Provider is not obliged or permitted to the assignment or novation. This is subject to the Permitted Purchasing Body having used reasonable endeavours (including exercising any relevant contractual rights) to require the third party to agree to it.
10.3	Warranties and representations given by the Permitted Purchasing Body in relation to each contract described in item 10.1		None given. The Provider must make its own checks.
10.4	Arrangements in relation to liabilities of the Permitted Purchasing Body under each contract described in item 10.1 which is to be novated to the Provider according to item 10.1		
(a)	Which liabilities are to remain liabilities of the Permitted Purchasing Body		Those relating to the contract which accrue, arise or relate to events or circumstances which occur or arise on or before the effective date in item (c).
(b)	Which liabilities are to be assumed by the Provider		Those relating to the contract which accrue, arise or relate to events or circumstances which occur or arise after the effective date in item (c).
(c)	What is the ' effective date ' of the transfer of any liabilities from the Permitted Purchasing Body to the Provider for the purposes of this item 10.4		As indicated in the Work Order.
(d)	Indemnity given by a party (' X ') to the other party (' Y ') in accepting liability under that contract according to this item 10.4		<ul style="list-style-type: none"> • X indemnifies Y for Y's Losses resulting any Claim made or threatened against Y by any person in respect of that contract. • This indemnity only applies to the extent X has accepted liability under that contract according to this item 10.4. • This indemnity is subject to section 96.

Method in providing the Services

11. Method in providing the Services

11.1 Methods or techniques (or the like of any of these) with which the Provider must comply in providing the Services

As (and to the extent) indicated in any of the following: <ul style="list-style-type: none"> • The General Specification; • The Individual Specification; and • The Provider Submission.

12. General standards

12.1 The Provider must provide the Services **to at least the highest of the following standards**

(a)	Specification, Provider Submission	<p>To the extent any standards indicated in any of the following:</p> <ul style="list-style-type: none"> • The General Specification; • The Individual Specification; and • The Provider Submission. <p>This includes any Contract Standards described in item 6.1.</p>
(b)	Standards of a skilled person	<p>The standard of skill, care, diligence, prudence and foresight where all of the following apply</p> <ul style="list-style-type: none"> • It is a standard which would reasonably be expected from an appropriately skilled, diligent and experienced person • That person is engaged to provide similar services to those required under the Individual Contract. • That person is engaged In similar circumstances to those to which the Individual Contract relates.
(c)	Law	<ul style="list-style-type: none"> • In any case, the requirements of relevant Law applying to the relevant activities. • This is a paramount obligation and overrides anything to the contrary elsewhere in these Terms and Conditions and/or a relevant Work Order.

13. Obligations of the Provider – certain consequences and risks

13.1 The Provider must not cause (or create an unreasonable risk of causing) any of the following to be suffered by the Permitted Purchasing Body and/or its Affiliate and/or any Third Party Beneficiary described in item 4.1 (each of them a **‘Protected Person’**) as a result of the way in which the Provider (and anyone acting on its behalf) provides the Services

(a)	Death, personal injury etc.	<p>Death, personal injury or other serious harm to any of the following</p> <ul style="list-style-type: none"> • The Protected Person, if a human being. • Any person whom the Provider knows (or reasonably ought to know) is owed a duty of care by the Protected Person (e.g. its Personnel).
(b)	Property loss etc.	<p>Loss, theft, damage or other significant undesirable consequence to any data, Intellectual Property, equipment, records, land and buildings or other property of any kind of (or used by) any of the following</p> <ul style="list-style-type: none"> • The Protected Person. • Any person whom the Provider knows (or reasonably ought to know) is owed a duty of care by the Protected Person (e.g. its Personnel). <p>Exception: any of these result from activities which are genuinely part of the Services (e.g. destruction of property).</p>

(c) Certain breaches etc.

Breaches, infringements or the like by the Protected Person of any of the following

- Any Law.
- Any duty which the Protected Person then owes any third party (whether arising in tort, contract, statute or otherwise, including any breach of any duty of confidentiality) to the extent the Provider knows (or reasonably ought to know) of that duty.
- The property (including Intellectual Property) rights of any third party.
Exception: where that property (including Intellectual Property where relevant)
 - Has been leased or licensed to the Provider or its subcontractors by the Permitted Purchasing Body and/or its Affiliate; or
 - Has otherwise been made available to the Provider by the Permitted Purchasing Body or its nominated agent for purposes connected with the Services.

(d) Bad publicity (in relation to the Permitted Purchasing Body and/or its Affiliate)

- The Protected Person receiving any significant, unjustified and undesirable publicity.
- This does not prevent the Provider or its subcontractors reporting serious and genuinely suspected wrongdoing by the Protected Person (or anyone connected to the Protected Person) to appropriate law enforcement authorities.

14. Permitted Purchasing Body policies

14.1 **Current policies** of the Permitted Purchasing Body with which the Provider must comply when providing the Services under the Individual Contract

As indicated in the relevant Work Order.

But only if the relevant policy (or a relevant website link containing the policy) is communicated to the Provider by the Permitted Purchasing Body in writing.

14.2 Policies of the Permitted Purchasing Body **from time to time** with which the Provider must comply when providing the Services under the Individual Contract

Each policy of the Permitted Purchasing Body from time to time to which all of the following apply:

- It must be **reasonable, lawful and relevant** to the Services; and
- It must have been sufficiently communicated to the Representative of the Provider in writing. This includes communicating a relevant website link containing the policy.

14.3 If the Provider would necessarily need to incur further costs (beyond a trivial level) to comply with any obligation contained in a policy of the Permitted Purchasing Body described in item 14.2

- **If the Provider is required by Law to comply with that obligation anyway:** the Permitted Purchasing Body is not obliged to reimburse the Provider for those further costs in relation to that obligation **except** to the extent the Permitted Purchasing Body and the Provider otherwise agree in writing.
- **If the Provider is NOT required by Law to comply with that obligation anyway:** the Provider is not obliged to comply with that obligation unless the Permitted Purchasing Body has agreed in writing to reimburse the Provider for those costs
 - To the extent those costs are reasonable, appropriately evidenced; and
 - Subject to any reasonable conditions the Permitted Purchasing Body requires.

14.4 Character of each Permitted Purchasing Body policy described in this section 14 for the purposes of the Individual Contract

- It shall be deemed to form part of the Individual Specification.
- **If there is any inconsistency between any Permitted Purchasing Body policy and any other part of the Individual Specification:** the policy prevails to the extent of the inconsistency.

Location

15. Location

15.1 Any specific location at which the Provider must provide the Services (or such part of them as indicated)

As indicated in the Work Order.

About the parties

16. Licences, registrations, accreditations

16.1 Licences, registrations, accreditations, permits, consents (or the like of any of these) which the Provider must have in place at all times whilst providing the Services

Registration by CQC or any successor body from time to time.
Any others indicated in the Work Order.
Any others required by Law from time to time in relation to the Provider's activities in carrying out the Services.

16.2 Obligations of the Provider if

- Any subcontractor which it directly or indirectly appoints (on a reasonable view)
- Requires any of the licences, registrations or the like described in item 16.1
- In relation to activities which the subcontractor carries out in connection with the Individual Contract

- The Provider must ensure the subcontractor has the relevant licences, registrations or the like described in item 16.1 in place at all times while the subcontractor carries out those activities.
- See section 62 and section 63 on the rights of the Permitted Purchasing Body to require the removal of the subcontractor if and for as long as it does not have the relevant licences, registrations or the like described in item 16.1 in place from time to time.

16.3 Providing evidence

- The Provider must provide the Permitted Purchasing Body with appropriate evidence that the Provider and/or relevant subcontractors meet all of the requirements in item 16.1.
- The Provider must do so promptly on the Permitted Purchasing Body's reasonable request from time to time.
- **If the Permitted Purchasing Body is not also the Lead Council:** the Provider will have satisfied this requirement if it provides such evidence to the Lead Council on the Permitted Purchasing Body's behalf.

17. Local authority powers

17.1 Status of a party ('X') if it is a local authority

(a) Right to carry out powers etc.

Nothing in the terms of the Individual Contract (as described in item 1.3) in any way affects the right of X as a local authority to exercise (or to not exercise) any of its statutory powers and/or its statutory functions.

(b) Examples

Without limiting this, this includes the power of X to grant or to deny any kind of application for planning, any particular licence or the like of any of these which is submitted by any other party to the Individual Contract.

(c) Interpretation

The above paragraphs shall apply even if the exercise (or non-exercise) of such powers and functions causes either party to breach its obligations under the Individual Contract.

18. Warranties and representations of the Provider

The Provider warrants and represents

- To the Permitted Purchasing Body and its Affiliates
- That each of the following (to be read independently) is materially true and materially correct
- At the date on which the Work Order is executed by the Provider, and again on the commencement of the Services under the Individual Contract, and again on the commencement of any extension period of the Individual Contract
- Subject to any exceptions which have been sufficiently disclosed by the Provider to the Permitted Purchasing Body (or to the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) in writing before the relevant date when the warranty and representation applies
- In addition to other warranties and representations of the Provider indicated elsewhere in these Terms and Conditions or the Work Order.

About the Provider generally

18.1 Claims made by the Provider

The claims the Provider has made about itself or its subcontractors or their respective Personnel in the Provider Submission are, to the best of the Provider's knowledge having made reasonably necessary inquiries:

- **True:** materially true; and
- **Not misleading:** not reasonably likely to be misleading (whether by omission or otherwise) to a reasonable person.

18.2 No changes to the Provider since the Provider Submission

- There have been no significant changes to the circumstances of the Provider compared to those disclosed in the Provider Submission
- **Changes to the Provider's circumstances to which this applies:** only to those changes which would (on reasonable view) significantly and unfavourably affect the ability of the Provider to provide the Services as required under the Individual Contract.

18.3 Not negligently or deliberately withheld information

There is no reasonably significant information about the Provider, its Personnel and/or its subcontractors to which all of the following apply:

- The Provider has negligently or deliberately withheld that information from the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council); and
- If that information had been sufficiently disclosed, it would be reasonably likely to have significantly affected the decision of the Permitted Purchasing Body (acting reasonably in the circumstances) to enter the Individual Contract on its terms.

18.4	Investigations, proceedings etc.	<p>The Provider is not</p> <ul style="list-style-type: none"> • Under any non-routine investigation by any law enforcement or regulatory body for any serious matter; and/or • Subject to any Claims or disputes or other actions which are reasonably likely to result in any of the following: <ul style="list-style-type: none"> • Any Service User described in section 3 (or his/her representative if he/she does not have capacity) having reasonable grounds not to have appropriate confidence in the Provider; and/or • The Provider being significantly and unfavourably affected in its ability to properly provide the Services; and/or • Serious, unjustified and unfavourable publicity being brought to the Permitted Purchasing Body.
18.5	Competitive procedure	<p>In any competitive procedure in which the Provider was awarded the Individual Contract: the Provider has not done any of the following:</p> <ul style="list-style-type: none"> • Engaged in any collusive or other anti-competitive conduct with other bidders (or potential bidders). • Engaged in any canvassing activity. • Done any act that would breach item 114.1 in relation to Corrupt Acts if that act were done after these Terms and Conditions is entered.
18.6	If the Provider is a human being (e.g. a sole trader)	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider meets the requirements in item 36.1 to the extent relevant to his/her expected activities in relation to the Services; and • The Provider is not aware of any serious issue relating to his/her health or other personal circumstances which is likely to prevent him/her carrying out his/her obligations under the Individual Contract.
18.7	If the Provider is a company or other type of entity other than a human being	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider has the following to enter the Individual Contract and to carry out its obligations under it <ul style="list-style-type: none"> - It has the power under its constituent document; and - It has obtained the relevant resolutions and taken the required corporate action. • The Provider validly exists under the Law of the place where it was incorporated or otherwise constituted.
Financial status of the Provider		
18.8	Able to pay debts	<p>The Provider is able to pay its debts (taking into account its contingent and prospective liabilities) when they fall due.</p>
18.9	If the Provider is a human being (e.g. a sole trader)	<p>The Provider is not an undischarged bankrupt.</p>

18.10 If the Provider is a company or other type of entity **other than** a human being

All of the following

- The Provider is not subject to any outstanding order from a court (or equivalent) or resolution requiring it to be dissolved, wound up or the equivalent.
- No liquidator, provisional liquidator, trustee, administrator, controller, receiver, or receiver and manager (or the equivalent to any of these in any other relevant jurisdiction) is currently appointed in relation to the Provider and/or its assets.
- The Provider has no reasonable grounds to believe that any of the above is imminent.

Ability to carry out obligations

18.11 **Due diligence:** the Provider has satisfied itself (including making investigations, gathering information, seeking advice or the like) of all of the following

(a) Ability to meet obligations

The Provider is able to carry out its obligations under the Individual Contract as follows:

- As required under the Individual Contract; and
- Without imposing charges or seeking reimbursement from the Permitted Purchasing Body beyond its entitlements indicated elsewhere in the terms of the Individual Contract (as described in item 1.3).

(b) Provider's understanding

The Provider understands the risks it faces in entering the Individual Contract and in carrying out its obligations under it.

(c) To what item (a) and item (b) are to be subject

- Due diligence rights of the Provider in relation to TUPE Transfers described in section 45; and
- The Permitted Purchasing Body carrying out its obligations in item 45.4 in relation to that due diligence.

18.12 Licences, permits, accreditations etc. in place

- The Provider and each subcontractor which it directly or indirectly appoints has in place all licences, permits, accreditations or the like which it is required to have under item 16.1 as relevant to their activities in relation to the Services; and
- The Provider has no reasonable grounds to expect it (or the relevant subcontractor) to suffer any loss or restrictions to such licences, permits, accreditations or the like that would prevent the Provider carrying out any of its obligations under the Individual Contract.

18.13 Sufficient systems, resources

The Provider has (whether directly or through permitted subcontractors) the necessary and sufficient systems, Personnel and other resources to provide the Services in a proper and punctual manner.

18.14 Processing Client Personal Data

The Provider (whether directly or through its subcontractors) has appropriate technical, operational and organisational measures in place to protect integrity of Client Personal Data described in item 82.2 for the purposes described in item 82.5.

18.15 Third party consents, regulatory approvals etc.	<p>The Provider has obtained all necessary third party consents, regulatory approvals or the like to enable it to do the following</p> <ul style="list-style-type: none"> • To enter the Individual Contract; and • To carry out its obligations as required under the Individual Contract. 			
18.16 Intellectual Property	<ul style="list-style-type: none"> • The Provider either owns or has appropriate licences and other permissions in place to enable it to use any Intellectual Property (including any Provider Background Intellectual Property) which it intends to use in carrying out its obligations under the Individual Contract. • Exception: this does not apply to any Intellectual Property which the Permitted Purchasing Body has done any of the following to enable the Provider to carry out its obligations under the Individual Contract <ul style="list-style-type: none"> - Has required the Provider to use; and/or - Has licensed or otherwise made available to the Provider and/or its subcontractors to use. 			
18.17 By entering into the Individual Contract and by carrying out its obligations under it the Provider will not breach or infringe any of the following (to the best of its knowledge having made reasonably necessary inquiries) <ul style="list-style-type: none"> (a) Law (b) Duties owed to third parties (c) Third party property rights 	<table border="1"> <tr> <td data-bbox="794 925 1495 976">The Law.</td> </tr> <tr> <td data-bbox="794 976 1495 1055">Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise).</td> </tr> <tr> <td data-bbox="794 1055 1495 1126">The property rights (including rights in connection with Intellectual Property) of any third party.</td> </tr> </table>	The Law.	Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise).	The property rights (including rights in connection with Intellectual Property) of any third party.
The Law.				
Any duty it owes a third party (whether arising under tort, contract, statute, or otherwise).				
The property rights (including rights in connection with Intellectual Property) of any third party.				

Personnel issues

18.18 Personnel to be engaged	<p>Each of the Personnel of the Provider (and those of its relevant subcontractors) who is engaged in activities connected with the Services:</p> <ul style="list-style-type: none"> • Has the necessary skills, qualifications, training and experience to carry out the his/her allocated duties; and • Meets (or is deemed under item 36.2 to meet) the requirements in item 36.1 to the extent relevant to his/her activities in connection with the Services.
18.19 All of the following apply to each Key Personnel which the Provider must make available in relation to the Services at the relevant time when the Provider gives this warranty and representation (see section 40) <ul style="list-style-type: none"> (a) Arrangements in place 	<p>The Provider has appropriate contractual arrangements in place to ensure that Key Personnel is available to have the relevant involvement in the Services as indicated in item 40.2.</p>

(b) Investigations

The Provider is not aware (and has no reason to be aware having made reasonably necessary inquiries) of any circumstances where **all** of the following apply

- That the Key Personnel is under any non-routine investigation (whether by any law enforcement or regulatory body or the like);
- For any serious matter;
- That is (on a reasonable view) reasonably likely to have any of the following consequences:
 - To materially and unfavourably affect the Key Personnel's proper involvement in the relevant parts of the Services according to item 40.1; and/or
 - To bring any serious and unjustified adverse publicity to the Permitted Purchasing Body.

(c) Nothing to stop involvement

- The Provider is not aware (and has no reasonable grounds to believe having made reasonably necessary checks) there are any circumstances preventing (or are reasonably likely to prevent) the Key Personnel from his/her proper involvement in the Services according to item 40.2.
- For example
 - The Key Personnel (or his/her employer, as relevant) has not already given any termination notice under a relevant contract with the Provider that would result in that contract terminating before the Key Personnel's involvement in the Services has been completed; and/or
 - The Key Personnel has not made the Provider aware of any significant impending absence for health or other reasons (e.g. maternity).

Promised Subcontractors (section 60)

18.20 All of the following apply in relation to each current Promised Subcontractor in place at the time when the relevant warranty or representation is given

(a) Contracts in place

The Provider has all reasonably necessary contractual arrangements in place to ensure that Promised Subcontractor is bound to provide those relevant parts of the Services according to item 60.1.

(b) Investigations

The Provider is not aware (and has no reason to be aware having made reasonably necessary checks) of all of the following

- That the Promised Subcontractor is under any non-routine investigation (whether by the police or regulatory body or the like)
- For any serious matter
- That is (on a reasonable view) likely to materially and unfavourably affect the Promised Subcontractor's involvement in the relevant parts of the Services indicated in item 60.1.

(c) No changes in circumstances

There have been no significant changes (all of the following)

- To the circumstances of the Promised Subcontractor in place at the time compared to the circumstances disclosed to the Permitted Purchasing Body (or to the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) when its approval of the Promised Subcontractor was first sought by the Provider (whether in the Provider Submission or otherwise).
- That on a reasonable view would significantly and unfavourably affect the Promised Subcontractor's proper involvement in the relevant parts of the Services according to item 60.1.

(d) No circumstances preventing involvement

The Provider is not aware (and has no reason to be aware having made due inquiry) of any circumstances preventing the full, punctual and uninterrupted involvement of the Promised Subcontractor in connection with the relevant parts of the Services according to item 60.1.

Insurance (section 93)

18.21 Insurance

The Provider (and its subcontractors, as relevant according to the nature of their roles in providing the Services) have properly in place with a reputable insurer all relevant insurance cover it is required to have under section 93.

Miscellaneous

18.22 If the Provider is a consortium, partnership, joint venture or the like

Each warranty and representation in this section 18 applies to each member of it, to the extent reasonably relevant to that member.

18.23 Not acting on behalf of a third party

The Provider is not entering the Individual Contract on behalf of any third party whose identity has not been sufficiently disclosed in writing to the Permitted Purchasing Body.

18.24 Valid execution

The Provider has validly executed the Work Order of the Individual Contract.

Preparation

19. Mobilisation or implementation

19.1 The mobilisation or implementation activities which the Provider must carry out in connection with the Individual Contract

As indicated in the Provider Submission.

19.2 Cooperation the Permitted Purchasing Body must provide in relation to the Provider's mobilisation or implementation activities described in item 19.1

The Permitted Purchasing Body must carry out its obligations indicated in the mobilisation plan or implementation plan indicated in the Provider Submission as follows:

- On a reasonable endeavours basis.
- In a reasonably timely manner.
- At its own cost.

19.3 How the Provider is to carry out its mobilisation or implementation activities indicated in item 19.1

- As indicated in item 20.4.
- At its own cost.
- Subject to the proper and timely cooperation (if any) which the Permitted Purchasing Body must provide according to item 19.2.

20. Preparation Activities

20.1 Each Preparation Activity for the purposes of the Individual Contract (all of the following)

Description of Preparation Activity	Party responsible for it								
(a) Mobilisation activities (if any) described in section 19	The Provider, subject to cooperation which the Permitted Purchasing Body must provide according to section 19.								
(b) Others: as indicated in the relevant Work Order.	As indicated in the Work Order.								
20.2 Purposes of each Preparation Activity	The Preparation Activity must be completed before the Provider may commence the Services under the Individual Contract.								
20.3 When a Preparation Activity is regarded as being 'completed'	When either of the following applies: <ul style="list-style-type: none"> • The Preparation Activity is completed to the reasonable satisfaction of each party who is not responsible for it, or • Each party agrees in writing (acting reasonably) that the Preparation Activity is no longer required. 								
20.4 Nature of the obligations of the parties in relation to Preparation Activities for which they are responsible (unless otherwise clearly indicated)	<table border="1" style="width: 100%;"> <tr> <td data-bbox="252 1055 715 1189">(a) To the extent control of the obligations is substantially within the reasonable control of that party</td> <td data-bbox="730 1055 1477 1189">It shall be an absolute contractual obligation of that party.</td> </tr> <tr> <td data-bbox="252 1196 715 1238">(b) Otherwise</td> <td data-bbox="730 1196 1477 1238">It shall be a 'reasonable endeavours' obligation of that party.</td> </tr> </table>	(a) To the extent control of the obligations is substantially within the reasonable control of that party	It shall be an absolute contractual obligation of that party.	(b) Otherwise	It shall be a 'reasonable endeavours' obligation of that party.				
(a) To the extent control of the obligations is substantially within the reasonable control of that party	It shall be an absolute contractual obligation of that party.								
(b) Otherwise	It shall be a 'reasonable endeavours' obligation of that party.								
20.5 How costs are to be borne by the parties in carrying out their respective Preparation Activities	Each party bears its own								
20.6 Obligation to keep informed: a party responsible for a Preparation Activity must keep the other party informed of each of the following events or circumstances in relation to that Preparation Activity if and as they occur (it must do so in a proper and timely manner on first becoming aware of the matter)	<table border="1" style="width: 100%;"> <tr> <td data-bbox="252 1462 715 1505">(a) Completion</td> <td data-bbox="730 1462 1477 1505">That it has been completed.</td> </tr> <tr> <td data-bbox="252 1512 715 1554">(b) Delays etc.</td> <td data-bbox="730 1512 1477 1554">Any significant delays or other problems in completing it.</td> </tr> <tr> <td data-bbox="252 1561 715 1603">(c) If no longer required</td> <td data-bbox="730 1561 1477 1603">Any reasonable grounds to believe it is no longer required.</td> </tr> <tr> <td data-bbox="252 1610 715 1673">(d) Unlikely to be completed in time</td> <td data-bbox="730 1610 1477 1673">Any reasonable grounds to believe that it is unlikely to be completed by any required deadline.</td> </tr> </table>	(a) Completion	That it has been completed.	(b) Delays etc.	Any significant delays or other problems in completing it.	(c) If no longer required	Any reasonable grounds to believe it is no longer required.	(d) Unlikely to be completed in time	Any reasonable grounds to believe that it is unlikely to be completed by any required deadline.
(a) Completion	That it has been completed.								
(b) Delays etc.	Any significant delays or other problems in completing it.								
(c) If no longer required	Any reasonable grounds to believe it is no longer required.								
(d) Unlikely to be completed in time	Any reasonable grounds to believe that it is unlikely to be completed by any required deadline.								

20.7 Right of a party ('X') to terminate the Individual Contract (or a relevant part, as indicated in item (b)) if another party ('Y') has not completed any Preparation Activity for which Y is responsible by a particular deadline

(a) When X may do so	<p>If and for as long as any Preparation Activity remains incomplete</p> <ul style="list-style-type: none"> Substantially due to Y's delay. After the following deadline: as indicated in the Work Order. <p>If a Preparation Activity is completed after that deadline, but before X has exercised its termination rights, X shall no longer have termination rights under this item 20.7 in relation to that particular Preparation Activity.</p>
(b) X's right to partially terminate the Individual Contract if it wishes to do so	<p>X may do so.</p> <p>But only in relation to a part of the Individual Contract which</p> <ul style="list-style-type: none"> Is reasonably and genuinely affected by the relevant Preparation Activity; and Is reasonably severable from the rest of the Individual Contract.
(c) Consequence of partial termination if it is permitted in item (b)	<p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. According to the formal requirements in section 72. Promptly on being requested to do so by the other party.
(d) How X terminates the Individual Contract (or relevant part of it, if partial termination is permitted in item (b))	<ul style="list-style-type: none"> By notice in writing to Y. The notice must strictly comply with section 121. If X is partially terminating the Individual Contract (and may do so under item (b)): the notice must indicate the relevant part being terminated. The notice may be given <ul style="list-style-type: none"> At any time after the deadline indicated in item (a). But not after the relevant Preparation Activity is subsequently completed (even if after the deadline in item (a)).
(e) Whether X is permitted to terminate the Individual Contract even if any other Preparation Activity for which X is responsible remains incomplete	<p>X may do so.</p>

Commencement

21. Commencement of the Services

21.1 When the Provider must commence providing the Services under the Individual Contract

- As indicated in the relevant Work Order.
- If it is not reasonably clear in the Work Order when the Services are to commence:** the Provider must commence them promptly after the Individual Contract is executed.

- 21.2 Strict deadline by which the Provider must commence the Services under the Individual Contract, if and as extended under item 21.3
- This only applies if there are **no Preparation Activities** in relation to the Individual Contract (according to the Work Order)
 - It is a Termination Default Event of the Provider if the Provider has not commenced the Services by this deadline

Either

- As indicated in the relevant Work Order.
- **If it is not reasonably clear in the Work Order: 30 days** after either:
 - The commencement date of the Services indicated in the Work Order.
 - **If it is not reasonably clear in the Work Order when the Services are to commence:** the date the Individual Contract is executed.

- 21.3 Extensions to the strict deadline in item 21.2
- This only applies if there are **no Preparation Activities** in relation to the Individual Contract (according to the Work Order)

- With the written consent of the Permitted Purchasing Body.
- Such consent shall not be unreasonably withheld where delays in commencement are due to circumstances genuinely outside the Provider's reasonable control (including delays which are substantially caused by the Permitted Purchasing Body).

Expiry

22. Expiry

- 22.1 Expiry date of the Individual Contract
- 22.2 Whether the Individual Contract automatically expires when the Flexible Purchasing System expires or is terminated
- 22.3 Whether the Provider is entitled to any compensation from the Permitted Purchasing Body on the expiry of the Individual Contract
- 22.4 If the Individual Contract is extended under section 23

As indicated in the relevant Work Order.

No, the Individual Contract continues until its own expiry date, or until it is terminated early.

Not for this reason alone.
Exception: unless indicated elsewhere in the terms of the Individual Contract (as described in item 1.3) and/or in any exit plan described in section 110.

- Reference in these Terms and Conditions and/or a relevant Work Order to the expiry or expiry date of the Individual Contract is reference to the expiry or expiry date of the extension period; and
- **If there is more than one extension period:** the expiry or expiry date of the last period for which the Individual Contract is extended.

23. Extensions

- 23.1 Periods for which the Permitted Purchasing Body may extend the Individual Contract
- 23.2 Whether the Permitted Purchasing Body may extend the Individual Contract for a shorter period than that indicated in item 23.1
- 23.3 Any deadlines or other time restrictions on the Permitted Purchasing Body in exercising its right to extend the Individual Contract

As indicated in the Work Order.

It may do so.

As indicated in the Work Order.

<p>23.4 Changes to the terms of the Individual Contract (as the terms stand at the expiry date) during the extension period E.g. changes to amounts payable by one party to another</p>	<ul style="list-style-type: none"> • Unchanged unless otherwise agreed by the parties in writing according to section 72. • In any case, this section 23 shall not apply in the final extension period (i.e. there shall be no further extension periods).
<p>23.5 Procedure the Permitted Purchasing Body must strictly follow if it wishes to extend the Individual Contract under this section 23</p>	<p>It must give the Provider a notice as follows:</p> <ul style="list-style-type: none"> • Strictly according to section 121. • Subject to the deadlines and other time restrictions in item 23.3. • The Permitted Purchasing Body must clearly indicate the extension period in the notice.
<p>23.6 Whether any Individual Contract may be extended under this section 23 where the extension period commences after the expiry of the Flexible Purchasing System</p>	<p>No.</p>

Financial arrangements

24. Charges

<p>24.1 Amount or calculation of the current Charges which the Permitted Purchasing Body is required to pay to the Provider in consideration for providing the Provider providing Services under the Individual Contract</p>	<p>As indicated in the Work Order.</p>
<p>24.2 Whether the Charges include or exclude VAT</p>	<p>They exclude VAT unless otherwise clearly indicated.</p>
<p>24.3 Routine changes to the Charges over time</p>	<p>As indicated in the Work Order.</p>

25. Charges relating to Service Users

<p>25.1 Any restriction on the right of the Provider to impose further charges on a Service User described in item 3.1 in relation to any Services provided under the Individual Contract to that Service User</p>	<p>As indicated in the Work Order.</p>						
<p>25.2 Arrangements regarding the obligation of the Permitted Purchasing Body to continue paying Charges to the Provider if the Service User described in item 3.1 is absent for a period for any reason (for example, in hospital, on holidays etc.)</p>	<p>As indicated in the Work Order.</p>						
<p>25.3 Arrangements regarding the obligation of the Permitted Purchasing Body to continue paying Charges to the Provider if there are vacancies from time to time</p>	<table border="1"> <tr> <td data-bbox="199 1657 790 1736"> <p>(a) What constitutes a ‘vacancy’ for the purposes of this item 25.3</p> </td> <td data-bbox="805 1657 1503 1736"> <p>As indicated in the Work Order.</p> </td> </tr> <tr> <td data-bbox="199 1736 790 1881"> <p>(b) Arrangements where the Permitted Purchasing Body is liable to continue paying the Provider in relation to vacancies</p> </td> <td data-bbox="805 1736 1503 1881"> <p>As indicated in the Work Order.</p> </td> </tr> <tr> <td data-bbox="199 1881 790 2018"> <p>(c) Arrangements where the Permitted Purchasing Body is not obliged to continue paying the Provider in relation to vacancies</p> </td> <td data-bbox="805 1881 1503 2018"> <p>As indicated in the Work Order.</p> </td> </tr> </table>	<p>(a) What constitutes a ‘vacancy’ for the purposes of this item 25.3</p>	<p>As indicated in the Work Order.</p>	<p>(b) Arrangements where the Permitted Purchasing Body is liable to continue paying the Provider in relation to vacancies</p>	<p>As indicated in the Work Order.</p>	<p>(c) Arrangements where the Permitted Purchasing Body is not obliged to continue paying the Provider in relation to vacancies</p>	<p>As indicated in the Work Order.</p>
<p>(a) What constitutes a ‘vacancy’ for the purposes of this item 25.3</p>	<p>As indicated in the Work Order.</p>						
<p>(b) Arrangements where the Permitted Purchasing Body is liable to continue paying the Provider in relation to vacancies</p>	<p>As indicated in the Work Order.</p>						
<p>(c) Arrangements where the Permitted Purchasing Body is not obliged to continue paying the Provider in relation to vacancies</p>	<p>As indicated in the Work Order.</p>						

(d) Other issues in relation to the payment of Charges if there are vacancies

As indicated in the Work Order.

26. No reimbursement of expenses

26.1 Any obligation of the Permitted Purchasing Body to reimburse the Provider for any third party expenditure incurred by the Provider in providing the Services (in addition to payment of Charges)

No obligation.

27. Invoicing by the Provider

27.1 Whether the Provider must submit invoices to the Permitted Purchasing Body to trigger an obligation of the Permitted Purchasing Body to pay Charges described in section 24

Only if indicated in the Work Order.
This section 27 only applies if the Work Order indicates the Provider must submit invoices in relation to the Individual Contract, and not otherwise.

27.2 When the Provider may issue invoices to the Permitted Purchasing Body for Charges calculated under section 24

As indicated in the Work Order,

27.3 Charges which the Provider is permitted to include in each invoice (and no other Charges except as agreed by the Permitted Purchasing Body in writing)

As indicated in the Work Order,

27.4 Whether the Permitted Purchasing Body may suspend recognition of invoices according to section 30

It may do so.

27.5 Any deadline by which the Provider must issue a particular invoice

No later than **60 days** after the date on which the Provider was first entitled to issue that invoice according to this section 27.

27.6 Consequences if the Provider issues a particular invoice **after** the relevant deadline in item 27.5

- The Permitted Purchasing Body **shall not** be liable to pay that invoice, even if the Provider has satisfactorily provided the Services to which the invoice relates.
- **Exception:** where either applies to the delay in issuing that invoice:
 - The Permitted Purchasing Body **specifically requested that delay, in writing.**
 - That delay was substantially caused by the Permitted Purchasing Body.

27.7 Formal requirements a Provider's invoice must meet (e.g. formats, accompanying documentation etc.)

As instructed by the Permitted Purchasing Body from time to time, acting reasonably.

27.8 Consequences if an invoice does not meet the requirements in item 27.7

- The Permitted Purchasing Body shall not be required to recognise the invoice.
- If the Permitted Purchasing Body has not raised any such issues of non-compliance after more than **30 days** after the invoice has been issued (if issued no later than the deadline indicated in item 27.5) that invoice shall be deemed to have met such requirements.

<p>27.9 How and to where must the Provider send its invoices</p>	<ul style="list-style-type: none"> As instructed by the Permitted Purchasing Body from time to time, acting reasonably. The Permitted Purchasing Body shall not be obliged to recognise any invoice if and for as long as the Provider has sent that invoice inconsistently with those instructions.
<p>28. Payment of Charges</p>	
<p>28.1 Due date for payment of Charges described in section 24 by the Permitted Purchasing Body to the Provider, subject to these Terms and Conditions This only applies if the Provider is required to submit invoices under section 27</p>	<p>30 days from the proper submission of the invoice submitted in accordance with these Terms and Conditions (see in particular, section 27).</p>
<p>28.2 Due date for payment of Charges described in section 24 by the Permitted Purchasing Body to the Provider, subject to these Terms and Conditions This only applies if the Work Order indicates that the Provider is NOT required to submit invoices under section 27</p>	<p>As indicated in the Work Order.</p>
<p>28.3 Whether the Permitted Purchasing Body may delay payment of Charges otherwise due according to this section 28 according to section 30</p>	<p>It may do so.</p>
<p>28.4 If the Permitted Purchasing Body wishes to dispute any Charges contained in any invoice issued by the Provider according to section 27</p>	
<p>(a) How the Permitted Purchasing Body raises the dispute</p>	<ul style="list-style-type: none"> By notice in writing to the Provider. The notice must be given strictly according to section 121. The notice must clearly set out <ul style="list-style-type: none"> The amount of the disputed Charges. The reasons why it is disputed.
<p>(b) Deadline by which the Permitted Purchasing Body must give the notice described in item (a)</p>	<ul style="list-style-type: none"> No later than 90 days after the invoice is issued. If no notice is not given in relation to a particular invoice (or a particular issue within an invoice) by that deadline, the Permitted Purchasing Body shall be regarded as having waived its rights to dispute that invoice (or issue within that invoice, as relevant).
<p>(c) Dealing with any dispute which the Permitted Purchasing Body raises according to this item 28.4</p>	<ul style="list-style-type: none"> It shall be regarded as a Relevant Dispute for the purposes of section 119. Section 119 shall apply to the resolution of that Relevant Dispute.
<p>28.5 Consequences if part of an invoice (section 27) is subject to a genuine dispute, but other parts of it are not in dispute</p>	<p>The dispute shall not in itself affect the Permitted Purchasing Body's obligations to pay the undisputed part of the invoice.</p>
<p>28.6 How the Permitted Purchasing Body must make payments of Charges to the Provider in connection with these Terms and Conditions</p>	<p>By BACS into the Provider's nominated bank account from time to time.</p>

29. Early payment discount

29.1 Discounts which the Permitted Purchasing Body may apply to relevant Charges otherwise calculated under section 24 under a particular invoice if the Permitted Purchasing Body pays that invoice before the due date for payment according to section 27

As indicated in the Work Order.

30. Right to delay payment etc.

30.1 Actions which the Permitted Purchasing Body may take if and for as long as any of the circumstances in item 30.2 applies at the time (any of the following

(a) Recognition of invoices (section 27)

Suspend recognition of outstanding invoices issued by the Provider under section 27 for the purposes of determining when payment is due under item 28.1, if permitted to do so under item 27.4.

(b) Delay payment (section 28)

Delay payment of Charges otherwise payable under section 28 if permitted to do so in item 28.3.

(c) Pension reimbursements (section 48)

Delay payment of any reimbursements to the Provider otherwise due under item 48.6. if permitted to do so under item 48.7(d).

30.2 The Permitted Purchasing Body may take any one or more of the actions described in item 30.1 (as relevant at the time) **if and for as long** as any of the following applies at the time

(a) Overdue report, output etc.

Any specific report, output, deliverable, proposal, plan or the like of any of these which the Provider is required to provide the Permitted Purchasing Body according to the Individual Contract remains overdue.

- **Exception:** where the delay is substantially caused by any failure by the Permitted Purchasing Body to meet any Client Assistance in item 73.1, subject to the Provider having met the requirements of item 73.2.
- **Exception:** to the extent the Provider is excused under item 76.1 due to any Uncontrollable Circumstance (section 74).
- **Exception:** to the extent the Permitted Purchasing Body has agreed in writing to any extension.

(b) Social value proposal

Any updated social value proposals required in the Individual Specification (or otherwise in the Work Order of the relevant Individual Contract) is overdue.

(c) Continuity plans (item 75.1)

A first draft of the business or service continuity plan is overdue according to item 75.1(b).

(d) Exit plan (item 110.3)

A first draft of the exit plan is overdue according to item 110.3.

(e) Overdue debts

- Any debt or other liability then owed by the Provider and/or its Affiliate to the Permitted Purchasing Body and/or its Affiliate (whether in connection with these Terms and Conditions or otherwise) remains overdue.
- **Exception:** this does not apply to any debt or other liability which is subject to a genuine dispute which the Provider and/or its relevant Affiliate is using reasonable and genuine efforts to attempt to resolve.

(f) Remedying Material Breach	The Provider has not yet remedied (to the reasonable satisfaction of the Permitted Purchasing Body) a Material Breach of the Individual Contract after the Permitted Purchasing Body has requested the Provider to do so, according to, and for the purposes of item 104.2.
(g) Remedial Plan (section 91)	If and for as long as either of the following applies <ul style="list-style-type: none"> • The Provider's first draft of a Remedial Plan is overdue under section 91. See item 91.4(b) for the deadline; or • The Provider has not yet properly completed its obligations under any Remedial Plan described in section 91 which has been agreed between the parties.
(h) Removal of Personnel (section 38)	The Provider has not properly complied with any request for the removal of Personnel which the Permitted Purchasing Body has properly made under section 38.
(i) Removal of subcontractors (section 62)	The Provider has not properly complied with any request for the removal of a subcontractor which the Permitted Purchasing Body has properly made under section 62.
(j) Inspection requirements (section 86)	The Provider is not materially complying with its obligations under item 86.4 in relation to an inspection which the Permitted Purchasing Body has requested and is entitled to undertake under section 86.

31. Set off

31.1 Whether the Provider has the rights of set off, counterclaim, deduction (or the like of any of these) under the Individual Contract	No, all such rights of the Provider (whether arising in law, equity or otherwise) are waived to the fullest extent permitted by Law.
31.2 Rules in relation to the rights of set off, counterclaim, deduction (or the like of any of these) of the Permitted Purchasing Body under the Individual Contract	
(a) Debts and other liabilities which the Permitted Purchasing Body may deduct from the debts and other liabilities described in item (b)	All of the following <ul style="list-style-type: none"> • Any debts or other liabilities owed by the Provider and/or its Affiliate to the Permitted Purchasing Body and/or its Affiliate. • Regardless of whether <ul style="list-style-type: none"> - Such debts or other liabilities are connected with the Individual Contract - Such debts or other liabilities arise in tort, contract or otherwise. • Including any unliquidated debt as estimated by the Permitted Purchasing Body acting reasonably and in good faith.
(b) Debts and other liabilities from which the Permitted Purchasing Body may deduct the debts or other liabilities described in item (a)	Any debts or other liabilities to which all of the following apply <ul style="list-style-type: none"> • Owed by the Permitted Purchasing Body and/or its Affiliate • To the Provider and/or its Affiliate • In connection with the Individual Contract • Whether arising in tort, contract or otherwise.

(c) Exceptions in relation to debts or other liabilities described in item (a) or in item (b)	This item 31.2 shall not apply to any debt or other liability owed by any person to the extent it is subject to a genuine dispute in relation to which the relevant debtor is using reasonable and genuine efforts to attempt to resolve.
(d) Whether anything in this item 31.2 limits the rights and remedies of the Permitted Purchasing Body	No.
(e) Obligation of the Permitted Purchasing Body to notify the Provider of any exercise of the rights of the Permitted Purchasing Body under this item 31.2	<ul style="list-style-type: none"> • The Permitted Purchasing Body must do so not less than 7 days before exercising such rights. • The communication must be in writing to the Representative of the Provider. The Permitted Purchasing Body is not obliged to observe the formalities in section 121 in relation to this communication.

32. Interest on late payment

32.1 What interest accrues on overdue debts or other liabilities owed between the Permitted Purchasing Body and the Provider <ul style="list-style-type: none"> • In connection with the Individual Contract • Whether arising in tort, contract or otherwise • Regardless of which of them is the debtor or creditor 	<p>The relevant debtor shall be obliged to pay interest to the relevant creditor as follows:</p> <ul style="list-style-type: none"> • In addition to the relevant principal. • At the following rate: 4% per year above the Bank of England base rate at the time (but if the Bank of England base rate falls below 0%, for this purpose it shall be deemed to be 0%). • To compound monthly from the due date until payment, whether before or after judgement. • Except to the extent and for as long as the debt or other liability is subject to a genuine dispute which the debtor is using reasonable and genuine efforts to attempt to resolve.
32.2 Strict procedures which a relevant creditor must follow if it wishes to claim interest that has accrued under item 32.1 in relation to a particular overdue debt or other liability	<p>The creditor must give the debtor a notice as follows</p> <ul style="list-style-type: none"> • According to section 121. • Clearly indicating <ul style="list-style-type: none"> - The relevant overdue debt or other liability, and - The interest accrued at the time the notice is given. • If the overdue debt has been paid at the time the notice is given: the notice must be given no later than 30 days after that overdue debt was received by the creditor (and if it is paid in instalments, 30 days after the creditor's receipt of payment of the final instalment).

33. Suspension by the Provider for non-payment

33.1 Right of the Provider to suspend Services to the Permitted Purchasing Body as a result of overdue debts or other liabilities owed to the Provider by the Permitted Purchasing Body in connection with the Individual Contract	<p>The Provider may not do so for this reason alone.</p> <p>The only rights and remedies of the Provider in relation to an overdue debt or other liability are as follows:</p> <ul style="list-style-type: none"> • To claim interest according to section 32; and • To exercise relevant termination rights (if any) if non-payment results in a Termination Default Event of the Permitted Purchasing Body.
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34. Provider lien

34.1 The Provider’s lien rights in connection with the Individual Contract

These rights are waived to the fullest extent permitted by Law.

Personnel issues

35. Safeguarding

35.1 Whether safeguarding is relevant to the Services

Yes.

35.2 **Safeguarding investigations:** the Provider must comply with all of the following obligations in relation to any safeguarding investigation in respect of any of its (and/or its subcontractor’s) Personnel engaged in the Services

(a) To keep informed

The Provider must keep the Permitted Purchasing Body informed in a timely manner of developments in relation to the investigation as the Provider becomes aware of them.

(b) To comply with directions to suspend etc.

The Provider must (at its own cost) comply in a proper and timely manner with any reasonable requests of the Permitted Purchasing Body to suspend or permanently discontinue the involvement of the relevant individual in safeguarding-related activities in connection with the Services.

(c) If the relevant individual is cleared

If and when any investigations discontinue or the relevant individual is cleared (e.g. by a court), the Provider may reinstate the individual (assuming there are no other grounds at the time to require his/her suspension or removal).

35.3 Other general safeguarding obligations

The Provider must comply with the relevant Law relating to safeguarding in all its activities, whether or not connected with the Services.

36. Provider Personnel requirements

36.1 Specific requirements which the Provider must ensure its each of its Personnel (including those of its subcontractors) meets before the Provider may involve the relevant individual in the Services (as relevant, depending on that individual’s duties)

Activity	Requirement
(a) Lone contact with the children and/or vulnerable adults if safeguarding is relevant to the Services (item 35.1)	Appropriate DBS checks
(b) All Personnel engaged in the Services	Right to work in the UK.

(c) All Personnel engaged in the Services	<ul style="list-style-type: none"> No unspent convictions of any crime involving dishonesty, violence, sexual misconduct or serious property damage (regardless of the penalty) or any other type of offence resulting in a prison sentence (whether suspended or otherwise). No current anti-social behaviour orders (as defined in the Crime and Disorder Act 1998). Exception: to the extent approved by the Permitted Purchasing Body in writing, at discretion. The Provider must make sufficient disclosures about the matter to the Permitted Purchasing Body to enable it to properly consider the matter. If the Permitted Purchasing Body is not also the Lead Council: the above approval of the Lead Council on behalf of the Permitted Purchasing Body shall be sufficient.
(d) Other: as indicated in the Individual Specification and/or the Work Order	As indicated in the Individual Specification and/or the Work Order

36.2 **Extent to which the requirements in item 36.1 apply to Personnel whose employment transfers to the Provider (or its direct or indirect subcontractor) as a TUPE Transfer on a Commencement Transfer:** the relevant individual shall be deemed to meet each requirement relevant to his/her activities in connection with the Services **until the first of the following** applies

(a) Change in circumstances	<p>An event or circumstance occurs or arises</p> <ul style="list-style-type: none"> After the Commencement Transfer Resulting in the individual no longer meeting the requirement in item 36.1 to the extent relevant to his/her activities in connection with the Services.
(b) New activities	<p>The requirement in item 36.1 relates specifically to any new activity which the individual carries out in connection with the relevant Services which that individual did not carry out immediately before the Commencement Transfer.</p>
(c) If the transferor employer is NOT the Permitted Purchasing Body or its Affiliate	<ul style="list-style-type: none"> The expiry of the first 3 months from the date of the Commencement Transfer. After this, the Provider must make its own checks whether or not the individual meets the relevant requirements.

37. General obligations in relation to Provider Personnel

37.1 The Provider must comply with all of the following obligations in relation to its (and its subcontractor's) Personnel engaged in connection with the Services provided under the Individual Contract

(a) Sufficient, suitable	<p>The Provider must ensure the following in order to meet its obligations in connection with the Individual Contract:</p> <ul style="list-style-type: none"> It and its relevant subcontractors (as between them) have a sufficient number of Personnel. Such Personnel are reasonably suitable for the tasks allocated to them in connection with the Services, having regard to their personal and professional characteristics (e.g. experience, qualifications, training etc.).
(b) Meet requirements	<p>The Provider must not allocate activities to any individual if he/she does not properly meet (or is not deemed to meet) the requirements of item 36.1, insofar as those requirements are relevant to those activities.</p>

(c)	Directions	The Provider must give appropriate directions to ensure each such Personnel carries out his/her relevant duties in a competent, timely, professional, safe, ethical, courteous and lawful manner.
(d)	Levels of authority	The Provider must ensure those Personnel have been given levels of authority to bind the Provider which are appropriate to the relevant individual's duties in connection with the Services.
(e)	Support	The Provider must provide those Personnel with such instruction, supervision, equipment, training and other resources and support that are appropriate and reasonably necessary to the relevant individual's duties in connection with the Services.
(f)	Policies	<ul style="list-style-type: none"> The Provider must have in place HR policies which meet or exceed standards reasonably expected of comparable firms or organisations. The Provider must promptly provide the Permitted Purchasing Body with copies of such policies on request (to be made reasonably and in good faith).
(g)	Not to cause breach	The Provider must not give Personnel directions or assistance that would cause the Provider to breach its obligations connected with the Individual Contract.
(h)	Subcontractors	<ul style="list-style-type: none"> The Provider must use reasonable endeavours (including properly exercising relevant contractual rights) to ensure subcontractors which are significantly involved in providing the Services comply with this section 37 in relation to their own relevant Personnel engaged in connection with the Services. This obligation does not apply where the subcontractor only takes a minor role in the provision of the Services.

38. Removal of Provider Personnel

38.1 Right of the Permitted Purchasing Body to require the removal of Personnel of the Provider (including its subcontractors) from activities in connection with the Services

(a)	When the Provider must remove such Personnel	Promptly on request of the Permitted Purchasing Body.
(b)	When the Permitted Purchasing Body may request removal of relevant Personnel	<ul style="list-style-type: none"> Only with reasonable grounds. See item 38.2 for examples of reasonable grounds.
(c)	Obligations of the Permitted Purchasing Body before requesting removal of Personnel	<p>All of the following</p> <ul style="list-style-type: none"> It must reasonably consult with the Provider, and It must give the Provider a reasonable opportunity to remedy or otherwise deal with the matter. <p>Exception to the above obligations: where immediate removal of the individual by the Permitted Purchasing Body is reasonably justified.</p>
(d)	Consequences of such removal on the Provider's obligations	Removal shall not in itself relieve the Provider from its obligations in connection with the Individual Contract.

(e) Reinstatement of the individual

- The Provider must not reinstate (or permit a relevant subcontractor to reinstate) the individual to become involved in the Services again without the prior written consent of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council).
- Such consent shall not be unreasonably withheld where either of the following applies:
 - **If removal is for competence-related issues:** the individual is allocated to activities better suited to his/her abilities.
 - **In any case:** the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) is satisfied (acting reasonably) that appropriate corrective action has been taken (where reasonably possible).

38.2 Examples of reasonable grounds for which the Permitted Purchasing Body may require the removal of Personnel under this section 38 (where relevant and it does not exclude other reasonable grounds that may apply)

(a) Meeting requirements

The individual does not properly meet the requirements indicated in item 36.1 where relevant to his/her duties.

(b) Consents

The individual has not given appropriate consents (particularly for the purposes of Law relating to data protection) to allow the Permitted Purchasing Body to check that he/she properly meets the requirements relevant to him/her in item 36.1.

(c) Misconduct

- The individual's serious misconduct in his/her activities in connection with the Services.
- This includes, without limitation, any act by the individual contrary to section 114.

(d) Incompetence

The individual has demonstrated serious incompetence in his/her allocated tasks in connection with the Services.

(e) Person of ill repute

- All of the following
- The individual is, or has become, a person of such serious ill repute
 - Whether or not in connection with the Services
 - That is sufficiently serious that a reasonable person would not expect
 - The individual to be involved in the Services; and/or
 - The individual to be associated with the Permitted Purchasing Body generally.

39. Provider employee terms and conditions

39.1 Obligations of the Provider in relation to the terms and conditions of its employees engaged in connection with the Services

As indicated in the General Specification.

39.2 To which employees of the Provider the obligations in item 39.1 apply

As indicated in the General Specification.

39.3 Obligations of the Provider in relation to the terms and conditions of employees of its subcontractors engaged in connection with the Services

To ensure such subcontractors comply with the obligations described in item 39.1.
 The Provider's obligation to do so is on a **reasonable endeavours** basis only.
 The Provider's obligation to do so only applies to the following subcontractors:

- Those in relation to which consent is required under section 59; and
- Promised Subcontractors (section 60).

The Provider's obligation does not extend to its other subcontractors.

40. Key Personnel

40.1 Definition of 'Key Personnel'

- Each current Key Personnel indicated in item 40.2.
- Each replacement appointed according to this section 40 from time to time to have the involvement with the Services indicated in item 40.2.

40.2 Indicate any current 'Key Personnel' of the Provider whom the Provider must use in certain activities connected with the Services

Involvement, required role etc. in connection with the Services	Current named individual
As indicated in the Work Order	As indicated in the Work Order

40.3 The Provider must do all of the following in relation to each Key Personnel in place at the time

(a) Contracts in place

The Provider must ensure it has appropriate contracts in place to ensure the Key Personnel can have the relevant involvement indicated in item 40.2.

(b) Directions

- The Provider must give the Key Personnel appropriate directions to ensure he/she gives appropriate time and attention to his/her involvement in the Services, as required in item 40.2.
- **Exception:** where and for as long as the Key Personnel cannot do so in extenuating circumstances (e.g. illness, disability, jury service, maternity or paternity leave, genuine holidays etc.).

(c) Not to terminate

- The Provider must not terminate either of the following whilst it is required to provide the Services:
 - **If the Provider's contract is with the Key Personnel directly (e.g. an employee, officer, worker or direct contractor of the Provider):** the Provider's contract with the Key Personnel.
 - **If the Key Personnel is an employee, officer, worker or direct contractor of the Provider's subcontractor:** the Provider's contract with that subcontractor.
- **Exception:** where termination of the relevant contract is reasonably justified under the relevant contract with the Key Personnel or his/her employer, as relevant.

(d) Other

40.4 Right of the Provider to remove the Key Personnel from his/her required involvement in the Services **whilst he/she still remains an employee, officer, worker or direct contractor of the Provider**

The Provider's obligations in this relevant Individual Contract relating to its (or its subcontractor's) Personnel generally also apply to its Key Personnel.

Only with the written consent of the Permitted Purchasing Body (or the Lead Council on its behalf). The Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) must not withhold that consent where the removal of the Key Personnel is made for good reasons, including the following (where relevant and without limiting other good reasons for doing so)

- The removal is for genuine purposes relating to the career development of the individual (e.g. a genuine promotion).
- The individual has made a genuine request to be relocated to another location (e.g. another part of the country, another country) where his/her continued involvement in the Services is not reasonably practicable.
- Serious illness, maternity, or other factors affecting the individual where his/her continued involvement in the Services is not reasonably practicable.

The Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) may refuse consent until it is satisfied (acting reasonably) with arrangements regarding a replacement.

40.5 Approval rights of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) in connection with the appointment of any replacement Key Personnel from time to time

- Any replacement shall be subject to the prior written approval of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council).
- The Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) must not unreasonably withhold that approval.
- The Provider must promptly comply with reasonable requests of the Permitted Purchasing Body (or Lead Council) to review CVs and to conduct interviews for this purpose.

40.6 For how long any Key Personnel is to be continuously absent from his/her activities (e.g. due to illness) before he/she is to be regarded as having discontinued his/her involvement with the Provider for the purposes of item 40.7

45 continuous Business Days.

40.7 If the Key Personnel has discontinued his/her involvement with the Provider	<p>All of the following apply:</p> <ul style="list-style-type: none"> • The Provider must replace him/her no later than 60 days after he/she discontinues. • This is subject to the approval rights of the Permitted Purchasing Body (or the Lead Council acting on its behalf if the Permitted Purchasing Body is not also the Lead Council) in item 40.3. • If the Provider fails to do so by this deadline (and if and for as long as the failure to replace is ongoing), it shall be a Termination Default Event of the Provider. 								
40.8 The Provider must keep the Permitted Purchasing Body informed promptly on the Provider first becoming aware of any of the following in relation to the Key Personnel at the time (the Provider shall have met this obligation if it informs the Lead Council on the matter, if the Permitted Purchasing Body is not also the Lead Council)	<table border="1"> <tr> <td data-bbox="231 658 790 792">(a) Anticipated absence</td> <td data-bbox="790 658 1461 792">The Provider becoming aware of any significant anticipated absence of the Key Personnel from his/her involvement in the Services for any reason (e.g. illness, maternity etc.).</td> </tr> <tr> <td data-bbox="231 799 790 875">(b) Death, disability</td> <td data-bbox="790 799 1461 875">The death or total and permanent disability of the Key Personnel.</td> </tr> <tr> <td data-bbox="231 882 790 1016">(c) Termination notice</td> <td data-bbox="790 882 1461 1016">Any notice given by or to the Key Personnel to terminate his/her contract with the Provider or (if he/she is engaged by a subcontractor) his/her contract with that subcontractor.</td> </tr> <tr> <td data-bbox="231 1023 790 1158">(d) Termination of subcontractor</td> <td data-bbox="790 1023 1461 1158">If the Key Personnel is contracted to a subcontractor of the Provider: any notice given by or to that subcontractor to terminate its contract with the Provider.</td> </tr> </table>	(a) Anticipated absence	The Provider becoming aware of any significant anticipated absence of the Key Personnel from his/her involvement in the Services for any reason (e.g. illness, maternity etc.).	(b) Death, disability	The death or total and permanent disability of the Key Personnel.	(c) Termination notice	Any notice given by or to the Key Personnel to terminate his/her contract with the Provider or (if he/she is engaged by a subcontractor) his/her contract with that subcontractor.	(d) Termination of subcontractor	If the Key Personnel is contracted to a subcontractor of the Provider: any notice given by or to that subcontractor to terminate its contract with the Provider.
(a) Anticipated absence	The Provider becoming aware of any significant anticipated absence of the Key Personnel from his/her involvement in the Services for any reason (e.g. illness, maternity etc.).								
(b) Death, disability	The death or total and permanent disability of the Key Personnel.								
(c) Termination notice	Any notice given by or to the Key Personnel to terminate his/her contract with the Provider or (if he/she is engaged by a subcontractor) his/her contract with that subcontractor.								
(d) Termination of subcontractor	If the Key Personnel is contracted to a subcontractor of the Provider: any notice given by or to that subcontractor to terminate its contract with the Provider.								
40.9 If and for as long as the Key Personnel or his/her employer has a contract in place with a subcontractor of the Provider (e.g. an employment contract, a contract as an independent contractor)	The Provider must use reasonable endeavours to ensure the subcontractor complies with item 40.3 and item 40.4.								

TUPE on commencement

41. Whether TUPE transfers expected on commencement

41.1 Whether any individual is expected to have any rights to a TUPE Transfer on the commencement of any Services under the Individual Contract	As indicated in the Work Order.
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42. If TUPE transfers unexpectedly arise on commencement

42.1 Obligations of the parties if any individual **unexpectedly** has a right to a TUPE Transfer on the commencement of any Services under the Individual Contract (this section 42 only applies if the Work Order indicates that **no individual** is expected to have rights to a TUPE Transfer on the commencement of any Services under the Individual Contract)

Each of them must do all of the following where relevant

- Comply in a proper and timely manner with its respective obligations under relevant Law (particularly the TUPE Regulations) in relation to that transfer.
- Use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to ensure such compliance with their respective direct or indirect contractors, where relevant to that transfer.
- To do the following (in a proper and timely manner)
 - Provide and use reasonable endeavours to require their respective contractors to provide
 - The other party (or the other party's respective contractor, if it is the transferor employer or the transferee employer)
 - With appropriate information
 - To enable the other party (or its contractor) to properly carry out its obligations under regulation 13 of those regulations.

43. TUPE Transfers on a Commencement Transfer

43.1 Application of this section 43

It applies if the Work Order indicates that **at least one individual** is expected to have rights to a TUPE Transfer on the commencement of any Services under the Individual Contract.

43.2 Information regarding each individual who is expected to have a right to a TUPE Transfer in connection a Commencement Transfer in relation to the Individual Contract

As indicated in the Work Order.

43.3 When a relevant Commencement Transfer is deemed to take place in relation to the Individual Contract

At **23.59 hours** on the day on which relevant activities transfer.

43.4 Obligation of the Permitted Purchasing Body to update the information regarding individuals who are expected to have a right to a TUPE Transfer in connection a Commencement Transfer (up to the date of the Commencement Transfer)

The Permitted Purchasing Body must do so in a timely manner as changes occur, and in any case, on the written request of the Provider (acting reasonably).

43.5 Obligations of the parties if any individual has a right to a TUPE Transfer as a result of a Commencement Transfer

Each of them must do all of the following where relevant

- Comply in a proper and timely manner with their respective obligations under the TUPE Regulations (and relevant Law generally) in relation to that TUPE Transfer.
- Use reasonable endeavours (including proper enforcement of any contractual rights, if relevant) to do the following
 - To ensure such compliance with their respective direct or indirect contractors, where any of them is the transferor employer or the transferee employer in relation to the TUPE Transfer.
 - **In the case of the Permitted Purchasing Body if the transferor employer is its direct or indirect contractor:** to ensure that contractor properly meets all of its Pre-TUPE Transfer Liabilities to all of its employees who have rights to a TUPE Transfer on the Commencement Transfer.
- To do the following (in a proper and timely manner)
 - Provide and use reasonable endeavours to require their respective contractors to provide
 - The other party (or the other party's respective contractor, if it is the transferor employer or the transferee employer)
 - With appropriate information
 - To enable the other party (or its contractor) to properly carry out its obligations under regulation 13 of the TUPE Regulations.

43.6 Whether the Permitted Purchasing Body gives the Provider any promise that any particular individual will exercise his/her right to a TUPE Transfer on a Commencement Transfer

Due to the nature of this right of the individual, the Permitted Purchasing Body cannot give a promise of this kind.

44. TUPE Transfers – union recognition

44.1 Obligations of the Provider in relation to recognition of unions in relation to which individuals who exercise their rights to a TUPE Transfer on a Commencement Transfer are members at the time

(a) Recognise

The Provider must recognise the trade unions representing those individuals as at the date of the TUPE Transfer.

(b) Supply copies of recognition agreements

The Provider must supply the Permitted Purchasing Body with copies of each of its union recognition agreements.

(c) Subcontractors

- The Provider must use reasonable endeavours to ensure compliance with the above by each of its directly or indirectly appointed subcontractors who is a transferee employer of the relevant individual.
- This applies whether the TUPE Transfer occurs on commencement of the Services, or if it occurs in any later service provision change if the subcontractor is replaced from time to time.

45. TUPE Transfers – due diligence arrangements

45.1	Whether this section 45 applies to the Individual Contract if there is to be any Commencement Transfer	As indicated in the Work Order
45.2	Due diligence rights of the Provider	<p>The Provider is permitted to carry out a reasonable due diligence to determine all of the following issues</p> <ul style="list-style-type: none"> • Which individuals have a right to a TUPE Transfer on a Commencement Transfer. • Whether or not those individuals will exercise their rights to that TUPE Transfer; • The terms and conditions of employment of those individuals who will exercise their rights to a TUPE Transfer (e.g. job descriptions). • The associated costs, liabilities or the like in relation to the TUPE Transfers of those individuals.
45.3	When the Provider is entitled to conduct the due diligence described in item 45.2	Promptly after the Individual Contract is entered.
45.4	Obligations of the Permitted Purchasing Body in connection with the due diligence activities of the Provider under this section 45	<p>The Permitted Purchasing Body:</p> <ul style="list-style-type: none"> • Must provide the Provider with cooperation (see examples in item 45.5) • To enable the Provider to determine the issues described in item 45.2. <p>The Permitted Purchasing Body must do so</p> <ul style="list-style-type: none"> • In a reasonable and timely manner; and • At its own cost.
45.5	Examples of cooperation which the Permitted Purchasing Body must provide for the purposes of item 45.4	<p>Each of the following (where relevant and not an exhaustive list)</p> <ul style="list-style-type: none"> • Give the Provider access to records, information or the like to enable the Provider to determine the issues described in item 45.2. • Give such cooperation to each subcontractor which is directly or indirectly appointed by the Provider and which is the transferee employer as a result of the TUPE Transfer. • Use reasonable endeavours (including exercising rights under contracts, if relevant) to ensure compliance with the above by any previous service provider of the Permitted Purchasing Body if that service provider is the transferor employer in the TUPE Transfer.
45.6	How the parties are to conduct the due diligence	<p>All of the following:</p> <ul style="list-style-type: none"> • In good faith. • In a timely manner. • On an ‘open book’ basis’.

45.7 Consequences of the findings resulting from the due diligence activities of the Provider under this section 45

<p>(a) If the findings of the due diligence result in an increase in the charges of a Client Required Subcontractor used in connection with the Services (section 64)</p>	<p>The Permitted Purchasing Body shall reimburse the Provider that increase in charges of the Client Required Subcontractor</p> <ul style="list-style-type: none"> • To whom any individual's employment transfers as a TUPE Transfer • To the extent the increase in those charges resulting from those transfers are agreed between the Client Required Subcontractor and the Permitted Purchasing Body.
<p>(b) If the activities from the due diligence indicate increased costs of the Provider (including increased charges from its subcontractors used in connection with the Services)</p>	<ul style="list-style-type: none"> • The Permitted Purchasing Body must consider in good faith and must not unreasonably refuse a reasonable request by the Provider to increase its Charges under section 24 to meet that increase in costs. • The increases in costs described in item (c) do not apply. • This obligation of the Permitted Purchasing Body only applies if all of the conditions in item 45.9 are met.
<p>(c) Increases in costs which do not apply as indicated above (any of the following)</p>	<p>Each of the following where relevant</p> <ul style="list-style-type: none"> • Any increase in charges imposed by any Client Required Subcontractor (see section 64) - this is covered in item (a). • Any increase in costs for which the Provider is compensated elsewhere according to these Terms and Conditions and/or a relevant Work Order. • Any increase in costs for which the Provider is compensated by Law (e.g. regulation 12 of the TUPE Regulations) or from any arm's length third party. • Any increase in costs resulting from a change in Law that comes into effect after the date on which the Individual Contract is executed.
<p>(d) If the activities from the due diligence indicate decreased costs of the Provider (including decreased charges from its subcontractors used in connection with the Services)</p>	<ul style="list-style-type: none"> • The Provider shall not unreasonably refuse a reasonable request by the Permitted Purchasing Body for the Provider to reduce its Charges under section 24 to reflect the reduced costs. • Exception where this does not apply: in relation to any decrease in costs to the extent it is due to any individual expected to have rights to a TUPE Transfer (and who was disclosed by the Permitted Purchasing Body before the service provision change, whether by name or role etc.) not exercising his/her right to a TUPE Transfer for whatever reason. • Exception where this does not apply: in relation to a decrease in charges of a Client Required Subcontractor. (section 64).

- (e) If the Provider Submission includes any promise by the Provider to provide the Services with a proposed organisational structure or the like
- The Permitted Purchasing Body must **consider in good faith and must not unreasonably refuse** a request by the Provider to amend that organisational structure or the like.
- But only to the extent the request by the Provider is **reasonable and proportionate** according to any changes discovered as a result of this due diligence exercise
- Being changes to the number and/or the identity of individuals who have rights to a TUPE Transfer on commencement of the relevant Services
 - Compared to the number and/or identity of individuals expected to have such rights according to the most recent written communications from the Permitted Purchasing Body to the Provider immediately before the execution date of the Individual Contract.

45.8 Rules in determining whether the costs of the Provider (or its relevant subcontractors) have increased or decreased for the purposes of item 45.7

- (a) Which costs of the Provider (or such subcontractors) are the base from which any increase or decrease is determined
- Any of the following costs (subject to the rest of this item 45.8)
- Costs of remunerating the Personnel to be used in the Provider's workforce in connection with the Services, and/or
 - Costs of conducting a reorganisation to have in place the Provider's proposed workforce to be used in connection with the Services (e.g. recruitment costs, redundancy costs etc.).
- (b) Other rules which apply to the costs described in item (a)
- All of the following
- The costs must have been disclosed by the Provider in the Provider Submission.
 - In determining those disclosed costs, the Provider must have taken into account any disclosures made by or on behalf of the Permitted Purchasing Body regarding any individuals expected to have a right to a TUPE Transfer on the relevant Commencement Transfer.
 - The costs must be consistent with any requirements in these Terms and Conditions and/or a relevant Work Order regarding the pay and conditions of Personnel to be used in connection with the Services.

45.9 All of the following conditions must be met before the Permitted Purchasing Body has any obligations under item 45.7 in relation to increased costs of the Provider described in item 45.7

- (a) How and when the Provider must raise the request described in item 45.7
- The Provider must have raised that request according to all of the following
- In writing
 - To the Permitted Purchasing Body.
 - No later than **30 days** after first becoming aware of the circumstances resulting in the additional costs.
- (b) Any increase in the Charges in section 24 must meet all of the following requirements
- (i) Wholly attributable
- The increase in the Charges in section 24 must be **directly and exclusively attributable** to the increased costs which meet all of the requirements in the rest of this item (b).

(ii)	Who must have incurred those costs	<ul style="list-style-type: none"> • The Provider; or • Any subcontractor directly or indirectly appointed by the Provider in connection with the Services.
(iii)	All of the following apply	
	(A) The Charges in section 24 exclude TUPE costs	<ul style="list-style-type: none"> • The Charges are clearly indicated in section 24 (or in any document cross-referenced in it) to fully exclude the costs of the Provider (and/or the costs of its subcontractors where relevant) in accepting the TUPE Transfers of individuals on the commencement of the Services. • Exception: other than the costs of a Client Required Subcontractor described in section 64.
	(B) Not reasonably foreseeable	<p>The increased costs must not have been reasonably foreseeable by the Provider at the date of this relevant Work Order according to all of the following</p> <ul style="list-style-type: none"> • Due to circumstances outside the Provider's reasonable control • Including (without limitation) any non-disclosures or inaccuracies in relation to information supplied by the Permitted Purchasing Body or its previous service provider that is the transferor employer. • Regardless of whether or not there was any fault on the part of the Permitted Purchasing Body or the relevant previous service provider in relation to the non-disclosures, inaccuracies etc.
(iv)	Mitigation of the cost increase	<p>The Provider (or its relevant subcontractor) must be able to reasonably demonstrate</p> <ul style="list-style-type: none"> • To the satisfaction of the Permitted Purchasing Body (acting reasonably) • That the Provider or its subcontractor has used reasonable endeavours to mitigate the relevant increase in costs. See item (v) for examples.
(v)	Examples of activities for the purposes of item (iv)	<p>Any of the following (where appropriate and without limiting the other actions that may otherwise be reasonably expected)</p> <ul style="list-style-type: none"> • Disputing any unmerited Claims made or threatened by an individual in relation to his/her TUPE Transfer (or his/her alleged right to a TUPE Transfer). • Finding ways to have the cost increases borne by other revenue streams of the Provider or relevant subcontractor where it is appropriate to do so (e.g. by having an individual who is subject to a TUPE Transfer work on contracts with other clients etc.). • Working in a reasonable and cooperative manner with the Permitted Purchasing Body or their respective previous service providers to find ways to mitigate the costs.
(vi)	Nothing to do to cause increase	<p>There is no reasonable evidence that the Provider (or relevant subcontractor) has done anything unreasonable to unnecessarily cause the relevant cost increase.</p>

46. Permitted Purchasing Body’s liability on a Commencement Transfer

46.1 Liability of the Permitted Purchasing Body to the Provider and/or to the Provider’s direct or indirect subcontractors in relation to any individual who has (or asserts that he/she has) a right to a TUPE Transfer in connection with a Commencement Transfer where **neither the Permitted Purchasing Body nor its Affiliate is the transferor employer**

(a)	In relation to any Pre-TUPE Transfer Liabilities	Excluded to the fullest extent permitted by Law.
(b)	In relation to any other aspect of the actual or prospective TUPE Transfer of the individual This includes any inaccuracies and/or incompleteness of any information provided regarding the rights of individuals to a TUPE Transfer	Excluded to the fullest extent permitted by Law.
46.2	Statement regarding exclusions of liability of the Permitted Purchasing Body in item 46.1	<ul style="list-style-type: none"> • These exclusions are reasonable because the transferor employer is a previous service provider of the Permitted Purchasing Body, and not the Permitted Purchasing Body itself. • Therefore, these matters are outside the Permitted Purchasing Body’s reasonable control.

47. TUPE Transfers on a Commencement Transfer – Provider indemnity

47.1 Indemnity given by the Provider

(a)	Who the Provider indemnifies	<ul style="list-style-type: none"> • The Permitted Purchasing Body; or • Its previous direct or indirect service provider whichever is the relevant transferor employer of the relevant individual.
(b)	For what the Provider indemnifies (and keeps indemnified) the person in item (a)	<ul style="list-style-type: none"> • For that person’s respective Losses • For any of the following, as relevant <ul style="list-style-type: none"> - The first item of indemnity in item 47.2. - The second item of indemnity in item 47.3. - The third item of indemnity in item 47.4. - The fourth item of indemnity in item 47.5.

47.2 First item of the indemnity for the purposes of item 47.1(b)

(a)	For what the Provider indemnifies (and keeps indemnified) the person in item 47.1(a)	<ul style="list-style-type: none"> • For that person’s respective Losses • Resulting from any Claim made or threatened against that person as described in this item 47.2
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(b) **Who can make or threaten the Claim indicated in item (a):** any of the following

(i) Any individual to whom either of the following applies

(A)	Employment transfers	His/her employment transfers to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Transfer.
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	(B) Employment would have transferred	<p>His/her employment would have transferred to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Transfer but</p> <ul style="list-style-type: none"> • Any of the following applies: <ul style="list-style-type: none"> - He/she raised an objection to the TUPE Transfer; or - He/she resigned immediately prior to the Commencement Transfer service provision change; - He/she treats his/her employment as having been terminated under regulation 4(9) of the TUPE Regulations. • The main reason for the individual doing any of the above was any changes to the individual's terms and conditions, or working conditions proposed by the transferee employer.
	(ii) Acting on behalf	<ul style="list-style-type: none"> • Anyone acting on behalf of any individual described in item (i). • This may include any trade union, staff association or employee representative (whether or not recognised by the Provider or the relevant subcontractor) of which any of the above individuals is a member.
(c)	<p>The Claim must relate (for the purposes of item (a)) to a breach by the relevant transferee employer in connection with any of the following</p> <p>(i) Employment</p> <p>(ii) Collective agreement</p> <p>(iii) Transfer process</p> <p>(iv) In the case of an individual who raises an objection or resigns or treats his/her employment as having been terminated under item (b)(i)(B):</p>	<p>The relevant individual's employment with the transferee employer (including without limitation, any failure or delay to pay wages or other remuneration to that individual).</p> <p>Any collective agreement relevant to the individual (e.g. with his/her union).</p> <p>The transfer process in relation to the individual's TUPE Transfer, including a breach by the transferor employer of its consultation obligations under regulation 13 of the TUPE Regulations.</p> <p>The proposed changes described in item (b)(i)(B).</p>

47.3 **Second item of the indemnity for the purposes of item 47.1(b):** any respective Losses of any person indicated in item 47.1(a) in relation to any liability to which all of the following apply

(a) To whom the liability is owed	Any individual whose employment transfers to the Provider or its direct or indirect subcontractor (whichever is the relevant transferee employer) as a TUPE Transfer as a result of any Commencement Transfer.
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(b) For what the liability relates (to the extent all of the following apply)

- The liability relates to any of the following
 - The resignation of that individual before the date of the Commencement Transfer
 - That individual having treated his/her employment with the transferor employer as having terminated under regulation 4(9) of the TUPE Regulations
 - Any other Claim against the relevant person indicated in item 47.1(a) by that individual
- A substantial reason for his/her resignation or Claim was all of the following
 - Changes proposed by the transferee employer
 - To the individual's working conditions (including his/her remuneration, pension arrangements or otherwise)
 - Which are **substantial and unfavourable** to the individual
- Which the transferee employer proposes are to take effect after the date of the Commencement Transfer
- Subject to the relevant transferor employer having used reasonable endeavours to mitigate that liability.

47.4 Third item of the indemnity for the purposes of item 47.1(b)

- For Losses of the person indicated in item 47.1(a)
- To the extent they relate to any statement issued by the Provider and/or its relevant direct or indirect contractor (whichever is the transferee employer)
- Where all of the following apply the statement
 - Is in connection with the proposed TUPE Transfer of any individual in connection with a Commencement Transfer
 - Is made before the date of the Commencement Transfer
 - Is made without the prior written permission of the person indicated in item 47.1(a).

47.5 Fourth item of the indemnity for the purposes of item 47.1(b)

- For Losses of the person indicated in item 47.1(a)
- To the extent they relate to any Claim made or threatened against that person where all of the following apply
 - The Claim is made or threatened by HMRC or other statutory body
 - In respect of financial obligations (including obligations to pay PAYE and/or national insurance contributions)
 - In respect of any individual whose employment is subject to a TUPE Transfer on a Commencement Transfer
 - To the extent the Claim relates to liabilities which arise after the date of the Commencement Transfer.

<p>47.6 Exceptions to the indemnity given by the Provider given in this section 47 – if Losses caused by certain breaches</p>	<p>The indemnity does not apply to the extent any Losses of the relevant person indicated in item 47.1(a) (to which the indemnity would otherwise apply) are caused by any of the following by that person:</p> <ul style="list-style-type: none"> • That person's negligence. • That person's breach of the Law (including without limitation, its breach of the TUPE Regulations). • That person's breach of any contract or other legally binding arrangement to which that person is a party.
<p>47.7 Exceptions to the indemnity given by the Provider given in this section 47 – in relation to reimbursement (item 48.6)</p>	<p>The indemnity does not apply to the extent any Losses of the relevant person involve any costs which the Permitted Purchasing Body is obliged to reimburse the Provider under item 48.6 in relation to the LGPS, if relevant.</p>
<p>47.8 Rules in relation to the indemnity given in this section 47</p>	<ul style="list-style-type: none"> • Section 96 applies to this indemnity. • If there is any inconsistency between section 96 and this section 47: this section 47 overrides section 96 to the extent of the inconsistency.

48. LGPS arrangements on Commencement Transfers

<p>48.1 To what this section 48 applies</p>	<p>Arrangements in relation to any individual who is expected to have rights to a TUPE Transfer on a Commencement Transfer is either</p> <ul style="list-style-type: none"> • A member of the LGPS • Eligible to be a member of the LGPS.
<p>48.2 Individuals to whom this section 48 applies (each of them is an 'Eligible LGPS Employee')</p>	<p>Only to any individual to whom all of the following applies:</p> <ul style="list-style-type: none"> • He/she is a member (or is eligible to become a member) of the LGPS (whether as a current or former employee of a relevant local authority). • His/her contract of employment transfers to the Provider or its direct or indirect subcontractor as a result of a relevant TUPE Transfer on a Commencement Transfer. <p>The Permitted Purchasing Body cannot give any assurance there will be any such individual.</p>
<p>48.3 Acknowledgements by the parties</p>	<p>The Best Value Authorities Staff Transfer (Pensions) Direction 2007 may apply to the Individual Contract in relation to each Eligible LGPS Employee, if any exercises any right to a TUPE Transfer on a Commencement Transfer.</p>

<p>48.4 Main obligations of the Provider in relation to the Best Value Authorities Staff Transfer (Pensions) Direction 2007 (not to limit its obligations in relation to that Direction)</p>	<p>To secure (and to use reasonable endeavours to ensure any relevant direct or indirect subcontractor secures) rights of each Eligible LGPS Employee (if any) to acquire pension benefits which are either of the following:</p> <ul style="list-style-type: none"> • The same as those that the Eligible LGPS Employee had, or that he/she had a right to acquire, as an employee of the Permitted Purchasing Body immediately before the service provision change; or • A registered occupational pension scheme (within the meaning of Part 4 of the Finance Act 2004) <ul style="list-style-type: none"> - Reasonably acceptable to the Permitted Purchasing Body - Certified from time to time <ul style="list-style-type: none"> ➢ By the Government Actuary's Department (as renewed from time to time) or ➢ By an actuary appointed by the Permitted Purchasing Body <p>as providing benefits which are the same as, broadly comparable to or better than those benefits provided by the LGPS as at the date of the service provision change.</p> <ul style="list-style-type: none"> • The above obligations commence after a change in the Eligible LGPS Employee's employer after a Commencement Transfer.
<p>48.5 Obligations regarding contributions</p>	<ul style="list-style-type: none"> • The Provider shall make such contributions to the LGPS as required. • This is subject to any right to reimbursement by the Permitted Purchasing Body under item 48.6.
<p>48.6 Responsibility as between the Provider and the Permitted Purchasing Body for the following in relation to any Eligible LGPS Employees (after his/her TUPE Transfer on a Commencement Transfer and for as long as he/she remains engaged in providing the Services under the Individual Contract) if from time to time the Provider has admitted body status with the LGPS in respect of any Eligible LGPS Employee</p>	
<p>(a) Employer's contributions below a particular percentage of Pensionable Pay (indicate the percentage)</p>	<p>As indicated in the Work Order.</p>
<p>(b) Employer's contributions above the percentage of Pensionable Pay indicated in item (a)</p>	<p>As indicated in the Work Order.</p>
<p>(c) Extent to which the Permitted Purchasing Body is obliged to reimburse the Provider for employer's contributions to the extent the increase in Pensionable Pay is due to a pay increase awarded at the discretion of the Provider (or subcontractor which is the transferee employee) and not specifically required by Law and/or by the administrator of the relevant fund</p>	<p>As indicated in the Work Order.</p>

(d) Employer contributions relating to the costs of early retirement benefits arising on the Eligible LGPS Employee's redundancy or as a result of business efficiency under Regulation 30(7) of the LGPS Regulations	As indicated in the Work Order.
(e) Further contributions to the relevant fund on the grounds of the Eligible LGPS Employee's ill health or infirmity of mind and/or body Exception: other than such ill health or infirmity which was diagnosed by a suitably qualified independent medical practitioner and notified to the Permitted Purchasing Body before the date of his/her TUPE Transfer on commencement of the Services.	As indicated in the Work Order.
(f) Employer contributions relating to the costs of the Eligible LGPS Employee's flexible retirement where any of the following applies: <ul style="list-style-type: none"> • The actuarial reduction is fully or partly waived • A 'cost neutral' reduction is not applied (with the written consent of the Provider or a relevant subcontractor which is the transferee employer). 	As indicated in the Work Order.
(g) Employer contributions relating to the costs of enhanced benefits which the Provider (or a relevant subcontractor which is the transferee employer) offers the Eligible LGPS Employee (on a discretionary basis), including those offered under regulation 31 of the LGPS Regulations	As indicated in the Work Order.
(h) Any other costs arising from any discretion exercised in relation to the pension arrangements of the Eligible LGPS Employee by the Provider (or by a relevant subcontractor which is the relevant transferee) where the Eligible LGPS Employee does not have an entitlement under the LGPS	The Provider.
(i) Any other amounts in respect of which the Permitted Purchasing Body must reimburse the Provider in respect of the pension arrangements of Eligible LGPS Employees	As indicated in the Work Order.

(j) Whether the Permitted Purchasing Body's obligations to reimburse the Provider under this item 48.6 extends to a direct or indirect subcontractor of the Provider which is the transferee employer of the Eligible LGPS Employee	<p>Only if the Provider can demonstrate all of the following (to the Permitted Purchasing Body's reasonable satisfaction)</p> <ul style="list-style-type: none"> • That it had a genuine legal obligation to reimburse the subcontractor (or any interposed subcontractors) for the relevant amount to which the Provider would have been entitled under this item 48.6 if it had been the transferee employer. • That it had met that legal obligation to the subcontractor.
(k) Whether the Provider must offer the Eligible LGPS Employees any discretionary benefits under the LGPS	As indicated in the Work Order.
(l) Obligation of the Provider to enrol any new employee engaged in connection with the Services into a compliant auto enrolment pension scheme	As indicated in the Work Order.
48.7 If the Permitted Purchasing Body is obliged to reimburse the Provider (and/or a relevant subcontractor) under item 48.6	
(a) How the Provider or subcontractor claims the reimbursement	<ul style="list-style-type: none"> • By notice to the Permitted Purchasing Body to be given according to section 121. • Such notice must be accompanied by reasonable evidence of the amount being claimed.
(b) Deadline by which the Provider or subcontractor must issue the notice described in item (a)	No later than 30 days after first becoming aware of the relevant cost to be reimbursed.
(c) Due date by which the Permitted Purchasing Body must make the relevant reimbursement	<p>30 days after the claim is properly made. This is subject to each of the following</p> <ul style="list-style-type: none"> • Any right of set off, counterclaim or deduction or the like which the Permitted Purchasing Body has under these Terms and Conditions (see section 31); and • Any obligation which the Permitted Purchasing Body has to reduce payment by Law.
(d) Whether the Permitted Purchasing Body is entitled to delay payment under section 30	It may do so.
(e) Other obligations	The Provider must use reasonable endeavours to mitigate the costs which the Permitted Purchasing Body is obliged to reimburse.
48.8 Indemnity given if the Provider enters into an admission agreement in obtaining admitted body status	<ul style="list-style-type: none"> • The Provider indemnifies the Permitted Purchasing Body and its replacement service providers for their respective Losses resulting from any Claim made or threatened against it • This indemnity only applies to the extent the Claim is the direct result of the Provider's breach of that admission agreement.

<p>48.9 Obligations of the Permitted Purchasing Body in assisting the Provider to obtain 'admitted body status'</p>	<ul style="list-style-type: none"> • The Permitted Purchasing Body must give the Provider (or its direct or indirect subcontractors, if the transferee employer) reasonable and timely assistance to enable the Provider to obtain such status. • This may include doing any of the following: <ul style="list-style-type: none"> - Executing the relevant admission agreement. - Providing the Provider and/or its relevant subcontractors with appropriate information regarding the status of the Scheme (e.g. whether there are any surpluses or deficits etc.). - Ensuring the Provider and/or its relevant subcontractors are credited with a notional fund within the LGPS at the date of the relevant TUPE Transfer (to be determined by the actuary of the LGPS appointed by the relevant administering authority), having regard to the matters described in item 48.14.
<p>48.10 If any local authority other than the Permitted Purchasing Body is the administering authority</p>	<p>The Permitted Purchasing Body must use its reasonable endeavours to ensure that other local authority complies with item 48.9 in a timely manner.</p>
<p>48.11 If the transferee employer of any Eligible LGPS Employee is a direct or indirect subcontractor of the Provider</p>	<ul style="list-style-type: none"> • The Provider must ensure the subcontractor complies with item 48.4 and item 48.5 insofar as relevant to the Eligible LGPS Employee. • The Provider must not allow that subcontractor to commence providing any of the Services until that subcontractor has complied with item 48.4.
<p>48.12 If the Provider or its relevant subcontractor from time to time wishes to offer any Eligible LGPS Employee new or continuing membership of the LGPS for the purposes of meeting its obligations under this section 48</p>	<p>The Provider must satisfy the Permitted Purchasing Body of the following</p> <ul style="list-style-type: none"> • That the Provider (and each of its relevant subcontractors to whom TUPE Transfers apply on commencement of the Services) has 'admitted body status' with the LGPS. This may include entering into a relevant admission agreement. • In relation to employees of the Permitted Purchasing Body who transfer to the Provider (or the relevant subcontractor) under TUPE on the commencement of the Services.
<p>48.13 Who bears the Provider's costs in obtaining admitted body status under item 48.12</p>	<p>The Provider must bear its own costs.</p>

48.14 Matters with which the actuary must be directed by the Permitted Purchasing Body to have regard in making its determinations under item 48.9 (to the extent the Permitted Purchasing Body has the power to give such directions)

All of the following apply:

- The total of the benefits (whether immediate, prospective or contingent) which would be payable under the LGPS immediately before the TUPE Transfer of the Eligible LGPS Employee
- In relation to each Eligible LGPS Employee and his/her spouse, civil partner and dependants.
- By reference to the Eligible LGPS Employee's pensionable service in the LGPS up to the date of his/her TUPE Transfer
- Making proper allowance for all of the following in relation to each Eligible LGPS Employee, to the extent relevant:
 - Predicted increases in the rate of the Eligible LGPS Employee's Pensionable Pay up to the date of his/her retirement, death or withdrawal.
 - Increases or decreases in pension payments using demographic and actuarial assumptions used for the most recent valuation.

48.15 Obligation of the Provider to provide any Eligible LGPS Employee with any **discretionary benefits** (item 48.6(k))

(a) If the Provider has admitted body status with the LGPS in connection with the Individual Contract

- If permitted, the Provider must award the Eligible LGPS Employee with benefits under any of the following
 - The Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011; and/or
 - The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006; and/or
 - The LGPS
- The Provider must do so
 - If the Eligible LGPS Employees would have received (or been entitled to receive) such benefits if they had been employed by the Permitted Purchasing Body
 - Subject to any policy of the Permitted Purchasing Body in place when the Individual Contract is entered.

(b) If the Provider from time to time offers broadly comparable arrangements under item 48.4

- The Provider must award benefits to the Eligible LGPS Employees which are identical to or better than the benefits the Eligible LGPS Employees would have received under item (a)
- If the Eligible LGPS Employees would have received (or been entitled to receive) such benefits if they had been employed by the Permitted Purchasing Body
 - Subject to any policy of the Permitted Purchasing Body in place when the Individual Contract is entered.

<p>48.16 Indemnity from the Provider to the Permitted Purchasing Body</p>	<p>The Provider shall indemnify the Permitted Purchasing Body according to all of the following:</p> <ul style="list-style-type: none"> • For Losses directly incurred by the Permitted Purchasing Body as a result of any Claim made or threatened against it by any Eligible LGPS Employee; • To the extent the Claim relates to any failure by the Provider and/or its subcontractor to properly meet the rights of the Eligible LGPS Employee under the Best Value Authorities Staff Transfer (Pensions) Direction 2007 and/or under this section 48. • Such Losses include any compensation the Permitted Purchasing Body is under a genuine legal obligation to pay any previous direct or indirect previous service providers to the extent the above Claim applies to that previous service provider. • Section 96 applies to this indemnity.
<p>48.17 The Provider must meet all of the following obligations if it offers any Eligible LGPS Employee membership of a broadly comparable pension scheme as described in item 48.4</p> <p>(a) Offer membership</p> <p>(b) To continue membership</p> <p>(c) Amendment of benefits</p> <p>(d) Termination</p>	<p>The Provider must offer membership of that scheme to each relevant Eligible LGPS Employee.</p> <p>The Provider must continue the Eligible LGPS Employee's membership of the scheme</p> <ul style="list-style-type: none"> • From the date of the TUPE Transfer, or • If the Provider had previously had admitted body status with the LGPS in respect of the Eligible LGPS Employee: from the date the Provider discontinued having that status. <p>The Provider must not change the benefits of the Eligible LGPS Employee under the scheme in a way that is unfavourable to him/her, except where any of the following applies</p> <ul style="list-style-type: none"> • The Provider has the written consent of the Permitted Purchasing Body to do so. • The change is permitted by the LGPS. • The change is to allow for any certificate issued by the Government Actuary's Department (or an actuary appointed by the Permitted Purchasing Body) <ul style="list-style-type: none"> - To be renewed, and/or - To comply with statutory requirements. <ul style="list-style-type: none"> • If the relevant scheme is terminated, the Provider must promptly offer the relevant Eligible LGPS Employee membership of a replacement scheme that meets the requirements of item 48.4. • The parties shall use reasonable endeavours to promptly agree <ul style="list-style-type: none"> - The terms of the transfer of the relevant Eligible LGPS Employee's accrued benefits, and - The value of the assets to be transferred.

(e) Subcontractors	To use reasonable endeavours (including exercising any rights under a relevant contract) to ensure any direct or indirect subcontractor complies with this item 48.17 to the extent relevant.
48.18 Obligations of the Provider if the Eligible LGPS Employee is no longer eligible to be a member of the LGPS	To offer him/her membership of the broadly comparable scheme indicated in item 48.4.
48.19 Duration of the Provider's obligations in item 48.17 and item 48.18 in relation to any Eligible LGPS Employee	<p>The obligations shall continue until the first of the following applies:</p> <ul style="list-style-type: none"> • The Eligible LGPS Employee is no longer an employee of either the Provider or its subcontractor engaged in connection with the Services. • The expiry or earlier termination of the relevant approved list to which these Terms and Conditions relate.
48.20 Further obligations of the Provider	<p>(a) Provision of information</p> <ul style="list-style-type: none"> • The Provider must provide (and ensure relevant subcontractors provide) the Permitted Purchasing Body (or other administering authority, if relevant) • The Provider must do so promptly on the request of the Permitted Purchasing Body and at the Provider's own cost • With information relevant to the pension arrangements in relation to any h Eligible LGPS Employee • For as long as that Eligible LGPS Employee is engaged in the LGPS (or broadly equivalent scheme).
(b) Not affect benefits	<p>The Provider must not do anything</p> <ul style="list-style-type: none"> • Outside the ordinary course of business • To affect the benefits of any Eligible LGPS Employee under the LGPS or a comparable scheme <p>Exception: with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.</p>
48.21 Resolving disputes between the Permitted Purchasing Body and the Provider on matters referred to in this section 48.	By an expert under item 119.6.

TUPE on cessation

49. Whether TUPE Transfers are expected on cessation

49.1 Whether any individual is expected to have the rights to a TUPE Transfer on the cessation of any Services	As indicated in the Work Order.
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50. If no TUPE transfers are expected on cessation

50.1 Application of this section 50	It applies if the Work Order indicates that no individual is expected to have any right to a TUPE Transfer on the cessation of any of the Services under the Individual Contract.
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50.2 General obligations of the Provider

- The Provider must not provide the Services in a way that results in any individual obtaining any right to a TUPE Transfer on the cessation of any Services under the Individual Contract.
- Without limiting this, it must not do so in a way that results in the formation of any organised grouping (even a grouping of one person) where the dominant purpose of the grouping is the provision of the relevant Services.

51. Limits on the organised grouping for TUPE purposes

51.1 Application of this section 51

It only applies if the Work Order indicates that the Provider is to be subject to an Agreed Grouping.

51.2 The agreed size and composition of the organised grouping which the Provider may use in providing the relevant Services (the '**Agreed Grouping**' at a particular time) are as follows

(a) Current

As indicated in the Work Order.

(b) From time to time

- As changed by the Provider from time to time
- Only with the prior written consent of the Lead Council.
 - Such consent shall not be unreasonably withheld.

51.3 Warranties and representations given by the Provider to the Lead Council and its relevant replacement direct or indirect service providers on cessation of the Services

- That no individual
- Who is **not a member of the Agreed Grouping** at a particular time
- Would have any right to a TUPE Transfer if a Cessation Transferred occurred at that time the warranty and representation is made.

51.4 Consequences in relation to any individual who

The Provider shall give the indemnity in section 57 in relation to that individual.

- Has (or to claims have) rights to a TUPE Transfer on a Cessation Transfer, but
- Is not a member of the Agreed Grouping at the time

52. TUPE Transfers expected on a Cessation Transfer

52.1 Application of this section 52

If any individual has a right to a TUPE Transfer on a Cessation Transfer, regardless of whether that was expected at the time the Individual Contract was entered.

52.2 When a relevant Cessation Transfer is deemed to take place in relation to the Individual Contract

At 23.59 hours on the day on which relevant activities transfer.

52.3 General obligations of the parties in relation to TUPE Transfers on any Cessation Transfer

To comply with the Law generally in relation to the TUPE Transfers.

53. Providing TUPE information on Cessation Transfers

53.1 The Provider’s obligations in providing information to the Permitted Purchasing Body regarding prospective TUPE Transfers in relation to a Cessation Transfer

(a) What information the Provider must provide the Permitted Purchasing Body	<p>All information indicated in item 53.2</p> <ul style="list-style-type: none"> • In relation to each employee of the Provider and/or its direct or indirect subcontractors • Who is a member of any organised grouping whose dominant purpose is to provide the relevant Services to which the Cessation Transfer relates.
(b) How the Provider must provide the information	<ul style="list-style-type: none"> • In writing; and • With material accuracy and completeness.
(c) Deadline by which the Provider must provide the information	<ul style="list-style-type: none"> • No later than 30 days of the written request of the Permitted Purchasing Body; or • Such longer time requested by the Provider and as permitted by the Permitted Purchasing Body, acting reasonably.
(d) When the Permitted Purchasing Body is permitted to make the request described in item (c)	<ul style="list-style-type: none"> • In good faith; and • Only in genuine contemplation of the cessation of any of the Services which are to transfer back to the Permitted Purchasing Body and/or to a replacement service provider.
(e) Whether the Provider may provide the information in a manner that does not identify individual to protect any individual's rights under the Data Protection Act 1998	<p>The Provider may take reasonable and proportionate steps to do so, for genuine purposes of complying with that Act.</p>
(f) Responsibility under the Data Protection Act 1998	<p>The Provider shall retain liability</p> <ul style="list-style-type: none"> • As between the Provider and the Permitted Purchasing Body • To any individual whose personal data is disclosed and used according to (and for the purposes of) this section 53 <p>If such disclosures and use breach that individual’s rights under the Data Protection Act 1998.</p>
(g) The Provider’s obligation to provide updates to the information requested by the Permitted Purchasing Body under this section 53	<ul style="list-style-type: none"> • The Provider must provide updates (e.g. significant changes) in writing until the relevant service provision change occurs. • It must do so according to all of the following: <ul style="list-style-type: none"> - Promptly when any significant change occurs, - Regardless of whether the Permitted Purchasing Body has requested the update; and - In any case, promptly on the request of the Permitted Purchasing Body (made reasonably and in good faith in relation to the prospective service provision change).
(h) Whether the Permitted Purchasing Body is obliged to reimburse the Provider for its costs in carrying out its obligations under this section 53	<p>No.</p>

53.2 **Information which the Provider must supply the Permitted Purchasing Body for the purposes of item 53.1:** all of the following in relation to each relevant individual where relevant to him/her

(a) Job title	His/her job title
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(b)	Grade	His/her grade
(c)	Date of birth	His/her date of birth
(d)	Commencement	The date of commencement of his/her employment.
(e)	Working hours	His/her working hours.
(f)	Continuous service	His/her level of continuous service, including continuous service for the purposes of relevant Law or his/her contract of employment relating to the calculation of redundancy payments.
(g)	Status of employment	Status of his/her engagement (i.e. whether employee, agency worker, contractor, consultant or otherwise).
(h)	Employer	The identity of his/her employer (or person who engages him/her in any other capacity) if not the Provider (e.g. a subcontractor).
(i)	Termination and redundancy	The main contractual terms relating to the termination of his/her employment, including notice periods, redundancy procedures and redundancy payments.
(j)	Wages etc.	His/her wages, salary, entitlements to bonuses and/or entitlement to any profit sharing (or the like of any of these), as relevant.
(k)	Pension	His/her current pension arrangements with his/her current employment, including (if relevant) his/her membership (or eligibility for membership) for any public sector pension scheme.
(l)	Other benefits	His/her other employment related benefits (e.g. membership of any pension or other retirement benefit scheme or the like, membership of any share option plan, company car, health insurance, life assurance etc.).
(m)	Claims	Any known <ul style="list-style-type: none"> • Liabilities owed to, and/or • Claims made or threatened by Which the relevant individual in connection with this/her employment or other engagement, including liabilities or Claims relating to personal injury, breach of his/her contract of employment, discrimination, equal pay etc.).
(n)	Long term absence	Whether he/she is on any kind of authorised long term absence (e.g. long term sick leave, maternity leave, paternity leave etc.).
(o)	Union membership	His/her union membership, if any.
(p)	Arrangements etc.	Details of any arrangements or understandings (including any collective arrangements) he/she has in place with any trade union, staff body or other representative body of employees.
(q)	Mobility	Whether his/her contract of employment contains any right of his/her employer to change his/her work location.
(r)	Relevant documents	Copies of relevant documents, materials etc. relevant to the above, including copies of relevant contracts of employment (or standard contracts if applicable generally to some or all employees).
(s)	Disciplinary	His/her disciplinary records.

	(t) Grievance, disciplinary	Summary of ongoing disciplinary or grievance matters.
	(u) Other	Any other information which is required as "employee liability information" under regulation 11 of the TUPE Regulations which is not otherwise described above.
53.3	Rights of the Permitted Purchasing Body to deal with information provided to it by the Provider under this section 53	<ul style="list-style-type: none"> The Permitted Purchasing Body may do so for genuine purposes connected with a proposed or actual Cessation Transfer. This includes, without limitation, disclosing the information to actual or prospective replacement service providers (whether in the context of a publicly-advertised competitive tendering exercise or the like, or otherwise).
53.4	Consequence if the Provider fails to supply any of the information whatsoever required in item 53.1 by the deadline described in item 53.1(c)	<p>The Permitted Purchasing Body shall be entitled to assume for all purposes of the Individual Contract (including the Provider's indemnity in section 57)</p> <ul style="list-style-type: none"> For the purposes of any disclosures to prospective replacement service providers, whether or not in a competitive tendering process or the like That the Provider had responded to supply that information by that deadline In the assumed response of the Provider, the Provider had disclosed that no individual is a member of an organised grouping whose dominant purpose is to provide the relevant Services to which the Cessation Transfer relates. <p>This does not limit the Permitted Purchasing Body's rights and remedies in relation to the Provider's failure to supply that information by that deadline.</p>

54. Providing employee records on cessation

54.1 General obligations of the Provider in providing records relating to individuals who are entitled to a TUPE Transfer on a Cessation Transfer

(a)	What records the Provider must provide the person described in item (b)	<ul style="list-style-type: none"> All records indicated in item 54.2 In relation to each employee of the Provider or its direct or indirect subcontractors who has a right to a TUPE Transfers on the Cessation Transfer.
(b)	To whom the records are to be provided	<ul style="list-style-type: none"> The Permitted Purchasing Body; or Such other replacement service provider of the Permitted Purchasing Body that is the relevant transferee employer <p>As the Permitted Purchasing Body reasonably directs.</p>
(c)	Deadline by which the Provider must provide the records	<ul style="list-style-type: none"> No later than 30 days of the written request of the Permitted Purchasing Body; or Such longer time permitted by the Permitted Purchasing Body, acting reasonably.
(d)	When the Permitted Purchasing Body may make the request described in item (c)	<ul style="list-style-type: none"> In good faith; and Only in genuine contemplation of the cessation of any of the Services which are to transfer back to the Permitted Purchasing Body and/or to a replacement service provider.
(e)	Whether the Provider is entitled to reimbursement of its costs for carrying out its obligations under this section 54.1	No.

54.2 **Records which the Provider must supply the Permitted Purchasing Body for the purposes of item 54.1:** all of the following in relation to each individual entitled to a TUPE Transfer on any Cessation Transfer

(a)	Pay slip	Data from the individual's most recent payslip.
(b)	Cumulative pay	Details of the individual's cumulative pay (for tax and pension purposes) for the relevant financial year.
(c)	Tax paid	Details of the cumulative tax paid by the individual from his/her pay for the relevant financial year.
(d)	Tax code	The individual's tax code.
(e)	Deductions	Any voluntary deductions to be made from the individual's pay.
(f)	Other deductions	Any deductions to be made from the individual's pay as a result of any court order specifically directed at the individual.
(g)	Pension-related	Records relating to pensions as indicated in item 55.1(a).
(h)	Bank account	Details of any individual's bank or building society account into which he/she wishes to have his/her pay deposited.

54.3	To what the Provider's obligations in this section 54 are subject	Its obligations are subject to the requirements of the Law, (particularly the Data Protection Act 1998, if relevant).
54.4	Responsibility under the Data Protection Act 1998	<p>The Provider shall retain liability</p> <ul style="list-style-type: none"> As between the Provider and the Permitted Purchasing Body To any individual whose personal data is disclosed and used according to (and for the purposes of) this section 53 If such disclosures and use breach that individual's rights under the Data Protection Act 1998.
54.5	How the Permitted Purchasing Body may deal with the records supplied to it under this section 54	<ul style="list-style-type: none"> If the Cessation Transfer is to the Permitted Purchasing Body itself: the Permitted Purchasing Body may retain them as the successor employer of the relevant individuals. If the Cessation Transfer is to a replacement service provider of the Permitted Purchasing Body: the Permitted Purchasing Body may supply them to the successor employer off the relevant individuals.

55. Pension obligations on Cessation Transfers

55.1 The Provider must do all of the following in relation to pension matters on cessation of the Services in relation to **any individual who would have a right to a TUPE Transfer on any Cessation Transfer** (at the Provider's separate cost)

(a)	Records	The Provider must maintain appropriate employer-related pension records relating that individual.
(b)	Administrative aspects	<p>The Provider must promptly comply (and to use reasonable endeavours to ensure the trustee of a relevant pension scheme complies) with all of the following</p> <ul style="list-style-type: none"> With the reasonable requests of the Permitted Purchasing Body In relation to the administrative aspects of the transfer of pension arrangements in relation to that individual At around the time of the individual's TUPE Transfer on cessation of the Services. Which may include, where relevant, a request relating to the bulk transfer of any accrued rights of the individual.

(c) Subcontractors

The Provider must use reasonable endeavours to ensure relevant subcontractors comply with the obligations elsewhere in this item 55.1, where the subcontractor is the transferor employer.

56. Restrictions on the Provider prior to a Cessation Transfer

56.1 The Provider must not (at the times indicated in item 56.4) do any of the following in relation to any organised grouping whose dominant purpose is to provide the relevant Services to which a Cessation Transfer relates

(a) Change size

- The Provider must not increase or decrease the size of that organised grouping.
- **Exception:** with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(b) Change composition

- The Provider must not change its composition of that organised grouping.
- **Exception:** with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(c) Time spent

- The Provider must not change the amount of time spent by that organised grouping in connection with the Services.
- **Exceptions:**
 - As required in these Terms and Conditions and/or a relevant Work Order (e.g. in the Specification); and/or
 - With the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(d) Terms and conditions

The Provider must not change the terms and conditions of any member of the organised grouping (including any customary practice in relation to that individual)

Particularly those relating to his/her remuneration and/or his/her rights and entitlements in relation to the termination of his/her employment

Exceptions (any of the following):

- As required by Law.
- As required in these Terms and Conditions and/or a relevant Work Order.
- It is the result of any genuine negotiations with a trade union (or the like) which is then representing the relevant individual.
- With the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld.

(e) Terminate contract	<p>The Provider must not terminate the contract of employment of any member of the organised grouping, subject to any of the following exceptions:</p> <ul style="list-style-type: none"> • Exception 1: with the prior written consent of the Permitted Purchasing Body, not to be unreasonably withheld. • Exception 2: as a result of any of the following: <ul style="list-style-type: none"> - The individual's serious misconduct. - The individual's default under his/her contract of employment. - Serious, genuine and long-term health issues affecting the individual (e.g. disability, long term illness) which genuinely affect the individual's ability to continue in his/her normal duties. • Exception 3: if the relevant individual is replaced by an individual <ul style="list-style-type: none"> - Who has at least equal skills, experience and expertise as the person he/she replaces; and - Who is employed on terms and conditions which are not less favourable to the employer than those of the person he/she replaces (other than changes required by Law).
(f) Legally bound	<p>The Provider must not agree (or otherwise become bound) to do any of the acts described elsewhere in this item 56.1.</p>
56.2 Further obligations of the Provider	<ul style="list-style-type: none"> • The Provider must not assist or instruct another person (e.g. any subcontractor) to do any act that would breach item 56.1 if done by the Provider directly. • If the Provider's Affiliate does any such act, the onus will lie with the Provider to prove it was not done under its assistance or instructions.
56.3 Obligations in relation to subcontractors	<p>The Provider must use reasonable endeavours (including exercising any relevant rights it has under contract) to ensure none of its direct or indirect subcontractors breaches item 56.1 in relation to any of its respective employees who have right to a TUPE Transfer on a Cessation Transfer.</p>
56.4 When the obligations of the Provider in this section 56 apply	<p>At the following times (where relevant)</p> <ul style="list-style-type: none"> • Within the 6 month period immediately before the expiry date of the Individual Contract (see section 22). • In any case: at any time after notice to terminate the relevant Services to which the Cessation Transfer relates has been given according to these Terms and Conditions (whether by the Provider or the Permitted Purchasing Body).
56.5 Keeping informed	<ul style="list-style-type: none"> • The Provider must keep the Permitted Purchasing Body informed in a proper and timely manner of first becoming aware of the occurrence of any of the events described in item 56.1. • The Provider must do so regardless of whether it involves affected employees of the Provider or its direct or indirect subcontractors.

57. TUPE Transfers on cessation – Provider indemnity

57.1 The Provider must indemnify and keep indemnified each TUPE Cessation Beneficiary described in item (a), where all of the following requirements are met

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| (a) | To whom the indemnity is given (each of them is a ' TUPE Cessation Beneficiary ') | <ul style="list-style-type: none"> • The Permitted Purchasing Body; and • A Replacement Contractor of the Permitted Purchasing Body. |
| (b) | The indemnity is given for the TUPE Cessation Beneficiary's Losses which are the direct result of either of the following | |
| (i) | Certain Claims | Any Claim made or threatened against the TUPE Cessation Beneficiary which meets all of the requirements described in item 57.2. |
| (ii) | Certain payments of compensation | Compensation payable by the TUPE Cessation Beneficiary in relation to the termination of the employment of any individual where all of the requirements in item 57.3 are met. |
| (c) | Procedures | The TUPE Cessation Beneficiary must have strictly complied with the procedures described in item 57.5. |
| (d) | To what the indemnity is subject | <ul style="list-style-type: none"> • Section 96 applies to this indemnity. • If there is any inconsistency between section 96 and this section 57: this section 57 overrides section 96 to the extent of the inconsistency. |

57.2 The Claim described in item 57.1(b)(i) must meet **all** of the following requirements if this indemnity is to apply to it

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| (a) | Who may make or threaten the Claim against the TUPE Cessation Beneficiary (any of the following) | <ul style="list-style-type: none"> • Any individual who has a right (or who asserts a right) to a TUPE Transfer on a Cessation Transfer. • This includes anyone bringing the Claim on his/her behalf. |
| (b) | If the Claim is made or threatened against the TUPE Cessation Beneficiary by or on behalf of an individual described in item (a) , this indemnity only covers the Losses of the TUPE Cessation Beneficiary in respect of each of the following | |
| (i) | Pre-TUPE Transfer Liabilities | <ul style="list-style-type: none"> • Any Pre-TUPE Transfer Liabilities in relation to the individual. • This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to the TUPE Cessation Beneficiary before the Cessation Transfer. |

(ii) Compensation for transferor employer's breach	<ul style="list-style-type: none"> • Compensation payable according to all of the following <ul style="list-style-type: none"> - By the TUPE Cessation Beneficiary - To the individual - To the extent the TUPE Cessation Beneficiary is held to be liable for the transferor employer's breach of the transferor employer's obligation to consult under the TUPE Regulations - In connection with the individual's right to a TUPE Transfer to the TUPE Cessation Beneficiary on the Cessation Transfer. • This applies regardless of whether or not the individual's identity (whether by name or role) was communicated to the TUPE Cessation Beneficiary before the Cessation Transfer. • But only if the TUPE Cessation Beneficiary had communicated the breach in writing to the Provider's Representative no later than 3 months after the relevant Cessation Transfer.
(iii) Compensation for TUPE Cessation Beneficiary's breach	<ul style="list-style-type: none"> • Compensation payable according to all of the following <ul style="list-style-type: none"> - By the TUPE Cessation Beneficiary - To the individual - To the extent the TUPE Cessation Beneficiary is held to be liable for the TUPE Cessation Beneficiary's breach of its obligation as the transferee employer to consult under the TUPE Regulations - In connection with the individual's right to a TUPE Transfer to the TUPE Cessation Beneficiary on the Cessation Transfer. • But only in relation to those individuals whose right to a TUPE Transfer on a Cessation Transfer was not disclosed (whether by name or role) <ul style="list-style-type: none"> - In writing; - By the Provider (and/or by its direct or indirect subcontractor if it is the transferor employer); - To the TUPE Cessation Beneficiary (and/or to the other transferee employer, where relevant); and - Before the Cessation Transfer.
(iv) Legal costs	<p>The TUPE Cessation Beneficiary's legal costs in relation to the Claim</p> <ul style="list-style-type: none"> • To the extent reasonably incurred; and • To the extent reasonably evidenced; and • Having proper regard to the Provider's right to take over the defence of the Claim under item 96.7(b).
(c) Other pre-conditions	<p>The TUPE Cessation Beneficiary must not have done anything to instruct, encourage or assist any person to bring a Claim described in this item 57.2.</p>

57.3 Requirements of the compensation payable by the TUPE Cessation Beneficiary in relation to **the termination of the employment of any individual by the TUPE Cessation Beneficiary** for the purposes of item 57.1(b)(ii)

(a) Whose employment is terminated	Any individual who has a right to a TUPE Transfer on the Cessation Transfer against the TUPE Cessation Beneficiary.
(b) To whom the compensation is payable by the TUPE Cessation Beneficiary for the purposes of this item 57.3	To the relevant individual described in item (a).
(c) Reasons for the termination of the employment of the individual described in item (a)	It must be due to a genuine and lawful redundancy.
(d) Any of the following apply to the individual if his/her employment is terminated for the reasons indicated in this item 57.3	
(i) Agreed Grouping (but only if section 51 applies to the Individual Contract)	<ul style="list-style-type: none"> • He/she is not a member of the Agreed Grouping immediately before the Cessation Transfer. • This applies even if the identity of the individual has been disclosed to the TUPE Cessation Beneficiary before the Cessation Transfer.
(ii) Failure to disclose	<p>The Provider (and/or any other relevant transferor employer) had failed to disclose according to all of the following</p> <ul style="list-style-type: none"> • To the Permitted Purchasing Body (and/or to the other TUPE Cessation Beneficiary which is the relevant transferee employer) • In writing • Before the Cessation Transfer • That the individual was expected to have a right to a TUPE Transfer in connection with the Cessation Transfer • Having sufficiently identified the individual (e.g. by name, role etc.).
(iii) Inaccuracies, incompleteness in information provided	<p>All of the following are met in relation to the individual:</p> <ul style="list-style-type: none"> • The Provider (and/or any other relevant transferor employer) had disclosed to the TUPE Cessation Beneficiary (or to a subcontractor which is the relevant transferee employer) that the individual was expected to have a right to a TUPE Transfer in connection with the Cessation Transfer. • There were material inaccuracies and/or material omissions in the disclosures made by the Provider (or other transferor employer) to the TUPE Cessation Beneficiary (or other transferee employer). • Those inaccuracies and/or omissions were not sufficiently remedied before the Cessation Transfer.

(e)	The TUPE Cessation Beneficiary must do the following (where relevant) if it wishes to be indemnified for the compensation described in item 57.1(b)(ii)	<p data-bbox="837 197 1482 369">The TUPE Cessation Beneficiary must give the Provider a reasonable opportunity (including reasonable cooperation) to enable the Provider to dispute whether the individual has a right to a TUPE Transfer on the relevant Cessation Transfer.</p> <ul data-bbox="837 369 1482 705" style="list-style-type: none"> <li data-bbox="837 369 1482 571">• The TUPE Cessation Beneficiary must give the Provider a reasonable opportunity to mitigate the compensation payable to the relevant individual (e.g. by offering the individual suitable alternative employment, giving another person the opportunity to do so etc.). <li data-bbox="837 571 1482 705">• The TUPE Cessation Beneficiary shall give the relevant individual appropriate releases or the like from his/her employment to enable the Provider to take such mitigating action. 						
(f)	How the compensation payable to the individual described in item (a) must be calculated	<p data-bbox="837 705 1482 840">The compensation must be properly and lawfully calculated, having regard to the relevant circumstances (e.g. the individual's remuneration, length of service etc.).</p>						
(g)	Deadline: the TUPE Cessation Beneficiary must have commenced the termination procedure described in this item 57.3 no later than 60 days after the following, as relevant	<table border="1" data-bbox="837 952 1482 1400"> <tr> <td data-bbox="399 952 813 1131">(i) If the individual is not a member of the Agreed Grouping immediately before the Cessation Transfer (section 51)</td> <td data-bbox="837 952 1482 1131">The date of the Cessation Transfer.</td> </tr> <tr> <td data-bbox="399 1131 813 1265">(ii) If the right of the individual to a TUPE Transfer had not been disclosed (item (d)(ii))</td> <td data-bbox="837 1131 1482 1265">After the TUPE Cessation Beneficiary first becomes aware of the right of the individual to a TUPE Transfer on a relevant Cessation Transfer.</td> </tr> <tr> <td data-bbox="399 1265 813 1400">(iii) If item (d)(iii) applies in relation to material inaccuracies and/or material omissions</td> <td data-bbox="837 1265 1482 1400">After the TUPE Cessation Beneficiary first becomes aware of the relevant inaccuracy and/or omission.</td> </tr> </table>	(i) If the individual is not a member of the Agreed Grouping immediately before the Cessation Transfer (section 51)	The date of the Cessation Transfer.	(ii) If the right of the individual to a TUPE Transfer had not been disclosed (item (d)(ii))	After the TUPE Cessation Beneficiary first becomes aware of the right of the individual to a TUPE Transfer on a relevant Cessation Transfer.	(iii) If item (d)(iii) applies in relation to material inaccuracies and/or material omissions	After the TUPE Cessation Beneficiary first becomes aware of the relevant inaccuracy and/or omission.
(i) If the individual is not a member of the Agreed Grouping immediately before the Cessation Transfer (section 51)	The date of the Cessation Transfer.							
(ii) If the right of the individual to a TUPE Transfer had not been disclosed (item (d)(ii))	After the TUPE Cessation Beneficiary first becomes aware of the right of the individual to a TUPE Transfer on a relevant Cessation Transfer.							
(iii) If item (d)(iii) applies in relation to material inaccuracies and/or material omissions	After the TUPE Cessation Beneficiary first becomes aware of the relevant inaccuracy and/or omission.							

(h) Other requirements	<p>The requirements of this item 57.3 shall not be regarded as having been met in relation to the individual described in item (a) where all of the following apply:</p> <ul style="list-style-type: none"> • If he/she continues to perform any duties for the TUPE Cessation Beneficiary and/or its Affiliate • In any capacity (e.g. as an officer, employee, contractor etc.) • Regardless of whether the activities in the role are similar to those which he/she carried out prior to the Cessation Transfer). • After the end of the following period (whichever is later) after the relevant individual is given notice of his/her termination (assuming that notice is given no later than 30 days after the date on which the TUPE Cessation Beneficiary first became aware of the individual's right to a TUPE Transfer) <ul style="list-style-type: none"> - The minimum notice period which the individual is entitled to receive by Law. - The minimum notice period which the individual is entitled to receive by under his/her contract of employment.
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57.4 The Permitted Purchasing Body's obligation to repay the Provider for amounts paid under the indemnity for Losses described in item 57.1(b)(ii) and under item 57.3

(a) What the TUPE Cessation Beneficiary must repay the Provider	<p>All of the following</p> <ul style="list-style-type: none"> • Any amounts paid to the Permitted Purchasing Body and/or its Affiliate (if the Affiliate is a TUPE Cessation Beneficiary) • Under the indemnity for Losses described in item 57.1(b)(ii) and under item 57.3. • In relation to a particular individual described in item 57.3(a). • Together with interest accruing from the date of payment to the Permitted Purchasing Body or relevant Affiliate and calculated under section 32.
(b) Circumstances where the Permitted Purchasing Body must make the repayment to the Provider described in item (a)	<p>If the relevant individual is later re-engaged according to all of the following</p> <ul style="list-style-type: none"> • By the Permitted Purchasing Body and/or by its Affiliate • In any capacity (e.g. as an officer, employee, contractor etc.) • Within 12 months from the date on which his/her employment was terminated for the purposes of item 57.3.
(c) Further obligations of the Permitted Purchasing Body	<p>The Permitted Purchasing Body must keep the Provider informed (in a timely manner on first becoming aware) of the circumstances in item (b).</p>

57.5 The TUPE Cessation Beneficiary must **strictly** follow all of the following procedures if it wishes to claim the indemnity under this section 57

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| (a) | Notice which the TUPE Cessation Beneficiary must give the Provider | <ul style="list-style-type: none"> The TUPE Cessation Beneficiary must give the Provider notice of its intention to enforce the indemnity. This notice must be given strictly according to section 121. |
| (b) | Minimum contents of the notice described in item (a): all of the following | |
| (i) | Name | The name of the individual to whom the claim relates. |
| (ii) | If the individual was an employee of a direct or indirect subcontractor of the Provider | The name of the subcontractor. |
| (iii) | Items being claimed | Details of the claim and/or the obligation to compensate to which the claim for the indemnity relates. |
| (c) | What must accompany the notice described in item (a) | Suitable proof of the claim and/or the obligation to compensate to which the claim for the indemnity relates. |
| (d) | Deadline by which the TUPE Cessation Beneficiary must give the notice described in item (a) | |
| (i) | If the indemnity relates to the threat of a Claim against the TUPE Cessation Beneficiary under this section 57 | No later than 30 days after the TUPE Cessation Beneficiary first becomes aware of the threat. |
| (ii) | If the indemnity relates to an actual Claim brought against the TUPE Cessation Beneficiary under this section 57 | No later than 30 days after the Claim has been issued to the TUPE Cessation Beneficiary. This overrides any deadline indicated in item 96.7(a). |
| (iii) | If the indemnity relates to anything else under this section 57 | No later than 30 days after the TUPE Cessation Beneficiary first becomes liable to pay for the thing to which the indemnity relates. |
| (iv) | In any case | No later than 12 months from the date of the relevant Cessation Transfer. |

58. Pre-TUPE Transfer Liabilities

58.1 A '**Pre-TUPE Transfer Liability**' in relation to any individual who has a right to a TUPE Transfer in relation a Commencement Transfer and/or a Cessation Transfer is any liability to the extent all of the following apply:

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| (a) | Who owes the liability | It is a liability of the transferor employer of that individual (whether that transferor employer is a party to these Terms and Conditions and/or a relevant Work Order or its direct or indirect contractor). |
| (b) | The liability relates to the transferor employer's employment of that individual up to the date of the Commencement Transfer or Cessation Transfer including any of the following (without limitation and to the extent relevant) | |
| (i) | Remuneration | Liability to pay remuneration and other compensation under the individual's contract of employment, including wages, commissions, bonuses and other benefits. |

(ii)	Pension	Liability to make employer's pension contributions in relation to the individual.
(iii)	Compensation	Liability to compensate the individual for any breach against the individual (e.g. unfair, wrongful or constructive dismissal, personal injury, breaches in relation to harassment, bullying, anti-discrimination, equal pay, and equal treatment of the individual as a part time worker).
(iv)	Holiday pay	<ul style="list-style-type: none"> Any liabilities to the relevant individual relating to holidays (including holiday pay) Exception: any such liability that had accrued in the 12 months prior to the TUPE Transfer.
(v)	PAYE, national insurance etc.	Liability to make payments in relation to PAYE and/or national insurance and/or any other similar liabilities of the transferor employer to HMRC or a similar body attributable to the relevant individuals.
(vi)	Collective agreement	Obligations under any collective agreement affecting the relevant individuals.
(vii)	Custom, practice etc.	Any custom or practice in relation to relevant individuals to which the transferor employer is contractually bound to honour.
(viii)	Penalties etc.	Any penalties, fines, interest (or the like of any of these) payable by the transferor employer in respect of any Claim relating to its employment of the relevant individual.
(ix)	Termination, redundancy	<p>Any liabilities relating to any dismissal, redundancy or other termination procedure which</p> <ul style="list-style-type: none"> Is completed by the transferee employer, but Was commenced by the transferor employer before the Commencement Transfer or Cessation Transfer, as relevant.

(c) What is not a Pre-TUPE Transfer Liability	<p>All of the following, where relevant</p> <ul style="list-style-type: none"> • Liability of the transferor employer • Arising in connection with a relevant individual with a right to a TUPE Transfer • Arising before the date of the Commencement Transfer or Cessation Transfer (as relevant) • To the extent all of the following apply: <ul style="list-style-type: none"> - The liability relates to the resignation of that individual before the date of the Commencement Transfer or Cessation Transfer (as relevant) - A substantial reason for his/her resignation was <ul style="list-style-type: none"> ➤ Changes proposed by the transferee employer ➤ To the individual's working conditions (including his/her remuneration, pension arrangements or otherwise) ➤ Which are substantial and unfavourable to the individual ➤ Which the transferee employer proposes are to take effect after the date of the Commencement Transfer or Cessation Transfer (as relevant). • Subject to the relevant transferor employer having used reasonable endeavours to mitigate that liability.
(d) How the liability arises	The liability arises in tort, contract, under statute or otherwise.
(e) When the liability accrues or arises	The liability accrues, arises, or relates to any event or circumstance which occurred when the individual was still an employee of the transferor employer (i.e. before the relevant service provision change).
(f) Does it matter whether the liability is known to the transferor employer at the time of the TUPE Transfer	No.
(g) TUPE Transfer	The individual's employment must have transferred to the transferee employer (whether that transferee employer is a party to the Individual Contract or its direct or indirect contractor) as a TUPE Transfer on a Commencement Transfer or a Cessation Transfer.

Subcontracting

59. Consents to appointment of subcontractors

59.1 The Provider must obtain the **prior written consent** of the Permitted Purchasing Body if the Provider wishes to appoint (directly or indirectly via its other intermediary subcontractors) any of the following subcontractors in relation to the Individual Contract

The consent of Lead Council is not required in relation to subcontractors which the Provider wishes to appoint in relation to the Individual Contract which are **not** indicated below

<p>(a) If the annual value of the subcontract exceeds the following percentage of the annual value of the Individual Contract</p> <p>All subcontracts which the Provider enters in connection with the Services with that subcontractor and that subcontractor's Affiliates shall be added together to determine whether this percentage is met</p>	<p>30%.</p>
<p>(b) Safeguarding (section 35)</p>	<p>In relation to any subcontractor whose activities in connection with the Services reasonably require safeguarding background checks.</p>
<p>(c) Eligible LGPS Employees (section 48)</p>	<p>In relation to any subcontractor which is to be the transferee employer of any Eligible LGPS Employee (as defined in item 48.2) on commencement of relevant Services.</p>
<p>(d) Promised Subcontractor (section 60)</p>	<p>Any subcontractor that later becomes the 'Promised Subcontractor' to carry out the activities described in item 60.1.</p>
<p>(e) If the Permitted Purchasing Body has previously required the Provider to remove the subcontractor (see section 62)</p>	<p>In relation to the reinstatement of that subcontractor in connection with any of the Services.</p>
<p>(f) Processing Client Personal Data (section 82)</p>	<p>In relation to any subcontractor whose activities in connection with the Services involve processing any Client Personal Data.</p>
<p>(g) Agency</p>	<p>Any agency supplying or introducing workers to the Provider (or its other subcontractors) where the involvement of the individual in the Services involves direct contact with Service Users.</p>
<p>59.2 If the Provider has already has the written consent of the Permitted Purchasing Body in relation to a particular subcontractor under another Individual Contract which the Permitted Purchasing Body has with the Provider under this Flexible Purchasing System, whether the Permitted Purchasing Body also needs consent to that subcontractor in relation to this Individual Contract</p>	<p>No additional consent is required, assuming the Permitted Purchasing Body has not subsequently required the removal of the subcontractor under section 62.</p>

59.3 If the Provider has already has the written consent of **ANOTHER local authority (or its Affiliate)** in relation to a particular subcontractor under **any Individual Contract which that other local authority (or its Affiliate) has with the Provider under this Flexible Purchasing System**, whether the Permitted Purchasing Body also needs consent to that subcontractor in relation to **this Individual Contract**

No additional consent is required, assuming the **other local authority (or its Affiliate)** has not subsequently required the removal of the subcontractor under its relevant Individual Contract.

59.4 The following apply in relation to the consent to a subcontractor described in item 59.1

(a) How the Lead Council's consent is to be given

- In writing.
- Not to be unreasonably withheld.
- See section 63 for examples of reasonable grounds for withholding consent.

(b) Subcontractors in relation to whom the consent of the Lead Council has already been given in relation to particular activities

- Each subcontractor indicated in the Provider Submission.
- Any Client Required Subcontractor indicated in section 64.

60. Promised Subcontractors

60.1 Current subcontractors which the Provider **must** engage in connection with particular activities in connection with the Services (the current '**Promised Subcontractors**')

Name of Promised Subcontractor	Brief description of required activities of the Promised Subcontractor for as long as those activities remain part of the Services
(a) Each subcontractor (if any) indicated in the Work Order	Each subcontractor (if any) indicated in the Work Order

60.2 If a Promised Subcontractor discontinues its activities in relation to its required activities, the **deadline by which the Provider must have suitable alternative arrangements** in place (e.g. to have found a replacement, to have taken on the responsibility for the relevant activities itself)

- Either
 - **45 days** from the discontinuation of the relevant Promised Subcontractor; or
 - Such later deadline permitted in writing by the Lead Council (acting reasonably).
 - This is subject to the Provider obtaining the Lead Council's consent required under item 60.3. The Provider must give the Lead Council enough time to properly consider the Provider's proposed alternative arrangements to ensure those arrangements can be in place before the above deadline.
- If the Provider fails to do so by that deadline, it shall be a 'Termination Default Event' of the Provider.

60.3 Where the consents of the Permitted Purchasing Body (or the Lead Council under item 60.5) given under item 60.4 are required in relation to Promised Subcontractors	<p>In relation to any of the following:</p> <ul style="list-style-type: none"> • Extending the deadline described in item 60.2. • Terminating the Provider’s contract with the Promised Subcontractor insofar as termination affects the activities for which the Provider must engage the Promised Subcontractor under item 60.1. • Appointing a replacement Promised Subcontractor from time to time (as per this section 60). • Having the required activities of the Promised Subcontractor under item 60.1 to be carried out by the Provider itself.
60.4 How the Permitted Purchasing Body is to give consent under item 60.3	<ul style="list-style-type: none"> • In writing. • Not to be unreasonably withheld.
60.5 If the Permitted Purchasing Body is not also the Lead Council: if the Lead Council consents to a particular subcontractor for the purposes of item 60.4, whether the Provider must also obtain separate consents from the Permitted Purchasing Body	<p>Separate consent is not required.</p> <p>The consent of the Lead Council shall be regarded as having been given on its own behalf and on behalf of each other Permitted Purchasing Body.</p>

61. Paying subcontractors

61.1 Obligation of the Provider to pay certain subcontractors within a certain time

(a) Subcontractors to which this obligation of the Provider applies	All subcontractors.
(b) What the Provider must pay in relation to each subcontractor described in item (a)	The subcontractor’s proper charges under the subcontract insofar as they relate to its activities connected with the Services.
(c) Deadline by which the Provider must pay each subcontractor described in item (a)	<p>The earlier of the following after the Provider’s receipt of a relevant invoice from the subcontractor:</p> <ul style="list-style-type: none"> • The following period: 30 days; or • Such shorter payment terms in any contract between the Provider and the subcontractor. <p>To the extent that invoice:</p> <ul style="list-style-type: none"> • Is valid; and • Is not subject to a genuine dispute which the Provider is using reasonable and genuine efforts to attempt to resolve in a timely way.

61.2 Consequences if the Provider breaches its obligations in item 61.1 (as follows)

(a) Right of the Permitted Purchasing Body to pay	<p>The Permitted Purchasing Body may pay (but shall not be obliged to pay) the relevant subcontractor all of the following, where relevant:</p> <ul style="list-style-type: none"> • The relevant outstanding charges. • Interest up to the amount permitted at the time under the Late Payment of Commercial Debts (Interest) Act 1998 (and not calculated under section 32).
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(b) Reimbursement by the Provider	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must reimburse the Permitted Purchasing Body in full for any payment made under item (a). • The Provider must do so no later than 7 days after the written demand of the Permitted Purchasing Body. • That demand must be issued strictly according to section 121.
(c) Exceptions where the obligation of the Provider to reimburse the Permitted Purchasing Body in item (b) does not apply	<p>If and for as long as any debts or other liabilities are then overdue from the Permitted Purchasing Body to the Provider in connection with the Individual Contract.</p> <p>Exceptions (either of the following):</p> <ul style="list-style-type: none"> • Where the debt or other liability is subject to a genuine dispute which the Permitted Purchasing Body is using reasonable and genuine efforts to attempt to resolve. • The Permitted Purchasing Body is permitted to delay payment under these Terms and Conditions and/or a relevant Work Order.
(d) Publicity rights	<p>Regardless of anything to the contrary in these Terms and Conditions (especially section 78 relating to confidentiality), the Permitted Purchasing Body may publicise any breach of this section 61 by the Provider.</p>
(e) Whether anything in this item 61.2 limits the rights and remedies of the Permitted Purchasing Body resulting from the Provider's breach of item 61.1.	<p>No.</p>

62. Removal of subcontractors

62.1 Obligations of the Provider to remove from any of the Services any subcontractor which the Provider has directly or indirectly appointed	<p>The Provider must do so promptly on the request of the Permitted Purchasing Body.</p>
62.2 How the Permitted Purchasing Body must make any request to remove any subcontractor directly or indirectly appointed by the Provider	<p>According to all of the following:</p> <ul style="list-style-type: none"> • With reasonable grounds. See section 63 for examples of reasonable grounds for withholding consent. • Strictly by notice, given according to section 121. • Subject to item 62.3.
62.3 Steps the Permitted Purchasing Body must take before issuing the notice in item 62.2	<ul style="list-style-type: none"> • It must take reasonable steps to consult with the Provider regarding the matter. • Exception: where the request for immediate removal is reasonable in the circumstances.
62.4 Whether the request for removal of a subcontractor under this section 62 relieves the Provider of its obligations in connection with the Individual Contract	<p>No.</p>

63. Grounds to refuse or require removal of subcontractors

63.1 Reasonable grounds for

- The Permitted Purchasing Body (or the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council) to refuse consent to subcontractors (for the purposes of item 59.4(a)) or
- The Permitted Purchasing Body to require removal of subcontractors (for the purposes of item 62.2)
- Where relevant and not to exclude other reasonable grounds that apply at the time

(a)	In dispute	<ul style="list-style-type: none"> • The subcontractor and/or any of its Affiliates is then in a genuine, unresolved dispute with the Permitted Purchasing Body and/or any of its Affiliates. • Regardless of whether the dispute relates to the Services or to other dealings with the subcontractor.
(b)	Does not have required licences, permits etc. (section 16)	The subcontractor does not at the time meet the requirements referred to in section 16 in relation to relevant licences, permits or the like (to the extent relevant to its activities in connection with the Services).
(c)	Insurance	<p>The subcontractor does not have insurance cover that would be reasonably expected of it having regard to:</p> <ul style="list-style-type: none"> • The nature of its activities in connection with the Services; and • The insurance the Provider would be required to have under item 93.1 if it carried out those activities directly.
(d)	Person of ill repute	On a reasonable view, the subcontractor and/or any of its Affiliates and/or any of their respective senior Personnel is (at the time) a person of such serious ill repute that association with any of them is reasonably likely to bring significant undesirable publicity to the Permitted Purchasing Body and/or any of its Affiliates and/or to bring any of their respective names into serious disrepute by association with the subcontractor.
(e)	Evidence of experience, capability	<p>In relation to giving consent under section 59:</p> <ul style="list-style-type: none"> • The Provider has not provided the Permitted Purchasing Body with reasonable evidence of the subcontractor’s capability (including its experience) to carry out the relevant activities to which the subcontract is to relate. • Such evidence may include the provision of appropriate and satisfactory references given for the relevant subcontractor.
(f)	Normal grounds for exclusion	In giving consent under section 59: the Lead Council has any mandatory or discretionary grounds for exclusion as a result of the proposed subcontractor’s response to any usual business questionnaire or the like of the Lead Council.

(g) Previous performance	<p>In giving consent under section 59:</p> <ul style="list-style-type: none"> • The Permitted Purchasing Body and/or its Affiliate had received similar services from the subcontractor or its Affiliate in the previous 3 years; and • The Permitted Purchasing Body and/or its Affiliate had reasonable grounds to be seriously dissatisfied with the performance of that subcontractor or its Affiliate in relation to those services.
(h) Incompetence	<p>In relation to the removal of the subcontractor under section 62: the subcontractor has demonstrated any of the following in carrying out its activities in connection with the Individual Contract (and/or any other contract under the Flexible Purchasing System):</p> <ul style="list-style-type: none"> • Serious incompetence; • Serious lack of professionalism; and/or • Serious misconduct.
(i) Termination of other contracts	<p>In relation to the removal of the subcontractor under section 62: the Permitted Purchasing Body and/or its Affiliate has validly terminated any other contract it has with the subcontractor (and/or with the subcontractor's Affiliate) due to any event of default or the like of the subcontractor (and/or the Affiliate) under that contract.</p>
(j) Other contract	<p>The subcontractor has been validly removed under any other contract entered under the Flexible Purchasing System (whether with the Permitted Purchasing Body or another organisation).</p>

64. Client Required Subcontractors

64.1 Indicate any subcontracts which **the Permitted Purchasing Body specifically requires the Provider to enter** to carry out particular activities in connection with any of the Services under the Individual Contract (each of them is a 'Client Required Subcontractor')

Subcontractor	Activities	Main terms of subcontract
As indicated in the Work Order.	As indicated in the Work Order.	As indicated in the Work Order.
64.2 Arrangements regarding payment of the fees, charges, reimbursement of expenses etc. of any Client Required Subcontractor		As indicated in the Work Order.
64.3 Consequences if any Client Required Subcontractor requires amendments to the terms of its subcontract with the Provider (e.g. increase in charges)		As indicated in the Work Order.
64.4 Obligations of the Permitted Purchasing Body to allow the Provider to terminate its subcontract with a particular Client Required Subcontractor if requested to do so by the Provider		As indicated in the Work Order.

64.5 **Provider obligations:** the Provider must do all of the following in relation to each Client Required Subcontractor (to do so lawfully, with reasonable skill, care and diligence and in a reasonably timely manner)

(a) Enter	<ul style="list-style-type: none"> The Provider must enter into a subcontract with the relevant Client Required Subcontractor materially reflecting the terms indicated in item 64.1. The Provider must provide the Permitted Purchasing Body with suitable evidence of it having done so promptly on request.
(b) Prohibitions on the Provider	<ul style="list-style-type: none"> The Provider must not carry out (or allow any other person to carry out) any of the activities reserved for the relevant Client Required Subcontractor without the prior written consent of the Permitted Purchasing Body, at discretion. Such consent is not necessary in circumstances where the Permitted Purchasing Body has permitted the Provider to terminate its subcontract with the relevant Client Required Subcontractor under item 64.4.
(c) Monitor	<ul style="list-style-type: none"> The Provider must monitor that Client Required Subcontractor's performance in relation to those activities. It must do so with reasonable skill, care and diligence.
(d) Keep informed	<p>The Provider must keep the Permitted Purchasing Body informed of any significant issues of non-compliance by the Client Required Subcontractor.</p>

64.6 If and for as long as that Client Required Subcontractor fails to enter the subcontract described in item 64.5(a) for any reason

<ul style="list-style-type: none"> It shall be considered a failure by the Lead Council in providing Client Assistance. See item 73.3 for the consequences of that failure by the Lead Council.

64.7 All of the following consequences apply (to the extent relevant) if any Client Required Subcontractor carries out its activities in relation to the Services negligently, in breach of its subcontract, and/or in breach of the Law

(a) Reporting obligations of the Provider	<p>The Provider must report the matter to the Permitted Purchasing Body according to all of the following</p> <ul style="list-style-type: none"> In a proper and timely manner On first becoming aware of the matter But only if the matter is reasonably serious (i.e. this is not required for minor acts or failures to act). Having monitored the Client Required Subcontractor to the standards required in these Terms and Conditions.
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<p>(b) Duty of care of the Provider</p> <ul style="list-style-type: none"> To the Permitted Purchasing Body (and anyone else with rights under the Individual Contract) For the relevant act (or failure to act) by the Client Required Subcontractor 	<p>None. This is subject to the exceptions indicated in item (c).</p>
<p>(c) Exceptions to the exclusions of liability indicated in item (b)</p>	<p>Item (b) does not in itself exclude the liability of the Provider in any of the following circumstances:</p> <ul style="list-style-type: none"> For breaching its obligations in item (a) to report the matter. Where any of the exceptions to the exclusion of liability in section 100 apply. To the extent the Client Required Subcontractor was acting (or failing to act) according to the express or clearly implied instructions of the Provider or any person acting on the Provider's behalf. In this case, the Permitted Purchasing Body may treat the Client Required Subcontractor's act (or failure to act) as if it were the Provider's own act (or failure to act).
<p>(d) How the breach of the Client Required Subcontractor's subcontract with the Provider must be treated for the purposes of the Individual Contract (section 73)</p>	<ul style="list-style-type: none"> It shall be considered a failure by the Permitted Purchasing Body to carry out Client Assistance for the purposes of section 73. See item 73.3 for the consequences of that failure by the Permitted Purchasing Body. Exception: to the extent the Client Required Subcontractor was acting (or failing to act) according to the express or clearly implied instructions of Personnel of the Provider or the Provider's own directly or indirectly appointed subcontractors. In this case, the Permitted Purchasing Body may treat the Client Required Subcontractor's act (or failure to act) as if it were the Provider's own act (or failure to act).
<p>64.8 Obligations of the Provider to accept any replacement Client Required Subcontractor requested by the Permitted Purchasing Body to carry out the relevant activities in connection with the Services</p>	<p>The Provider must do so in a proper and prompt manner.</p>

65. Liability for the acts etc. of subcontractors

<p>65.1 Liability of the Provider for the acts or failures to act by any subcontractor directly or indirectly appointed by the Provider in connection any of the Services under the Individual Contract</p>	<ul style="list-style-type: none"> The parties to the Individual Contract must regard any act (or failure to act) by any such subcontractor in connection with the Individual Contract as if it were the Provider's own act or failure to act if the Provider were responsible for those activities directly. This does not limit any person's rights and remedies against the subcontractor directly.
<p>65.2 Arrangements in relation to the liability for acts or failure to act by any Client Required Subcontractors in connection with the Individual Contract (section 64)</p>	<p>Section 64 (particularly item 64.7) applies to the liability of the Provider for the acts (or failures to act) by the Client Required Subcontractor in connection with the Services.</p>

Intellectual Property

66. Intellectual Property – general statement

66.1 General statement regarding Intellectual Property

A party to the Individual Contract (or its Affiliate) shall **not** obtain any interest or right (including any right of use) in the separately developed or separately acquired Intellectual Property of the other party or the other party's Affiliate.

Exceptions: to the extent otherwise:

- Clearly indicated elsewhere in the terms of the Individual Contract (as described in item 1.3) (e.g. in any licence); or
- Agreed in writing between the Permitted Purchasing Body and the Provider (and/or their respective Affiliates).

66.2 Interpretation of any license over Intellectual Property granted by a party under the terms of the Individual Contract (as described in item 1.3)

All rights not expressly granted by that party to the relevant licensee are reserved to the party granting the licence.

67. Each party's ownership of Arising Intellectual Property

67.1 Who owns Arising Intellectual Property (as between the Permitted Purchasing Body and the Provider)

Each party (or their respective contractors or third party licensors) shall own whatever Arising Intellectual Property is created, developed or the like by that party or its own separate Personnel, its separate contractors or its other separate agents.

67.2 Right of the Provider to use Arising Intellectual Property which belongs to the Permitted Purchasing Body under item 67.1

The Provider shall have a licence to use the Arising Intellectual Property on these terms:

- Non-exclusive
- Royalty free
- **Permitted use:** only for lawful activities and for purposes which are genuinely connected with the Provider meeting its obligations under the Individual Contract.
- **Right of the Provider to sublicense or assign the benefit of this licence**
 - It may do so (without requiring the Permitted Purchasing Body's consent) to its genuine direct and indirect subcontractors for use for the above purposes.
 - Any other sub-licence or any assignment requires the prior written consent of the Permitted Purchasing Body, at its discretion.

67.3 Licence for the benefit of the Permitted Purchasing Body and its Affiliates in relation to Arising Intellectual Property which belongs to the Provider under item 67.1

(a) The Intellectual Property over which the licence is granted

- Any and all Arising Intellectual Property to belong to the Provider (and/or its respective third party clients, contractors, licensors or the like).
- Any Provider Background Intellectual Property of the Provider (and/or its third party contractors, licensors or the like) over which that Arising Intellectual Property depends.

(b) Who grants the licence	<ul style="list-style-type: none"> • The Provider • If relevant Intellectual Property belongs to the Provider's third party contractors, licensors or the like: the Provider shall use reasonable endeavours at its own cost to obtain a licence on these terms from that person.
(c) To whom the licence is granted	To the Permitted Purchasing Body and its Affiliates.
(d) Commencement of the licence	Immediately when the relevant Arising Intellectual Property is first created, developed or the like.
(e) Main terms of the licence	It shall be a non-exclusive, worldwide, perpetual, royalty-free licence.
(f) Permitted use of the licensed Intellectual Property	<ul style="list-style-type: none"> • To copy or otherwise use that Intellectual Property in any manner • Solely to allow the Permitted Purchasing Body and its Affiliates to properly enjoy the benefit of the Services. • This includes use of relevant Intellectual Property in any Marketing Materials produced under section 68 to enable the Permitted Purchasing Body or a replacement service provider to continue the marketing of the Services. • This includes uses sufficiently connected with genuine research, teaching and/or inclusion in academic publications, but only where relevant to the genuine activities of the licensee.
(g) Prohibited use of licensed Intellectual Property, even if otherwise permitted in item (f)	<p>Neither the Permitted Purchasing Body nor its Affiliate may use (or cause or assist or instruct anyone else to use) that Intellectual Property for any of the following</p> <ul style="list-style-type: none"> • For unlawful activities; and/or • For any activities which (on a reasonable view) compete with the Provider according to its business activities at the time when the Arising Intellectual Property was created, developed or the like; and/or • For activities which bring (or which create an unreasonable risk of bringing) significant, unjustified and unfavourable publicity to the Provider and/or its Affiliates; and/or • For activities which damage the goodwill attaching to the licensed Intellectual Property. <p>If the Permitted Purchasing Body's Affiliate uses that Intellectual Property in breach of the above, the onus shall lie with the Permitted Purchasing Body to prove that use was not done with assistance of the Permitted Purchasing Body, or under the Permitted Purchasing Body's instructions.</p>
(h) Right to assign or sub-licence	The Permitted Purchasing Body or its relevant Affiliate may not assign and/or sub-licence the licence without the prior written consent of the Provider, not to be unreasonably withheld.
(i) Breaches by Affiliates of the Permitted Purchasing Body	The Permitted Purchasing Body shall treat any breach of this licence by its Affiliate as if it were the Permitted Purchasing Body's own breach.

Marketing

68. Marketing Materials

68.1	Marketing materials which the Provider is required to produce in connection with the Services ('Marketing Materials')	As indicated in the General Specification and/or in the Individual Specification.
68.2	Approvals of the Permitted Purchasing Body required before the Provider may use any Marketing Materials it has produced for purposes connected with the Services	
(a)	Which Marketing Materials require the approval of the Permitted Purchasing Body under this item 68.2	As indicated in the Work Order.
(b)	How the approval of the Permitted Purchasing Body is to be given	Not to be unreasonably withheld.
(c)	Approvals – if the Permitted Purchasing Body is not also the Lead Council	Any approval given by the Lead Council shall be given on its own behalf, and on behalf of each other Permitted Purchasing Body.
(d)	Deemed approval	<p>The approval of the Permitted Purchasing Body shall be deemed to have been given in relation to particular Marketing Materials if all of the following apply:</p> <ul style="list-style-type: none"> • The Provider has submitted the Marketing Material to the Permitted Purchasing Body's Representative (or such other person as he/she designates from time to time) to obtain such approval. • The Permitted Purchasing Body has not responded to the Provider after more than 14 days from the submission date to do any of the following in relation to those Marketing Materials: <ul style="list-style-type: none"> - To reject them. - To raise further questions in relation to them in good faith - To seek further information in relation to them in good faith.
68.3	Obligations of the Provider in relation to any website, an 'app', a dedicated social media page and/or any special telephone number (e.g. free or memorable telephone number) relating to the Services	The Provider must ensure the Permitted Purchasing Body is at all times supplied with relevant up-to-date passwords, access codes and the like to enable the Lead Council to continue to operate them when the Services are no longer being provided by or on behalf of the Provider.
68.4	Other obligations of the Provider in relation to the production of Marketing Materials in relation to the Individual Contract	As indicated in the General Specification and/or the Individual Specification and/or the Provider Submission, as relevant.

Changes

69. Best value obligations

69.1 **‘Best value’ duty of the Permitted Purchasing Body under the Local Government Act 1999:** the Provider must provide the Permitted Purchasing Body (in a proper and timely manner) with information and/or other assistance requested in writing and in good faith by the Permitted Purchasing Body for the following purposes

(a) Various obligations under the Local Government Act 1999	<p>The Provider must do all of the following in relation to obligations under the Local Government Act 1999 insofar as relevant to the Services:</p> <ul style="list-style-type: none"> • Assist the Permitted Purchasing Body in carrying out a best value performance review (section 5 of the Act). • Assist the Permitted Purchasing Body in preparing a best value performance plan (section 6 of the Act). • Assist the auditors of the Permitted Purchasing Body to audit any best value performance plan (section 7 of the Act). • Assist the Permitted Purchasing Body in responding to the audit report in relation to any best value performance plan (section 9 of the Act). • Assist in relation to any best value inspection (sections 10 and 11 of the Act). • Assist the Permitted Purchasing Body in relation to any action taken by the Secretary of State (section 15 of the Act).
(b) Comprehensive performance assessment	<p>The Provider must assist the Permitted Purchasing Body in relation to any comprehensive performance review of the Permitted Purchasing Body’s services (insofar as the review is relevant to the Services provided under these Terms and Conditions) undertaken by the Audit Commission or any other regulatory body under section 99 of the Local Government Act 2003.</p>
(c) Publication of information	<p>The Provider must enable the Permitted Purchasing Body to comply with the Publication of Information Direction 2000 (England and Wales) insofar as is relevant to the Services.</p>
69.2 Extent to which the Provider may impose further Charges for carrying out its obligations in this section 69	<p>It may NOT do so.</p>
69.3 Whether this section 69 limits the Provider’s obligations relating to continuous improvement under the Rules of the relevant Flexible Purchasing System	<p>No.</p>

70. Change process requested by the Permitted Purchasing Body

70.1	Definition of a 'Client Change'	<p>A change to any of the following</p> <ul style="list-style-type: none"> • The Individual Specification. • The Work Order. • The General Specification applicable to the relevant Flexible Purchasing System (but only insofar as it relates to the Individual Contract). • These Terms and Conditions. <p>Which is requested from time to time by the Permitted Purchasing Body according to this section 70.</p>
70.2	<p>First step if the Permitted Purchasing Body wishes to propose a Client Change: it must give the Provider a notice proposing the Client Change ('Client Change Notice') which must contain all of the following minimum contents</p>	
(a)	Description of Client Change	<p>A description of the proposed Client Change in sufficient detail to allow the Provider to properly evaluate and respond to the Client Change Notice.</p>
(b)	<p>A request for the Provider to supply the Permitted Purchasing Body by the deadline described in item 70.3 (and given strictly in accordance with section 121) with either of the following, as relevant</p>	
(i)	Change Estimate	<p>A 'Change Estimate' meeting the requirements in item 70.4.</p>
(ii)	<p>If the Change Estimate cannot be provided by the relevant deadline</p>	<p>An estimate (made with due care and in good faith) of the estimated date on which the Change Estimate can be provided, on the understanding the Provider is to use reasonable endeavours to provide it promptly.</p>
70.3	<p>Deadline for the Provider to supply either piece of information indicated in item 70.2(b)(i) or item 70.2(b)(ii)</p>	<p>30 days after the Client Change Notice is given (or such longer period indicated in the Client Change Notice).</p>
70.4	<p>Requirements of the Change Estimate in relation to the proposed changes (excluding those the Provider has properly refused according to item 70.7)</p>	
(a)	Writing	<p>It must be in writing.</p>
(b)	Preparation	<p>It must be compiled with due care and in good faith.</p>
(c)	Content	<p>It must (as a minimum) contain ALL of the contents described in item 70.5.</p>
70.5	<p>Minimum contents of the Change Estimate - all of the following</p>	
(a)	Estimate of change	<p>A genuine estimate of the impact proposed changes on the Individual Contract, particularly the Charges in section 24 and the Services.</p>
(b)	Implementation proposal	<p>The Provider's proposal in implementing the relevant proposed changes, including its relevant methods and time periods required.</p>
(c)	<p>The extent to which the Provider requires any of the following to implement the relevant proposed changes (describing the nature of the requirement in sufficient detail)</p>	
(i)	Subcontractor	<p>The assistance of any subcontractor.</p>
(ii)	Client Assistance	<p>Any additional Client Assistance.</p>
(iii)	Consents	<p>Any consent of any arm's length third party, including any regulatory approval.</p>
(iv)	Extension	<p>Any extension of any deadline otherwise applying to the Individual Contract.</p>

	(v) Relief	Any other relief from its obligations under these Terms and Conditions and/or a relevant Work Order (e.g. relief from standards to which the Services are to be provided).
	(d) Amendments	A genuine proposal of amendments reasonably required as a result of the proposed change.

70.6 Grounds on which the Provider may refuse a requested Client Change (in full or part) requested in a particular Client Change Notice: ONLY if at least one of the following applies

	(a) The requested change involves activities to which any of the following applies	
	(i) Outside normal business	The activities are not sufficiently connected with the Provider's normal business activities at the time.
	(ii) Outside scope etc.	The activities are not sufficiently within the scope, nature and/or risk profile of the Services.
	(b) The requested change, if implemented, would necessarily require the Provider and/or its Personnel to do any of the following which it cannot reasonably avoid	
	(i) Law	Break the Law.
	(ii) Licences, accreditations etc.	In the case of the Provider, breach any licence, permission or the like which it and/or a relevant subcontractor is required to hold according to section 16.
	(iii) Personnel requirements	In the case of any Personnel of the Provider involved in the Services, breach of any requirement (e.g. licence etc.) he/she is required to hold under item 36.1 having regard to the nature of his/her activities in connection with the Services.
	(iv) Standards	Breach standards applicable to the Provider according to good industry or professional practice, professional or industry codes of conduct or the like.
	(v) Hazards	Create unreasonable and not reasonably a safety hazards.
	(vi) Risk to property	Create unreasonable risk of loss, theft, damage or destruction of any of the Provider's property.
	(c) Client Change Notice does not meet requirements	The Client Change Notice does not strictly meet the requirements of this section 70, particularly the content requirements of item 70.5.

70.7 Procedure the Provider must follow if it wishes to partly or fully refuse the proposed Client Change: the Provider must give the Permitted Purchasing Body a notice indicating such refusal according to the following

	(a) As a notice	The notice must be given strictly in accordance with section 121.
	(b) Deadline	The notice must be given by the relevant deadline described in item 70.3.
	(c) Parts refused	If refusal only applies to part of the requested change, it must indicate reasonably clearly the part being refused.
	(d) Reason for refusal	It must clearly indicate in sufficient detail the reasons for refusal, being at least one of the grounds indicated in item 70.6.

70.8 Next step if the Provider - meeting between Representatives

	(a) Obligations	The parties shall direct their respective Representatives to meet as soon as reasonably practicable after the Permitted Purchasing Body receives the Change Estimate to discuss the proposed changes and the matters indicated in the Change Estimate.
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(b)	Purpose of the meeting	To attempt to agree relevant amendments required, including without limitation and to the extent relevant, changes to the Charges, taking into account the matters described in item 70.9.
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70.9 **Matters to be taken into account for the purposes of the meeting described in item 70.8:** all reasonable and relevant matters, including the following, without limiting the reasonable and relevant grounds which may apply at the time

(a)	Necessity of the changes to ensure compliance with the Law	The extent the proposed changes are necessary to ensure the Permitted Purchasing Body and/or the Provider complies with any Law introduced or amended after the date on which the Individual Contract was entered.
(b)	Change Estimate	Matters raised by the Provider in the Change Estimate, acting reasonably and in good faith.
(c)	Evidence certain changes are kept to a minimum	Reasonable evidence provided by the Provider that it has used reasonable endeavours to keep to a reasonable minimum any amendments resulting from the proposed changes to the extent such amendments are unfavourable to the Permitted Purchasing Body.
(d)	Continuous improvement	Any suggested improvement raised by the Provider in meeting its obligations if any under the rules of the relevant Flexible Purchasing System relating to continuous improvement.
(e)	Good value for money	<ul style="list-style-type: none"> • Reasonable evidence provided by the Provider that it is giving good value for money for implementing the proposed changes having regard (without limitation) to amendments to the terms of the Individual Contract. • This may include, where relevant and without limitation, evidence of competitive quotes from subcontractors and other suppliers.

70.10 What happens when the Permitted Purchasing Body and the Provider reach agreement on the proposed change - all of the following

(a)	Execute documents	The Permitted Purchasing Body and the Provider must promptly execute all such documents to make the appropriate amendments to properly reflect that agreement, according to the formal requirements in section 72.
(b)	Deadline for the Permitted Purchasing Body to execute relevant documents reflecting agreement to the proposed changes	<ul style="list-style-type: none"> • 30 days of the documents being properly presented, or such longer period agreed in writing by the Provider. • The Provider shall not unreasonably withhold consent to any request by the Permitted Purchasing Body for an extension to this deadline.
(c)	If the Permitted Purchasing Body fails to execute such documents	If the Permitted Purchasing Body (through no fault of the Provider) fails to execute such documents that properly reflect that agreement by the deadline indicated in item (b) of agreement having been reached: the Permitted Purchasing Body shall be deemed to have withdrawn its request for the relevant proposed changes.

70.11 Consequence of withdrawal of the request in relation to a proposed Client Change

It shall not in itself prevent the Permitted Purchasing Body from later recommencing the procedure in relation to the same (or any other) proposed changes.

70.12 Consequences if the parties cannot agree on the proposed Client Change

It shall be considered a dispute for the purposes of section 119.

71. Change process requested by the Provider

71.1	Definition of a 'Provider Change'	<p>A change to any of the following</p> <ul style="list-style-type: none"> • The Individual Specification. • The Work Order. • The General Specification applicable to the relevant Flexible Purchasing System (but only insofar as it relates to the Individual Contract). • These Terms and Conditions. <p>Which is requested from time to time by the Provider according to this section 71.</p>
71.2	First step if the Provider wants to propose a Provider Change	It must give the Permitted Purchasing Body a notice (' Provider Change Notice ') which complies with this section 71.
71.3	How the Provider must give the Provider Change Notice	Strictly according to section 121.
71.4	Minimum contents of the Provider Change Notice: all of the following (such information to be provided with sufficient clarity and sufficient detail to enable proper evaluation)	
(a)	Description	A description of the proposed Provider Change.
(b)	Required amendments	The likely required amendments.
(c)	Reasons	Reasons for requesting the proposed Provider Change.
(d)	Timetable	The proposed timetable for commencing the mobilisation of the proposed Provider Change from the date it is agreed by the parties.
(e)	Increase on Charges (section 24)	If the proposed Provider Change is to result in an increase in Charges, a breakdown of that increase, indicating relevant calculations.
(f)	Deadline for decision	If the Provider requires the decision of the Permitted Purchasing Body on the proposed Provider Change by a particular date, the relevant date and the reason the decision is required by that date.
(g)	Request for consultation	A request for the Permitted Purchasing Body to consult with the Provider for the purpose of considering the proposed Provider Change.
71.5	Next step	
(a)	Obligations of the Permitted Purchasing Body	The Permitted Purchasing Body must evaluate the request for proposed Provider Change contained in the Provider Change Notice in good faith.
(b)	Deadline for the above evaluation	By the deadline (if there is one) described in the Provider Change Notice.
(c)	Matters which the Permitted Purchasing Body must take into account when evaluating the Provider Change Notice - all reasonably relevant issues including the following (where relevant and without limiting other reasonable and relevant issues that apply at the time)	
(i)	Changes to Charges (section 24)	Changes to the Charges and other amounts payable by the Permitted Purchasing Body which are likely to result from the proposed Provider Change.
(ii)	Other changes	Other amendments which are reasonably likely to result from the proposed Provider Change.

(iii)	Undesirable consequences	The extent to which the proposed change is reasonably likely to cause any serious and undesirable consequence for the Permitted Purchasing Body including without limitation, any breach of the Law, breach of any duty of care it owes another person, serious and unjustified unfavourable publicity, further costs, delays etc.
(iv)	Likelihood of change being implemented	The likelihood of the Provider being able to implement the proposed change.
(v)	Impact on other Services	The impact of the proposed change on other parts of the Services.

71.6 **Next step - meeting between Representatives:** the Permitted Purchasing Body and the Provider shall direct their respective Representatives to meet (as soon as reasonably practicable) to discuss the proposed change with a view to agreeing the following

(a)	Whether accepted	Whether the proposed change is to be accepted in full or part.
(b)	Required amendments	Relevant amendments required, including without limitation and to the extent relevant, changes to the Charges.

71.7 Basis of the decision of the Permitted Purchasing Body to accept or reject the Provider's proposed change (e.g. whether 'at discretion' or 'not to be unreasonably withheld')

(a)	In relation to changes in the Law which <ul style="list-style-type: none"> • Relates specifically to the business of the Permitted Purchasing Body; and • Which would not affect the supply of substantially similar services to substantially similar clients or customers (whether or not involving the Provider and/or the Permitted Purchasing Body) 	Not to be unreasonably withheld.
(b)	In relation to any other changes to the Law not described in item (a)	At discretion.
(c)	In relation to any part of the General Specification and/or the Individual Specification which creates an unreasonable risk of any of the matters indicated in section 13	Not to be unreasonably withheld.
(d)	Other	At discretion.

71.8 Consequences if the proposed changes are to result in a reduction in the cost to the Provider in providing the Services

	As indicated in the Work Order.
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71.9 Consequences of the parties reaching agreement on the proposed change

(a)	Execute documents	They shall promptly execute all such documents to amend the Individual Contract to properly reflect that agreement.
(b)	Deadline for the Provider to execute relevant documents reflecting agreement to the proposed change	30 days after they are properly presented.

(c) If the Provider fails to execute

If the Provider (through no fault of the Permitted Purchasing Body fails to execute such documents that properly reflect that agreement by the deadline indicated in item (b) after agreement is reached, the Provider shall be deemed to have withdrawn its request for the relevant proposed Provider Change.

(d) Consequence of withdrawal under item (c)

It shall not in itself prevent the Provider from later recommencing the procedure in relation to the same (or any other) proposed Provider Changes.

72. Amendment

72.1 How the terms of the Individual Contract (as described in item 1.3) are to be validly amended if the Work Order is NOT a deed

- By agreement in writing between the Permitted Purchasing Body and the Provider.
- It must be clearly intended to amend the terms of the Individual Contract.

72.2 If no consideration is otherwise indicated in the relevant document evidencing the amendment to the terms of the Individual Contract (if that document is not a deed)

- Each party shall be deemed to give the other party consideration of £1.00 if demanded.
- The parties agree that this consideration is sufficient.

72.3 How the terms of the Individual Contract (as described in item 1.3) are to be validly amended if the Work Order IS a deed

- By deed of variation executed by the Permitted Purchasing Body and the Provider.
- The deed of variation must indicate a clear intention of the parties to amend the terms of the Individual Contract.

Events outside the Provider's control

73. Client Assistance

73.1 Indicate any assistance which the Permitted Purchasing Body is to provide the Provider to enable the Provider to provide relevant Services ('Client Assistance')

Description of the Client Assistance	Any details (e.g. deadlines, specific requirements etc.)
As indicated in the General Specification.	As indicated in the General Specification.
As indicated in the Individual Specification	As indicated in the Individual Specification
The Lead Council (or its Affiliate) entering into, and carrying out its obligations under any Associate Document described in section 2, where it is expected to be a party to it	
Ensuring Client Required Subcontractors enter into relevant subcontracts to enable the Provider to carry out its obligations in item 64.5(a) (section 64)	To do so promptly.
Providing the Provider with cooperation to enable it to novate the contracts indicated in item 10.1	To do so in a timely manner.
Providing assistance required in item 19.1 in relation to any mobilisation plan	To do so in a timely manner.

Carrying out the Permitted Purchasing Body's obligations in section 45 in relation to the Provider's right to carry out TUPE-related due diligence activities	To do so in a timely manner.
73.2 Steps the Provider must strictly follow if it wants any of the consequences in item 73.3 to apply if the Permitted Purchasing Body fails to provide any particular Client Assistance according to the relevant requirements (e.g. deadlines) in item 73.1	<p>It must raise the matter as follows</p> <ul style="list-style-type: none"> • In writing to the Representative and/or the Escalated Person of the Permitted Purchasing Body. • No later than 5 Business Days from the day on which the Provider first became aware of the matter.
73.3 Consequences if the Permitted Purchasing Body fails to provide any Client Assistance as required: all of the following to the extent relevant (to be read independently, and to limit the rights and remedies of the Provider as a result of the failure by the Permitted Purchasing Body)	
(a) Whether delays substantially caused by the failure to provide the Client Assistance relieve the Permitted Purchasing Body of its obligations to pay Charges indicated in section 24	No.
(b) Right to relief	<p>The Provider shall be relieved of liability according to all of the following</p> <ul style="list-style-type: none"> • To any person with rights under the Individual Contract • For failing to carry out any of its obligations under the Individual Contract • To the extent the Provider's failure to carry out that obligation is substantially and directly caused by the Permitted Purchasing Body's failure to provide that Client Assistance.
(c) If the Permitted Purchasing Body's failure substantially and directly causes the Provider to fail to meet any Contract Standard (section 6)	The Provider shall be deemed to have met that Contract Standard on that occasion for all purposes of the Individual Contract.
(d) Right to take certain steps: the Permitted Purchasing Body shall not unreasonably refuse a proposal from the Provider to take certain steps if the Provider's proposal meets all of the following requirements	
(i) How the proposal must be made	<ul style="list-style-type: none"> • In writing. • Communicated to the Permitted Purchasing Body's Representative.
(ii) Steps that the Provider may propose	<p>Amendments to the terms of the Individual Contract (as described in item 1.3), including (without limitation and where relevant) amendments relating to any of the following to take account of the failure by the Permitted Purchasing Body to provide the relevant Client Assistance:</p> <ul style="list-style-type: none"> • Extending any deadlines of the Provider in connection with the Services. • Changing the financial arrangements between the parties under the Individual Contract (e.g. Charges payable under section 24 etc.). • Changing the General Specification or the Individual Specification and/or the Provider Submission (whether temporarily or permanently) to reduce the burden of the Provider in connection with the Individual Contract.

(iii) Requirements of the proposal	<ul style="list-style-type: none"> • It must be reasonable and proportionate • In preparing the proposal, the Provider must have proper regard to the extent to which the Permitted Purchasing Body's failure affected the Provider's ability to carry out its obligations.
(iv) Deadline to submit the proposal	<ul style="list-style-type: none"> • The proposal must be submitted no later than 30 days after the Permitted Purchasing Body has properly fixed its failure to provide the relevant Client Assistance. • If and for as long as the Permitted Purchasing Body continues to fail to remedy that failure, the Provider shall have an ongoing right to submit (and to resubmit, if the Provider wishes to do so) this proposal in relation to that failure by the Permitted Purchasing Body.
(v) If the parties cannot reach agreement on the proposal	It shall be a dispute between the parties, to be resolved according to section 119.

74. Definition of 'Uncontrollable Circumstances'

74.1 Each of following is to be considered to be an '**Uncontrollable Circumstance**' for the purposes of the Individual Contract (each of them effectively a '**force majeure**' event)

- To the extent each of them is **genuinely outside the Provider's reasonable control** and
- To the extent each of them **directly and substantially disrupts the Provider's ability to meet its affected obligations** under the Individual Contract

(a) As required by the Permitted Purchasing Body	<ul style="list-style-type: none"> • The Permitted Purchasing Body requires the Provider to suspend the affected obligations, even if the Provider is willing and able to carry them out. • The Permitted Purchasing Body must have reasonable grounds to impose this requirement (e.g. exercise of any statutory or regulatory functions, safety issues, necessary closure of relevant premises, etc.).
(b) Obligation by Law	The Provider is required by Law to suspend relevant obligations under the Individual Contract.
(c) Unsafe, impractical	<p>On a reasonable view, it is seriously unsafe and/or seriously impractical for the Provider and/or relevant Personnel to carry out relevant obligations under the Individual Contract due to</p> <ul style="list-style-type: none"> • Severe weather, natural disasters, war, invasion, armed conflict, epidemic, acts of terrorism, civil unrest, or other armed conflict (whether or not declared) or • Any event or circumstance similar to these.

(d)	Personnel absence	<p>At least 50% of the Personnel usually allocated by the Provider to the affected activity (whether employees of the Provider or otherwise) is unable to come to work (and working from home or elsewhere is not reasonably practicable having regard to their duties) for a substantial continuous period due to reasons outside their control including without limitation any of the following:</p> <ul style="list-style-type: none"> • Severe weather, natural disasters, and security-related issues such as terrorism, war or civil unrest. • Illness affecting those Personnel. • Serious disruptions to transportation (e.g. transport strikes).
(e)	Strikes	<ul style="list-style-type: none"> • Relevant obligations are disrupted by strikes or other industrial action. • Exception: this does not apply to strikes or other industrial action by Personnel of the Provider and/or its directly or indirectly appointed subcontractors.
(f)	Premises becoming unusable	<p>Relevant premises where the Provider is expected to carry out the relevant obligations are substantially unusable for any reason which is not substantially the fault of the Provider.</p>
(g)	Equipment becoming unusable	<p>Relevant equipment (which is significant and necessary to the affected obligations of the Provider and is not easily replaceable)</p> <ul style="list-style-type: none"> • Is substantially unusable • For any reason which is not substantially the fault of the Provider.
(h)	Utility disruption	<ul style="list-style-type: none"> • Disruption in the supply of relevant utility services, such as electricity, gas, water, telephone and internet services <ul style="list-style-type: none"> - For any reason; and - Which is not substantially the fault of the Provider. • Withdrawal of such services on request of the Provider or as a result of any default by the Provider (e.g. failure to pay supplier charges) is not an Uncontrollable Circumstance.
(i)	Key Personnel (section 40)	<p>Absence or temporary discontinuation of a particular Key Personnel</p> <ul style="list-style-type: none"> • For good reasons; and • Outside the reasonable control of the Key Personnel and/or the Provider (e.g. serious illness).
(j)	Client Required Subcontractor (section 64)	<p>Delays or other breaches by any Client Required Subcontractor.</p>
(k)	Default by housing provider	<p>If the relevant premises are occupied by a third party which is giving the Provider access to it to provide the Services, a default by that third party of any contract it has with the Provider relating to the Provider's access to the premises.</p>

75. Continuity plans

75.1 Business or service continuity plans or the like which apply to the Individual Contract if relevant Uncontrollable Circumstances described in section 74 occur

(a) The Provider's initial obligations	The Provider must submit a first draft of a business or service continuity plan to the Permitted Purchasing Body for its approval.
(b) Due date for submitting the first draft	6 weeks after the date the Individual Contract is entered.
(c) Purpose of submission	<ul style="list-style-type: none"> For the approval of the Permitted Purchasing Body. The approval of the Permitted Purchasing Body cannot be unreasonably withheld.
(d) Obligations of the Permitted Purchasing Body if approval is not given	To give the Provider timely feedback to enable it to submit the next draft.
(e) Until the approval of the Permitted Purchasing Body is given	<ul style="list-style-type: none"> The Provider must resubmit further drafts of the business or service continuity plan until the approval of the Permitted Purchasing Body is given. The Provider must do so in a timely manner. The Provider must give proper regard to any feedback given to it by the Permitted Purchasing Body.
(f) If the Provider from time to time wishes to amend the approved business or service continuity plan in place at the time	<ul style="list-style-type: none"> The amendment shall not apply to the Individual Contract unless it has been approved in writing by the Permitted Purchasing Body. Such approval shall not be unreasonably withheld.
(g) If the parties cannot agree on a particular business or service continuity plan (or any amendment) proposed by the Provider for the approval of the Permitted Purchasing Body	It shall be a dispute for the purposes of section 119.
75.2 Character of any business or service continuity plan described in this section 75	<ul style="list-style-type: none"> It forms part of the Individual Specification. If there is any inconsistency between the business or service continuity plan and the rest of the Individual Specification: the business or service continuity plan overrides the rest of the Individual Specification to the extent of the inconsistency.

76. Uncontrollable Circumstances – general consequences

76.1 **Suspension:** the following apply to the right or obligation of the Provider to suspend obligations under the Individual Contract as a result of relevant Uncontrollable Circumstances (section 74)

(a) Obligation to communicate	<p>The Provider must communicate its intention to suspend carrying out such obligations as follows</p> <ul style="list-style-type: none"> To the Permitted Purchasing Body's Representative or (in any emergency) other suitable Personnel of the Provider; and In writing where reasonably possible. <p>If suspension is required by the Permitted Purchasing Body under item 74.1(a): this communication is not required.</p>
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(b) Right or obligation to suspend	<ul style="list-style-type: none"> The Provider may suspend carrying out those of its obligations in relation to the Individual Contract to the extent the relevant Uncontrollable Circumstance substantially and directly prevents the Provider or its subcontractors from otherwise carrying them out. If suspension is required by the Permitted Purchasing Body under item 74.1(a): the Provider must do so.
(c) Obligations of the Provider to keep informed	The Provider must keep the Permitted Purchasing Body informed in a proper and timely manner of significant events or circumstances in relevant to the suspension of the relevant obligations.
(d) Resumption	<ul style="list-style-type: none"> The Provider must resume the relevant activities promptly when it is no longer substantially and directly prevented from doing so under the relevant Uncontrollable Circumstance. If suspension is required by the Permitted Purchasing Body under item 74.1(a): the Provider must not do so until permitted by the Representative of the Permitted Purchasing Body.

76.2 **Consequences if the Provider suspends its obligations according to item 76.1:** all of the following (as relevant, to be read independently) (section 74)

(a) Right to relief	<p>The Provider shall be relieved of liability (all of the following)</p> <ul style="list-style-type: none"> To any person with rights under the Individual Contract For failing to carry out any of its obligations under the Individual Contract To the extent the Provider's failure to carry out that obligation is substantially and directly caused by the relevant Uncontrollable Circumstance.
(b) If the suspension of obligations according to item 76.1(b) substantially and directly causes the Provider to fail to meet any Contract Standard (section 6)	The Provider shall be deemed to have met that Contract Standard for all purposes of the Individual Contract in relation to activities suspended under item 76.1(b).
(c) Consequences for the Charges for Services disrupted due to any Uncontrollable Circumstance (section 24)	

<p>(d) Business or service continuity plans (section 75)</p>	<p>The parties are to carry out their respective obligations under any business or service continuity plan or the like described in section 75, as follows (all of the following)</p> <ul style="list-style-type: none"> • In a proper, timely and lawful manner. • To the extent the business or service continuity plan imposes obligations on them when the relevant Uncontrollable Circumstance arises. • With proper regard to the safety and wellbeing of human beings who are reasonably affected, where appropriate to the relevant Uncontrollable Circumstance. • Bearing their own costs, except to the extent the Permitted Purchasing Body is required to pay the Provider any additional Charges according to the business or service continuity plan or the like.
<p>(e) Right to take certain steps: the Permitted Purchasing Body shall not unreasonably refuse a proposal from the Provider to take certain steps if the Provider’s proposal meets all of the following requirements</p> <p>(i) How the proposal must be made</p> <p>(ii) Steps that may be proposed</p> <p>(iii) Requirements of the proposal</p> <p>(iv) Deadline to submit the proposal</p> <p>(v) If the parties cannot reach agreement on the proposal</p>	<p>• In writing.</p> <p>• Communicated to the Permitted Purchasing Body’s Representative.</p> <p>The Permitted Purchasing Body and the Provider agreeing to amendments to the terms of the Individual Contract (as described in item 1.3), including (without limitation and where relevant) amendments relating to any of the following to take account of the suspension of activities in connection with the relevant Uncontrollable Circumstance:</p> <ul style="list-style-type: none"> • Extending any deadlines of the Provider in connection with the Services. • Changing the financial arrangements between the parties under the Individual Contract (e.g. Charges payable under section 24 etc.). • Changing the General Specification or the Individual Specification and/or the Provider Submission (whether temporarily or permanently) to reduce the burden of the Provider in connection with the Individual Contract. <p>• It must be reasonable and proportionate</p> <p>• In preparing the proposal, the Provider must have proper regard to the extent to which the Provider’s obligations were suspended as a result of the relevant Uncontrollable Circumstance.</p> <p>The proposal must be submitted no later than 30 days after the Uncontrollable Circumstance no longer substantially and directly prevents the Provider from conducting the Concession in the manner as if the Uncontrollable Circumstance had not occurred.</p> <p>It shall be a dispute between the parties, to be resolved according to section 119.</p>

76.3	Which party is permitted to terminate the Individual Contract under section 108 if the Services are disrupted for a continuous period due to any Uncontrollable Circumstances	Either party.
76.4	When a party described in item 76.3 may terminate the Individual Contract under section 108 due to the continuation of any Uncontrollable Circumstances	Where all of the following apply: <ul style="list-style-type: none"> • The relevant Services have been suspended due to any Uncontrollable Circumstance for more than 90 continuous days. • The Services are still suspended at the time the notice described in item 108.3 is given.

Information

77. Accuracy of information

77.1	Information relating to the Individual Contract in relation to which the Permitted Purchasing Body gives the warranties and representations in item 77.2 (‘Client Warranted Information’)	Any information to which and to the extent all of the following applies <ul style="list-style-type: none"> • The information relates to the Individual Contract. • The information was supplied by or on behalf of the Permitted Purchasing Body in writing before the Provider and the Permitted Purchasing Body entered the Individual Contract. • It is reasonable in the circumstances for the Provider to assume that the accuracy and completeness of that information is within the control of the Permitted Purchasing Body; • It is reasonable in the circumstances to assume the Provider has relied on that information in preparing its Provider Submission.
77.2	Warranties and representations given by the Permitted Purchasing Body to the Provider in relation to each piece of Client Warranted Information	All of the following <ul style="list-style-type: none"> • That the information is materially accurate and complete • At the execution date of the Work Order of the Individual Contract. • To the best of the knowledge of the Permitted Purchasing Body (having made reasonably necessary checks). • Exception: to the extent otherwise disclosed beforehand by the Permitted Purchasing Body in writing to the Provider.
77.3	Deadline by which the Provider must raise a breach of warranty and representation in item 77.2 (after that deadline it is not entitled to exercise any rights or remedies against the Permitted Purchasing Body in relation to that breach).	No later than 3 months after the date of the Individual Contract. The Provider must raise the breach in writing with the Permitted Purchasing Body as a notice given strictly under section 121 in these Terms and Conditions.
77.4	In relation to all other information given by the Permitted Purchasing Body to the Provider in relation to the Individual Contract which is not Client Warranted Information	
(a)	No warranty etc.	The Permitted Purchasing Body gives no person any warranty or representation in relation to the accuracy and/or the completeness of that information.
(b)	Exclusion of liability	The liability of the Permitted Purchasing Body and that of its Affiliates or Personnel in connection with the Individual Contract in relation to the accuracy and/or completeness of that information (whether arising in tort, contract or otherwise) is excluded to the fullest extent permitted by Law .

(c)	No relief	The Provider is not entitled to any relief from its obligations under the Individual Contract for the sole reason that such information is inaccurate and/or incomplete.
(d)	No exclusion	Nothing in this item 77.4 excludes the Permitted Purchasing Body's liability for fraudulent misrepresentation .

78. Confidentiality

78.1 Confidential Information of the respective Disclosers is as follows, subject to item 78.2

(a)	Confidential Information of the Permitted Purchasing Body and/or its Affiliates (each of the following to be read independently)	
(i)	Business activities	Information relevant to its business activities generally, including without limitation, its business strategies, plans, finances, operations, Personnel and human resources activities generally, products or services, research activities, data (including personal data in relation to which it is the data controller or data processor for the purposes of the Data Protection Act 1998), know how, trade secrets, customers or clients or Service Users identified in item 3.1 or unpublished Intellectual Property.
(ii)	Dispute resolution	Disclosures made in the course of any dispute resolution procedure described in section 119.
(iii)	How the information must be disclosed or made available to be the 'Confidential Information' of the Permitted Purchasing Body or its Affiliate	<p>All of the following</p> <ul style="list-style-type: none"> • It may be disclosed or made available to the Provider (and/or anyone acting on its behalf) • In any manner or in any medium (e.g. in writing, verbally, by observation at the Discloser's premises, contained in any device or material etc.) • In activities reasonably connected with the Individual Contract. • Regardless of whether labelled 'confidential'.
(b)	Confidential Information of the Provider (each of the following to be read independently)	
(i)	Provider Submission	The contents of a genuinely confidential nature in the Provider Submission.
(ii)	Charges described in section 24	<ul style="list-style-type: none"> • The Provider's Charges. • But only to the extent the Charges have been uniquely determined by the Provider for the purposes of the Individual Contract (e.g. they are not set by the Permitted Purchasing Body, they are not publicly-available etc.).
(iii)	Subcontractor, Personnel	<p>Any information</p> <ul style="list-style-type: none"> • Relating to any Personnel of the Provider, or any subcontractor appointed by the Provider in connection with the Individual Contract. • Disclosed or otherwise made available by the Provider to the Permitted Purchasing Body or to anyone acting on its behalf in connection with the Individual Contract. • Where the Provider indicates in writing it is subject to a genuine duty of confidentiality to that Personnel or subcontractor.

(iv)	Information in reports etc.	<p>All of the following</p> <ul style="list-style-type: none"> Information about the Provider itself (e.g. its financial condition, any significant incident, any prospective internal changes etc.) Given to the Permitted Purchasing Body from time to time in connection with the Individual Contract. Whether in providing regular reports, at meetings or otherwise.
(v)	Inspection (section 86)	Information of a genuinely confidential nature obtained in the course of any inspection carried out by or on behalf of the Permitted Purchasing Body in connection with the Individual Contract.
(vi)	Dispute resolution	Disclosures made in the course of any dispute resolution procedure described in section 119.
(vii)	How the information must be disclosed or made available to be the 'Confidential Information' of the Provider	<p>All of the following</p> <ul style="list-style-type: none"> It may be disclosed or made available to the Permitted Purchasing Body (and/or anyone acting on its behalf) In any manner or in any medium (e.g. in writing, verbally, by observation at the Discloser's premises, contained in any device or material etc.) unless otherwise indicated. In activities reasonably connected with the Individual Contract. Regardless of whether labelled 'confidential'.

78.2 A piece of information of the Discloser is not in any case Confidential Information of the Discloser if any of the following applies to that piece of information at the time

(a)	Public domain	<ul style="list-style-type: none"> It is in the public domain from time to time Exception: as a result of any breach of a duty of confidentiality owed by the Recipient under these Terms and Conditions and/or a relevant Work Order.
(b)	Independently developed	The Recipient can reasonably prove it (or its Affiliates and/or their Personnel) had developed that information independently of its association with the Discloser and/or the Discloser's Affiliates and/or their Personnel.
(c)	Independently acquired	<ul style="list-style-type: none"> The Recipient and/or its Affiliate and/or their respective Personnel receives that information in good faith from a third party in circumstances unconnected with the Individual Contract. Exception: where the Recipient knows or has reasonable grounds to suspect that the third party is in breach of confidentiality obligations owed to the Discloser and/or its Affiliate.
(d)	Trivial	The information is of a trivial nature.

78.3 Duration of the Recipient's obligations in item 78.4 in relation to each piece of the Discloser's Confidential Information

<p>Either</p> <ul style="list-style-type: none"> 3 years from the date on which the Provider ceases to be obliged to provide any Services whatsoever under the Individual Contract; or Such longer period required by Law in relation to that piece of Confidential Information.

78.4 **The Recipient's obligations:** the Recipient must comply with all of the following obligations in relation to each piece of Confidential Information of the Discloser in the possession of the Recipient from time to time (for the period indicated in item 78.3)

(a)	Non-disclosure (subject to item 78.5)	<p>The Recipient</p> <ul style="list-style-type: none"> Must keep that Confidential Information strictly in confidence, and Must not disclose it or make it available to third parties.
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(b)	Not to misuse	<ul style="list-style-type: none"> The Recipient must not copy, modify, reverse engineer or otherwise use that Confidential Information for any purpose other than for legitimate purposes connected with the relevant Services. Without limiting the above, the Recipient must not use that Confidential Information to conduct any venture (whether for profit or otherwise) independently of the Discloser.
(c)	Comply with the Law	The Recipient must comply with relevant Law in relation to the keeping, disclosure or use of that Confidential Information.
(d)	Storage (where the Recipient is the Provider)	<p>The Recipient must store the Confidential Information as follows:</p> <ul style="list-style-type: none"> According to any requirements in the Specification. To a reasonable standard of security. In any case, not to a lower standard of security the Recipient uses to store its own information of comparable confidentiality.
(e)	Return or destroy (where the Recipient is the Provider)	<ul style="list-style-type: none"> The Recipient must promptly return or destroy Confidential Information of the Permitted Purchasing Body or its Affiliate on written request of the Permitted Purchasing Body where (on a reasonable view) the Recipient no longer has a need to retain the Confidential Information. The Recipient may retain records which incidentally contain Confidential Information of the Discloser, or where the Recipient has a genuine professional requirement to retain a copy of records.
(f)	Not to direct others	<ul style="list-style-type: none"> The Recipient must not direct or assist any person to do anything in breach of the rest of this item 78.4. If any Personnel of the Recipient or those of its Affiliate or (if the Recipient is the Provider) any subcontractor directly or indirectly appointed by the Recipient does anything in breach of the rest of this item 78.4, the onus shall lie with the Recipient to prove it was not done at the direction of, or with the assistance of the Recipient.

78.5 **Permitted disclosures:** the Recipient is permitted to disclose or make available any Confidential Information of the Discloser in **any** of the following circumstances, regardless of item 78.4(a)

(a)	Consent	With the prior written consent of the Discloser, subject to the Recipient's compliance with any conditions attached to that consent.
(b)	To Personnel, advisers etc.	<p>To any of the following</p> <ul style="list-style-type: none"> The Recipient's genuine existing or prospective Personnel, advisers, contractors, consultants, agents, insurers, funders, shareholders or other investors, or purchasers of the business of, and/or shares in, the Recipient, auditors and banks. Any public body authorised to review these Terms and Conditions. Any person to whom the Recipient wishes to make a genuine novation and/or assignment of any part of the Individual Contract. Relevant third parties engaged for the purpose of resolving disputes under section 119. Third parties described in item 124.2 who have rights under the Individual Contract for the purpose of advising them of their rights, powers and benefits under the Individual Contract. <p>These disclosures are subject to item 78.6.</p>
(c)	Other entities connected with the Flexible Purchasing System	To any other entity which is entitled to enter contracts under the Flexible Purchasing System at the time.

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| (d) | Required by Law | <ul style="list-style-type: none"> To the extent the Recipient is required to disclose or make available the Confidential Information by Law, including without limitation, a court, a regulatory body, a law enforcement body, a genuine public auditor or other genuine public body (if the Recipient is a public body), the UK Parliament, a relevant stock exchange or similar body, where reasonably necessary by the Recipient in exercise of any of its public functions or in relation to any obligations the Recipient has under any FOI Act. These disclosures are subject to item 78.7. |
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78.6 Rules regarding the Recipient disclosing (or making available) any Confidential Information of the Discloser to any person described in item 78.5(b) (all of the following)

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| (a) | Need to know | <ul style="list-style-type: none"> Such disclosures must be in good faith; and Strictly on a 'need to know' basis. |
| (b) | Treating unauthorised disclosures etc. | The Discloser may regard any unauthorised disclosure or other misuse of such Confidential Information by any such person as if it were the Recipient's own act. |
| (c) | Separate confidentiality agreement | <ul style="list-style-type: none"> The Recipient must require the relevant person to enter into a suitable written confidentiality agreement with the Discloser on reasonable terms. But only if requested to do so by the Discloser, acting reasonably and proportionately in the circumstances. |

78.7 The Recipient must comply with all of the following if it is compelled by Law to disclose or make available any Confidential Information of the Discloser (except where disclosure is required under any FOI Act, which is covered in section 79)

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| (a) | Inform | <p>The Recipient must inform the Discloser of the circumstances</p> <ul style="list-style-type: none"> With sufficient detail and accuracy; and Promptly on becoming aware of the obligation to make the compelled disclosure. |
| (b) | Make person aware | The Recipient must make the person compelling the disclosures aware of the duty of confidentiality owed to the Discloser in relation to the relevant information. |
| (c) | Assist the Discloser to challenge | <ul style="list-style-type: none"> The Recipient must provide the Discloser with reasonable and timely assistance on request if the Discloser wishes to challenge the compelled disclosure. The Discloser must reimburse the Recipient for the Recipient's reasonable and sufficiently evidenced costs in providing that assistance. |
| (d) | Keep to minimum | The Recipient must keep such disclosures to the minimum it is compelled to disclose or make available. |

79. Freedom of information

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| 79.1 | Each party (each of them a ' FOI Party ') which is subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (each of them an ' FOI Act ') | <ul style="list-style-type: none"> The Permitted Purchasing Body. The Provider, but only if it is a public authority which is subject to a relevant FOI Act. |
| 79.2 | In relation to the relevant FOI Party: the extent to which the party other than the FOI Party considers any of its information to be 'commercially sensitive' for the purposes of the FOI Acts | <ul style="list-style-type: none"> To the extent indicated by the party other than the FOI Party to the relevant FOI Party in writing from time to time. This is for indicative purposes only, and is not binding on the relevant FOI Party. |

79.3	Consequences if the relevant FOI Party receives a request for information under any FOI Act involving information of the other party (all of the following)	
(a)	Rights of the relevant FOI Party	It may make its own determination according to Law as to whether or not to provide that information to the person making the request.
(b)	Extent to which the relevant FOI Party is required to consult etc.	The relevant FOI Party shall be under no obligation to consult the party other than the FOI Party or anyone else in relation to that request for information.
(c)	Consequence if the relevant FOI Party does consult the party other than the FOI Party and/or anyone else	The relevant FOI Party shall be under no obligation to have regard to the views of the party other than the FOI Party and/or anyone else.
(d)	To what this item 79.3 is subject	It is subject to the relevant FOI Party's compliance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 to the extent that compliance is permissible and reasonably possible .

80. Announcements and publicity

80.1	Restrictions on the Provider making announcements and/or giving publicity in connection with the Individual Contract (e.g. press releases, public circulars, interviews)	<ul style="list-style-type: none"> The Provider must not do so without the prior written consent of the Permitted Purchasing Body. This consent must not be unreasonably withheld.
80.2	Restrictions on the Provider and/or its Affiliate using any reference to the Permitted Purchasing Body and/or its Affiliates (including use of its logos or other branding) in any publicity materials of the Provider and/or its Affiliate	<ul style="list-style-type: none"> The Provider must not do so without the prior written consent of the Permitted Purchasing Body. This consent must not be unreasonably withheld.
80.3	Other	<ul style="list-style-type: none"> The Provider must not assist or instruct another person to do any act that would breach this section 80 if that act were done by the Provider directly. If the Provider's Affiliate does anything that would breach the main obligations indicated in this section 80 if done by the Lead Council directly, the onus will lie with the Provider to prove it was not done with the Provider's instruction and/or assistance.

81. Provider's status as data controller

81.1	Application of this section 81	It applies where the Work Order indicates that the Provider is to be a data controller in relation to any personal data it obtains in connection with the Individual Contract.
81.2	Arrangements regarding the control and processing of personal data of any individual obtained by the Provider in the course of providing the Services under the Individual Contract	<ul style="list-style-type: none"> The Provider (and not the Permitted Purchasing Body) will determine the purposes for which such personal data will be held and used. Therefore, as between the Provider and the Permitted Purchasing Body, the Provider (and not the Permitted Purchasing Body) shall be the 'data controller' in respect of that personal data.
81.3	General obligations of the Provider in relation to personal data described in item 81.2	<ul style="list-style-type: none"> To comply with relevant Law in relation to the holding and processing of that personal data. This includes maintaining necessary registrations with the relevant regulatory body.

81.4 Indemnity given by the Provider in relation to personal data described in item 81.2

(a) For what the Provider must indemnify the Permitted Purchasing Body	<p>All of the following</p> <ul style="list-style-type: none"> • For all Losses incurred by the Permitted Purchasing Body and/or its Affiliate • As a result of any Claim made or threatened by any person • To the extent the Claim alleges any of the following by the Provider and/or anyone acting on its behalf in relation to the personal data of any individual described in item 81.2 <ul style="list-style-type: none"> - Any breach of the Data Protection Act 1998 (or other relevant Law relating to the holding and processing of that personal data). - Any other wrongdoing in relation to that personal data.
(b) Exceptions to this indemnity	<p>This indemnity does not apply to the extent either of the following applies to the relevant breach or other wrongdoing:</p> <ul style="list-style-type: none"> • The Provider was acting under the written instructions of the Permitted Purchasing Body. • The negligence, breach of Law or other wrongdoing by the Permitted Purchasing Body was involved.
(c) To what this indemnity is subject	Section 96.

81.5 Handover obligations of the Provider in relation to relevant personal data described in item 81.2

(a) Main obligations	<p>The Provider shall comply with the reasonable directions of the Permitted Purchasing Body regarding (all of the following)</p> <ul style="list-style-type: none"> • Handover of personal data • Held by or on behalf of the Provider • Relating to customers or the like of the Provider (including any Service Users described in item 3.1 and individuals associated with them, such as family members or representatives) who are relevant to the Services. • Such handover is to be to the Permitted Purchasing Body or its nominee (e.g. a replacement provider) for the purposes of the continuation of the relevant services.
(b) How the Provider must comply with its obligations in this item 81.5	It must do so promptly, and at its own cost.
(c) To what the Provider's obligations in this item 81.5 are subject	They are subject to the Provider complying with its genuine obligations under Law relating to data protection.
(d) Whether this item 81.5 limits the Provider's exit obligations under section 110	No.

82. Processing Client Personal Data

82.1 Application of this section 82	It applies where the Work Order indicates that the Provider is to be a data processor in relation to any Client Personal Data.
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82.2 Description of the personal data of the Permitted Purchasing Body (or its Affiliate) which the Provider is to process as part of the Services ('Client Personal Data')	<p>As indicated in any of the following</p> <ul style="list-style-type: none"> • The Individual Specification. • A sufficiently-completed Work Order. • The General Specification applicable to the relevant Flexible Purchasing System.
82.3 Definitions of various expressions	<p>Unless the context otherwise requires, the expressions 'data controller', 'data processor', 'data subject', 'processing' and 'personal data' shall have the same meanings in these Terms and Conditions as in the Data Protection Act 1998.</p>
82.4 The Provider must comply with all of the following in the processing of Client Personal Data in the Provider's possession or control in connection with the Services	
(a) Specification	<p>All relevant and lawful obligations and instructions in the Specification.</p>
(b) Policies etc.	<p>Reasonable, lawful and adequately communicated policies or instructions of the Permitted Purchasing Body from time to time.</p> <p>The Provider's own policy (to the extent they impose a higher standard than the Permitted Purchasing Body's policies).</p>
(c) Disclosure	<p>The Provider must not disclose or transfer possession of any Client Personal Data except:</p> <ul style="list-style-type: none"> • With the written permission of the Permitted Purchasing Body (not to be unreasonably withheld where the Provider has reasonable safeguards in place). • As reasonably necessary to provide the Services. • As reasonably necessary to enable the Provider or the Permitted Purchasing Body to comply with the Law.
(d) Law	<p>In any case, relevant Law, particularly the Data Protection Act 1998 and (where relevant) General Data Protection Regulation as amended from time to time, including where relevant all of the data protection principles indicated in that Act or that Regulation.</p>
82.5 Measures the Provider must have in place when processing relevant Client Personal Data: appropriate technical, operational and organisational measures which comply with relevant Law (in particular, the Seventh Principle of the Data Protection Act 1998 or the equivalent in the General Data Protection Regulation) in place to do all of the following	
(a) Integrity	<p>To protect integrity of Client Personal Data.</p>
(b) Prevent undesirable consequences	<p>To prevent it being accessed, copied, modified or otherwise used unlawfully or without authority or otherwise being lost, damaged or destroyed.</p>
(c) Breaking Law	<p>To prevent any unreasonable risks of the Provider causing the Permitted Purchasing Body and/or its Affiliates to break any Law in relation to that Client Personal Data.</p>
82.6 The Provider's obligations to describe the measures it (or its relevant subcontractor) has in place for the purposes of item 82.5: it must promptly provide the Permitted Purchasing Body on written request (such request not to be made more than once per calendar year unless it has reasonable grounds to suspect significant problems) any of the following (as requested):	
(a) Description	<p>A written description of those measures.</p>

(b)	Report	A written report indicating compliance with such measures to the extent they relate to the Client Personal Data.
(c)	Copies of documentation	<ul style="list-style-type: none"> • Copies of all documentation of the Provider or its relevant subcontractors. • Which is relevant to its (or its subcontractor's) compliance with those measures, including manuals, procedures, protocols, and training.
82.7	The Provider's obligations in relation to queries of the Permitted Purchasing Body raised in relation to Client Personal Data in the Provider's possession or control for purposes of the relevant Services	It must respond to that query in a prompt and proper manner.
82.8	If the Provider or its subcontractor receives any communication from the Information Commissioner or other regulatory body in connection with the processing of Client Personal Data	<p>The Provider must do all of the following</p> <ul style="list-style-type: none"> • Communicate the matter to the Representative of the Permitted Purchasing Body in 5 Business Days from receiving the communication. • Provide the Permitted Purchasing Body with reasonable cooperation in relation to the response of the Permitted Purchasing Body. This is subject to the Permitted Purchasing Body reimbursing the Provider for its reasonable and sufficiently evidenced costs in providing that cooperation.
82.9	Requests, complaints, communications.: the Provider's obligations	
	<ul style="list-style-type: none"> • In relation to any request (including any access request), complaint or other communication which the Provider or its subcontractor receives • From any person (including a relevant data subject or any other person with a right to access by Law, or the Information Commissioner or other regulatory or law enforcement body) • In relation to Client Personal Data in the Provider's possession or control for the purposes of the relevant Services 	
(a)	Inform: the Provider must inform the Representative of the Permitted Purchasing Body of the relevant matter as follows	
(i)	When	In a prompt manner, and in any case no later than 5 Business Days after first receiving the request., complaint or other communication
(ii)	What it must provide	Providing the Representative with such relevant information the Provider has about the request, complaint or other communication.
(b)	Cooperation: the Provider must provide the Permitted Purchasing Body with reasonable and timely cooperation in relation to the request, complaint or other communication including the following (without limiting what cooperation may be required, and to the extent relevant)	
(i)	If the request, complaint or other communication is made to the Provider or its subcontractors directly	<ul style="list-style-type: none"> • The Provider must inform the Permitted Purchasing Body of the request within 5 Business Days. • In doing so, the Provider must give the Permitted Purchasing Body copies of the relevant request, complaint or other communication.
(ii)	In relation to an access request	<ul style="list-style-type: none"> • The Provider must comply with the access request to the extent it has the relevant requested Client Personal Data in its possession or control, or otherwise assist the Permitted Purchasing Body to do so. • The Provider must do so by relevant deadlines according to relevant Law.

(iii)	Supply Client Personal Data	The Provider must supply the Permitted Purchasing Body with relevant requested Client Personal Data in its possession or control to enable the Permitted Purchasing Body to respond to the access request.
(iv)	Instructions	The Provider must comply with reasonable and relevant instructions of appropriate representatives of the Permitted Purchasing Body.
82.10	Purposes for which the Provider must restrict its processing of the Client Personal Data	<p>Only to those purposes</p> <ul style="list-style-type: none"> • Legitimately connected with the relevant Services; and/or • To enable the Provider and/or its subcontractors to meet their respective obligations under the Law according to such processing.
82.11	Assistance the Provider must give the Permitted Purchasing Body to enable it to meet its obligations in relation to relevant Client Personal Data	<ul style="list-style-type: none"> • It must give the Permitted Purchasing Body prompt and reasonable cooperation (on reasonable written request of the Permitted Purchasing Body) in relation to any obligation under Law or contract which the Permitted Purchasing Body has in relation that Client Personal Data, including any lawful access request. • The Provider's obligations under this item 82.11 are subject to the Permitted Purchasing Body paying the Provider a reasonable additional administration fee if requested in writing by the Provider.
82.12	Transferring Client Personal Data outside EEA: the Provider must not cause or allow any Client Personal Data in its possession or control to be transferred and/or otherwise processed outside the European Economic Area without the prior written consent of the Permitted Purchasing Body, such consent to be given as follows:	
(a)	If the country is deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC	Not to be unreasonably refused.
(b)	Where the Provider has provided reasonable evidence that the Client Personal Data will be subject to at least a comparable level of protection	Not to be unreasonably refused.
(c)	Otherwise	At discretion.
82.13	Refusing consent: each of the following is regarded as a reasonable ground for refusing consent to the transfer and/or processing of any Client Personal Data outside the European Economic Area (where relevant and not an exhaustive list of reasonable grounds to refuse consent)	
(a)	Identity	The Provider has not properly disclosed to the Permitted Purchasing Body the identity of the person who will be processing the relevant Client Personal Data.
(b)	Safeguards	The Permitted Purchasing Body is not reasonably satisfied with the adequacy of protection and safeguards in relation to the relevant Client Personal Data.
(c)	Model clauses	The Provider (and any relevant subcontractor) has not entered into an appropriate data handling agreement (or appropriate amendments to these Terms and Conditions and/or a relevant Work Order) which incorporate standard and/or model clauses which are approved by the European Commission.
82.14	Keeping informed – other: additional events or circumstances about which the Provider must inform the Permitted Purchasing Body (promptly and properly on the Provider first becoming aware of them) in relation to any Client Personal Data then in the Provider's possession control	
(a)	Unauthorised access	Any incident of unauthorised access to that Client Personal Data.

(b) Breach	Any incident of processing of that Client Personal Data that is materially in breach of the Individual Contract.
82.15 Warranties and representations given by the Permitted Purchasing Body in relation to its Client Personal Data to be processed by or on behalf of the Provider from time to time	<ul style="list-style-type: none"> • Only those (if any) indicated elsewhere in these Terms and Conditions and/or a relevant Work Order. • All other such warranties and representations shall be excluded to the fullest extent permitted by Law.
82.16 Provider indemnity: the Provider must indemnify (and keep indemnified) the Permitted Purchasing Body and/or its Affiliates in relation to the Provider's processing of relevant Client Personal Data (as follows)	
(a) Losses for which the Provider must indemnify (and keep indemnified) the Permitted Purchasing Body and/or its Affiliates	<p>The respective Losses incurred by the Permitted Purchasing Body and/or its Affiliate as a result of any Claim made or threatened against it in connection with any one or more of the following in relation to any Client Personal Data in the possession or control of the Provider in connection with the Individual Contract:</p> <ul style="list-style-type: none"> • Its loss, and/or • Its misuse, and/or • Any unauthorised access to it.
(b) Exceptions to the indemnity	<p>To the extent either of the following applies:</p> <ul style="list-style-type: none"> • The Provider's act or failure to act is as a result of its proper compliance with the clear and properly authorised written instructions of the Permitted Purchasing Body at the time, including those indicated in the Specification. • The negligence, breach of Law or other wrongdoing by the Permitted Purchasing Body was involved.
(c) Other rules in relation to this indemnity	See section 96.
82.17 Rights of the Permitted Purchasing Body to inspect the Provider or its subcontractors to ensure compliance with its obligations under these Terms and Conditions and/or a relevant Work Order relating to the processing of the Client Personal Data	As indicated elsewhere in these Terms and Conditions (see in particular, section 86).
82.18 Obligation to return or destroy: the Provider's must return or destroy Client Personal Data (including copies) then in its possession or control (regardless of the medium in which the Client Personal Data is held at the time) as follows	
(a) On request	The Provider must do so promptly on the written request of the Permitted Purchasing Body.
(b) Costs	The Provider must bear its own costs in doing so.
(c) When the request cannot be made	The Permitted Purchasing Body must not make that request if the Provider still reasonably requires that Client Personal Data to provide the Services.
82.19 Obligations of the Provider to certify compliance with item 82.18 (to do so at no further charge and without any conditions or qualifications imposed on the certificate)	<ul style="list-style-type: none"> • The Provider must do so within 30 days of the written request of the Permitted Purchasing Body. • The certificate of compliance must be signed by the Provider's Representative (or other person of at least equivalent seniority within the Provider's organisation). • The certificate must be in a form approved by the Lead Council acting reasonably.

<p>82.20 General obligations of the Provider in relation to its (and/or its subcontractor's) Personnel who have access to Client Personal Data from time to time</p>	<p>The Provider must do all of the following:</p> <ul style="list-style-type: none"> • Ensure those individuals are aware of the confidential nature of the Client Personal Data. • Ensure those individuals are suitably trained, resourced and generally supported in their relevant duties in relation to the Client Personal Data. • Ensure those individuals do not do anything in relation to the Client Personal Data (including disclosing it, misusing it, or giving anyone access to it) that would be a breach of the Individual Contract if done by the Provider directly.
<p>82.21 Processing by subcontractors: the Provider must do the following if its directly or indirectly appointed subcontractor processes any relevant Client Personal Data in connection with the relevant Services (without limiting the Provider's obligations in relation to such subcontractor generally)</p>	<p>(a) Ensure compliance</p> <p>The Provider must ensure the subcontractor's compliance with relevant obligations under this section 82 in connection with the subcontractor's processing of relevant Client Personal Data.</p> <p>(b) Subcontractor's acts</p> <p>The Provider must accept any act or failure to act by the subcontractor in relation to such obligations as if it were the Provider's own act or failure to act.</p> <p>(c) Exception (section 64)</p> <p>Item (b) does not apply if the subcontractor is a Client Required Subcontractor indicated in item 64.1.</p>
<p>82.22 Acknowledgements of the Provider and the Permitted Purchasing Body in relation to Client Personal Data</p>	<ul style="list-style-type: none"> • The Permitted Purchasing Body or its Affiliate (and not the Provider) is the data controller. • The Provider and its subcontractors have no right or interest in relation to the Client Personal Data except as indicated in these Terms and Conditions and/or a relevant Work Order.
<p>82.23 Obligation of the Permitted Purchasing Body to pay the Provider further Charges or to reimburse the Provider for its costs in dealing with any complaints and/or access requests in relation to Client Personal Data in the Provider's possession or control from time to time in connection with the Services</p>	<p>No obligation to do so.</p>
<p>82.24 Whether this section 82 limits the confidentiality obligations (if any) owed by the Provider under 78</p>	<p>No.</p>
<p>82.25 Duration of the rights and obligations of the Permitted Purchasing Body and the Provider under this section 82</p>	<ul style="list-style-type: none"> • They continue for as long as the Provider retains possession and/or control of such Client Personal Data in connection with the Individual Contract. • This applies even if the Provider is no longer providing the Services under the Individual Contract.

Monitoring

83. Record keeping

83.1 Records which the Provider is required to keep as part of the Services

(a) Complaints by Service Users described in section 3	<p>A register of complaints by Service Users and/or their families in relation to Services provided to them, including:</p> <ul style="list-style-type: none"> • Nature of the complaint. • The way in which the complaint was resolved.
(b) Records which the Provider must keep if any part of the Charges are calculated according to Personnel time spent	<p>Copies of relevant Personnel timesheets evidencing time spent in relation to the Services for which the Permitted Purchasing Body is obliged to pay Charges to the Provider.</p>
(c) Reporting (section 84)	<p>Data from which the Provider prepares reports it is required to submit to the Permitted Purchasing Body under section 84.</p>
(d) Personnel	<p>All of the following</p> <ul style="list-style-type: none"> • Records in relation to Personnel of the Provider and/or its direct subcontractors • To the extent such Personnel are engaged in connection with the Individual Contract • To the extent they evidence the Provider's compliance with these Terms and Conditions and/or a relevant Work Order.
(e) Other specific records	<p>As indicated in the General Specification.</p>

83.2 Requirements of the Provider in keeping the records described in item 83.1

(a) For how long the Provider must keep the records described in item 83.1	<ul style="list-style-type: none"> • 7 years from the date the record was created; or • Such longer or shorter period required by Law in relation to the record. <p>Exception: the Provider is not required to continue to hold records which the Permitted Purchasing Body requires to be sent elsewhere (e.g. to the Permitted Purchasing Body itself, or to another person).</p>
(b) How the Provider must keep those records	<ul style="list-style-type: none"> • According to any requirements in the General Specification and/or the Individual Specification. • In any case, to the standards required generally of the Provider in section 12.
(c) Where the Provider must keep those records in hard copy (i.e. not electronic).	<ul style="list-style-type: none"> • While the Provider is providing the Services: at the relevant premises. • After expiry or early termination of the Individual Contract: at any of its usual places of business in the United Kingdom. • In any case: at such other locations for the genuine purposes of record storage. However, the Provider must be able to access such records in a timely manner for inspection by the Permitted Purchasing Body where relevant (at the relevant premises if the Provider is providing the Services).

84. Reporting by the Provider

84.1 Regular reports which the Provider must supply the Permitted Purchasing Body in connection with the Individual Contract

Description of report, information required	Frequency, period covered	Due date
As indicated in the General Specification.	As indicated in the General Specification.	As indicated in the General Specification.
84.2 Circumstances where the Permitted Purchasing Body may require reports in addition to those indicated in item 84.1	<p>The Permitted Purchasing Body may do so (acting reasonably and proportionately and giving the Provider reasonable advance warning) where any of the following applies</p> <ul style="list-style-type: none"> • There has been a Material Breach of the Individual Contract by the Provider, even if it has been remedied. • There has been a persistent failure by the Provider to meet any of its obligations under the Individual Contract. 	
84.3 Format requirements of reports required under this section 84	<p>As indicated in the General Specification.</p> <p>If there is no indication in the General Specification: as directed by the Permitted Purchasing Body, acting reasonably.</p>	
84.4 How the Provider must provide reports to the Permitted Purchasing Body	<p>By e-mail to the Permitted Purchasing Body's Representative, or as the Permitted Purchasing Body otherwise reasonably instructs.</p>	
84.5 General obligations of the Provider in relation to reports it is required to send	<p>To ensure required reports are:</p> <ul style="list-style-type: none"> • Materially accurate; and • Not materially misleading (or reasonably likely to materially mislead) due to any inaccuracies or omissions. 	

85. Customer surveys

85.1 How the Provider must conduct customer surveys whilst it has Individual Contracts in place from time to time

85.2 Frequency with which the Provider must conduct customer surveys according to item 85.1

85.3 Assistance of the relevant Permitted Purchasing Body required to enable the Provider to carry out its obligations to carry out customer surveys

85.4 How the Provider must report the findings of customer surveys it must carry out under this section 85

85.5 Each due date by which the Provider must report its findings of customer surveys it must carry out under this section 85

As indicated in the General Specification.
As indicated in the General Specification.
As indicated in the General Specification.
As indicated in the General Specification.
As indicated in the General Specification.

86. Inspection

86.1 The Permitted Purchasing Body may inspect any of the following in relation to the Individual Contract if it wishes to do so

(a) Records	<ul style="list-style-type: none"> Any records held by or on behalf of the Provider in any medium (e.g. hard copy, electronic) in connection with the provision of the relevant Services. These include any records which the Provider is specifically required to keep according to these Terms and Conditions and/or a relevant Work Order.
(b) Systems etc.	Any system, ICT environment, process or the like relevant to the provision any of the Services.
(c) Activities	Activities in relation to the carrying out of any of the Services.
(d) Premises	Premises where any of the Services are provided (regardless of whether the Provider is the occupier).

86.2 Minimum notice the Permitted Purchasing Body must give before an inspection	<ul style="list-style-type: none"> At least 5 Business Days prior notice. Exceptions (either of the following): <ul style="list-style-type: none"> The Permitted Purchasing Body is not obliged to give any notice where it has reasonable grounds to suspect fraud or other misconduct in connection with the things being inspected (e.g. removal or destruction of records etc.). Shorter notice to the extent the Provider agrees (at its discretion).
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86.3 Any third parties who have the same rights of inspection under this section 86	Any genuine auditor of the Permitted Purchasing Body.
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86.4 **Obligations of the Provider if the Permitted Purchasing Body requires an inspection (having met the requirements in this section 86):** the Provider must direct its relevant Personnel (including those of relevant subcontractors) to give reasonable, proper and timely assistance to representatives of the Permitted Purchasing Body (including its external auditor) in connection with the relevant inspection, including the following (without limitation)

(a) Access	Ensuring access to relevant premises to representatives of the Permitted Purchasing Body on a non-exclusive licence basis.
(b) Making things available	Making relevant records or other items which the Permitted Purchasing Body is permitted to inspect available for this purpose.
(c) Providing facilities	Providing suitable facilities for the purposes of the inspection.
(d) Providing explanations	Providing open and accurate explanations and discussions from relevant Personnel, as reasonably required by such representatives of the Permitted Purchasing Body.
(e) Subcontractors	To use reasonable endeavours (including exercising rights under a relevant subcontract) to ensure compliance with the rest of this item 86.4 by each such direct or indirect subcontractor insofar as an inspection is reasonably relevant to that subcontractor's activities in connection with the relevant Services.

86.5 **Purposes for which the Permitted Purchasing Body must limit its inspections of the Provider** - any of the following, to the extent relevant, to be read independently

(a) Compliance with Individual Contract	To ensure the Provider's compliance with the Individual Contract.
(b) Personnel requirements	To ensure each Personnel allocated to the Services meets all requirements relevant to him/her and his/her duties according to section 36.
(c) Accuracy of payments	To verify the accuracy of amounts claimed or paid by the parties to each other under the Individual Contract.

	(d) Reports (section 84)	To verify the accuracy of reports which the Provider gives the Permitted Purchasing Body under section 84.
	(e) Use of resources	To enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983, with a view to determining the economy, efficiency and effectiveness of the use of resources by the Permitted Purchasing Body.
	(f) Corrupt Acts (section 114)	To investigate any suspected breach of section 114 by the Provider in relation Corrupt Acts.
	(g) Financial viability	To evaluate the financial viability of the Provider and/or its guarantor (if relevant) to continue to meet its obligations and liabilities under the Individual Contract and/or under the relevant guarantee.
	(h) Client Personal Data (section 82)	To ensure the proper processing of any Client Personal Data in the possession or control of the Provider from time to time.
	(i) Rebates	To verify whether the Permitted Purchasing Body is entitled to any rebate in connection with the Flexible Purchasing System.
86.6	The Permitted Purchasing Body's right to take copies of records in the course of an inspection	It may do so, subject to reimbursing the Provider for its reasonable costs.
86.7	Right of the Permitted Purchasing Body to remove original records or other property of the Provider and/or its Affiliates	It may not do so except with the prior written consent of the Provider, at discretion.
86.8	How inspection costs are to be borne	Each party bears its own costs.
86.9	The inspection rights of the Permitted Purchasing Body under this section 86 continue as follows	
	(a) Records	<ul style="list-style-type: none"> • For as long as the Provider is required to keep any records under these Terms and Conditions and/or a relevant Work Order (see section 83). • Even if after the Provider is no longer required to provide any Services under the Individual Contract.
	(b) Property	<ul style="list-style-type: none"> • Property of the Permitted Purchasing Body still in the possession or control of the Provider in connection with the Services, even if the Services have discontinued for any reason. • Even if after the Provider is no longer required to provide any Services under the Individual Contract.
	(c) Where item (a) and item (b) do not apply	The inspection rights of the Permitted Purchasing Body shall discontinue when the Provider is no longer obliged to provide any Services under any Individual Contract whatsoever.

87. Keeping informed

87.1 How the Provider must keep the Permitted Purchasing Body informed of the matters indicated in this section 87	<p>According to all of the following</p> <ul style="list-style-type: none"> • In writing where reasonably practicable • In a proper and timely manner when the Provider first becomes aware of the matter • Keeping the Representative (or other appropriate Personnel of the Permitted Purchasing Body) informed in a proper and timely manner of significant progress of events as they occur in relation to the relevant matter • This section 87 is not to be read to limit the Provider's obligations.
87.2 If the Permitted Purchasing Body is not the Lead Council	<p>The Provider shall be deemed to have met its obligation to inform the Permitted Purchasing Body on a particular matter required under this section 87 if the Provider provides that information to the Lead Council on the Permitted Purchasing Body's behalf.</p>

Events or circumstances on which the Provider must keep the Permitted Purchasing Body informed under this section 87: as follows

87.3 Breach of warranty or representation	<p>Any event or circumstance that would result in a breach of any warranty or representation given by the Provider in section 18 if the event or circumstance had occurred or arisen on a date when that warranty or representation was given according to section 18.</p>						
87.4 Unable to meet obligations	<p>The Provider being unable to significantly meet its obligations in connection with the Services.</p>						
87.5 Property issues	<p>The loss, theft, damage, destruction or other serious unfavourable consequence to any significant property of any kind (including without limitation, any documents, files, equipment, premises or data) of the Permitted Purchasing Body or its Affiliate which is then in the possession and/or control of the Provider for purposes reasonably connected with the Services.</p>						
87.6 Confidentiality breaches	<p>The unauthorised disclosure, loss or other misuse of any Confidential Information of the Permitted Purchasing Body or its Affiliate which would constitute a breach of the Individual Contract by the Provider.</p>						
87.7 Client Personal Data (section 82)	<p>As indicated in item 82.14.</p>						
87.8 Any event or circumstance (e.g. accident or other incident) relating to activities of the Provider or its subcontractors in connection with the Services which cause, or creating an unreasonable risk of causing any of the following	<table border="1"> <tr> <td data-bbox="239 1590 718 1624">(a) Harm to individuals</td> <td data-bbox="766 1590 1445 1780"> <p>Death or serious personal injury or other serious harm to any other human being where the Provider knows (or reasonably ought to know) that human being is owed a duty of care by the Permitted Purchasing Body, including any employee of the Permitted Purchasing Body.</p> </td> </tr> <tr> <td data-bbox="239 1792 718 1825">(b) Property loss etc.</td> <td data-bbox="766 1792 1445 1892"> <p>The loss, theft, damage, destruction or other serious unfavourable consequence to any significant property of the Permitted Purchasing Body or its Affiliate.</p> </td> </tr> <tr> <td data-bbox="239 1904 718 1937">(c) Breach Law</td> <td data-bbox="766 1904 1445 1937"> <p>The Permitted Purchasing Body breaching any Law.</p> </td> </tr> </table>	(a) Harm to individuals	<p>Death or serious personal injury or other serious harm to any other human being where the Provider knows (or reasonably ought to know) that human being is owed a duty of care by the Permitted Purchasing Body, including any employee of the Permitted Purchasing Body.</p>	(b) Property loss etc.	<p>The loss, theft, damage, destruction or other serious unfavourable consequence to any significant property of the Permitted Purchasing Body or its Affiliate.</p>	(c) Breach Law	<p>The Permitted Purchasing Body breaching any Law.</p>
(a) Harm to individuals	<p>Death or serious personal injury or other serious harm to any other human being where the Provider knows (or reasonably ought to know) that human being is owed a duty of care by the Permitted Purchasing Body, including any employee of the Permitted Purchasing Body.</p>						
(b) Property loss etc.	<p>The loss, theft, damage, destruction or other serious unfavourable consequence to any significant property of the Permitted Purchasing Body or its Affiliate.</p>						
(c) Breach Law	<p>The Permitted Purchasing Body breaching any Law.</p>						

(d)	Duty of care	The Permitted Purchasing Body breaching any duty of care it owes to any third party (whether under tort, contract, statute or otherwise) where the Provider knows (or reasonably ought to know) about the duty of care owed to that person.
87.9	Any event or circumstance to which both of the following apply	
(a)	Who it affects	The event or circumstance affects the Provider, its subcontractors and/or any of their respective Personnel, regardless of whether or not in connection with the relevant Services.
(b)	Adverse publicity	If the event or circumstance were publicly known, it would create an unreasonable risk of serious, unjustified and unfavourable publicity to the Permitted Purchasing Body and/or its Affiliates due to its association with the Provider.
87.10	Loss of licences etc. (section 16)	The Provider losing, or having imposed on it any significant restrictions or conditions on, or being under a serious threat of losing or having imposed on it, any permission, licence, accreditation or the like which the Provider is required to have under item 16.1.
87.11	Preparation Activities (section 20)	Any of the matters described in item 20.6 in relation to any Preparation Activity for which the Provider is responsible.
87.12	In relation to Personnel	Any event or circumstance in relation to any Personnel of the Provider which would render the individual ineligible to be appointed to particular activities according to item 36.1.
87.13	In relation to any Key Personnel (section 40)	Any of the matters described in item 40.4.
87.14	Any of the following events or circumstances in relation to the Provider if he/she is a human being acting as a sole trader	
(a)	Bankruptcy	His/her bankruptcy and/or Any bankruptcy proceedings being commenced against him/her.
(b)	Charge, conviction	Him/her being charged or convicted of a crime of dishonesty or violence (regardless of the penalty) or a crime of any other kind resulting him/her receiving a prison sentence (whether served or suspended).
(c)	Right to remain	He/she no longer has right to remain in the United Kingdom (or such other country where his/her duties in connection with the Individual Contract are to be carried out).
87.15	Any of the following events or circumstances in relation to the Provider if it is an entity other than a human being (e.g. a company)	
(a)	Winding up	Any order of a court (or equivalent) being made or any resolution being passed requiring the Provider to be dissolved and/or wound up.
(b)	Appointments	The appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Provider and/or its assets.
(c)	Change in Control	Any change in Control of the Provider.

87.16	If the Provider is a consortium, partnership or the like, any of the following	
	(a) Change	Any change in the composition of its membership.
	(b) Events affecting members	Any of the events or circumstances in item 87.14 and/or item 87.15 (as relevant) apply to any of its members.
87.17	Litigation	<ul style="list-style-type: none"> Any litigation, arbitration, adjudication or mediation proceedings Before any court, arbitrator or any agency, inspectorate, ministry or public official or the like of any of these (whether local, national or supra-national) That is (on a reasonable view) likely to significantly and unfavourably affect its ability to carry out its obligations under the Individual Contract.
87.18	Investigations	<ul style="list-style-type: none"> Any non-routine investigation of the Provider by any regulatory or law enforcement body or the like (including the police) for any serious matter That is (on a reasonable view) likely to significantly and unfavourably affect its ability to carry out its obligations under the Individual Contract.
87.19	Corrupt Acts (section 114)	The carrying out of any Corrupt Act in breach of section 114.
87.20	Representative	Changes to the Provider's Representative from time to time.
87.21	In relation to Promised Subcontractors (section 60)	Any notice of termination given by or to any Promised Subcontractor insofar as it is relevant to the Services.
87.22	In relation to Client Required Subcontractors (section 64)	As indicated in item 64.5(d).
87.23	Other	As indicated elsewhere in these Terms and Conditions and/or in the General Specification and/or the Individual Specification.

88. Cooperation with regulatory investigations

88.1	Whether the Provider is required to cooperate with regulatory investigations affecting the Permitted Purchasing Body	It must do so, insofar as the investigations are reasonably connected with the provision of any Services.
88.2	Obligations of the Provider under this section 88: to provide (in a proper and timely manner) the Permitted Purchasing Body with reasonable cooperation (on request) in relation to any investigation to which both of the following apply	
	(a) Against whom the investigation is carried out	<ul style="list-style-type: none"> The investigation is conducted by or on behalf of a regulatory body against the Permitted Purchasing Body and/or its relevant Affiliate. It may be a routine investigation, in response to a particular event or circumstance (e.g. a complaint, major incident etc.) or otherwise.
	(b) Connected with Services	The investigation relates (in part or full) to activities by or on behalf of the Provider in connection with any relevant Services.

88.3 **What is included in the cooperation required under item 88.2:** the Provider must do the following (where relevant and this is not intended to be an exhaustive list)

(a) Access

The Provider must provide the relevant regulator with suitable access to premises, records, property or otherwise to allow it conduct its investigation.

(b) Explanations

The Provider must direct its relevant Personnel to provide appropriate explanations and discussions reasonably required by the relevant regulator.

(c) Subcontractors

The Provider must use reasonable endeavours to ensure each of its relevant subcontractors provides comparable cooperation to the extent that subcontractor's activities in relation to the relevant Services are involved.

88.4 Right of the Provider to impose additional charges and/or to claim reimbursement for its third party expenditure in providing the cooperation described in this section 88

No right to do so.

Contract management

89. Recovery of contract management costs

89.1 Amounts payable by the Provider to Permitted Purchasing Body, if demanded by the Permitted Purchasing Body

Item	Charge payable by the Provider to the Permitted Purchasing Body	When payable
(a) Reimbursement of the Permitted Purchasing Body's costs in approving any Remedial Plan (section 91)	Officer time at £50/hour + VAT	Payable in full, 30 days after the Permitted Purchasing Body's written demand
(b) Reimbursement of the Permitted Purchasing Body's costs in carrying out its obligations under any Remedial Plan (section 91)	Officer time at £50/hour + VAT	
(c) Reimbursement of the Permitted Purchasing Body's costs in dealing with Material Breaches of the Provider (e.g. in managing remedial activity)	Officer time at £50/hour + VAT	Payable in full, 30 days after the Permitted Purchasing Body's written demand
(d) Reimbursement of the Permitted Purchasing Body's investigation costs if the Permitted Purchasing Body has reasonable grounds to require the removal of Personnel of the Provider or any subcontractor appointed by the Provider (as permitted in these Terms and Conditions)	Officer time at £50/hour + VAT	Payable in full, 30 days after the Permitted Purchasing Body's written demand
(e) Training provided by the Permitted Purchasing Body for new Personnel of the Provider or its subcontractors on contract compliance Only if required by the Provider Subject to the Permitted Purchasing Body having available staff at the time.	£50/hour + VAT.	

Suspension

90. Right to require suspension of Services due to Provider breaches

90.1	<p>When the Permitted Purchasing Body may require suspension: the Provider shall suspend the provision of relevant Services under one or more Individual Contracts in place at the time if requested to do so by the Permitted Purchasing Body (in addition to any right of the Permitted Purchasing Body to do so in item 74.1(a) as an Uncontrollable Circumstance) if any of the following applies</p>	
(a)	Material Breach	If (and for as long as) the Provider is remedying a Material Breach of the Individual Contract for the purposes of item 104.2.
(b)	<p>Investigations: if (and for as long as) all of the following apply</p>	
(i)	Non-routine investigation	<p>The Provider is subject to any significant, non-routine investigation</p> <ul style="list-style-type: none"> • By any regulatory or law enforcement agency (e.g. the police, the Permitted Purchasing Body in exercise of any statutory function etc.); and/or • By the Permitted Purchasing Body in relation to any serious safeguarding issues affecting the Services and involving Personnel of the Provider and/or its subcontractors.
(ii)	To what the investigation relates	That investigation may relate to the Services and/or to other unrelated business activities of the Provider and/or its Affiliates, whether in the UK or elsewhere.
(iii)	Risks to the Permitted Purchasing Body if it did not require suspension of the Services	<p>If the Permitted Purchasing Body did not require the Services to be suspended, there would be an unreasonable risk of any one or more of the following:</p> <ul style="list-style-type: none"> • Serious harm to any individual. • Serious adverse consequences for any person's property. • The Permitted Purchasing Body and/or its Affiliate breaching any genuine arm's length duty of care to another person. • The good name of the Permitted Purchasing Body and/or its Affiliate being brought into serious disrepute without good reason. • Serious, unjustified and unfavourable publicity to the Permitted Purchasing Body.
(c)	Other circumstances when the Permitted Purchasing Body may do so	As indicated in the General Specification and the Individual Specification.
90.2	Whether the Permitted Purchasing Body may extend the suspension to other Services which are not affected by the relevant circumstances described in item 90.1 (yes/no)	The Permitted Purchasing Body may do so.
90.3	Consequences of the suspension of any of the Services under this section 90 on the following	
(a)	Consequences for Charges in section 24	<p>The Permitted Purchasing Body shall be required to pay them.</p> <p>If the circumstances in relation to which the suspension relates becomes a Termination Default Event, this item (a) shall not prevent the Permitted Purchasing Body from recovering any Charges paid.</p>
(b)	Consequences for the rest of the Individual Contract (e.g. deadlines, service standards, etc.)	The Provider shall not be liable for breach of contract for failing to carry out the suspended obligations.

90.4	For how long the Permitted Purchasing Body is entitled to require the relevant Services to be suspended under this section 90	Only for as long as any of the circumstances in item 90.1 continue to apply.
90.5	How the Permitted Purchasing Body exercises its rights to suspend the Services in the circumstances described in item 90.1	<ul style="list-style-type: none"> • By communicating the matter in writing to the Representative of the Provider. • The formalities in section 121 are not required.

Defective work

91. Remedial Plans

91.1	Definition of a 'Remedial Plan'	<p>A plan in writing which</p> <ul style="list-style-type: none"> • Is requested by the Permitted Purchasing Body • In the circumstances described in item 91.2 • In the manner described in item 91.3 • Is agreed between the Permitted Purchasing Body and the Provider • Sets out the obligations of the Provider to remedy of any of its breaches of the type described in item 91.2, as requested by the Permitted Purchasing Body.
91.2	Breaches of the Individual Contract by the Provider which allow the Permitted Purchasing Body to give the notice described in item 91.3	<p>Any breach of the Individual Contract which is persistently unresolved by the Provider for a rolling 6 month period</p> <p>But only if it is reasonable in the circumstances for the Permitted Purchasing Body to give the notice in the circumstances.</p>
91.3	When the obligations of the Provider in this section 91 trigger	<p>When the Permitted Purchasing Body gives the Provider a notice which</p> <ul style="list-style-type: none"> • Must be given strictly according to section 121; and • May only be given by the Permitted Purchasing Body if there has been at least one breach of the kind described in item 91.2; and • Must indicate reasonably clearly the relevant breach of the Individual Contract by the Provider to which the notice relates; and • Must indicate that the Permitted Purchasing Body requires the Provider to provide a draft Remedial Plan which addresses the relevant breach of the Individual Contract indicated in the notice.
91.4	Consequences if the Permitted Purchasing Body gives the notice described in item 91.3	
(a)	Provider to give draft Remedial Plan	<p>The Provider must give the Permitted Purchasing Body a first draft of a Remedial Plan for the Permitted Purchasing Body's approval.</p> <p>The draft Remedial Plan must set out as a minimum:</p> <ul style="list-style-type: none"> • Steps the Provider proposes to take to do the following, as relevant <ul style="list-style-type: none"> - If the Provider's breach of the Individual Contract is continuing: to remedy that breach, and - In any case: to prevent the relevant breach from occurring in future. • A proposed deadline by which the Provider is to complete the proposed steps.

(b) Deadline by which the Provider must give the Permitted Purchasing Body the first draft of the Remedial Plan	<ul style="list-style-type: none"> • Either <ul style="list-style-type: none"> - 30 days from the date the notice described in item 91.3 is given. - Such longer period indicated in the notice. • The Permitted Purchasing Body shall not unreasonably refuse a request from the Provider for an extension where all of the following apply: <ul style="list-style-type: none"> - The request is made in writing - The request is made before the above deadline. - The extension is reasonably necessary due to circumstances genuinely outside the Provider's control.
(c) Consequence if the first draft (which properly meets the requirements of item (a)) is not provided by the relevant deadline in item (b) (if and as extended)	It shall be a Termination Default Event.
(d) Obligations of the Permitted Purchasing Body	<ul style="list-style-type: none"> • The Permitted Purchasing Body must not unreasonably withhold its written approval to drafts of the Remedial Plan as submitted. • The Permitted Purchasing Body must provide the Provider with timely feedback if the Permitted Purchasing Body does not approve a particular draft.
(e) Obligations of the Provider if the Permitted Purchasing Body withholds approval (with reasonable grounds)	<ul style="list-style-type: none"> • The Provider must reissue further drafts of the Remedial Plan to take proper account of any feedback, requests for amendments etc. provided by the Permitted Purchasing Body (acting reasonably and in good faith) to the previous draft. • The Provider must do so until a final draft is approved in writing by the Permitted Purchasing Body.
(f) Obligations of both the Permitted Purchasing Body and the Provider	To work together in a timely, reasonable and generally cooperative manner to agree a final Remedial Plan.
(g) Deemed approval of a draft Remedial Plan	<p>If the Permitted Purchasing Body has not communicated in writing to the Provider either</p> <ul style="list-style-type: none"> • Its rejection of a draft, or • Any genuine queries in relation to the draft, or • Any genuine requests for amendments to the draft <p>Within 30 days of the draft being submitted the Permitted Purchasing Body shall be deemed to have approved the draft.</p>
91.5 If the parties cannot agree on the Remedial Plan under item 91.4 more than 60 days after the deadline for submission of the first draft	
(a) First step	<ul style="list-style-type: none"> • The matter shall be escalated to the Escalated Persons for resolution. • The parties shall direct their respective Escalated Persons to use reasonable endeavours to resolve matters in a timely manner.

(b) Second step if and for as long as the matter remains unresolved more than **30 days** after commencement of the first step described in item (a)

The Permitted Purchasing Body may terminate each affected Individual Contract as follows

- By notice in writing to the Provider
- To be given strictly according to section 121.
 - At any time before the matter is resolved.

If the Permitted Purchasing Body gives the termination notice: the effective date of the termination of the Individual Contract will be the date on which the notice is given, or such later date indicated in the notice. That later date cannot be later than the expiry date of the Individual Contract.

91.6 Obligations of the **Provider** in relation to the Remedial Plan when the Permitted Purchasing Body has approved (or deemed to have approved) the Remedial Plan

(a) Obligations

All of the following

- The Provider must carry out its obligations in the approved Remedial Plan.
- The Provider must complete those obligations by any relevant deadlines indicated in the Remedial Plan.

(b) Right to extension

The Permitted Purchasing Body shall not unreasonably refuse

- Any reasonable and proportionate request by the Provider
 - Issued to the Permitted Purchasing Body
 - In writing in a timely manner
- To extend any deadlines in the Remedial Plan
- If delays to completing the Provider's obligations are **substantially and directly** caused by events or circumstances outside the Provider's reasonable control. This includes any failure by the Permitted Purchasing Body to carry out its obligations (if any) in the Remedial Plan in a proper and timely way.

(c) Costs of carrying out the Remedial Plan

The Provider shall bear its own costs in carrying out its obligations in the Remedial Plan.

91.7 Obligations of the **Permitted Purchasing Body** in relation to the Remedial Plan when the Permitted Purchasing Body has approved (or deemed approved) the Remedial Plan

To carry out any of its obligations (if any) indicated in the Remedial Plan:

- In a proper and timely manner; and
- At its own cost, unless otherwise indicated in the Remedial Plan or elsewhere in these Terms and Conditions and/or a relevant Work Order.

91.8 Character of any Remedial Plan in place from time to time

- It forms part of the Specification.
- **If there is any inconsistency between the Remedial Plan and the rest of the Specification:** the Remedial Plan overrides the Specification in relation to that inconsistency

91.9 Whether the Provider's failure to **properly complete its obligations under the Remedial Plan** described in item 91.1 **by the deadline in that Remedial Plan** (if and as extended) is a Termination Default Event of the Provider (yes/no)

Yes.

91.10 Extent to which anything in this section 91 in itself limits the rights and remedies of the Permitted Purchasing Body in relation to any breach by the Provider described in item 91.2

- Nothing in this section 91 limits the rights and remedies of the Permitted Purchasing Body in connection with that breach.
- This includes (where relevant and without limitation)
 - Any right to treat the failure as a Termination Default Event of the Provider if it becomes a Material Breach; and
 - Any right to claim any credit, compensation or the like of any of these.

92. Step in Rights

92.1 Definition of ‘Step in Rights’

The right of the Permitted Purchasing Body under this section 92 to temporarily take over all or a relevant part of the Services which the Provider is otherwise required to provide under the Individual Contract.

92.2 Extent to which the Permitted Purchasing Body **is obliged** to exercise Step in Rights at any particular time

No obligation.

92.3 Circumstances where a Permitted Purchasing Body **is permitted** to exercise Step in Rights in relation to the Services

The Permitted Purchasing Body (acting reasonably and in good faith) believes it is necessary to exercise its Step in Rights for any of the following reasons

- To ensure proper continuity of the Services where there are serious and significant failures or disruptions in the Provider doing so for any reason (whether or not due to the Provider’s fault)

Exception: the Permitted Purchasing Body is not permitted to exercise its Step in Rights if the failures or disruptions are **substantially and directly** due to the failure by the Permitted Purchasing Body to properly provide any Client Assistance described in item 73.1).

- To protect the safety of individuals, property or the environment generally.
- To enable the Permitted Purchasing Body to discharge an obligation it has under Law.
- To deal with a situation that involves any of the public emergency services.

92.4 Procedure the Permitted Purchasing Body must follow before exercising its Step-in Rights

(a) How it must communicate its intention to exercise its Step in Rights

- The Permitted Purchasing Body must communicate the matter to the Provider in writing, subject to item (c).
- The Permitted Purchasing Body is not obliged to comply with the formalities in section 121 in making that communication.

(b)	Minimum information the Permitted Purchasing Body must include in its communication	<p>All of the following:</p> <ul style="list-style-type: none"> • The action the Permitted Purchasing Body proposes to take in exercising Step in Rights. • Reasons for taking that action. • Expected consequences if the proposed action were not taken. • When its proposed action is to commence. • Estimated period its action is to last. • Estimated costs to the Permitted Purchasing Body in relation to the proposed action. • Estimated effects on the Services.
(c)	Where such written communication is not required	Where emergency action is reasonable in the circumstances.
92.5	Right of the Permitted Purchasing Body to take action substantially beyond what it has indicated in his/her communication described in item 92.4	
(a)	Usual position	The Permitted Purchasing Body must not to do.
(b)	Exceptions to item (a)	<p>If either applies:</p> <ul style="list-style-type: none"> • It gives a further communication describing his/her proposed further action. • Where emergency action is reasonable in the circumstances to justify the further action.
92.6	If the Permitted Purchasing Body exercises its Step in Rights for reasons other than due to a breach by the Provider	
(a)	Duty of care of the Permitted Purchasing Body	<p>The Permitted Purchasing Body shall exercise its Step in Rights</p> <ul style="list-style-type: none"> • Lawfully; and • With reasonable skill, care and diligence.
(b)	Relief from obligation	The Provider shall be relieved of its obligations to provide those parts of the Services which are carried out by the Permitted Purchasing Body in exercising its Step in Rights.
(c)	Obligation of the Provider	The Provider must provide the Permitted Purchasing Body with reasonable assistance in carrying out its Step in Rights.
(d)	Implications for Charges in section 24	Unaffected.
92.7	If the Permitted Purchasing Body exercises its Step in Rights due to a breach by the Provider	
(a)	Implications for Charges in section 24	The Permitted Purchasing Body is not obliged to pay Charges during this period.
(b)	Whether the Permitted Purchasing Body owes the Provider any duty of care in the way in which the Permitted Purchasing Body carries out its Step in Rights	No.
(c)	Whether the exercise of Step in Rights is the sole right and remedy of the Permitted Purchasing Body against the Provider (yes/no)	No.

Insurance

93. Provider's insurance requirements

93.1 The Provider must have in place

- Insurance of all of the following types
- To the minimum level indicated
- With a reputable insurer
- At all times whilst the Provider is obliged to provide any of the Services under the Individual Contract.

	Minimum level of cover required
(a) Employers' liability	£5 million or such higher level required by Law.
(b) Public liability	£10 million
(c) Professional indemnity	£2 million
93.2 Duration for which the Provider must ensure the insurances described in item 93.1 are in place	
(a) In relation to insurance on a 'claims made' basis	<ul style="list-style-type: none"> • For as long as the Provider is providing any Services whatsoever under the Individual Contract; and • If the Work Order is a deed: For a further 12 years after the Provider has discontinued providing any of the Services whatsoever under the Individual Contract. • If the Work Order is a NOT deed: For a further 6 years after the Provider has discontinued providing any of the Services whatsoever under the Individual Contract.
(b) In relation to insurance on a 'claims occurred' basis	For as long as the Provider is providing any Services whatsoever under the Individual Contract
93.3 Obligations of the Provider in relation to any subcontractor it appoints in connection with the Individual Contract	It must ensure the subcontractor has in place such cover that the Provider would be reasonably required to have in place under this section 93 if the Provider carried out the relevant activities in connection with the Individual Contract instead of that subcontractor.
93.4 Obligations of the Provider to provide evidence that the insurance cover required under this section 93 is in place	<ul style="list-style-type: none"> • The Provider must provide the Permitted Purchasing Body with evidence that it has that insurance properly in place. • It must do so promptly on the Permitted Purchasing Body's written request. That request must be made in good faith and not at unreasonable frequency. • Such evidence may include copies of insurance certificates, cover notes and/or a suitable letter from the Provider's insurance broker.
93.5 Other obligations of the Provider in relation to the insurance cover required in this section 93	<p>The Provider must not</p> <ul style="list-style-type: none"> • Do anything; and/or • Fail to take reasonable action to do anything within its reasonable power; and/or • Assist or instruct anyone else to do or fail to do any of the above that results in <ul style="list-style-type: none"> • Such insurance cover being wholly or partly rendered void, voidable, suspended, vitiated, impaired or unenforceable (or the like of any of these), and/or • Any amounts paid under that insurance cover being wholly or partly repayable.

93.6 Exemptions where the Provider or its relevant subcontractor is not required to have any particular insurance cover otherwise required in item 93.1	<ul style="list-style-type: none"> • Only with the written consent of the Permitted Purchasing Body. • If the Permitted Purchasing Body is not also the Lead Council: the Lead Council may give this consent on behalf of the Permitted Purchasing Body. • Such consent cannot be unreasonably withheld where there are reasonable alternative arrangements in place (e.g. suitable self-insurance arrangements).
93.7 Consequences if the Provider does not have any of the insurance cover required in this section 93 at any time during the relevant period described in item 93.2	<ul style="list-style-type: none"> • It shall be a Termination Default Event of the Provider. • Even if the Provider later obtains that insurance cover during that period. • This does not limit the rights and remedies of the Permitted Purchasing Body.

Liability

94. Liability of consortium members

94.1 **If a party is a consortium, partnership under the Partnership Act 1890, joint venture or the like:** nature of the liability of its members in connection with the Individual Contract

Their liability is 'joint and several'.

95. Provider indemnity for Claims

95.1 For what the Provider must indemnify (and keep indemnified) the Permitted Purchasing Body and its Affiliates and their respective Personnel

- For the respective Losses of the Permitted Purchasing Body and/or its Affiliate and/or their respective Personnel
- In relation to any Claim made or threatened against the Permitted Purchasing Body and/or its Affiliate and/or their respective Personnel
- Where the person making the Claim **is not** the Permitted Purchasing Body and/or its Affiliate
- Including without limitation, Claims for death, personal injury or property damage, or the imposition of any fine or penalty or the like
- To the extent the Claim relates to any of the matters described in item 95.2
- Subject to the rest of this section 95.

95.2 **Matters to which the indemnity described in item 95.1 applies:** any of the following acts or failures to act

- By the Provider (or by anyone acting on its behalf whom the Provider has directly or indirectly appointed including its Personnel or subcontractors)
- In connection with the Individual Contract

(a) Law

A breach of the Law by the Provider (or such other person acting on its behalf).

(b) Negligence

- Any act or failure to act by the Provider (or such other person acting on its behalf)
- To the extent it involves the **negligence** of the Provider (or that other person acting on its behalf)
- Against the third party claimant described in item 95.1.

(c)	Breach of the Individual Contract	<ul style="list-style-type: none"> Any act or failure to act by the Provider (or such other person acting on its behalf) To the extent that act or failure to act by the Provider (or that other person acting on its behalf) against the third party claimant described in item 95.1 Would be a breach of the Individual Contract if that act were done (or failed to be done) by the Provider against the Permitted Purchasing Body directly. This excludes delay or other failure by the Provider to pay amounts due to the Permitted Purchasing Body under the Individual Contract.
(d)	Use of property	<p>The unauthorised use and/or infringement of the property of the third party claimant described in item 95.1. by the Provider (or such other person acting on its behalf) including without limitation:</p> <ul style="list-style-type: none"> That third party claimant's Intellectual Property; and/or The supply of goods in connection with the Services in which that third party claimant has any interest.
(e)	Misconduct	<p>The deliberate misconduct of the Provider (or such other person acting on its behalf).</p>
(f)	Other duty	<p>A breach of any other duty which the Provider and/or its Affiliate owes that third party claimant (whether arising in tort, contract, statute or otherwise).</p>
95.3	<p>Exceptions to the indemnity described in this section 95 to the extent the indemnity is given to the Permitted Purchasing Body and its Affiliates: to the extent any of the following applies</p>	
(a)	Negligence etc. of the Permitted Purchasing Body	<p>To the extent the Losses were caused by the negligence or other wrongdoing of</p> <ul style="list-style-type: none"> The Permitted Purchasing Body and/or its Affiliates and/or their respective Personnel Any other agents separately appointed by the Permitted Purchasing Body and/or its Affiliates.
(b)	Requirement in Agreement, instruction	<p>To the extent the relevant act or failure to act by or on behalf of the Provider was significantly in compliance with</p> <ul style="list-style-type: none"> Any specific requirement elsewhere in the terms of the Individual Contract (as described in item 1.3); and/or Any written instruction issued by the Representative of the Permitted Purchasing Body.
(c)	In relation to the use of property described in item 95.2(d)	<p>Either of the following applies to the relevant property (including Intellectual Property where relevant)</p> <ul style="list-style-type: none"> The property has been specifically licensed or leased to the Provider and/or its Affiliate (whether under these Terms and Conditions or otherwise); and/or The Permitted Purchasing Body and/or its Affiliate has specifically made the relevant property available for use by the Provider in connection with the Individual Contract.
95.4	<p>To what the indemnity given by the Provider in item 95.1 is subject</p>	
		<p>Section 96.</p>

95.5	Whether the indemnity in this section 95 in itself limits the rights and remedies of the Permitted Purchasing Body and/or its Affiliates and/or their respective Personnel	No.
96. Indemnities generally		
96.1	Application of this section 96	This section 96 applies to any indemnity one party (' Indemnifier ') gives to the other party and/or its Affiliate (' Indemnity Beneficiary ') under these Terms and Conditions and/or a relevant Work Order (' Relevant Indemnity ').
96.2	Some rules of interpretation in relation to any Relevant Indemnity	
	(a) Nature of obligation	The Indemnifier's obligation to indemnify the Indemnity Beneficiary includes an obligation to keep the Indemnity Beneficiary indemnified.
	(b) Other rights and remedies	The Indemnifier's obligation to indemnify the Indemnity Beneficiary shall not in itself limit the rights or remedies of the Indemnity Beneficiary or any other person (except to the extent otherwise clearly indicated).
	(c) How Relevant Indemnities are to be read	Independently of each other.
96.3	Consequence for any Relevant Indemnity when the Provider is no longer obliged to provide any Services under these Terms and Conditions	Such events or circumstances do not in themselves affect any person's rights or obligations in respect of that Relevant Indemnity.
96.4	Procedure the Indemnity Beneficiary must follow to claim amounts under a Relevant Indemnity	<ul style="list-style-type: none"> • The Indemnity Beneficiary must give the Indemnifier a written demand. • That demand must be given strictly according to section 121.
96.5	Deadline for payment by the Indemnifier to the Indemnity Beneficiary	30 days after having been given a demand for payment by the Indemnity Beneficiary.
96.6	Obligations of the Indemnity Beneficiary in relation to the indemnity	<ul style="list-style-type: none"> • To take all reasonable steps to mitigate such Losses. • Exception: to the extent these Terms and Conditions otherwise indicates it is not required to do so.
96.7	Circumstances where the Indemnifier can refuse to meet an indemnity in relation to a Claim made against the Indemnity Beneficiary (any of the following, as relevant)	
	(a) If the Indemnity Beneficiary has failed to give the Indemnifier written notice of the Claim within the following period of the Claim first being communicated to the Indemnity Beneficiary in writing	<ul style="list-style-type: none"> • 30 days. • This is a strict deadline. • If the indemnity covers a threat of a Claim, the indemnity does not cover the Indemnity Beneficiary's Losses incurred before the notice is given. • The relevant notice of the Claim must be given strictly in accordance with section 121.
	(b) If the Indemnity Beneficiary has failed to give the Indemnifier proper control over the defence of the Claim (if the Indemnifier requests in writing), subject to each of the following, to the extent relevant	
	(i) Legal restrictions	This does not apply to the extent there are any legal or other genuine restrictions on the Indemnity Beneficiary giving Indemnifier such control.
	(ii) Consent from third parties	The parties must obtain all necessary consent from insurers and/or other arm's length third parties.

(iii)	Costs	The Indemnifier must bear all costs of that defence.
(iv)	Keeping the Indemnity Beneficiary informed	The Indemnifier must keep the Indemnity Beneficiary informed in a proper and timely manner of progress of the defence of the Claim, including significant events or circumstances in relation to the defence as and when they occur.
(v)	The Indemnity Beneficiary's requests	The Indemnifier must act reasonably to seek and to take account of the Indemnity Beneficiary's reasonable requests in relation to the conduct of the defence.
(vi)	Not bringing the Indemnity Beneficiary's name into disrepute etc.	<ul style="list-style-type: none"> The Indemnifier must not do anything (without good reason) to bring the name of the Indemnity Beneficiary into disrepute in the course of conducting the defence. The Indemnifier must not assist or instruct another person to do so.
(vii)	Indemnity Beneficiary's assistance with the defence	<ul style="list-style-type: none"> The Indemnity Beneficiary must give the Indemnifier reasonable and timely assistance with the defence of the Claim if reasonably requested in writing by the Indemnifier. Examples: such assistance may include (without limitation and as relevant) provision of relevant information, subject to relevant persons accepting reasonable confidentiality obligations.
(viii)	Reimbursement of costs	<p>The Indemnifier must reimburse the Indemnity Beneficiary for its following reasonable and sufficiently evidenced costs:</p> <ul style="list-style-type: none"> The Indemnity Beneficiary's third party disbursements, including external professional costs The time and effort of the Indemnity Beneficiary's Personnel in providing that assistance, at £50 per hour plus VAT.
(c)	Indemnity Beneficiary has failed to defend or settle	<p>The Indemnity Beneficiary has failed to take reasonable and timely action to defend or settle the Claim if so reasonably requested by the Indemnifier in writing.</p> <p>This applies if the Indemnifier has not taken control of the defence of the Claim for any reason.</p>
(d)	Not to harm defence	<p>The Indemnity Beneficiary and/or its Affiliate and/or their respective Personnel has done any act to substantially harm the Indemnifier's prospects of defending the Claim including (without limitation):</p> <ul style="list-style-type: none"> Admitting liability, or Attempting to settle the Claim. <p>Exceptions: any of the following:</p> <ul style="list-style-type: none"> To the extent that act is authorised by the Indemnifier in writing (at its discretion). To the extent that act is required by Law.
(e)	Other compensation	To the extent the Indemnity Beneficiary has received any payment or other benefit (e.g. discount, saving, credit etc.) in relation to the third party Claim.

96.8 **No double recovery:** a party to the Individual Contract ('X') must refund to the other party to the Individual Contract as the Indemnifier any amount paid by the Indemnifier to X and/or its Affiliate and/or its Personnel (as the relevant Indemnity Beneficiary) if that relevant Indemnity Beneficiary and/or its Affiliate receives any amount or other benefit (e.g. discount, saving, credit etc.) from another source (e.g. proceeds from an insurance claim, or a claim against a third party) in relation to the same event or circumstance, subject to the following

(a) The amount to be refunded	X is not obliged to refund any amount greater than the amount paid by the Indemnifier to the Indemnity Beneficiary in relation to that particular Relevant Indemnity.
(b) Keeping informed	X must inform the Indemnifier in writing (and make payment of the relevant refund) promptly on receipt of the payment from that other source.
(c) Extent to which X is under any duty to the Indemnifier to seek such payment from that other source	<p>X:</p> <ul style="list-style-type: none"> • Must use reasonable endeavours to do so; or • Must cause its Affiliate or Personnel to do so, where relevant, and to the extent it is in X's power to do so <p>In a reasonably proper and timely manner (at the Indemnity Beneficiary's own cost).</p>

97. Caps on the liability of the Provider

<p>97.1 Caps on the liability of the Provider for liabilities described in item 101.1 which are reasonably expected (according to the usual terms of insurance policies of the relevant types) to be covered by insurance which the Provider is required to have under section 93</p> <p>These caps are subject to these Terms and Conditions, particularly section 100 and section 101</p>	<p>To the level of the insurance cover which is relevant to the particular liability as required in item 93.1.</p>
<p>97.2 Caps on the liability of the Provider for liabilities described in item 101.1 which are not covered elsewhere in this section 97</p> <p>These caps are subject to these Terms and Conditions, particularly section 100 and section 101</p>	<ul style="list-style-type: none"> • To 125% of the Charges that would be payable by the Permitted Purchasing Body in connection with the Individual Contract in a calendar year, as if the Services were provided for that full calendar year. • This applies regardless of whether those Charges had accrued or been paid at the time the liability first arose.

98. Caps on the liability of the Permitted Purchasing Body

<p>98.1 Caps on the liability of the Permitted Purchasing Body for liabilities described in item 101.1</p> <p>Other than in the circumstances described in item 98.2.</p> <p>These caps are subject to these Terms and Conditions, particularly section 100 and section 101</p>	<ul style="list-style-type: none"> • To £100 in aggregate in relation to the Individual Contract, per calendar year. • The parties consider this reasonable having regard to the level of the duty of care which the Permitted Purchasing Body owes to the Provider in connection with the Individual Contract.
<p>98.2 Caps on the liability of the Permitted Purchasing Body to the Provider for loss of profit of the Provider resulting from breach by the Permitted Purchasing Body in connection with these Terms and Conditions</p>	<p>No cap.</p>

99. Exclusion of liability

99.1	Exclusions of liability of the Provider for acts (or failures to act) by a Client Required Subcontractor (section 64)	See item 64.7(b).
99.2	General exclusions of liabilities of the parties in connection with the Individual Contract This is subject to these Terms and Conditions, particularly section 100 and section 101	Liabilities of the parties for indirect or consequential losses are excluded.

100. Exceptions to caps and exclusions of liability

100.1	The caps and exclusions of a party's liability indicated elsewhere in the terms of the Individual Contract (as described in item 1.3)	<ul style="list-style-type: none"> • Do not apply and shall not be taken into account in calculating any caps on its liability • To the extent the liability relates to any of the following (each of these is to be read independently)
(a)	Death etc.	Death or personal injury caused by that party's negligence.
(b)	Deliberate	<ul style="list-style-type: none"> • That party's deliberate act or deliberate failure to act. • A party shall be regarded as having deliberately acted or failed to act where that act as done (or failed to be done) where there is reasonable evidence that the act was done (or not done) under the instruction of that party's Representative and/or any other member of its senior management.
(c)	Fraudulent misrepresentation	That party's fraudulent misrepresentation.
(d)	Provider's subcontracting (item 59.1)	<p>In relation to the liability of the Provider (all of the following):</p> <ul style="list-style-type: none"> • Any act or negligent failure by a subcontractor • Directly or indirectly appointed by the Provider • In connection with any of the Services to which the relevant liability relates <p>Where all of the following apply:</p> <ul style="list-style-type: none"> • The act or negligent failure is in connection with the Services. • The Provider was required under item 59.1 to obtain the Permitted Purchasing Body's consent to that subcontractor. • Either of the following applies, as relevant <ul style="list-style-type: none"> - The Provider failed to seek such consent; or - The Provider sought such consent, and the Lead Council refused consent to that subcontractor, in writing and with reasonable grounds.
(e)	Indemnities for third party Claims	Any indemnity that party gives under these Terms and Conditions and/or a relevant Work Order for third party Claims.

(f)	Specific debts	Specific debts arising under or in connection with the Individual Contract including (as relevant and without limitation) any liability to pay Charges under section 24 and any interest accruing on such debts.
(g)	Elsewhere in the terms of the Individual Contract (as described in item 1.3)	As indicated elsewhere in these Terms and Conditions and/or a relevant Work Order.
(h)	Not permitted by Law	Anything else to the extent liability cannot be capped and/or excluded by Law.

101. Caps and exclusions of liability – interpretation

101.1	Interpretation of caps and exclusions of the liability of a party ('X') in section 97 and section 98 and section 99	<ul style="list-style-type: none"> • They apply to X's liabilities of any kind in connection with the Individual Contract. • Regardless of whether the liability arises in tort, contract, under statute or otherwise. • Any cap on X's liability is to be aggregated between <ul style="list-style-type: none"> - The liability X owes to the other party; and - The liability X owes any third party under the Individual Contract.
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102. Apportionment of liability

102.1	Apportionment where the loss of party ('X') is only partly due to the fault of the other party ('Y')	<p>Where X's losses in particular circumstances relevant to the Individual Contract</p> <ul style="list-style-type: none"> • Are partly caused by the fault of Y and/or anyone acting on Y's behalf (whether in tort, contract, under statute or otherwise); and • Are partly due to other factors (including X's own acts and failures to act), <p>Then the liability of Y to X for compensation or the like shall be reduced fairly and proportionately to reflect the extent to which Y's act or failure to act contributed to causing X's losses.</p>
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Termination

103. Termination due to a Termination Default Event

103.1	Termination rights of a party ('Terminating Party') if and for as long as a Termination Default Event applies to the other party ('Defaulting Party')	The Terminating Party may terminate the Individual Contract if and for as long as a Termination Default Event applies to the Defaulting Party.
103.2	What are the Termination Default Events of the Provider	See section 104.
103.3	What are the Termination Default Events of the Permitted Purchasing Body	See section 105. i
103.4	Whether the Permitted Purchasing Body may terminate the Individual Contract	The Permitted Purchasing Body may do so.
(a)	If the Provider is removed from the Flexible Purchasing System by the Lead Council due to the Provider's Termination Default Event	

(b) If a Termination Default Event applies to the Provider under another contract which the Permitted Purchasing Body has with the Provider under the Flexible Purchasing System	The Permitted Purchasing Body may do so.
(c) If a Termination Default Event applies to the Provider under another contract which another entity has with the Provider under the Flexible Purchasing System	The Permitted Purchasing Body may do so.
103.5 Whether the Provider may terminate the Individual Contract if a Termination Default Event applies to the Permitted Purchasing Body under another contract which the Provider has with the Permitted Purchasing Body under the Flexible Purchasing System	The Provider may not do so.
103.6 Whether the Terminating Party may terminate only part of the Individual Contract under this section 103 if the Terminating Party wishes to do so	<ul style="list-style-type: none"> • Only in relation to a part of the Individual Contract which is reasonably severable from the rest of the Individual Contract. <p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> • Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. • According to the formal requirements in section 72. • Promptly on being requested to do so by the other party.
103.7 How a Terminating Party terminates the Individual Contract (or the relevant part of it, if permitted in item 103.6) under this section 103	<p>By giving the Defaulting Party a notice as follows:</p> <ul style="list-style-type: none"> • Strictly according to section 121. • Setting out in reasonable detail a description of the Termination Default Event of the Defaulting Party. • If partial termination is permitted in item 103.6: the notice must indicate sufficiently clearly the relevant part being terminated.
103.8 Interpretation	<p>If</p> <ul style="list-style-type: none"> • A Termination Default Event applies to a Defaulting Party; and • That Termination Default Event is expressed to continue if and for as long as particular circumstances apply, and • Those circumstances cease to apply (e.g. the Defaulting Party has remedied the Termination Default Event); and • The Terminating Party has not yet given the Defaulting Party the notice described in item 103.7 in relation to that Termination Default Event <p>Then the Terminating Party is no longer entitled to give that notice to the Defaulting Party in relation to that particular Termination Default Event.</p>
103.9 Effective date on which the Individual Contract (or the relevant part of it, if permitted in item 103.6) is terminated if a notice is given by the Terminating Party under item 103.7	<ul style="list-style-type: none"> • On the date the notice is given, or • On any later date indicated in that notice. That later date cannot be later than the expiry date of the Individual Contract.

103.10 Obligations of the parties in relation to their respective exit obligations in section 110 after a notice is given by the Terminating Party under item 103.7

The parties must commence them promptly after that notice is given.

103.11 Whether termination of the Individual Contract (or any part) under this section 103 in itself limits the rights and remedies of the Terminating Party

- No.
- Without limiting this, if the Permitted Purchasing Body is the Terminating Party, termination does not in itself limit the Permitted Purchasing Body's rights (if any) to compensation for its increased costs in appointing a replacement service provider on an emergency basis.

104. Provider Termination Default Events

Each of the following is a Termination Default Event of the Provider (to be read independently) if and for as long as they continue to apply

General breaches

104.1 Material Breach not capable of being remedied

- The Provider is in Material Breach of the Individual Contract.
- On a reasonable view, that Material Breach is not capable of being remedied by the Provider.

104.2 Material Breach capable of being remedied

- All of the following
- The Provider is in Material Breach of the Individual Contract.
 - On a reasonable view the Material Breach is capable of being remedied by the Provider.
 - For as long as the Provider has still not remedied the Material Breach
 - To the reasonable satisfaction of the Permitted Purchasing Body
 - At the Provider's own cost
 - More than **30 days** after the Permitted Purchasing Body has requested the Provider to do so
 - The Permitted Purchasing Body must have issued its request by notice given strictly according to section 121.
 - The Permitted Purchasing Body shall not unreasonably refuse consent to a written request by the Provider to an extension of the above deadline if there are delays to the Provider remedying the Material Breach which are significantly due to factors outside the reasonable control of the Provider.

104.3 Failure to supply first draft of Remedial Plan (item 91.4(c))

- The Permitted Purchasing Body has requested the Provider to provide a first draft of a Remedial Plan under item 91.3.
- For as long as the Provider has not yet supplied that first draft of the Remedial Plan
 - Which substantially meets the requirements of item 91.4(a)
 - **After** the relevant deadline in item 91.4(b) (if and as extended)
- But only if item 91.4(c) indicates that this is a Termination Default Event of the Provider.

104.4 Failure to complete obligations under Remedial Plan (item 91.9)	<ul style="list-style-type: none"> • For as long as the Provider still has not yet fully completed its obligations in the Remedial Plan indicated section 91 <ul style="list-style-type: none"> - Properly according to the requirements of the Remedial Plan; and - After the expiry of the deadlines (if any) indicated in the Remedial Plan (if and as extended) • But only if item 91.9 indicates that this is a Termination Default Event of the Provider.
104.5 Failure to commence the Services in relation to the Individual Contract (item 21.2)	<ul style="list-style-type: none"> • For as long as the Provider has not yet commenced to provide the Services under the Individual Contract • After the deadline indicated in item 21.2, as extended under item 21.3.
104.6 Failure to pay debts	<p>If and for as long as the Provider has still not yet fully paid the following:</p> <ul style="list-style-type: none"> • Any overdue debt owed to the Permitted Purchasing Body or its Affiliate • Within 14 days of being demanded to do so • Whether or not that debt is connected with the Individual Contract • Subject to rights of set off, deduction or counterclaim which the Provider has in relation to that debt (if any) <p>But only where that overdue debt is not subject to a genuine dispute which the Provider or its Affiliate is using reasonable endeavours in good faith to attempt to resolve.</p>
104.7 Promised Subcontractor (section 60)	<p>If and for as long as both of the following apply to a Promised Subcontractor:</p> <ul style="list-style-type: none"> • It substantially discontinues its required activities for any reason. • The Provider has not proposed a reasonably suitable replacement for approval by the deadline indicated in item 60.2.
104.8 Insurance (item 93.7)	<ul style="list-style-type: none"> • The Provider does not have in place the insurance cover required in section 93 at any time (even if it subsequently obtains it). • But only to the extent this is a Termination Default Event according to item 93.7.
104.9 If the consent of the Permitted Purchasing Body is required to the assignment or novation of any part of the Individual Contract (section 120)	<p>The Provider assigns or novates any part of the Individual Contract (or becomes legally bound to do so) without having obtained that consent.</p>
General misconduct	
104.10 Serious misconduct	<ul style="list-style-type: none"> • The Provider has engaged in serious misconduct • Such misconduct includes without limitation, the Provider's involvement in a serious public scandal (whether or not in connection with these Terms and Conditions) • In circumstances where a reasonable person would not expect the Permitted Purchasing Body to continue a commercial relationship of this kind with the Provider.

104.11 Misconduct in competitive exercise

- The Provider has engaged in serious misconduct in any competitive exercise conducted by or on behalf of the Permitted Purchasing Body in awarding to the Provider the contract to which the Individual Contract relates.
- That misconduct includes without limitation
 - Engaging in any collusive or other anti-competitive conduct with other actual or potential bidders.
 - Engaging in any canvassing activity.
 - Doing any act in connection with that competitive exercise that would breach section 114 in relation to Corrupt Acts if that act were done after these Terms and Conditions is entered.
- It makes no difference whether or not the Provider's senior management knew of the misconduct (regardless of anything to the contrary in section 114).

104.12 Corrupt Act (section 114)

- The Provider's breach of section 114.
- But only if item 114.3 indicates that this is a Termination Default Event of the Provider.

About the Provider

104.13 Loss of licence, accreditation etc. (section 16)

- The Provider substantially discontinues holding any licence, permit, accreditation or the like which it is required to have under item 16.1.
- **If the Provider is required by Law to hold that licence, permit, accreditation or the like to provide any of the Services:** this shall be a Termination Default Event of the Provider even if the Provider later remedies the issue.
- **Otherwise:** this shall be a Termination Default Event only for as long as the Provider has failed to remedy the issue.

104.14 Disposal of assets etc.

- The Provider ceases to have title and/or possession to its business and/or other assets; and
- On a reasonable view, this creates an unreasonable risk of the Provider being materially unable to carry out its obligations under the Individual Contract.

104.15 Change in Control

Where **all** of the following apply:

- The Provider is a company with share capital.
- There is a change in the majority underlying Control of the Provider.
- That change in Control is **not** the result of the purchase of shares in the Provider on a public stock exchange.
- The Permitted Purchasing Body (or the Lead Council acting on its behalf, if the Permitted Purchasing Body is not the Lead Council) has raised objections (with reasonable grounds) to that change in Control
 - By notice given strictly under section 121
 - Not later than **30 days** of having first been sufficiently informed of the change
 - For this purpose, the Lead Council shall not be regarded as being sufficiently informed of the change if the Lead Council has raised genuine questions and/or requests for further information with the Provider about the change.

104.16 Key Personnel (section 40)

If and for as long as the circumstances in item 40.7 continue to apply in relation to the replacement of any Key Personnel.

104.17 Bankruptcy (if the Provider is a human acting as a sole trader)	The Provider becomes bankrupt.
104.18 Certain convictions (if the Provider is a human acting as a sole trader)	The Provider is convicted of any crime of violence or dishonesty, any crime relevant to safeguarding (where the Services involve safeguarding issues) or any other offence resulting in a prison sentence (whether suspended or served).
104.19 Death (if the Provider is a human acting as a sole trader)	The Provider dies.
104.20 Disability (if the Provider is a human acting as a sole trader)	The Provider suffers total and permanent disability.
104.21 Mental Health Act (if the Provider is a human acting as a sole trader)	The Provider becomes a patient within the meanings of sections 94(2) or 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Provider in his/her relevant jurisdiction.
104.22 Certain appointments (if the Provider is an entity other than a human being – e.g. a company)	The Provider is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the Provider and/or its assets.
104.23 Winding up (if the Provider is an entity other than a human being – e.g. a company)	<ul style="list-style-type: none"> • The Provider is subject to a court order (or equivalent) or a resolution requiring the Provider to be dissolved and/or wound up. • Exception: in relation to a genuine solvent reconstruction where <ul style="list-style-type: none"> - The replacement entity agrees in writing to become legally bound to the obligations of the Provider under the Individual Contract. - The replacement entity accepts in writing liability for the liabilities of the Provider in connection with the Individual Contract. - The replacement entity (and/or any third party guarantor it wishes to propose at the time) has at least equivalent financial standing as that which the Provider had at the date of these Terms and Conditions. - The replacement entity has the same underlying majority controlling ownership as the Provider.
104.24 Moratorium	If the Provider is a ‘small company’ under section 382(3) of the Companies Act 2006: if and for as long as a moratorium (or any equivalent in its relevant jurisdiction) is in force under Schedule A1 of the Insolvency Act 1986.
104.25 Unable to pay debts	<ul style="list-style-type: none"> • If and for as long as the Provider is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law, including section 123 of the Insolvency Act 1986. • This applies whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time) as they fall due, and the Provider has no reasonable prospect of paying such debts.
104.26 Composition with creditors	If and for as long as the Provider is a party to a composition or other similar arrangement with its creditors, including any voluntary arrangement within Part I of the Insolvency Act 1986.

Third party guarantee (e.g. parent company guarantee)

104.27 If the liabilities, obligations etc. of the Provider in connection with the Individual Contract are subject to any guarantee by a third party, **both** item (a) and item (b) apply

(a) Any of the following applies to the guarantor

(i) If the guarantor is a human being	<p>Any of the following applies to him/her</p> <ul style="list-style-type: none"> • He/she dies. • He/she becomes a patient within the meanings of sections 94(2) or 145(1) of the Mental Health Act 1983 or equivalent meanings in other similar replacement legislation or in equivalent legislation applying to the Provider in his/her relevant jurisdiction. • He/she becomes bankrupt. • He/she receives a prison sentence.
(ii) Certain appointments	<p>The guarantor is subject to a court order (or equivalent) or a resolution requiring the appointment of a liquidator, provisional liquidator, trustee, administrator, controller, receiver or receiver and manager (or any equivalent of any of these in another relevant jurisdiction) in relation to the guarantor and/or its assets.</p>
(iii) Winding up	<p>The guarantor is subject to a court order (or equivalent) or a resolution requiring the guarantor to be dissolved and/or wound up.</p>
(iv) Unable to pay debts	<ul style="list-style-type: none"> • The guarantor is unable to pay its debts (taking into account its contingent and prospective liabilities) as defined in any applicable Law • As they fall due, and the guarantor has no reasonable prospect of paying such debts. • Whether such debts individually or in aggregate equal any minimum required under relevant bankruptcy or similar legislation from time to time
(v) Composition with creditors	<p>The guarantor enters into a composition or other similar arrangement with its creditors.</p>
(vi) Moratorium	<p>If the guarantor is a ‘small company’ under section 382(3) of the Companies Act 2006: if and for as long as a moratorium (or any equivalent in its relevant jurisdiction) is in force under Schedule A1 of the Insolvency Act 1986.</p>
(vii) Failure to pay debts	<p>The guarantor has failed to pay the following:</p> <ul style="list-style-type: none"> • Any overdue debt owed to the Permitted Purchasing Body or its Affiliate • Within 14 days of being demanded to do so • Whether or not in connection with the Individual Contract • But only where that overdue debt is not subject to a genuine dispute which the guarantor is using reasonable endeavours in good faith to attempt to resolve.
(viii) If the guarantor is a partnership, consortium or the like	<p>Any of the above events or circumstances applies to any of its members.</p>

(b) Failure to provide a replacement

- The Provider has failed to provide the Permitted Purchasing Body (within 14 days of that event or circumstance first occurring) a legally binding written guarantee given by a replacement guarantor, subject to the approval of the Permitted Purchasing Body (or by the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council).
- For the purposes of this approval
- The Permitted Purchasing Body (or Lead Council on its behalf) must not require the replacement guarantor to accept terms that are materially more onerous on it than those which applied to the immediately preceding guarantor.
 - The Permitted Purchasing Body (or Lead Council on its behalf) must not require the replacement guarantor to have greater comparable financial strength than that which the immediately preceding guarantor had at the time it entered into its guarantee.

104.28 If the Provider is a consortium, partnership or the like, if and for as long as **both** of the following apply

(a) Certain events apply to a member

Any of the events or circumstances in this section 104 applies to any member at the time of the consortium, partnership or the like.

(b) Failure to take steps

- The Provider has failed to remove that member from its involvement with the relevant Services within 14 days of the written request of the Permitted Purchasing Body (or Lead Council on its behalf if the Permitted Purchasing Body is not also the Lead Council).
- Such request by the Lead Council must be issued by a notice strictly according to section 121.

105. Permitted Purchasing Body Termination Default Events

105.1 **Non-payment by the Permitted Purchasing Body:** if and for as long as all of the following apply

(a) Amounts overdue

Any amount owed by the Permitted Purchasing Body to the Provider in connection with the Individual Contract is overdue.

(b) Not disputed

The amount owed is not subject to a genuine dispute which the Permitted Purchasing Body is using reasonable and genuine efforts to attempt to resolve.

(c) No right to delay etc.

The Permitted Purchasing Body has no grounds under these Terms and Conditions and/or a relevant Work Order to refuse and/or to delay payment.

(d) Overdue

The amount (or any part of it) must remain overdue more than **30 days** after the Provider has issued a further demand for payment.

(e) How the Provider issues the demand described in item (c)

- Strictly according to section 121
- But addressed to the Escalated Person of the Permitted Purchasing Body.

(f) When the Provider may issue the demand described in item (c)

At any time after the relevant amount first becomes overdue.

106. Termination by the Permitted Purchasing Body without Provider Termination Default Event

<p>106.1 Whether the Permitted Purchasing Body may terminate the Individual Contract where no Termination Default Event applies to the Provider</p>	<ul style="list-style-type: none"> • The Permitted Purchasing Body may do so according to this section 106. • This section 106 does not limit the termination rights of the Permitted Purchasing Body indicated elsewhere in the terms of the Individual Contract (as described in item 1.3).
<p>106.2 Any initial period when the Permitted Purchasing Body may not terminate the Individual Contract</p>	<p>The Permitted Purchasing Body cannot give the notice described in item 106.4 in the following initial period:</p> <ul style="list-style-type: none"> • The first 12 months from the date of the Individual Contract; or • Such longer initial period indicated in the Work Order.
<p>106.3 Whether the Permitted Purchasing Body may terminate only part of the Individual Contract under this section 106</p>	<ul style="list-style-type: none"> • Only in relation to a part of the Individual Contract which is reasonably severable from the rest of the Individual Contract. <p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> • Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. • According to the formal requirements in section 72. • Promptly on being requested to do so by the other party.
<p>106.4 How the Permitted Purchasing Body terminates the Individual Contract if it wishes to do so under this section 106</p>	<ul style="list-style-type: none"> • By notice in writing given to the Provider. • The notice must be given strictly according to section 121. • If the Permitted Purchasing Body is partially terminating the Individual Contract (and if it is permitted to do so in item 106.3): the notice must clearly indicate the part being terminated.
<p>106.5 Effective termination date if the Individual Contract is terminated under this section 106</p>	<ul style="list-style-type: none"> • The Individual Contract shall terminate at the end of the notice period indicated in item 106.6. • See section 116 regarding ongoing rights, obligations etc. of the parties after termination, including exit obligations in section 110.
<p>106.6 Notice period if the Permitted Purchasing Body terminates the Individual Contract under section 106 The termination of the Individual Contract becomes effective at the end of this notice period</p>	<p>Either</p> <ul style="list-style-type: none"> • 6 months after the date the notice described in item 106.4 is given; or • Any later date or event as indicated in the notice. That later date cannot be later than the expiry date of the Individual Contract.
<p>106.7 Whether</p> <ul style="list-style-type: none"> • The Provider must continue to provide the Services as normal during the notice period; or • The Provider is required to wind them down during the notice period 	<p>It must continue to provide the Services as normal.</p>
<p>106.8 Whether the parties are to commence their respective exit obligations in section 110 during the notice period</p>	<p>Yes, except to the extent otherwise indicated in the exit plan.</p>

107. Termination by the Provider without Permitted Purchasing Body Termination Default Event

107.1 Whether the Provider may terminate any Individual Contract to which it is a party where no Termination Default Event applies to the Permitted Purchasing Body	<ul style="list-style-type: none"> • The Provider may do so according to this section 107. • This section 107 does not limit the termination rights of the Provider indicated elsewhere in these Terms and Conditions and/or a relevant Work Order.
107.2 Any initial period when the Provider may not terminate the Individual Contract to which it is a party under this section 107	<p>The Provider cannot give the notice described in item 107.4 in the following initial period:</p> <ul style="list-style-type: none"> • The first 12 months from the date of the Individual Contract; or • Such longer initial period indicated in the Work Order.
107.3 Whether the Provider may terminate only part of the Individual Contract under this section 107	Not applicable
107.4 How the Provider terminates the Individual Contract if it wishes to do so under this section 107	<ul style="list-style-type: none"> • By notice in writing given to the Permitted Purchasing Body. • The notice must be given strictly according to section 121.
107.5 Effective termination date if the Individual Contract is terminated under this section 106	<ul style="list-style-type: none"> • The Individual Contract shall terminate at the end of the notice period indicated in item 107.6. • See section 116 regarding ongoing rights, obligations etc. of the parties after termination, including exit obligations in section 110.
107.6 Notice period if the Provider terminates the Individual Contract under section 107 (at the end of which termination becomes effective)	<ul style="list-style-type: none"> • 6 months after the date the notice described in item 107.4 is given. • Such later date or event as indicated in the notice. That later date cannot be later than the expiry date of the Individual Contract.
107.7 Whether <ul style="list-style-type: none"> • The Provider is to be required to continue to provide the Services as normal during the notice period; or • The Provider is required to wind them down during the notice period 	It must continue to provide the Services as normal.
107.8 Whether the parties are to commence their respective exit obligations in section 110 during the notice period (yes/no)	Yes, except to the extent otherwise indicated in the exit plan.

108. Termination due to Uncontrollable Circumstances

108.1 Which party may terminate the Individual Contract due to Uncontrollable Circumstances	See item 76.3.
108.2 When that party may give the notice described in item 108.3	See item 76.4.
108.3 How the party in item 108.1 may terminate the Individual Contract	<p>By giving a notice to the other party as follows:</p> <ul style="list-style-type: none"> • Strictly according to section 121; and • Setting out the relevant Uncontrollable Circumstance.

108.4 Whether partial termination of the Individual Contract is permitted	<ul style="list-style-type: none"> • Only in relation to a part of the Individual Contract which is reasonably severable from the rest of the Individual Contract. <p>The parties shall work cooperatively to amend the terms of the Individual Contract (as described in item 1.3) according to all of the following</p> <ul style="list-style-type: none"> • Fairly and proportionately (including reductions in amounts payable between the parties) to reflect the remaining parts of the Services. • According to the formal requirements in section 72. • Promptly on being requested to do so by the other party.
108.5 Effective date of termination of the Individual Contract under this section 108	The date the notice is given, or such later date indicated in the notice.

109. Termination – other circumstances

109.1 Other circumstances where the Individual Contract may be terminated early	
(a) By a party indicated in item 20.7 (section 20)	In the circumstances described in item 20.7 if a Preparation Activity described in item 20.1 remains incomplete after a particular deadline.
(b) By the Permitted Purchasing Body (section 91)	In the circumstances described in item 91.5 if the parties cannot agree on a particular Remedial Plan described in section 91.
(c) By the Permitted Purchasing Body	If any of the circumstances in regulation 73 of the Public Contracts Regulations 2015 applies.

Exit arrangements

110. Exit

110.1 Where this section 110 applies: it applies to the exit obligations of the parties under the Individual Contract when the first of the following applies	
(a) Expiry	On expiry of the Individual Contract (see section 22).
(a) Early termination	The early termination of the Individual Contract (or relevant part of it, if partial termination is permitted)
110.2 Exit obligations of the parties where this section 110 applies according to item 110.1	
(a) Main obligations	The parties must comply with their respective obligations in the exit plan described in this section 110.
(b) If the Individual Contract is only partly terminated (and partial termination is permitted)	The parties shall only carry out those exit obligations relevant to the terminated part which is terminated.

<p>110.3 Exit plan for the purposes of this section 110</p>	<ul style="list-style-type: none"> • As prepared by the Provider and approved by the Permitted Purchasing Body (or by the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council). • That approval must not be unreasonably withheld. • For this purpose, the Provider must submit to the Permitted Purchasing Body (or by the Lead Council on its behalf, if the Permitted Purchasing Body is not also the Lead Council) a draft exit plan for Lead Council's consideration no later than 3 months from the date the Individual Contract. • Until the approval is given: <ul style="list-style-type: none"> - The Provider must work in a timely and diligent manner to prepare and submit further drafts of the exit plan if requested to do so by the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant). - The Provider must have proper regard for the reasonable feedback of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant) in preparing those further drafts.
<p>110.4 Examples of reasonable grounds for the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant). to refuse approval to a draft exit plan described in item 110.3 (where relevant, and not an exhaustive list, and does not exclude other reasonable grounds for refusing approval)</p> <p>(a) Transfer of responsibility</p> <p>(b) Returning data etc.</p> <p>(c) Imposes certain things on the Permitted Purchasing Body</p>	<p>In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the orderly and timely transfer of responsibility to the person (whether the Permitted Purchasing Body or its replacement service provider) who will be continuing to provide the Services, including maintenance of the Services until the transfer is complete.</p> <p>In the reasonable opinion of the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant), the draft fails to properly address the return of any data, records or other property of the Permitted Purchasing Body and/or its Affiliates which were then in the possession and/or control of the Provider in connection with the Services.</p> <p>The draft exit plan proposes imposing any of the following on the Permitted Purchasing Body which are uncontrollable by the Permitted Purchasing Body and/or in any case unreasonable</p> <ul style="list-style-type: none"> • Additional costs. • Additional obligations. • Additional risks of serious adverse consequences for the Permitted Purchasing Body and/or any person to whom the Permitted Purchasing Body owes any duty of care at the time (whether it owes that duty of care under tort, a contract in place at the time or otherwise).
<p>110.5 If the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant) refuses to approve any Provider's draft exit plan described in item 110.3</p>	<p>Either party may require the parties to treat the matter as a dispute for the purposes of section 119 if the Permitted Purchasing Body (or the Lead Council on its behalf, where relevant) has not approved it.</p>
<p>110.6 Character of any approved exit plan</p>	<ul style="list-style-type: none"> • It forms part of the Individual Specification. • If there is any inconsistency between the exit plan and the rest of the Individual Specification: the exit plan overrides the rest of the Individual Specification to the extent of the inconsistency.

110.7	Obligations of the Provider on expiry or early termination of these Terms and Conditions in relation to any Operating Manual described in section 7	It must make the latest version (properly updated) available to the Permitted Purchasing Body or its nominee (e.g. a replacement provider) promptly on the Permitted Purchasing Body's request (if the Permitted Purchasing Body does not already have that version)
110.8	How each party is to carry out its respective obligations under the exit plan described in this section 110	<ul style="list-style-type: none"> • In a proper and timely manner. • At its own cost unless otherwise indicated in the exit plan.
110.9	When the parties must commence their respective exit obligations described in the exit plan described in this section 110	<ul style="list-style-type: none"> • When the relevant event or circumstances described in item 110.1 occurs or arises; or • At such earlier time indicated elsewhere in these Terms and Conditions and/or a relevant Work Order and/or in the exit plan.

111. Handover obligations

111.1 **Where this section 111 applies:** it applies to the handover obligations of the Provider when the first of the following applies

(a)	Expiry	On expiry of the Individual Contract (see section 22).
(b)	Early termination	The early termination of the Individual Contract (or relevant part of it, if partial termination is permitted)

111.2 Specific handover obligations of the Provider where this section 111 applies

As indicated in the Work Order.

111.3 **General handover obligations of the Provider if the Services are to be taken over by the Permitted Purchasing Body or a replacement service provider on expiry or early termination of the Individual Contract:** all of the following to the extent relevant (and without limiting the specific obligations in item 111.2 and/or in any exit plan described in this section 110 or elsewhere in the Individual Contract (as described in item 1.3)

(a)	Continued provision	To continue providing the Services as normal until the Permitted Purchasing Body or the replacement service provider is ready to take over the running of the Services.
(b)	Service Users (section 3)	To comply with item (a) in a way to ensure the wellbeing of Service Users described in section 3 is maintained, to the extent the Services are relevant to their wellbeing.
(c)	Work with Personnel	<ul style="list-style-type: none"> • To work cooperatively with Personnel of the Permitted Purchasing Body and/or its replacement service provider to provide reasonable assistance and advice concerning the continued provision of any of the Services. • This includes the timely provision of information relevant to the Services on reasonable request of the Permitted Purchasing Body or the replacement service provider. This is subject to item 111.5.

(d) If the Provider is still at the time a party to any Associated Document described in section 2	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must comply in a proper and timely manner • To the extent it is within its reasonable control to do so • With reasonable instructions of the Permitted Purchasing Body • Regarding the novation or assignment of that Associated Document • From the Provider to the replacement service provider or such other person as the Permitted Purchasing Body reasonably nominates • To be read subject to the relevant Associated Document (e.g. clauses in it covering novation and/or assignment).
(e) If the Provider is still at the time a party to any contract described in item 10.1	<p>All of the following</p> <ul style="list-style-type: none"> • The Provider must comply in a proper and timely manner • To the extent it is within its reasonable control to do so • With reasonable instructions of the Permitted Purchasing Body • Regarding the novation or assignment of that contract • From the Provider to the Permitted Purchasing Body or the replacement service provider or such other person as the Permitted Purchasing Body reasonably nominates.
111.4 Other obligations of the Provider	<p>The Provider must use reasonable endeavours to ensure compliance with the obligations in this section 111 by its relevant direct and indirect subcontractors.</p>
111.5 Limits on the Provider's obligations to make disclosures in carrying out its handover obligations in this section 111	<p>This section 111 does not require the Provider and/or its subcontractors to disclose information to any person to which any of the following applies:</p> <ul style="list-style-type: none"> • Such disclosure would cause the Provider or its subcontractor to do any of the following <ul style="list-style-type: none"> - Break any Law (e.g. any Law relating to data protection etc.); and/or - Breach any genuine, existing confidentiality obligations it owes to a third party. • Such disclosure involves genuine commercially sensitive information of the Provider or its subcontractor (i.e. information that would genuinely, seriously and unfavourably affect the Provider's or the subcontractor's competitive position with its competitors).
111.6 When the Provider must commence its handover obligations under this section 111	<p>On the expiry or effective early termination date of the Individual Contract.</p>
111.7 For how long the Permitted Purchasing Body can require the Provider to continue with the handover obligations under this section 111	<p>For up to a further 6 months from the date in item 111.6; or Such other period indicated in the Work Order.</p>
111.8 Who bears the Provider's costs in carrying out its handover obligations under this section 111	<p>The Provider shall be entitled to its normal Charges whilst carrying out the handover obligations.</p>

Miscellaneous

112. Health and safety

112.1 **Obligations of the Provider in relation to health and safety when providing Services:** it must comply with the highest of the following standards when providing the Services (and to ensure its relevant Personnel and subcontractors do likewise)

(a)	Law	Requirements of the Law which are relevant to health and safety and the Services at the time.
(b)	Individual Specification, General Specification	Any health and safety requirements in the Individual Specification and/or in the General Specification.
(c)	Provider Submission	Any health and safety standards, procedures etc. contained in the Provider Submission.
(d)	Provider's own policy	Obligations contained in any health and safety policy the Provider has in place from time to time.
(e)	In relation to the Individual Contract	Specific health and safety requirements in the relevant Work Order.
(f)	The Lead Council's policy (section 14)	<ul style="list-style-type: none"> • The Permitted Purchasing Body's health and safety policy (if any) from time to time. • But only to the extent the Provider is obliged to comply with it under section 14.

113. Equalities

113.1 Obligations of the Provider relating to **anti-discrimination and equalities** whilst it is providing any Services

<ul style="list-style-type: none"> • The Provider must have in place (at all times whilst it is providing any Services and in relation to its activities within the United Kingdom) <ul style="list-style-type: none"> - Appropriate policies and procedures relating to equalities and anti-discrimination matters, and - Systems in place to monitor and enforce those policies and procedures • The Provider must comply with relevant Law relating to equalities and anti-discrimination in each jurisdiction in which it carries out activities connected with the Individual Contract. This includes (in relation to activities within the UK) complying with the Equality Act 2010.

114. Corrupt Acts

114.1 Obligations of the Provider in relation to Corrupt Acts defined in item 114.2

<p>The Provider must not do any of the following in connection with the Individual Contract:</p> <ul style="list-style-type: none"> • Carry out any Corrupt Act • Assist or instruct another person to carry out any Corrupt Act.

114.2 Definition of a '**Corrupt Act**': any of the following acts (to be read independently)

- | | |
|----------------------|---|
| (a) Certain offers | <p>The act is a direct or indirect offer or promise to which all of the following apply</p> <ul style="list-style-type: none"> • It is made to any Personnel of the Permitted Purchasing Body and/or its Affiliate • It offers or promises any benefit or advantage (whether or not financial) • The offer or promise is substantially for any of the following purposes <ul style="list-style-type: none"> - To encourage that Personnel to carry out his/her duties improperly. - To reward that Personnel for having carried out his/her duties improperly. |
| (b) Policy | <ul style="list-style-type: none"> • Any act which breaches any policy of the Permitted Purchasing Body from time to time regarding gifts to its Personnel • But only to the extent the policy is communicated in writing to the Provider. |
| (c) Certain offences | <p>In relation to the Provider's dealings with the Permitted Purchasing Body under the Individual Contract</p> <ul style="list-style-type: none"> • Any offence under the Bribery Act. • Any other offence under any Law relating to fraud. |
| (d) Serious attempts | <p>Any serious attempt by any Personnel of the Provider and/or its Affiliate to do anything indicated elsewhere in this item 114.2.</p> |

114.3 Consequence of the Provider's breach of item 114.2	<p>It shall be a Termination Default Event of the Provider. This applies</p> <ul style="list-style-type: none"> • Regardless of the size of the breach. • But only where the breach was done with the assistance or instruction of the Provider's Representative and/or any other member of the Provider's Personnel of at least equivalent seniority. <p>This does not limit the rights or remedies of the Permitted Purchasing Body and/or its Affiliates.</p>
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115. Governing law and jurisdiction

- | | |
|--|-----------------|
| 115.1 Law under which the terms of the Individual Contract (as described in item 1.3) are to be interpreted and generally governed | English law. |
| 115.2 Jurisdiction to exclusively apply to disputes arising in connection with the Individual Contract.
This is subject to the dispute resolution arrangements in section 119 | English courts. |

116. Consequences of expiry or early termination

- | | |
|---|---|
| 116.1 Circumstances where the consequences in item 116.2 apply: on the first of the following to occur | |
| (a) Expiry | Expiry of the Individual Contract. |
| (b) Early termination | Early termination of the Individual Contract. |

116.2 Consequences if the circumstances in item 116.1 apply

(a)	In relation to the Individual Contract	The rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the Permitted Purchasing Body and the Provider in connection with the Individual Contract shall discontinue .
(b)	Examples	See item 116.3 for examples.
(c)	To what this is subject	This is subject to item 116.4 in relation to those which continue after the circumstances in item 116.1 apply.

116.3 Examples of the rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) which are **to discontinue** for the purposes of item 116.2 to the extent relevant to the Individual Contract

(subject to item 116.4 in relation to those which continue)

(a)	Providing the Services	<ul style="list-style-type: none"> • Any obligation of the Provider under the Individual Contract to provide the Services (or relevant part). • Exception: any continuing obligations to do so under any exit plan described in section 110 and/or in relation to any handover obligations described in section 111.
(b)	Opportunity	<ul style="list-style-type: none"> • Any obligation of the Permitted Purchasing Body to give the Provider the opportunity to provide the Services (or relevant part). • Exception: any continuing obligation to give the Provider the right to do so, if the Provider is to continue to provide any of the Services under any exit plan described in section 110 and/or in relation to any handover obligations described in section 111.
(c)	Charges (section 24)	<ul style="list-style-type: none"> • Obligations of the Permitted Purchasing Body to pay Charges for any Services (or relevant part) provided after that date. • Exception: the Permitted Purchasing Body must continue to pay the Charges for any Services which the Provider is obliged to continue to provide under any exit plan described in section 110 and/or in relation to any handover obligations described in section 111.

116.4 **Continuing rights, obligations etc.:** the following rights, powers, obligations, liabilities, prohibitions and restrictions (or the like of any of these) of the parties **shall continue** until they are completed, until they expire, or indefinitely (as relevant according to the terms of the Individual Contract (as described in item 1.3) **regardless** of the occurrence of the circumstances described in item 116.1 (each of these are to be read independently)

(a)	Already arisen, accrued	Those in connection with the Individual Contract which had already arisen or accrued at the time the circumstances described in item 116.1 first arose.
(b)	Relating to certain events or circumstances	<p>Those which relate to events or circumstances</p> <ul style="list-style-type: none"> • Which are connected with the Individual Contract; and • Which occurred on or before the date on which the circumstances described in item 116.1 first arose.
(c)	Interest	Any interest accruing on any debts in connection with the Individual Contract which relate to events or circumstances which had already occurred or arisen on or before the date on which the circumstances described in item 116.1 first arose.

(d) Continuing nature

- Those in connection with the Individual Contract which are expressed (or which are reasonably implied) in these Terms and Conditions and/or a relevant Work Order to continue.
- This includes those under any Individual Contract which is to continue after expiry or early termination of these Terms and Conditions, as indicated in these Terms and Conditions.

117. Entire agreement

117.1 Status of the terms of the Individual Contract (as described in item 1.3)

Subject to this section 117, the terms of the Individual Contract (as described in item 1.3) represent the entire agreement between the parties on its subject matter.

117.2 Status of any previous agreements entered between the parties on the subject matter of the Individual Contract

They are fully extinguished immediately when the Individual Contract is entered.

117.3 Liability of a party in relation to any statement, warranty, representation, opinion or prediction of the future which that party may have made which is not described in the terms of the Individual Contract (as described in item 1.3) and/or any document clearly cross-referenced in those terms (including any Associated Document described in section 2).

To the fullest extent permitted by Law:

- These are excluded from the Individual Contract.
- That party's liability in relation to any of these is excluded.

118. Relationship between the parties

118.1 Relationship between the parties created by the Individual Contract

The relationship of client and independent service provider.

118.2 Relationships **which are not** created by the Individual Contract

Any of the following

- Any partnership between the parties.
- Any relationship of principal and agent authorising one party to do anything (e.g. incur liabilities or obligations, make statements) on behalf of the other party (unless clearly indicated or reasonably implied in the terms of the Individual Contract (as described in item 1.3).
- Any employment relationship (or the like) between a party and/or its Affiliates and the Personnel of the other party and/or that other party's separate contractors and/or Affiliates.

119. Dispute resolution

119.1 Application of this section 119

To any dispute between the Permitted Purchasing Body and/or its Affiliates and the Provider (**'Disputing Parties'**) in connection with the Individual Contract (**'Relevant Dispute'**).

119.2 Obligations of the Permitted Purchasing Body if its Affiliate is a Disputing Party

If an Affiliate of the Permitted Purchasing Body is a Disputing Party, the Permitted Purchasing Body shall use reasonable endeavours to ensure the Affiliate complies with this section 119 in relation to the Relevant Dispute.

119.3 First step - resolution by Representatives	<ul style="list-style-type: none"> • The Disputing Parties shall direct their Representatives to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith. • The Disputing Parties shall bear their own costs in doing so.
119.4 Next step - resolution by Escalated Persons	<ul style="list-style-type: none"> • If the Disputing Parties' Representatives cannot resolve the Relevant Dispute within 30 days: they shall escalate the matter to their respective Escalated Persons. • The Disputing Parties shall direct their Escalated Persons to use their reasonable endeavours to resolve the Relevant Dispute in a timely manner and in good faith. • The Disputing Parties shall bear their own costs in doing so.
119.5 Next step if the Relevant Dispute has not been resolved within 60 days of commencing the previous step: the Disputing Parties must attempt to resolve the Relevant Dispute by mediation, according to all of the following (unless it is reasonable for the Disputing Parties to resolve the Relevant Dispute by engaging an independent expert under item 119.6)	
(a) How the Disputing Parties are to commence the mediation	<ul style="list-style-type: none"> • By either Disputing Party giving the other Disputing Party a notice (strictly according to section 121) requesting mediation. • Such notice must summarise in reasonable detail the Relevant Dispute (as understood in good faith by the Disputing Party giving that notice).
(b) Mediation procedure the Disputing Parties are to use	The Model Mediation Procedure of the Centre for Effective Dispute Resolution or the comparable rules of any successor body ('Centre').
(c) How the Disputing Parties must appoint the mediator	<ul style="list-style-type: none"> • By agreement of the Disputing Parties (acting promptly and in good faith). • They shall appoint a suitably qualified, independent mediator. • If they cannot agree on a mediator within 7 days of first considering the issue, they shall request the Centre to recommend a mediator. The Disputing Parties must accept the person who is recommended unless there are genuine and serious concerns about that person's independence.
(d) General obligations of Disputing Parties in the course of the mediation: all of the following	
(i) Good faith	The Disputing Parties must act generally in good faith in attempting to resolve the Relevant Dispute.
(ii) Cooperation	The Disputing Parties must co-operate fully and promptly with the mediator, including promptly doing such acts (including signing a document substantially in the form of the Centre's model agreement in force from time to time) as the mediator reasonably requires.
(iii) Directions to Personnel	The Disputing Parties must direct their respective Personnel to attend and cooperate with the mediation properly and in good faith, as reasonably necessary.

(iv)	Confidentiality	<ul style="list-style-type: none"> The Disputing Parties must carry out the mediation in strict confidence. A party shall not be regarded as having breached its confidentiality obligations in these Terms and Conditions if it or its Affiliate makes disclosures of Confidential Information of the relevant Discloser for purposes connected with the mediation.
(v)	Without prejudice	The parties acknowledge that anything said or done by a Disputing Party in the course of the mediation shall not in itself prejudice its rights in any later proceedings between it and the other Disputing Party.
(vi)	Engagement	The Disputing Parties shall not engage (in connection with further proceedings involving the Relevant Dispute) the mediator as an advisor and/or to call him/her as a witness.
(e)	How mediation costs are to be borne	The Disputing Parties shall share equally the costs of engaging the mediator but shall otherwise bear their own costs.

119.6 **Next step if the Relevant Dispute has not been resolved within 60 days of commencing the previous step** (and if the Relevant Dispute is of a kind which (on a reasonable view or as indicated in these Terms and Conditions and/or a relevant Work Order) requires resolution by an independent expert – all of the following apply

(a)	How the Disputing Parties must resolve the Relevant Dispute	By the Disputing Parties appointing an independent expert to investigate the Relevant Dispute and to issue his/her opinion on it.
(b)	How the Relevant Dispute procedure is to be commenced	<ul style="list-style-type: none"> By either Disputing Party giving a notice to the other Disputing Party indicating it wishes this dispute resolution procedure to apply. That notice must be given strictly according to section 121.
(c)	How the expert is to be appointed	<ul style="list-style-type: none"> By agreement. If the Disputing Parties cannot reach agreement within 30 days, <ul style="list-style-type: none"> Either Disputing Party may refer the matter to the President at the time of the Chartered Institute of Arbitrators (or similar replacement body), who shall be instructed to appoint a suitably qualified, independent expert. The Disputing Parties shall accept the person appointed, unless there are genuine and serious concerns about that person's independence.
(d)	Cooperation	The Disputing Parties shall provide the expert with appropriate cooperation (e.g. access to records) to allow him/her to make his/her determination.
(e)	Costs	The Disputing Parties shall bear the costs of the expert's appointment equally.
(f)	Confidentiality	A party shall not be regarded as having breached its confidentiality obligations in these Terms and Conditions if it or its Affiliate makes disclosures of Confidential Information to the expert.
(g)	Without prejudice	The parties acknowledge that anything said or done by a Disputing Party in the course of disclosures to the expert shall not in itself prejudice its rights in any later proceedings between it and the other Disputing Party.

(h) Engagement	The Disputing Parties shall not engage (in connection with further proceedings involving the Relevant Dispute) the expert as an advisor and/or to call him/her as a witness.
(i) Accept	The Disputing Parties shall accept the expert's determination on the matter as final and binding until revised by the English courts. Exceptions <ul style="list-style-type: none"> • Where there is a significant and obvious error. • If it is later discovered that the expert was not independent of the Disputing Parties.
(j) Status of the expert	<ul style="list-style-type: none"> • The expert shall act as an expert and not as an arbitrator. • The Arbitration Act 1996 does not apply to the expert.
119.7 Right of a Disputing Party to commence legal proceedings in relation to the Relevant Dispute	<ul style="list-style-type: none"> • It may do so if the Relevant Dispute is not resolved by mediation after at least 90 days from commencement of mediation. • Nothing in this section 119 shall prevent a Disputing Party from seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to the Individual Contract.

120. Assignment and novation

120.1 Consent of the Provider required if the Permitted Purchasing Body wishes to assign its rights, powers and benefits under the Individual Contract	All of the following <ul style="list-style-type: none"> • No consent is required. • The Permitted Purchasing Body must give the Provider notice of the assignment. • The Provider shall not be required to recognise the assignment until that notice is given. 				
120.2 Consent of the Provider required if the Permitted Purchasing Body wishes to novate the Individual Contract	<ul style="list-style-type: none"> • The prior written consent of the Provider is required. • This consent is not to be unreasonably withheld. 				
120.3 Consent of the Permitted Purchasing Body required if the Provider wishes to assign its rights, powers and benefits under the Individual Contract or wishes to novate the Individual Contract	<table border="1"> <tr> <td data-bbox="119 1377 794 1713">(a) In relation to the assignment of debts owed to the Provider by the Permitted Purchasing Body in connection with the Individual Contract</td> <td data-bbox="794 1377 1495 1713">All of the following <ul style="list-style-type: none"> • No consent is required. • The Provider must give the Permitted Purchasing Body notice of the assignment. • The Permitted Purchasing Body shall not be required to recognise the assignment until that notice is given. </td> </tr> <tr> <td data-bbox="119 1713 794 1930">(b) In relation to <ul style="list-style-type: none"> • The assignment of other rights and benefits of the Provider under the Individual Contract; and/or • The novation of the Individual Contract </td> <td data-bbox="794 1713 1495 1930"> <ul style="list-style-type: none"> • The prior written consent of the Permitted Purchasing Body is required. • Such consent shall not be unreasonably withheld. </td> </tr> </table>	(a) In relation to the assignment of debts owed to the Provider by the Permitted Purchasing Body in connection with the Individual Contract	All of the following <ul style="list-style-type: none"> • No consent is required. • The Provider must give the Permitted Purchasing Body notice of the assignment. • The Permitted Purchasing Body shall not be required to recognise the assignment until that notice is given. 	(b) In relation to <ul style="list-style-type: none"> • The assignment of other rights and benefits of the Provider under the Individual Contract; and/or • The novation of the Individual Contract 	<ul style="list-style-type: none"> • The prior written consent of the Permitted Purchasing Body is required. • Such consent shall not be unreasonably withheld.
(a) In relation to the assignment of debts owed to the Provider by the Permitted Purchasing Body in connection with the Individual Contract	All of the following <ul style="list-style-type: none"> • No consent is required. • The Provider must give the Permitted Purchasing Body notice of the assignment. • The Permitted Purchasing Body shall not be required to recognise the assignment until that notice is given. 				
(b) In relation to <ul style="list-style-type: none"> • The assignment of other rights and benefits of the Provider under the Individual Contract; and/or • The novation of the Individual Contract 	<ul style="list-style-type: none"> • The prior written consent of the Permitted Purchasing Body is required. • Such consent shall not be unreasonably withheld. 				

- 120.4 Consents of the other party required if a party requires (section 2)
- The assignment of its rights, powers and benefits under any Associated Document; and/or
 - The novation of any Associated Document.

- The same consents that apply to the assignments or novation of the Individual Contract also apply to the Associated Document.
- This is in addition to any other consents or other requirements indicated in the particular Associated Document.

121. Notices

121.1 Application of this section 121

It applies to all of the following:

- Communications described in the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) as 'notices'.
- Other communications described in the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) as being subject to this section 121.

The formalities in this section 121 are not required in relation to other communications between the parties in relation to this relevant Work Order.

121.2 Methods by which notices must be given to be valid (in at least one of the following ways)

Method	When notice is deemed to have been given
(a) Hand delivery to the recipient's Representative	On the date it is given to him/her.
(b) By registered mail or courier to the recipient's last known address (addressed to the recipient's Representative unless otherwise indicated)	2 Business Days (or 5 Business Days if sent internationally if the sender is based in a different country to the recipient) after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence), unless it is returned as undelivered.
121.3 Whether an exchange of e-mails is sufficient for the relevant notices or other communications described in item 121.1	<ul style="list-style-type: none"> • No. • This does not prevent use of e-mail for less formal communications between the parties.

122. Remedies

122.1 Consequence of the terms of the Individual Contract (as described in item 1.3) referring to a particular remedy in a particular circumstance	It does not in itself exclude the availability of any other remedy in that circumstance (unless otherwise clearly indicated).
122.2 Whether available remedies are cumulative	Yes.
122.3 Consequence if a person with rights under the Individual Contract pursues a particular remedy in a particular circumstance	That shall not in itself constitute a waiver of that person's right to pursue other available remedies in those circumstances (whether under common law, equity, statute or otherwise).
122.4 Rights of a person with rights under the Individual Contract to seek remedies other than damages against a party to these Terms and Conditions and/or a relevant Work Order	<ul style="list-style-type: none"> • The parties acknowledge that damages may not always be an adequate remedy of that person in particular circumstances. • Accordingly, that person may (without being required to prove special damage) obtain other remedies available to that person (whether arising under common law, equity, statute or otherwise), including without limitation, injunctions and/or specific performance.

123. Waivers

<p>123.1 Strict requirements for a waiver of a party's rights or powers in connection with the Individual Contract to be binding on that party</p>	<p>Only if all of the following apply to the waiver (and not otherwise):</p> <ul style="list-style-type: none"> • It is in writing. • It is clearly indicated to be a waiver of the relevant right or power. • It is properly authorised by that party.
<p>123.2 Other rules regarding waiver of any party's right or power in connection with the Individual Contract</p>	<ul style="list-style-type: none"> • Delay or failure to exercise that right or power shall not in itself be a valid waiver of it. • A waiver of that right or power on one occasion does not (except to the extent otherwise indicated in that waiver) in itself constitute a waiver of the same right or power on a later occasion, and does not affect any other right or power.

124. Third party rights

<p>124.1 Rights of third parties with rights under the Individual Contract for the purposes of the Contracts (Rights of Third Parties) Act 1999</p>	<p>These are excluded to the fullest extent permitted by Law, subject to item 124.2.</p>
<p>124.2 Third parties whose rights to directly enforce their rights under the Individual Contract under the Contracts (Rights of Third Parties) Act 1999 are retained (all of the following)</p>	
<p>(a) Affiliates</p>	<p>Affiliates of the Permitted Purchasing Body.</p>
<p>(b) Personnel</p>	<p>Personnel of the Permitted Purchasing Body and/or its Affiliates.</p>
<p>(c) Third Party Beneficiaries (section 4)</p>	<p>Each Third Party Beneficiary described in section 4 in relation to Services provided for that person's benefit.</p>
<p>(d) TUPE on commencement (section 47)</p>	<p>Any previous direct or indirect service provider of the Permitted Purchasing Body described in item 47.1(a) in relation to the indemnity given to it in section 47.</p>
<p>(e) Provider indemnity in relation to the admissions agreement (section 48)</p>	<p>Any replacement service provider of the Permitted Purchasing Body in relation to the indemnity given by the Provider under item 48.8.</p>
<p>(f) Helping subcontractors to get 'admitted body status' (section 48)</p>	<p>Any direct or indirect subcontractor of the Provider in relation to cooperation which the Permitted Purchasing Body must provide it under item 48.9 and item 48.10 in getting 'admitted body status'.</p>
<p>(g) Eligible LGPS Employees (section 48)</p>	<p>Each Eligible LGPS Employee (if any) described in section 48.2.</p>
<p>(h) Reimbursement of certain subcontractors for pension costs (item 48.6(j))</p>	<p>Any direct or indirect subcontractor of the Provider in relation to any reimbursement of certain pension-related costs, to the extent entitled under item 48.6(j).</p>
<p>(i) Replacement Contractors</p>	<p>Any Replacement Contractor described in item 57.1 in relation to the indemnity described in section 57.</p>
<p>(j) Inspection rights (section 86)</p>	<p>Any third party referred to in item 86.3 in relation to its inspection rights.</p>

125. Severance

125.1	Application of this section 125	It applies where any section, item or other part of the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) is held by any court (or equivalent body) to be invalid or unenforceable for any reason.
125.2	First step	<ul style="list-style-type: none">• If possible, the relevant provision shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability.• Such removal or alteration shall be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the relevant provision.
125.3	Second step	<ul style="list-style-type: none">• If the action required in item 125.2 is not reasonably possible, the entire provision shall be severed from the terms of the Individual Contract (as described in item 1.3) (including these Terms and Conditions and/or the Work Order) unless it alters the fundamental nature of the Individual Contract or is otherwise against public policy.• The remaining provisions shall remain in full force and effect.

126. Priority of documents

- 126.1 **Priority of documents in connection with the Individual Contract to the extent of any inconsistency between them:** in the following order
- (a) **If any arm's length third party is also a party to a particular Associated Document described in section 2:** that Associated Document to the extent it is not described elsewhere in this item 126.1.
 - (b) Each policy of the Permitted Purchasing Body with which the Provider must comply according to section 14.
 - (c) The exit plan in place at the time according to section 110.
 - (d) The business or service continuity plan in place at the time according to section 75.
 - (e) The Work Order of the Individual Contract, including the Individual Specification (to the extent not otherwise described elsewhere in this item 126.1).
 - (f) The General Specification, except
 - To the extent it is not described elsewhere in this item 126.1; and/or
 - To the extent the Permitted Purchasing Body (at its discretion) regards the Provider Submission as more favourable.
 - (g) These Terms and Conditions.
 - (h) **If NO arm's length third party is also a party to a particular Associated Document described in section 2:** that Associated Document to the extent it is not described elsewhere in this item 126.1.
 - (i) The Provider Submission in relation to the Individual Contract.
 - (j) The Provider Submission to become a member of the Flexible Purchasing System.

127. Further assurances

127.1	Further obligations of the parties to the Individual Contract	At the request of the other party, each party must do all acts (including executing relevant documents) which (on a reasonable view) are necessary to give proper effect to the meaning of the terms of the Individual Contract (as described in item 1.3).
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127.2 How the costs of the activities in item 127.1 By the party making the relevant request.

128. Definitions

The following words and expressions shall be given the meaning given to them respectively below for the purposes of the terms of the Individual Contract (as described in item 1.3), except to the extent the context otherwise requires

Defined term	Definition
Affiliate	<ul style="list-style-type: none"> In relation to a person, any other entity which controls that person, is controlled by that person or is under the same common underlying control as of that person. For this purpose, a person ('X') will be regarded as having control over another person ('Y') if X alone (and without being subject to the further direction of any other person) directly or indirectly possesses the power (whether by the direct or indirect holding of voting shares or otherwise) to direct the management and policies of Y on all matters.
Agreed Grouping	See item 51.1.
Arising Intellectual Property	Any Intellectual Property arising as a result of activities in connection with the Services, whether created by the Provider, its subcontractors or otherwise.
Associated Document	Each of the, contracts, instruments or other documents described as such in section 2.
Business Day	Any day except a Saturday, Sunday or any official bank or public holiday in England.
Centre (item 119.5(b))	The Centre for Effective Dispute Resolution or a successor body.
Cessation Transfer	Any service provision change (for the purposes of the TUPE Regulations) to the Permitted Purchasing Body (or its replacement direct or indirect contractor) from the Provider (or its direct or indirect subcontractors) on the cessation of any of the Services provided under the Individual Contract.
Charges	The charges payable by the Permitted Purchasing Body to the Provider according to section 24.
Claim	A claim, proceedings, action, prosecution (or the like of any of these) which a third party threatens or makes against a relevant person by a person other than the Provider and/or the Permitted Purchasing Body and/or their respective Affiliates.
Client Assistance	Each assistance the Permitted Purchasing Body is to provide the Provider as described in item 73.1.
Client Change	See item 70.1.
Client Change Notice	See item 70.2.
Client Personal Data	See item 82.2.
Client Required Subcontractor	Each subcontractor indicated in item 64.1.
Client Warranted Information	See item 77.1.
Commencement Transfer	Any service provision change (for the purposes of the TUPE Regulations) from the Permitted Purchasing Body (or its previous direct or indirect contractors) to the Provider (or its direct or indirect subcontractor) on the commencement of any of the Services under the Individual Contract.
Confidential Information	In relation to a Discloser, as indicated in section 78.
Contract Standards	See item 6.1.

Defined term	Definition
Control	Where a person alone (and without having to refer to another person) has sufficient direct or indirect power to enable a resolution on any matter to be passed in relation to a company (or other entity other than a human being).
Corrupt Act	See item 114.2.
Defaulting Party	See section 103.
Discloser	A party to the Individual Contract (and its relevant Affiliates where indicated) in relation to its respective Confidential Information.
Disputing Party	See item 119.1.
Eligible LGPS Employee	See item 48.2.
Escalated Person	<ul style="list-style-type: none"> • In relation to the Permitted Purchasing Body: the Director of Adult Social Services at the time or his/her delegate. • In relation to the Provider: the most senior executive based in the UK at the time or his/her delegate.
Flexible Purchasing System	<p>The relevant Flexible Purchasing System</p> <ul style="list-style-type: none"> • Indicated in the Work Order • Under which the Individual Contract is entered. <p>Being either of the following established by Liverpool City Council in 2018:</p> <ul style="list-style-type: none"> • Flexible Purchasing System 1: extra care services for people over 55 • Flexible Purchasing System 2: extra care services for adults with support needs under over 55
FOI Act	See item 79.1.
FOI Party	Each party identified as such in item 79.1.
General Specification	<p>The specification applicable generally to the Flexible Purchasing System</p> <ul style="list-style-type: none"> • As that specification stands at the date on which the Work Order is entered • As it is amended (insofar as it relates to the Individual Contract) from time to time by agreement between the parties according to section 72.
Indemnifier	See item 96.1.
Indemnity Beneficiary	See item 96.1.
Individual Contract	The contract entered by the Permitted Purchasing Body and the Provider under the Flexible Purchasing System according to the rules and procedures of the Flexible Purchasing System from time to time.
Individual Specification	<p>The specification applicable to the Individual Contract specifically.</p> <ul style="list-style-type: none"> • As that specification stands at the date on which the Work Order is entered • As it is amended from time to time by agreement between the parties according to section 72.
Intellectual Property	Copyright, trade marks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, rights to take action for passing off, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the questions so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights.
Key Personnel	See item 40.1.

Defined term	Definition
Law	<p>Any of the following applicable to a party from time to time (to be read independently)</p> <ul style="list-style-type: none"> • Any statute, regulation or other subordinate legislation. • Any directive or other European instrument (to the extent it is binding on the party) • Any treaty • Any judgement, rule of common law or equity • Any stock exchange rule • Any order of a competent court, tribunal, arbitrator or the like of any of these • Any permit, permission (e.g. planning permission) consent, licence, statutory agreement and authorisation (or the like of any of these) required by Law and affecting the relevant person and its activities in connection with the Individual Contract from time to time. • Any guidance or the like issued by authorised government bodies (whether legally binding or not) • Anything else imposed by any governmental body (in its capacity as such) having a legally binding effect on the respective activities of any party in connection with the Individual Contract from time to time.
Lead Council	Liverpool City Council or such other entity holding the role from time to time in connection with the Flexible Purchasing System.
LGPS (section 48)	The Local Government Pension Scheme, which is established under regulations made under sections 7 and 12 of the Superannuation Act 1972.
LGPS Regulations (section 48)	The Local Government Pension Scheme Regulations 2013.
Losses	<ul style="list-style-type: none"> • All losses, damages, costs, charges and expenses incurred by the relevant party in the relevant circumstances to which the context refers, whether in tort, contract, by Law or otherwise including, where relevant, third party claims, liabilities, demands, proceedings, interest, penalties and fines, damage to property, death or personal injury, and full legal costs charged on a solicitor-client basis. • Exception: to the extent any of these are capped or excluded in these Terms and Conditions and/or a relevant Work Order.
Marketing Materials	Materials (e.g. brochures, advertisements, websites, apps, dedicated social media pages etc.) to be used by or on behalf of the Provider promote any of the Services, including those described in item 68.1.
Material Breach	<ul style="list-style-type: none"> • In relation to a party, a breach of the Individual Contract by that party (including an anticipatory breach of the Individual Contract by that party or a breach of any warranty or representation given by that party under the terms of the Individual Contract (as described in item 1.3) • Which has significant (and not trivial) consequences for the other party.
Operating Manual	See item 7.1.
Pensionable Pay (section 48)	The same meaning as in the LGPS Regulations.

Defined term	Definition
Personnel	<p>In relation to a firm or other organisation:</p> <ul style="list-style-type: none"> Any individual genuinely appointed or otherwise engaged by that firm or other organisation as an officer, employee, worker, consultant, trustee, elected member, member of any partnership, agent, intern, seconded person, volunteer, adviser or contractor (or the like of any of these). If that firm or other organisation is the Provider: any individual genuinely appointed or otherwise engaged in any of the capacities described above by a subcontractor which is directly or indirectly appointed by the Provider in connection with the Individual Contract. This includes any such subcontractor which is a human being operating as a sole trader. <p>If a firm is a human being operating as a sole trader, it includes that human being.</p>
Preparation Activity	Each activity indicated as such in item 20.1.
Pre-TUPE Transfer Liability	See item 58.1.
Promised Subcontractor	<ul style="list-style-type: none"> Each current subcontractor indicated in item 60.1. Any replacement subcontractor carrying out the relevant activities applying to such subcontractor indicated in item 60.2.
Provider Background Intellectual Property	<p>Any Intellectual Property:</p> <ul style="list-style-type: none"> Belonging to the Provider and/or its subcontractors and/or their respective third party licensors On which any Arising Intellectual Property depends.
Provider Change	See item 71.1.
Provider Change Notice	See item 71.2.
Provider Submission	<p>Any and all of the following</p> <ul style="list-style-type: none"> The Provider's application to become a member of the Flexible Purchasing System. Any proposal or the like given by Provider if the Individual Contract has been directly awarded to the Provider by the Permitted Purchasing Body, and which is annexed to the Work Order. If the Individual Contract has been awarded as a result of a competitive exercise conducted by the Permitted Purchasing Body: the Provider's response, submission or the like in relation to that competitive process, including its written responses to any clarification questions raised by the Permitted Purchasing Body in the course of that exercise.
Recipient	A party to the Individual Contract in relation to the Confidential Information of the other party and/or its Affiliates.
Relevant Dispute	See item 119.1.
Relevant Indemnity (section 96)	See item 96.1.
Remedial Plan (section 91)	See item 91.1.
Replacement Contractor	A replacement service provider of the Permitted Purchasing Body (or that service provider's direct or indirect subcontractor) which is a transferee employer of any individual who has a right to a TUPE Transfer on a Cessation Transfer.

Defined term	Definition
Representative	In relation to a party to the Individual Contract, <ul style="list-style-type: none"> The individual identified as such in a particular Work Order, or such replacement individual as communicated to the other party in writing from time to time. Where the relevant individual is absent from time to time: any other individual deputising for him/her, as decided by the relevant party. Where the position is vacant from time to time: the Escalated Person of the relevant party.
Service User	Each individual to whom Services are provided who identified or who is a member of the group described in item 3.1.
Services	The services described in item 5.1.
Step in Rights	See item 92.1.
Terminating Party	See section 103.
Termination Default Event	<ul style="list-style-type: none"> In relation to the Provider: each event or circumstance described in section 104. In relation to the Permitted Purchasing Body: each event or circumstance described in section 105.
Third Party Beneficiary	Each person (if any) described as such in section 4.
TUPE Cessation Beneficiary	See item 57.1(a).
TUPE Regulations	The Transfer of Undertakings (Protection of Employment) Regulations (2006) and the European Lead Council Directive 77/187/EEC as these may be amended.
TUPE Transfer	<ul style="list-style-type: none"> A transfer of the employment of a relevant employee under the TUPE Regulations As a result of a service provision change in connection with any Services Whether on a Commencement Transfer or a Cessation Transfer.
Uncontrollable Circumstance (section 74)	As indicated in section 74.
Work Order	A document <ul style="list-style-type: none"> In a form <ul style="list-style-type: none"> Substantially similar to the template published by the Lead Council from time to time in connection with the Flexible Purchasing System or As that template is amended from time to time by the Lead Council (acting reasonably to consult the Provider and having reasonable and genuine regard for its views) Which clearly cross references the relevant Flexible Purchasing System. Which, when agreed by the Permitted Purchasing Body and the Provider, evidences the Individual Contract entered between them.

129. Interpretation

Except to the extent the context otherwise requires (and except to the extent otherwise indicated elsewhere in the terms of the Individual Contract (as described in item 1.3). the Work Order and the Terms and Conditions shall be interpreted as follows

129.1 Headings

Headings do not affect the interpretation of the terms of the Individual Contract (as described in item 1.3).

129.2 Reference to a party	<ul style="list-style-type: none"> Reference to any party is a reference to a party to the Individual Contract. It includes reference to that party's successors in title and permitted assignees.
129.3 Consents, approvals	<ul style="list-style-type: none"> Where consent, approval, permission or the like of a person is not to be unreasonably refused, also cannot be unreasonably delayed or subject to unreasonable conditions. Where consent, approval, permission or the like of a person is to be at that person's discretion, that person <ul style="list-style-type: none"> Shall not be obliged to respond to a request for it; and Shall not be obliged to give reasons for its decision (including any decision not to respond); and Excludes (to the fullest extent permitted by Law) that person's liability to any person for any reason given for that decision (including any decision not to respond).
129.4 Deadlines not falling on a Business Day	If a deadline or event is expressed in the terms of the Individual Contract (as described in item 1.3) to fall or occur on a day that is not a Business Day, the deadline or that event shall be extended until the next Business Day.
129.5 When due on a particular day	If an act is required under the Individual Contract to be done (including the giving of notice) by a particular date, it is required to be done by 5.00pm in the United Kingdom.
129.6 Definitions	If a word or phrase is defined in the terms of the Individual Contract (as described in item 1.3), its other grammatical forms have a corresponding meaning.
129.7 Statutes, codes etc.	Reference in the terms of the Individual Contract (as described in item 1.3) to any statute, code or the like includes reference to any amending, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter.
129.8 'In writing'	<ul style="list-style-type: none"> Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail or facsimile message. It does not include communication by telephone text messages or communication via a social media site (or the like of any of these).
129.9 'Including'	<ul style="list-style-type: none"> Use of the word 'including', 'in particular', 'for example' (or a similar word) at the commencement of a list to illustrate a particular concept does not limit that concept in any way. Use of the abbreviation 'etc.' at the end of a list to illustrate a particular concept does not limit that concept in any way.
129.10 Other references	<ul style="list-style-type: none"> Reference to one gender refers to all genders Reference to the singular includes the plural and vice versa Reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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ADULT SOCIAL CARE AND HEALTH COMMITTEE
Monday, 18 January 2021

REPORT TITLE:	BUDGET CONSULTATION
REPORT OF:	DIRECTOR OF RESOURCES

REPORT SUMMARY

This report forms part of the Council's formal budget setting process, as set out in the constitution and in accordance with the legal requirements to set a balanced and sustainable budget for 2021/22.

Policy and Resources Committee must recommend a 2021/22 balanced Budget proposal to the Council for its meeting in March 2021, it is good practice for service committees to consider and feedback on Budget proposals.

This is not a key decision.

RECOMMENDATION

The Committee is invited to comment and provide feedback on the budget proposals which fall under the remit of the Committee so that those comments can be presented for consideration to the Policy and Resources Committee in February 2021.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Policy and Resources Committee (P&R) is required to recommend a Budget to the Council for its meeting in March 2021. The Council has to set a budget for 2021/22 by 11 March by law 2020. This report is a key step in facilitating the Policy and Resources Committee to be in a position to recommend a Budget proposal.
- 1.2 The Council's Budget supports the delivery of the Wirral Plan and is key to ensuring the Council is financially stable. Our residents and businesses expect to be informed and consulted about how services are going to be run and how their money is going to be raised and spent. The benefits of consultations are:
- to improve planning, policy and decision making
 - to make better use of resources
 - to access new information, ideas and suggestions
 - to encourage greater participation in the activities of the council
 - to govern by consent (a full and fair consultation, with careful consideration of all views, can strengthen the legitimacy of the prevailing view among those people not in favour of the final decision)
 - to measure residents' satisfaction with the council
 - to shape council activities around residents' needs and aspirations

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No other options were considered as the views of the Policy Committees are sought to enable them to be submitted to the Policy & Resources Committee for consideration.

3.0 BACKGROUND INFORMATION

- 3.1 Views are being sought on the Council's future budget and spending priorities, which will be delivered through a programme of community and stakeholder consultation.
- 3.2 The public consultation began on 21 December 2020 and will finish on 22 January 2021. The objectives of the consultation are:
- **Understanding:** Stakeholders understand the scale of the budget challenge, and how we are going about overcoming it
 - **Engagement:** Stakeholders feel able to contribute and that their views are valued and are being considered
 - **Support:** Stakeholders support the budget proposals, appreciate the work which has been done to involve them, and understand the reasons for budget decisions
- 3.3 The roles of the Service Committees is to formalise any feedback from the workshops in November and December 2020 and provide feedback on the proposals to Policy & Resources Committee

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications from this report, however the feedback requested is part of the consideration for the budget setting process, and as such, there could be financial implications.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council is required to agree a budget for 2021/22 by March 2020. The Council must set the budget in accordance with the provisions of the Local Government Finance Act 1992 and approval of a balanced budget each year is a statutory responsibility of the Council.
- 5.2 The provisions of section 25, Local Government Act 2003 require that, when the Council is making the calculation of its budget requirement, it must have regard to the report of the chief finance (s.151) officer as to the robustness of the estimates made for the purposes of the calculations and the adequacy of the proposed financial reserves. This is in addition to the personal duty on the Chief Finance (Section 151) Officer to make a report, if it appears to them that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.
- 5.3 It is essential, as a matter of prudence, that the financial position continues to be closely monitored. In particular, Members must satisfy themselves that sufficient mechanisms are in place to ensure both that savings are delivered and that new expenditure is contained within the available resources. Accordingly, any proposals put forward must identify the realistic measures and mechanisms to produce those savings.
- 5.4 Consultation must take place in accordance with the Council's duties under section 65 of the Local Government Finance Act 1992. It must be borne in mind that this is consultation on the budget proposals, not on the decision to take whatever decision is implied by the adoption of that budget. This is because the budget is a sufficiently high-level estimate or cap and, in relation to much of the estimated income and expenditure in exercise of the budget, not set in relation to the distinct decisions that will make up that expenditure throughout the year. As such, when setting and formulating the budget it would be difficult to compile a sufficiently detailed consultation document or undertake a focussed impact assessment.
- 5.5 It should be noted, however, that this exercise must also form the essential preliminary consultation under section 3 of the Local Government Act 1999 and section 27 of the Children and Families Act 2014, as well as due regard under section s.149 of the Equality Act 2010 (the public sector equality duty) and section 11 of the Children Act 2004 if consultation is necessary, where there is any significant, sufficiently focussed and, in financial terms, apparently rigid relationship of spending to a specific proposal, even if taken as part of the setting of a budget. The consultation process, including the Council's consideration of the responses, is

required to comply with the following overarching obligations (unless detailed statutory rules supplant these):

- Consultation must be at a time when proposals are at a formative stage.
- The proposer must give sufficient reasons for its proposals to allow consultees to understand them and respond to them properly.
- Consulters must give sufficient time for responses to be made and considered.
- Responses must be conscientiously taken into account in finalising the decision.

5.6 The results of the consultation exercises will form part of the report to Policy and Resources Committee. This will be under three headings and accompanying appendices concerning:

- (a) the public consultation responses, which will be presented in a form that allows the Policy and Resources Committee, and therefore full Council, to be able to give conscientious consideration to the consultation responses in making their recommendation and decision (This summary will also be shared with all Members at the earliest opportunity);
- (b) The responses of the individual policy and service committees, the collation of which forms the purpose of this report; and
- (c) Consultation and comments received directly from stakeholders and from other sources

5.7 This is the same whether or not a public body was required to consult or chooses to do so. This is because all of those rules are aspects of an overriding requirement for 'fairness'. The process must be substantively fair and have the appearance of fairness. The setting of the budget and council tax by Members involves their consideration of choices.

5.8 When considering options, Members must bear in mind their fiduciary duty to the council taxpayers of Wirral. Members must have adequate evidence on which to base their decisions on the level of quality at which services should be provided.

5.9 Where a service is provided pursuant to a statutory duty, it would not be lawful to fail to discharge it properly or abandon it, and where there is discretion as to how it is to be discharged, that discretion should be exercised reasonably.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no implications for resources as a result of this report.

7.0 RELEVANT RISKS

7.1 The Council's ability to close the funding gap is highly dependent on the accuracy of assumptions used for Government funding and levies from other bodies, as well as demand estimates for Council services. As the Local Government Finance

Settlement only covers one year, the uncertainty around future funding over the MTFP period remains high.

- 7.2 A key risk to the Council's financial plans is that funding and demand assumptions in particular can change as more information becomes available. As such, the MTFP is regularly reviewed and updated as part of routine financial management.
- 7.3 There is a risk that external factors could impact on agreed savings, which means that may not be delivered or may be delayed. Progress on delivery of agreed savings will be monitored using Budget Monitoring reports presented to P&R Committee. As such the Council continues to hold a General Fund reserve of £10.7m. This represents a minimum level of contingency to support the organisation if savings cannot be delivered and no other options for mitigation can be identified.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Views are being sought on the Council's future budget and spending priorities, which will be delivered through a programme of community and stakeholder consultation.
- 8.2 The Council has also worked with staff and Trade Unions where required to ensure obligations in relation to statutory staff consultation is delivered appropriately and within agreed guidelines.
- 8.3 Should any financial proposals agreed by Policy and Resources Committee require specific consultation, the Council will commence appropriate consultation directly with any service users and stakeholders who are affected and will feedback their views before final decisions are taken.

9.0 EQUALITY IMPLICATIONS

- 9.1 It is recognised that some of the developing proposals could have equality implications. Any implications will be considered and any negative impacts will be mitigated where possible.
- 9.2 Equality implications will be assessed during planning, decision and implementation stages and will be recognised as an ongoing responsibility. Equality issues will be a conscious consideration and an integral part of the process.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 No direct implications. The content and/or recommendations contained within this report are expected to have no impact on emissions of Greenhouse Gases.

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APPENDICES

Appendix 1 – Savings Proposals

BACKGROUND PAPERS

2021/22 Budget Transition Process (Policy and Resources Committee 7 October 2020)
Local Government Association: Consulting Residents

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Policy & Resources Committee	7 October 2020
Council	19 October 2020
Policy & Resources Committee	18 December 2020

Appendix 1 – Savings Proposals

Adult Care and Health Committee		
<p>In Wirral we want all our residents to have a good quality of life. Good health and wellbeing is key to this and achieving that is more than about health services. A good start in life, education, decent work and housing, the environment in which we live and strong and supportive relationships all play a part.</p> <p>We're proud of our reputation that people tell their story once, to one healthcare professional, and they will design a personalised care package to meet those needs. Our system is easier to access, it is better value, and it provides better care.</p> <p>Wirral is a place where older people are treated with dignity and respect, and where having a disability is never a barrier to leading a full and fulfilling life. We are an accessible borough, which welcomes diversity and champions inclusion and social cohesion. Where people need extra help to stay healthy, we commission outstanding services to help people live more healthily.</p>		
OPTION	VALUE	NARRATIVE
Wirral Evolutions review of day services for people with Learning Disabilities	£500,000	This option relates to a service review with the aim of modernising the current operating model and reduce the associated operating costs of delivering day services for people with Learning Disabilities. The review's aim is to manage the cost of current provision by service changes that could lead to savings of £500,000



ADULT SOCIAL CARE AND HEALTH COMMITTEE

Monday, 18 January 2021

REPORT TITLE:	REVENUE BUDGET MONITORING
REPORT OF:	DIRECTOR OF CARE AND HEALTH

REPORT SUMMARY

This report sets out the financial monitoring information for the Adult Social Care and Health Committee. The report provides Members with an overview of budget performance for this area of activity. The financial information details the projected year-end revenue position, as reported at quarter 2 (Apr-Sep) 2020/21.

RECOMMENDATION/S

The Adult Social Care and Health Committee are requested to note the projected year-end revenue forecast position of £0.06m favourable, as reported at quarter 2 (Apr-Sep) of 2020-21

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Regular monitoring and reporting of the Revenue Budgets, savings achievements and Medium-Term Financial Strategy (MTFS) position enables decisions to be taken faster, which may produce revenue benefits and will improve financial control of Wirral Council.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No other options have been considered.

3.0 BACKGROUND INFORMATION

- 3.1 This Statement provides a summary of the projected year-end revenue position as at the end of Quarter 2, Month 6 (September 2020) of 2020/21 financial year.
- 3.2 As at the end of September 20 (Quarter 2), the forecast year end position for Adult Care and Health is small favourable variance of £0.06m against a budget of £106.6m. The cost of care pressure has been managed, to date, through access to increased Government funding for the COVID-19 response and the Clinical Commissioning Group (CCG) responsibility to provisionally fund hospital discharges and deflections. The CCG, up until 31 Aug 20, had funded £0.9m of hospital discharges and deflections and has further alleviated costs by funding additional emergency bed provision. As at the 1 September 20, a revised and reduced Hospital Discharge Policy applies, again funded by CCG but will not provide the same level of funding accessed during the first two quarters of the financial year.
- 3.3 This reduced 'cost of care' burden on the revenue budget will be offset by the increased risk of non-achievement of the £3.75m of efficiency savings, approved at the start of the financial year and prior to the COVID-19 pandemic. In the current circumstances, it is difficult to forecast with confidence the likely progress toward the achievement of these savings. At present, our forecast position assumes £1m of these savings will be achieved. There is also the added risk of, potentially significant, increases in demand for care services as we move through the year and the impact of COVID-19 and the period of lockdown is realised.

TABLE 1 2020/21 Adult Care and Health – Service Budget & Forecast

	Full Year				
	Budget	Forecast	Variance		Adv/Fav
	£000	£000	(+ Fav, - Adv) £000	%	
Adult Social Care Central Functions	9,778	9,369	409	4%	Favourable
Older People Services - WCFT	44,903	45,079	(175)	0%	Adverse
Mental Health & Disability Services - CWP	48,293	48,421	(128)	0%	Adverse
Other Care Commissions	(148)	(44)	(104)	-70%	Adverse
Public Health	(6,126)	(6,307)	181	3%	Favourable
Wirral Intelligence Service	485	431	54	11%	Favourable
Movement on Reserves	5,864	6,045	(181)		
Directorate Surplus / (Deficit)	103,049	102,994	56	0%	
Support / Admin Building Overhead	3,577	3,577	0	0%	
Total Surplus / (Deficit)	106,627	106,571	56	0%	

- 3.4 **Central Functions:** A favourable variance of £0.4m is reported at quarter 2. This variance is largely due to savings from employee costs. This position will continue to be monitored throughout the year.
- 3.5 **Older People Services:** An adverse variance of £0.2m is reported at quarter 2. The main contributing factor for the variance in this area is due to the increased risk of non-achievement of the efficiency savings approved at the start of the financial year. This pressure has been offset by access to Government COVID-19 monies and the current CCG's responsibility to provisionally fund hospital discharges and deflections.
- 3.6 **Mental Health & Disability Services:** An adverse variance of £0.1m is reported at quarter 2. The forecast deficit position is also due to the increased risk of non-achievement of efficiency savings, approved at the start of the financial year and prior to the COVID-19 pandemic. In the current circumstances, it is difficult to forecast with confidence the likely progress toward the achievement of these savings at this time. The current forecast assumes £0.5m of the £1.65m of savings within this area will be achieved
- 3.7 **Other Care Commissions:** An adverse variance of £0.1m is reported at quarter 2. The forecast adverse variance in this area relates to early intervention and prevention (EIP) commissions. Many of these commissions have been extended longer than initially anticipated due to the COVID-19 pandemic. A review is currently being undertaken in light of the current environment and this will inform future forecasts.

- 3.8 **Public Health:** A balanced position is reported at quarter 2. Public Health is a ringfenced grant with an annual value £29.7m and projected to be fully utilised. £6.7m of this funding supports public health activities delivered by the Council, representing a significant funding stream.
- 3.9 **Wirral Intelligence Team:** A favourable variance of £0.05m is reported at quarter 2. The minor forecast surplus within this Service Area is due to notional slippage against various posts.

TABLE 2 2020/21 Adult Care and Health – Subjective Budget & Forecast

	Full Year				Adv/Fav
	Budget	Forecast	Variance		
	£000	£000	(+ Fav, - Adv) £000	%	
Income	(83,919)	(84,235)	316	0%	Favourable
Expenditure					
Employee	5,786	5,288	499	9%	Favourable
Non Pay	47,506	47,716	(210)	0%	Adverse
Cost of Care	127,813	128,180	(367)	0%	Adverse
Total Expenditure	181,105	181,184	(79)	0%	
Directorate Surplus / (Deficit)	97,185	96,949	237	0%	Favourable
Support / Admin Building Overhead	3,577	3,577	0	0%	
Movement on Reserves	5,864	6,045	(181)	-3%	Adverse
Total Surplus / (Deficit)	106,627	106,571	56	0%	

- 3.10 **Employee:** The forecast surplus within Employee budgets is due to existing vacant posts.
- 3.11 **Movement on reserves:** The movement within reserves relates to the Cheshire and Merseyside Public Health Partnership (CHAMPS) budget. A project is underway to realign the budget for CHAMPS outcomes, which is expected to inform on the reserves position.

4.0 FINANCIAL IMPLICATIONS

4.1 This is the revenue budget monitoring report that provides information on the forecast outturn for the Adult Care and Health Directorate for 2020/21. The Council has robust methods for reporting and forecasting budgets in place and alongside formal Quarterly reporting to the Policy & Resources Committee, the financial position is routinely reported at Directorate Management Team meetings and corporately at the Strategic Leadership Team (SLT). In the event of any early warning highlighting pressures and potential overspends, the SLT take collective responsibility to identify solutions to resolve these to ensure a balanced budget can be reported at the end of the year.

5.0 LEGAL IMPLICATIONS

5.1 The provisions of section 25, Local Government Act 2003 require that, when the Council is making the calculation of its budget requirement, it must have regard to the report of the chief finance (s.151) officer as to the robustness of the estimates made for the purposes of the calculations and the adequacy of the proposed financial reserves. This is in addition to the personal duty on the Chief Finance (Section 151) Officer to make a report, if it appears to them that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no implications arising directly from this report.

7.0 RELEVANT RISKS

7.1 The possible failure to deliver the Revenue Budget is being mitigated by:

1. Senior Leadership / Directorate Teams regularly reviewing the financial position.
2. Availability of General Fund Balances.
3. Review of existing services and service provision.

8.0 ENGAGEMENT/CONSULTATION

8.1 The priorities in the Council Plan 2025 were informed by stakeholder engagement carried out in 2019.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2 There are no equality implications arising specifically from this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 The Wirral Plan 2025 includes a set of goals and objectives to create a sustainable environment which urgently tackles the environment emergency. These are based on developing and delivering plans that improve the environment for Wirral residents. The performance report will include information on key areas where environment and climate related outcomes are delivered.
- 10.2 No direct implications. The content and/or recommendations contained within this report are expected to have no impact on emissions of Greenhouse Gases.

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APPENDICES

None

BACKGROUND PAPERS

- 2020/21 Revenue Budget Monitor for Quarter Two (Apr - Sep)
- Revenue Budget 2020/21 and Medium-Term Financial Plan (2021/22 to 2024/25)

SUBJECT HISTORY (last 3 years)

Council Meeting	Date



ADULT SOCIAL CARE AND HEALTH COMMITTEE

Monday, 18 January 2021

REPORT TITLE:	ADULT SOCIAL CARE AND HEALTH PERFORMANCE REPORT
REPORT OF:	DIRECTOR OF ADULTS, HEALTH AND STRATEGIC COMMISSIONING

REPORT SUMMARY

This report provides a performance report in relation to Adult Social Care and Health. The report was designed based on discussion with Members and an initial draft reviewed by the Committee at the meeting 13 October 2020. The Committee approved the report and requested it as an agenda item at future committees.

This matter affects all Wards within the Borough. It is not a key decision.

RECOMMENDATION

The Adult Social Care and Health Committee are requested to note the content of the report and highlight any areas requiring further clarification or action.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION

- 1.1 To ensure Members of the Adult Social Care and Health Committee have the opportunity to scrutinise the performance of the Council and partners in relation to Adult Social Care and Health Services.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 This report has been developed in line with Member requirements. As such, no other options were considered.

3.0 BACKGROUND INFORMATION

- 3.1 Regular monitoring of performance will ensure public oversight and enable Elected Members to make informed decisions in a timely manner.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 There are no legal implications arising from this report.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are none arising from this report.

7.0 RELEVANT RISKS

- 7.1 The Council's Corporate and Directorate Risk Registers are currently undergoing revision to reflect the work in progress to update the Council Plan and the impact of COVID-19 on proposed actions and plans in 2020/21 and beyond. Information on the key risks faced by the organisation and the associated mitigations and planned actions will be incorporated into committee reporting once refreshed.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Adult Social Care and Health services carry out a range of consultation and engagement with service users and residents to work to optimise service delivery and outcomes for residents.

9.0 EQUALITY IMPLICATIONS

- 9.1 There is no impact for equality implications arising directly from this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no environmental and climate implications generated by the recommendations in this report.

The content and/or recommendations contained within this report are expected to:

- Have no impact on emissions of Greenhouse Gases.

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APPENDICES

Appendix 1: Adult Social Care and Health Performance Report

BACKGROUND PAPERS

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Adult Social Care and Health Committee	19 November 2020
Adult Social Care and Health Committee	13 October 2020

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Wirral Health & Care
Commissioning



**Adult Social Care and Health Performance
Report
09/12/2020**



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Introduction

The Adult Care and Health Committee have requested a set of key intelligence related to key areas within Health and Care. This report supplies that information for review and discussion by members. If additional intelligence is required further development on reporting will be carried out.

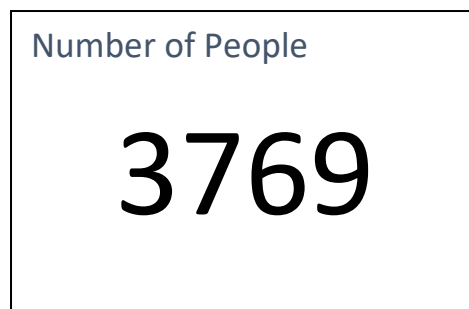
Care Market – Homes

Residential and Nursing Care - Cost and Hours (25/03/2019 to 22/11/2020):

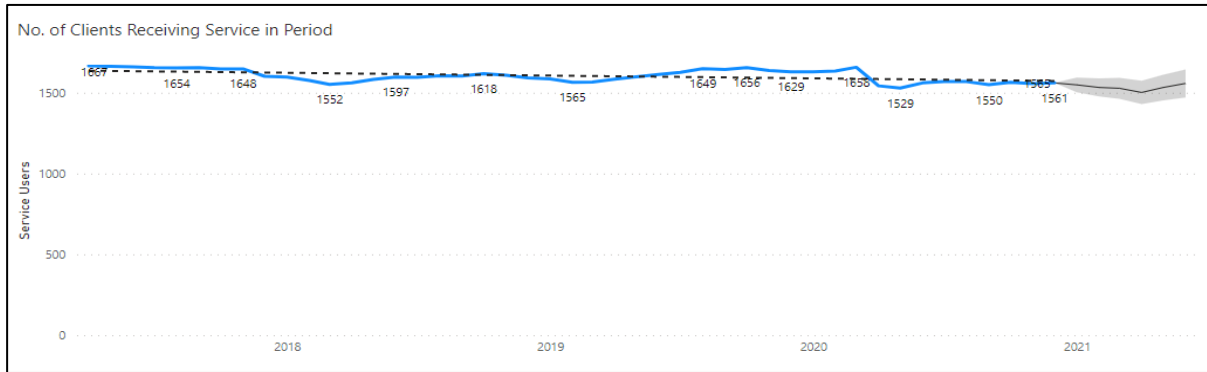
The actual cost for Residential and Nursing Care between 25/03/2019 and 22/11/2020



The total number people receiving residential care (that were billed) between 25/03/2019 and 22/11/2020



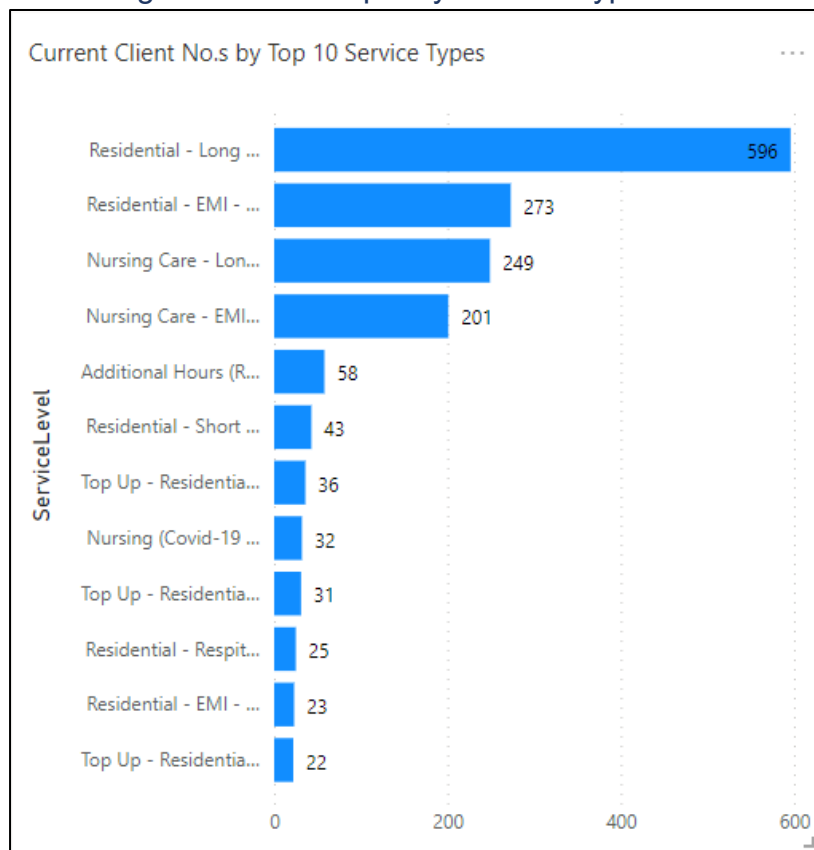
Residential and Nursing Care - Since 01/04/2017



Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2020	1630	1634	1658	1543	1529	1561	1569	1569	1550	1565	1556	1561	1561
2019	1586	1565	1567	1585	1599	1614	1627	1649	1644	1656	1638	1629	1629
2018	1597	1576	1552	1562	1583	1597	1596	1606	1604	1618	1609	1593	1593
2017				1667	1664	1661	1655	1654	1656	1647	1648	1602	1602
Total	1630	1634	1658	1543	1529	1561	1569	1569	1550	1565	1556	1561	1561

The above line chart and table give the number of people receiving residential and nursing care month by month. The line chart also shows a forecast.

Residential and Nursing – Current People by Service Type:

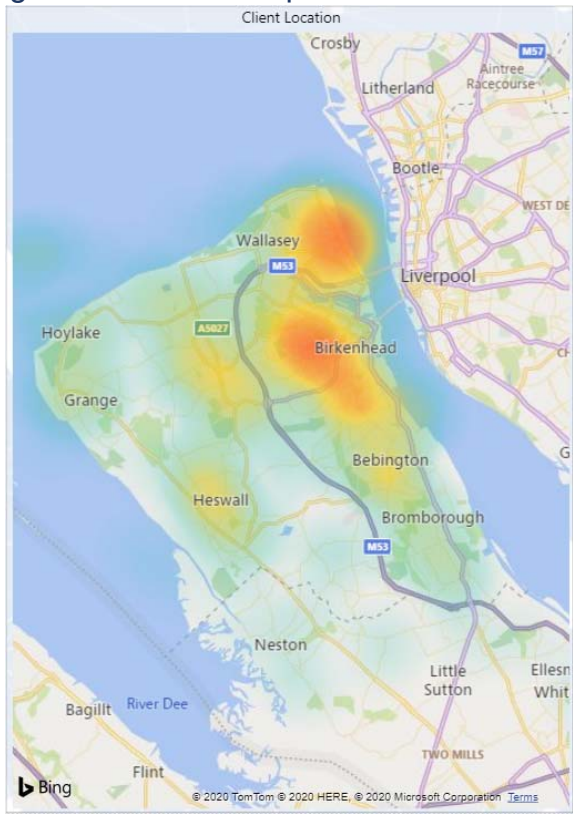


Current Client No.s by Top 10 Service Types

ServiceLevel	Count of ClientId
Residential - Long Term	596
Residential - EMI - Long Term	273
Nursing Care - Long Term	249
Nursing Care - EMI - Long Term	201
Additional Hours (Residential)	58
Residential - Short Term	43
Top Up - Residential EMI (3rd Party)	36
Nursing (Covid-19 Block Bed)	32
Top Up - Residential (3rd Party)	31
Residential - Respite (Per Year)	25
Residential - EMI - Short Term	23
Top Up - Residential (1st Party)	22
Total	1442

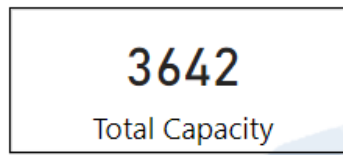
Residential & Nursing Long term and EMI (Elderly, Mental health and Infirm) make up the bulk of the services received.

Residential and Nursing – Location of People:

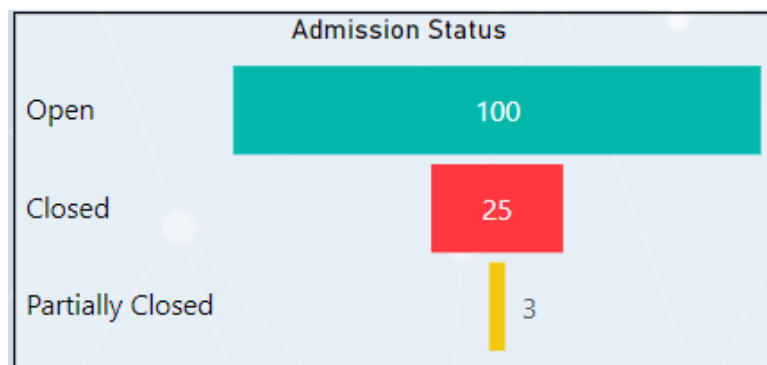
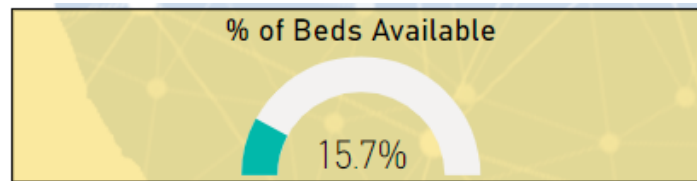


The heat map shows the care home locations.

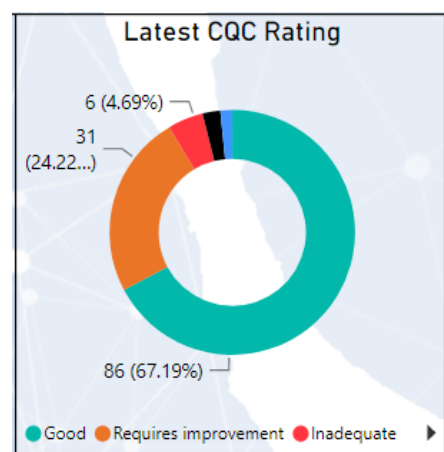
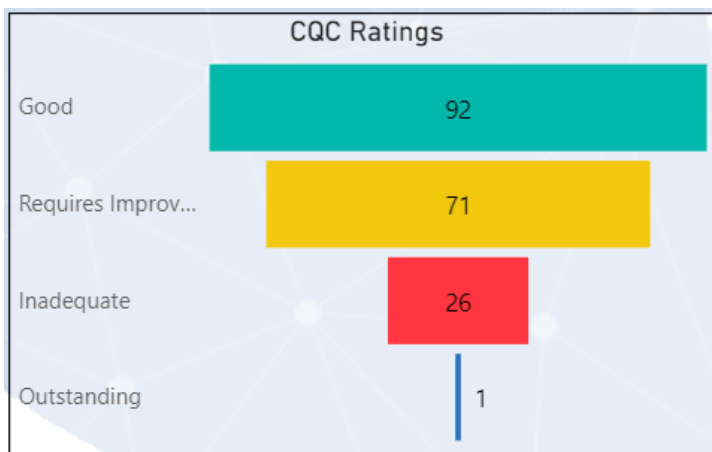
Homes – Current Vacancy Rate (at as 11/12/2020):



This is the total number of beds available in care homes.



Homes – Care Quality Commission Inspection Ratings (Since 05/01/2017):

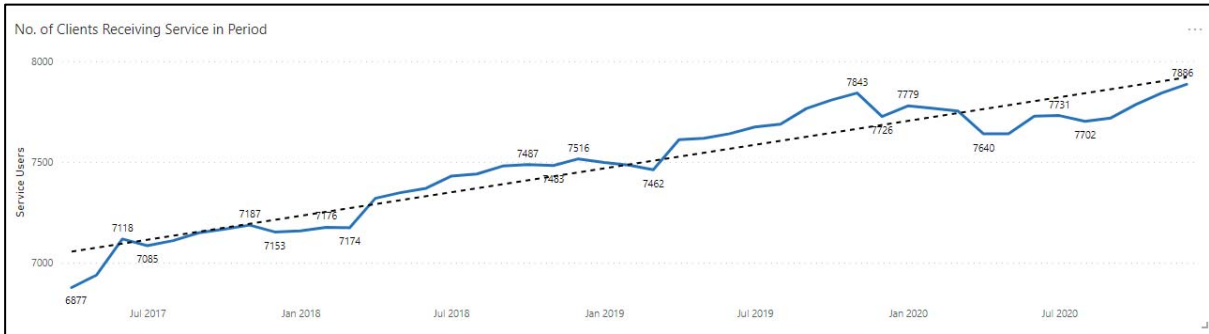


Total number of inspections carried out since 05/01/2017.

(Please note: Homes may be inspected multiple times).

Care Market – Block Commitments:

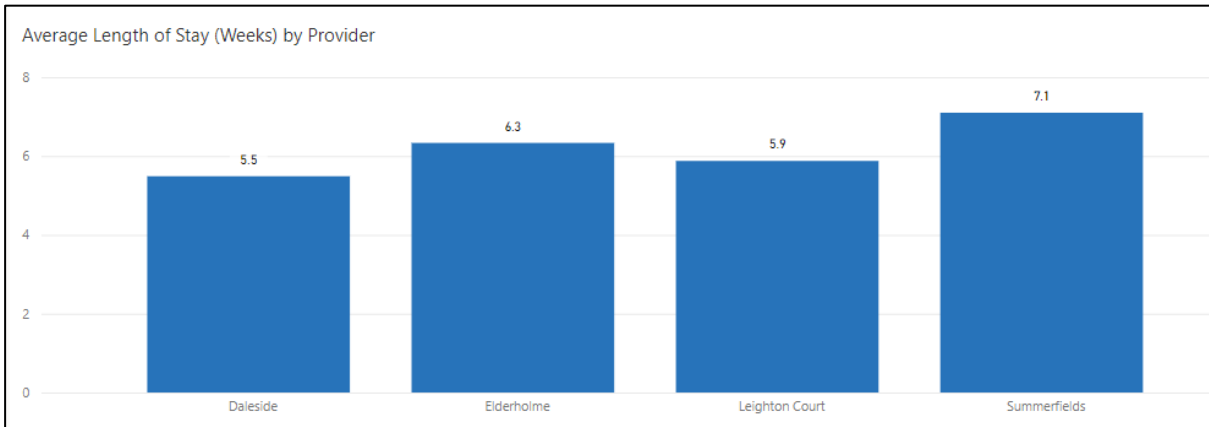
Discharge to Assessment – Number of people:



No. of Clients Receiving Service in Period													
Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2020	7779	7766	7754	7640	7641	7728	7731	7702	7719	7786	7843	7886	7886
2019	7498	7484	7462	7611	7618	7641	7674	7688	7766	7808	7843	7726	7726
2018	7158	7176	7174	7320	7348	7370	7430	7441	7480	7487	7483	7516	7516
2017				6877	6939	7118	7085	7110	7149	7167	7187	7153	7153
Total	7779	7766	7754	7640	7641	7728	7731	7702	7719	7786	7843	7886	7886

These are care home beds commissioned for people being discharged from hospital who need further rehabilitation and recovery.

Discharge to Assessment – Average Length of Stay (Since April 2018):



Average Length of Stay (Weeks) by Provider	
Provider	Average of LOS in Weeks
Daleside	5.49
Elderholme	6.33
Leighton Court	5.88
Summerfields	7.10
Total	5.92

Discharge to Assessment – Vacancy Rate:

Table 1 - Actual Bed Days						
	Apr	May	Jun	Jul	Aug	Sep
Nursing (Covid-19 Block Bed)	967	1003	790	1008	1193	1264
Nursing EMI (Covid-19 Block Bed)	94	121	1008	102	70	73
Residential (Covid-19 Block Bed)	232	244	223	275	358	290
Residential EMI (Covid-19 Block Bed)	550	424	336	273	230	179
Transfer to Assess	1913	2043	2200	1596	1619	1677
Grand Total	3756	3835	3657	3254	3470	3483
Table 2 - Commissioned Bed Days						
	Apr	May	Jun	Jul	Aug	Sep
Nursing (Covid-19 Block Bed)	1680	1736	1680	1736	1736	1674
Nursing EMI (Covid-19 Block Bed)	144	186	180	186	186	174
Residential (Covid-19 Block Bed)	913	1129	1110	1147	1147	886
Residential EMI (Covid-19 Block Bed)	630	651	630	651	651	630
Transfer to Assess	2831	2976	2880	2976	2917	1650
Grand Total	6198	6678	6480	6696	6637	5014
Table 3 - % Occupancy						
	Apr	May	Jun	Jul	Aug	Sep
Grand Total	61%	57%	56%	49%	52%	69%

The above table shows the difference between the number of bed days commissioned compared to the actual bed days used.

Short Breaks – Number of People and Days (since April 2019):

Total Respite Days	Total Clients
1.31K	60

Short Breaks – Occupancy Levels (since April 2020):

Occupancy Level by Date and Provider		
Date - Week Commencing	Vacancies Rate	Service
06 April 2020	29%	Tree Vale Limited Acorn House
13 April 2020	50%	Tree Vale Limited Acorn House
20 April 2020	50%	Tree Vale Limited Acorn House
27 April 2020	50%	Tree Vale Limited Acorn House
04 May 2020	50%	Tree Vale Limited Acorn House
11 May 2020	50%	Tree Vale Limited Acorn House
18 May 2020	71%	Tree Vale Limited Acorn House
25 May 2020	100%	Tree Vale Limited Acorn House
01 June 2020	100%	Tree Vale Limited Acorn House
08 June 2020	93%	Tree Vale Limited Acorn House
15 June 2020	100%	Tree Vale Limited Acorn House
22 June 2020	100%	Tree Vale Limited Acorn House
29 June 2020	57%	Tree Vale Limited Acorn House
06 July 2020	29%	Tree Vale Limited Acorn House
13 July 2020	7%	Tree Vale Limited Acorn House
20 July 2020	93%	Tree Vale Limited Acorn House
27 July 2020	57%	Tree Vale Limited Acorn House
03 August 2020	57%	Tree Vale Limited Acorn House
10 August 2020	57%	Tree Vale Limited Acorn House
17 August 2020	50%	Tree Vale Limited Acorn House
24 August 2020	100%	Tree Vale Limited Acorn House
31 August 2020	100%	Tree Vale Limited Acorn House
07 September 2020	100%	Tree Vale Limited Acorn House
14 September 2020	71%	Tree Vale Limited Acorn House
21 September 2020	57%	Tree Vale Limited Acorn House
28 September 2020	100%	Tree Vale Limited Acorn House
05 October 2020	50%	Tree Vale Limited Acorn House
12 October 2020	50%	Tree Vale Limited Acorn House
19 October 2020	64%	Tree Vale Limited Acorn House
26 October 2020	50%	Tree Vale Limited Acorn House
02 November 2020	71%	Tree Vale Limited Acorn House
09 November 2020	50%	Tree Vale Limited Acorn House
16 November 2020	50%	Tree Vale Limited Acorn House
23 November 2020	50%	Tree Vale Limited Acorn House
30 November 2020	29%	Tree Vale Limited Acorn House
07 December 2020	7%	Tree Vale Limited Acorn House

Care Market – Domiciliary Care and Reablement

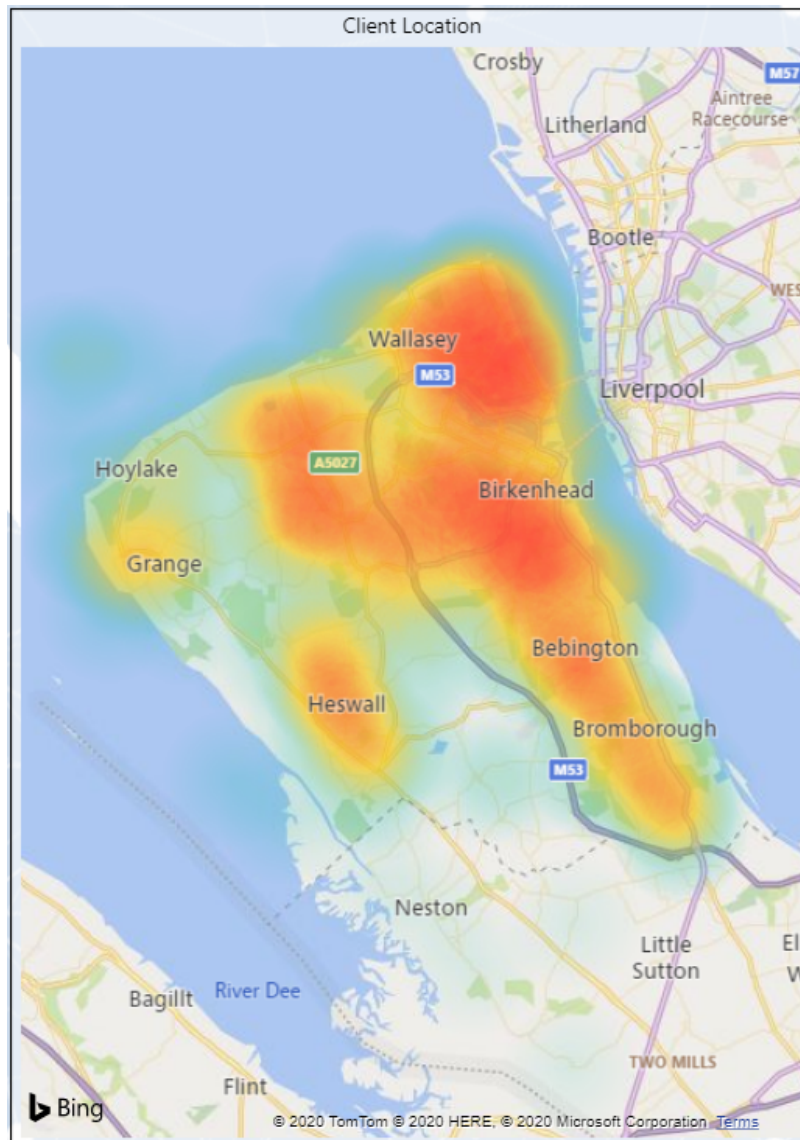
Domiciliary Care - Cost and Hours (04/03/2019 to 02/11/2020):

Actual Cost £24.46M	Average Weekly Actuals Cost £277.91K	Number of Calls 2.80M
Number of Hours Delivered 1.43M	Average No. of Weekly Hours Delivered 16.23K	

Year	Count of SSRef	Hours Delivered	Hours Commissioned	Actual Cost	Commissioned Cost
2019	3434	720,064.03	863,749.00	£12,090,840.27	£14,174,818.36
March	1639	57,733.00	64,727.25	£936,301.80	£1,024,378.45
April	1852	86,052.88	96,054.75	£1,419,649.11	£1,577,577.75
May	1816	69,323.92	80,113.75	£1,159,941.60	£1,312,991.85
June	1838	70,019.15	80,324.75	£1,180,593.88	£1,316,966.23
July	1811	84,868.38	100,043.00	£1,434,452.06	£1,648,156.58
August	1743	66,001.78	80,510.50	£1,113,722.04	£1,325,912.04
September	1797	80,222.85	100,926.75	£1,353,871.53	£1,662,138.84
October	1772	63,628.67	79,908.50	£1,072,075.88	£1,319,241.60
November	1767	64,200.50	80,686.50	£1,091,658.97	£1,331,477.97
December	1791	78,012.90	100,453.25	£1,328,573.40	£1,655,977.04
2020	3625	638,709.28	875,055.58	£11,132,466.06	£15,186,071.10
January	1774	60,008.62	81,797.00	£1,015,605.52	£1,345,022.93
February	1851	73,645.43	86,175.00	£1,235,171.51	£1,400,001.26
March	1900	86,285.88	107,499.00	£1,399,953.60	£1,756,381.33
April	1808	69,543.25	85,850.25	£1,181,227.72	£1,461,182.01
May	1819	70,486.50	84,774.00	£1,282,656.41	£1,525,016.34
June	1967	69,597.70	107,590.50	£1,284,161.87	£1,945,434.56
July	1935	58,557.53	89,949.25	£1,059,724.57	£1,610,738.59
August	1994	74,087.62	114,335.75	£1,315,940.35	£2,047,909.48
September	1972	61,669.00	93,264.33	£1,094,748.09	£1,668,491.27
October	1788	14,827.75	23,820.50	£263,276.41	£425,893.33
Total	5308	1,358,773.32	1,738,804.58	£23,223,306.33	£29,360,889.45

The above table shows the number of people receiving domiciliary care, month by month along with the hours delivered compared to the hours commissioned and the actual cost compared to the commissioned cost.

Domiciliary Care – People Location:



Reablement – People, Cost and Days (since 01/04/2018):

The aim of these services is to ensure that people are supported to regain their optimum independence and mobility following an episode of ill-health

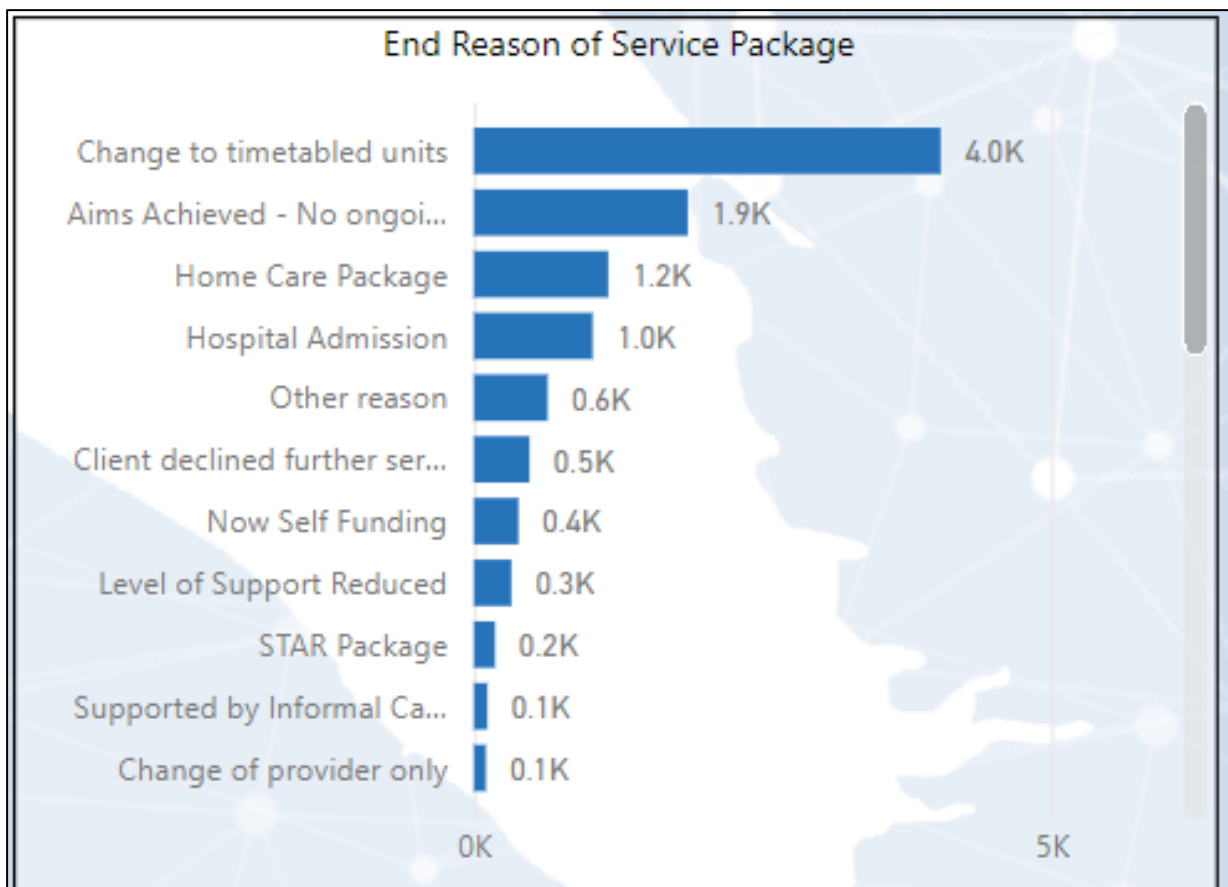
No. of Service Users	No. of Service Packages	Average Weekly Cost	Average no. of Days in Reablement
4705	10.89K	£131.92	12.13

Reablement – Number of People:

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2020	154	93	96	104	110	171	151	148	137	149	88	1	1402
2019	171	153	145	170	159	140	125	101	92	110	103	92	1561
2018		9	188	192	182	169	182	147	150	146	163	137	1665
Total	325	255	429	466	451	480	458	396	379	405	354	230	4628

This table shows the number of people receiving reablement services month by month. The current reporting month's figures will always be incomplete.

Reablement – End Reasons of Care Packages:



End Reason of Service Package

Service Provision End Reason Description	Reablement End Reason
Change to timetabled units	4043
Aims Achieved - No ongoing service(s)	1853
Home Care Package	1164
Hospital Admission	1029
Other reason	639
Client declined further service	482
Now Self Funding	386
Level of Support Reduced	325
STAR Package	184
Supported by Informal Carer	117
Change of provider only	104
Supported Solely by AT/Equipment	89
Deceased	61
Moving to Respite / ST Bed	59
CHC Funded	42
No longer eligible for support	41
Moving to Transitional Care Bed	25
Moving to IMC Bed	18
Moving to Residential Care	13
COVID - New services required	11
Client left area	9
Moved to live with Family	8
COVID - decrease support due to self-isolating	7
Direct Payments	7
Moving to Nursing Care	7
COVID - decrease support- family/carers can support	6
Extension of Short Term Placement	3
COVID - change of provider for same service	2
COVID - increase support- no family/carers support	1
COVID - pending CHC eligibility	1
Needs EMI Care	1
Total	10737

Reablement – Length of Stay:

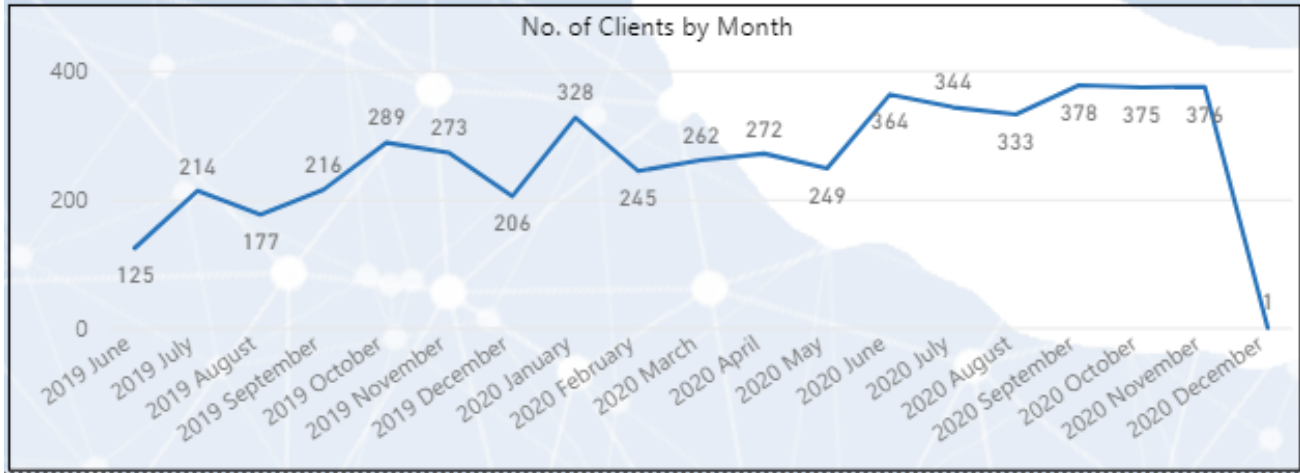
Year	2 to 4 Weeks	4 to 6 Weeks	Over 6 Weeks	Under 2 Weeks	Total
2018	841	297	52	2812	4002
February		6	3		9
March	67	52	8	61	188
April	98	29	5	307	439
May	96	31	7	296	430
June	77	24	3	322	426
July	86	22	4	323	435
August	78	25	4	313	420
September	85	27	4	320	436
October	83	27	3	318	431
November	89	23	7	316	435
December	82	31	4	236	353
2019	848	356	41	2467	3712
January	72	24	3	400	499
February	78	18	2	314	412
March	87	28	3	297	415
April	96	52	1	192	341
May	89	38	5	208	340
June	78	34	6	218	336
July	66	31	5	165	267
August	62	24	1	147	234
September	52	22	1	134	209
October	61	30	3	144	238
November	63	24	4	123	214
December	44	31	7	125	207
2020	733	327	22	1935	3017
January	84	38	8	138	268
February	56	41		110	207
March	45	7		141	193
April	45	15		135	195
May	64	18		188	270
June	93	50	2	221	366
July	95	42	5	216	358
August	66	45	1	202	314
September	72	45	3	185	305
October	86	26	3	231	346
November	27			164	191
December				4	4
Total	2422	980	115	7214	10731

The above table shows the number of people receiving reablement services month on month by Length of Stay category.

Brokerage – Packages by People Numbers and Providers (Since 10/06/2019)

Number of People Matched to Package

3781



Page 353

Year	January	February	March	April	May	June	July	August	September	October	November	December	Total	
2019	1					170	269	231	327	454	461	443	1633	
2020		489	410	419	335	271	397	389	427	463	446	432	197	3282
Total	1	489	410	419	335	271	565	652	648	775	888	877	632	4448

The above line chart and table show the number of people matched to home care packages month on month.

The current reporting month's figures will always be incomplete.

Care Market – Specialist (Supported Living)

Cost and Number of People and Providers (Since 25/03/2019):

Number of People		
1031		
Actual Cost	Service Providers	
£30.47M	226	
Cost		
Period	CommissionedCost	ActualCost
2019.20 - Period 09	£2,519,231.43	£2,468,749.59
2019.20 - Period 10	£2,525,543.21	£2,453,250.29
2019.20 - Period 11	£2,538,180.10	£2,483,064.12
2019.20 - Period 12	£2,562,431.35	£2,512,414.01
2019.20 - Period 13	£2,560,037.62	£2,509,631.05
2020.21 - Period 01	£2,577,491.05	£2,450,713.26
2020.21 - Period 02	£2,768,937.28	£2,653,239.36
2020.21 - Period 03	£2,817,105.91	£2,733,195.21
2020.21 - Period 04	£2,806,424.13	£2,741,209.42
2020.21 - Period 05	£2,849,990.10	£2,788,763.44
2020.21 - Period 06	£2,720,353.06	£2,665,266.80
2020.21 - Period 07	£2,031,988.66	£2,010,464.50
Total	£31,277,713.90	£30,469,961.05

The above table shows the Commissioned cost against actual costs for each 4-weekly billing period.

Supported Living - Number of People Since 01/04/17:

No. of Clients Receiving Service in Period													
Year	January	February	March	April	May	June	July	August	September	October	November	December	Total
2020	7779	7766	7754	7640	7641	7728	7730	7701	7717	7784	7838	7874	7874
2019	7498	7484	7462	7611	7618	7641	7674	7688	7766	7808	7843	7726	7726
2018	7158	7176	7174	7320	7348	7370	7430	7441	7480	7487	7483	7516	7516
2017				6877	6939	7118	7085	7110	7149	7167	7187	7153	7153
Total	7779	7766	7754	7640	7641	7728	7730	7701	7717	7784	7838	7874	7874

The above table shows the number of people in Supported Living accommodation month on month.

Supported Living – People Locations by Ward:

Ward	No of Clients	Percentage
Bebington	24	2.3%
Bidston and St James	57	5.5%
Birkenhead and Tranmere	104	10.1%
Bromborough	60	5.8%
Clatterbridge	15	1.5%
Claughton	113	11.0%
Eastham	16	1.6%
Greasby Frankby and Irby	8	0.8%
Heswall	25	2.4%
Hoylake and Meols	21	2.0%
Leasowe and Moreton East	36	3.5%
Liscard	52	5.0%
Moreton West and Saughall Massie	48	4.7%
New Brighton	104	10.1%
Oxton	89	8.6%
Pensby and Thingwall	16	1.6%
Prenton	39	3.8%
Rock Ferry	89	8.6%
Seacombe	34	3.3%
Upton	10	1.0%
Wallasey	11	1.1%
West Kirby and Thurstaston	9	0.9%
Out of Area	51	4.9%

The above table shows the number of people in supported living accommodation by Ward.

Wirral Community Foundation Trust

Key Measures - Monitored Monthly:

ID	KPI Description	Green	Amber	Red	Target	Monthly Trend												
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	YTD
KPI 1	% of initial contacts through to completion of assessment within 28 days	≥80%	<80% ≥70%	<70%	80%	87%	91%	92%	92%	90%	87%							90%
KPI 2	% of safeguarding concerns (Contacts) completed within 5 Days (exc. EDT)	≥99%	<99% ≥95%	<95%	99%	99.5%	100%	100%	99.6%	100.0%	100.0%							99.9%
KPI 3	% of safeguarding enquiries concluded within 28 days	≥80%	<80% ≥60%	<60%	80%	52%	62%	77%	72%	64%	53%							64%
KPI 4	% of individuals who have had an annual review completed	≥70%	<70% ≥60%	<60%	70%	68%	72%	71%	67%	68%	70%							70%
KPI 5	% of care packages activated (in Liquidlogic) in advance of service start date (exc. Block Services)	≥65%	<65% ≥50%	<50%	65%	66%	73%	67%	74%	72%	75%							71%
KPI 6	% of adults with a learning disability who live in their own home or with their family	≥88%	<88% ≥70%	<70%	88%	94%	94%	94%	94%	94%	94%							94%
KPI 7	% of older people who were still at home 91 days after discharge from hospital into reablement / rehabilitation services	≥83%	<83% ≥81%	<81%	83%	84%	83%	83%	94%	87%	81%							85%

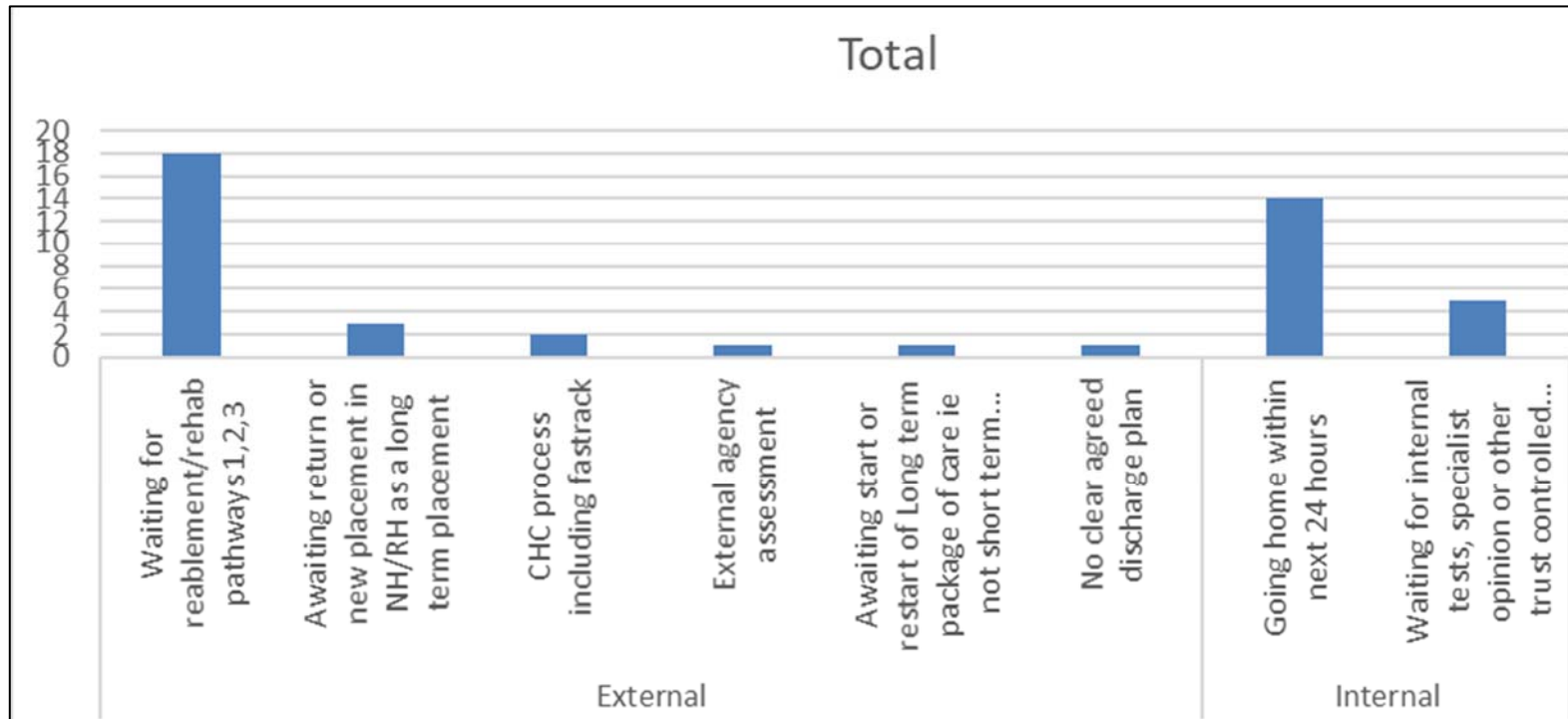
Length of Stay Report

Long Stay Patients:

The number of Long Stay patients dropped significantly in April 2020: 14 to 21 days to 80 and Over 21 days to 72.

The number of patients between 7 and 14 days remained steady since April, between 100 and 200. The most recent figure for 7 – 14 days is 152.

Delay Reasons for Medically Optimised Patients (Sum of 21 Days)



Current External Delays

Current External Delays	
Awaiting return or new placement in nursing home or residential home as a long-term placement	3
Awaiting start or restart of long-term package of care i.e., not short term reablement or rehab	1
CHC process including Fastrack	2
External Agency assessment	1

Better Care Fund

Delayed Transfer of Care - 2.67% maximum:

DTOC Data collection suspended since March 2020 due to the ongoing Coronavirus crisis.

Residential/Nursing - 5% reduction:

	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
2019/20	30	32	25	48	33	31	30	47	29	35	39	40
2020/21	29	30	24	46	31	29	29	45	28	33	37	38

Forecast trend based on a targeted 5% reduction vs same month in preceding year.

Reablement (91 days), With Trend to November 2020:

91 Day Status	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20
At Home 91 days +	52	50	50	36	53	48	39	31		51	51	45
Not at Home 91 days +	9	7	13	9	9	10	10	2		12	15	12
Total	61	57	63	45	62	58	49	33		63	66	57
% At Home 91 days +	85.2%	87.7%	79.4%	80.0%	85.5%	82.8%	79.6%	93.9%		81.0%	77.3%	78.9%
Target	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

18th JANUARY 2021

REPORT TITLE:	STRATEGIC DEVELOPMENTS IN THE NHS
REPORT OF:	SIMON BANKS, CHIEF OFFICER, NHS WIRRAL CLINICAL COMMISSIONING GROUP AND WIRRAL HEALTH AND CARE COMMISSIONING

REPORT SUMMARY

On 26th November 2020 NHS England/Improvement (NHSE/I) published *Integrating Care: Next steps to building strong and effective integrated care systems across England*. This document set out proposals for legislative reform and focused on the operational direction of travel for the NHS from 2021/22 onwards. The document was intended to open up a discussion with the NHS and its partners about how Integrated Care Systems (ICSs) could be embedded in legislation or guidance. Decisions on legislation will be for Government and Parliament to make. This paper summarises the proposals set out in *Integrating Care: Next steps to building strong and effective integrated care systems across England*. This paper also sets out work in progress to respond to these proposals for Wirral as a “*place*” within the Cheshire and Merseyside ICS.

RECOMMENDATION

The Adult Social Care and Health Committee is asked to note and support the work to define what a commissioning offer at *place* should look like, setting out what commissioning functions should be delivered in *place* and what would best sit with provider partnerships. The Committee is also asked to note the work in the creation of a provider collaborative/alliance in Wirral.

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATION

- 1.1 The Adult Social Care and Health Committee should be informed of important policy changes in the NHS that impact upon Wirral and should also be engaged in the development of a Wirral response such as changes to maximise the benefit to the local population.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The options of (i) maintaining the status quo or (ii) not engaging in these national driven policy changes have been considered and dismissed as they would not benefit the population of Wirral.

3.0 BACKGROUND INFORMATION

3.1 Introduction

- 3.1.1 On 26th November 2020 NHS England/Improvement (NHSE/I) published *Integrating Care: Next steps to building strong and effective integrated care systems across England*, subsequently referred to as *Integrating Care: Next steps*. This document set out proposals for legislative reform and focused on the operational direction of travel for the NHS from 2021/22 onwards. The document was intended to open up a discussion with the NHS and its partners about how Integrated Care Systems (ICSs) could be embedded in legislation or guidance. Decisions on legislation will be for Government and Parliament to make.
- 3.1.2 *Integrating Care: Next steps* builds on the route map set out in the *NHS Long Term Plan*, for health and care joined up locally around people's needs. It signals a renewed ambition for how the NHS can support greater collaboration between partners in health and care systems to help accelerate progress in meeting our most critical health and care challenges.
- 3.1.3 *Integrating Care: Next steps* details how systems and their constituent organisations will accelerate collaborative ways of working in future, considering the key components of an effective ICS and reflecting on what a range of local leaders have told NHSE/I about their experiences during the past two years, including the immediate and long-term challenges presented by the COVID-19 pandemic.
- 3.1.4 These are significant new steps towards the ambition set out in the *NHS Long Term Plan*, building on the experience of the earliest ICSs and other areas. NHSE/I now intend now is to spread their experience to every part of England. From April 2021 this will require all parts of our health and care system to work together as ICSs, involving:
- Stronger partnerships in local places between the NHS, local government and others with a more central role for primary care in providing joined-up care;
 - Provider organisations being asked to step forward in formal collaborative arrangements that allow them to operate at scale; and

- Developing strategic commissioning through systems with a focus on population health outcomes;
- The use of digital and data to drive system working, connect health and care providers, improve outcomes and put the citizen at the heart of their own care.

This means that the Cheshire and Merseyside Health and Care Partnership (HCP) is now working on an authorisation process to become an ICS by April 2021.

3.1.5 *Integrating Care: Next steps* also describes options for giving ICSs a firmer footing in legislation, likely to take effect from April 2022 (subject to Parliamentary decision). These proposals sit alongside other recommendations aimed at removing legislative barriers to integration across health bodies and with social care, to help deliver better care and outcomes for patients through collaboration, and to join up national leadership more formally.

3.1.6 NHS England and NHS Improvement invited views on these proposed options from all interested individuals and organisations by Friday 8th January 2021. This paper provides an overview of the key proposals in *Integrating Care: Next steps*.

3.2 ***Integrating Care: Next Steps – Key practical changes***

3.2.1 *Integrating Care: Next steps* sets out a series of practical changes that will be in place by April 2022. The preparatory work for the implementation of these changes during 2021/22 will be supported by further guidance for ICSs and by the *NHS Operational Planning Guidance for 2021/22*. These key practical changes are summarised below.

3.2.2 There will be **devolution of national and regional functions** and resources to ICSs. ICSs will be required to work together across partners to determine:

- distribution of financial resources to places and sectors that is targeted at areas of greatest need and tackling inequalities;
- improvement and transformation resource that can be used flexibly to address system priorities;
- operational delivery arrangements that are based on collective accountability between partners;
- workforce planning, commissioning and development to ensure that our people and teams are supported and able to lead fulfilling and balanced lives;
- emergency planning and response to join up action at times of greatest need; and
- the use of digital and data to drive system working and improved outcomes.

3.2.3 The **future health and care system will be built upon “*place*”**, which is defined as the local authority boundaries (at which joint strategic needs assessments and health and wellbeing strategies are made). Within each *place*, services will be joined up through primary care networks (PCNs) integrating care in neighbourhoods. The ambition is to create an offer to the local population of each *place*, to ensure that in that *place* everyone is able to:

- access clear advice on staying well;
- access a range of preventative services;

- access simple, joined-up care and treatment when they need it;
- access digital services (with non-digital alternatives) that put the citizen at the heart of their own care;
- access proactive support to keep as well as possible, where they are vulnerable or at high risk; and to
- expect the NHS, through its employment, training, procurement and volunteering activities, and as a major estate owner to play a full part in social and economic development and environmental sustainability.

3.2.4 There will be **provider collaboration at scale** for services where people will have more complex or acute needs, require specialist expertise which can only be planned and organised effectively over a larger area than *place*. Some services such as hospital, specialist mental health and ambulance will be organised through provider collaboration that operates at a whole-ICS footprint – or more widely where required. To support this there will be the need to harness the involvement, ownership and innovation of clinicians, working together to design more integrated patient pathways horizontally across providers and vertically within local place-based partnerships.

3.2.5 By April 2022 **all NHS provider trusts will be expected to be part of a provider collaborative**. These will vary in scale and scope, but all providers must be able to take on responsibility for acting in the interests of the population served by their respective system(s) by entering into one or more formal collaboratives to work with their partners on specific functions. These collaboratives will help the ICS to set system priorities and allocate resources. Joining up the provision of services will happen in two main ways:

- *within places* (for example, between primary, community, local acute, and social care, or within and between primary care networks) through place-based partnerships ('vertical integration'); and
- *between places* at scale where similar types of provider organisation share common goals such as reducing unwarranted variation, transforming services, providing mutual aid through a formal provider collaborative arrangement ('horizontal integration' – for example, through an alliance or a mental health provider collaborative).

3.2.6 There is an expectation that there will be **strong and effective place-based partnerships** between sectors. These will have the full involvement of all partners who contribute to the *place's* health and care; an important role for local councils (often through joint appointments or shared budgets); a leading role for clinical primary care leaders through primary care networks; and a clear, strategic relationship with health and wellbeing boards. There will be a *place* leader on behalf of the NHS, as set out above, will work with partners such as the local authority and voluntary sector in an inclusive, transparent and collaborative way. They will have four main roles:

- to support and develop primary care networks (PCNs) which join up primary and community services across local neighbourhoods;
- to simplify, modernise and join up health and care (including through technology and by joining up primary and secondary care where appropriate);

- to understand and identify – using population health management techniques and other intelligence – people and families at risk of being left behind and to organise proactive support for them; and
- to coordinate the local contribution to health, social and economic development to prevent future risks to ill-health within different population groups.

This will be supported by ICSs who will need to ensure that each *place* has appropriate resources, autonomy and decision-making capabilities to discharge these roles effectively, within a clear but flexible accountability framework that enables collaboration around funding and financial accountability, commissioning and risk management. This could include *places* taking on delegated budgets. The exact division of responsibilities between system and place should be based on the principle of subsidiarity – with the system taking responsibility only for things where there is a clear need to work on a larger footprint, as agreed with local places.

As ICSs are established and evolve, this will create opportunities to further strengthen partnership working between local government, the NHS, public health and social care. Where partnership working is truly embedded and matured, the ability to accelerate *place*-based arrangements for local decision-making and use of available resources, such as delegated functions and funding, maximises the collective impact that can be achieved for the benefit of residents and communities.

3.2.7 ICSs will be asked to embed **system-wide clinical and professional leadership** through their partnership board and other governance arrangements, including primary care network representation. Primary care clinical leadership will take place through critical leadership roles including:

- Clinical directors, general practitioners and other clinicians and professionals in primary care networks (PCNs), who build partnerships in neighbourhoods spanning general practice, community and mental health care, social care, pharmacy, dentistry, optometry and the voluntary sector.
- Clinical leaders representing primary care in *place*-based partnerships that bring together the primary care provider leadership role in federations and group models.
- A primary care perspective at system level.

Specialist clinical leadership across secondary and tertiary services must also be embedded in systems. Existing clinical networks at system, regional and national level have important roles advising on the most appropriate models and standards of care, in particular making decisions about clinical pathways and clinically-led service change. System-wide clinical leadership at an ICS and provider collaborative footprint through clinical networks should:

- be able to carry out clinical service strategy reviews on behalf of the
- ICS;
- develop proposals and recommendations that can be discussed and
- agreed at wider decision-making forums; and
- include colleagues from different professional backgrounds and from different settings across primary care, acute, community and mental health care.

Wider clinical and professional leadership should also ensure a strong voice for the wide range of skills and experience across systems. From nursing to social care, from allied health professionals to high street dentists, optometrists and pharmacists, and the full range of specialisms and care settings, people should receive services designed and organised to reflect the expertise of those who provide their care.

3.2.8 ICSs will be required to put in place **firmer governance and decision-making arrangements** for 2021/22. As part of this, each system should define:

- ‘Place’ leadership arrangements.
- Provider collaborative leadership arrangements
- Individual organisation accountability within the system governance framework.

These governance arrangements will seek to minimise levels of decision-making and set out defined responsibilities of organisations, partnerships at place, provider collaboratives and the core ICS role. Each ICS should seek to ensure that all the relevant bodies feel ownership and involvement in the ICS.

The greater development of working at place will in many areas provide an opportunity to align decision-making with local government, including integrated commissioning arrangements for health and social care, and local responsiveness through health and wellbeing boards. There is no one way to do this, but all systems should consider how the devolution of functions and capabilities to systems and places can be supported by robust governance arrangements.

ICS governance is currently based on voluntary arrangements and is therefore dependent on goodwill and mutual co-operation. There are also legal constraints on the ability of organisations in an ICS to make decisions jointly. *Integrating Care: Next steps* sets out options for changes in guidance and legislation, as described below.

During 2021/22, every ICS will be required to develop systematic arrangements to involve lay and resident voices and the voluntary sector in its governance structures, building on the collective expertise of partners and making use of pre-existing assets and forums such as Healthwatch and citizen’s panels.

3.2.9 There will be a “**single pot’ of NHS financial resources for each ICS**, organised at ICS level with allocative decisions being made by local leaders. ICSs will need to

- distribute resources in line with national rules, including adhering to mental health and community services investment guarantees, and locally-agreed strategies for health and care.
- deploy the resources available to them in order to protect the future sustainability of local services, and to ensure that their health and care system consumes their fair share of resources allocated to it.
- delegate significant budgets to *place* level, which might include resources for general practice, other primary care, community services, and continuing healthcare.
- move away from episodic or activity-based payment, rolling out a blended payment model for secondary care services. This is intended to greater certainty about the resources available to providers to run certain groups of services and

meet the needs of particular patient groups. Any variable payments will be funded within the ICS financial envelope, targeted to support the delivery of locally-identified priorities and increasingly linked to quality and outcomes metrics.

- agree and codify how financial risk will be managed across places and between provider collaboratives.

Through active involvement at ICS and *place* level, providers will have a greater say in how funding is deployed; particularly as new lead provider models emerge. Decisions about the use of all of these budgets will usually be made at the lowest possible level, closest to those communities they serve and in partnership with their local authority. New powers will make it easier to form joint budgets with the local authority, including for public health functions.

3.2.10 **Data and digital technology** have played a vital role helping the NHS and care respond to the pandemic. *Integrating Care: Next steps* places data and digital technology at the heart of creating effective local systems. To fulfil the potential of digital and data to improve patient outcomes and drive collaborative working, ICSs will need to:

- build smart digital and data foundations – each ICS will have a Board level lead, three year digital transformation plan and will invest in workforce digital and data literacy and infrastructure to support this.
- connect health and care services – this will include developing or joining a shared care record across all health and social care settings to improve care and underpin population health and system management.
- use digital and data to transform care – this will support real time decision making by frontline teams and more effective workforce, finance, quality and performance planning.
- put the citizen at the centre of their care – this will involve improving access to personalised advice on staying well, enabling citizen's to access to their own data, and triage to appropriate health and care services. There will also be increased utilisation of remote monitoring to allow citizens to stay safe at home for longer, using digital tools to help them manage long-term conditions.

3.2.11 *Integrating Care: Next steps* proposes **changes to regulation and oversight** in the NHS which includes:

- subject to legislation, formally merging NHS England and NHS Improvement into a single body.
- Working with the Care Quality Commission (CQC) to embed a requirement for strong participation in ICS and provider collaborative arrangements in the Well Led assessment;
- issuing guidance under the NHS provider licence that good governance for NHS providers includes a duty to collaborate.
- ensuring foundation trust directors' and governors' duties to the public support system working.
- introducing new measures and metrics to support system- and place- level measurements, which might include reporting some performance data such as patient treatment lists at system level and an integration index for use by all systems.

- rebalancing the focus on competition between NHS organisations by reducing the Competition and Market Authority's role in the NHS and abolishing Monitor's role and functions in relation to enforcing competition. There is also a recommendation that regulations made under section 75 of the *Health and Social Care Act 2012* should be revoked and that the powers in primary legislation under which they are made should be repealed, and that NHS services be removed from the scope of the *Public Contracts Regulations 2015*.

The future System Oversight Framework will set consistent expectations of systems and their constituent organisations and match accountability for results with improvement support, as appropriate. This approach will recognise the enhanced role of systems. It will identify where ICSs and organisations may benefit from, or require, support to help them meet standards in a sustainable way and will provide an objective basis for decisions about when and how NHSEI will intervene in cases where there are serious problems or risks, potentially through a proposed future Intensive Recovery Support Programme.

3.2.12 There will be **changes in commissioning**, with a clearer focus on population-level health outcomes and a marked reduction in transactional and contractual exchanges within a system. This significant change of emphasis for commissioning functions means that the organisational form of Clinical Commissioning Groups (CCGs) will need to change, with either a single CCG being established or CCGs being abolished, subject to legislation, and their functions being delivered through an ICS. The latter is NHSEI's preferred option.

The activities, capacity and resources for commissioning will change in three significant ways in the future:

- Ensuring a single, system-wide approach to undertake strategic commissioning. This will discharge core ICS functions, which include:
 - assessing population health needs and planning and modelling demographic, service use and workforce changes over time;
 - planning and prioritising how to address those needs, improving all residents' health and tackling inequalities; and
 - ensuring that these priorities are funded to provide good value and health outcomes.
- Service transformation and pathway redesign need to be done differently. Provider organisations and others, through partnerships at place and in provider collaboratives, become a principal engine of transformation and should agree the future service model and structure of provision jointly through ICS governance (involving transparency and public accountability). Clinical leadership will remain a crucial part of this at all levels.
- The greater focus on population health and outcomes in contracts and the collective system ownership of the financial envelope is a chance to apply capacity and skills in transactional commissioning and contracting with a new focus. Analytical skills within systems should be applied to better understanding how best to use resources to improving outcomes, rather than managing contract performance between organisations.

Commissioning functions will have to be coterminous with ICS boundaries before April 2022. However, with the spread of *place*-based partnerships backed by

devolved funding, simplified accountability, and an approach to governance appropriate to local circumstances along with further devolution of specialised commissioning activity, there will be flexibility for local areas to make full use of the local relationships and expertise currently residing in CCGs.

ICSs should also agree whether individual functions are best delivered at system or at place, balancing subsidiarity with the benefits of scale working. Commissioners may, for example, work at place to complete service and outcomes reviews, allocate resources and undertake needs assessments alongside local authorities. But larger ICSs may prefer to carry out a wider range of functions in their larger places, and smaller ones to do more across the whole system.

3.3 *Integrating Care: Next Steps – Legislative Changes*

3.3.1 In September 2019, NHS E/I made a number of recommendations for an NHS Bill. These aimed to remove current legislative barriers to integration across health and social care bodies, foster collaboration, and more formally join up national leadership. These recommendations, which remain relevant in the context of *Integrating Care: Next steps*, included:

- rebalancing the focus on competition between NHS organisations by reducing the Competition and Markets Authority’s role in the NHS and abolishing Monitor’s role and functions in relation to enforcing competition;
- simplifying procurement rules by scrapping section 75 of the Health and Social Care Act and remove the commissioning of NHS healthcare services from the jurisdiction of the Public Contracts Regulations 2015;
- providing increased flexibilities on tariff;
- reintroducing the ability to establish new NHS trusts to support the creation of integrated care providers;
- ensuring a more coordinated approach to planning capital investment, through the possibility of introducing FT capital spend limits;
- the ability to establish decision-making joint committees of commissioners and NHS providers and between NHS providers;
- enabling collaborative commissioning between NHS bodies – it is currently easier in legislative terms for NHS bodies and local authorities to work together than NHS bodies;
- a new “triple aim” duty for all NHS organisations of ‘better health for the whole population, better quality care for all patients and financially sustainable services for the taxpayer; and
- merging NHS England and NHS Improvement - formalising the work already done to bring the organisations together.

3.3.2 *Integrating Care: Next steps* proposes that ICSs should become statutory bodies. The document sets out two possible options for enshrining ICSs in legislation, without triggering a distracting top-down re-organisation:

- Option 1: a statutory committee model with an Accountable Officer that binds together current statutory organisations.
- Option 2: a statutory corporate NHS body model that additionally brings CCG statutory functions into the ICS.

- 3.3.3 Both models share a number of features - broad membership and joint decision-making (including, as a minimum, representatives from commissioners; acute, community and primary care providers; and local authorities); responsibility for owning and driving forward the system plan; operating within and in accordance with the triple aim duty; and a lead role in relating to the centre.
- 3.3.4 Either model would be sufficiently permissive in legislation to allow different systems to shape how they operate and how best and most appropriately deliver patient care and outcomes support at place.
- 3.3.5 Under either model local government will be an integral, key player in the ICS. Both models offer a basis for planning and shaping services across healthcare, social care, prevention and the wider determinants of health. Both would allow for the delegation of functions and money to place-based statutory committees involving NHS bodies and local government. Both would enable NHS and local government to exploit existing flexibilities to pool functions and funds.
- 3.3.6 While both models would drive increased system collaboration and achieve the vision and aims of NHS E/I for ICSs in the immediate term, NHS E/I believe Option 2 is a model that offers greater long term clarity in terms of system leadership and accountability. They suggest that it also provides a clearer statutory vehicle for deepening integration across health and local government over time. Additionally NHS E/I also believe that this provides enhanced flexibility for systems to decide who and how best to deliver services by both taking on additional commissioning functions from NHS England (NHS E)¹ but also deciding with system colleagues (providers and local councils) where and how best service provision should take place.

3.4 *Integrating Care: Next Steps - Implications and Next Steps*

- 3.4.1 Appendix 2 sets out the detail of the implications for the NHS following the proposals in *Integrating Care: Next steps*.
- 3.4.2 NHS E/I expect that every system will be ready to operate as an ICS from April 2021, in line with the timetable set out in the *NHS Long Term Plan*. To prepare for this, they expect that each system will, by this time, agree with its region the functions or activities it must prioritise (such as in service transformation or population health management) to effectively discharge its core roles in 2021/22 as set out *Integrating Care: Next steps*.
- 3.4.3 All ICSs should also agree a sustainable model for resourcing these collective functions or activities in the long term across their constituent organisations.
- 3.4.4 To support all of the above, all systems should agree development plans with their NHS E/I Regional Director that clearly set out:

¹ NHS England and NHS Improvement have a shared management structure but are legally distinct organisations under the Health and Social Care Act 2012. Commissioning functions and regulation legally reside with NHS England, provider development and regulation with NHS Improvement.

- By April 2021: how they continue to meet the current consistent operating arrangements for ICSs and further planning requirements for the next phase of the COVID-19 response.
- By September 2021: implementation plans for their future roles as outlined above, that will need to adapt to take into account legislative developments.

3.4.5 Throughout the rest of 2020, the Department of Health and Social Care and NHS E/I will continue to lead conversations with different types of health and care organisations, local councils, people who use and work in services, and those who represent them, to understand their priorities for further policy and legislative change.

3.4.6 The legislative proposals set out in *Integrating Care: Next steps* go beyond NHS E/I's original legislative recommendations to the Government. This is why NHS E/I published the document with the intention of seeking views on the proposed options from all interested individuals and organisations. These views will help inform future system design work and that of Government should they take forward the recommendations for legislative change in a future Bill. The closing date for the submission of views was set as Friday 8th January 2020.

3.4.7 In *Integrating Care: Next steps* NHS E/I sought views on four specific questions:

- Do you agree that giving ICSs a statutory footing from 2022, alongside other legislative proposals, provides the right foundation for the NHS over the next decade?
- Do you agree that option 2 offers a model that provides greater incentive for collaboration alongside clarity of accountability across systems, to Parliament and most importantly, to patients?
- Do you agree that, other than mandatory participation of NHS bodies and Local Authorities, membership should be sufficiently permissive to allow systems to shape their own governance arrangements to best suit their populations needs?
- Do you agree, subject to appropriate safeguards and where appropriate, that services currently commissioned by NHSE should be either transferred or delegated to ICS bodies?

3.5 *Integrating Care: Next Steps* – A response by Wirral as a *Place*

3.5.1 Whilst the direction of travel for the NHS is to create an ICS across Cheshire and Merseyside the future health and care system needs to be built on *place*, which is defined as the local authority boundary as set out in 3.2.3 above. Clearly this is, for us, the population served by Wirral Council.

3.5.2 The Cheshire and Merseyside Health and Care Partnership, the emergent ICS, recognises the lead role of local authorities in system design and in the integration of care. Over the past four years in Wirral the NHS, through NHS Wirral CCG, and Wirral Council has built a strong, strategic and integrated commissioning partnership – Wirral Health and Care Commissioning. Whilst it is proposed that some commissioning functions will move from CCGs to ICSs in April 2022, both NHS Wirral CCG and Wirral Council are clear that *place* is the primary building block for integration between health and care and other sectors of the service system. The commissioning and delivery of health and care services will only be on a wider foot print where absolutely necessary.

- 3.5.3 Following a meeting on 3rd December 2020 between Wirral Council (represented by the Chair of the Adult Social Care and Health Committee, Chief Executive and Director of Adult's Care and Health) and NHS Wirral CCG (represented by the Chair and Chief Officer) it was agreed that we want to build on our successful local commissioning partnership and retain skills, experience and knowledge of the health and care of our population in our *place*.
- 3.5.4 As this meeting it was agreed to undertake some work through the Joint Health and Care Commissioning Group (JHCCEG) to, by the end of January 2021, define what a commissioning offer at *place* should look like, setting out what commissioning functions should be delivered in *place* and what would best sit with provider partnerships. This would be shared with the Cheshire and Merseyside Health and Care Partnership and NHS England/Improvement to influence the development of the arrangements for commissioning from April 2022.
- 3.5.5 It was also agreed that the two organisations wished to take a strong role in influencing governance at *place*, supporting the development of new provider collaborations and creating a new partnership with providers and commissioners based on emerging guidance and legislation. This would need to link into the governance of the ICS and, importantly, Wirral Council. Democratic leadership and stewardship is key to the legitimacy of *place* based development. Strategic leadership for Wirral will come via the Health and Wellbeing Board, Adult Social Care and Health Committee and Children's, Young People and Education Committee.
- 3.5.6 At the meeting of the *Healthy Wirral* Partners Board on 10th December 2020, provider organisations serving the borough accepted that there was a strong case for Wirral as a *place* and that the current commissioning arrangements reflected many of the changes that the revised policy expected. There was an expectation that 80% of commissioning would take place locally and that as such local commissioning would hold primacy. There was a debate about how providers would fit into the new arrangements but Partners Board members were generally supportive of the current direction of travel.
- 3.5.7 At the same *Healthy Wirral* meeting it was agreed that work needed to commence to create a provider collaborative/alliance in Wirral, which would require a strong primary care and third sector involvement. It was agreed that the Chair of Wirral University Teaching Hospitals NHS Foundation Trust, would lead on the creation of a scope for work to develop a provider collaborative/alliance that would be agreed amongst the Chairs of the constituent organisations in *Healthy Wirral*. The work to create the provider collaborative/alliance would be delegated to the *Healthy Wirral* Project Delivery Unit (PDU).
- 3.5.8 The Adult Social Care and Health Committee is asked to note and support the work to define what a commissioning offer at *place* should look like, setting out what commissioning functions should be delivered in *place* and what would best sit with provider partnerships. The Committee is also asked to note the work in the creation of a provider collaborative/alliance in Wirral.

4.0 FINANCIAL IMPLICATIONS

4.1 This report is principally for information only and as such, there are no financial implications.

5.0 LEGAL IMPLICATIONS

5.1 It is likely that, in 2021, primary legislation will be introduced by Her Majesty's Government to further support the implementation of the NHS Long Term plan and to give ICSs statutory roles.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There is a direct impact of these changes on staff employed by NHS Wirral CCG. It is anticipated that there will be a human resources framework within which these proposed changes will be managed.

7.0 RELEVANT RISKS

7.1 The system changes outlined in this report will have risk management frameworks as part of their implementation.

8.0 ENGAGEMENT/CONSULTATION

8.1 Engagement will need to take place in regard to the system changes outlined in this report.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

This report is for information and no EIA is required.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 None as a result of this report.

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APPENDICES

Appendix 1 Legislative Options for Integrated Care Systems
Appendix 2 Implications of *Integrating Care: Next Steps*

BACKGROUND PAPERS

- NHS Five Year Forward View, <https://www.england.nhs.uk/five-year-forward-view/>
- NHS Long Term Plan, <https://www.longtermplan.nhs.uk/>
- NHS Planning Guidance, <https://www.england.nhs.uk/publication/delivering-the-forward-view-nhs-planning-guidance-201617-202021/>
- NHS England/Improvement, Designing Integrated Care Systems (ICSs) in England, <https://www.england.nhs.uk/wp-content/uploads/2019/06/designing-integrated-care-systems-in-england.pdf>
- Integrating Care: Next steps to building strong and effective integrated care systems across England, <https://www.england.nhs.uk/wp-content/uploads/2020/11/261120-item-5-integrating-care-next-steps-for-integrated-care-systems.pdf>

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Partnerships Committee	9 th November 2020 13 th January 2021

APPENDIX 1 LEGISLATIVE OPTIONS FOR INTEGRATED CARE SYSTEMS

Option 1 – a statutory ICS Board/Joint Committee with an Accountable Officer

This option would establish a mandatory, rather than voluntary, statutory ICS Board through the mechanism of a joint committee and enable NHS commissioners, providers and local authorities to take decisions collectively.

It would have a system Accountable Officer, chosen from the CEOs/AOs of the Board's mandatory members. This Accountable Officer would not replace individual organisation AOs/CEOs but would be recognised in legislation and would have duties in relation to delivery of the Board's functions. There would be a duty for the Board to agree and deliver a system plan and all members would have an explicit duty to comply with it.

There would be one aligned CCG only per ICS footprint under this model, and new powers would allow that CCGs are able to delegate many of its population health functions to providers.

This option retains individual organisational duties and autonomy and relies upon collective responsibility. Intervention against individual NHS organisations (not working in the best interests of the system) would continue to be enhanced through the new triple aim duty and a new duty to comply with the ICS plan.

The new Accountable Officer role would have duties to seek to agree the system plan and seek to ensure it is delivered and to some extent offer clarity of leadership. However, current accountability structures for CCG and providers would remain.

Option 2 – a statutory ICS body

In this option, ICSs would be established as NHS bodies partly by “repurposing” CCGs and would – among other duties – take on the commissioning functions of CCGs. Additional functions would be conferred and existing functions modified to produce a new framework of duties and powers.

The CCG governing body and GP membership model would be replaced by a board consisting of representatives from the system partners. As a minimum it would include representatives of NHS providers, primary care and local government alongside a Chair, a Chief Executive and a Chief Financial Officer. The ICS body should be able to appoint such other members as it deems appropriate allowing for maximum flexibility for systems to shape their membership to suit the needs of their populations.

The power of individual organisational veto would be removed. The ICS Chief Executive would be a full-time Accounting Officer role, which would help strengthen lines of accountability and be a key leadership role in ensuring the system delivers.

The ICS's primary duty would be to secure the effective provision of health services to meet the needs of the system population, working in collaboration with partner organisations. It would have the flexibility to make arrangements with providers through contracts or by delegating responsibility for arranging specified services to one or more providers.

Although there would be a representative for primary care on the Board, there would no longer be a conflict of interests with the current GP-led CCG model (created by the 2012 Act) and it could be possible to allocate combined population-level primary care, community health services and specialised services population budgets to ICS.

Many commissioning functions for which NHSE is currently responsible could, for the most part, be transferred or delegated to the ICS body, but with the ability to form joint committees as proposed through our original recommendations, with NHSE, if and where appropriate.

Through greater provider involvement, it could also reduce some of the transactional burdens of the current contracting processes. There would be powers for the ICS to delegate responsibility for arranging some services to providers, to create much greater scope for provider collaboration to use whole-population budgets to drive care pathway transformation.

APPENDIX 2 IMPLICATIONS OF *INTEGRATING CARE: NEXT STEPS*

1. Changes in NHS England and NHS Improvement's operating model

NHS E/I will support systems to adopt improvement and learning methodologies and approaches which will enable them to improve services for patients, tackle unwarranted variation and develop cultures of continuous improvement.

This will be underpinned by a comprehensive support offer which includes:

- access to our national transformation programmes for outpatients and diagnostics;
- support to tackle unwarranted variation and increase productivity (in partnership with the Getting it Right First Time programme);
- the data they need to drive improvement, accessed through the 'model health system';
- the resources and guidance that they need to build improvement capability; and
- assistance from our emergency and electivity intensive support teams (dependent on need).

Much of this support offer will be made available to systems through regional improvement hubs, which will ensure that improvement resource supports local capacity- and capability-building. Systems will then able to flexibly and rapidly deploy the support into place partnerships and provider collaboratives.

NHS E/I developed a joint operating model during 2019, with input from senior NHS leaders including those in systems and regions, as well as frontline staff and other stakeholders. This resulted in a description of the different ways NHSEI will operate in future, underpinned by a set of principles including subsidiarity, and a set of 'levers of value' that NHS E/I can use at national and regional level to support systems.

NHS E/I will continue to develop this operating model to support the vision set out above, and any legislative changes. This will include further evolving how we interact with systems nationally and regionally; and ensuring that its functions are arranged in a way that support and embed system working to deliver our priorities.

The new operating environment will mean:

- increased freedoms and responsibilities for ICSs, including greater responsibility for system development and performance, as well as greater autonomy regarding assurance.
- the primary interaction between NHSEI and systems will be between regions and the collective ICS leadership, with limited cause for national functions to directly intervene with individual providers within systems.
- as systems take on whole population budgets they will increasingly determine how resource is to be used to 'move the dial' on outcomes, inequalities, productivity and

wider social and economic development against their specific health challenges and population health priorities.

- NHS E/I regional teams will become 'thinner' as we move direct commissioning responsibility out to systems (individually and collectively). They will increasingly continue to enable systems to take on greater autonomy, working with them to identify their individual development priorities and support needs.

2. Transition

NHS E/I are supporting ICSs through to April 2022 at their current size and scale, but recognise that smaller systems will need to join up functions, particularly for provider collaboration. They will support the ability for ICSs to more formally combine as they take on new roles where this is supported locally.

NHS E/I will work with systems to ensure that they have arrangements in place to take on enhanced roles from April 2022. They will set out a roadmap for this transition that gives assurance over system readiness for new functions as these become statutory.

NHS E/I recognise that under either legislative proposal they need to ensure that they support staff during organisational change by minimising uncertainty and limiting employment changes. They are therefore seeking to provide stability of employment while enabling a rapid development of role functions and purpose for all our teams, particularly in CCGs directly impacted by legislative Option 2.

NHS E/I have stated that they want to take a different approach to this transition; one that is characterised by care for our people and that there is no distraction from the 'day job': the critical challenges of recovery and tackling population health.

Stable employment: As CCG functions move into new bodies NHS E/I state that they will make a 'continued employment promise' for staff carrying out commissioning functions. We will preserve terms and conditions to the new organisations (even if not required by law) to help provide stability and to remove uncertainty.

New roles and functions: For many commissioning functions the work will move to a new organisation and will then evolve over time to focus on system priorities and ways of working. The priority will be the continuation of the good work being carried out by the current group of staff and NHS E/I have stated that they will promote best practice in engaging, consulting and supporting the workforce during a carefully planned transition, minimising disruption to staff.

Other functions will be more directly impacted, principally the most senior leaders in CCGs (chief officers and other governing body / board members). ICSs need to have the right talent in roles leading in systems. The stated commitment by NHS E/I is:

- not to make significant changes to roles below the most senior leadership roles;

- to minimise impact of organisational change on current staff by focusing on continuation of existing good work through the transition and not amending terms and conditions; and
- offer opportunities for continued employment up to March 2022 for all those who wish to play a part in the future.

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Adult Social Care and Health Committee

18th January, 2021

REPORT TITLE:	Think 111 First
REPORT OF:	Adult Social Care and Health Committee

REPORT SUMMARY

This report provides the Committee with a summary of the implementation to date of “Think 111 First” in Wirral and an overview of the anticipated next steps.

RECOMMENDATION/S

The Adult Social Care and Health Committee is requested to;

1. Note the contents of this report
2. Support the implementation of phase two

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

1.1.1 In the first ten days since Go Live:

1.1.1.1 70% of all urgent referrals into the Clinical Advisory Service (CAS) have been managed without referring people to the Emergency Department (ED).

1.1.1.2 People who have needed to go to the Emergency Department have, on average, a 45 minute shorter waiting time compared to people who did not use 111 First.

1.1.1.3 The number of unheralded (unexpected) people arriving in the Emergency Department has reduced by 9%.

2.0 OTHER OPTIONS CONSIDERED

2.1 Phase one of the “111 First” project was nationally mandated

2.2 Phase two aims to:

2.2.1 Review and sustain the changes implemented during phase one

2.2.2 Encourage up to 40% of all urgent (but not life threatening) care cases to use the “111 First” pathway

2.2.3 Make additional services available on the 111 First Pathway, such as Primary Care Services, Mental Health Services and Same Day Emergency Care (SDEC) services

2.2.4 Other options for services will be considered during a detailed data analysis and modelling exercise

3.0 BACKGROUND INFORMATION

3.1 Think 111 First was a nationally mandated project which offered an opportunity to transform the way that patients access urgent and emergency care by offering a single point of access, standardised assessment, clinical validation and onward direct referral to ED or other alternative services.

3.2 Wirral’s implementation of the national project was managed by the Healthy Wirral Programme Development Unit (PDU), strategically led by the Chief Officer of the CCG and the Chief Operating Officer of Wirral Community Trust and had direct input from a wide variety of multi-disciplinary stakeholders from across the Healthy Wirral System.

3.3 The project was successfully delivered to original plans for time, quality and scope.

3.4 Benefits realisation is expected post-project and a robust evaluation and monitoring strategy has been developed to support this.

3.5 The anticipated benefits are:

- 3.5.1 To reduce the risk of nosocomial infection due to overcrowding in ED
- 3.5.2 To increase the number of patients who get to the right service, first time
- 3.5.3 To increase staff and patient satisfaction with the 111 First service

4.0 FINANCIAL IMPLICATIONS

- 4.1 A finance summary has been prepared by the deputy director of finance from Wirral Community Trust.
- 4.2 Costs for 2020/21 amount to £193,284. The majority of costs have been met by national funds. A shortfall of £35,251 has been identified and has been met within the Wirral Healthcare system from COVID contingency funding
- 4.3 Costs for 22/23 have been identified at £170,937. No additional funding has been provided for local systems after the first six months. This will create a cost pressure for both the Acute and Community Trust

5.0 LEGAL IMPLICATIONS

- 5.1 N/A

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 An additional Advanced Nurse Practitioner (ANP) has been recruited to the CAS
- 6.2 Additional reception cover has been funded for the Emergency Department. Recruitment is in progress
- 6.3 The Emergency Department has purchased a module of TPP's SystemOne to receive electronic referrals from the 111 Service and from the CAS. The reception team have been trained on the use of the system and adoption is progressing well.

7.0 RELEVANT RISKS

- 7.1 Risk that patients will choose to contact "111 First" but their calls will take a long time to answer or go unanswered. Management plan is as follows:
 - 7.1.1 The project team includes representatives from NWS and NHSE so that this risk can be closely monitored and scrutinised.
 - 7.1.2 The 111 service has recruited and trained additional staff to cope with the expected demand. Unfortunately, the service subsequently suffered high absence levels due to COVID in October 2020

- 7.1.3 Data from October showed a decline in the number of calls answered within 60 seconds, down to 24% from 83.2% in July, against a 95% target
- 7.1.4 Additional temporary staff and national contingencies have been deployed
- 7.1.5 Latest data (covering the week to 6th November) shows a steady day on day increase and a weekly total of 76% of calls answered within 60 seconds
- 7.1.6 The risk is being closely monitored by local project teams, NWAS and NHSE

8.0 ENGAGEMENT/CONSULTATION

- 8.1 NHSE/I are co-ordinating a national press campaign, which started on 4th December and will continue throughout the winter.
- 8.2 The key message is: “if you have an urgent (but not life threatening) condition, please consider contacting 111 before going to the emergency department”
- 8.3 A local communications campaign has been created, which is aligned to the national campaign.
- 8.4 Health Watch Wirral have been a key member of the communications and engagement team and have helped to develop a public engagement strategy that will reach all members of our community
- 8.2 Staff engagement has also been crucial and clinical and operational leads from all of the relevant service providers have been members of the service design team

9.0 EQUALITY IMPLICATIONS

- 9.1 A detailed equality impact assessment has been completed by clinical leads from across the system, led by the Deputy Director of Nursing from Wirral Community Trust
- 9.2 Risks including access and language barriers have been identified and mitigated against

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 N/A

REPORT AUTHOR: Val McGee, Chief Operating Officer, Wirral Community Health and Care Trust

APPENDICES

Appendix 1 –

BACKGROUND PAPERS

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

18th January 2021

REPORT TITLE:	COVID-19 RESPONSE UPDATE
REPORT OF:	DIRECTOR OF PUBLIC HEALTH

REPORT SUMMARY

This report provides the Committee with an update on surveillance data and key areas of development in relation to Wirral's COVID-19 response and delivery of the Outbreak Prevention and Control Plan.

This matter affects all wards within the Borough; it is not a key decision.

RECOMMENDATION/S

The Adult Social Care and Health Committee are recommended to note the contents of the report, the progress made to date and to support the ongoing COVID-19 response.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 This report gives an overview of how we will work to Keep Wirral well and protect residents from the impact of COVID-19.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No other options have been considered.

3.0 BACKGROUND INFORMATION

- 3.1 On 22 May 2020, the government asked all Councils to develop local COVID-19 Outbreak plans. Wirral published its Outbreak Prevention and Control Plan in June 2020, setting out:

- how we will prevent transmission of COVID-19 within the community
- how we will ensure we have an effective and coordinated local approach to managing COVID-19 outbreaks across different settings within the Borough
- how we will ensure vulnerable people are protected
- how we will link with national and regional systems to ensure we get maximum benefit for the population of Wirral.

- 3.2 In December 2020, we published an update to this plan highlighting the progress that has been made to date along with a dynamic strategy for how we will continue to protect our communities from the impacts of COVID-19, as well as the wider effects on the health, wellbeing and livelihoods of Wirral residents. The updated plan can be found on the Wirral Council website: [Outbreak Plan Dec 2020.pdf \(wirral.gov.uk\)](#)

- 3.3 Currently we are again facing a challenging picture in relation to COVID-19 both nationally and locally. We undertake daily and weekly surveillance to understand the local picture – Up to date information on COVID-19 in Wirral is available here: [COVID-19 statistics for Wirral | www.wirral.gov.uk](#)

- 3.4 Due to Coronavirus cases rising rapidly across the country and growing pressure on the NHS the Prime Minister announced on the 4th January, that the country would be put back into a national lockdown. Details of Current National Guidance is available here: [National lockdown: Stay at Home - GOV.UK \(www.gov.uk\)](#)

3.5 Wirral Response to COVID-19

A summary of key progress against the priority actions outlined within the Updated Wirral COVID-19 Outbreak Prevention and Control Plan is provided in the table below;

Priority	Progress to date
1) Effective Surveillance <i>Ensure access to the right local data and</i>	<ul style="list-style-type: none">• Established and embedded a local surveillance system to capture local outbreak data and provide targeted support to a variety of settings through Wirral's COVID-19 Hub, with an improved approach through Microsoft Dynamics software currently in development.

<p><i>intelligence to inform local activity to prevent and manage outbreak</i></p>	<ul style="list-style-type: none"> • Implemented a local information system bringing together regional and local data that provides a greater understanding of what is happening in Wirral, providing intelligence to inform key decisions when responding to COVID-19. • Undertaken daily and weekly surveillance at a local level to understand the epidemiology of current situations and to appropriately direct control measures, community engagement activity and target communications.
<p>2) Governance and Accountability <i>Establish robust governance structures for decision making</i></p>	<ul style="list-style-type: none"> • Our emergency response governance system, which oversees the Outbreak Plan and its delivery, is now fully embedded. This thread of governance and accountability works across local government teams, and includes work with Liverpool City Region neighbours, community organisations and NHS partners.
<p>3) Engagement and Communication <i>Build trust and participation through effective community engagement and communication</i></p>	<ul style="list-style-type: none"> • Wirral's Engagement Strategy and Action Plan has looked to recognise and support the work done by business, community and faith organisations and local people, and to gather insight to inform proactive action. • Over 540 local people have signed up to the Community Champions programme. Wirral was the first local authority to establish a system wide COVID Community Champions model, and as a result the Local Government Association (LGA) has invited Wirral to speak at a national event for Councils to highlight the great work undertaken so far. • We have worked with local community leaders to establish a black, Asian and minority ethnic engagement group as well as producing a range of communication materials in suitable formats for our diverse local population. • Our Community Connector service, working in collaboration with Merseyside Fire & Rescue Service, has delivered over 30,000 leaflets to areas with high incidence rates with restriction and support information.
<p>4) High Risk Settings and Communities <i>Identify and support high risk workplaces, locations and communities to prevent and manage outbreaks</i></p>	<ul style="list-style-type: none"> • The Wirral COVID-19 Outbreak Hub has been established to prevent and manage outbreaks of COVID-19 across all settings within the borough. • Daily multi-agency meetings are held to review case data and share key information, with weekly meetings held to evaluate longer-term themes and issues relating to high risk settings and to proactively provide support where needed. • We have increased the specialist infection prevention and control team working with care homes. • We have established a dedicated school support team to provide timely advice and guidance for single or multiple cases.

	<ul style="list-style-type: none"> • We have conducted compliance visits to high risk premises – with around 900 COVID-19 compliance visits having been completed as of December 2020. • We will continue to work with communities, organisations and groups to respond to the needs of local communities particularly at risk of COVID-19 and to safeguard vulnerable people.
<p>5) Local Testing <i>Manage deployment of local testing to ensure access for the entire population</i></p>	<ul style="list-style-type: none"> • We have successfully deployed five local testing sites across the borough in Liscard, Bebington, Birkenhead, Bidston and Heswall to ensure everyone can access local testing in a timely manner, prioritising front line health and social care key workers. • We have provided an outreach service for vulnerable groups to access testing and deployed mobile testing sites to accommodate outbreaks to ensure local, timely testing to high risk service areas – with home tests delivered for vulnerable groups accessing respite services in partnership with Wirral’s Community Trust. • We have developed a Community Testing Programme utilising rapid lateral flow testing technology for people without COVID-19 symptoms. In addition to establishing Four Wirral Community Testing Sites (in operation at the Floral Pavilion, Birkenhead Market and Eastham and Greasby Libraries), we have developed a distributed model for at risk settings to undertake lateral flow tests for their staff and residents and are currently developing a mobile community outreach model to target high risk settings, locations and communities and across the Borough. • Through collaboration with NHS Wirral CCG, and Wirral’s Primary Care Networks, we are supporting the role out of the COVID-19 Vaccination Programme in Wirral through the provision of sites/locations and resource for vaccinations on a mass scale for Wirral residents.

<p>6) Local Contact Tracing <i>Deploy local contact tracing to complement regional and national capability</i></p>	<ul style="list-style-type: none"> • We have developed locally supported contact tracing to enable us to reach people who the national system have been unable to contact, embedding this strategy within the key principles of 'Find, Test, Trace, Isolate, Support' to ensure effectiveness of each of these key pillars of the COVID-19 response. • This local contact tracing offer will be flexible in order to meet evolving local need, reaching high levels of cases and contacts and with no individual, group, or community underserved by the contact tracing system. • Work is ongoing to further develop this local contact tracing system, working with Public Health England and the national Test and Trace system. This will increase the numbers contacted and the effectiveness of the system to reduce transmission through isolation.
<p>7) Supporting Vulnerable People and Communities <i>Support vulnerable people to self-isolate and ensure that services meet the needs of diverse communities locally.</i></p>	<ul style="list-style-type: none"> • We have launched Wirral InfoBank to help match residents with needs to sources of local support, with the public making thousands of online searches per week. • We have established a group consisting of over 100 local community groups and organisations working in partnership with the local authority to deliver a range of initiatives to support local communities. • We have co-ordinated funding for local community organisations to be supported as well as facilitating the local response to support clinically vulnerable individuals with food deliveries, prescription collection and wellbeing calls. • We have provided financial support to individuals to enable them to isolate without experiencing hardship.

3.6 Vaccination Programme

Cheshire & Merseyside have commenced delivery of the mass vaccination programme, with over 7,500 vaccines delivered to the highest priority cohort during the first week of operations. This group consists of people aged over 80 years old, and frontline staff, caring for the most vulnerable in residential care homes. Vaccine sites across the primary care network, and additional hospital hubs, will continue to significantly increase capacity.

4.0 FINANCIAL IMPLICATIONS

4.1 The delivery of the Outbreak Control Plan is funded via national grant funding as follows:

- Test and Trace Support Service Grant of £2,733,018 awarded to Wirral Council in June 2020.
- Test and Trace grant funding of £2,701,000 received by Wirral Council when the Liverpool City Region was placed under the Tier 3 'very high' COVID-19 alert level restrictions in October 2020.

- Funding of £2,137,405 for Community Testing agreed as part of the approved Liverpool City Region Business case in December 2020

5.0 LEGAL IMPLICATIONS

5.1 There are no legal implications directly arising from this report. New powers have been provided to support enforcement activities which have been reviewed and appropriately utilised locally.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 This report is for information to Members and as a result there are no resource implications.

7.0 RELEVANT RISKS

7.1 It should be noted that data relating to case rates, hospitalisation and operational management of the COVID-19 response is frequently changing and as a result, some of the information contained within this report is likely to be outdated by the time of publication.

8.0 ENGAGEMENT/CONSULTATION

8.1 No direct public consultation or engagement has been undertaken in relation to this report. However, community engagement is a key priority in ensuring an effective response to the COVID-19 pandemic.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity. Equality considerations were a key component of the actions noted in 3.4 of this report, however there are no further direct equality implications arising..

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no direct environment and climate implications arising from this report.

REPORT AUTHOR: **Julie Webster**
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APPENDICES

None

BACKGROUND PAPERS

Wirral Outbreak Prevention and Control Plan December 2020

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Adult Social Care and Health Committee	13th October 2020 19th November 2020

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

18 JANUARY 2021

REPORT TITLE	<i>Deprivations of Liberty</i>
REPORT OF	Director of Care and Health

REPORT SUMMARY

This report provides information relating to the deprivation of liberty for people deemed unable to make decisions relating to their care and support needs. It will discuss the protections afforded by Article 5, European Convention of Human Rights (ECHR), the determination of capacity and best interests under the Mental Capacity Act 2005 (MCA), the Deprivation of Liberty Safeguards (DoLS) (Schedule A1 MCA) and applications to the Court of Protection under section 16 MCA.

It also highlights issues relating to end-of-life care with requirements to deprive a person of their liberty. In addition, the report will consider current government guidance relating to best interest decision making relating to testing and other issues relating to COVID 19.

The report provides further information on the Mental Capacity (Amendment) Act 2019 (MCA(A)) that will, in April 2022, replace DoLS and applications to the Court of Protection for deprivation of liberty authorisations.

This work supports the Wirral Plan 2025 Active and Healthy Lives theme: “Working for happy, active and healthy lives where people are supported, protected and inspired to live independently”.

This is not a key decision.

RECOMMENDATION/S

The Adult Social Care and Public Health Committee are requested to note the report and the ongoing work to support vulnerable people within the borough.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 For Committee to have an awareness of the ongoing work in this area.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council is required to comply with the current legal requirements under Article 5 of the European Convention of Human Rights (ECHR). There is a recognition nationally of the significant workload arising from the requirements and this report will provide how requests are prioritised.

3.0 BACKGROUND INFORMATION

Introduction

- 3.1 For those people accommodated in a care home or hospital, the Council has powers to deprive the person of their liberty if certain statutory criteria are met. These duties are found in schedule A1 of the Mental Capacity Act 2005 (MCA). For those people who live elsewhere such as their own home or in supported living accommodation, then the Council or the NHS must apply to the Court of Protection to seek an authorisation to deprive the person of their liberty.
- 3.2 The ethos of the MCA is to assume the person (P) can make their own decision and, where required, to support them to make the relevant decision. Further details relating to capacity assessments and best interest decisions can be found in Appendix 1 to this report.

Deprivation of Liberty

- 3.3 Article 5 ECHR states that “everyone has the right to liberty and security of person”. The state is unable to deprive a person of their liberty without complying with a lawful process. The law currently allows two main routes to deprive P of their liberty where they are unable, by virtue of a lack of capacity, to make decisions relating to their care and support needs.
- 3.4 The two routes are the Deprivation of Liberty Safeguards (DoLS) or an application to the Court of Protection. Both routes are discussed below. This will change in April 2022 when the Mental Capacity (Amendment) Act 2019 MC(A) introduces the Liberty Protection Safeguards (LPS). To support this work, the Council works closely at a regional level with other local authorities to share experiences and good practice. Further information about deprivation of liberty and its processes can be found in Appendix 1. It is important to note that an order authorising a deprivation of liberty does not increase the restrictions on a person per se but simply authorises the current restrictions that are or will be in place. The DoLS and an application to the Court provides an independent oversight to ensure the person’s welfare is protected and there are no arbitrary

decisions. Standard authorisations and Court orders are subject to review on a regular basis.

Life-saving Treatment

- 3.5 For those people receiving life-saving treatment there is not a requirement for DoLS or for an application to be made to the Court of Protection. This followed a ruling in R (Ferreira) v HM Senior Coroner for Inner South London and others [2017] EWCA Civ 31. The government has given guidance that during the pandemic this ruling is to include people who are being treated for COVID-19. It now also applies to care homes as well as hospitals.

Deprivation of Liberty Safeguards (DoLS)

- 3.6 The first of those routes is to be found in schedule A1 MCA and is known as DoLS. DoLS apply to people who are in a care home or hospital who have a mental disorder and are unable to decide to be there. In all DoLS cases the Council is the supervisory body. This means it is responsible for commissioning the assessments and undertaking the authorisations for a standard authorisation. The supervisory body will issue a standard authorisation if the criteria for DoLS are met. Further information relating to the DoLS can be found in Appendix 1.
- 3.7 Since the Supreme Court in P v Cheshire West & Chester Council; P & Q v Surrey County Council [2014] UKSC 19 laid down the definition of what amounts to a Deprivation of Liberty, Wirral Council, like all Local Authorities in England and Wales has been subject to massively increased referrals for DoLS. In 2013/14 Wirral received circa 70 DoLS referrals per year.
- 3.8 The latest figures from the Department for Health and Social Care for 2019/20 indicate Wirral received 3705 referrals. 1508 of the referrals were from acute hospitals, 10 from mental health hospitals and 1380 were from care homes. 727 referrals did not have the source of referral identified. The Council is in the process of exploring this. For the majority of people, there was one application but in 90 cases there were four applications made over this period. This could indicate a number of hospital admissions and a subsequent return to a care home. Standard authorisations are not portable from setting to setting. At the time of writing this report, Wirral Council is the supervisory body for 577 people.
- 3.9 During 2019/20 1040 assessments were completed, the vast majority of which occurred in care homes. Applications from acute trusts pose a challenge because of the very quick through flow of patients being admitted and discharged. People subject to a standard authorisation can challenge it by either themselves or their representative making an application to the Court of Protection. They will receive non-means tested legal aid.
- 3.10 The Council uses a triage tool to screen DoLS assessments that was originally based on the one issued by the Association of Directors of Adult Social Services (ADASS) in 2014. Wirral are a member of the North West region ADASS DoLS group, sharing best practice and preparing for new guidance and legislation.

Similar to other authorities, Wirral have adapted it over the years to reflect local needs and priorities. In line with government guidance, it was amended in March 2020 to reflect the anticipated demands as a result of the pandemic. Our resources are concentrated on high priority cases and assessing other cases when resources allow. The government guidance issued on 11 November stated:

“supervisory bodies who consider DoLS applications and arrange assessments should continue to prioritise DoLS cases using standard prioritisation processes first”.

Deprivation of Liberty Safeguards during the pandemic

3. 11 Following the issuing of the first lockdown in March 2020 the Council responded promptly by ensuring all assessments for DoLS were conducted remotely. At the time of writing this report that method of working is still on-going. This complies with government guidance that only in exceptional circumstances should face to face visits be conducted. The link to the updated guidance can be found below. Exceptional circumstances could be where there are communication difficulties. Independent BIAs and medical assessors have been requested to consult the supervisory body before undertaking a face-to-face visit.
- 3.12 The Council requires that each assessor and authoriser records on the DoLS documentation the method of the assessment and the reasons for it. Assessors use a mixture of telephone and video technology. This has presented challenges as some people being assessed can struggle with this method of assessment. The Council have been very clear with assessors that where they are unable to consult with the person, the reasons and rationale has to be clearly recorded. Examples we have had include where it would cause considerable distress for the person to be asked to undertake a remote assessment. The advice we have given is in line with the requirements under sub-sections 4 (4), (6) and (7) MCA.
- 3.13 There are clearly risks to this method of assessment as by not visiting the care home, assessors are missing out on potentially vital clues to support their assessment. This lack of face-to-face contact of course has impacted on care home residents in a number of ways including lack of contact with families and friends. In some cases, the lack of a face-to-face interview will be reflected in the duration of the standard authorisation which will be shorter than normal. The mechanisms for review and appeal are still in operation and the Council will respond to each request appropriately. The Council still receive contact from representatives and others where issues relating to the DoLS are raised. Where there are issues of concern the Council’s NHS adult social care partners will work with service-users and their families to reassess support plans and placements.

- 3.14 As mentioned above the Council at the start of the pandemic amended its triage tool in line with government guidance to direct its resources to those deemed most at risk. That tool is still in operation. We have assessed every high priority case within the timescales laid out. Assessors have adapted remarkably well to this method of working and they have accepted the guidance we have issued. Assessments continue to be subject to high levels of scrutiny during the authorisation stage. Authorisations are completed by senior staff and senior registered social workers in the Professional Standards Team. There are occasions when assessments are returned by authorisers because they do not meet the standards required.

Court of Protection Applications

- 3.15 For those people not accommodated in a care home or hospital but who meet the criteria for a deprivation of liberty then an application to the Court of Protection will need to be made.
- 3.16 The application would have to demonstrate the person was subject to continuous supervision and control, not free to leave and the state was in some way responsible for the deprivation of liberty. The Court would require evidence that the person had a mental disorder, lacked capacity to decide about their care arrangements, that such arrangements were in their best interests and were a proportionate response to prevent harm to the person. The Court would also require evidence that less restrictive alternatives had been considered and were not deemed to be appropriate. Current demands on services mean court applications will only be made where there is an objection from either the person or someone interested in their welfare or where a significant risk is evident. If there is a contested hearing, currently P would be means tested to access legal representation through the legal aid scheme. Further details about such applications can be found in Appendix 1.

Deprivations of Liberty in a person's own home.

- 3.17 The adage "an Englishman's home is his castle" is clearly challenged by the notion of a court ordering the deprivation of liberty for someone in their own home. The court will need to be satisfied that the restrictions in place are to support the person and do not contravene their rights under article 8 ECHR. This article supports a person's right to a private and family life. Where the restrictions do interfere in that right the court will have to authorise them and, in the process, ensure they are proportionate and are the least restrictive interference in the person's rights. The court will continue to review such arrangements on a regular basis.
- 3.18 Due to the criteria being used to prioritise court applications, such applications made by the council are currently very rare. However, with the introduction of LPS in April 2022 it is expected that the number of people subject to a formal order depriving them of their liberty in their own home will increase. The Council will, with NHS our partners, be scoping the number of people we believe will fall within the legislation.

End of Life Care

- 3.19 DoLS do apply to people who meet the criteria for a standard authorisation and are nearing the end of their life. The managing authority (hospitals and care homes) have no discretion but to make referrals where the legal criteria are met. However, in the latest government guidance issued on 11 November 2020 it states:

“Where the person is receiving end-of-life care, supervisory bodies should use their professional judgement as to whether an authorisation is necessary and can add any value to the person’s care.”

- 3.20 Those receiving end of life care are triaged as a low priority in respect of requiring DoLS assessments.
- 3.21 There is no provision in schedule A1, once someone is subject to a standard authorisation, to discharge it unless one of the qualifying requirements are no longer met or the person moves somewhere else on a permanent basis. This includes people who are receiving end of life care. The requirement to notify the coroner of the death of someone on a standard authorisation has been removed.

Liberty Protection Safeguards

- 3.22 As has been mentioned above the MC(A)A will introduce the Liberty Protection Safeguards (LPS) in April 2022. This is in response to the widespread concerns that DoLS is an overly bureaucratic and complex process that was never designed to deal with the high volumes of referrals the Council and other local authorities have received. There will be significant changes from DoLS. These will include the Council no longer having responsibility for cases in hospitals or those people funded under NHS continuing health care. There will no longer be specialist assessors, with registered professionals expected to undertake the assessments.
- 3.23 The LPS process will offer safeguards to vulnerable people who are subject to restrictions because of their care and support needs. They will have a right of appeal either directly or via their advocate or representative to the Court of Protection. Unlike the current arrangements, this will be automatically funded by legal aid.
- 3.24 The Council is engaged in planning for the new legislation and awaits the draft Code of Practice and draft regulations. The Council will work in partnership with the ADASS Sector Led improvement Board to deliver this legislation.

Best Interests decisions and testing for COVID-19

- 3.25 In their guidance issued on 11 November 2020 the government states its belief that a person who is unable to decide about a COVID-19 test, would consent to be tested if they had capacity and that it would be in their best interests to be tested as a positive test would lead to the person receiving the treatment they need. The link to this guidance is found below.

- 3.26 The guidance states that if the person cannot decide themselves within the context of COVID-19 even with support then the MCA must be complied with to make a best interests decision. For those people lacking capacity and who have symptoms again the advice is to use the MCA and where appropriate seek advice from Public Health England if the emergency powers under the Coronavirus Act 2019 are being considered. There is no knowledge of a case that has led to such advice being sought locally.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The government, following the Supreme Court judgement in 2014 did not make additional resources available to councils to meet the increased demand of DoLS applications. This was despite a number of local authorities going to court to compel them to do so. The costs for commissioning doctors and commissioning independent best interest assessors for 2019/20 were £443,000. Independent assessors are used because the current capacity in adult social care commissioned services is insufficient to meet the demand.
- 4.2 In 2020/21, the Council has allocated a budget of £177,000 to cover costs for doctors undertaking DoLS assessments. There is no specific or dedicated budget for independent best interest assessors. Considerable investment would be required to meet all the demands for DoLS in Wirral

5.0 LEGAL IMPLICATIONS

- 5.2 Article 5 and the current legal regimes identified above seek to protect vulnerable people and ensure there are protections in place to afford them safe care. Where they are required to remain in a particular place and be subject to additional restrictions the law requires that a thorough process must be gone through to avoid arbitrary decisions.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 DoLS and applications to the Court of Protection are part of the normal delivery of services. The process can take a significant amount of time and requires training for staff.

7.0 RELEVANT RISKS

- 7.1 If service-users are not afforded the legal protections this could increase their vulnerability.
- 7.2 The Courts have publicly named local authorities and other public bodies that have not complied with their obligations under these requirements. Costs and damages have also been awarded against councils and other public bodies.

Such cases tend to be when the person has suffered a substantial harm as a result of the actions of the council or other public body.

8.0 ENGAGEMENT/CONSULTATION

8.1 The process of completing a DoLS and an application to the Court of Protection includes consultation with the person themselves, anyone interested in their welfare, providers of care, social workers and medical professionals. The ethos of the MCA is to support the person to make any decision that will impact on them. Before determining whether a person cannot make a particular decision there must be evidence to demonstrate that engagement and consultation has taken place.

9.0 EQUALITY IMPLICATIONS

9.1 The law as it stands is designed to protect the most vulnerable residents and ensure services provided to them meet their needs and expectations. The procedures and processes confirm to the requirements of the relevant legislation.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 DoLS and applications to the Court of Protection has been utilised within the Council for some years and it is not a new concept or working practice. Therefore, the recommendations of this report are carbon and emissions neutral and do not adversely affect the Council's carbon reductions target. Processes and procedures will not have any additional impact on carbon emissions.

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BACKGROUND PAPERS

<https://digital.nhs.uk/data-and-information/publications/statistical/mental-capacity-act-2005-deprivation-of-liberty-safeguards-assessments/2019-20>

<https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity/the-mental-capacity-act-2005-mca-and-deprivation-of-liberty-safeguards-dols-during-the-coronavirus-covid-19-pandemic-additional-guidance#a#depriving-a-person-of-their-liberty>

Mental Capacity Act 2005

Mental Capacity (Amendment) Act 2019

Mental Capacity Act Code of Practice

Deprivations of Liberty Code of Practice

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

1.0 Mental Capacity Act 2005 (MCA)

- 1.1 The MCA lays out a statutory process for establishing whether a person can make a particular decision at a particular time. The ethos of the MCA is to assume the person (P) can make their own decision and, where required, to support them to make the relevant decision. Sections 2 and 3 lay out the requirements that must be met to determine if someone is unable to make a particular decision. There is a body of case law that points professionals towards how these capacity assessments should be completed.
- 1.2 Section 4 MCA lays out the process that must be followed to determine what decision is in a person's best interests. This section provides a checklist, and all aspects must be considered. Once again there is case law that points towards how such decisions are arrived at.
- 1.3 The MCA has a Code of Practice that is statutory guidance. This code must be complied with unless there are good reasons to depart from it. These reasons must be recorded.

2.0 Deprivation of Liberty

- 2.1 There is no statutory definition laid down by Parliament for what amounts to a deprivation of liberty. In March 2014, the Supreme Court based on previous European Court rulings defined a deprivation of liberty as applying when P is confined to a particular place for a non-negligible length of time, was unable to consent and the state was in some way responsible for the deprivation of liberty.
- 2.2 With regards to the first of these tests the Court issued what it described as the "acid test". P was to be viewed as confined if they were subject to continuous supervision and control and not free to leave. This was a significant decision, as Wirral, prior to this ruling, received 70 DoLS requests a year. The Council now receive circa 3,700 such requests a year. The government has not made any additional funds available to councils to undertake this role apart from a one-off grant in 2014/15. They refused to accept the Supreme Court judgement amounted to placing additional burdens on local authorities. Wirral is not alone in the challenges it faces in this area.

Deprivation of Liberty Safeguards (DoLS)

- 2.3 Under DoLS, assessors will have to confirm the person has a mental disorder and that they are unable to make decisions relating to their care and treatment needs. There are also four further assessments that must be positive before a standard authorisation under DoLS can be issued. They are the age assessment. P must be 18 or over. The no refusals assessment considers whether an attorney or deputy with powers relating to decisions impacting on P's health and welfare objects to the proposed care arrangements. The best interests assessment considers whether the proposed care arrangements are in P's best interests, are necessary and proportionate and will reduce the risk of harm. The eligibility

assessment considers whether the Mental Health Act 1983 should be used rather than DoLS.

- 2.4 Standard authorisations can be up to 12 months in duration. There is a right of appeal to the Court of Protection under section 21A MCA. The person and their representative are entitled to non-means tested legal aid. The Council is involved in a number of such cases.

Court of Protection Applications

- 2.5 Where P meets the criteria laid out in paragraphs 2.1 et al above and is not in a care home or hospital then an application to the Court of Protection must be made under section 16 MCA. The applicant is usually the commissioner of the services P is receiving. Upon receiving the application, the Court will then follow one of two processes.
- 2.6 If the case is not contested, that is P does not object to the proposed care arrangements and people interested in his/her welfare do not object, the Court will use the Re X process. The Re X process allows the court to decide based on the papers. This process was introduced after the Supreme Court decision in March 2014. The Court will issue an order depriving the person of their liberty for up to 12 months. The Council or other applicant must make a further application prior to the expiry of the original order to ask for it to be extended.
- 2.7 If there is an objection to the arrangements from P or anyone interested in his welfare then the Court will direct there to be an oral hearing. For P this can be expensive because there is no right to non-means tested legal aid. The court will subsequently decide to deprive or not deprive P of their liberty. The court can also make other declarations that fall within its purview that could relate, for example, to tenancy agreements.

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

18 JANUARY 2021

REPORT TITLE	<i>Quality Improvement and Assurance – Care Homes</i>
REPORT OF	Director of Care and Health

REPORT SUMMARY

This report sets out the Council and the NHS approach to working with Care Homes to meet required national and local standards and regulations, particularly during the pandemic. The report outlines the benefits of a quality improvement approach to homes that are rated 'inadequate' or 'requires improvement' by the Care Quality Commission (CQC) and other quality performance data and intelligence. It provides detail about the approach undertaken and how sanctions work to address concerns over quality standards and the work that is carried out between inspections.

This is not a key decision.

RECOMMENDATION

For the Committee to note the report and the ongoing work to support vulnerable people within the Borough.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 For the Committee to have an awareness of the ongoing work in with care homes.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council and the NHS is required to seek assurance that the care commissioned provides safe high-quality care and meets best value principles. Options for the Council include providing a level of residential and nursing care in-house and providing alternatives such as Extra Care Housing or, where appropriate, domiciliary care.

3.0 BACKGROUND INFORMATION

- 3.1 Wirral is a commissioner of care services and is committed to monitor and support improvements in the care provision of all commissioned services delivered across Wirral. This is supported through contract management and the work of Quality Improvement Practitioners that work in partnership with the CQC, the care provider, social work services and other health care professionals. The contracts team set the required standards and monitor performance against the contract and seek assurance in relation to the quality and safety of the care being delivered by the providers. This is in addition to CQC who inspect the quality of care in relation to the statutory regulatory requirements. Depending upon funding streams, social work teams and individual commissioning nurses are responsible for assessing the needs of individuals, formulating a care plan, and supporting providers with arranging care to meet the resident's needs. They are then responsible for reviewing needs and the suitability of the provision to continue to meet them.
- 3.2 Information that is required for monitoring against standards is sought through a variety of methods and includes the views of stakeholders relevant to the service. Stakeholders can include Infection Prevention and Control (IPC), environmental health, specialist nursing teams and social work teams. With this information, providers that are rated by CQC as 'requires improvement' will be supported to improve by NHS Wirral Clinical Commissioning Group (CCG) and Wirral Council Quality Improvement Team using a number of quality improvement tools, including engagement, action planning and tracking of improvements. By using this methodology, NHS Wirral CCG and Wirral Council will support its Community providers in leading their quality improvements.
- 3.3 The Quality Improvement Team works in partnership with the care home Manager, and where relevant, the owner of the service. The Manager of the care home identifies how they will address the concerns and issues raised by commissioners and regulators by submitting an improvement plan with timescales to the Contracts Manager to be agreed. The implementation of the improvement plan will then be monitored and supported by the Quality Improvement Team. This has been completed virtually, during the period of the pandemic. This work has continued with the number of 'inadequate' homes being significantly reduced since March 2020, and now having achieved an improved CQC rating.

4.0 QUALITY ASSURANCE ASSESSMENT

- 4.1 In line with contractual and CQC regulatory requirements the care provider monitors and evaluates its service through robust audit systems and through the collation of feedback from stakeholders. This is evidenced through monthly submissions of key performance indicators (KPI's) by the care provider to the contract lead.
- 4.2 All stakeholders inclusive of the Quality Improvement Team then validate improvements through working closely and supporting the provider to meet its contractual and regulatory standards. The Contracts Manager co-ordinates the monitoring of the provision throughout the year. When concerns are raised, in relation to standards, they are challenged and addressed promptly. The frequency of contract monitoring meetings vary in relation to the Quality Rating identified with the care provider, the type of service provision, and the contract.

5.0 PANDEMIC RESPONSE

- 5.1 During the current period of the pandemic, the Quality Improvement Team have continued to manage their interactions with care providers. This has been virtual in relation to their contact with care providers, including discussion of progress against improvement plans and determining whether evidence submitted is sufficient.
- 5.2 Wirral Council have held monthly Quality Surveillance meetings during the pandemic period. These were increased to weekly meetings during the first wave of the pandemic due to the reduction in visits from some professionals.
- 5.3 The Quality Surveillance meeting has representation from clinical professionals that regularly work with the care home providers. These include such professionals as Community Nurses, Dietitians, Tele-Triage Team, Falls Team, HealthWatch, IPC, Palliative Care Team, and Social Workers. The meeting also draws on information available from the CQC.
- 5.4 A Care Provider Support Team was established in April 2020 as a response to the pandemic and consisted of Wirral CQC inspectors, Wirral Quality Improvement Practitioners and NHS Wirral CCG Quality Managers. All care providers were allocated a worker as their single point of contact person.
- 5.5 CQC have worked closely with the Quality Improvement Team and Contract Teams. CQC have continued to enter care homes throughout the Pandemic as and when serious concerns have been identified. Enforcement action has been implemented which has also led to the review by Social Workers and or individual commissioning nurses of the residents currently residing in that home. Through the quality surveillance approach, commissioners and regulators have been able to identify homes of concern and, if required, undertaken on site visits, whilst adhering to national and local guidance on entering care homes.

- 5.6 Whilst the pandemic continues, the stepped plan for returning to visit homes is being developed for early in the new year. This will include adhering to infection control measures and a risk assessment process to plan safe visits in order to undertake improvement work, with the care providers, whilst protecting the residents and staff concerned. Lateral flow testing (LFT) is being introduced across the Borough and will provide a basis for how the reintroduction of staff visits to care home moves forward. The Council have an established process of risk assessment and approval for reinstating staff returning to work in the community and this includes input from colleagues in Public Health.
- 5.7 Not all Contract meetings have continued during the pandemic, only the high risk or inadequate services have been undertaken or where there a concern has arisen with a care provider. A plan will be formulated to re-introduce routine contract meetings in the new year and this will include a review of contractual reporting.
- 5.8 A national call to action was announced in May 2019 for all CCGs to offer, assist, and support IPC training in care homes over a two-week period, under the mutual aid principle. All Wirral Care homes were sent access to a free virtual COVID-19 training for care homes which had been developed and produced by the Royal National Orthopaedic Hospital. The virtual training included hand hygiene technique and 'donning' and 'doffing' of Personal Protection Equipment (PPE) suitable for non-aerosol generating procedures. Care homes were asked to identify a suitable IPC lead in the care home who would train all staff in the care home. Following completion of the virtual training, local trainers worked with the IPC lead to complete a virtual practical session of hand hygiene and 'donning' and 'doffing' to embed skills learnt. A self-assessment was also provided to the care home for staff to complete following both parts of the training. The virtual training was provided to 100% of care homes with 54% of Wirral care homes completing both the virtual training and the virtual practical session.
- 5.9 Government IPC grant funding was made available to assist with staff sick pay and improving their environment in relation to infection control measures. Grant was used to second nurses into the IPC team to support where there had been outbreaks.
- 5.10 Care homes were asked to provide daily information on the number of staff and the number of clients with COVID; the number of staff and clients with symptoms; issues around Personal Protection Equipment (PPE) supply; and issues around capacity. This was requested daily initially in March I and then throughout the year. The information was reviewed and responded to, with lead officers for care homes following issues up. Care home providers were also advised to inform us of any particular problems in providing services.
- 5.11 As National guidance for care homes was issued, this has been shared and where there is a need for enhancing the guidance locally this has been done through consultation with Public Health and confirmation through the Health and Social Care Cell.

- 5.12 On 2 December 2020, the Government announced the new Care Homes visiting guidance, which encourages a move to support care home visiting. In preparation for this, a small number of care homes were asked to take part in a tightly controlled two-week pilot to test these arrangements, with a view to meet the Government's winter target of enabling visits to all care homes by 18 December 2020.
- 5.13 Whilst lateral flow testing (LFT) can reduce the risks around visiting, it is widely recognised that it does not completely remove the risk of infection. Therefore, in addition to using the LFT, as part of the pilot, a suite of measures were introduced to ensure safe and controlled visits could occur.
- 5.14 As a minimum requirement, care home staff were expected to complete an online training video, however as an additional measure, care homes were offered some face-to-face training, in a COVID secure environment, that also covered donning and doffing of PPE, as a refresher for staff.
- 5.15 Local guidance was devised to support care homes manage expectations and shared with visitors, the guidance set out the key principles of the pilot, to assist care homes in ensuring the safety and well-being of all the residents, staff, and visitors.

6.0 QUALITY IMPROVEMENT

- 6.1 Much work has been done in the past two years to improve the general quality within the care home sector by the Council and CCG contracts, and to have an integrated approach to quality and safety in care homes. This has included the development of a compliance framework. There are approximately 118 Nursing and Residential homes in Wirral. Wirral is a National outlier in terms of the amount of provision proportionate to its population; having approximately twice the number of homes than is the national average. With so many care homes in Wirral, some care providers have struggled to fill their homes and, as such, struggle to maintain high quality and safety due to financial constraints. In 2013 approximately 45% of homes were rated 'green' for being fully quality compliant, and either rated good or outstanding by the CQC. The current position has improved to approximately 85% of Homes reaching Green status. It is the aim to build on the work that has been undertaken to date and strengthen this in 2021/22.
- 6.2 The Quality Improvement Team works with care home managers to anticipate areas of practice that need to improve and help equip them to develop strategies and action plans to build a sustainable continuous improvement journey. Care homes have required support in understanding what actions are needed to affect change where the CQC have identified shortcomings in practice.
- 6.3 Currently the Quality Improvement Team have minimal involvement with care homes that are rated good or outstanding, as the team does not have capacity at present to do this. The team will be looking to undertake more proactive work in 2021/22 to ensure that homes are delivering good care and that this can be shared with other homes.

- 6.4 The closure of a care home or other service at very short notice is an extremely rare event. The CQC can close a home by removing its registration. The Council has no powers to close a home but can choose to no longer contract with them. The Council Contracts Team and Quality Improvement Team introduced a policy in 2018 to address care homes who repeatedly fell below regulatory standards from 'good' to 'requires improvement' by suspending homes where this happened on three occasions. This was to address the fact that there were no financial penalties to the 'requires improvement' rating, however suspension by the Council clearly has an impact on care home providers as they are then not commissioned by the Council to have further placements. As a consequence of this suspension, Social Workers and individual commissioning nurses will also routinely review the care the residents receive. This approach has had a positive impact on episodes of homes repeatedly slipping back in regulatory standards.
- 6.5 The Council are not however in a position to withhold or have financial sanctions around poor ratings, as this would impact on the care provided.
- 6.6 A recent study undertaken by the Council revealed that there was no correlation between the incidence of COVID 19 and the CQC ratings of care homes.
- 6.7 In 2021, the team will review the work that has been undertaken during the pandemic: looking at what has worked well and areas for improvement in order to ensure that the care provided to our most vulnerable is safe.

7.0 FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications arising from this report.

8.0 LEGAL IMPLICATIONS

- 8.1 The Council has a statutory duty to meet the needs of people under the Care Act 2014 and to ensure they commission sufficient good quality provision.

9.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 9.1 There are no resource implications arising from this report.

10.0 RELEVANT RISKS

- 10.1 If service-users are not afforded suitable quality care their safety may be compromised and as a result, S42 safeguarding enquires may need to be instigated to decide what action is needed to help and protect adults at risk. Low level care concerns that do not meet the threshold for a safeguarding investigation will follow the care concern process, whereby the care provider will be expected to complete a report on the findings and lessons learnt to reduce the risk of re-occurrence.

11.0 ENGAGEMENT/CONSULTATION

11.1 Consultation takes place over council rates and fees for these services.

12.0 EQUALITY IMPLICATIONS

12.1 The law as it stands is designed to protect the most vulnerable residents and ensure services provided to them meet their needs and expectations.

13.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

13.1 The recommendations of this report are carbon and emissions neutral and do not adversely affect the Council’s carbon reductions target.

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APPENDICES

N/A

REFERENCE MATERIAL

CQC Reports.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

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ADULT SOCIAL CARE AND HEALTH COMMITTEE

Monday, 18 January 2021

REPORT TITLE:	COMMITTEE WORK PROGRAMME - ADULTS COMMITTEE
REPORT OF:	DIRECTOR OF CARE AND HEALTH

REPORT SUMMARY

The Adult Social Care and Health Committee, in co-operation with the other Policy and Service Committees, is responsible for proposing and delivering an annual committee work programme. This work programme should align with the corporate priorities of the Council, in particular the delivery of the key decisions which are within the remit of the Committee. It is envisaged that the work programme will be formed from a combination of key decisions, standing items and requested officer reports. This report provides the Committee with an opportunity to plan and regularly review its work across the municipal year. The work programme for the Adult Social Care and Health Committee is attached as Appendix 1 to this report.

RECOMMENDATION

Members are invited to note and comment on the proposed Adult Social Care and Health Committee work programme for the remainder of the 2020/21 municipal year.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION

- 1.1 To ensure Members of the Adult Social Care and Health Committee have the opportunity to contribute to the delivery of the annual work programme.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 A number of workplan formats were explored, with the current framework open to amendment to match the requirements of the Committee.

3.0 BACKGROUND INFORMATION

- 3.1 The work programme should align with the priorities of the Council and its partners. The programme will be informed by:

- The Council Plan
- The Council's transformation programme
- The Council's Forward Plan
- Service performance information
- Risk management information
- Public or service user feedback
- Referrals from Council

Terms of Reference

The Adult Social Care and Health Committee is responsible for the Council's adult social care and preventative and community based services. This includes the commissioning and quality standards of adult social care services, incorporating responsibility for all of the services, from protection to residential care, that help people live fulfilling lives and stay as independent as possible as well as overseeing the protection of vulnerable adults. The Adult Social Care and Health Committee is also responsible for the promotion of the health and wellbeing of the people in the Borough. The Committee is charged by full Council to undertake responsibility for:

a) adult social care matters (e.g., people aged 18 or over with eligible social care needs and their carers);

b) promoting choice and independence in the provision of all adult social care;

c) all Public Health functions (in co-ordination with those functions reserved to the Health and Wellbeing Board and the Overview and Scrutiny Committee's statutory health functions);

d) providing a view of performance, budget monitoring and risk management in relation to the Committee's functions; and

e) undertaking the development and implementation of policy in relation to the Committee's functions, incorporating the assessment of outcomes, review of effectiveness and formulation of recommendations to the Council, partners and other bodies, which shall include any decision relating to:

(i) furthering public health objectives through the development of partnerships with other public bodies, community, voluntary and charitable groups and through the improvement and integration of health and social care services;

(ii) functions under or in connection with partnership arrangements made between the Council and health bodies pursuant to Section 75 of the National Health Service Act 2006 ("the section 75 Agreements");

(iii) adult social care support for carers;

(iv) protection for vulnerable adults;

(v) supporting people;

(vi) drug and alcohol commissioning;

(vii) mental health services; and

(viii) preventative services.

4.0 FINANCIAL IMPLICATIONS

4.1 This report is for information and planning purposes only, therefore there are no direct financial implication arising. However, there may be financial implications arising as a result of work programme items.

5.0 LEGAL IMPLICATIONS

5.1 There are no direct legal implications arising from this report. However, there may be legal implications arising as a result of work programme items.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no direct implications to Staffing, ICT or Assets.

7.0 RELEVANT RISKS

7.1 The Committee's ability to undertake its responsibility to provide strategic direction to the operation of the Council, make decisions on policies, co-ordinate spend, and maintain a strategic overview of outcomes, performance, risk management and budgets may be compromised if it does not have the opportunity to plan and regularly review its work across the municipal year.

8.0 ENGAGEMENT/CONSULTATION

8.1 Not applicable.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

This report is for information to Members and there are no direct equality implications.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 This report is for information to Members and there are no direct environment and climate implications.

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APPENDICES

Appendix 1 – Work programme

BACKGROUND PAPERS

Wirral Council Constitution
Forward Plan
The Council's transformation programme

SUBJECT HISTORY (last 3 years)

Council Meeting	Date



**ADULT SOCIAL CARE AND HEALTH COMMITTEE
WORK PROGRAMME 2020/21**

**PROPOSED AGENDA FOR ADULT SOCIAL CARE AND HEALTH COMMITTEE
18th January 2020 – Deadline for SLT – 10 December**

Item	Key Decision Yes/No	Lead Departmental Officer	Wirral Plan Priority
Wirral Evolutions	Yes	Ursula Bell	
Deprivation of Liberties inc in domestic settings	No	Jason Oxley	
Extra Care Housing Tender	Yes	Jayne Marshall	
Extra Care Housing Capital Report	Yes	Simon Garner	
Adults Safeguarding Board Report	No	Lorna Quigley	
Future Safeguarding Arrangements	Yes	Simon Garner/ Paul Carr	
Quality Assurance – Care Homes	No	Jason Oxley	
Performance Monitoring Report – Quarter four	No	Nancy Clarkson	
Budget Monitoring Report	No	Graham Hodkinson	
NHS 111 Think First Project.	No	Simon Banks	
Covid Response Update	No	Julie Webster	
Work Programme Update/Committee Terms of Reference	No	Victoria Simpson	All

Deadline for SLT	Deadline for Cleared Reports	Agenda Published
10 December	21 December	TBC

KEY DECISIONS

Item	Approximate timescale	Lead Departmental Officer	Wirral Plan Priority
Intermediate Care Bed Based Commission	April 2021	Graham Hodgkinson	<i>'Active and Healthy Lives'</i>
Early Intervention and Prevention Commission	February 2021	Graham Hodgkinson	<i>'Active and Healthy Lives'</i>

ADDITIONAL AGENDA ITEMS – WAITING TO BE SCHEDULED

Item	Approximate timescale	Lead Departmental Officer
Public Health – Obesity	2020/21	Julie Webster
Public Health – Alcohol	2020/21	Julie Webster
Public Health – Dental Care	2020/21	Julie Webster
Public Health – Vaccinations	2020/21	Julie Webster
Domestic Abuse Strategy Update	2020/21	Mark Camborne/Elizabeth Hartley
WUTH CQC Improvement Plan	2020/21	Janelle Holmes/Paul Moore (WUTH)
Clatterbridge Cancer Centre – Site Update	2020/21	Liz Bishop (CCC)
Commissioning Priorities and Framework	March 2021	Graham Hodgkinson
Domestic Abuse Strategy – Future Joint Working with Childrens	TBC	Elizabeth Hartley
Community Care Services Review	TBC	Graham Hodgkinson
All Age Disability	TBC	Jason Oxley/Simon Garner
Future Safeguarding Arrangements	Jan 2021	Jason Oxley
Extra Care Housing Model	March 2021	Simon Garner

Intermediate Care		
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STANDING ITEMS AND MONITORING REPORTS

Item	Reporting Frequency	Lead Departmental Officer
Financial Monitoring Report	TBC	Shaer Halewood
Performance Monitoring Report	TBC	Carly Brown
Adult Social Care and Health Committee Work Programme Update	TBC	Committee Team
Social Care Complaints Report	Annual Report – January 2021	Simon Garner
Adults Safeguarding Board	Annual Report – January 2021	Lorna Quigley
Public questions	Each meeting	

WORK PROGRAMME ACTIVITIES OUTSIDE COMMITTEE

Item	Format	Timescale	Lead Officer	Progress
Working Groups/ Sub Committees				
Task and Finish work				
Quality Accounts 2020/21	Task & Finish	May 2021	Committee Team	
Spotlight sessions / workshops				
County Lines Action Update	Workshop	2020/21	Paul Boyce/Tony Kirk	
Public Health Implications of 5G Roll Out	Workshop	2020/21	Julie Webster	
Corporate scrutiny / Other				
Performance Reporting Review	TBC	TBC	TBC	

