

## DUE DILIGENCE EXERCISE

### Transfer of service to Cheshire and Wirral Partnership NHS Trust (CWP) to create an All Age Disability and Mental Health Service (AADMHS)

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## 1. Introduction

Wirral Council (WBC) intends to create an All Age Disability and Mental Health service in partnership with CWP in August 2018. This follows the successful creation of an integrated service for older people and adults, by transferring staff and related resources to Wirral Community Foundation Trust (WCFT) in June 2017 under a S75 agreement.

Implementation of this proposal will mean that Wirral is amongst the few Local Authority areas nationally to have fully integrated Social Care functions for adult services, delivered by the NHS under contract. The inclusion of related services for children with a disability as part of an All Age Disability and Mental Health Service (AADMHS) creates a unique opportunity for Wirral to achieve seamless services for people with a disability, regardless of their age.

Integration of Social Work and related functions is a key component of Wirral's strategy and aligns to the Wirral Plan and associated pledges.

Political support for the development is strong and partner organisations recognise the benefits of organising services in this way.

Alongside this development, is the creation of Wirral Health and Care Commissioning which brings together WBC and Wirral NHS Clinical Commissioning Group (CCG) as a formal entity to commission services jointly for residents of Wirral, under pooled budget and single contracting arrangements..

Learning from the service transfer to WCFT has resulted in a clearer understanding of the issues and risks, and potential solutions, in creating this service. For that service transfer, an extensive due diligence exercise was undertaken by an external contractor, at a significant cost. A decision has been taken that WBC has sufficient knowledge and expertise amongst its officers to conduct an internal due diligence exercise for this service transfer proposal. CWP will make its own arrangements for due diligence of the proposal prior to entering into the partnership agreement.

This exercise will consider the proposed arrangements, risks and impacts, and will assist Chief Officers and Elected members in key decision making on the proposed service transfer.

### Overview

A transformation programme is underway to develop an AADMHS by bringing together Social Work and related services that are currently provided by the Council's Children with Disabilities Team, Integrated Disability Services and Adult Mental Health Teams. The proposal is to bring these services together with Community Mental Health and Community Disability Services provided by CWP. This would involve the transfer of approximately 130 staff from the Council to CWP, to deliver an integrated service under a Section 75 contract.

The proposal involves three phases, the transfer of service and staff, a stabilisation phase, and a service development stage. It is at the service development stage where the full benefits can be achieved.

## **2. Strategic alignment.**

The proposal aligns closely with the Wirral Plan, Pledges, and Strategies. Key Strategic Outcomes to be delivered through this initiative will contribute to the following Wirral Pledges:

### Community Services are joined up and accessible

Services will be commissioned across health and care to get the best outcomes for people within available resources.

People with disabilities live independently.

The All Age Disability and All Age Mental Health Service will ensure that people are supported to remain as independent as is possible, to be in more control of their support arrangements and to participate in their local communities.

Wirral Residents live healthier lives.

Services will be provided on an all age, whole system basis ensuring that there is a clear link between the 2020 partnership pledges and the Healthy Wirral Programme.

Vulnerable children reach their full potential

Children with disabilities will be supported to plan towards greater independence and to achieve their goals.

WBC is committed to delivering services differently to meet the needs of its population where this makes sense to do so. It promotes a more commercial, business focussed approach, maximising the opportunities of collaboration, partnerships and efficiencies through working towards shared aims and objectives.

Wirral Health and Care Commissioners (WHCC) are planning for Place Based Care, and services based around people and their natural communities.

This proposal aligns closely with the strategic aims of both WBC and WHCC and offers an opportunity for WBC to achieve its strategic aims.

**Risk: Low**

### **3. Staffing numbers and costs**

As at 25/07/18, it is proposed that 128.61 FTE posts will transfer to CWP. This is comprised of 142 individual posts, of which 122 are filled (112.02 FTE) and 20 are vacant (16.59 FTE). The current budget for these posts, proposed to be transferred to CWP as part of the overall contract price, is £5.0m. Note that all of these figures are subject to change prior to the 19/08/18 transfer date and that some of these changes may be materially significant.

Staff will transfer to CWP under TUPE protections and future appointments to vacancies by CWP will be on NHS terms and conditions.

Unpaid leave days continue as part of the collective agreement with Trade Unions and for the duration of that agreement. This cost reduction is built into the contract value.

A vacancy factor continues to be applied. This cost reduction is built into the contract value.

Vacancies are funded as the posts are required and at various stages of being recruited to. Any use of agency staff cover by CWP is to be funded within the contract value.

The staff costs due to the transfer of staff are costs that are currently budgeted for by WBC and present no additional cost. The difference is that unspent budget relating to funded vacancies will be retained by CWP post transfer, who may use the available funds to cover their costs associated with covering vacant posts with agency staff.

Additional cost to WBC: Nil on transfer.

There is a potential risk that in the later years of the contract, if CWP transfer staff to NHS Agenda for Change pay grades, then staff at or near to the top of grade at point of transfer may attract higher pay due to Agenda For Change bands extending further than JNC current Grades. This may also be the case for new appointments by CWP post transfer.

Annual contract price review discussion will evaluate the staffing costs and data for the service post transfer and consider this, together with vacancies, in setting the contract price for future years. This has the opportunity to mitigate for any risk of rising staff costs in later years of the contract.

#### CWP as an employer

CWP operates from 66 sites across Cheshire and Merseyside, including Wirral, Chester, Winsford, Crewe, Macclesfield, Sefton and Trafford. CWP employs approximately 3,500 staff in a variety of roles to provide quality care services for clients and their families.

One of the Trust's strategic objectives is to "Be a model employer and have a caring, competent and motivated workforce"

The organisation is supported by a range of employment policies and practices to provide a working environment that enables staff to perform to the best of their ability. This includes training and professional development opportunities, a health and wellbeing strategy, staff engagement campaigns and a range of staff benefits. The Trust also recognises trade unions and has an active dialogue for negotiation and consultation with trade unions as part of its business processes.

**Risk: Low.**

#### **4. Care Budget allocation and monitoring arrangements.**

The care budget will be retained within WHCC as a pooled budget with Wirral CCG. Contractual delegation rules for authorisation of support cost expenditure replicate the current arrangements in place within WBC. CWP, under the contract, will be required to gain authorisation from WBC commissioners for individual spending above delegated levels detailed within the contract. This is currently set at £1500 per week.

Draw down of care budget to meet eligible assessed needs of people supported by CWP will be reported through formal monthly contract monitoring meetings, and through a partnership approach between WBC accountants and CWP.

Any projected care budget overspend situation will be subject to discussion and remedial action via contract monitoring arrangements. Any overspend on the care budget, will, however, remain with WHCC as part of the retained pooled budget or otherwise.

The value of the care budget allocation available to CWP to draw down against is detailed in the contract, and at the time of writing is: £50.3 for 2018/19.

There is not anticipated to be any change to the risk of an overspend against the care budget, as a result of the proposed transfer.

**Risk: Low.**

#### **5. Pensions – arrangements and costs**

Staff transferring to CWP under TUPE arrangements will do so with retained membership in the Local Government Pension Scheme (LGPS). CWP will become an Admitted Body to the Merseyside Pension Fund (MPF). Therefore, staff transferring from WBC employment to CWP employment remain as members of the LGPS for the duration of their employment and continue to contribute and accrue membership, unless they elect to apply for alternative employment within, or external to, CWP.

New appointments made by CWP to the service will join the NHS Pension scheme. If transferred staff subsequently become WBC employees again post transfer to CWP, and where they have had no break in service, WBC will recognise their continuous service whilst employed by CWP. However, staff who become employed by other Local Authorities may not have their continuous service recognised by the new employer unless agreed otherwise by the employing local Authority.

The MPF scheme will be fully funded at point of transfer, and exit costs at the end of the contract will be met by WMC with the exclusion of costs due to circumstances under the control of CWP, and which are detailed in the contract.

WBC will act as Guarantor for the scheme. No bond will be required of CWP.

An actuarial evaluation has been undertaken by MPF at a cost of £2,315 to WBC.

The required employer contribution has increased from 14.6% to 18.9%.

This is a cost of approximately £149k which will be shared 50/50 with the annual cost to WBC being £74k

Triennial evaluations of pension scheme will indicate if a change is required to employer contribution rates (CWP), and these will be discussed as part of the annual contract price discussion. There is a potential that employer contribution rates will rise at triennial evaluation. As a closed scheme, the recovery period for any future deficit accruing is usually shorter than the MPF as a whole. If a significant increase is required in the future this could potentially have an inflationary effect on the contract price, although the contract price review would consider costs and budgets as a whole.

It has been agreed between both parties that any subsequent rise in the employer's contribution rate, up to a maximum of a further 4%, will continue to be met jointly, by both parties, on a 50:50 basis. Any increase beyond 4% will trigger an extraordinary contract review meeting to agree a funding approach.

If the service transfer to CWP was not to take place, then the staff would remain in the MPF at the current employer contribution rate and these costs would not materialise. Therefore a Risk Rating of Medium has been applied.

**Risk: Medium**

## **6. CWP financial sustainability.**

The Council has analysed CWP's final accounts for the four years 2014/15 to 2017/18 and obtained information directly from CWP themselves. CWP has been in existence since 01/03/17, when the NHS Act 2006 came into force. Its workforce is large (3,110) and stable (<4% variance over last 4 years) and it is a registered charity. Its turnover of over £160m is stable and shows growth for each of the last four years. Operating expenses are also stable and show signs of efficiencies between 2016/17 and 2017/18, delivering a combined surplus of £2.2m over the last three years. CWP liquidity levels are such that we can be confident that it is able to pay its short term debts as they fall due. On balance, the analysis of CWP's financial sustainability is favourable and therefore represents a low risk to the Council.

**Risk: Low**

## **7. CWP registration and inspection reports**

CWP was last inspected in December 2015. Overall the service is rated as "Good" It is important to note that the service operates on a footprint that is significantly larger

than Wirral, and with different types of services in different areas. Most of the services operated by CWP are not comparable to social care services and are more clinical by nature. Therefore, much of the inspection report is not directly relevant, although it provides an informative overall “Good” rating of CWP as a provider. The inspection report falls into five main areas which are rated as either Outstanding, Good Requires Improvement or Inadequate:

Effective-Good  
Safe-Requires improvement  
Responsive -Good  
Caring -Outstanding  
Well Led –Good

With no “Inadequate” ratings, and only one “Requires Improvement”, overall CWP is a good service provider with some areas of excellence.

**Risk: Low**

## 8. CWP Quality and Compliance

CWP are compliant with most areas of Schedule 4 of the NHS Standard contract relating to the quality schedule. As with other providers, there is a plan and trajectory for compliance with accessible information standards in relation to equality and inclusion requirements.

CWP have 5 national 2 year CQUINs which span 2017 -2019.

<b>1a (improvement of health and wellbeing of NHS staff)</b>	<b>Non-Compliant</b>
<b>1b Healthy food for NHS staff, visitors and patients</b>	<b>Full Compliance</b> Fully satisfied with the explanations received
<b>1c (improving the uptake Flu vaccination)</b>	<b>Full Compliance</b>
<b>3a Improving physical healthcare to reduce premature mortality in people with SMI</b>  Cardio metabolic assessment and treatment for patients with psychoses	<b>Full achievement for inpatients</b>  <b>Partial achievement for CMHT and Early intervention in psychosis.</b>
<b>3b Improving physical healthcare to reduce premature mortality in people with SMI</b>  Collaborating with primary care clinicians	<b>Full compliance</b> Action plan embedded within the evidence
<b>4 Improving services for people with mental health needs who present to A&amp;E</b>	<b>Full compliance</b> 55% reduction
<b>5 Transitions out of children and young people’s mental health services (CYPMHS)</b>	<b>Full compliance</b> Detailed evidence submitted. Comprehensive Wirral



		multiagency engagement plan in place for transitions plan. Transitions Operational group in place with Education. Local Authority, Adults Mental health and CAMHS and acute NHS trust .Detailed tracking data provided
<b>9 a- e</b>		<b>Full compliance</b> Detailed evidence submitted. Compliance also confirmed by Wirral Public Health colleagues supporting CWP to achieve these requirements
<b>CQUIN 9 - Tobacco</b>	<b>9a Tobacco screening</b>	
	<b>9b Tobacco brief advice</b>	
	<b>9c Tobacco referral and medication offer</b>	
<b>CQUIN 9 – Alcohol</b>	<b>9d Alcohol screening</b>	
	<b>9e Alcohol brief advice or referral</b>	

- Numbers of Serious Incidents reported via national reporting system StEIS between April 2017 – March 2018 = 53. CWP are not an outlier on NHSE data surveillance in comparison with other Mental Health organisations.
- Two Regulation 28 “Preventing Future Deaths” have been issued by the coroner in the last 12 months. Immediate actions and action plans are formulated to address issues and concerns. CCG is kept informed by CWP.
- A robust serious incident reporting system is in place with a recent restructure to support more localised discussions and timely responses to Serious Incidents.
- RCA (Root Cause Analysis) within the national serious incident framework guidance has not always met the required timescales. This is improving and is reflected in a number of extension requests.
- There is good engagement from the CWP incidents team with the CCG.

CWP submitted its statement of Quality Account for 2017/18. The Chair of Wirral CCG wrote to CWP to recognise their commitment to quality and to continuous improvement.

**Risk: Low**

## 9. CWP Complaints

A comprehensive learning from experiences report is provided by CWP to the Quality Improvement Team each Trimester. This triangulates learning and themes across the organisation from claims, complaints, incidents and patient & client engagement /feedback sources. The “Learning from Experience” report aggregates qualitative and quantitative analysis from key sources of feedback from people who access and deliver Trust services, and other relevant sources of learning.

Current themes from complaints include:

Staff attitude	30%
Communication/ information	15%
Dissatisfied with access to services	1%
Medication	1%
Care Planning	1%

These are subdivided in the report to gain better insight and scrutiny.

**Risk: Low**

## 10. Contractual framework arrangements

The contract vehicle will be a S75 Agreement, supported by an extensive Service Specification.

Regulations made under Section 75 of the National Health Service Act 2006 enable certain NHS bodies and certain local authorities to enter into arrangements for or in connection with the exercise of prescribed health related functions of local authorities if the arrangements are likely to lead to an improvement in the way in which these functions are exercised.

WBC Legal Service have considered the service scope and have concluded that all the delegated duties and functions described in the contract framework can legally be delivered by CWP on behalf of WBC and that a S75 Agreement is the appropriate contract vehicle. Particular consideration has been given to the child protection functions and mental health statutory functions.

Where related duties or functions cannot be delegated, arrangements are described clearly in the contract and supporting Service Specification. Examples where this applies are the Approval and Renewal processes for Approved Mental Health Professionals under the Mental Health Act 1983 and the Supervising Authority functions that WBC holds under the Mental Capacity Act 2005.

A decision has been taken to retain the decision making on child protection related matters within WBC due to the potential risk of delegating this out fully. This reduces any risks in this regard.

The contract also contains the governance and contract monitoring arrangements as contractual requirements. The contract clearly sets out the statutory duties, practice standards, performance standards and roles and responsibilities.

**Risk: Low**

## **11 Corporate and back office support functions**

- a) Payroll –CWP will arrange payroll services through their payroll supplier.
- b) Training- a training budget is included in the contract price, with additional training offer from WBC.
- c) Legal advice-WBC will provide legal advice to CWP on case matters within the service area. The contract contains details of the amount of legal support to be available to CWP.
- d) Principal Social Worker- There is a Principal Social Worker role for both Children and Adults within WBC. These are vital roles, retained by WBC, to ensure that professional and practice standards are sustained with continuous improvement.
- e) Business Information –an element is included in the contact price for Business Information.
- f) Finance and Accountancy- an amount is included in the contact price for Finance Officer support.
- g) HR -an amount is included in the contact price for HR and organisational development.
- h) Assets- services will be operated from two bases currently, one owned by CWP and one owned by WBC. This will operate on a quid pro quo basis with no cross charging.
- i) IT – Staff will transfer with their current laptops and associated IT kit. They will be issued with new mobile telephones. Some new IT infrastructure has been required to enable co-location. Costs have been shared between WBC and CWP. CWP will provide the service with IT support and will maintain and replace IT kit as required. Set up costs are detailed in the contract.
- j) Liquidlogic Case Management System –WHCC will continue to offer system support and system development to the transferring staff.
- k) Management support- an amount is included in the contact price for management secretarial support.

**Risk: Low**

## 11. VAT

For all services provided by the Council to CWP, VAT will be applied in line with the Council's normal VAT regulations. As an NHS body, CWP has a more limited scope to recover VAT from HMRC, therefore where services are 'bought back' from the Council in this way, an additional VAT liability is likely to be incurred by CWP. It has not yet been agreed how the additional costs of unrecoverable VAT will be shared between the Council and CWP, however, due to the relatively small value of services which CWP is buying back from the Council, the financial implications are likely to be relatively immaterial. The financial risk of additional VAT costs, therefore, is considered to be low.

**Risk: Low**

## 12. Implications for WBC corporate support services.

As more functions and services of WBC are delivered via alternative delivery models, there are implications for WBC's corporate support services. WBC will need to consider and plan for the type and scale of the corporate and back office support function it will require in the future. WBC is moving through a period of change, and its ultimate shape and size is not yet known. However, it is likely that the organisation will continue to reduce its overall direct employee numbers given its strategic direction. In the short term, there are likely to be some additional costs to delivering differently as some support function costs will need to be incorporated into the contract price of new delivery models (e.g. AADMHS), whilst at the same time the corporate support service within WBC cannot yet reduce.

As this is likely to result in additional cost, which is a feature of more than one alternative delivery model service, then the risk must currently be rated as Medium.

**Risk: Medium**

## 13. Governance.

Decisions to enact the service transfer will be made at:

- Strategic Integrated Commissioning Board
- CWP Board.

The governance arrangements post transfer are described within the contract and Service Specification, and include the following contractual requirements:

- Monthly contract monitoring meeting
- Quarterly Contract Review
- Quarterly Partnership Governance Board
- Annual Service Review

- Annual contract price review

The Assistant Director of Health and Care Outcomes will hold responsibility for contract monitoring and will report to the Director of Care and Health (Statutory Director of Adult Social Care).

The Assistant Director of Health and Care Outcomes will report on the care budget draw down to the Pooled Funds Executive Group and the Strategic Integrated Commissioning Board as required.

The Cabinet Member for Adult Social Care and the Cabinet Member for Children's services will co-chair the Partnership Governance Board which will be attended by the Principal Social Worker for Adults and the Principal Social Worker for Children. This service will be subject to the scrutiny of the Health and Care and Children's and Young Peoples Overview and Scrutiny Committees at their request.

It is considered that robust governance is in place to ensure that the service is fulfilling its contractual and statutory duties, to the required standard, and within the costs allocated.

#### Organisational Governance: Foundation Trusts

CWP is a Foundation Trust. Foundation Trusts are self-governing organisations with financial freedom to raise capital from both public and private sectors within borrowing limits.

Each NHS foundation trust has a duty to consult and involve a board of governors – including patients, staff, members of the public, and partner organisations – in the strategic planning of the organisation.

CWP is governed by a Board of Directors, including Executive Directors, Non-Executive Director's, service user and carer governors, public governors and staff governors.

They are overseen and supported by NHS Improvement (an umbrella organisation). NHS improvement can hold a foundation trust to account – for example, putting trusts on special measures.

**Risk: Low**

There are additional recurrent costs associated with running the AADMHS, which CWP will incur over the lifetime of the contract. Through negotiation, the Council has agreed to fund some of these costs. This is set out as follows:

Service	CWP Cost	Agreed WBC Contribution
	£	
Finance	24,937	16,624
Business Intelligence	30,876	20,584
HR/OD	39,899	33,249
Payroll	7,800	7,800
Training	42,000	42,000
Complaints/FOI	30,876	20,584
ICT	30,408	-
Contracting	20,584	-
Admin/Secretarial	14,219	14,219
Other Trust Functions	14,219	-
	<b>255,818</b>	<b>155,060</b>

There are also a number of one-off costs of implementation that will be incurred as a result of the transfer, towards which the Council has agreed to make a contribution. The costs themselves are as follows:

Item	Value (£)
I.C.T – Millennium	52,464
I.C.T. – Network	42,748
I.D. Badges	189
D.B.S. Checks	5,985
Legal/Due Diligence	22,000
V.A.T. Advice	13,000
Procurement Set-Up and Training	3,400
	<b>139,786</b>

It has been agreed that it will make a contribution of £70,000 towards these one-off costs.

The total additional costs to the Council, as a result of setting up the AADMHS, is as follows:

Item	Value (£)
Recurrent Costs	155,060
Additional Pension Liability (recurrent)	74,000
One-Off Costs of Implementation	70,000
	<b>299,060</b>

#### **14. Conclusion and recommendation**

It is recommended that this report is considered as part of the final decision making process. The overall risk is low and the proposal fits strongly with the strategic direction of WBC and WHCC.

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