

Memorandum of Understanding

November 2019

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Foreword

We have agreed to develop this Memorandum of Understanding to strengthen our joint working arrangements and to support the next stage of development of our Partnership. It builds on our existing collaborative work to establish more robust mutual accountability and break down barriers between our separate organisations.

We all agree that working more closely together is the only way we can tackle the challenges we face and achieve our ambitions. This Memorandum demonstrates our clear commitment to do this.

1. Parties to the Memorandum

1.1. The members of the Devon ICS Partnership and parties to this Memorandum, are:

- Devon Partnership NHS Trust (DPT)
- Livewell Southwest (LSW)*
- Northern Devon Healthcare NHS Trust (NDHT)
- Royal Devon and Exeter NHS Foundation Trust (RDE)
- University Hospitals Plymouth NHS Trust (UHP)
- South Western Ambulance Service NHS Foundation Trust (SWASFT)**
- Torbay and South Devon NHS Foundation Trust (TSD)
- Devon County Council (DCC)
- Plymouth City Council (PCC)
- Torbay Council (TC)
- NHS Devon CCG
- NHS England
- NHS Improvement

**(n.b Although Livewell Southwest is an independent social enterprise, throughout this document the term “NHS organisations” should be read as including Livewell Southwest)*

*** (SWASFT is a partner within the Devon ICS with respect to the services that it provides within the Devon footprint. It is recognised that SWASFT will also be a partner in other ICS arrangements)*

1.2. As members of the Partnership all of these organisations subscribe to the values and behaviours stated below, and agree to participate in the governance and accountability arrangements set out in this Memorandum.

1.3. It is recognised that some of these organisations will have different roles within the ICS (e.g. provider and commissioner responsibilities). We will ensure that, at all times, organisations and their representatives are clear on the capacity in which they are acting and that there are robust systems for the management of potential conflict of interests.

Term

1.4. This Memorandum shall commence on the date of signature of the Partners. It shall be reviewed within its first year of operation to ensure it remains consistent with the evolving requirements of the Partnership as an Integrated Care System. It shall thereafter be subject to an annual review of the arrangements by the ICS Board.

Local Government role within the partnership

1.5. The Devon ICS includes three local government partners. Together, they work with the NHS as commissioning and service delivery partners, as well as exercising formal powers to scrutinise NHS policy decisions.

1.6. Within the Devon ICS Partnership the NHS organisations and Councils will work as equal partners, each bringing different contributions, powers and responsibilities to the table.

1.7. Local government's regulatory and statutory arrangements are separate from those of the NHS. Councils are subject to the mutual accountability arrangements for the partnership. However, because of the separate regulatory regime certain aspects of these arrangements will not apply. Most significantly, Councils would not be subject a single NHS financial control total and its associated arrangements for managing financial risk. However, through this Memorandum, Councils agree to align planning, investment and performance improvement with NHS partners where it makes sense to do so. In addition, democratically elected councillors will continue to hold the partner organisations accountable through their formal Scrutiny powers.

Partners in Local Places

1.8. All of the Councils, CCGs and Healthcare Providers will be part of their respective local place-based partnership arrangements. The extent and scope of these arrangements is a matter for local determination, but they typically include elements of shared commissioning, integrated service delivery, aligned or pooled investment and joint decision-making.

2. Introduction and context

2.1. This Memorandum of Understanding is an agreement between the Devon health and care partners. It sets out the details of our commitment to work together in partnership to realise our shared ambitions to improve the health of the people who live in our area, and to improve the quality of their health and care services.

2.2. Our partnership is not a new organisation, but a new way of working to meet the diverse needs of our citizens and communities. NHS services will come together with local authorities, charities and community groups to agree how we can improve people's health and improve the quality of their health and care services.

2.3. We published our first high level proposals to close the health, care and finance gaps that we face in 2016. Since then we have made significant progress to build our capacity and infrastructure and establish the governance arrangements and ways of working that will enable us to achieve our aims.

Purpose

2.4. The purpose of this Memorandum is to formalise and build on these partnership arrangements. It does not seek to introduce a hierarchical model; rather it provides a mutual accountability framework, based on principles of subsidiarity, to ensure we have collective ownership of delivery. It also provides the basis for a refreshed relationship with national oversight bodies.

2.5. The Memorandum is not a legal contract. It is not intended to be legally binding and no legal obligations or legal rights shall arise between the Partners from this Memorandum. It is a formal understanding between all of the Partners who have each entered into this Memorandum intending to honour all their obligations under it. It is based on an ethos that the partnership is a servant of the people in Devon and of its member organisations. It does not replace or override the legal and regulatory frameworks that apply to our statutory NHS organisations and Councils. Instead it sits alongside and complements these frameworks, creating the foundations for closer and more formal collaboration.

2.6. Nothing in this Memorandum is intended to, or shall be deemed to, establish any partnership or joint venture between the Partners to the Memorandum, constitute a Partner as the agent of another, nor authorise any of the Partners to make or enter into any commitments for or on behalf of another Partner.

2.7. The Memorandum should be read in conjunction with the System Assurance Framework.

Our shared values and behaviours

2.8. We commit to behave consistently as leaders and colleagues in ways which model and promote our shared values:

- We are leaders of our organisation, our place and of Devon.
- We support each other and work collaboratively;
- We act with honesty and integrity, and trust each other to do the same;
- We challenge constructively when we need to;
- We assume good intentions; and
- We will implement our shared priorities and decisions, holding each other mutually accountable for delivery.

Developing new collaborative relationships

2.9. Our approach to collaboration begins in each of the 31 Primary Care Networks (PCNs) which make up Devon, in which GP practices work together, with community and social care services, to offer integrated health and care services for populations of 20,000-60,000 people. These integrated neighbourhood services focus on preventing ill health, supporting people to stay well, and providing them with high quality care and treatment when they need it.

2.10. Neighbourhood services sit within each of our local places. These places are the primary units for partnerships between NHS services, local authorities, charities and community groups, which work together to agree how to improve people's health and improve the quality of their health and care services.

2.11. The focus for these partnerships is moving increasing away from simply treating ill health to preventing it, and to tackling the wider determinants of health, such as housing, employment, social inclusion and the physical environment.

2.12. These place-based partnerships are key to achieving the ambitious improvements we want to see. However, we have recognised that there also clear benefits in working together across a wider footprint and that local plans need to be complemented with a common vision and shared plan for Devon as a whole. We apply three tests to determine when to work at this level:

- to achieve a critical mass beyond local population level to achieve the best outcomes;
- to share best practice and reduce variation; and
- to achieve better outcomes for people overall by tackling 'wicked issues' (ie, complex, intractable problems).

2.13. The Partners acknowledge the statutory and regulatory requirements which apply in relation to competition, patient choice and collaboration. Within the

constraints of these requirements we will aim to collaborate, and to seek greater integration of services, whenever it can be demonstrated that it is in the interests of patients and service users to do so.

2.14. The Partners are aware of their competition compliance obligations, both under competition law and, in particular (where applicable) under the NHS Improvement Provider Licence for NHS Partners and shall take all necessary steps to ensure that they do not breach any of their obligations in this regard.

Further, the Partners understand that in certain circumstances collaboration or joint working could trigger the merger rules and as such be notifiable to the Competition and Markets Authority and Monitor/NHS Improvement and will keep this position under review accordingly. (n.b. it is recognised that proposed changes to the legislation concerning competition in the NHS are under consideration)

2.15. The Partners understand that no decision shall be made to make changes to services in Devon or the way in which they are delivered without prior consultation where appropriate in accordance with the partners' statutory and other obligations.

3. Partnership Governance and Accountability

3.1. The Partnership does not replace or override the authority of the Partners' Boards and governing bodies. Each of them remains sovereign and Councils remain directly accountable to their electorates.

3.2. The Partnership provides a mechanism for collaborative action and common decision-making for issues which are best tackled on a wider scale.

3.3. A single consistent approach for assurance and accountability between Partners on Devon system wide matters will be applied through the governance structures and processes. The details of these arrangements are set out in our System Assurance Framework.

A new model of mutual accountability

3.4. Through this Memorandum the Partners agree to take a collaborative approach to, and collective responsibility for, managing collective performance, agreed collective resources and the totality of population health. The partners will:

- Agree ambitious outcomes, common datasets and dashboards for system improvement and transformation management;
- work through our formal collaborative groups for decision making, engaging people and communities across Devon; and
- identify good practice and innovation in individual places and organisations and ensure it is spread and adopted through the Programmes.

3.5. The Partnership approach to system oversight will be geared towards performance improvement and development rather than traditional performance

management. It will be data-driven, evidence-based and rigorous. The focus will be on improvement, supporting the spread and adoption of innovation and best practice between Partners.

3.6. Peer review will be a core component of the improvement methodology. This will provide valuable insight for all Partners and support the identification and adoption of good practice across the Partnership.

3.7. System oversight will be undertaken through the application of a continuous improvement cycle, including the following elements:

- Monitoring performance against key standards and plans in each place;
- Ongoing dialogue on delivery and progress;
- Identifying the need for support through a clinically and publicly-led process of peer review;
- Agreeing the need for more formal action or intervention on behalf of the partnership; and
- Application of regulatory powers or functions.

National NHS Bodies oversight and escalation

3.8. As part of the development of the Partnership and the collaborative working between the Partners under the terms of this Memorandum, NHS England and NHS Improvement will look to adopt a new relationship with the Partners (which are NHS Bodies) in Devon in the form of enacting streamlined oversight arrangements under which:

- Partners will take the collective lead on oversight of trusts and CCGs and Places in accordance with the terms of this Memorandum;
- NHS England and NHS Improvement will in turn focus on holding the NHS bodies in the Partnership to account as a whole system for delivery of the NHS Constitution and Mandate, financial and operational control, and quality (to the extent permitted at Law);
- NHS England and NHS Improvement intend that they will intervene in the individual trust and CCG Partners only where it is necessary or required for the delivery of their statutory functions and will (where it is reasonable to do so, having regard to the nature of the issue) in the first instance look to notify and work through the Partnership to seek a resolution prior to making an intervention with the Partner.

4. Decision-Making and Resolving Disagreements

4.1. Our approach to making Partnership decisions and resolving any disagreements will follow the principle of subsidiarity. We will take all reasonable steps to reach a mutually acceptable resolution to any dispute.

Collective Decisions

4.2. There will be three levels of decision making:

- **Decisions made by individual organisations** - this Memorandum does not affect the individual sovereignty of Partners or their statutory decision-making responsibilities.
- **Decisions delegated to collaborative forums** - some partners have delegated specific decisions to a collaborative forum, for example the ICS Board. Arrangements for resolving disputes in such cases will be set out in the Terms of Reference of that forum.
- **Whole Partnership decisions** - the Partners will make decisions on a range of matters in the Partnership which will neither impact on the statutory responsibilities of individual organisations nor have been delegated formally to a collaborative forum.

4.3. Collaborative decisions on Partnership matters will be considered by the ICS Board. The ICS Board has no formal powers delegated by any Partner. However, it will increasingly take on responsibility for co-ordinating decisions relating to regulatory and oversight functions currently exercised from outside the Devon system and will look to reach recommendations and any decisions on a best for Devon basis. The terms of reference for the ICS Board will set out clearly the types of decision which it will have responsibility to discuss and how conflicts of interest will be managed. The ICS Board will initially have responsibility for decisions relating to:

- The objectives of priority work programmes and workstreams
- The apportionment of NHS transformation monies from national bodies
- Priorities for NHS capital investment across the Partnership.
- Operation of the single NHS financial control total (for NHS Bodies)
- Agreeing common actions when Places or Partners become distressed
- The management of system performance improvement.

4.4. Executive Leadership Team will make recommendations to the ICS Board on these matters. Where appropriate, the ICS Board will make decisions of the Partners by consensus of those eligible ICS Board members present at a quorate meeting. If a consensus decision cannot be reached, then (save for decisions on allocation of capital investment and transformation funding) it may be referred to the dispute resolution procedure under Paragraph 4.6 below by any of the affected Partners for resolution.

4.5. In respect of priorities for capital investment or apportionment of transformation funding from the Partnership, if a consensus cannot be reached at the Executive Leadership Team meeting to agree this then the Partnership Board may make a decision provided that it is supported by not less than 75% of the eligible ICS Board members. ICS Board members will be eligible to participate on issues which apply to their organisation.

Dispute resolution

4.6. Partners will attempt to resolve in good faith any dispute between them in respect of ICS Board (or other Partnership-related) decisions, in line with the Values and Behaviours set out at 2.8 in this Memorandum.

4.7. Where necessary, Place-based arrangements will be used to resolve any disputes which cannot be dealt with directly between individual Partners, or which relate to existing schemes of delegation.

4.8. The Partnership will apply a dispute resolution process to resolve any issues which cannot otherwise be agreed through these arrangements.

4.9. As decisions made by the Partnership do not impact on the statutory responsibilities of individual organisations, Partners will be expected to apply shared Values and Behaviours and come to a mutual agreement through the dispute resolution process.

4.10. The key stages of the dispute resolution process are

- i. The Partners will seek to resolve the dispute to the mutual satisfaction of each of the affected parties. If the Partners cannot resolve the dispute within 30 days, the dispute should be referred to Executive Leadership Team
- ii. Executive Leadership Team will come to a majority decision (i.e. a majority of eligible Partners participating in the meeting who are not affected by the matter in dispute) on how best to resolve the dispute, applying the Values and Behaviours of this Memorandum, taking account of the objectives of the Partnership. Executive Leadership Team will advise the Partners of its decision in writing.
- iii. If the parties do not accept the Executive Leadership Team decision, or Executive Leadership Team cannot come to a decision which resolves the dispute, it will be referred to an independent facilitator selected by ICS Board. The facilitator will work with the Partners to resolve the dispute in accordance with the terms of this Memorandum.
- iv. In the unlikely event that the independent facilitator cannot resolve the dispute, it will be referred to the ICS Board. The ICS Board will come to a majority decision on how best to resolve the dispute in accordance with the terms of this Memorandum and advise the parties of its decision.

5. Financial Framework

5.1. All NHS organisations in Devon are ready to work together, manage risk

together, and support each other when required. The Partners are committed to working individually and in collaboration with others to deliver the changes required to achieve financial sustainability.

5.2. A set of financial principles have been agreed, within the context of the broader guiding Principles for our Partnership. They confirm that we will:

- Return to living within our means, i.e. the resources that we have available to provide services and deliver against our LTP financial trajectories.
- develop a Devon system response to the financial challenges we face; and
- develop payment and risk share models that support a system response rather than work against it.
- Move towards allocating resources to our system using National Resource Allocation principles

5.3. We will collectively manage our NHS resources so that all Partner organisations will work individually and in collaboration with others to deliver the changes required to deliver financial sustainability.

Living within our means and management of risk

5.4. Through this Memorandum the collective NHS Partner leaders in each Place commit to demonstrate robust financial risk management. This will include agreeing action plans that will be mobilised across the system in the event of the emergence of financial risk outside plans. This might include establishing a system risk reserve where this is appropriate and in line with the legal obligations of the respective NHS body Partners involved.

5.5. Subject to compliance with confidentiality and legal requirements around competition sensitive information and information security the Partners agree to adopt an open-book approach to financial plans and risks in each Place leading to the agreement of fully aligned operational plans. Aligned plans will be underpinned by common financial planning assumptions on income and expenditure between providers and commissioners, and on issues that have a material impact on the availability of system financial incentives

NHS Contracting principles

5.6. The NHS Partners are committed to considering the adoption of payment models which are better suited to whole system collaborative working (such as Aligned Incentive Contracting). The Partners will look to adopt models which reduce financial volatility and provide greater certainty for all Partners at the beginning of each year of the planned income and costs.

Allocation of Transformation Funds

5.7. The Partners intend that any NHS transformation funds made available to the Partnership will be used within the Places. Funds will be allocated through collective decision-making by the Partnership in line with agreed priorities. The

method of allocation may vary according to agreed priorities. However, funds will not be allocated through expensive and protracted bidding and prioritisation processes and will be deployed in those areas where the Partners have agreed that they will deliver the maximum leverage for change and address financial risk.

5.8. The NHS funding provided to Places (based on weighted population, or other formula agreed by the Partners) will directly support Place-based transformation programmes. This will be managed by each Place with clear and transparent governance arrangements that provide assurance to all Partners that the resource has been deployed to deliver maximum transformational impact, to address financial risk, and to meet the efficiency requirements. Funding will be provided subject to agreement of clear deliverables and outcomes by the relevant Partners in the Place through the mutual accountability arrangements and be subject to on-going monitoring and assurance from the Partnership.

5.9. Funding provided to the Programmes will be determined in agreement with Partners through the Executive Leadership Team, subject to documenting the agreed deliverables and outcomes with the relevant Partners.

Allocation of ICS capital

5.10. The Partnership will play an increasingly important role in prioritising NHS capital spending by the national bodies over and above that which is generated from organisations' internal resources. In doing this, the Partnership will ensure that:

- the capital prioritisation process is fair and transparent;
- there is a sufficient balance across capital priorities specific to Place as well as those which cross Places;
- there is sufficient focus on backlog maintenance and equipment replacement in the overall approach to capital;
- the prioritisation of major capital schemes must have a clear and demonstrable link to affordability and improvement of the financial position;
- access to discretionary capital is linked to the mutual accountability framework as described in this Memorandum.

6. National and regional support

6.1. To support Partnership development as an Integrated Care System there will be a process of aligning resources from ALBs to support delivery and establish an integrated single assurance and regulation approach.

6.2. National capability and capacity will be available to support Devon from central teams including governance, finance and efficiency, regulation and competition, systems and national programme teams, primary care, urgent care, cancer, mental health, including external support.

7. Variations

7.1. This Memorandum, including the Schedules, may only be varied by written agreement of all the Partners.

8. Charges and liabilities

8.1. Except as otherwise provided, the Partners shall each bear their own costs and expenses incurred in complying with their obligations under this Memorandum.

8.2. By separate agreement, the Parties may agree to share specific costs and expenses (or equivalent) arising in respect of the Partnership between them.

8.3. Partners shall remain liable for any losses or liabilities incurred due to their own or their employee's actions.

9. Information Sharing

9.1. The Partners will provide to each other all information that is reasonably required in order to achieve the objectives and take decisions on a best for Devon basis.

9.2. The Partners have obligations to comply with competition law. The Partners will therefore make sure that they share information, and in particular competition sensitive information, in such a way that is compliant with competition and data protection law.

10. Confidential Information

10.1. Each Partner shall keep in strict confidence all Confidential Information it receives from another Partner except to the extent that such Confidential Information is required by Law to be disclosed or is already in the public domain or comes into the public domain otherwise than through an unauthorised disclosure by a Partner. Each Partner shall use any Confidential Information received from another Partner solely for the purpose of complying with its

obligations under this Memorandum and for no other purpose. No Partner shall use any Confidential Information received under this Memorandum for any other purpose including use for their own commercial gain in services outside of the Partnership or to inform any competitive bid without the express written permission of the disclosing Partner.

10.2. To the extent that any Confidential Information is covered or protected by legal privilege, then disclosing such Confidential Information to any Partner or otherwise permitting disclosure of such Confidential Information does not constitute a waiver of privilege or of any other rights which a Partner may have in respect of such Confidential Information.

10.3. The Parties agree to procure, as far as is reasonably practicable, that the terms of this Paragraph (Confidential Information) are observed by any of their respective successors, assigns or transferees of respective businesses or interests or any part thereof as if they had been party to this Memorandum.

10.4. Nothing in this Paragraph will affect any of the Partners' regulatory or statutory obligations, including but not limited to competition law.

11. Additional Partners

11.1. If appropriate to achieve the objectives, the Partners may agree to include additional partner(s) to the Partnership. If they agree on such a course the Partners will cooperate to enter into the necessary documentation and revisions to this Memorandum if required.

11.2. The Partners intend that any organisation who is to be a partner to this Memorandum (including themselves) shall commit to the ownership of the system success/failure as set out in this Memorandum.

12. Signatures

12.1. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Memorandum, but all the counterparts shall together constitute the same document.

12.2. The expression "counterpart" shall include any executed copy of this Memorandum transmitted by fax or scanned into printable PDF, JPEG, or other agreed digital format and transmitted as an e-mail attachment.

12.3. No counterpart shall be effective until each Partner has executed at least one counterpart.

Signatures