

Memorandum of Understanding

Between

Wirral Borough Council

And

NHS Wirral Clinical Commissioning Group

This memorandum of understanding is made between:

(1) **Wirral Borough Council** of Town Hall Brighton Street Wallasey Wirral CH44 8ED (“WBC”)

(2) **NHS Wirral Clinical Commissioning Group** of Old Market House, Hamilton Street, Birkenhead, Wirral CH41 5AL (“WCCG”)

each referred to as a “Partner” and together referred to as the “Partners”.

Background

This Memorandum of Understanding (“MOU”) sets out the terms upon which the Partners intend their respective employees who are to work in Wirral Health and Care Commissioning to be managed and how the Partners intend to co-operate in relation to the management of their respective employees in order to achieve the objectives of Wirral Health and Care Commissioning (“WHACC”).

This MOU and any documents annexed to it are also intend to set out the management structure and reporting lines of WHACC for the time being agreed between the Partners.

The Partners do not intend that this MOU to be a legally binding upon the Parties.

Interpretation

“**Data Protection Legislation**” shall mean up to, but excluding 25 May 2018, the Data Protection Act 1998 and thereafter unless and until the General Data Protection Regulation (EU) 2016/679 (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR or the Data Protection Act 1998 and including where applicable the guidance and codes of practice issued by the Information Commissioner.

“**Commissioning Function**” means the administrative function for the provision of integrated commissioning of health and care services for All Age Health and Care in Wirral by WHACC.

“**Management Issues**” means all those matters under an employee’s employment contract requiring action, investigation and / or decisions by the employer including in particular (by way of illustration only and without limitation) appraisals, performance management, pay reviews and awards of other payments and benefits under an employee’s employment contract, periods of sickness absence or other absence, any complaint about an employee (whether or not it would be dealt with under the employer’s disciplinary procedure), any complaint or grievance raised by the employee (whether or not that would be dealt with under the employer’s grievance procedure).

“Personal Data” and “Sensitive Personal Data” shall have the same meaning as in Data Protection Legislation.

“Partnership Agreement” means the Partnership Agreement Relating to the Commissioning of Health and Social Care Services made between the Partners.

Clauses, schedules and paragraph headings shall not affect the interpretation of this Memorandum.

Any reference to this Memorandum includes the Schedules.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to other all other genders.

A reference to a statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same.

Term and Termination

1. This Memorandum shall come into effect on 1st May 2018 and shall continue until it is terminated by agreement of the Partners or until the Partnership Agreement terminates or is terminated.

Management of the Partners’ Employees

2. The Partners agree to work together co-operatively and in good faith in order to ensure that their respective employees are able to work in a manner which positively supports the objectives of WHACC and the delivery of the Commissioning Function.
3. The Partners agree to make their respective employees available to WHACC for the purpose of providing the Commissioning Function.
4. For the avoidance of doubt, any of the employees of WBC who are tasked with working in or for WHACC will remain the employees of WBC and the employees of WCCG who are tasked with working in or for WHACC will remain the employees of WCCG.
5. The Partners have agreed a work place structure for the WHACC which is set out in Schedule 1 of this Memorandum.

6. The Partners confirm that they have provided information and engaged with their respective employees and the representatives of their employees regarding the working arrangements of WHACC. In particular the Partners confirm that they have informed any employees who are likely to be line managed on a day to day basis by a manager, team leader or supervisor who is employed by the other Partner of any changes to their line management.
7. The Partners will ensure that their respective employees assigned to WHACC will perform such duties as may from time to time be assigned to them and comply with the reasonable instructions of their respective line manager provided that any such duties or instructions are properly regarded as part of the Commissioning Function.
8. In the event that any employee is managed on a day to day basis by an employee of the other Partner, the manager's responsibility in relation to an employee of the other Partner will only extend to day to day tasks and instructions relating to the Commissioning Functions and will not extend to any Management Issues.
9. In the event that an employee of one Partner is to be line managed on a day to day basis by an employee of the other Partner, any such employee will be informed of the manager of the employing Partner who they should contact in the event that they need to raise any issues or concerns regarding their employment and / or who will be responsible for dealing with any Management Issues in relation to the employee.
10. The Partners will inform the other Partner of any changes to the contracts of employment of their respective employees if such changes have an impact upon the work which those employees undertake in relation to the Commissioning Function.
11. The Partners will not require the employees of the other Partner to do anything which would constitute a breach of the contracts of employment of the employees of the other Partner and the Partners shall have no authority to vary the terms of the contracts of employment of any employees of the other Partner or make any representations to the employees of the other Partner in relation the terms of their contracts of employment. Where any employee indicates to a line manager of the other Partner that any request of that line manager would constitute a breach of the contract of employment of that employee, the line manager shall inform the employing Partner of that fact and the employing Partner shall consider the purpose of the request by the respective line manager with a view to determining whether the purpose of the request could be achieved in another manner which does not constitute a breach of the contract or employment of the employee.
12. Each Partner shall, in accordance, with its respective policies and procedures, continue to pay all expenses incurred by its employees arising from them carrying out their duties.

13. Each Partner will conduct any appraisals and pay reviews in relation to its own employees in the usual way and deal with any grievances raised by any of its employees or any concerns relating to its employees' conduct, performance, capability or attendance in accordance with its own policies and procedures. A Partner may consult with the other Partner when following any such procedure and before making any determination under such a procedure.
14. For the avoidance of any doubt, a Partner will take no disciplinary action in respect of nor purport to terminate the employment of an employee of the other Partner. Allegations of misconduct of an employee will be dealt with in accordance with the disciplinary policy and procedure of the employing Partner.
15. In the event that a Partner considers that an employee of the other Partner has committed an act or omission which amounts to gross misconduct or some other act which might warrant the employee being suspended or removed from working at WHACC on a temporary basis, it will inform the employing Partner as soon as is practicable and it may make representations to the employing Partner as to whether it believes that the employing Partner should investigate the matter and / or suspend or remove the employee from the workplace temporarily. In the event that the employing Partner does not agree with any such representations made by the other Partner, then the employing Partner will inform the other Partner of its decision and the reasons for it.
16. Each Partner will consider any flexible working time requests made by any of its employees in accordance with its own policy and procedure however the employing Partner will, where necessary, consult with the other Partner and in particular if the employee making such a request is line managed by an employee of the other Partner to ensure that any decision made in response to any such request is made in accordance with the business needs of WHACC and the Commissioning Function.
17. If an employee raises a grievance about an employee of the other Partner, then the other Partner will co-operate, provide any relevant information and take all reasonable steps to ensure the co-operation of its employees in the investigation of such a grievance.
18. The Partners agree to co-operate fully and promptly with each other in order to resolve any issues that may arise in relation to any of their employees.
19. The Partners shall provide any information, documentation, access to premises and employees and assistance (including but not limited to giving witness evidence) to the other Partner in order for the Partners to:
 - (a) carry out their obligations as employer of their respective employees;
 - (b) deal with any grievances or concerns about the performance, conduct, capability, or attendance of any of their respective employees whether under the employing Partner's internal procedures or before any Court or Tribunal.

20. A Partner which has day-to-day line management responsibility for employees of the other Partner shall, in so far as it relates to the Commissioning Function, refer any concern relating to the conduct, capability, performance or attendance of an employee of the other Partner that comes to its attention to the employing Partner as soon as is reasonably practicable.

Annual Leave and Absence

21. The Partners will remain responsible for managing and maintaining records of the annual leave and other absence of their respective employees.
22. In the event that an employee is line managed by an employee of the other Partner, the employing Partner will consult with the respective line manager before authorising any leave request in order that leave is allocated in adherence with the business needs of WHACC.
23. In the event that an employee is line managed by an employee of the other Partner, the employing Partner will inform the respective line manager if the respective employee is absent from work for any reason.

Health and Safety

24. The Partners shall be responsible for the health and safety of their respective employees.

Recruitment of Employees

25. WBC will not induce or attempt to induce an employee of WCCG to leave their employment with WCCG or take up any employment with WBC.
26. WCCG will not induce or attempt to induce an employee of WBC to leave their employment with WBC or take up any employment with WCCG.
27. Paragraphs 25 and 26 will not prevent the Partners from conducting general recruitment exercises or campaigns or from offering employment to an individual (including any employee of the other Partner) in response to such an exercise or campaign.

Data Protection

28. Both Partners will ensure that all personal data processed in connection with this Memorandum and the management of employees in relation to the Commissioning Function is processed in compliance with Data Protection Legislation.

29. The Partners will obtain any consents which are required from their respective employees in order to comply with the Data Protection Legislation for the processing of Personal Data or Sensitive Data for legal, personnel, administrative or management purposes and to take such steps as become necessary pursuant to GDPR (and any implementing UK legislation) to ensure that any Personal Data or Sensitive Data can continue to be processed for those purposes.

Signed by:	On behalf of:	Date:
 Graham Hodkinson	Wirral Borough Council	17/05/18
 Simon Banks	Wirral Clinical Commissioning Group	17/05/18

Schedule 1
Management Structure

See Attached