Greater Manchester Health and Social Care Partnership

Learning Disability and Autism Complex Needs Project
Memorandum of Understanding

Parties

The Parties to this Memorandum of Understanding (MOU) are;

1. Bolton Council
2. NHS Bolton Clinical Commissioning Group
3. Bury Council
4. NHS Bury Clinical Commissioning Group
5. Manchester City Council
6. NHS Manchester Clinical Commissioning Group
7. Oldham Council
8. NHS Oldham Clinical Commissioning Group
9. Rochdale Borough Council
10. NHS Heywood Middleton and Rochdale Clinical Commissioning Group
11. Salford City Council
12. NHS Salford Clinical Commissioning Group
13. Stockport Metropolitan Borough Council
14. NHS Stockport Clinical Commissioning Group
15. Tameside Metropolitan Borough Council
16. NHS Tameside and Glossop Clinical Commissioning Group
17. Trafford Council
18. NHS Trafford Clinical Commissioning Group
19. Wigan Borough Council
20. NHS Wigan Clinical Commissioning Group

Background

Linked to the 'bespoke commissioning' priority of the Greater Manchester Learning Disability Strategy, this programme of work explores a new approach to commissioning support for people with complex needs. The aim of this work is to ensure people get the best possible quality of care and support in the right place at the right time – reducing the number of people placed out-of-area, ensuring a more person-centred approach and effective value for money.

Individuals within the scope of this project are defined within one of the four cohorts below:
Cohort 1 - Men with LD and/or autism and behaviours with histories involving MOJ
Cohort 2 - Women with LD and/or autism and experience of trauma
Cohort 3 - Men with LD and/or autism and behaviours that challenge
Cohort 4 - Men with LD and/or autism and mental ill-health
and:

- part of the transforming care programme or those who have similar needs and who would benefit from services developed to respond to the needs of those cohorts (*and where there is no local plan to support individuals out of hospital)*

or

- on locality dynamic risk registers who may need services to support discharge from hospital or to prevent hospital admission.

Purpose of the Memorandum of Understanding (MOU)

The purpose of the MOU is to have clear arrangements across Greater Manchester Local Authorities and Clinical Commissioning Groups when commissioning through the complex needs project, setting out the roles and responsibilities of the placing authority and host authority, where these are different.

The MOU is not intended to be legally binding and no legal obligations or legal rights shall arise between the Parties from the provisions of the MOU. The Parties enter into the MOU intending to honour all their obligations.

Complex Needs Inter Locality Agreement (Proforma)

An individual agreement will be produced for each proposed new service between the relevant placing and host localities. The placing localities will sign and agree and then it will require the host locality Director of Adult Social Care sign off before any service goes ahead.

The agreement will provide information about the proposed scheme and will include subgroup information, localities involved, provider support costs, property requirements and why the chosen property has been selected in that locality. The full provider support proposal and a project plan including timeline will be included as an appendix.

Any deviation from the Memorandum Of Understanding should be clearly documented in the Complex Needs Inter Locality Agreement.

Current Guidance

We have considered 3 areas of current guidance:

1. CCG - Who Pays Guidance
2. Local Authority - Ordinary Residency
3. Mental Health Act detention and Section 117 aftercare.

Please see Appendix 1 for further detail on the guidance

‘Own our Own’

Localities remain responsible for the individual they are commissioning the care and support for.

The recommendation is to follow 1. Who Pays and 2. Ordinary Residency guidance but not
3. Mental Health Act detention and Section 117 aftercare, with the intention that S117 responsibility remains with the originating locality even if the person is detained. This option could remove the risk that a host authority could become responsible for a person that has been placed through the complex needs project and is later detained.

As the people being placed through the project will have a range of complex needs and all will be on localities dynamic risk registers, there is a higher possibility that they could be detained. Some people will have managed in community provision and have not previously been detained, meaning responsibility under current processes would change to the host authority on detention. This places significant financial risk on host authorities.

Our recommendation is that the placing authority retains responsibility if a person is detained whilst placed in provision commissioned through the complex needs project.

Contracting the Support Provider

The support providers have been selected through a strategic procurement exercise, completed using the GM LD Flexible Purchasing System, exploring a new approach to commissioning support for people with complex needs across GM. Detailed specifications were developed and agreed with GM colleagues for each of the four cohorts identified. The procurement process was a strategic, multi-agency approach involving self-advocates throughout. The successful awarded providers all demonstrated a strong track record of experience, quality and commitment to deliver the complex needs project for GM. The providers are:

Provider & Cohorts		
CareTech *Cohort 2*	**Eden Futures** *Cohorts 3 and 4*	**MacIntyre** *Cohort 1 and 3*
Community Integrated Care *Cohorts 1, 2 and 4*	**Imagine** *Cohort 1 and 2*	**Voyage** *Cohort 3 and 4*
Creative Support *Cohort 1, 3 and 4*	**Future Directions CIC** *Cohort 2*	**Zeno** *Cohort 3*

Each locality will contract with the **support provider separately on a spot contract basis for the individual they are responsible for.** The terms and conditions for the GM LD Flexible Purchasing system and the original specification and provider submissions will also form part of the contracting arrangements for each provider. Please see Appendix 2 – Contract Documentation

In collaboration with the commissioners, the support provider will submit a proposal detailing how they will support each person, suggested support hours and costings, broken down into hourly rates and sleep/ waking night. Transition/discharge costs will be agreed with the support provider and commissioning localities.

GM HSCP will support with the initial discussions around costs of support packages. Hourly rates were submitted by each provider at the start of the process and were considered reasonable by the project working group. Support provider will be asked to enter into open book accounting if required.

It is the expectation that the annual uplift of costings is in line with the host authority standard uplift methodology. In line with Care Act this would be the host authority methodology as this reflects “usual market rate” in that locality.

If a dispute around funding cannot with a support provider, the other support providers for that cohort may be engaged.

A 12-month review service review will be completed in 2022, looking into contracting, funding what has worked and what hasn’t, what do we need to change. A report will be produced with recommendations.

Local services

The host locality commissioners will be involved in the setting up of the service and ALL operational discussions. Basic care plans will be shared with the host locality commissioners, so they have an understanding of the people moving into the area.

Host locality commissioners will notify the local GP’s of the planned provision in the area and where needed, provide the GP with a basic overview of the people and service.

The placing authority and/or CCG will commission a package of care and support that meets the person’s needs. This should include; therapeutic support, psychological support, mental health support, communication support, speech and language therapy and behavioural support where there are identified needs. Where additional local services are required, in the first instance SST support will be requested.

GM HSCP will support discussions between localities where local services are used and where additional capacity across GM may be required.
The host authority/CCG may charge the responsible locality for the ongoing use of local services.

Referral to local services will be managed as follows: -

1. Community Learning Disability Team (CLDT) –patients who meet eligibility criteria may be referred to the CLDT for specific health assessment and advice. To support integrated care, information on the commissioned package should be shared with the CLDT either in advance or at point of referral.

2. Specialist Mental Health services – referrals for specialist mental health assessment and advice not covered by the patient's commissioned package should be made to the Mental Health Access Team for patients who meet the eligibility criteria. Care co-ordination/case management should continue to be provided by the placing CCG / LA however where required due to distance it may be possible to negotiate for a local worker to support this role on behalf of the placing CCG/LA.

3. Responsible Clinician Cover
    a. Patients with a primary mental health need - If the patient has a mental health diagnosis and learning disability and/or autism is a secondary need a referral should be made via the MH Access Team for a CMHT Responsible Clinician.
    b. Patients with a learning disability and/or autism diagnosis only may access limited support through a Transforming Care Responsible Clinician if the patient is on the Placing locality Dynamic Register. The GM CCGs will maintain an Out of Area Monitoring Sheet of patients placed in their locality, which will be reviewed at Dynamic Register meetings.

4. Acute Physical Health Admissions / Primary Health Care
   Physical Health - all patients registered with a local GP are entitled to NHS care funded by the GM CCG.

5. Secondary Care Services including CLDT / Specialist Support Team / LD Crisis Beds / CMHT / Mental Health Admissions and interventions – where patients have significant needs requiring intensive support from local services they will be considered as an out of area placement and the placing CCG may be charged.

Roles and Responsibilities

Each locality will work collaboratively to ensure a placement is not refused or delayed because of uncertainty or ambiguity between localities.

Host Authority

The host authority will have overall responsibility for the provider and service in relation to safeguarding, quality monitoring, provider engagement and CQC registration. The host authority remains responsible even if they have no placements and do not commissioning the provision or support provider. Commissioning localities should fully support the host locality in managing the provider and service.
Localities remain responsible for the individual they are commissioning.
Localities should remain actively involved, ensuring a **named worker** is allocated at all times and all duties are fulfilled in a timely manner.

There will be no more than one service in each locality for each of the four cohorts, unless requested from the host locality specifically.

Review of Services

The host authority will be responsible for the ongoing quality assurance of the provision. They will consider the whole service offer as part of their monitoring and will keep commissioning localities informed of quality assurance activity, any improvement plans, CQC activity and notifications.

Review of Individuals

Care and support reviews will be completed as needed by the responsible locality.

Safeguarding

Local authority statutory adult safeguarding duties apply.

Advocacy

The placing CCG and LA to ensure that independent advocacy is commissioned and offered as appropriate. Commissioners should consider the need to provide non statutory advocacy where the person does not meet the criteria for statutory advocacy (IMHA, IMCA, Care Act).

Discharge process

The full discharge process and cost will be agreed with the placing locality before any discharge commences. The placing locality will facilitate the full discharge process involving practitioners to include clinicians (nurses and social workers etc). They will hold the case for the full discharge process.

Landlord Service Level Agreement

There is no expectation that the host authority enters into an agreement with the landlord for the property. The agreement for the property will be between the landlord and selected support provider. The void costs and any charges linked to the property are the responsibility of the landlord and support provider.

Role of SST

SST will support with discharges and overall service delivery, ensuring placement stability.

CHC Funding

CHC Funding - CCG – 'Who pays guidance' (MOU) is followed.
CHC **will not be withdrawn** and any issues for continued funding requires the placing CCG/CHC team to liaise with the host area. If CHC funding is stopped and following a **reassessment** is reinstated, the **placing CCG will remain responsible**, this responsibility **will not pass** to the host authority.
Localities will otherwise adhere to the national guidance and acknowledge that different funding and quality arrangements apply for CHC. GMHSCP CHC colleagues to be consulted if needed.

Mental Capacity (Amendment) Act 2019: Liberty Protection Safeguards (LPS)

The LPS are planned to come into force in April 2022. There will be an ongoing review on the impact on complex needs project and how this is managed

Dispute Resolution

If the parties are unable to agree a matter arising from a placement through the complex needs project, the dispute shall be referred to more senior representatives within each organisation.
If this does not resolve the matter, then parties will attempt to settle through mediation led by the complex needs project leads.

Disputes should not delay the provision of the care package, and the parties should make clear how funding will be provided pending resolution of the dispute. Where disputes relate to local authorities and CCGs in different geographical areas, the disputes resolution process of the responsible CCG should normally be used in order to ensure resolution in a robust and timely manner. This should include agreement on how funding will be provided during the dispute, and arrangements for reimbursement to the agencies involved once the dispute is resolved.

Authorising Signatures

1. **Bolton**

Name ………………………………………………………….. Signature……………………………………………………

Job Title ………………………………………………………. Date …………………………………………………………

2. **Bury**

Name ………………………………………………………….. Signature……………………………………………………

Job Title ………………………………………………………. Date …………………………………………………………

3. **Manchester**

Name ………………………………………………………….. Signature……………………………………………………

Job Title ………………………………………………………. Date …………………………………………………………

4. **Oldham**

Name ………………………………………………………….. Signature……………………………………………………

Job Title ………………………………………………………. Date …………………………………………………………

5. **Rochdale**

Name ………………………………………………………….. Signature……………………………………………………

Job Title ………………………………………………………. Date ……………………………………………………….

6. **Salford**

Name ………………………………………………………… Signature…………………………………………………….

Job Title ………………………………………………….. Date ……………………………………………………………

7. **Stockport**

Name ………………………………………………………… Signature…………………………………………………….

Job Title ………………………………………………….. Date ……………………………………………………………

8. **Tameside**

Name ………………………………………………………… Signature…………………………………………………….

Job Title ………………………………………………….. Date ……………………………………………………………

9. **Trafford**

Name ………………………………………………………… Signature…………………………………………………….

Job Title ………………………………………………….. Date ……………………………………………………………

10. **Wigan**

Name ………………………………………………………… Signature…………………………………………………….

Job Title ………………………………………………….. Date ……………………………………………………………

Appendices

Appendix 1 - Current Guidance

CCG - Who Pays Guidance *
The updated Who Pays Guidance came into effect on 1st September 2020.
The core rule remains that the commissioner responsible for payment will be the clinical commissioning group of which the patient's GP practice is a member, with some exceptions.
One of the key exceptions relates to out-of-area continuing care placements - i.e. the 'placing CCG' must commission and pay for continuing care placements in another CCG's geographical area despite the patient becoming GP registered in that new area.

Who Pays Guidance - Mental Health Act detention and Section 117 aftercare
The new Who Pays guidance introduces a significant change to the position on payment responsibility for inpatient detention under the Mental Health Act and on payment responsibility for s.117 aftercare.
Under the new rules, NHS England is using its power to split off payment responsibility from commissioning responsibility to stipulate that - although commissioning responsibility will remain as per the legislation - the CCG responsible for paying for both the period of detention in hospital and the s.117 aftercare will be determined by the general rule - i.e. the person's GP registration (or, usual residence) immediately prior to their detention in hospital. This CCG is regarded as the 'originating CCG' and retains responsibility for s.117 after-care, and any subsequent repeat detentions or voluntary admissions, until such time as the patient is discharged from s.117 aftercare. This responsibility for paying remains with the originating CCG regardless of where the patient may move to or which GP practice they are registered with.

Local Authority - Ordinary Residency **
Where an adult's care and support needs can only be met if they are living in one of the specified types of accommodation and the accommodation arranged is in another area, then the principle of 'deeming' ordinary residence applies. This means that the adult is treated as remaining ordinarily resident in the area where they were resident immediately before the local authority began to provide or arrange care and support in any type of specified accommodation. The consequence of this is that the local authority which first provided that care and support will remain responsible for meeting the person's eligible needs, and responsibility does not transfer to the authority in whose area the accommodation is physically located.

However, in circumstances where the person moves to accommodation in a different area of their own volition, without the local authority making the arrangements, they would be likely to acquire ordinary residence in the area of the authority where the new accommodation is situated.

Ordinary Residency - Section 117 aftercare
The section 117 duty falls on the local authority where the patient was ordinarily resident immediately before being detained. It does not matter who is paying for care and support at the time of detention or which local authority employed any approved mental health professional (AMHP) who might have been involved in the detention.
(For the MOU we are proposing not to follow this guidance - The section 117 duty remains the responsibility of the placing authority if a person is detained whilst placed in provision commissioned through the complex needs project. It does not matter which local authority employed any approved mental health professional (AMHP) who might have been involved in the detention)

Dispute Resolution
There is a clear dispute resolution process for the Who Pays Guidance and a determination for ordinary residency from the Secretary of State can be sought under section 40 of the Care Act.

Greater Manchester Protocol
There is a draft protocol to manage out of area patients placed in Greater Manchester in specialised mental health or learning disability/autism provision. It is our intention that the complex needs MOU and the GM protocol complement each other.

Appendix 2 – Contract Documentation

Cohort 1 Service Spec

Cohort 2 Service spec

Cohort 3 Service spec

Cohort 4 Service spec

Terms and Conditions