

Greater Manchester Health and Social Care Partnership ("GMHSCP") Learning Disability and Autism Complex Needs Project Agreement

Parties

1. The Parties to this Agreement 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

Definitions

2. In this Agreement -

'host authority' means the local authority or Clinical Commissioning Group ("CCG") in the area to which a person has been placed by another authority that is a Party to this Agreement

'placing authority' means the local authority or CCG which has made arrangements for a person to reside and receive care in a place for which another Party to this Agreement has statutory responsibilities

'ordinary residence rules' mean UK legislation, guidance, and any case-law interpreting such legislation and guidance

Purpose of this Agreement

3. The purpose of this Agreement is to have clear arrangements across Greater Manchester local authorities and Clinical Commissioning Groups when commissioning through the complex needs project, with clear agreement as to the roles and responsibilities of the placing authority and host authorities.
4. This Agreement is intended to be legally binding, and to impose legal obligations and rights between the Parties. The Parties enter into this Agreement intending to honour all their obligations.

Background

5. As people being placed through the Learning Disability and Autism Complex Needs Project will have a range of complex needs, and all will be on the dynamic risk registers maintained by local public bodies, there is a higher possibility that such individuals could be detained, as compared with other people to whom care is commissioned by the Parties to this Agreement. Some individuals will have had their needs met in community provision and may not have been detained previously. This means that responsibility under current processes would change to the host authority on detention. This places significant financial risk on host authorities, when receiving such people into their area.
6. This Agreement supports the bespoke commissioning priorities of the Greater Manchester Learning Disability Strategy, and has been devised as a new approach to commissioning support for people with complex needs.
7. The aim of this arrangements is to ensure that 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.
8. 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.

Complex Needs Inter Locality Agreement (Proforma)

9. Individual agreements (termed “*Complex Needs Inter Locality Agreements*”) will be produced for each proposed new service between the relevant placing and host Local Authority / CCG. The placing Local Authority / CCG will sign and agree and then it will require the host locality Director of Adult Social Care sign off before any service goes ahead.
10. The arrangements made under this Agreement will provide information about the proposed scheme. It will include subgroup information, local authorities and CCG’s 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.
11. Any variation from this Agreement should be clearly documented in the Complex Needs Inter Locality Agreement. If there is any inconsistency between an individual Complex Needs Inter Locality Agreement and this Agreement, the localised Complex Needs Inter Locality Agreement shall take precedence.

Current Guidance

12. This Agreement takes into account three areas of current law and guidance:

1. CCG – “Who Pays?” guidance
2. Local Authority - ordinary residence rules (as set by legislation, guidance, and case-law interpreting those sources)
3. mental health aftercare as required to be provided pursuant to section 117 of the Mental Health Act 1983.

Please see Appendix 1 for further detail on the law and guidance

Core principle of this Agreement: ‘Own our Own’

13. The core principle of this Agreement is the principle of ‘Own Our Own’. This means that, as between the parties to this Agreement, local authorities and CCGs remain responsible for an individual’s healthcare, adult social care, and mental health aftercare irrespective of a move of place of residence as between the areas for which the parties to this Agreement are responsible; and notwithstanding that statute, guidance and case-law would lead to a different allocation of responsibility.

14. This operates by the placing authority agreeing to discharge the statutory obligations for the provision of mental health aftercare which would otherwise fall by operation of law to be discharged by the host authority. The host authority delegates to the placing authority the fulfilment of the statutory mental health aftercare duty for such an individual, which would otherwise fall on the host authority.

15. The parties agree to follow [1] the “Who Pays?” guidance, and [2] ordinary residence rules (as set by legislation, guidance, and case-law interpreting those sources), but not [3] the effect of section 117 of the Mental Health Act 1983 on such responsibility. The intention is that responsibility for mental health aftercare remains with the originating locality even if the person is detained. This removes 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.

16. All parties agree 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

17. 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 <i>Cohort 2</i>	Eden Futures <i>Cohorts 3 and 4</i>	MacIntyre <i>Cohort 1 and 3</i>
Community Integrated Care <i>Cohorts 1, 2 and 4</i>	Imagine <i>Cohort 1 and 2</i>	Voyage <i>Cohort 3 and 4</i>
Creative Support <i>Cohort 1, 3 and 4</i>	Future Directions CIC <i>Cohort 2</i>	Zeno <i>Cohort 3</i>

18. 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
19. 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.
20. 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.
21. 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.
22. If a dispute around funding cannot with a support provider, the other support providers for that cohort may be engaged.
23. 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

24. The host Local Authority and CCG commissioners will be involved in the setting up of the service and all operational discussions. Care plans will be shared with the host locality commissioners, so they have an understanding of the people moving into the area.
25. 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.
26. The placing authority and 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.
27. GM HSCP will support discussions between localities where local services are used and where additional capacity across GM may be required.
28. The host authority and CCG may charge the placing local authority and CCG for the ongoing use of local services.

29. 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.

Agreement as to aftercare provision

30. The provision to meet an individual’s s.117 mental aftercare needs is to be agreed jointly by the placing local authority and CCG.
31. The agreement between the LA and CCG as to what services are to be provided shall be recorded in a document (“the aftercare plan”). The aftercare plan document shall also record –
 - a. the division of financial responsibility as between the local authority and CCG;
 - b. for any care services or provision which may overlap between Care Act adult social care and section 117 MHA mental health aftercare, the division of such services or provision as between those two sources of statutory responsibility.;
 - c. the period of review of the aftercare plan, and by whom and how such reviews are to be carried out;
 - d. how any decision to terminate section 117 aftercare provision is to be jointly made by the relevant local authority and CCG, and how such decision is to be documented.

Roles and responsibilities

32. Each placing and host local authority and CCG will work collaboratively to ensure that a placement is not refused or delayed because of uncertainty or ambiguity as between parties to this Agreement.

Host Authorities

33. The host authorities will have overall responsibility for the provider and service provision, in relation to safeguarding, quality monitoring, provider engagement and CQC registration. The host authorities remain responsible even if they have no placements and do not commission the provision or support provider.

34. Placing authorities should fully support the host authorities in managing the provider and service.

35. Placing authorities remain responsible for the individual they are commissioning. Placing authorities should remain actively involved, ensuring a named worker is allocated at all times and all duties are fulfilled in a timely manner.

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

Review of Services

37. The host authorities 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

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

Safeguarding

39. Local authority statutory adult safeguarding duties apply.

Advocacy

40. The placing CCG and LA will 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

41. The full discharge process and cost will be jointly agreed with the placing local authority and CCG before any discharge commences. The placing local authority and CCG will jointly 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

42. There is no expectation that the host authorities enter 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 Specialist Support Team

43. Specialist Support Team will support with discharges and overall service delivery, ensuring placement stability.

CHC Funding

44. For the funding of individuals with continuing healthcare (“CHC”) needs, responsibility continues to be determined by application of the ‘Who Pays?’ guidance. CHC will not be withdrawn and any issue for continued funding requires the placing CCG and its CHC team to liaise with the CCG in the host area. Localities will adhere to the national guidance and acknowledge that different funding and quality arrangements apply for CHC. GMHSCP CHC colleagues will be consulted if this is needed.

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

45. 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

46. 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.

47. If referral to more senior representatives within each organisation does not resolve the matter, then parties will attempt to settle through mediation led by the complex needs project leads.

48. Disputes should not delay the provision of the care package. 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 Council

Name

Signature.....

Job Title

Date

2. NHS Bolton Clinical Commissioning Group

Name

Signature.....

Job Title

Date

3. Bury Council

Name

Signature.....

Job Title

Date

4. NHS Bury Clinical Commissioning Group

Name

Signature.....

Job Title

Date

5. Manchester City Council

Name

Signature.....

Job Title

Date

6. NHS Manchester Clinical Commissioning Group

Name

Signature.....

Job Title

Date

7. **Oldham Council**

Name

Signature.....

Job Title

Date

8. NHS Oldham Clinical Commissioning Group

Name

Signature.....

Job Title

Date

9. Rochdale Borough Council

Name

Signature.....

Job Title

Date

10. NHS Heywood Middleton and Rochdale Clinical Commissioning Group

Name

Signature.....

Job Title

Date

11. Salford City Council

Name

Signature.....

Job Title

Date

12. NHS Salford Clinical Commissioning Group

Name

Signature.....

Job Title

Date

13. Stockport Metropolitan Borough Council

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Job Title

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17. Trafford Council

Name

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18. NHS Trafford Clinical Commissioning Group

Name

Signature.....

Job Title

Date

19. Wigan Borough Council

Name

Signature.....

Job Title

Date

20. NHS Wigan Clinical Commissioning Group

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.

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