

Herefordshire Council/CCG Framework Agreement 2016

QSBD Comments: 15 June 2016

Minor Amendments

Questions

Minor Issues/Concerns

Material Issues/Concerns

Number	Clause number	Comment	Final agreement
1	1.1	The definition of "Authorised NHS Person" needs re-working as it covers anyone concerned with the provision of Services of care of a Service User. This could include people not employed by the NHS.	This clearly refers to an NHS employee duly authorised by the commissioner (eg: review nurse or other CCG/ Trust employee).
2	2.1	"Commencement Date" is not defined and needs to be.	Noted and will amend.
3	3.2	The Policies and Procedures can be unilaterally changed by the Commissioners during the term of the Agreement without the consent/approval of the Providers. The Providers would be contractually bound to comply with these Policies and Procedures, irrespective of their terms. This is not acceptable. Can a change	This is the current process, we will add in a change control procedure but with legislative change they would be made and for any major changes – we will consult as we do now.

		control procedure be introduced?	
4	7.1/7.2	This is the same point as clause 3.2 above. What sort of changes do they envisage? All contractual changes ought to be agreed by mutual agreement, particularly if it is going to impact on the Placement Fee. There are usually Change Control Procedures written into commissioning agreements to deal with variations but this Agreement does not have them.	As above this is a standard variation clause but we will put a change control in place.
5	8.1	Please confirm why there are no agreed timescales for assessments and re-assessments to be carried out when there is a mutual obligation on providers	There are defined scales for CHC / FNC reviews in the National Framework for CHC and the NHS works to these. This will be a case by case basis for adult social care.
6	8.3	Please include a time period within which a Purchase Order will be received. Some currently come weeks after admission.	The LA will aim to complete a PO within 10 working days of the placement.
7	9.2	Please amend to any “published” inspection report. Providers may challenge draft reports. It is not fair for commissioners to be influenced by the contents of a report which may be inaccurate and subject to substantial change both in terms of factual content, breaches and ratings. Our firm has successfully overturned many allegations of breaches and upgraded ratings for providers at the draft report stage.	Agree and we will amend.
8	9.3	Please amend to “Notices of Decision” not “Notices of Proposal” which the Provider may successfully challenge.	Agree to change notice of intention to amend to notice of decision.

9	9.6	It is not acceptable for Commissioners to have unrestricted access to providers' financial records. Providers operate commercial businesses and would not want third parties to view commercially sensitive information. Please amend to limit the scope of this clause to statutory/end of year accounts only.	<p>Clause 9.6. does not relate to financial records (it does not mention financial records at all in this clause), although it may include them.</p> <p>This needs to remain as we are obliged to report issues and this is a standard contract clause but we will put in the word reasonable access.</p>
10	9.10	Please confirm what a "satisfactory financial reference" would comprise	<p>For example, this may compromise:</p> <p>A credit reference</p> <p>2 years worth of accounts</p> <p>2 letters from large suppliers</p> <p>A letter from a bank</p>
11	9.12	Please confirm for how long these records need to be kept	7 years
12	9.14.3	This is unacceptable. It goes beyond any sanction CQC can legally impose.	This needs to remain, this is standard in the NHS contract as part of the Duty Of Candour, but we agree to take website element out.

13	10.2	See clause 3.2 above.	Please refer to 3.2 clause response.
14	11.4	“immediately” is too onerous and not practical. Please amend to “within 5 Working Days”	Agree to amend to 5 working days.
15	11.9/11.10	This is totally unacceptable and could place the Provider in breach of employment law. Providers are ultimately liable if someone is wrongfully dismissed.	It is not stating the person cannot work for the provider; it is stating that the commissioner does not want that person providing care and support to our clients. Agree to amend to reflect that Providers must have and implement robust policies and HR procedures in place and see ref to 11.2.4.
16	12.7	Please amend so that this clause is FNC specific	Agree to amendment.
17	12.10	Please amend to “5 days”. Same day is an issue for providers if they do not know who will become the resident’s GP or if the GP is out of county. Additionally if the resident is admitted at a weekend, the provider may not have admin staff on site and commissioners may not have relevant staff at the other end.	Suggest 3 days as a compromise.
18	12.13	Please confirm within what time period the Determination will be completed	There are defined scales for CHC / FNC reviews in the National Framework for CHC and the NHS works to these.
19	12.15	Nursing homes provide all continence products but the CCG supplies continence products to residential homes. These are totally unsuitable due to the quality of the products. Residential homes can and do give people an option to purchase better quality	Agree but for the avoidance of doubt, if the service user chooses a different product the commissioner is not liable for the additional cost.

		products such a “pull up incontinence pants”. Nursing homes must be given the same option and it is not acceptable for the contract to prevent service users from choosing a product which is of better quality.	
20	12.19	Please amend to 2 “Working Days”	No we cannot amend to 2 working days, we need to ensure 7 day working and flexibility in the system.
21	12.27	It may not be practical for service users to be offered a “choice of accommodation” within the home. This will depend on how full the home is and what rooms are available. This is not a legal requirement.	Amend to include available rooms.
22	12.28	Please amend to permit the Provider to be able to move the Service User for safety reasons	Agree but needs to be clear that only in an emergency or for safety reasons and needs to be documented.
23	12.33	Please amend to Third Party Contribution in line with the definitions used in the Agreement	Agree, amend to Third Party.
24	12.41	Please amend to make it clear that verbal authorisation is sufficient to avoid any doubt	We need to include ‘verbal’ .
25	12.45	Please amend to state “period of the stay plus 1 day” to cover cleaning of the resident’s room	No, we cannot do this as it would be an additional cost which has not been modelled.
26	12.60	Please confirm what is meant by “appropriate intervals”. How quickly will commissioners re-assess where there is a need to do so?	These are defined for FNC / CHC cases in 12.61 This needs to be a case by case basis.
27	12.61	Please confirm what is meant by “significant and sustained change”	Where the care needs of the user alter to the extent that

		as the obligation on the provider is to request a review “immediately”. How would providers know when to do this?	there is a material increase / decrease in the resource required to care for them and / or they are deemed to be near the end of life.
28	12.63	Is it practical for providers to notify “immediately” where there is any increase or decrease in physical or mental health? Please confirm at what point this is triggered.	Take out, it isn’t relevant and is usual business.
29	12.67	This could leave the provider having to care for someone for an unspecified period of time whose needs cannot be met by the provider. This would potentially put the provider in breach of their registration and this agreement. There needs to be an agreed notice period by which time the Commissioners have to move the service user.	Agreed, suggest 3 working days.
30	12.70	Please confirm whether this applies to any admission or absence or those exceeding 48 hours only	Yes 48 hours seems reasonable, will amend accordingly.
31	12.71	Please amend to “as soon as reasonably practicable”. Immediately is not practical or reasonable	Propose we delete clause 12.71 and include requirement to notify Commissioners in clause 12.70 so that it is done at the same time as notifying the care managers.
32	12.75.1.2	Please confirm what the notice period is for providers to give notice under short-term respite care.	3 working days or lesser period if agreed.
33	12.75.2	It is not acceptable for departure to be conditional upon commissioners securing alternative arrangements- please see comments under 12.67 above	This needs to remain as the service user must be maintained in a place of safety but we have given some clarity on timeframes under clause 12.76.

34	12.75.4.1.2	Please confirm why 28 days notice wouldn't be given in line with the remainder of the agreement	2 weeks is sufficient, if someone wants to leave the home.
35	12.75.4.1.2	Please amend to include 1 further day: see comments under 12.45	As mentioned we cannot do this please see previous comment.
36	12.75.5	As above	As above.
37	12.75.6.3	Please confirm what you envisage by use of the word "or otherwise"?	Remove.
38	12.75.6.4	We agree that Commissioners should be advised about any closure or sale/transfer of ownership but it is not reasonable or safe for service users to include a clause which allows Commissioners to immediately terminate placements unless there is a serious risk to life or well-being. Commissioners have the right to withhold consent to assignment of the contract under 26.1 (assignment) . If a sale was going ahead, the provider would have to obtain the Commissioners consent under this clause, which could be refused. If it were refused, it would be unfair for the agreement to be terminated as the existing provider may continue to operate the home. The word "particularly" needs to be removed from the last sentence as this should be the only reason for ending the placement.	The clause says that the Commissioners reserve the right to end the Placement . The clause does not say that the placement will end. If a home was to be sold to a provider subject to CQC enforcement action, we would have serious concerns. Legal to reword accordingly.
39	12.79	This gives providers no comfort that a proper consultation on fees will take place. Please provide detail as to how commissioners envisage their review will be conducted so we can comment.	This is Care act compliant but we will add in the word consultation.

40	12.85/12.89	“every reasonable effort” has no contractual meaning and would be very difficult to enforce. Please confirm why commissioners can’t be contractually bound to pay within a certain time period. Same for clause 12.89. Clause 12.8 requires providers to be contractually bound to make repayments within a set time period- the obligation should be mutual. Interest should be payable on excessively late payments.	Legal to revise.
41	12.94	The Placement Fee should cover meeting the service users assessed needs and no more.	This is standard clause and remains but needs to be reworded to reflect the service user choice to pay more for extras but at no cost to the commissioner.
42	15.6	See previous comments about limiting access to all financial records. Please confirm why Commissioners are not willing to give notice. “without notice” seems unnecessary for looking at records. Please also confirm how the clause is meant to read as it doesn’t make sense as written.	As above agreed to ‘reasonable’ access.
43	18.6.2.3	Please confirm who this is designed to cover. It is not acceptable for providers’ information to be provided to unidentified third parties.	Obvious example would be auditors –any company engaged by the NHS / Council is bound by our IG rules.
	19.8	It is disproportionate for the agreement to be terminable for breach of this clause unless the breach was material. The QAF states that Commissioners will act proportionately	The clause does not say that the agreement will be terminated but that the Commissioners reserve the right to terminate. It does fit with the QAF as the Commissioners would act proportionately and terminate only in the most severe of circumstances.

			Legal to look at again to ensure it fits together.
44	20.2.1	Please confirm why the timescale is 2 days when the Commissioners have 20 working days to respond to a request.	The Commissioners as public bodies have an obligation under the Freedom of Information Act 2000 to respond to requests for information within 20 working days. The providers are not (unless they themselves are public bodies) subject to the FOIA. Therefore, any requests for information must be dealt with by the Commissioners and to enable the Commissioners to comply with the 20 working days set out in the FOIA, it requires the prompt co-operation of the providers.
45	21.4	Please amend to 2 "Working Days"	Agree to amend.
46	22.1	This is a meaningless clause . What does "act in the spirit" mean and why would providers be required to act in the spirit of the Commissioners HR and Whistle-blowing policies when they have their own policies? If Commissioners want providers to comply with these policies, please provide copies for review.	Agree , we will take out clause.
47	23.3.	The definition of "Personnel" needs amending as not all the groups included under it would be required to have an enhanced DBS check	Agreed to revisit, legal to amend.
48	23.5	This is not acceptable. Please see comments against clauses 11.9/11.10	Please see previous comments

49	23.7	This is not acceptable. It goes far and beyond what the law (HSCA Regulated Activities Regs 2014) requires. Further, most employers only supply factual references.	Agree to take out.
50	24.4	This is not acceptable. The findings of a court of tribunal may be subject to confidentiality	This needs to remain but state unless a confidentiality clause applies.
51	24.5	This is widely drafted and should be limited to any claims arising directly from a breach. It should also be subject to a limitation of liability clause. See later comments	Agree it needs to be directly out of breach, legal to look revisit.
52	29.4	Please explain why commissioners shouldn't be liable if they cause damage.	Clarify that it's not providers causing damage, it's if the service user causes damage.
53	30.2/3/4	Providers to confirm whether these limits are acceptable. Do residential homes need medical malpractice insurance?	Not for residential homes, Nursing homes it would.
54	30.7	This isn't acceptable. If the provider breaches the clause, then the commissioner can terminate the agreement. This is not a proportionate response- the QAF dictates that commissioners will act proportionately	Remains as this is a standard clause but it will link to QAF process.
55	30.9	This isn't acceptable. The effect of this clause is that providers' liability under the agreement is unlimited. Firstly this may void their insurance, secondly limiting liability to the minimum insurance levels would give the commissioners adequate protection/scope to recoup any loss for breach of contract.	Legal will revisit the clause.
56	31.1	"Contracts Officers" is not defined	A definition will be added.

57	32.4	See previous comments about limiting access to all financial records.	Resolved please see previous comments.
58	32.5	Please confirm why providers are required to implement “recommendations” when they are not law	It is only to implement relevant recommendations and its best practice.
59	33.3	See previous comments. This needs to be limited to “published” reports. CQC get things wrong and if they had concerns they would share them with commissioners. There must be an information sharing policy- please comment (and see CQC’s 5 Year Strategy)	Agreed to amend as stated previously.
60	33.6	There must be a clear policy that sets out the indicators that would necessitate such a disruptive visit. Please comment	This will remain– but links to the QAF process.
61	33.10	The Commissioners cannot be allowed to advise personnel. This is the role of the provider as employer	It was not intended that the commissioners advised the provider’s personnel; It was intended that the commissioners advised their own staff. The wording can be revised to reflect this.
62	33.15	Please confirm why this clause is needed. It is already covered by the previous clauses. Please confirm what “reasonable access” means.	Agree it can be removed.
	34.2	Please confirm what “by any other means” is intended to include	A wide range of intelligence.
63	37.1.3	S.416 of the Income and Corporation Taxes Act 1988 is repealed.	Noted, it will be checked and amended.
64	37.3/37.4.3	The Commissioners can terminate the agreement for a “fundamental” breach but also for “non-compliance” (which appears	Noted Legal will revisit and amend.

		to be any breach) as well as a “material breach” which isn’t remedied. These clauses do not fit together and need reworking. Termination for non-compliance should only be immediate if it is a fundamental breach or material breach which has not been remedied. In addition the QAF refers to placements being suspended for “substantial” breach. Please confirm what you mean by “fundamental”, “substantial” and “material”.	
65	39.2	“reasonable period” is too vague. A time period, for example, 3 months ought to be included	Legal will revise and amend if appropriate.
8.3		whilst 8.2 stats clearly “prior to commencement of services”, why is there no corresponding clause in 8.3? I think that generally we do have a P.O in place prior to commencement, and most issues have arisen where we have been asked by social workers to take someone at a given cost at short notice without a P.O in place, and then we have found the P.O which arrives later does not accord with what was agreed; at this point, it is much harder to ask a resident to relocate.	Noted, and has been reworded.
9.13		the clause requires four weeks notice to be given to the council for a change of control. This effectively requires there to be a four week gap between exchange and completion as a minimum. Using our recent acquisition as an example, we were unable to give such a notice period, and this forces an additional period of uncertainty into the operation of a home. I am not sure that this is workable in practice.	We need to update our systems (including payments) and given that we pay on a monthly basis, it is a reasonable timescale. Plus the Vendor and Purchaser would be working to longer timescales to Transfer the Business and as such should be in a position to provide 4 weeks formal notice. We are asking for no more than to be kept apprised of the Provider’s intentions around disposal of the business and requesting the Provider to

		let us know of the planned change .
Service spec	talks about transport and travel. Could this please be made clear that such transport provision is not at the cost of the provider.	Noted but the cost of the travel does need to be included in the placement cost and considered as part of the assessment.
	Shared room rate?	Noted it will be included
	Out of county placements?	Noted to be considered by legal.

Quality Assurance Framework

3.2	Providers are already asked to do this to CQC using the PIR. CQC are rolling this out on-line so it becomes a “living document” (see recent 5 year strategy published by CQC). How does duplication of the process by Commissioners fit with the goals identified under clause 2.5?	We are still reviewing and developing this and will take the requirements of CQC into account.
Page 18	What does “related to a contractual issue mean”? Why is the appeal process limited to this? It is possible that suspension for safeguarding may be applied incorrectly-it is not fair process to prevent an appeal for this. CQC do not limit their representations process to particular matters only.	We will reword this to avoid confusion.

Page 19	How quickly will the suspension be lifted if recommendation is made to lift it? Each day of the suspension causes financial damage to the provider and they need comfort on timescales from the commissioners side.	Some may be a complete lifting of suspension whilst others may be a phased lifting of the suspension, where a complete removal of suspension is agreed the timeframe will also be agreed with the provider. Nothing stopping providers putting in an early request to review and lift suspension.
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Local Arrangements for the Provision of Equipment in Care Homes

Page 3	References to the Care Standards Act 2000 are out of date for homes in England. As are the “national minimum standards”.	Noted and amended
	Please amend to include eligibility criteria for the "Provision of Equipment" The previous document refers to the Chronically sick and disabled persons Act , NHS and Community Care Act, delayed discharges etc, whilst this has been removed from the revised document there is no definition of risk. It should either be the Care and Support (Eligibility Criteria) Regulations 2014 or better still for the provision of equipment that prevents pressure ulcers they could consider using the risk rating tool known as Waterlow score	Noted and amended

Protocol for Suspension

Page 1	“strong indication” should be amended to “strong evidence”. Suspension is very damaging to a provider and should only be	Agreed we will amend
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	triggered on evidential grounds.	
Page 2	What is a “serious contracting concern”? See also comments under 37.3/37.4 of the Framework Agreement	We will put in a definition.
Page 2	These must be concerns based on evidence. See above	Yes this will be made clearer in the text.
Page 2	The QAF says that appeals are heard by the Director of Adults Wellbeing or CCG Chief Nurse but this document says that the decision to suspend is taken by these people. Please clarify the process. The appeal needs to be heard by someone not involved in the original decision otherwise how can it be considered a fair process? .	Either the chief exec or a nominated senior executive of the nominated organisation.