

## Executive Summary

### Report to the Board of Directors

Being Held on 30 March 2021

<b>Subject</b>	Changes to the Acute Federation's Joint Working Agreement (JWA)
<b>Supporting TEG Member</b>	Sandi Carman, Assistant Chief Executive
<b>Author</b>	Sandi Carman, Assistant Chief Executive
<b>Status<sup>1</sup></b>	A*

### PURPOSE OF THE REPORT

To update the Board of Directors regarding a change to the membership of the Acute Federation and an adjustment to the period of rotation of the meeting lead (chair) and to seek approval for the amendments to the Joint Working Agreement (JWA) to reflect these changes.

### KEY POINTS

The Acute Federation brings together Acute Trusts in South Yorkshire and Bassetlaw with a common aim to improve quality, safety and the patient experience by sharing collective expertise and collaborating on specific workstreams.

The existing Joint Working Agreement (JWA) was agreed by Board of Directors in 2017 and was supported by the establishment of a Committee in Common (CiC) of the Board of Directors.

The two changes to the JWA to highlight are:

- The removal of reference to Chesterfield Royal Hospital NHS Foundation Trust who have effectively withdrawn from the Acute Federation to enable the Trust to foster greater alignment with the Derbyshire Integrated Care System and prevent duplication due to involvement in two healthcare systems.
- An adjustment to the period of rotation of rotation of the meeting lead (chair) from six to 12 months as agreed at the Acute Federation Committee in Common on 1 February 2021.

These changes have been reflected in the Joint Working Agreement a copy of which is provided at Appendix A the proposed amendments are shown as tracked changes.

Amendments to the Sheffield Teaching Hospitals Committee in Common terms of reference will be undertaken during the next annual review in May 2021 to reflect these changes.

### IMPLICATIONS<sup>2</sup>

AIM OF THE STHFT CORPORATE STRATEGY 2017-2020		TICK AS APPROPRIATE
1	Deliver the Best Clinical Outcomes	✓
2	Provide Patient Centred Services	✓
3	Employ Caring and Cared for Staff	✓
4	Spend Public Money Wisely	✓
5	Deliver Excellent Research, Education & Innovation	✓

### RECOMMENDATIONS

The Board of Directors is asked to:

- **NOTE** the changes to the membership of the Acute Federation and the adjustment of the period of rotation of the meeting lead (chair);
- **APPROVE** the attached revised Acute Federation Joint Working Agreement (JWA)
- **NOTE** that the Sheffield Teaching Hospitals Committee in Common terms of reference will be amended to reflect these changes.

## APPROVAL PROCESS

Meeting	Date	Approved Y/N
Trust Executive Group	10/03/2021	Y
Board of Directors	30/03/2021	

<sup>1</sup> Status: A = Approval  
A\* = Approval & Requiring Board Approval  
D = Debate  
N = Note

<sup>2</sup> Against the five aims of the STHFT Corporate Strategy 2017-20

DATED: **2-DECEMBER-2019**

(1) BARNSELY HOSPITAL NHS FOUNDATION TRUST

~~(2) CHESTERFIELD ROYAL HOSPITAL NHS FOUNDATION TRUST~~

~~(3)~~(2) DONCASTER AND BASSETLAW TEACHING HOSPITALS NHS  
FOUNDATION TRUST

~~(4)~~(3) THE ROTHERHAM NHS FOUNDATION TRUST

~~(5)~~(4) SHEFFIELD CHILDREN'S NHS FOUNDATION TRUST

~~(6)~~(5) SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST

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JOINT WORKING AGREEMENT

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## 1. Introduction

1.1 In this joint working agreement, the following words bear the following meanings:

<b>Confidential Information</b>	all information which is secret or otherwise not publicly available (in both cases in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this JWA;
<b>Competition Sensitive Information</b>	means Confidential Information which is owned, produced and marked as Competition Sensitive Information including information on costs by one of the Trusts and which that Trust properly considers is of such a nature that it cannot be exchanged with the other Trusts without a breach or potential breach of competition law;
<b>Dispute</b>	any dispute arising between two or more of the Trusts in connection with this Joint Working Agreement or their respective rights and obligations under it;
<b>Meeting Lead</b>	the WTP CiC Member nominated (from time to time) in accordance with paragraph 6.4 of the Terms of Reference, to preside over and run the WTP CiC meetings when they meet in common;
<b>Member</b>	a person nominated as a member of a WTP CiC in accordance with their Trust's Terms of Reference and " <b>Members</b> " shall be interpreted accordingly;
<b>"Joint Working Agreement" or "JWA"</b>	this agreement signed by each of the Trusts in relation to their joint working and the operation of the WTP CiCs;
<b>Terms of Reference</b>	the terms of reference adopted by each Trust (in substantially the same form) more particularly set out in the Appendices to this Joint Working Agreement;
<b>Trusts</b>	Barnsley Hospital NHS Foundation Trust, <del>Chesterfield Royal Hospital NHS Foundation Trust,</del> Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust, The Rotherham NHS Foundation Trust, Sheffield Children's NHS Foundation Trust, Sheffield Teaching Hospitals NHS Foundation Trust and " <b>Trust</b> " shall be interpreted accordingly;
<b>WTP CiCs</b>	the committees established by each of the Trusts to

	work alongside the committees established by the other Trusts and “ <b>WTP CiC</b> ” shall be interpreted accordingly.
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- 1.2 Each Trust is putting in place a governance structure which will enable it to work together with the other Trusts to implement change.
- 1.3 Each Trust has agreed to establish a committee which shall work in common with the other WTP CiCs, but which will each take its decisions independently on behalf of its own Trust.
- 1.4 Each Trust has decided to adopt terms of reference in substantially the same form to the other Trusts, except that the membership of each WTP CiC will be different.

**2. Background**

- 2.1 Since 2013, the Trusts have been working together as an innovative partnership (the **Working Together Partnership**) and the Working Together Partnership became an Acute Care Collaboration Vanguard in 2015.
- 2.2 The Working Together Partnership’s stated aims are to strengthen each of the Trusts by sharing collective expertise and knowledge to:
  - 2.2.1 improve quality, safety and the patient experience;
  - 2.2.2 deliver safe and sustainable new models of care;
  - 2.2.3 deliver equity of access and improve activity; and
  - 2.2.4 make collective efficiencies where the potential exists.
- 2.3 In July 2016 the Boards of the Trusts, as part of the Working Together Partnership, confirmed the creation of the Acute Federation. It was agreed that further phases for changes to the governance structure would develop to enhance the delivery of the new models of care as the service change options became clearer.
- 2.4 In light of the above, the Trusts have identified that a preferred model for their closer collaboration and joint working is to establish a governance structure that, so far as possible within the existing legislation, enables “group” and common decision making structures; the WTP CiCs.
- 2.5 More specifically the WTP CiCs will facilitate the Trusts’ work in the following four key areas:
  - 2.5.1 **Informatics** - to identify the potential areas where collaboration on informatics systems, services or infrastructure between the Trusts could take place;

- 2.5.2 **Sharing and adopting good practices** - to enable the adoption of good practice and learning across the Trusts, including the provision of integrated and shared corporate services;
- 2.5.3 **Sustainable Care Quality** - to improve the provision of sustainable quality care between trusts; and
- 2.5.4 **Sustainable Service Configuration** - to explore where quality and safety benefits could be achieved from further collaborative working.

2.6 The Trusts will remain as ~~six-five~~ separate legal entities with their own accountabilities and responsibilities. For avoidance of doubt there is no intention that the governance structure outlined in this Joint Working Agreement will lead to a statutory merger or acquisition under section 56 or section 56A of the National Health Service Act 2006 (as amended).

### 3. Principles of working

3.1 The Trusts have agreed to adopt this Joint Working Agreement dated **2-DECEMBER 2019, TO BE INSERTED** and agree to operate the WTP CiCs in line with the terms of this JWA, including the following principles (the “**Principles of Working**”):

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- 3.1.1 through collaboration with each other aspiring, for the benefit of our patients, to be one of the most innovative, safe, caring, responsive, effective, well led and efficient health and care systems by 2020;
- 3.1.2 making the starting point for everything the Trusts do “can this be done better, safer, more economically for our patients if we work with our partners in a different way?”;
- 3.1.3 move at pace in examining all activities on a “bottom up” basis, across the Trusts, engaging clinical and non-clinical teams to adopt innovative approaches and best practice;
- 3.1.4 challenge themselves and embrace change where it benefits its patients or the health care system as a whole. Status quo is not an option if we are to do the right thing for patients on a sustainable basis;
- 3.1.5 establish a governance model which facilitates this approach. Structure will not be a barrier to innovative change while recognising the statutory responsibilities of all ~~six-five~~ individual Trust Board of Directors;
- 3.1.6 models of cost/benefit equalisation will be a key ingredient of the partnership activity to ensure financial loss or gain for any individual Trust is not a barrier to beneficial system change/progress;
- 3.1.7 seek support from commissioners to ensure changes are achieved at pace in order to gain maximum benefits for patients and system stability;

- 3.1.8 collaborate and co-operate. Establish and adhere to the governance structure set out in the Terms of Reference to ensure that activities are delivered and actions taken as required;
- 3.1.9 be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in the Terms of Reference;
- 3.1.10 be open. Communicate openly about major concerns, issues or opportunities relating to the joint working subject always to appropriate treatment of commercially sensitive information and competition law compliance;
- 3.1.11 adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, competition law, data protection and freedom of information legislation;
- 3.1.12 act in a timely manner. Recognise the time-critical nature of the joint working and respond accordingly to requests for support;
- 3.1.13 manage stakeholders effectively; and
- 3.1.14 deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the requirements and responsibilities set out in this Joint Working Agreement and the Terms of Reference.

#### **4. Process of working together**

- 4.1 The WTP CiCs shall meet together in accordance with and discuss the matters delegated to them in accordance with their Terms of References (attached here as Appendices 1-~~76~~).
- 4.2 The WTP CiCs shall work collaboratively with each other in relation to the committees in common model.
- 4.3 Each WTP CiC is a separate committee, with functions delegated to it from its respective Trust in accordance with its Terms of References, and is responsible and accountable to its Trust. Acknowledging this and without fettering the decision-making power of any WTP CiC or its duty to act in the best interests of its Trust, each WTP CiCs shall seek to reach agreement with the other WTP CiCs and take decisions in consensus, in light of its aims and Principles of Working set out in clauses 2 and 3 above.
- 4.4 When the WTP CiCs meet in common, the Meeting Lead shall preside over and run the meeting on a rotational basis for a period of ~~six~~-twelve months, rotating at the January meeting each year.

## 5. Future Involvement and Addition of Parties

- 5.1 Subject to complying with all applicable law, and the Trusts' unanimous agreement, third parties may become parties to this Joint Working Agreement on such terms as the Trusts shall unanimously agree.
- 5.2 Any Trust may propose to the other Trusts that a third party be added as a Party to this Joint Working Agreement.

## 6. Exit Plan

- 6.1 Within three (3) months of the date of this JWA the Trusts shall develop and agree an exit plan which shall deal with, for example, the impact on resourcing or financial consequences of:
  - 6.1.1 termination of this JWA;
  - 6.1.2 a Trust exercising its rights under clause 7.1 below; or
  - 6.1.3 the Meeting Lead and the WTP CiC Chairs varying the JWA under clause 10.6.2.
- 6.2 Once agreed by all of the Trusts, the exit plan shall be inserted into this JWA at Appendix ~~7-6~~ and the Trusts shall review and, as appropriate, update the exit plan on each anniversary of the date of this JWA.

## 7. Termination

- 7.1 If any Trust wishes to revoke the delegation of functions to the relevant committee and exit this JWA ("**Exiting Trust**"), then the Exiting Trust shall, prior to such revocation and exit:
  - 7.1.1 send a written notice from the Chair of the Exiting Trust to the other Trusts' Chairs of their intention to do so; and
  - 7.1.2 if required by any of the other Trusts (by sending a written notice within ten (10) business days of receipt of such notice) meet with the other Trusts' Chairs within ten (10) business days of the notice given under clause 7.1.1 to discuss the consequences of such revocation and exit.
- 7.2 If:
  - 7.2.1 no other Trust sends a notice to the Exiting Trust within the time limit referred to in clause 7.1.2; or
  - 7.2.2 following the meeting held under clause 7.1.2 the Exiting Trust still intends to exiting the JWA,then the Exiting Trust may (subject to the terms of the exit plan at Appendix ~~76~~) exit this JWA.

7.3 If following the steps and meeting (if any) pursuant to clause 7.1.2 above the Exiting Trust revokes its delegation to its WTP CiC and exits this JWA then the remaining Trusts shall meet and consider whether to:

7.3.1 Revoke their delegations and terminate this JWA; or

7.3.2 Amend and replace this JWA with a revised joint working agreement to be executed by the remaining Trusts and to make such revisions as may be appropriate in the circumstance.

## **8. Information Sharing and Competition Law**

8.1 Subject to compliance with all applicable law (including without limitation competition law and obligations of confidentiality (contractual or otherwise)) the Trusts agree to share all information relevant to the provision of the JWA in an honest, open and timely manner.

8.2 The Trusts will ensure they share information, and in particular Competition Sensitive Information, in such a way that is compliant with competition law.

8.3 The Trusts will seek to agree a protocol to manage the sharing of information in accordance with competition law requirements, within three (3) months of the date of this JWA. Once agreed, this protocol shall be inserted into this JWA at Appendix ~~8-7~~ and the Trusts shall review and, as appropriate, update the exit plan on each anniversary of the date of this JWA.

## **9. Conflicts of Interest**

Members of each of the WTP CiCs shall ensure that Members of the other WTP CiCs are aware of any conflict of interest applicable to them, which has any relevance to the work of the WTP CiCs.

## **10. Dispute Resolution**

10.1 The Trusts agree to adopt a systematic approach to problem resolution which recognises the Principles of Working set out in clause 3 above.

10.2 If a problem, issue, concern or complaint comes to the attention of a Trust in relation to any matter in this JWA, that Trust shall notify the other Trusts in writing and the Trusts each acknowledge and confirm that they shall then seek to resolve the issue by a process of discussion.

10.3 If any Trust considers an issue identified in accordance with clause 10.2 to amount to a Dispute requiring resolution and such issue has not been resolved under clause 10.2 within a reasonable period of time, the matter shall be escalated to the Meeting Lead who shall decide in conjunction with the WTP CiC Chairs the appropriate course of action to take.

10.4 If the Meeting Lead and the WTP CiC Chairs reach a decision that resolves, or otherwise concludes a Dispute, the Meeting Lead will advise the Trusts of the

decision by written notice. Any decision of the Meeting Lead and the WTP CiC Chairs will be final and binding on the Trusts once it has been ratified by the Trusts' Boards (if applicable).

10.5 If the matter referred to in clause 10.3 above cannot be resolved by the Meeting Lead and the WTP CiC Chairs, within fifteen (15) Working Days, the Trusts agree that the Meeting Lead and the WTP CiC Chairs, may determine whatever action they believes is necessary including the following:

10.5.1 If the Meeting Lead and the WTP CiC Chairs cannot resolve a Dispute, the Meeting Lead may select an independent facilitator to assist with resolving the Dispute; and

10.5.1.1 the independent facilitator shall:

- a) be provided with any information he or she requests about the Dispute;
- b) assist the Meeting Lead and WTP CiC Chairs to work towards a consensus decision in respect of the Dispute;
- c) regulate his or her own procedure and, subject to the terms of this JWA, the procedure of the Meeting Lead and WTP CiC Chairs at such discussions;
- d) determine the number of facilitated discussions, provided that there will be not less than three and not more than ~~six~~ five facilitated discussions, which must take place within 20 Working Days of the independent facilitator being appointed; and
- e) have its costs and disbursements met by the Trusts equally.

10.6 If the independent facilitator cannot resolve the Dispute, the Dispute must be considered afresh in accordance with this clause 10 and only after such further consideration again fails to resolve the Dispute, the Meeting Lead and WTP CiC Chairs may decide to recommend their Trust's Board of Directors to:

10.6.1 terminate the JWA;

10.6.2 vary the JWA (which may include a re-drawing the member Trusts); or

10.6.3 agree that the Dispute need not be resolved.

## 11. Variation

No variation of this JWA shall be effective unless it is in writing and signed by the Trusts (or their authorised representatives).

## **12. Counterparts**

- 12.1 This JWA may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this JWA, but all the counterparts shall together constitute the same agreement.
- 12.2 The expression “counterpart” shall include any executed copy of this JWA 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 Trust has executed at least one counterpart.

## **13. Governing law and jurisdiction**

This JWA shall be governed by and construed in accordance with English law.

**THIS JOINT WORKING AGREEMENT is executed on the date stated above by**

.....  
For and on behalf of Barnsley Hospital NHS Foundation Trust

.....  
~~For and on behalf of Chesterfield Royal Hospital NHS Foundation Trust~~

.....  
For and on behalf of Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust

.....  
For and on behalf of The Rotherham NHS Foundation Trust

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For and on behalf of Sheffield Children's NHS Foundation Trust

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For and on behalf of Sheffield Teaching Hospitals NHS Foundation Trust

**APPENDIX 1**

**[Insert Terms of Reference for the Barnsley Hospital NHS Foundation Trust CiC]**

**APPENDIX 2**

**[Insert Terms of Reference for the Chesterfield Royal Hospital NHS Foundation Trust CiC]**

**APPENDIX 32**

**[Insert Terms of Reference for the Doncaster and Bassetlaw Teaching Hospitals NHS Foundation Trust CiC]**

**APPENDIX 43**

**[Insert Terms of Reference for The Rotherham NHS Foundation Trust CiC]**

**APPENDIX 54**

**[Insert Terms of Reference for the Sheffield Children's NHS Foundation Trust CiC]**

**APPENDIX 65**

**[Insert Terms of Reference for the Sheffield Teaching Hospitals NHS Foundation Trust CiC]**

**Appendix 76**

**Exit Plan**

1. In the event of termination of this Joint Working Agreement (JWA) by all parties, the trusts agree that:
  - a. each trust will be responsible for its own costs and expenses incurred as a consequence of the termination of this JWA up to the date of termination *unless* it is agreed between the trusts that the costs and expenses are to be borne equally between the trusts;
  - b. upon reasonable written notice, each trust will be liable for one fifth of any professional adviser's fees incurred by and on behalf of the Working Together Partnership in relation to the termination of this JWA (if any) up to and including the date of termination of this JWA;

- c. each trust will revoke its delegation to its Working Together Partnership (WTP) Committee in Common (CiC) on termination of this JWA;
  - d. termination of this JWA shall not affect any rights, obligation or liabilities that the trusts have accrued under this JWA prior to this termination of this JWA;
  - e. there are no joint assets and resources but should these be identified in the future, trusts will need to confirm agreement at termination of this JWA how any joint assets or resources will need to be dealt with on termination of the JWA.
2. In the event of an exiting trust exiting this JWA in accordance with clause 7, the trusts agree that:
- a. a minimum of six months' notice will be given by the exiting trust and they shall pay to the other trusts all reasonable costs and expenses incurred by the other trusts as a consequence of the exiting trust's exiting from the Working Together Partnership and this JWA up to and including the exiting trust's date of exit from this JWA. Notwithstanding this, the exiting trust's total aggregate liability, in respect of such reasonable costs and expenses, shall be capped at the value of their annual contribution of resources that are agreed to remain for the financial year or term of any agreement being overseen by the Committee in Common;
  - b. upon reasonable written notice from the other trusts, the exiting trust shall be liable to pay one fifth of any professional adviser's fees incurred by and on behalf of the Working Together Partnership as a consequence of the exiting trust's exit from the Working Together Partnership and this JWA up to and including the date of exit of the exiting trust from this JWA;
  - c. the exiting trust will revoke its delegation to its WTP on its exit from this JWA;
  - d. the remaining trusts shall use reasonable endeavours to procure that the JWA is amended or replaced as appropriate in accordance with clause 7.3.2.
  - e. subject to any variation to or replacement of this JWA in accordance with paragraph d above and clause 7.3.2 this JWA shall remain in full force and effect following the exit of the exiting trust from the JWA

**Appendix 8Z**

**Information Sharing protocol**

**[to be inserted once agreed]**