

## South Tyneside and Sunderland Healthcare Group

### MEMORANDUM OF UNDERSTANDING

#### 1 THE AGREEMENT

This Memorandum of Understanding (“MoU”) is entered into by City Hospitals Sunderland NHS Foundation Trust and South Tyneside NHS Foundation Trust, collectively the “Foundation Trusts”.

This MoU will be managed collectively by a joint group called the ‘South Tyneside and Sunderland Healthcare Group’ made up of representatives from both Foundation Trusts which will have no statutory authority and be managed by the Group Board as further described in clause 8 (Role of Group Board).

This MoU commences on 28 April 2016 and subject to clause 11 (Termination) has an indefinite duration, subject always to annual review between the Foundation Trusts.

#### 2 BACKGROUND

There is an unprecedented quality, efficiency and productivity challenge to the NHS as a result of growing demands upon its services and continuing public expenditure constraints.

This calls for a radical re-evaluation of all aspects of the work of NHS organisations, and the Foundation Trusts recognise the opportunities this presents for creating new delivery models for front line clinical services, clinical and non-clinical support services. Their mutual commitment is to collaborate where appropriate for the benefit of patients and communities served by each organisation in Sunderland and South Tyneside.

#### 3 PURPOSE

To reflect the commitment described above, this MoU provides an overarching framework for closer working and/or formal collaborations between the Foundation Trusts, intended to bring mutual benefits to the quality, safety and patient experience across both Foundation Trusts. It will also bring mutual benefits to the productivity and efficiency of the healthcare services provided by them.

#### 4 SCOPE OF COLLABORATIONS

The Foundation Trusts already work closely together in a number of areas. Upon the commencement of this MoU, the Foundation Trusts will develop a separate schedule of these areas and further specialties/services for future development (the “Clinical Review Programme”). The Clinical Review Programme will be reviewed and updated annually by the Foundation Trusts. The areas initially identified for potential collaboration include:

- Emergency Surgery;
- Trauma;
- Obstetrics & Gynaecology;
- Pharmacy;
- Stroke.

Other clinical and non-clinical services will be reviewed on a rolling programme during 2016/17 and beyond as part of the Clinical Review Programme.

The Foundation Trusts anticipate that future collaborations may take a number of forms. Examples are listed in appendix A.

The Foundation Trusts acknowledge that any collaboration may require formal due diligence, specific legal advice, and preparation and agreement of legal arrangements where this is indicated. The Foundation Trusts also acknowledge the ongoing need for careful examination of vires, procurement and competition law.

The Foundation Trusts may choose to broaden the reach of their activities, through any or all of the following means:

- offering of services to third party entities (whether public or private) –; and/or
- procurement by the Foundation Trusts of external partners, whether public or private, to facilitate the delivery of their joint objectives; and/or
- establishing a broader partnership, which other Trusts could join under the terms of appropriate legal agreements in order further to increase efficiencies, or to enhance the partnership's offer to third parties.

Any steps towards further collaborations will require the consent and positive engagement of the Foundation Trusts, which may or may not be given in the future at the absolute discretion of each of them. Specifically, the Boards of each Foundation Trust shall have primacy and all key decisions arising from actual or proposed collaborations will be reserved to them, supported by recommendations made by the Group Board as appropriate.

## **5 HOW WILL POTENTIAL COLLABORATIONS BE ASSESSED?**

In deciding whether to enter into further collaborations, each Foundation Trust intends to consider whether the relevant service(s) will be stronger (of higher quality, more productive and more efficient) as a result of the collaboration than if they had continued to be provided separately. The Foundation Trusts' Boards will, before entering into further collaborations, consider the risks associated with doing so.

More specific indicators of success may include:

- Improved quality, pathways or access to care for patients and carers;
- Improved performance against national performance benchmarks and metrics against which both Foundation Trusts are assessed;
- Improving/improved financial position of both Foundation Trusts.
- Greater breadth and depth of clinical, scientific and managerial expertise by drawing upon the knowledge, skills and experience of staff from both Foundation Trusts;
- Greater resilience in service provision, as demonstrated by scale and staffing levels/rotas;
- Standardisation of practice in accordance with best published evidence;
- Closer integration of clinical service delivery and applied research in the areas of collaboration;
- Evidence of improvements in quality and range of teaching and research activities.

## **6 COMMITMENTS OF THE FOUNDATION TRUSTS UNDER THIS MOU**

Regardless of whether the Foundation Trusts proceed to further collaboration, they intend to engage with each other openly on feasibility studies, development, delivery and evaluation of collaborative service delivery arrangements. Such collaborations may be driven by the joint or separate business needs of each Foundation Trust or by the actions of the clinical service commissioners. Open collaboration will include the sharing of all relevant data or information (subject to the Confidentiality Agreement defined in clause 9, and any necessary data sharing arrangements) to better inform a decision in support of the key success factors.

## **7 GOVERNANCE**

Subsidiary to the Foundation Trusts' Boards, and specifically in accordance with the governance arrangements established for the collaboration between the Foundation Trusts, the South Tyneside and Sunderland Healthcare Group will meet regularly via the Group Board to review progress on current collaborations and, where appropriate, to specify/commission new ones.

In addition, specific governance arrangements appropriate to each future collaboration, which will define the decision making parameters and levels of authority, will be established to assume responsibility for the objectives and deliverables of that collaboration, and to account to the CEOs and Boards.

The Councils of Governors of both Foundation Trusts have a statutory duty to hold to account the Non-executive Directors for the performance of the Foundation Trusts' Boards. To enable the Governors to do so in respect of the collaboration, the Councils of Governors of both Foundation Trusts will be engaged in the review of progress on both current proposals and in any significant policy changes affecting new collaborations. Subject to the requirements of the Foundation Trusts' constitutions, the Councils of Governors will be asked to approve any proposals developed through the collaboration which would constitute a significant transaction.

The Foundation Trusts' Boards recognise the requirement for robust risk management arrangements in respect of the collaboration. The Boards will each undertake an appraisal of risks relating to the collaboration, which will be consistent with any relevant requirements from regulators, and they will put arrangements into place to ensure that risks are managed on an ongoing basis. The arrangements will include a regular review of risks by the Group Board, reporting to the Foundation Trusts' Boards so that they can monitor risk through the Foundation Trusts' existing risk management processes.

The Foundation Trusts recognise the duties in law and/or under their Constitutions which their Executive and Non-executive Directors have in respect of conflicts of interests, ie to:

- a) avoid situations in which they have, or can have, interests which conflict, or possibly may conflict, with the interests of the Trusts; and
- b) to declare the nature and extent of any direct or indirect interests in transactions or arrangements with the Trusts.

The Foundation Trusts have in place arrangements to address conflicts of interests and will ensure that these are adopted in respect of the collaboration between the Trusts, including in respect of the Directors who will be members of the Group Board as defined in section 8 of this document. The Foundation Trusts' Boards will thereby ensure that no conflicts of interests prevent them from holding to account the Group Board or otherwise to monitor the collaboration.

In respect of conflicts of interests more generally, the Foundation Trusts will declare to each other the full particulars of any real or perceived conflict of interest which arises or may arise in connection with this MoU. Such declarations shall be made immediately upon becoming aware of the conflict of interest. Through these arrangements the Foundation Trusts will not allow themselves to be placed in a position of conflict of interest or duty in regard to any of their rights or obligations under this MoU (without the prior consent of the other Parties) before participating in any action in respect of that matter.

## **8 ROLE OF GROUP BOARD**

For practical purposes, the functioning of the South Tyneside and Sunderland Healthcare Group will be managed by a Group Board. The Group Board will comprise the Chairman (Chairman of South Tyneside NHS Foundation Trust), Deputy Chairman (Chairman of City Hospitals Sunderland NHS Foundation Trust), Chief Executive (Chief Executive of City Hospitals Sunderland NHS Foundation Trust), Deputy Chief Executive (Chief Executive of South Tyneside NHS Foundation Trust) and two Non-Executive Directors (one from each Foundation Trust).

The responsibilities of the Group Board will be defined in Terms of Reference to be approved by the Boards of both Foundation Trusts. The Foundation Trusts' Boards will specify the authority delegated to the members of the Group Board, which will be recognised in the Foundation Trusts' Schemes of Delegation (or similar) as appropriate. The Foundation Trusts' Boards will also specify their requirements for reports from the Group Board, and in respect of the collaboration generally, so that they can fulfil their responsibilities.

The role of the Group Board does not undermine the primacy or legal standing of the individual Foundation Trust Boards, and will not be able to bind the Foundation Trusts' Boards contrary to their instructions or authority delegated to the members, but will provide a management function to support decisions around the collaborative working arrangements. Specifically, the Group Board will ensure the delivery of this MoU and will oversee the delivery of:

- Joint strategic plans encompassing the Sunderland and South Tyneside planning footprint including supporting the development of the Sunderland and South Tyneside component of the 5 year Sustainability and Transformation plan on behalf of both Foundation Trusts;
- Consult and recommend to the respective Boards on any proposed major capital investment decisions above £1m with the intention to coordinate any capital expenditure plans of the Foundation Trusts where the Foundation Trusts are considering similar investments/plans;
- Managing the transition towards a common management team recognising that the Boards of each Foundation Trust still retain their statutory responsibility for their respective Trusts, including separate Accounting Officers.
- Manage the alignment towards:
  - Common principal operational policies and operating models;
  - Common workforce control processes including recruitment, retention and organisational development;
  - An IM&T approach to support a common operational model of services across the two Foundation Trust where appropriate;
  - A consistent approach to Standing Financial Instructions/Standing Orders;
- Produce and publish a short annual overview of the South Tyneside and Sunderland Healthcare Group's activities and performance for the year.

- Support the appointment process for any external advisors/auditors, subject where relevant to the responsibilities of the Foundation Trusts' Audit Committees and Councils of Governors;
- Manage a shared risk and benefit approach to support the implementation of any agreed clinical or support service changes;
- South Tyneside and Sunderland Healthcare Group overview of the key performance aspects of each respective organisation, particularly those that are related to delivery of the 5 year Sustainability and Transformation Plan, and the associated transformation funding which is linked to the achievement of these performance aspects;
- A Communications strategy to engage with patients, residents, staff and partner organisations as appropriate to support the aims of the South Tyneside and Sunderland Healthcare Group.

## **9 CONFIDENTIALITY**

The Foundation Trusts have entered into a confidentiality agreement dated 28 April 2016 in relation to their obligations for the mutual exchange of certain information strictly for the purposes of the potential collaborations under this MOU ("Confidentiality Agreement").

## **10 DISPUTE RESOLUTION**

Every effort will be made to resolve disputes through the established Programme/Project structures established for each collaboration. Should such efforts prove unsuccessful, the Strategy and Business Development leads will attempt second line resolution. Any unresolved issues will be escalated to the CEOs and where appropriate reported promptly to both Foundation Trust Boards and the South Tyneside and Sunderland Healthcare Group Board.

If either Foundation Trust receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the potential collaborations, the matter shall be promptly referred to the Group Board.

## **11 TERMINATION**

In the unlikely event that this MoU will require termination, but if at any time either Foundation Trust does wish to exit the MoU, then it can be terminated by 6 months' notice in writing addressed to the Chief Executive Officer of the other Foundation Trust. This termination notice must clearly set out the reasons for any such termination.

For individual collaborations, the MoU will partially terminate in respect of the individual collaboration only in accordance with the separate documents in place which will detail the specific arrangements between the Foundation Trusts in respect of that particular collaboration, and the MoU will continue in respect of the other service collaborations.

## **12 LEGAL STATUS**

Notwithstanding the good faith consideration that each Foundation Trust has afforded the terms set out in this MoU, this MoU shall not be legally binding and neither Foundation Trust will seek redress through any legal process.

## **13 GENERAL**

### **Variation**

This MoU, may only be varied by written agreement of the Foundation Trusts signed by, or on behalf of, each of the Foundation Trusts.

### **Charges and liabilities**

Each Foundation Trust will bear its own costs and expenses incurred in complying with its obligations under this MoU, including in respect of any losses or liabilities incurred due to its own or its employee's actions.

Neither Foundation Trust intends that the other Foundation Trust shall be liable for any loss it suffers as a result of this MoU.

### **No partnership**

Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Foundation Trusts, constitute either Foundation Trust as the agent of the other Foundation Trust, or authorise either Foundation Trust to make or enter into any commitments for or on behalf of the Foundation Trust.

### **Signatories**

#### **AGREED by the Parties:**

Signed by the Chief Executive on behalf of the Board of the following:

City Hospitals Sunderland NHS Foundation Trust

**Ken Bremner**  
**Chief Executive**

Dated: 28 April 2016

South Tyneside NHS Foundation Trust

**Steve Williamson**  
**Chief Executive**

Dated: 28 April 2016

## Appendix A

Examples of forms of collaboration:

- Full integration of clinical services to create Sunderland and South Tyneside-wide services that are jointly governed by the Foundation Trusts; and/or
- Either Foundation Trust providing services to the other under the terms of a contract or service level agreement; and/or
- Shared services arrangements(s) for clinical or non-clinical support services, with the Foundation Trusts carrying out one or more functions jointly under joint governance arrangements; and/or
- The Foundation Trusts delegating functions to each other which may include, but is not limited to, the sharing of staff and creation of joint roles; and/or
- The creation of companies or other legal entities to pursue their mutual objectives.