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To:
Rotherham Health and Wellbeing Board
NHS Rotherham CCG

Copy to:
Rotherham Metropolitan Borough Council

29th October 2014

Dear colleague,

Thank you for submitting your revised Better Care Fund (BCF) plan. I know this has been a very rigorous and demanding process, so I am extremely grateful for the considerable thought and work that has gone into your plan. It is clear that your team and partners have worked very hard over the summer, and have a clear commitment to improving people's care.

I am writing to confirm the outcome of the plan assurance process. As you will know, plans have been subject to a robust and consistent methodology to assure the quality of local plans (the Nationally Consistent Assurance Review (NCAR)). While I recognise the significant progress that has been made in such a short space of time, the review process identified a number of fundamental delivery risks and areas where the plan needs to be strengthened further. The outcome of the NCAR process has therefore placed your plan in the '**Approved Subject to Conditions**' category.

It is important to stress that we consider the conditions to be critical to the successful delivery of your plan, and at this stage it means that your plan has not yet been fully approved. The full NCAR outcome report for your plan is attached to this letter.

As set out in the NCAR methodology document published in August¹, areas whose plans fall into the 'Approved Subject to Conditions' category will need to fulfil specified conditions before their plan is fully approved. If required, you will receive additional support to assist you in meeting these conditions.

The conditions are set out below:

- Condition 4a: The plan must address the outstanding narrative risks identified in the NCAR report
- Condition 4c: The plan must address the outstanding analytical risks identified in the NCAR report

Appended to this letter is your NCAR outcome report which documents the agreed actions. In order to assist you in revising your plan, we have appointed a Better Care Advisor Nick Clarke who will work with you to develop an action plan to detail how and by when the agreed actions will be addressed to meet the above conditions. Once the conditions have been met your plan will be considered again for approval. More detail on this process is included further in this letter.

We recognise that you may need to start entering into spending commitments now in order to ensure continuity of service. If this is the case, and you feel that with appropriate support you will meet the conditions set out in this letter, then you should proceed with gearing up for implementation on the basis that you will meet the conditions (and thus move to an approved plan). However, we strongly recommend that:

- i. Commissioners should not enter into any S.75 agreement to pool budgets and/or under which a local authority is to commission the relevant services until plan approval has been obtained;
- ii. If embarking on any procurement process before approval is confirmed, commissioners should make it absolutely clear to potential providers in all procurement documentation that the award of a contract will be strictly conditional on that approval being obtained, that the commissioners have discretion to abandon, amend or vary the procurement at any point prior to contract award, and will have no liability to potential providers for wasted bid costs or otherwise should they exercise that discretion;
- iii. If commissioners reach the point at which they are ready to enter into contractual arrangements with any provider for the relevant services when their plan has still not been approved, they should either (and preferably) defer doing so until approval has been obtained, or (and only if entering into the contract at that stage is entirely necessary) only do so having included in the relevant contract appropriate provisions to ensure that the contract (or the contract insofar as it relates to the relevant services) is conditional on final plan approval by NHS England and other appropriate protections as further described in the attached guidance document;
- iv. Commissioners should under no circumstances make payments to providers prior to approval being obtained. In the event that payments are made and approval is not granted, commissioners will not receive funding for those payments.

Please ensure you follow the guidance issued by NHS England and include standard wording approved by NHS England in every formal document that could commit any element of your share of the national £3.46bn 15/16 BCF monies which is being routed via CCGs (i.e. contracts, procurement processes, Section 75 Agreements and such like) to ensure that it makes clear that it is subject to final plan approval by NHS England. The guidance is attached to this letter.

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NHS England may not approve the expenditure that has been committed to and this is why it is essential to follow the guidance. If the clause is not included and NHS England does not approve the expenditure, it will be for local commissioner(s) – not NHS England – to fund any shortfall.

With regards to following the guidance, I recognise that in practice CCGs will be planning to put their BCF allocation into a pooled fund under section 75 of the NHS Act 2006, and for a significant proportion of that to be spent by partner local authorities rather than the CCG. The recommendation to insert a standard clause in all contracting documents, procurement documents, and section 75 agreements relating to BCF expenditure applies to CCGs. However, given the release of the entire CCG BCF allocation will remain subject to approval of a plan, local authorities will need to work closely with relevant CCGs to consider any proposals to enter into spending commitments that are dependent on the release of CCG funds to the section 75 pool. If local authorities choose to go ahead with entering into spending commitments, they would bear the financial risk of entering into a contract which they may find in April they do not have the funding for if NHS England does not approve the plan.

For clarity the guidance only applies to the BCF funding that is routed directly through the CCG. You will be aware that a small proportion of your total BCF allocation (the Disabled Facilities Grant and Social Care Capital Grant) will be paid directly to the local authority by the Department of Health and Department of Communities and Local Government under section 31 of the Local Government Act 2003. The detailed terms and conditions under which this part of your area's BCF allocation will be paid will be confirmed later this year, but we expect this will include an equivalent requirement for this money to be spent in line with an agreed and approved BCF plan.

I want to reiterate that the policy intent is that all BCF funds will remain within the local area as per the published guidance.

Process for getting to approval

To support you to improve your plan you have been allocated a dedicated Better Care Advisor Nick Clarke who will work with you to develop an action plan setting out how and when you will address the agreed actions and meet the conditions outlined above. This action plan should be submitted to bettercarefund@dh.gsi.gov.uk by 14 November 2014. This process of agreeing an action plan will also include agreeing a programme of further support.

Your Better Care Advisor will also work with you to agree the level of resubmission and further assessment that will be required, and the timetable for submission. Your updated plan will be subject to an assurance process that is proportional to the materiality of the conditions set out in your NCAR outcome report (i.e. if these are wide-ranging the plan may be subject to a full NCAR assessment, but if they are narrower in scope your Better Care Advisor will agree the level of resubmission required to secure approval).

The aim is to get your plan to a fully approved status by end of December 2014.

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Once the conditions set out earlier in this letter have been met, your plan may be approved subject to the following standard conditions which apply to all BCF plans. These are as follows:

- The Fund being used in accordance with your final approved plan and through a section 75 agreement;
- The full value of the element of the Fund linked to non-elective admissions reduction target will be paid over to CCGs at the start of the financial year. However, CCGs may only release the full value of this funding into the pool if the admissions reduction target is met as detailed in the BCF Technical Guidance². If the target is not met, the CCG(s) may only release into the pool a part of that funding proportionate to the partial achievement of the target. Any part of this funding that is not released into the pool due to the target not being met must be dealt with in accordance with NHS England requirements. Full details are set out in the BCF Technical Guidance.

These conditions would be imposed through NHS England's powers under sections 223G and 223GA of the NHS Act 2006 (as amended by the Care Act 2014). These allow NHS England to make payment of the BCF allocation subject to conditions. If the conditions are not complied with NHS England is able to withhold or recover funding, or direct the CCG that it be spent in a particular way.

Non-elective (general and acute) admissions reductions ambition

As there is a considerable amount of time between the submission of BCF plans and their implementation from April 2015, we recognise that some areas may want to revisit their ambitions for the level of reduction of non-elective admissions, in light of their experience of actual performance over the winter, and as they become more confident of the 2014/15 outturn, and firm-up their plans to inform the 2015/16 contracting round. Any such review should include appropriate involvement from local authorities and be approved by HWBs. NHS England will assess the extent to which any proposed change has been locally agreed in line with BCF requirements, as well as the risk to delivery of the ambition, as part of its assurance of CCGs' operational plans.

The Better Care Fund remains a significant enabler for delivering better, more integrated care for people locally. I hope that some further time and additional support and information will enable you to take the final steps to having a fully approved plan, and move quickly towards implementation.

Once again, thank you for the work and local leadership that you have shown in developing your plan so far.

Yours sincerely,



Dame Barbara Hakin
National Director: Commissioning Operations
NHS England

- ¹ <http://www.england.nhs.uk/wp-content/uploads/2014/08/bcf-nat-ass-methodology.pdf>
- ² <http://www.england.nhs.uk/wp-content/uploads/2014/08/bcf-technical-guidance-v2.pdf>