

Report

Report to:	Clyde Valley Learning and Development Joint Committee
Date of Meeting:	4 December 2017
Report by:	Chair of Clyde Valley Learning and Development Project Implementation Steering Group

Subject:	Clyde Valley Learning and Development Project – Ownership and Use of the Promoting Positive Behaviour Programme
----------	--

1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ request approval of a Minute of Agreement (MoA) for the Promoting Positive Behaviour (PPB) programme
- ◆ request approval to authorise other councils to use the PPB model under licence from the Promoting Positive Behaviour Governance Group

2. Recommendation(s)

2.1. The Joint Committee is asked to approve the following recommendation(s):-

- (1) that the Promoting Positive Behaviour Minute of Agreement which had been developed to protect and delineate the ownership of the Promoting Positive Behaviour programme by the Clyde Valley Learning and Development Group be approved;
- (2) that the Promoting Positive Behaviour Minute of Agreement be signed off by representatives of the eight Clyde Valley Member Councils; and
- (3) that the letter of licence contained in the Schedule to the Minute of Agreement should be approved to permit other councils to use the PPB model, subject to authorisation by the Promoting Positive Behaviour Governance Group.

3. Background

- 3.1. In 2010 the Clyde Valley Social Care Sub-group was asked by Social Work Directors on the Clyde Valley Health and Care Collaborative Group to explore alternatives to the current arrangements for training staff in managing challenging behaviour.
- 3.2. A substantial and complex project was developed on the basis of this objective to develop a new programme of training to be known as Promoting Positive Behaviour.
- 3.3. Given the significance of this new development, the new training model required a high degree of scrutiny and monitoring. For this reason a three tier governance structure was developed. This comprises of the following:-

- ◆ High level strategic governance
- ◆ Governance of training content and quality assurance of delivery
- ◆ Local governance of programme delivery

3.4. The establishment of this structure is central to the establishment of PPB as a viable long term project which is owned by, managed, resourced, delivered and quality assured by the member councils of the Clyde Valley Learning and Development Group.

3.5. At the meeting of the PPB Governance Group on 5 October 2016, papers were submitted and approved to establish the three tier governance structure.

4. Programme Ownership and Intellectual Property

4.1. The PPB programme was developed through input from five of the Clyde Valley Member Councils. The model was developed for use by all eight Members. One Associate Member Council was also involved in the development of the programme to a lesser degree.

4.2. Prior to the PPB model being developed, training was undertaken by private providers using their own training materials and standards. It is commonplace for training organisations providing training of this kind, to protect their own intellectual property and to establish clearly the ownership of the content.

4.3. Following discussions with South Lanarkshire Council's Legal Services, it has been agreed that the appropriate approach to clearly delineate ownership of the PPB programme is to establish a separate Minute of Agreement which directly relates to the PPB programme.

4.4. The MoA sets out that the programme is jointly and severally owned by the eight Member Councils of the Clyde Valley Learning and Development Group and that the owners have joint responsibility for maintaining and governing all aspects of the programme and its usage.

4.5. By establishing and signing off the MoA, the content of the programme cannot be changed or altered in any way, nor the programme delivered differently by any participating organisation without the prior approval of the PPB Governance Group.

4.6. The MoA is attached to this report as appendix 1.

5. Liability and Risk Management

5.1. Given the nature of the subject matter and the context of service users where this model is applied, a consistent approach is vital to deliver the programme correctly and with the minimum of risk. This consistency will be maintained by formalising the overall governance of the programme both at a strategic and local level, and by managing its quality assurance.

5.2. With any programme of training of this nature, there remains an element of risk and hence potential liability. The inclusion of these responsibilities within the governance structure described in the MoA is designed to mitigate any risks associated with the programme and, therefore, to minimise the likelihood of any liability being raised against the Member Councils.

- 5.3. The ongoing governance of the programme based on the three tier governance model is designed to monitor all aspects of the programme's delivery and the impact of the programme on service delivery.

6. Termination

- 6.1. The MoA makes it explicit that being a party to the agreement is contingent on Councils retaining their membership to the Clyde Valley Learning and Development Group.

7. Extending Access to the Programme

- 7.1. The ongoing success of the PPB programme has brought the model to the attention of many organisations outwith membership of the Clyde Valley Learning and Development Group.
- 7.2. To date, members of the Clyde Valley Social Care Sub-group have been approached by three Associate Member Councils, and one other third party organisation enquiring about the possibility of using the PPB Programme in their respective organisations.
- 7.3. Until the formal ownership of the programme was signed off via the MoA, the agreed response has been to decline these requests. It is clear though that the demand is still present to consider using the programme and reap the documented benefits it brings when compared to similar commercial training models.
- 7.4. At a meeting of the PPB Governance Group on 14 March 2017 it was agreed that subject to the MoA being signed off, the Group should establish a pilot programme with East Ayrshire Council to deliver the programme under licence.
- 7.5. Following discussions with and advice from South Lanarkshire Council's Legal Services, it was agreed that the appropriate vehicle for achieving this was the establishment of a letter of licence authorising its usage for a fixed period.
- 7.6. The terms of the proposed licence agreement state that the agreement must be signed by two members of the PPB Governance Group (one of whom will be the Chair of the Group), and that the licence will be countersigned by the appropriate representative of the third party organisation.
- 7.7. The license agreement will be of a fixed duration and subject to meeting the defined governance arrangements set out by the owners of the programme.
- 7.8. The proposed letter of licence is attached to this report as the schedule to the MoA in Appendix 1.

7. Employee Implications

- 7.1. The establishment of the MoA formally makes a commitment to meet the governance arrangements of the programme. This includes ensuring that, where possible, the Member Councils attend the PPB Governance Group and that a quorum of Members is in attendance for all meetings.
- 7.2. The delivery of the proposed pilot programme for PPB will be delivered through the established capacity building model of peer to peer training. The initial training for the pilot organisation will be provided by agreement through the Clyde Valley Social Care Sub-group. Having provided initial training and supervision for new trainers, the programmes will be delivered and governed locally by the pilot organisation.

8. Financial Implications

- 8.1. There are no immediate financial implications.

9. Other Implications

- 9.1. The primary risks will be mitigated by adhering to the terms of the MoA and the letter of licence respectively.
- 9.2. There are no implications for sustainability in terms of the information contained in this report.

10. Equality Impact Assessment and Consultation Arrangements

- 10.1. This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and therefore no impact assessment is required.
- 10.2. All eight Clyde Valley Member Councils were invited to participate in all aspects of the PPB programme, and contribute to play a role in its governance and delivery.

Gill Bhatti

Chair, Clyde Valley Learning and Development Project Implementation Steering Group

9 November 2017

Previous References

- ◆ 5 December 2016 - Clyde Valley Learning and Development Project - Governance of the Promoting Positive Behaviour Programme

List of Background Papers

- ◆ Clyde Valley Learning and Development Joint Committee Minute of Agreement

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

Gill Bhatti, Chair, Clyde Valley Learning and Development Project Implementation Steering Group

Ext: 5604 (Tel: 01698 455604)

E-mail: gill.bhatti@southlanarkshire.gov.uk

Appendix 1

Promoting Positive Behaviour Minute of Agreement and Schedule

MINUTE OF AGREEMENT

Relating to:- Promoting Positive Behaviour Model

Between

SOUTH LANARKSHIRE COUNCIL

and

EAST DUNBARTONSHIRE COUNCIL

and

EAST RENFREWSHIRE COUNCIL

and

GLASGOW CITY COUNCIL

and

INVERCLYDE COUNCIL

and

NORTH LANARKSHIRE COUNCIL

and

RENFREWSHIRE COUNCIL

and

WEST DUNBARTONSHIRE COUNCIL

Administration & Legal Services
South Lanarkshire Council
13th Floor, Council Offices
Almada Street
Hamilton
ML3 0AA

Ref: HL/CPPL/15919

MINUTE OF AGREEMENT

Relating to: - Promoting Positive Behaviour

between

SOUTH LANARKSHIRE COUNCIL, Almada Street,
Hamilton, ML3 0AA ("South Lanarkshire")

and

EAST DUNBARTONSHIRE COUNCIL, 12 Strathkelvin
Place, Kirkintilloch, G66 1TJ ("East Dunbartonshire")

and

EAST RENFREWSHIRE COUNCIL, Eastwood Park,
Rouken Glen Road, Giffnock, G46 6UG ("East
Renfrewshire")

and

GLASGOW CITY COUNCIL, City Chambers, George
Square, Glasgow G2 1DU, ("Glasgow City")

and

INVERCLYDE COUNCIL, Municipal Buildings, Clyde
Square, Greenock, PA15 1LY ("Inverclyde")

and

NORTH LANARKSHIRE COUNCIL, Civic Centre,
Windmillhill Street, Motherwell, ML1 1AB ("North
Lanarkshire")

and

RENFREWSHIRE COUNCIL, Renfrewshire House,
Cotton Street, Paisley, PA1 1AN, ("Renfrewshire") and

WEST DUNBARTONSHIRE COUNCIL, Garshake
Road, Dumbarton, G82 3PU ("West Dunbartonshire")

all incorporated under the Local Government etc
(Scotland) Act 1994 and all hereinafter collectively
referred to as the "Local Authorities"

INDEX OF CLAUSES

1. Interpretation
2. Duration of Agreement
3. Termination
4. Governance Group & Sub-Groups
5. Standing Orders and Financial Regulations
6. Intellectual Property
7. Points of Contact
8. Applicable Clauses
9. Resolution of Disputes
10. Effect Date, Counterparts and Delivery
11. Law and Jurisdiction

WHEREAS:

(One) In terms of Section 1 of the Local Authorities (Goods & Services) Act 1970 a Local Authority may enter into an Agreement with respect to the supply of administrative or professional services to any public body;

(Two) The Local Authorities are all public bodies within the meaning of Section 1 of the said Act;

(Three) The Local Authorities have formed the Clyde Valley Learning and Development Joint Committee constituted under Section 57 of the Local Government (Scotland) Act 1973 in terms of Agreement between the Local Authorities dated 7 October 2008 and subsequent dates for the purposes of delivering the Project as defined in the said Agreement; and

(Four) The Local Authorities have agreed to enter into this Minute of Agreement as part of the delivery of the Project and in particular to enable the delivery of the PPB Model (as hereinafter defined).

THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

In this Agreement the following expressions shall have the meanings respectively ascribed thereto:

“Agreement” means this Agreement as executed by the Local Authorities;

“Associate Member” means an Associate Member of the CVLD Joint Committee in terms of the Project Agreement;

“CVLD Joint Committee” means the Clyde Valley Learning and Development Joint Committee constituted under Section 57 of the Local Government (Scotland) Act 1973 in accordance with the Minute of Agreement between the Local Authorities dated 7 October 2008 and subsequent dates;

“Governance Group” means the group of officers, which has been established to oversee the scheduling, development, advertising, management and monitoring of the PPB Model.

“Implementation Steering Group of the CVLDG Joint Committee” means the group of officers responsible for managing the day to day activities of the Clyde Valley Learning and Development Project.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Lead Authority” means South Lanarkshire

“Member Authority” means any Local Authority which is a Full Member of the CVLD Joint Committee;

“PPB Model” means the model devised and developed by the Local Authorities for the delivery of training in Promoting Positive Behaviour including but not limited to, the theory, context and practical applications of interventions, breakaway and de-escalation techniques;

“Project Agreement” means the Minute of Agreement between the Local Authorities dated 7 October 2008 and subsequent dates establishing the CVLD Joint Committee;

“Service” means the provision of, delivery of, permission to use and, where agreed by the Governance Group levy a charge for the PPB Model to any person or organisation in terms of this Agreement;

“Third Party User” means any person or organisation who has been authorised by the Governance Group to utilise the PPB Model other than the Member Authorities and the Associate Members; and

In this Agreement:-

- (a) References to the singular include the plural and vice versa unless the context otherwise requires;
- (b) Clause headings and sub headings are for reference purposes only and shall not affect the construction of anything in the Agreement. Reference to a clause is a reference to the whole of that clause unless stated otherwise;

(c) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees and

(d) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”

2. DURATION OF THIS AGREEMENT

This Agreement will commence on 1 April 2017 (“the Commencement Date”) notwithstanding the date or dates of signature hereof, and shall continue thereafter until the CVLD Joint Committee agrees that the Agreement shall be terminated.

3. TERMINATION

- 3.1 In the event of any Local Authority ceasing to become a Member of the CVLD Joint Committee that Local Authority shall automatically cease to be a party to this Agreement;
- 3.2 If any Local Authority wishes to withdraw from this Agreement they shall serve written notice of their intention to do so on the Lead Authority by giving not less than six months of their intention to withdraw;
- 3.3 Any assets (whether financial, materials, or equipment) relating to the PPB Model and/or the Service as at the date of termination of this Agreement shall be appropriately distributed among the Local Authorities as decided by the Governance Group.

4. GOVERNANCE GROUP & SUB-GROUPS

- 4.1 The Governance Group shall have as its purpose the regulation of the provision of the Service, but that subject to the terms and provisions of this Agreement;
- 4.2 The Chair of the Governance Group shall be appointed by the Local Authorities prior to 1 April in each year. If the Local Authorities fail to make such an appointment in relation to any year the Chair appointed in the previous year shall continue in office until an alternative appointment is made.
- 4.3 Each Local Authority shall be entitled to nominate up to two representatives to the Governance Group at any time.

- 4.4 Any Associate Member may be invited to send officers to attend meetings of the Governance Group but such officers shall be present as observers only and shall have no voting rights;
- 4.5 Each Local Authority shall be entitled to replace its nominated officer(s) on the Governance Group at any time, and also to send a substitute officer in his/her place, which substitute officer shall enjoy the same rights and privileges as the nominated officer;
- 4.6 The Governance Group may invite any other appropriate persons, representing appropriate professional or other interests, to attend its meetings from time to time. No representatives attending in terms of this sub-clause will be entitled to vote;
- 4.7 The Lead Authority will convene meetings of the Governance Group at not less than six monthly intervals. The Lead Authority shall ensure that the other Local Authorities are given at least fourteen days' notice in writing of any such meeting.
- 4.8 The quorum of the Governance Group shall be not less than one third in number of the Local Authorities. Each Local Authority shall have one vote irrespective of the number of its officers in attendance and decisions will be taken by a majority of those present and voting. In the event of there being no majority vote in relation to any matter the Chair shall have the casting vote.
- 4.9 The Governance Group will be responsible for exercising the following functions:-
- a) Monitoring usage of the Service by Member Authorities, Associate Members and Third Party Users;
 - b) Ensuring that satisfactory arrangements are in place to monitor the standard of the Service;
 - c) Monitoring of incidents and issues;
 - d) Relevancy and currency of course content (adult and child context);
 - e) Quality assurance of content and delivery;
 - f) Management of capacity and demand;
 - g) Agreeing, rejecting or amending any changes which may be proposed to the PPB Model;
 - h) Considering applications from persons other than the Member Authorities and the Associate Members, who wish to use the PPB Model;

- i) Granting Licences to Third Party Users in accordance with the Licence template contained in the Schedule annexed hereto. Any such Licences should be granted by the Chair of the Governance Group and one other member of the Governance Group.
- j) Where necessary, taking or instructing the Lead Authority to take action against or in relation to any Third Party User;
- k) Risk assessment and mitigation;
- l) Setting up such sub-groups as is considered to be appropriate in the interests of the Service and the PPB Model;
- m) Governance arrangements for itself and any sub-groups; and
- n) Any other such matter as appear to the Governance Group to be appropriate in relation to the Service.

5. STANDING ORDERS AND FINANCIAL REGULATIONS

- 5.1 This Agreement shall operate subject to the Standing Orders and Financial Regulations of the Lead Authority insofar as these may be varied from time to time;
- 5.2 In the event of any conflict between this Agreement and the said Standing Orders and Financial Regulations the provisions of the Standing Orders or Financial Regulations as the case may be, shall rule.
- 5.3 Each Local Authority shall contribute in-house resources e.g. trainers, facilities, administration to ensure the delivery of the PPB Model as appropriate. In the event of any issue or dispute as to the level of such contribution from any Local Authority the matter shall be referred to the Governance Group for a determination thereon which determination shall be final.

6. INTELLECTUAL PROPERTY

- 6.1 Intellectual Property in the PPB Model shall be jointly and severally owned by the Local Authorities.
- 6.2 No Local Authority shall be entitled to sell, assign or otherwise dispose of its Intellectual Property rights in the PPB model without the consent of the CVLD Joint Committee.

7. POINTS OF CONTACT

Each Local Authority will provide the Lead Authority with a nominated point of contact from their Authority who will manage the availability of training, facilities, trainers and course participation.

8. APPLICABLE CLAUSES

The following Clauses of the Project Agreement shall apply equally to this Agreement and are deemed to be incorporated herein:-

- a) Clause 12 Termination;
- b) Clause 14 Confidential Information;
- c) Clause 15 Freedom of Information;
- d) Clause 16 Data Protection; and
- e) Clause 19 – Law

9. RESOLUTION OF DISPUTES

Any dispute arising in terms of this Agreement shall be referred by the Governance Group to the Implementation Steering Group of the CVLD Joint Committee for determination.

10. EFFECTIVE DATE, COUNTERPARTS AND DELIVERY

- 10.1 This Agreement may be executed in any number of counterparts, each of which is an original, and all of which taken together, shall constitute one single document.
- 10.2 Each executed counterpart shall be delivered to the Lead Authority by whatever means is most practicable for that Member Authority (including but not limited to electronic means)

and shall be held by the Lead Authority as undelivered until the Lead Authority has received the executed counterparts from all Members. "Delivery" shall be deemed to have taken place once the Lead Authority is in receipt of all executed counterparts, and the Lead Authority shall e-mail each Member confirming the date when Delivery has taken place.

10.3 The Parties hereto agree that this Agreement shall take effect on the Commencement Date (earlier defined in clause 2.1) notwithstanding the date of Delivery under clause 10.2 above.

11. **LAW AND JURISDICTION**

This Agreement shall be construed in accordance with Scots Law and shall be subject to the exclusive jurisdiction of Scottish Courts: IN WITNESS WHEREOF this Agreement consisting of this and the seven preceding pages together with the Schedule in one part annexed are executed in counterpart as follows:-

By South Lanarkshire Council

Council Seal or Witness:-

at (place)

on(date), by

.....**x(signature)**

.....**x(witness)**

.....

.....

Full Name of Authorised Signatory

Full Name of Witness

.....

.....

.....

Designation

Witness Address

THE SCHEDULE

This is the Licence template referred to in the foregoing Minute of Agreement relating to:-

Promoting Positive Behaviour Model among

South Lanarkshire Council, East Dunbartonshire Council, East Renfrewshire Council, Glasgow City Council, Inverclyde Council, North Lanarkshire Council, Renfrewshire Council and West Dunbartonshire Council.

Licence For Clyde Valley Promoting Positive Behaviour (“PPB”)

The Clyde Valley Learning and Development Joint Committee, a joint committee constituted in terms of Section 57 of the Local Government (Scotland) Act 1973 (“the CVLDJC”), hereby grants a non-exclusive licence to **<Name of Organisation>, address>** (“**the Licensee**”) to utilise the CVLDJC Promoting Positive Behaviour programme of training devised and owned by the CVLDJC (“the PPB programme”) but only on the following conditions.

- 1. Duration:** This licence will commence on <Date> and will continue for a period of **<N months/years>** until **<Date>** at which time this licence shall terminate automatically without any requirement for notice to be served.

- 2. No licence fee:** For the avoidance of doubt, no licence fee is due by the Licensee in connection with this Licence.

- 3. Ownership and intellectual property:** All intellectual property rights in and to the PPB including but not limited to training materials, course content and e-learning files are owned by the CVLDJC. Permission to reproduce PPB programme training materials is granted for the sole use of delivering the PPB programme for the Licensee’s statutory functions or its own business purposes only.

4. Prohibition against assignment etc: The Licensee may not dispose, assign, purport to sell, transfer or otherwise share the PPB programme or any part thereof including, but not limited to, any of the documentation or training materials with any other person. Breach of this condition shall entitle the CVLDJC to terminate this license with immediate effect by written notice to the Licensee. Upon receipt of such notice the Licensee shall immediately return all documents, materials and others provided in terms of this licence to the CVLDJC.

5. Programme governance:

- a. The CVLDJC has established the PPB Governance Group from among its members to manage and monitor the PPB programme on its behalf including the grant and management of licences such as this and the Licensee shall liaise with and accept any appropriate instructions from that Group in connection with any matters relating to this license;
- b. The Licensee shall take full responsibility for the governance of the PPB programme for its own purposes;
- c. The Licensee shall establish a local governance group or similar to manage the PPB programme and compliance with the any guidelines to licensees provided by the PPB Governance Group from time to time; and.
- d. Meetings of the Licensee's local governance group shall be minuted, and these in turn submitted to the PPB Governance Group on request by the PPB Governance Group at any time or times. Failure to comply with any such request shall entitle, but not oblige, the CVLDJC to terminate this license with immediate effect by written notice to the Licensee.

6. Training for trainers: The CVLDJC will provide initial training for the Licensee's designated trainers who will be delivering the PPB programme. There will be no charge by the CVLDJC in respect of this training, however any costs or expenses such as accommodation charges or catering incurred in hosting the training will be met by the Licensee unless the CVLDJC agrees otherwise.

7. Liability: The Licensee hereby warrants that it has taken all reasonable and necessary steps to assure itself that the PPB programme is suitable and appropriate for its

purposes and the CVLDJC gives no assurances in this respect. In addition, save as prohibited by law, the CVLDJC shall not be liable to indemnify the Licensee in respect of any liability of any kind whatsoever to any person including, for the avoidance of doubt, the Licensee or any of its employees, other persons acting on its behalf and/or service users.

8. **Quality assurance:** The Licensee shall be responsible for managing the quality assurance of the PBB programme according to the programme governance advice as provided by the PPB Governance Group. This will include managing all aspects of the delivery of the PBB programme such as providing joining instructions, scheduling rosters, venue, equipment, course numbers and training personnel.

9. **Evaluation:** The Licensee shall be responsible for the evaluation of the PBB programme's delivery and subsequent impact on service users, service staff and training staff.

10. **Law of Scotland to apply:** this licence agreement shall be interpreted by and governed according to the laws of Scotland.

11. **Notices etc:** Any notices or other requests served or requiring to be served under this licence by the CVLDJC shall be in writing and signed by the Chair of the PPB Governance Group and one other member thereof. Service on the Licensee shall be made to the Licensee's address as stated in this licence.

12.

This licence is authorised on behalf of the CVLDJC by

Signature: **Chair PPB Governance Group**

<Name (Print)>

<Date>

Signature: **Member PPB Governance Group**

<Named member (Print)>

<Date>

The terms of this licence are accepted by a duly authorised signatory of the License

Signature:

<Name (Print)>

<Position>

<Date of Signing>