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| MEETING: | CABINET |
| DATE: | 16 MAY 2013 |
| TITLE OF REPORT: | SECTION 75 PARTNERSHIP AGREEMENT |
| REPORT BY: | ASSISTANT DIRECTORS CHILDREN'S AND ADULTS SERVICES – PEOPLE'S SERVICES DIRECTORATE |

1. Classification

Open

2. Key Decision

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.

It is also a Key Decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the County.

Notice has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

3. Wards Affected

County-wide

4. Purpose

To approve the financial schedule between Herefordshire Council and Herefordshire Clinical Commissioning Group for 2013 to 2014 attached as Appendix D to the Section 75 and agree the extension to the existing Section 75, until the 30th June 2013, whilst work continues to develop a 'fit-for-purpose' new Partnership Agreement for 2013/16.

5. Recommendation(s)

THAT:

- (a) **The financial schedule for 2013/14 in Appendix D page 26 is approved on behalf of the Council**

Further information on the subject of this report is available from Chris Baird 01432 260264 or Marie Seaton 01432 260232

- (b) **An extension and novation of the existing Section 75 is agreed until June 30th 2013**
- (c) **The work in progress on a new Section 75 Agreement is endorsed, with a final document to be approved by 1st June.**

6. Key Points Summary

- The Section 75 Agreement provides the legal basis for the Council and Herefordshire Clinical Commissioning Group (HCCG) to design and deliver services within the budgets available to meet the needs of the people of Herefordshire. The Section 75 Agreement removes organisational barriers which may get in the way of effective commissioning. This Section 75 is completely separate from the Section 75 agreements with Wye Valley and 2gether.
- The Section 75 agreement will support the delivery of Herefordshire's Health and Wellbeing Strategy, allowing long term arrangements to be developed and put in place. The agreement covers lead commissioning, integrated provision, pooled budgets.
- The Section 75 builds on the previous work of the Council and the Primary Care Trust, which enabled integrated commissioning of a range of adults, children and family health and local authority services. It also enabled joint commissioning of private and third sector providers. A number of these arrangements continue, but the changes in the NHS and the creation of the HCCG provide an opportunity to develop a new relationship between the council and health in commissioning services.
- Section 75 arrangements are designed to ensure that 'partnerships' are properly constructed and supported within the legislation that permits their use. They cover purpose, governance and accountability, to avoid issues of liability or responsibility being unclear at the point of individual assessment or care when staff of one agency act for another body in carrying out its duties, whilst under instruction.
- Flexibility across health and social care budgets allows resources to be used where they are most needed. For instance health money could be used for preventative community services. The legal freedom for partners through the Section 75 has the potential to make service design more tailored to local population needs.
- A Section 75 partnership provides an opportunity to develop integrated care pathways and locally tailored services focused on individual needs. This allows a seamless transition between service providers e.g. intermediate care services. The arrangements allow commissioning for existing or new services, as well as the development of provider arrangements, to be joined-up. They were previously referred to as Section 31 (1999) Health Act flexibilities. The Section 75 should be used to develop services which deliver against the priorities of the Health and Wellbeing Strategy.
- The specific objectives for implementing Section 75 agreements are:
 - to facilitate a co-ordinated network of health and social care services, allowing flexibility to fill any gaps in provision
 - to ensure the best use of resources by reducing duplication (across organisations) and achieving greater economies of scale; and
 - to enable service providers to be more responsive to the needs and views of users, without distortion by separate funding streams for different service inputs.

- Appendix C sets out the Financial Arrangements between the two parties, including areas of underspends, overspends and termination of service.
- The Financial Schedule within the attached report (Appendix D) demonstrates the key service areas which are jointly funded by the CCG and HC for the financial period 2013/14. These services have been identified as priority areas for joint funding arrangements and aim to serve the people of Herefordshire with seamless, cost effective, quality services. In terms of Appendix D the financial schedule demonstrates the areas covered by Section 256, which allows the CCG to make payments to the Local Authority towards expenditure on Community Services.
- Memorandum items are outside the Section 75 in financial terms but are listed as issues which are being addressed by HCCG and the council. The second pooled budget is a proposal only at this stage for short breaks for children which should come into effect in October – the figures included are indicative full year figures and an in year variation will have to be agreed for 6 months later in the year when the commissioning of the service has been completed

7. Alternative Options

- 7.1 The Council and the HCCG could decide not to pursue a Section 75, and have separate approaches to commissioning and service provision. This would however not be in the best interests of people in Herefordshire, with the potential to create fragmented services, and inefficient use of resources. This would also make it more difficult to deliver the Health and Wellbeing Strategy.

8. Reasons for Recommendations

- 8.1 To ensure that the Council and the HCCG have a legal basis for joint, effective commissioning.

9. Introduction and Background

- 9.1 Herefordshire Council had a Section 75 Agreement between the Council and the Primary Care Trust (PCT) from 2009. This provided the legal agreement for the Council to carry out functions on behalf of the PCT, and for the PCT to do likewise on behalf of the Council. This led to integrated arrangements which provided a single approach, benefiting individual service users and providers and making an effective use of resources available. The creation of HCCG and the demise of the PCT require a new section 75 to be put in place. The extension and novation of the existing Section 75 Agreement provides an opportunity for the Council and the CCG to agree design principles; outcomes and robust governance arrangements for the new Section 75, which is attached as a draft to this report
- 9.2 In order for joint working to be effective, decision making needs to be timely, transparent, and unambiguous. Where organisations work together the requirements of their separate governance structures and ways of working can inhibit these outcomes. To counter this it is essential to maximise the alignment of decision making processes.
- 9.3 Appendix B sets out the overall governance structure for the S75. Central to this will be the operation of the S75 Board. This will comprise the Director of People's Services, the Herefordshire CCG Accountable Officer and support functions to be agreed. The remit of the Board will cover performance management and monitoring the Agreement and it will report through the CCG Board and Cabinet to the Health and Wellbeing Board. This will be an

improvement on previous arrangements and will provide greater transparency and oversight of effectiveness.

- 9.4 Joint commissioning groups (JCGs) will be responsible for delivering each aspect of the S75 using whatever flexibilities are deemed appropriate by the Partners. Commissioners will focus on outcome based commissioning in the planning and development of services; prepare business cases that outline proposed services, activity and financial implications with identified cashable savings or cost avoidance measures. A consistent business case template will be used across the partnership, and will only be presented to the JCG after financial and performance have validated the assumptions used. The JCG's Adults and Children's and Families will endorse any proposals, which will then be presented to the S.75 Board for onward approval through the governance process of the Council and CCG: Cabinet/CCG Board. The JCG's will implement the strategy, priorities and any approved service developments. The JCG's will provide regular monitoring reports to the Sec 75 Board. The summary schedule is included in Appendix D.
- 9.5 The Board will initially review any changes in year to the S75 agreement and these will be approved, where material, by the CCG Board and Cabinet. Further escalation will be made where necessary to the Health and Wellbeing Board.

10. Key Considerations

- 10.1 Children, young people, adults, families and carers benefit by having integrated services which maximise understanding and common delivery across a range of service areas. Providers of services benefit from having single conversations with commissioners at a local level, and resources can be used most effectively when combined around common aims. The Health and Wellbeing Strategy establishes the overarching aims to improve the lives of people in Herefordshire and a joint commissioning approach between two of the main commissioning public organisations provides a powerful vehicle to delivery within the finances available.
- 10.2 Without a novation agreement in place the CCG would not be able to release funding to the Council to enable them to discharge services. This potentially poses a risk to current service delivery.
- 10.3 The Council has duties and powers to commission and provide care to people resident within Herefordshire (the "Resident Population"): under s.74 of the National Health Service Act 2006 (the "2006 Act") which requires local authorities to make services available to NHS bodies acting in its area so far as is reasonably necessary and practicable to enable the NHS body to discharge its functions under this act and under the Local Government Act 2000 the Council has "Well Being Power" which allows it to do anything it considers likely to promote the economic, social and environmental well-being of the area unless explicitly prohibited elsewhere in legislation. In guidance, Local Authorities and previously, Health Trusts, have been encouraged to consider partnership working by using flexibilities under Section 75 of the 2006 Act. These partnership arrangements will in future be made between Local Authorities and the Clinical Commissioning Groups.
- 10.4 A partnership agreement enables Herefordshire Council and Clinical Commissioning Group to contribute to the delivery of the Health and Wellbeing Strategy's Vision. This will be achieved by strategically aligning resources and redesigning services. This facilitates more fundamental change through a redoubling of effort to manage the demand for formal health and social care interventions: help people who may be at risk of needing health and social care support to remain independent for as long as possible; build the capacity of communities to support people in new ways; prioritise the development of services that support people's recovery

after an accident or episode of ill-health (including reablement, intermediate care, crisis response and telecare); ensure that personalisation works for those with on-going needs so they are able to plan and direct their own support and have a choice of cost effective solutions.

- 10.5 The legal flexibilities provide a clear opportunity for the Herefordshire Council and the Clinical Commissioning Group (CCG) to commission and develop integrated services. The legislation is versatile, leaving localities to shape new systems of governance and provision to suit the capacity of local partners and the needs of their populations. National evidence suggests that integrated services have several beneficial outcomes for users and can make efficiency savings by avoiding duplication.
- 10.6 A new Section 75 Agreement allows both the CCG and Herefordshire Council the opportunity to revise all services currently within the agreement that was originally created by Herefordshire Council and Herefordshire Primary Care Trust in 2011. It allows the opportunity to assess whether these remain key priority service areas for both partner organisations,, whether they are now aligned to other external partner organisations, if there are better ways of working as key business partners i.e. less transactional processes equates to less administration proving more cost effective. Additionally, it allows for priorities to be aligned with the Health and Wellbeing Board with the intention of increased flexibility of working together in Partnership to deliver the right outcomes for the People of Herefordshire over the three year period.

11. Community Impact

- 11.1 The Section 75 will have significant community impact. Many of the service areas are particularly targeted at those with additional needs, or who are vulnerable. A number of the service areas focus specifically on early intervention, to support children, adults, families and carers and to prevent the reliance on higher cost, more specialised services, some of which exist outside of Herefordshire. Specific service areas are detailed in the agreement
- 11.2 There are promising indications from individual projects that joint working leads to positive outcomes for service users. The impacts of integrated care pathways have been highly commended in localities and include: improved accessibility to intermediate care, occupational therapy, physiotherapy and district nurses; faster rates of assessment, provision of care and installation of home equipment; and reduced use of acute hospital services, meaning improved outcomes for the people of Herefordshire.

12. Equality and Human Rights

- 12.1 Services commissioned under the section 75 will have due regard to the need to
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it." in terms of service delivery and in commissioning of the services themselves, including contract monitoring and management.

13. Financial Implications

- 13.1 £858k due from the CCG to the local authority and £555k payable from the authority to the CCG, excluding section 256 funding (which allows the CCG to make payments to the Local Authority towards expenditure on Community Services) of £3,152k which is pass ported to the authority via the CCG. Details of the components of these amounts are set out in the Section 75 and financial schedule.
- 13.2 Within the current services covered by the section 75 arrangement most services are fixed cost contributions by one partner to the other, but the variable costs of the Complex Needs pooled budget risks are shared in ratio to the current agreed contributions which are 3/7th local authority/ 3/7th education and 1/7th CCG.

14. Legal Implications

- 14.1 Set out any identified legal implications of the proposal.
- 14.2 Under the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 there are a number of criteria which have to be fulfilled before a partnership agreement can be entered into.
- (a) The partnership must be likely to lead to an improvement in the exercise of NHS and/or Local Authority health functions.
- (b) The partnership arrangements must fulfil the objectives of the health improvement plan of the Health Authority in whose area the partnership is to operate. With the abolition of Strategic Health Authorities it is not clear if this criterion remains relevant.
- (c) The partners must undertake a joint consultation of persons likely to be affected by the proposed arrangements. Therefore the Council and the CCG should consider whether any persons are likely to be affected by the arrangement or if it is purely an administrative measure with no effect on service users or staff.
- 14.3 The current version of agreement included in the Appendices is very much a first draft and concentrates primarily on the Council and the CCG's aspirations for the services. The final version will be legal document in a standardised format with specific detail on the services included, their operation and funding.

15. Risk Management

- 15.1 The Section 75 will be overseen by the Director of People Services on behalf of the Council, and by the Chief Operating Officer on behalf of the HCCG. The Director of Finance for the Council will monitor the financial performance of the Section 75 and promote action as required.
- 15.2 Operational and financial risks would increase if a Section 75 was not in place as it would create a twin track independent approach to service delivery and commissioning by both the Council and Clinical Commissioning Group

16. Consultees

- 16.1 To date key stakeholders/ consultees in the development of the Section 75 are:
Herefordshire Council - Chief Finance Officer, Adults and Children's Assistant Directors.
Herefordshire Clinical Commissioning Group – Head of Commercial Development
Public Health –Director and Consultant

17. Appendices

- 17.1 Section 75 between Herefordshire Council and the Herefordshire Clinical Commissioning Group and accompanying financial schedule.

18. Background Papers

- 18.1 None identified.