

Decision maker:	Cabinet
Decision date:	17 March 2016
Title of report:	Agreement of section 75 (s75)
Report by:	Joint commissioning better care fund manager

Classification

Open

Key decision

This is 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

Wards affected

Countywide

Purpose

To agree a six month extension to the original section 75 agreement between the local authority and Herefordshire clinical commissioning group (HCCG), to 30 September 2016.

Recommendation(s)

THAT:

- (a) the extension of the general section 75 agreement (at appendix one to this report) to 30 September 2016 be agreed;**
- (b) the section 75 agreement for the better care fund (at appendix two to this report) for the period 1 April 2016 to 30 September 2016 be agreed;**
- (c) the principle of developing a single section 75 agreement between the council**

- and Herefordshire clinical commissioning group (from September 2016 onwards) is approved, which will be presented at a future cabinet ratified; and
- (d) authority be delegated to the director for adults and wellbeing to finalise the council's funding contribution and detail of the better care fund delivery plans, following approval by the health and wellbeing board.

Alternative options

- 1 This partnership arrangement under section 75 of the NHS Act 2006 enables partners to commission integrated health and social care services to better meet the needs of the service users than if the partners were operating independently. The current agreement is due to end on 31 March 2016, unless further extended. The extension of the general section 75 agreement and the section 75 agreement for the better care fund is the recommended option.
- 2 An alternative option would be for the section 75 agreements to be terminated and services to be commissioned individually by partners. However, this is not recommended due to the benefits gained through joint commissioning.
- 3 Continuing the section 75 arrangements through two separate agreements is an option. However, the principle of developing a single agreement is recommended in order to achieve efficiencies and to reduce duplication.

Reasons for recommendations

- 4 To ensure that sufficient time is available for the development of a single section 75 agreement and that contractual agreement are in place whilst this work is completed.
- 5 The section 75 agreement provides a contractual framework for the use of pooled funds between the council and HCCG to enable services to be delivered and commissioned co-dependently. The arrangements enable delegation of functions in order to secure efficiencies and to avoid duplication. The recommendation has been made for this to continue within one section 75 agreement in the future.

Key considerations

- 6 The original agreement (referred to in this report as the general agreement) was entered into by the council and HCCG in 2013 for a period of three years, under section 75 of the NHS Act 2006 to commission integrated health and social care services to better meet the needs of the service users than if the partners were operating independently.
- 7 An extension period of up to six months is requested in order to allow partners to work together to develop and refine the services to be included in the section 75 agreement.
- 8 A further section 75 agreement has been entered into between the council and HCCG specifically in relation to the implementation of the better care fund (BCF) plan. The first year of this agreement ends on 31 March 2016. To enable the activity funded under the two agreements to be consolidated into a single section 75 agreement is recommended that the better care fund section 75 agreement for 2016/17 be approved for up to a six month period pending a further decision on the new single agreement.
- 9 The intended aims of the existing partnership agreements include:

- a. Promote the independence of people through a strategic shift to health promotion, prevention, early intervention and supported self-management to produce better outcomes and greater efficiency for the health and social care system;
 - b. Focus on helping people who may be at risk of needing health and social care support to remain independent for as long as possible;
 - c. Tailor interventions and support services which better understand and respond to the needs of the whole person and those of their carers
 - d. Maintain good governance and transparency to drive effective partnership working
- 10 The schemes included within the general section 75 agreement include:
- a. Children's complex needs solutions
 - b. Contribution towards herefordshire safeguarding children's board
 - c. Carers hub
 - d. Community equipment store
 - e. Kington court (intermediate care provision)
 - f. MIND (providing residential and nursing accommodation for adults of working age with mental health illness)
- 11 A cabinet decision was taken on 21st January 2016 in relation to the provision of short breaks and respite care services for children with disabilities (regarding the service delivered by wye valley NHS trust at 1 ledbury road). This scheme is partly funded through the better care fund and therefore is dependent upon the continuation of the section 75 agreement.
- 12 The better care fund has been established by the government to provide funds to local areas to support the integration of health and social care. It is a requirement of the better care fund that the HCCG and council establish a pooled fund for this purpose. The better care fund section 75 agreement sets out the terms on which the partners have agreed to collaborate in delivering the better care fund plans, which are approved by the health and wellbeing board.
- 13 Clear governance and information sharing protocols are in place and will be maintained during the six month extension and implementation periods.
- 14 During the six month extension period partners will work together to develop a single section 75 agreement, which will incorporate the general section 75 arrangement and the better care fund section 75 agreement. This consolidation into a single agreement will allow monitoring and reporting to become combined and will ensure that duplication is minimised. It will also enable partners to further improve the quality and efficiency of services and continue to make more effective use of resources. Fortnightly better care fund planning meetings are currently in place to monitor the progress of the development of a single agreement. Draft documents will be developed by June with the aim of finalising content during July and for governance processes to be completed for September 2016.

- 15 The proposed extension will also be subject to approval by the HCCG. This is currently scheduled for 29 March 2016.
- 16 Herefordshire is developing the One Herefordshire plan, which is an alliance of all the health and social care organisations working together to address the fundamental issues facing our community. The better care fund plan is a key component and integral part of this overarching plan for Herefordshire. Discussions are currently taking place with the HCCG about integration plans and a form of joint commissioning arrangement. Detailed proposals regarding this development will be brought forward in due course in a separate report.
- 17 National guidance documents regarding better care fund plans for 2016/17 are yet to be published resulting in a delay in establishing clear plans at this point. It is therefore recommended that authority is delegated to the director adults and wellbeing to finalise detail of the better care fund delivery plans, following review by the health and wellbeing board.

Community impact

- 18 Understanding Herefordshire and local needs assessments provide the evidence base to inform the development of a single section 75 agreement.
- 19 The existing section 75 agreements support the delivery of the Herefordshire Council Corporate Plan 2016 – 2020 aim to enable residents to live safe, healthy and independent lives and to secure better services, quality of life and value for money.
- 20 In addition the agreements support the health and wellbeing strategy aim for 'Herefordshire residents are resilient, lead fulfilling lives, are emotionally and physically healthy and feel safe and secure'.

Equality duty

- 21 The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
- 22 It is not envisaged that the recommendations in this report will negatively disadvantage the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Financial implications

- 23 The general section 75 agreement will be extended for six months to September 2016 at the same funding levels as for 2015/16 (annual budget £5.3m). The budget for the general S75 agreement for April to September 2016 will be £2.65m (council funding £1.95m, HCCG funding 0.7m). The financial impact on the BCF budget for the second half of 2016/17 is shown in paragraph 29 below.
- 24 The general S75 includes a risk share arrangement for the complex needs pool which will continue for the duration of the contract extension. The other funds represent fixed contributions by one partner or the other to contracts or services and carry no risk of variation.
- 25 The table below shows the original budgets (as included within the BCF S75

agreement), the final agreed budget and the forecast spend for 2015/16.

BCF Section 75 Budget / Forecast 2015/16	LA Contrib £'000	HCCG Contrib £'000	Total S75 Budget £'000	Final Budget £'0000	F/Cast 2015/16 £'000
Protection of Social Care*		4,520	4,520	4,520	4,520
Sub Total Pool 1		4,520	4,520	4,520	4,520
Community Health & Social Care Services Redesign		6,716	6,716	6,716	6,716
Total Pool 1		11,236	11,236	11,236	11,236
Implementation of Care Act*		458	458	458	458
Total Minimum Fund (revenue)		11,694	11,694	11,694	11,694
Home Market Mgt (Pool 2)	21,729	12,811	34,540	27,048	28,242
DFG / Social Care Capital	1,356	0	1,356	1,356	1,356
TOTAL FUNDING (BCF 15/16)	23,085	24,505	47,590	40,098	41,292

* These are the funds which are transferred from the HCCG to the local authority.

- 26 The BCF fund is reporting an overspend for 2015/16 of £1.2m, due to an increase in continuing health care (CHC) placements. These are health funded placements for people with ongoing health conditions which meet national criteria for health funding. The in year pressure has resulted in a financial pressure for the council of £0.8m under the risk share arrangements for 2015/16.
- 27 The 2016/17 budgets are expected to be broadly consistent with the figures for 2015/16, but have not yet been agreed.
- 28 NHS guidance for planning the BCF in 2016/17 has still not been published (16th February) (originally due in December 2015), and therefore the full financial implications for the council cannot be determined with certainty.
- 29 NHS England has now published the minimum fund allocations for 2016/17, and these are shown in the table below. Indicative figures for the additional pool (based upon December current clients) are included as a guide to the overall BCF budget for 2016/17. The financial impact of consolidating the two S75 agreements for six months into one agreement are shown below:

BCF Section 75 Indicative Budget 2016/17	LA Contrib £'000	HCCG Contrib £'000	Total S75 Budget £'000
Total Minimum Fund (revenue)		11,749	11,749
Care Home Market Mgt (Pool 2)	19,000	8,600	27,600
Disabled Facilities Grant	1,558	0	1,558
TOTAL INDICATIVE BCF BUDGET	20,558	20,349	40,907
Consolidation of Original S75 (6 months)	1,952	699	2,651
INDICATIVE TOTAL S75 BUDGET (post consolidation)	22,510	21,048	43,558

- 30 The minimum fund allocations do not specify the values to be attributed to the

protection of social care and implementation of the Care Act, and national guidance on BCF planning has not yet been issued. The council budget setting process took a prudent position and assumed that funding would be maintained at the same level as 2015/16, £5m in total. The council position is that a proportion of the increase in minimum funding should transfer to the council, it could be as low as £25k or in the region of £80k. The amount is subject to publication of the national planning guidance and local negotiation.

- 31 The final budgets for the care home market management pool (the additional pool) will reflect the costs of the clients supported as at the end of February 2016, but the December figures are shown above as a guide.
- 32 The BCF risk share arrangements were put in place for year one (2015/16) only and recognised that further work would be required to develop a risk share agreement for year two. Risk share arrangements will be renegotiated with the HCCG for 2016/17 to ensure that the council does not fund health costs.
- 33 Within the minimum fund allocation NHS England has identified £3.3m of ringfenced funds for NHS commissioned out of hospital services. The allocation also makes reference to a risk share agreement for the ringfenced fund. The national guidance is required in order to determine the impact, if any for the council.

Legal implications

- 34 Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in section 275 and 276 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The parties entered into a section 75 agreement in exercise of those powers under and pursuant of the NHS Regulations 2000.
- 35 Clause 3.1 of the original section 75 agreement allows for the term of the agreement to be extended for a period and on varied terms as the parties agree, beyond the initial term and in accordance with the provisions of clause 15 of the original section 75 agreement.

Risk management

- 36 If the proposed six month extension of the section 75 agreements are not agreed then the formal risk share arrangements will no longer be in place, which poses a risk to the council. If the extension is not granted then a separate risk share arrangement would need to be established.
- 37 Risk will be managed and controlled through the governance structure, which includes both the joint commissioning board and the health and wellbeing board.
- 38 Risk share arrangements are currently in place for the general section 75 agreement which includes risk for partners being in proportion to their contribution. A risk share agreement regarding the better care fund is in place for 2015/16 and is currently being negotiated regarding 2016/17. Therefore this extension does not extend the current risk share arrangements.
- 39 If the HCCG do not agree with the extension it may pose a risk to the council and to the delivery of services. Council officers are working closely with HCCG colleagues in developing better care fund plans, which includes the establishment of section 75 arrangements. Working in close partnership will assist in minimising this risk.

Consultees

- 40 The HCCG Governing body will take a formal decision on 29th March 2016. The better care fund plan will be submitted to the health and wellbeing board during March and final plan taken to NHS England on 11 April 2016.

Appendices

Appendix One – general section 75 agreement

Appendix Two – better care fund section 75 agreement (to follow)

Background papers

None