

Decision maker:	Cabinet
Decision date:	15 September 2016
Title of report:	Agreement of section 75 (S75) arrangements between the council and Herefordshire clinical commissioning group (CCG)
Report by:	Cabinet member health and wellbeing

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 variations to the Better Care Fund section 75 agreement (the BCF s75) effective from 1 October 2016.

Recommendation(s)

THAT:

- (a) the variations to the BCF s75 set out at appendix one, be agreed effective from 1 October 2016; and**
- (b) authority is delegated to the director for adults and wellbeing to complete the varied section 75 agreement following legal review of the document.**

Alternative options

- 1 To extend the original s75 agreement to run alongside the BCF s75. This is not recommended due to the duplication of contractual arrangements and inefficiencies in monitoring and delivering the two s75 agreements in parallel. The principle of developing a single s75 agreement was approved by cabinet on 17 March 2016.
- 2 Both of the s75 agreements to be terminated and services to be commissioned individually by partners. This is not recommended due to the benefits gained through joint commissioning. It is also a national requirement of the Better Care Fund that a minimum level of resources be held between the council and the CCG under a S75 agreement.
- 3 For the extension period to be removed from the varied BCF s75. If this extension option is not included, the BCF s75 will automatically end on 31 March 2018. It is recommended that the option to extend is included in the BCF s75 to enable it to be extended should both parties agree this is appropriate. Current national guidance suggests that the BCF will continue, at least in some form, beyond March 2018.

Reasons for recommendations

- 4 A 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 service users than if the partners were operating independently. The 'original' section 75 arrangement, which was entered into by the council and the CCG in 2013 for a period of three years, will end on 30 September 2016. The principle of developing and implementing a single legally binding agreement has already been agreed by cabinet and the recommendations implement that decision.
- 5 Variations to the BCF s75 will provide a single arrangement for the remaining 18 month period of the BCF s75 (from 1 October 2016 to 31 March 2018). The variation will also include an option for the BCF s75 to be extended for a further 18 months after 31 March 2018, up to 30 September 2019; any exercise of that option would be subject to a further decision.
- 6 It is a national requirement of the BCF to have a s75 agreement to manage the pooled budget arrangements. By consolidating the historical s75 arrangement with the better care fund arrangements, a single agreement on health and social care covering both adults and children will be in place. The implementation of a single arrangement will enable partners to achieve efficiencies, reduce duplication and will also facilitate the further development of joint commissioning between the council and the CCG.

Key considerations

- 7 Section 75 agreements provide a contractual framework for the use of pooled funds between the council and the CCG to enable services to be delivered and commissioned co-dependently, the BCF s75 is documented in appendix two.
- 8 On 17 March 2016 cabinet approved the principle of developing a single section 75 agreement between the council and the CCG replacing the current two agreements.
- 9 It is proposed that to achieve a single agreement the existing BCF is varied to incorporate all other pooled resource activity.

10 The services included within the BCF s75 agreement are set out in the table below:

Scheme name	Financial contribution (full year equivalent 2016/17)				2016/17 in S75 1/10/16 to 31/3/17			
	Council £'000	CCG (PASC) £'000	CCG £'000	Total spend £'000	Council £'000	CCG (PASC) £'000	CCG £'000	Total spend £'000
Reablement		420		420	-	210	-	210
Falls prevention service			123	123	-	-	62	62
Virtual wards / hospital at home			768	768	-	-	384	384
Risk stratification			768	768	-	-	384	384
Carers support		460	50	510	-	230	25	255
DTOC support		23	32	55	-	11	16	27
Integrated community care			3,806	3,806	-	-	1,903	1,903
Rapid response		550		550	-	275	-	275
Rapid access to assessment and care		494	240	734	-	247	120	367
Community equipment store / Home improvement		272		272	-	136	-	136
Kington court (intermediate care provision)		366	534	900	-	183	267	450
Children's short breaks *1			427	427	-	-	214	214
Care Act implementation *2		460		460	-	230	-	230
Support for social care staff		832		832	-	416	-	416
Demand management		793		793	-	397	-	397
LD health (2g)		331		331	-	165	-	165
Sub Total Minimum Revenue Fund	-	5,001	6,748	11,749	-	2,500	3,375	5,875
Care home market management	19,468		9,272	28,740	9,734	-	4,636	14,370
Sub Total BCF Revenue Pools	19,468	5,001	16,020	40,489	9,734	2,500	8,011	20,245
Disabled Facilities Grant (Capital)	1,558			1,558	779	-	-	779
Total Better Care Fund	21,026	5,001	16,020	42,047	10,513	2,500	8,011	21,024
Children's commissioning unit (new from 1/10/16)	40		40	80	20	-	20	40
Children's short breaks *1	453			453	226	-	-	226
Children's complex needs solutions	2,995		499	3,494	1,498	-	249	1,747
Safeguarding boards *2	138		80	218	69	-	40	109
Sub Total Pool 3 Childrens Services	3,626	-	619	4,245	1,813	-	309	2,122
Annual cost for schemes	24,652	5,001	16,639	46,292	12,326	2,500	8,320	23,146

*1 Part of Childrens short breaks and respite funding (Ledbury Road within BCF minimum fund)

*2 Funding for Adults Safeguarding board £103k within Care Act as new burden for councils

11 The new agreement will not take effect until 1 October 2016, however the schemes will be operational under the existing arrangements, therefore full year equivalent figures are shown. The full value for each scheme over the life of the agreement will be subject to CCG and council budget setting for 2017/18 (see finance section below). The council and CCG have been working together to develop a single s75 agreement. This consolidation of pooled resource activity into a single agreement will allow monitoring and reporting to be streamlined 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.

12 The council and CCG have a longstanding joint approach to the provision of short breaks to support families with children with disabilities. The joint approach maximises the use of resources whilst enabling a single, coherent programme of development and provision. The provision covers a range of accessible opportunities in universal services through to some highly specialised services which do include overnight respite. The approach also includes the use of direct payments. It is underpinned by the s75 agreement with contributions from both parties as recognised in the financial table. One benefit from combining the two s75 agreements will be that this will bring together the different funding sources for children's respite care and for the safeguarding boards, which are currently split between the agreements.

Further information on the subject of this report is available from
Amy Pitt, joint commissioning better care fund manager on Tel (01432) 383758

- 13 Short breaks provision will be recommissioned for April 2017 and will be dependent upon the continued joint contributions from the council and CCG. The financial contributions will be finalised as part of the development of the BCF s75 delivery plan for April 2017 onwards and will need to give a clear ongoing commitment over a number of years. This will enable the council and CCG to provide preventative services, reducing the pressure on high cost interventions and enable Herefordshire to continue to revise the short breaks offer to meet the needs of children and families whilst also meeting the financial challenges for both organisations.
- 14 The governance and monitoring processes are currently under review and will be subject to a further decision. NHS England require that quarterly performance returns are approved by the health and wellbeing board; the council's elements of the BCF s75 are also included within the corporate performance reports to cabinet.
- 15 The varied BCF s75 is subject to approval by the CCG governing body on 6 September 2016.

Community impact

- 16 The Understanding Herefordshire report and different local needs assessments have provided the evidence base which has informed the development of this single BCF s75.
- 17 The BCF s75 supports the delivery of the council's 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.
- 18 In addition the BCF s75 supports the health and wellbeing strategy aim that 'Herefordshire residents are resilient, lead fulfilling lives, are emotionally and physically healthy and feel safe and secure'.

Equality duty

- 19 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.
- 20 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.
- 21 Equality Impact Assessments (EIA) will be undertaken on the individual schemes which will consider the Equality Act 2010 and will review all of the nine protected characteristics in the event of any changes.

Financial implications

- 22 The initial full year equivalent value of the agreement reflects the funding agreed for the 2016/17 BCF plan and the continuation of the existing funding arrangements and funding levels for children with complex needs, as shown in the table below, further details on the finance contributions are within appendix four:

	LA £'000	CCG £'000	Total £'000
BCF within S75			
Minimum Revenue Fund - Protection of ASC *1		5,001	5,001
Minimum Revenue Fund - CCG schemes		6,748	6,748
Additional Pool Contributions	19,468	9,272	28,740
Total BCF Revenue Fund	19,468	21,021	40,489
BCF Capital	1,558		1,558
Total BCF in Section 75	21,026	21,021	42,047
Other Existing S75 Services			
Children with complex Needs *2	2,995	499	3,494
Children's short breaks (LA contribution)	453		453
Safeguarding Boards*3	138	80	218
New - Children's Commissioning Unit*4	40	40	80
Sub Total Other Services	3,626	619	4,245
Total Section 75	24,652	21,640	46,292

*1 includes protection of adult social care and care act funding.

*2 Children with complex needs funded through both Dedicated Schools Grant and core budget in LA

*3 £103k of funding for safeguarding boards within care act funding in BCF (note 1 above). Additional funding for the safeguarding boards from other partners is not included but provides an additional £63k pf funding per annum.

*4 Estimated cost of new integrated childrens commissioning unit. Value TBC

23 The new agreement will be in place for the final six months of 2016/17 and the whole of 2017/18. At this stage, the total value of the agreement can be estimated but not confirmed, as expenditure for 2017/18 will be dependent upon the allocation of the BCF funding by NHS England, the agreement of partners on the values of the additional pool contributions, the centrally awarded disabled facilities grant and the outcomes of budget setting by both partners for 2017/18. Furthermore the partners may jointly wish to include additional services within the pooled arrangements as part of the move towards the integration of health and social care. An indicative estimate of the total value of the agreement over the eighteen month period is shown in the table below:

Period October 2016 to March 2018	LA £'000	CCG £'000	Total £'000
BCF within s75			
Minimum revenue fund	29,202	31,532	60,734
BCF capital *5	2,337		2,337
Total BCF revenue fund	31,539	31,532	63,071
Other schemes	5,439	929	6,368
Total section 75	36,978	32,461	69,439

*5 The comprehensive spending review highlighted a significant increase in funding for disabled facilities grants, but no indication of the settlement for 2017/18 is available, therefore no uplift assumed.

24 The BCF funding includes £4.5m for the protection of adult social care and £0.5m for implementing the additional requirements introduced through the Care Act. These are in line with the 2015/16 financial plan and as reflected within the 2016/17 plan for the

adults and wellbeing directorate.

- 25 The council is required to include the capital funding received for the Disabled Facilities Grant (DFG) within the minimum BCF. This is £1.5m for 2016/17, which is an increase of £0.6m compared to 2015/16.
- 26 It is proposed that the new section 75 agreement continues with the additional pool for residential and nursing placements. Further, it has been agreed that this includes a new risk share arrangement on a restricted client cohort, replacing the previous much broader risk share arrangement. An arrangement has been agreed with Herefordshire CCG which caps the council's risk share on pool 2 at 13% of the current cost of this cohort of 27 individuals. Consequently this limits the financial risk to the council at £180k per annum, on a non recurrent basis, please see appendix three for the detailed risk share agreement.
- 27 The current risk share arrangement for the children with complex needs will continue unchanged, on the basis of budget contributions.
- 28 All other risks will be borne by the respective partners.

Legal implications

- 29 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 council functions and for local councils to exercise various NHS functions. The parties entered into the BCF S75 in exercise of those powers under and pursuant of the NHS Regulations 2000.
- 30 Clause 32 of the BCF S75 provides that variations to the BCF S75 will be valid if they have been agreed in accordance with the governance process of each partner's constitution and are then recorded in writing and signed for and on behalf of each of the partners. Schedule 9 of the BCF S75 provides the template to be used to vary this agreement, having followed any required governance process of each partner's constitution.

Risk management

- 31 If the CCG does not agree to vary the BCF S75 it may pose a risk to the council and to the delivery of services. Council officers have worked closely with CCG colleagues in developing this proposed agreement and continue to work in close partnership to minimise risk.
- 32 Risk will be managed and controlled through the governance structure, which includes the better care fund partnership group, the joint commissioning board and the health and wellbeing board.
- 33 A risk share arrangement has been agreed with Herefordshire CCG which is set out in paragraph 26 above.

Consultees

- 34 The council has worked closely with colleagues from the CCG to finalise better care fund plans for 2016/17, which have been approved at both a regional and national level. The development of a single s75 agreement has formed part of these discussions. In addition, a small working group involving both parties has been

established.

Appendices

Appendix 1 – Summary of variations to be effected.

Appendix 2 – Section 75 agreement

Appendix 3 – Risk share arrangement (Schedule 4)

Appendix 4 – Schedule 1 and 2 of section 75 agreement

Appendix 5 – BCF plan 2016/17

Background papers

None identified