

# HEALTH AND WELLBEING BOARD

9 September 2014

<b>Title:</b>	<b>Learning Disability Section 75 Update</b>
<b>Report of the Corporate Director of Adult and Community Services</b>	
<b>Open Report</b>	<b>For Information</b>
<b>Wards Affected: ALL</b>	<b>Key Decision: No</b>
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<b>Sponsor:</b> Anne Bristow, Corporate Director of Adult and Community Services	
<b>Summary:</b> <p>One of the key recommendations from the Winterbourne View concordat was that local authorities and Clinical Commissioning Groups put in place joint and collaborative commissioning arrangements, with pooled budgets where possible.</p> <p>Following an initial report in March 2014 which set out the intentions for the Borough's Section 75 agreements around learning disabilities, this report provides a progress update on the arrangements that have been negotiated between the Clinical Commissioning Group and the Council for the creation of a Section 75 partnership agreement to cover both parties' commissioning budgets for learning disability services. It also sets out the progress made in the Section 75 arrangement for the provision of an integrated Community Learning Disability Team, comprising officers from NELFT and the Council.</p>	
<b>Recommendation(s)</b> <p>The Health and Wellbeing Board is recommended to:</p> <ul style="list-style-type: none"><li>• Note the progress made in the negotiations of the learning disability Section 75 agreements.</li></ul>	
<b>Reason(s)</b> <p>The Council has committed to 'encourage growth and unlock the potential of Barking &amp; Dagenham and its residents'. This requires good quality support to be in place for those with a learning disability, to assist them to live independent lives and unlock their own potential. The Section 75 agreements will provide a better framework for considering the needs of service users and carers, and for meeting those needs. This will deliver, in particular, the Council's priority to improve health and wellbeing through the whole of life, and to increase household incomes through supporting those with a learning disability into employment.</p> <p>There are national requirements to strengthen the arrangements for jointly commissioning and providing learning disability services in order to improve the quality of services provided to service users by health and social care. Furthermore, integration is a core policy driver in health and social care, as evidenced by the introduction of the Better Care Fund, with the aim of improving both efficiency and service user experience. This</p>	

arrangement provides the framework for taking that work forward locally.

## **1. Introduction and Background**

- 1.1 In December 2012 the Department of Health published its final report on the abuse that took place at the Winterbourne View Hospital. The report identified 63 actions to be completed by health and social care in relation to the findings of the investigation. One of the key recommendations was that local authorities and Clinical Commissioning Groups put in place joint and collaborative commissioning arrangements, with pooled budgets where possible.
- 1.2 Back in March 2014, the Health and Wellbeing Board received a report on the overview of the arrangements that are being negotiated between the Clinical Commissioning Group and the Council for the creation of a Section 75 partnership agreement to cover both parties' commissioning budgets for learning disability services. The Board agreed to delegate authority to the Corporate Director for Adult & Community Services to conclude the negotiations and enter into the agreement on behalf of the Council. Additionally, the March report also set out the intention to revise the Section 75 arrangements for the provision of an integrated Community Learning Disability Team (CLDT), comprising officers from NELFT and the Council.
- 1.3 This report gives the Board an update on the progress of both the Commissioning and CLDT Section 75 agreements.

## **2. The Section 75 Agreement (Commissioning)**

- 2.1 Powers to enable health and local authority partners to work together more effectively came into force on 1 April 2000. These were outlined in Section 31 of the 1999 Health Act, which has since been repealed and replaced, for England, by Section 75 of the National Health Service Act 2006.
- 2.2 A Section 75 is a partnership agreement of equal control whereby one partner can act as a "host" to manage the delegated functions, including statutory functions of both partners who remain equally responsible and accountable for those functions being carried out in a suitable manner.
- 2.3 Over the last few months the Council and the CCG have been working together to agree the terms of a Section 75 arrangement to bring together the commissioning of learning disability for both services. This is just one of the agreements that are being developed to govern more formally the approach to integration of services, sitting alongside a related agreement (with NELFT) proposed for the direct provision of an integrated learning disability team, and a similar agreement for the provision of mental health services.

## **Scope of Services**

- 2.4 The Section 75 partnership agreement between the CCG and the Council will cover the commissioning of services. The lead commissioner for the Section 75 agreement will be the Council, who will take on the responsibility of commissioning services in behalf of the Clinical Commissioning Group, when the function is delegated.
- 2.5 The most significant service within the portfolio is the Community Learning Disability Service, an integrated team between the Council and North East London NHS Foundation Trust. A separate Section 75 agreement between those parties is being drafted to govern the operation of this function, but it will also be represented in the commissioning agreement.
- 2.6 In addition to the CLDT, the contracts currently held by both parties that are currently intended to be managed through the joint commissioning arrangement include:
- From London Borough of Barking & Dagenham:
    - Supported living services under block contract (as at 30/9/14; due for retender for 1/2/15), provided at 144 & 148 Longbridge Road; 2 Gardners Close; 98a Ford Road; 28 Vicarage Road; 110 Bromhall Road; 1/3 Vicarage Road; 99 Burdett's Road; 48 Raydons Road
    - Day provision under block contract (to 31/3/14; thereafter purchased under personal budget or managed personal budget arrangements):
    - Individual spot-purchased placements based on assessed need, for residential care; supported living; day care and activities; home care.
    - Personal budgets provided to service users;
  - From B& D Clinical Commissioning Group:
    - Continuing healthcare placements arranged to meet individual need;
    - Optometry services ('Bridge to Vision').
- 2.7 A piece of work is currently being undertaken to map out the commissioned services above which will form the specification for the Commissioning Section 75 agreement.

## **Joint Commissioner**

- 2.8 As part of the agreement, a Joint Commissioner post has been created. The post will be funded jointly by the Council and the Clinical Commissioning Group: 80% from the local authority and 20% from the CCG. The post will commission services on behalf of both parties and management responsibility will rest with the

Group Manager, Integration & Commissioning, in the Council's Adult & Community Services directorate.

- 2.9 A recruitment exercise was carried out in May and June 2014, and interviews were conducted by a panel made up of representatives from both organisations. A Joint Commissioner was successfully appointed and the Council is currently confirming a start date for the post for October 2014. The work programme for the Joint Commissioner will be agreed through the Learning Disability Executive Group, which will oversee performance against expected outputs for the Section 75 agreement, and a joint induction will be arranged over the coming month.

### **Governance**

- 2.10 Whilst accountability for the day-to-day commissioning of services will rest with the Joint Commissioner, the two organisations have agreed to establish a joint committee, the Learning Disability Executive Group (LDEG), to provide strategic oversight of the performance of the partnership and the commissioning of services. The LDEG will be formed of representatives from both the Council and the CCG.
- 2.11 The emphasis of this group will be on ensuring that the outcomes set out in the agreement are delivered for both parties and effective management of the pooled budget. A separate and similar arrangement is proposed between the Council and NELFT for the management of the integrated service. Links will also be maintained with the Learning Disability Partnership Board, which will remain as a subgroup of the Health & Wellbeing Board and an important forum through which the joint commissioner will work on the future development of services.

### **Finance**

- 2.12 In Year 1 (2014-15), following sign off of the section 75, it was intended that budgets would be aligned and not pooled. Pooled budgets are intended for the second year of the agreement from 1 April 2015 and thereafter.
- 2.13 Through the contracts and functions detailed above, the local authority is committing £7,714,600 of existing expenditure and the CCG £3,349,083, giving a total aligned budget of £11,063,683. It should be noted that this expenditure is from the 2014/15 budget and that the 2015/16 budget has not yet been confirmed and may be subject to savings.
- 2.14 At the point at which the CCG is able to delegate continuing healthcare functions to the local authority it will transfer the agreed monies to the local authority under the section 75 agreement. Work has started to transfer existing contract information to the Council. Existing continuing health care contracts will continue to be managed by the CCG on behalf of the partnership until new contracts are in place with the local authority. This process will be done collaboratively with the joint commissioner and in line with national guidelines on continuing health care.

- 2.15 During the first year of aligned budgets, the two partners will negotiate arrangements for pooled budgets to be in place.

### **Duration and Commencement**

- 2.16 The partnership agreement will be for a minimum of three years with the option to extend by mutual agreement and the agreement requires six months' notice of termination.
- 2.17 Officers have been working towards an implementation date of **1 April 2015** for this work.
- 2.18 The previous report to the Health & Wellbeing Board noted that the CCG were to give the required notice (6 months) on the NELFT contract relating to the health provision in the Community Learning Disability team with the intention that the service would be commissioned by the local authority after this period. The contract would continue to be managed by the CCG on the partnership's behalf for the six months until a new contracting arrangement with the local authority was in place under the proposed second Section 75 agreement, at which point the commissioning of the service and management of the contract would shift to the local authority.
- 2.19 Notice was given, and work commenced to draw up the agreement for signature, alongside a programme of work on the new section 75 agreement to govern the direct provision. However, there remain some outstanding matters which mean that formal responsibility for commissioning cannot transfer from the CCG to the Council. These are set out below. In the interim, a further six-month extension has been agreed with NELFT, with the intention that the new arrangements are run in shadow form from 1 January 2015, to come into full effect on 1 April 2015.

### **Outstanding matters**

- 2.20 The main body of the section 75 agreement and the majority of schedules have been completed and agreed by the CCG and Local Authority as planned. Due to the Joint Commissioner not yet starting in the Borough, there have been delays in the completion of some key actions required to finalise the agreement. These include the specifications and contracts for the CLDT, and for the wider services being commissioned. In addition, detailed processes for the management of continuing healthcare need to be developed so that the arrangements commence with confidence on the CCG's part about the management of this important statutory function.
- 2.21 It is for this reason that the new timelines have been proposed, with the 'shadow running' intended to ensure that any concerns are addressed and problems resolved before formal commencement in April 2015.

### **3. Second Section 75 Agreement for Integrated Service Provision**

- 3.1 Meanwhile, work has begun to develop the Section 75 agreement to govern the provision of an integrated Community Learning Disability Team (CLDT), between the Council and North East London NHS Foundation Trust.
- 3.2 A group comprising of representatives from NELFT, the CCG and the Council are regularly meeting in order to develop the Section 75 agreement.
- 3.3 The group are currently reviewing the existing operational procedures and specification for the CLDT, particularly as these documents will form the basis for the Section 75. Due to the fact that these documents have ramifications for staff, it has been agreed that staff within NELFT and the Council will be consulted using their constituent organisation's processes for consultation. It is intended that the consultation and the preparation of the Section 75 agreement will be concluded by March 2015, ready for signing before the formal commencement date of 1 April 2015.
- 3.4 Although the Learning Disability Executive Group (LDEG) will be established to provide strategic oversight of the performance of the partnership arrangements and the commissioning of services, it is proposed that a separate steering group is set up to oversee the Section 75 arrangement for the integrated service. This group will maintain oversight of the running of the service and will discuss operational issues which require escalation.

### **4 Mandatory Implications**

#### **4.1 Joint Strategic Needs Assessment**

The refresh of the Joint Strategic Needs Assessment (JSNA) will include sections on adults, and children and young people with Learning Disabilities. These sections will identify the needs of this vulnerable population. Once published, the needs as outlined in these sections should be fed into the commissioning process to ensure that service configurations meet the needs, and optimise the health and wellbeing of, people with Learning Disabilities.

#### **4.2 Health and Wellbeing Strategy**

People with Learning Disabilities experience high levels of health inequalities. The refresh of the Health and Wellbeing Strategy should prioritise this population as a vulnerable group with specific needs as outlined in the JSNA.

#### **4.3 Integration**

Responsibility for ensuring the delivery of the things set out the concordat rests with both the NHS and the Local Authority and there is commitment on both sides to enable this to happen. Both the strategic plan and the Section 75 will actively increase integration.

## **4.4 Financial Implications**

### **Barking and Dagenham Council:**

There are no new financial implications to this update other than that the LBBDD contribution to the pooled budget will be subject to 15/16 onwards savings options that are currently in the process of being finalised.

Implications completed by: Faysal Maruf, Group Accountant, Finance

### **Barking and Dagenham Clinical Commissioning Group:**

Financial processes will have to be agreed within the section 75 agreement, this will need to include; authorisation of new packages, management of financial risk, reporting of financial positions and treatment of under and overspends. The CCG and LA are committed to not increasing the financial risk for each partner through the establishment of the section 75.

Implications completed by: Rob Adcock, Deputy Director of Finance, Barking and Dagenham CCG

## **4.5 Legal Implications**

### **Barking and Dagenham Council:**

This report is seeking to update the Health and Wellbeing Board on the progress made in entering into a section 75 partnering arrangement between the Council and the Clinical Commissioning Group (CCG) for the commissioning of learning disability services.

This report sets out a detailed update of the current progress. There are no specific legal implications to add to this updating report.

Legal Services continue to work with Adult and Community Services in the drafting and negotiation of the section 75 arrangement with the CCG. Legal Services will also be assisting in the drafting of the section 75 arrangement between the Council and the North East London Foundation Trust for the integrated service provision as outlined in the report.

Implications completed by: Daniel Toohey, Principal Corporate Solicitor, Legal and Democratic Services

### **Barking and Dagenham Clinical Commissioning Group:**

It is understood that it is proposed that the Learning Disability Executive Group is to be a joint committee under regulation 10 (2) of the 2000 Regulations. The CCG intends to make an amendment to the CCG's constitution but for the time being as the CCG's commissioning functions are reserved to the Governing Body of the CCG (as is the case with the vast majority of CCGs) and not the Group, whilst the

Group could enter into a joint committee, the Group would not be able to exercise any commission functions in such a joint committee.

As such therefore for the time being it is proposed that a working group be established which would constitute individuals from the CCG and the local authority to whom authority had been delegated.

It is also noted that notwithstanding that section 75 of the NHS Act 2006 permits delegation of final decision making functions to a local authority that the CCG remains legally responsible for all eligibility decisions made.

Implications completed by: Rod McEwen, Legal and Governance Adviser, Solicitor and in house Counsel for Barking and Dagenham, Havering and Redbridge Clinical Commissioning Groups

## **5. Public Background Papers Used in the Preparation of the Report:**

'Learning Disability Section 75 and (as part of the former) Joint Strategic Plan on Behaviour that Challenges' – Report to the March 2014 Health and Wellbeing Board