

HEALTH AND WELLBEING BOARD
16 January 2018

Title:	Barking and Dagenham's Better Care Fund Section 75 Agreement (Pooled Budget 2017/18) Deed of Variation to pooled budget 2016/17 S.75 agreement.	
Report of: Strategic Director for Service Development & Integration		
Open Report		For Information
Wards Affected: ALL		Key Decision: No
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Sponsor: Anne Bristow, Deputy Chief Executive and Strategic Director, Service Development & Integration		
Summary:		
<p>The Health & Wellbeing Board has received updates on the agreement of the Better Care Fund at its previous meetings. Having delegated authority to the Deputy Chief Executive for the approval and submission of the joint plan with Havering and Redbridge, it was duly submitted and approved by NHS England. This followed some negotiation on the final targets for Delayed Transfers of Care (DToC), which has now been resolved.</p> <p>As previously advised, it is a national requirement of the Better Care Fund that the borough enter into a Section 75 agreement to govern the deployment of the funds and joint performance management of the plan with NHS partners. Given the delayed national timescales for submission of the plan, for the current year it is intended to agree a Deed of Variation to amend the existing Section 75 agreement. The changes required will be included in new schedules. Work can then focus on agreeing the integrated governance arrangements to begin in 2018/19 as part of the Integrated Care Partnership with Havering and Redbridge.</p> <p>National guidance asked that Section 75 arrangements were in place by the end of November. However, given the delayed submission timescales, and the negotiations that we needed on the DToC targets, this was not practical. The agreement of Section 75 arrangements this late in the financial year nonetheless aligns the arrangements in Barking & Dagenham, Havering and Redbridge, and therefore provides the basis for integrating the agreement in 2018/19.</p> <p>The principal amendments to previous Section 75 agreements are in the governance and finance schedules, and in the plan itself. Copies of these documents are included as appendices to this report for Board members' information.</p>		

Recommendation(s)

The Health and Wellbeing Board is recommended to:

- (i) Agree to the retrospective expenditure which has taken place during this financial year, and agree to continue the section 75 Agreement (Pooled Fund) with NHS BARKING AND DAGENHAM CLINICAL COMMISSIONING GROUP (“BDCCG”), on the terms and conditions outlined in this report along with any ancillary legal agreements (i.e. the Deed of Variation) necessary for the joint administration of the Better Care Fund Plan for Barking and Dagenham.
- (ii) Delegate authority to the Deputy Chief Executive, in consultation with the Cabinet Member for Social Care and Health Integration and the Director of Law & Governance, to approve the Deed of Variation for 2017/18;
- (iii) Agree in principal that a Section 75 agreement for 2018/19 would be pursued jointly with Havering and Redbridge, and note that a further request for delegated authority will be brought to the Board in due course.

1 Introduction and Background

- 1.1 It is a requirement of the Better Care Fund (BCF) planning guidance that we are required to have a form of Section 75 agreement in place to support the pooled fund within Barking and Dagenham. The pooled fund has, in this current year, been enhanced by additional Better Care Fund funding and the new Social Care Grant monies. These have increased the BCF pool by £5.429m in this financial year. The total pooled fund for 2017-18 is £21.758m. It should be noted that whilst the new social care grant monies were to form part of the pooled fund, these are subject to specific grant criteria which include the protection of social care, market sustainability, and improved Delayed Transfers of Care.
- 1.2 The governance structure is principally the Joint Executive Management Committee, which allows the monthly review of both performance and spend against the fund and consideration of risks and further actions required. This also allows consideration of matters that may require escalation, including matters for consideration of the HWBB itself.
- 1.3 Governance has also been enhanced by the development of the Joint Commissioning Board, strengthening both commissioning leadership and critically across the partners, broadening the scope and reach of commissioning activity and helping to steer further steps towards improved integration and innovation.
- 1.4 In the construction of the Deed of Variation, a pragmatic approach is being taken to the arrangements in the current financial year, setting out the changes in the pooled fund, governance, performance, and replacing former schemes of work with the plan itself. There was a tight delivery time for its completion given the delays by NHS England in the completion of guidance, including late changes, delays in their assurance process, and a requirement that arrangements not be formalised until assurance of the plan was achieved.

2 Principles to be applied for the development of a new Section 75 agreement:

- 2.1 We are currently preparing a new Section 75 agreement for 2018-19 which will seek to reflect the following principles, taking us towards closer integration, whilst considering what is achievable between now and April 2018:
- The provision of a single S.75 agreement across the partners – encompassing LB Barking and Dagenham, LB Havering, LB Redbridge, and the joint Clinical Commissioning Groups for BHR;
 - Each partner to have a dedicated schedule reflecting their interests and contributory resources, with aligned funding pools rather than the delivery of single pooled funds across the partners. In this way, areas such as intermediate care will have clearly identifiable resources, strengthening of lead commissioners (with agree delegations) where this makes sense to do so with progress in the development of a provider alliance, with organisational commissioners retaining budgetary responsibility and

accountability but avoid at this point the implications that a single pool ambition might bring.

- Plans will also strengthen delivery against key themes across BHR, which our current plan begins; these being: Protection of Social Care, Market sustainability, improved management of demand through work on intermediate care and care out of hospital.

3 Mandatory Implications

3.1 Financial Implications

Implications: (Katherine Heffernan, Group Manager, Finance)

This report seeks to agree the deed of variation reflecting the changes to the 2017-18 pooled fund for the iBCF which is currently £21.758m. The pooled fund has been further enhanced this year and the main changes between the 2016-17 pooled fund and this year includes;

1. An increase to the Local Authority's minimum contribution to the pool which previously was only the Disabled Facilities grant (DFG) but now includes £5.429m made up of the improved BCF grant allocation (£1.044m) and additional grant funding for adult social care (£4.385m). There are conditions attached to this additional grant allocation which include meeting social care pressures, improving delayed transfers of care and supporting the care Market. The Local Authority would need to ensure that the grant funds are spent in line with these specific conditions to ensure that the funding is not clawed back, and future years funding reduced or suspended.
2. A 10% increase in the DFG allocation and the CCG's minimum allocation has also been increased by 1.9% inflation.
3. A reduction in the Local Authority's other base budget and public health grant contributions which are optional contributions have been reduced to reflect the focus of the new two-year iBCF Narrative plan agreed across the three-borough partnership.

3.1.2 The Local Authority as host of the pooled funds, would continue to report the progress on spend to the Joint Executive Management Committee (JEMC). All financial governance arrangements are set out in Schedule 3b.

3.1.3 The agreement also sets out the arrangements for dealing with under and over spends that may arise. The partners will work together to minimise the financial risks across the partnership but in the final instance the lead commissioner will bear any overspends that arise across their services. Where underspends are forecast, the partners will agree how to reinvest the funds which may include to support overspends elsewhere.

3.2 Legal Implications

Implications completed by Derron Jarell Regeneration Projects Lawyer

3.2.1 The agreed section 75 Agreement must be in place for the 2017/18 financial year. The BCF grant regime requires the Council to work jointly with the BDCCG. As

indicated at paragraph within the body of the report. Section 121 of the Care Act 2014 requires BCF arrangements to be underpinned by pooled funding arrangements. The intention therefore is to seek retrospective approval for the expenditure to date in financial year 2017/18 by entering into a Deed of Variation to previous 2016/17 partnership agreement pursuant to s75 of the National Health Service Act 2006 on the basis that it will lead to an improvement in the way the council and BDCCG's functions are exercised. The section 75 Agreement is the vehicle by which the services that are to be delivered, the mechanism for expenditure; and delivery of outcomes are clarified to ensure each party knows exactly how it will operate and to reduce the risk of disputes

- 3.2.2 Section 75 of the NHS Act 2006 (the “**Act**”) allows local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised. Section 75 of the Act permits the formation of a pooled budget made up of contributions by both the Council and the BDCCG out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body and prescribed health-related functions of the local authority. The Act precludes CCGs from delegating any functions relating to family health services, the commissioning of surgery, radiotherapy, termination of pregnancies, endoscopy, the use of certain laser treatments and other invasive treatments and emergency ambulance services.

For local authorities, the services that can be included within section 75 arrangements are broad in scope and a detailed exclusions list is contained within Regulations of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

- 3.2.3 The body of this report and attached background documents describe the detailed arrangements that will be covered by the individual BCF projects and work streams, outlines the financial commitment of both organisations and outlines the governance structures and hosting arrangements for the pooled fund.
- 3.2.4 The governance arrangements will ensure that there is sufficient authority to take appropriate decisions and scrutiny of those decisions and the operation of the arrangements generally. This is outlined in Section [1 and/or 2] above, and will be included in detail within the Governance Schedule of the attached draft agreement.
- 3.2.5 A Section 75 agreement with the BDCCG in relation to the BCF is required to be in place before the beginning of the financial year 2018/19.
- 3.2.6 Work is underway to ensure that the S.75 schedules, which form a critical part of the agreement, are completed and agreed. The Council's legal department has been assisting on the provision of legal advice to the process alongside the BDCCG's legal representation in support of the partners through the development stage.
- 3.2.7 Prior to signing both partners will secure independent legal review of the final agreement.
- 3.2.8 The S.75 agreement is a vehicle for the delivery of the BCF plan. This plan was developed jointly across the BDCCG, the Council and involving other lay partners

and providers and aims to support the delivery of the Council's and BDCCG's strategic vision, supporting the achievement of effective, efficient and integrated community and neighbourhood facing services.

3.3 Joint Strategic Needs Assessment

The purpose of the Health and Wellbeing Board is to promote the health and wellbeing of the residents of Barking and Dagenham. This is achieved by focusing on integration of health and social care, delivery of improved health outcomes and efficiently reduce inequalities for those residents who live in the Borough, including those identified in the 2016 JSNA.

The JSNA set out a number of areas for improvement in the management of long-term conditions, avoiding hospital admission, and keeping people well in the community. The BCF plan that has been submitted sets ambitious plans for improving the hospital discharge process, avoiding admissions, and improving targeted support to individuals in the community, particularly frail older people and those with long-term conditions. The plan exceeds the JSNA's identified needs around delayed transfers of care.

3.4 Health and Wellbeing Strategy

The Health and Wellbeing Strategy includes key priorities including prevention, improvement and integration of services, care and support, protection and safeguarding. By focusing on improving out-of-hospital support, integration of services, and helping to get people home from hospital safely and quickly, the BCF plan will aid the Health and Wellbeing Board to deliver the Joint Health and Wellbeing strategy.

3.5 Integration

The Better Care Fund plan is fundamentally about integrating services more fully, including with partners in Redbridge and Havering, and therefore is central to the Board's statutory aim to promote integration of services. The proposed approach for the second year of the BCF seeks to further remove obstacles to delivering further progress.

3.6 Patient / Service User Impact

The approach taken seeks to balance the impact upon patients and service users, ensuring both timely discharges from acute care but equally, balancing these with the need to ensure that discharges are safe. This approach also enables the drawing of what works well across areas and service settings within the wider social care and health economy and for local application.

4. List of Appendices:

- Appendix 1 – Proposed Performance Arrangements, including sample dashboard
- Appendix 2 – Proposed Governance and Financial Management Arrangements
- Appendix 3 – Barking & Dagenham, Havering and Redbridge Better Care Fund Plan 2017-2019 (assured by NHS England)