HEALTH AND WELLBEING BOARD

12 June 2018

Title: Authority to enter a Section 75 Agreement to govern the operation of the Better Care Fund 2018/19 and 2019/20

Report of the Strategic Director for Service Development & Integration

Open Report  For Decision

Wards Affected: ALL  Key Decision: Yes

Report Author:  Contact Details:
David Millen, Integrated Care Delivery Manager  E-mail: David.millen@lbfd.gov.uk

Sponsor:
Anne Bristow, Strategic Director, Service Development & Integration

Summary:
The Better Care Fund is a joint Department of Health, Ministry of Housing, Communities and Local Government, NHS England and Local Government Association (LGA) programme spanning local government and the NHS, which seeks to address mounting budgetary and demand pressures through health and social care integration. Ultimately it aims to promote the kind of service integration that allows people to manage their own health and wellbeing, and live independently in their own communities for as long as possible.

Minute 89 of the Health & Wellbeing Board, 5 July 2017, noted the approval given by the Board to finalise the plan and submit it to NHS England. The report to the Health & Wellbeing Board on 6 September gave further detail on the plan, noting that there is opportunity to develop it further as the partners proceed towards the second year of deeper integration. The Plan was signed off and submitted in September 2017, and is attached with this report for Members’ information.

To operate the Fund requires a form of governance called a Section 75 agreement, after the section of the NHS Act 2006 which authorises it, and in which health and local authority partners pool or transfer functions. This report seeks authority to sign the Section 75 Agreement on behalf of the London Borough of Barking & Dagenham.

Recommendation(s)
The Health and Wellbeing Board is recommended to:

(i) Delegate authority to the Strategic Director of Service Development & Integration (and her successor), in consultation with the Cabinet Member for Social Care & Health Integration and the Director of Law & Governance, to enter into a Section 75 Agreement for the purposes of operating a shared Better Care Fund programme across Barking & Dagenham, Havering and Redbridge.
Reason(s)

The plan to deliver the Better Care Fund contains a number of strands of work which are core to the ambition the Council and CCG have jointly set out to improve health and care services for local people: these include the Joint Assessment & Discharge Service, the integrated care locality approach, and work to stabilise and sustain the local care market. The plan unlocks considerable central government investment in social care services, and its approval by NHS England is conditional on operating a Section 75 pooled fund arrangement between partners.
1 Introduction

1.1 Our Better Care Fund plan submitted in 17/18 was for a two-year period as required by NHS England. It is a joint plan across Barking & Dagenham, Havering and Redbridge, recognising similarities in the priorities set out by each borough. The ambition described is to move beyond simply aligning the plans of the three boroughs, to increasing the integration and shared delivery where it makes sense to do so. In line with stated principles of subsidiarity, it is the firm intention to retain the opportunity for local determination and prioritisation. There were also clear efficiency opportunities in pursuing a shared work plan through which joint objectives might be agreed and delivered in one place; indeed, there are existing shared pieces of work such as the Joint Assessment & Discharge Team which fall under the BCF Plan.

1.2 Year two 2018/19 was to realise further steps, including moving to a single Section 75 agreement and revised governance arrangements, through which senior officers of the partners to the agreement would run the programme through a single new Joint Overview Group, replacing the ‘Joint Executive Management Committees’ that previously existed in all three boroughs.

1.3 Our approach is very much supported by our contacts with NHS England and has featured in the BCF Exchange, as an example of exemplary BCF development.

2 Governance

2.1 The new officer-led governance continues to sit below the Health & Wellbeing Boards and report to them. The single Joint Overview Group will ensure that there is an improved ability to work together on shared activity and opportunities, whilst still ensuring that matters of local priority will continue to be determined by senior officers of the Council and the Clinical Commissioning Group on a borough basis.

2.2 Any decisions required across BHR within the new Joint Overview Group will require the full agreement of the partners, including oversight and necessary actions on the shared BCF work plan. This will, however, ensure that the focus shifts away from management of ‘business as usual’, to the larger impact developments that are described in the plan.

2.3 The Council’s representatives on the Joint Overview Group are:
   - Mark Tyson, Commissioning Director Adults’ Care & Support;
   - Katherine Heffernan, Group Manager for Service Finance.

3 Funding arrangements

3.1 For Barking & Dagenham, contributions to the fund for 2018/19 total £24.237m:
   - From CCG revenue allocations: £13.670m
   - For the Disabled Facilities Grant: £1.517m
   - From Council funds, including Public Health Grant: £1.524m
   - For the Improved Better Care Fund: £4.910m
   - For additional government grant to support social care: £2.616m
3.2 Partners in Havering and Redbridge are contributing in total £24.165m and £26.293m for each borough respectively.

3.3 At the outset of the agreement, all three boroughs retain their pooled funds for their borough-aligned priorities. However, the agreement includes a fourth pool, where clear decisions are taken by boroughs to jointly fund a project or service, the decision can be made to identify resources from borough funds for the purpose. This provides a vehicle for ‘cementing’ decisions on stronger integration.

3.4 To use the joint pool will require an explicit decision of the Joint Overview Group, and will need to be aligned to the priorities in the plan. Individual partners will be able to withdraw from agreements made, but it should be acknowledged that to do so will require a specific decision in the Joint Overview Group, and funds would still remain as part of the Better Care Fund Section 75 overall, as agreed as part of the overall plan with NHS England. Any such decisions, in either direction, will be reported to the Health & Wellbeing Board through routine monitoring of the BCF Plan and delivery.

4 Mandatory Implications

Joint Strategic Needs Assessment

4.1 Our two-year Better Care Fund Plan, submitted in 2017/18, is fully underpinned by and supports, key outcomes required. The changes here are principally about promoting further integration and providing practical enablers through which progress can be more readily delivered across and with our BHR partners.

Joint Health and Wellbeing Strategy

4.2 Our plan will continue to be both aligned with and support the delivery of our strategy. As above, our proposal seeks to enhance the capacity and focus we are able to apply across BHR to development and innovation within our respective Better Care Funds.

Integration

4.3 The new S.75 and governance arrangement provide a new mechanism through which steps can be taken to improve integration across the partners in BHR seeking to further improve the use of resources within our respective BCFs and staff time, in both removing duplication and creating opportunities to utilise lead commissioning arrangements where it makes sense to do so.

Financial Implications

Financial Implications completed by Katherine Heffernan, Group Finance Manger

4.4 NHS England (NHSE) agreed a joint two-year BCF plan across BHR and the agreed allocation into the pool from Barking & Dagenham Council and the CCG is £24.237m in 2018-19. The new S75 agreement includes terms regarding the maintenance of the pooled funds.

4.5 There is an agreement to have a single pooled fund across BHR to enable improved joint working but amounts to be contributed to the pool have not yet been confirmed.
Also, because a two-year plan was agreed with NHSE, the planned allocations to each of the workstreams for 2018-19 would need to be reviewed by the proposed new Joint Overview group to identify available funding within the existing pool to create a single pooled fund.

Legal Implications
Legal Implications completed by: Pamela Igbo, Contracts and Procurement Solicitor

4.6 Under the National Health Service Act 2006, local authorities and NHS bodies may enter into partnership arrangements to provide a more streamlined service and to pool their resources. In this instance all parties to the Agreement wish to utilise a single pooled fund with the objective of improving the way their functions are exercised.

4.7 Section 75(2)(a)(ii) of the NHSA 2006 permits the formation of a pooled budget made up of contributions from all parties to the agreement out of which payment may be made towards the expenditure incurred in the exercise of prescribed functions of the NHS bodies and the prescribed health related functions of the local authorities

4.8 The power to enter into Section 75 Agreements is conditional upon the following:

4.8.1 the arrangement is likely to lead to an improvement in the way those functions are exercised

4.8.2 the partners have jointly consulted those parties likely to be affected by such arrangements

4.9 Regulation 7(3) of the NHS Bodies and Local Authorities Partnership Arrangements, 2000 require any pooled funds to be in writing and to specify:

- The agreed aims and outcomes of the pooled fund arrangements
- The contributions to be made to the pooled funds by each of the partners and how these contributions are to be varied
- Both the NHS functions and the health-related functions the exercise of which are the subject of the arrangement
- The persons and the kinds of services likely to be affected by the functions exercised by the partnership
- The staff, goods or accommodation likely to be provided by the partners in connection with the arrangement
- The duration of the arrangements and provision for the review, variation or termination of the arrangements
- How the pooled fund is to be monitored or managed, including which body or authority is to be the host partner

4.10 Officers are to circulate draft copies of the Agreement for review by Legal Services before the document is finalised
List of Appendices:

Appendix A  Better Care Fund Plan 2017-19