

CABINET

JANUARY 2011

REPORT OF THE CABINET MEMBER FOR HEALTH AND ADULT SERVICES

Title: Clarification of Joint Working Arrangements with NHS Barking & Dagenham	For Decision
<p>Summary:</p> <p>In July 2010 the Coalition Government set out its long-term vision for the future of the NHS in the White Paper 'Equity and excellence: Liberating the NHS'. The paper sets out how the NHS will increase choice to ensure that patients are put at the heart of everything the NHS does, and continuously improve outcomes for patients. There will be significant change to the structure of the NHS locally and regionally. Local authorities will be given a much greater role in health, with responsibilities including leading on local health improvement and prevention activity, promoting joined-up commissioning, leading on the development of Joint Strategic Needs Assessment and ensuring the commissioning of robust arrangements for patient and public involvement. <i>Healthy Lives, Healthy People</i>, the Public Health White Paper published in December 2010, further set out the role of local authorities in public health, taking over this responsibility from the NHS and being the future joint employer (with the Chief Medical Officer) of the Director of Public Health.</p> <p>The Health & Social Care Bill will set out the legislative basis for these changes to the NHS, and it is expected that it will have been published by the time of the Cabinet meeting. With the direction of travel clear, in Barking and Dagenham we are wasting no time in setting up the necessary arrangements.</p> <p>With such a period of change imminent, it is essential that the basis on which local joint services are planned and managed is clear, in order to avoid frontline services being destabilised during the transition. A number of funding agreements exist between NHS Barking & Dagenham and Barking & Dagenham Council, many of which have grown up over a long period and which would benefit from greater clarity. Officers from both organisations have undertaken considerable work to ensure that these existing agreements are captured within formal arrangements under Sections 75 and 256 of the National Health Service Act 2006. The services covered within the agreement are, for the most part, existing services. The agreement on Public Health begins the process of establishing a new division within the Council containing, as its core, the current Health Improvement department for the PCT.</p> <p>Wards Affected: All</p>	
<p>Recommendation(s)</p> <p>The Cabinet is recommended to:</p> <p>(i) Authorise the Corporate Director of Adult & Community Services to enter into an agreement with NHS Barking & Dagenham for the continued joint commissioning and delivery of services as outlined in this report. The overarching agreement will contain five Section 75 and three Section 256 agreements between the Council and NHS Barking and Dagenham.</p>	

<p>Reason(s)</p> <p>The overarching agreement with NHS Barking and Dagenham contributes to the Council's Vision of 'Working together for a better borough', most particularly through assisting the Council in achieving its Community Priorities of 'Healthy' and 'Safe'. The NHS is about to enter a period of considerable transition, and this makes it particularly important that frontline services, or joint commissioning plans, have a clear contractual basis between our respective organisations. Furthermore, the agreement will ensure that the borough is ahead of schedule in meeting the proposals set out within the NHS White Paper in advance of any resulting legislation, whilst helping to deliver the Health and Wellbeing Strategy.</p>		
<p>Comments of the Chief Financial Officer</p> <p>The Chief Financial Officer has reviewed the proposals and is satisfied that officers are proposing commitments which are in line with existing budget allocations and do not exceed expected available allocations over the two years of the agreement. Further, she is satisfied that the governance arrangements, whilst placing some constraint upon both parties concerning the movement or withdrawal of funds, do not place any unacceptable risks to the Council's ability to manage its budgets in the years ahead. Having initiated discussions on the resources available from within the agreement for the management of such a substantial additional commissioning responsibility, and having received suitable assurances, she is also assured that the Council will be able to manage these agreements and co-ordinate delivery against their requirements without placing a significant, unfunded burden on its existing resources.</p>		
<p>Comments of the Legal Partner</p> <p>The Council has statutory powers under the National Health Service Act 2006 to enter into partnering arrangements (under Section 75) and direct funding arrangements (under Section 256) with NHS Barking and Dagenham. The Legal Partner is satisfied that there are no legal issues that would prevent the Cabinet approving the entering into of an overarching agreement with NHS Barking and Dagenham which will contain a number of these partnering and direct funding arrangements.</p>		
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1. Background

1.1 On 12 July 2010 the Government published the NHS White Paper, *Equity and Excellence: Liberating the NHS* which sets out the Government's long-term vision for the future of the NHS and how it intends to devolve power from Whitehall to patients and professionals. The key proposals include:

- Consortia of GP practices will take control of £80bn from primary care trusts by 2013 to commission acute, community and mental health services.

- Local authorities will be given statutory responsibility for bringing health and social care together by taking on PCTs' public health functions
 - Plans to strengthen the local democratic legitimacy of the NHS through the establishment of new statutory Health and Wellbeing Boards
- 1.2 The implementation of the developments envisaged in *Liberating the NHS* will bring about considerable change to the local NHS, its institutions and the individuals within them. Appointments are being made to a new management structure for a cluster of PCTs, comprising Barking & Dagenham, Havering, Redbridge and Waltham Forest, to work through the transition years until PCTs cease to exist in 2013.
- 1.3 The Cabinet received a report on 2 November regarding the Implications of the Health White Paper for Barking and Dagenham, which set out a proposed plan for the transition to the new working arrangements. Cabinet agreed the Outline Transitions Plan (Minute 55), which included the following key tasks:
- Early transfer of the health improvement function to the Council;
 - Exploring opportunities to align, share and /or jointly commission services.
- 1.4 In the interim, the Government has also published its proposals for public health in England, under the heading *Healthy People, Healthy Lives*. This expands on the proposed transfer of public health from the NHS to the local authority. In particular, it includes provisions for:
- The joint appointment of the Director of Public Health between the local authority and the Chief Medical Officer, through Public Health England;
 - Public Health England will allocate ring-fenced budgets to local authorities, weighted for inequalities and with the chief executive as accountable officer, to enable them to secure better health outcomes for the local population. 'Shadow' allocations will be made in 2012/13, with full allocations introduced in 2013/14, and the grant will include many existing health-related funding streams;
 - A Public Health Outcomes framework is to be developed to set out a high-level vision and outcomes to be delivered at a local level. Areas with poor health outcomes will receive a 'health premium' to fund additional activity, linked to specific outcomes to be improved.

2 Proposal

- 2.1 Over years of partnership working between NHS Barking & Dagenham and the Council, a number of joint working and contracting arrangements have been developed. The documentation that supports these arrangements is in varying forms. In order to ensure that these services are not destabilised by debates about the terms of the agreements during the forthcoming period of transition, a contract is proposed within which formal agreement can be reached about key areas of services and the expectations of both parties, invoking the appropriate legislation as required.
- 2.2 The structure of the agreement will be an 'overarching agreement' setting out the broad terms of the contract between the Council and NHS Barking & Dagenham.

Within this, specific individual agreements, invoking specific enabling legislation, will then provide more detail to govern specific areas of business. The aims of the over-arching agreement between LBBD and NHS Barking and Dagenham are primarily to ensure that:

- Our focus on agreed local health priorities is maintained so that services are not affected in a way that is detrimental to local residents during the transitional period
- That the borough is well-placed to implement the anticipated change in statutory functions brought about through legislation in July 2011

2.3 The over-arching agreement sets out a contract between the PCT and the Council demonstrating how both organisations are contributing to the improvement of health and well-being in the borough. This is supported by four Section 75 and three Section 256 agreements (under the National Health Service Act 2006 – please see section 4 for explanations) which set out the detailed arrangements for the commissioning and delivery of local health services, including levels of funding and expected performance for each service area. A further Section 75 agreement for Learning Disability services, involving North East London Foundation Trust as a third signatory, would also be signed.

2.4 The over-arching agreement also delivers two of the key tasks as agreed by Cabinet in the Outline Transitions Plan (see 1.3)

Early transfer of the Health Improvement function to the Council

2.5 The Section 75 agreement for Public Health, contained within the over-arching agreement, deals directly with the interim relocation of the PCT's Health Improvement Team to sit alongside other Council resources. It is proposed that the new Health & Wellbeing Division will be hosted within the Adult and Community Services Department, pending any future decisions about appropriate structures and locations as the function develops.

2.6 This transfer will allow for the Council to be ahead of schedule while the implications of the NHS White Paper are realised through legislation. Further consultation will be undertaken at a Member and Officer level to ensure that the division is compliant with the emerging statutory duties as set out in the Health and Social Care Bill (released in January 2011) and to ensure appropriate integration with existing council services.

Exploring opportunities to align, share and /or jointly commission services

2.7 There are a further three Section 75 and three Section 256 agreements contained within the over-arching agreement. These are:

- Section 75 Adults (including mental health services, both residential and community-based);
- Section 75 Children's (including looked after children, safeguarding, disabled children's services);
- Section 256 Adults & Carers (including Integrated Care)

- Section 256 Reablement & Adult Social Care (dealing with new government allocations to the PCT intended for transfer to the Council to support increased pressures on adult social care);
- Section 256 Drugs and Alcohol commissioning;
- Section 75 Family Nurse Partnership

Further detail on these agreements and their contents, and how each contributes to the overall total, is contained in Appendix 1.

- 2.8 Further to the portfolio of agreements above, it is also proposed that a Section 75 agreement be entered into to cover joint learning disability services, principally the joint arrangements for the Community Learning Disability Team. This is a tripartite agreement, including NHS Barking & Dagenham, the Council and North East London Foundation NHS Trust, which has been under construction for some time. Due to the involvement of the third signatory, it cannot fall under the overarching contract. Nonetheless, it is a central part of the portfolio of services and commissioning activity being considered as part of this process.
- 2.9 The majority of these agreements relate to existing services and funding arrangements between the two organisations. However, a substantial amount of this has been informal arrangements between partners. The over-arching agreement will place these arrangements in a contractual framework, with the individual service area agreements being given their legal footing through the relevant sections of the National Health Service Act 2006.

3 Financial Issues

- 3.1 The over-arching agreement between NHS Barking and Dagenham and LBBD has significant financial implications for the borough. The agreement will ensure that £28.1m of partnership funding is secured to continue to deliver local health improvement priorities for the residents of Barking and Dagenham. This will include securing £16.4m of NHS funding to contribute to these joint arrangements, matched by £11.7m of Council resources. The overview of financial commitments is included at Appendix 1.
- 3.2 It is important for Members to note that in signing up to this over-arching agreement, the Council will be entering into a legal agreement on the amount of funding that we will contribute to the service areas until April 2013. Provision is made to allow partners to change their levels of commitment, or to move resources between schemes. However, this will place some restriction on Members' flexibility in terms of where any future cost-savings could be achieved in these particular areas, and any proposals to reduce funding would need to be dealt with carefully in negotiation with NHS colleagues.

4 Legal Issues

- 4.1 Local authorities and various NHS bodies (including Primary Care Trusts) are enabled by Section 75 of the National Health Service Act 2006 ("the Act") to exercise certain functions of each other within formal contractual partnering arrangements. Section 75 of the Act provides that any such exercise is permitted "if the arrangements are likely to lead to an improvement in the way in which those functions are exercised".

- 4.2 Section 75 of the Act, and accompanying Regulations issued by the Secretary of State allow for flexibility in how such partnering arrangements are structured, as they allow arrangements where one party commissions the services which are included in the agreement, in addition to allowing for joint commissioning of the services by both parties. The statutory provisions also provide a legal basis for both parties to fund the services which are included in a partnering agreement, as well as the legal basis for the provision of staff, goods and services in connection with the arrangements. Each of these aspects of the arrangements may be freely agreed between the parties and incorporated into the agreements.
- 4.3 The Regulations prescribe which functions may be included in a Section 75 arrangement and they also specifically exclude some functions of the Council. The Legal Partner is satisfied that the subject matter of the proposed arrangements is within the permitted areas of functions.
- 4.4 Section 256 of the Act provides the legal basis for direct funding agreements to be made under which the Primary Care Trust provides funding for the Council in respect of any 'health related' local authority function which the Council is performing. These arrangements are not partnering arrangements in the way in which Section 75 agreements are, and they do not involve either party exercising the other party's functions.
- 4.5 The proposal to incorporate a number of Section 75 and Section 256 agreements into a single overarching agreement does not create any legal issues, provided that the requirements of the Act and the Regulations (in terms of content) are complied with. There are no provisions in the Act or in the Regulations which would prevent the incorporation of a number of separate agreements into a single overarching agreement as is proposed.
- 4.6 Arrangements under Section 75 of the Act are in effect delegations of functions. The Council's Scheme of Delegation reserves the power to delegate functions (and to accept delegations) to and from other local authorities to the Assembly. However, there is no such reservation of power in respect of delegations to and from other public bodies, such as the Primary Care Trust. Accordingly, the statutory powers under the Act to enter into such arrangements may be exercised by the Cabinet within its executive capacity.
- 4.7 The Legal Partner has negotiated the terms and conditions of the overarching agreement with the legal representatives of the Primary Care Trust, and is satisfied as to its terms.

5 Governance implications

- 5.1 There is a clear governance structure set out in the agreements, specifying the level at which discussions should take place about different changes to, or evolution of, the agreements. This governance framework sits below the emerging Health & Wellbeing Board in the form of an Executive Steering Group, and the detail is included at Appendix 2, specifically a structure diagram outlining relationships and the terms of reference of the Executive Steering Group. Members would wish to note that the terms of reference for the Health & Wellbeing Board have been amended in line with previous discussions with Cabinet Members. Alongside GP commissioning representatives, this now includes a wider range of Elected Members as part of its membership, including Cabinet Members for Health & Adult

Services and Children & Education, as well as the Chair of the Health & Adult Services Scrutiny Committee. Initially in an observer capacity, new appointments will be formalised when the legislation governing Health & Wellbeing Boards has been clearer about expectations.

- 5.2 The overarching agreement will require the Council and the PCT to form the Executive Steering Group and to give the Executive Steering Group various powers of governance, guidance and review (*inter alia*) in relation to the services provided pursuant to the agreement. Under the Council's Scheme of Delegation, these are executive powers which are delegated to Chief Officers. In order for the Executive Steering Group to exercise its powers in accordance with the Council's Constitution and Scheme of Delegation, the appropriate Chief Officers will need to delegate such powers to the Executive Steering Group. However, this will be implicit given that the relevant Chief Officers will be members of the Executive Steering Group. The Executive Steering Group will not be able, under its Terms of Reference or otherwise, to exercise any executive powers which are reserved for Cabinet under the Scheme of Delegation.
- 5.3 The overarching agreement also requires the Executive Steering Group to refer some types of powers to the Health and Wellbeing Board, to make decisions on their recommendations. Until such time as the Health and Wellbeing Board has full statutory basis, the interim body will require the same authorisation and delegation from Chief Officers as the Executive Steering Group, for the same reasons as are described in 5.2.

6 Other Implications

Risk Management

- 6.1 There is a clear element of risk in entering into this agreement in terms of the Council being accountable for the agreed levels of performance set out. Officers have worked hard with PCT colleagues to outline a robust performance management framework for the monitoring of the agreements, built on realistic expectations of what is achievable with the level of funding. Further refinement will be necessary following signing of the agreement and before its commencement in April 2011. The agreement specifies that the final suite of measures will be approved by the Health & Wellbeing Board before April 2011, and refreshed again before April 2012. The agreement sets out the clear basis for these negotiations, as well as the consequences of any default and the basis on which underspends and overspends are dealt with between partners.
- 6.2 When agreed, appropriate updates will be made to the Adult & Community Services Department and Corporate Risk Registers to ensure that senior officers and members are monitoring any emerging concerns with the operation of the agreements.
- 6.3 The risk of not proceeding with the agreement is that, during a time of already uncertain financial context, there would be further instability around key services as the NHS moves to a sectoral basis for commissioning. Until relationships with both the four-borough NHS Sector and local GP commissioning groups have been more formally established, it places our joint commissioning at considerably less risk to ensure that it is contractually clear for the interim period.

Contractual Issues

- 6.4 In signing the over-arching agreement the Council will be entering a contract with the PCT until April 2013. A performance management framework is in place to monitor the contract. There is scope for some of the details of the individual 'Section' agreements to be revised during the course of the contract. It has been proposed that the Key Performance Indicators related to the service areas will be reviewed on an annual basis. In addition, the service specifications will be revised on at least an annual basis in line with the organisation's budget setting process, with a contingency process for undertaking revisions in-year.
- 6.5 The individual service areas as set out in the different 'sections' may be subject to further contractual arrangements depending on how the services are delivered. In each of these cases, any further procurement proposals will be carried out in line with European Union rules and principles and Council procurement rules. The agreement is clear on the standing financial instructions to be adopted for any further contracting or financial changes.

Staffing Issues

- 6.6 The main implications for staffing at this stage are in relation to the interim relocation of staff from the Health Improvement Department of NHS Barking & Dagenham to the Council. Pending future decisions about the longer-term structures, this will lead to a new division being created, in interim form, within the Council structure, proposed to sit within the Adult and Community Services Department. The division will be led by a Joint Director of Public Health, reporting directly to the Corporate Director of Adult and Community Services.
- 6.7 As mentioned earlier in this report, the relevant NHSB&D staff will be seconded to the Council in the short-term. Since this is an interim position, whilst the longer-term arrangements are worked through, TUPE regulations do not currently apply. The affected PCT staff have all been consulted on the secondment proposal, the consultation period for which finishes on 22 January.
- 6.8 Further consultations will be undertaken with Members and senior officers to ensure the divisional structure that is developed for the longer term is integrated into the work of the Council and to establish working relationships with existing Council services which contribute to the health improvement agenda.

Customer Impact

- 6.9 The proposals set out within the over-arching agreement are aimed at ensuring that local health services are stabilised during the transition period before the proposals set out within the NHS White Paper become statute. This reduces the chance that local residents feel negative impacts of any uncertainty over the coming months which may have otherwise been caused had these agreements not been made formally.
- 6.10 Many of the services that are covered within the agreements are for existing services and therefore will have completed Equality Impact Assessments in place, with actions to address any adverse impact.

- 6.11 The Health and Social Care Bill will put local government at the heart of improving health and wellbeing for their populations and tackling inequalities. The early transfer of the PCT Health Improvement function to the Council enables us to gain a headstart in integrating services to the benefit of our local residents. A full Equality Impact Assessment (EIA) has not yet been complete for this transfer. It is planned that this will be undertaken following the establishment of the Public Health division and further consultation to fully integrate with the Council (see 6.8)

Safeguarding Children and Vulnerable Adults

- 6.12 The agreements detail specific services that work directly to ensure that children and young people are safeguarded, particularly within the Children's Section 75 Agreement. Similarly, the agreements on adults include provision for joint work to support the local arrangements for safeguarding vulnerable adults. Provision for safeguarding is included in the emerging structure proposals for the NHS sector, but there is local concern that the resources allocated will be insufficient to provide the level of service previously experienced. These elements of our local agreements are, therefore, important.

Health Issues

- 6.13 The over-arching agreement and the appended Section 75 and 256s will have a positive impact on the health of the local population. The agreement will ensure that partnership funding is secured to continue to deliver the health improvement priorities that have been identified as priorities for this borough until 2013. Without the funding arrangements being formalised within these agreements, there is a risk that alternative commissioning decisions may have moved funding to other priorities, which may not have been those of local significance, and which would adversely impact on the health of the local community.
- 6.14 The transfer of the Public Health division to the Council will give the Authority the opportunity to integrate the work of the Public Health team with other appropriate Council services ahead of schedule (in terms of the legislation being passed through Parliament). This will benefit the local community through better joined-up working in relation to health issues and in particular areas such as Adult Social Care, Children's Services, Leisure, Environmental Health and Emergency Planning.

Crime and Disorder Issues

- 6.15 The agreements set out in the appendices will help to address crime and disorder issues in the borough. A contribution to Domestic Violence services is included within the Public Health Section 75, while the DAAT Section 256 contains the funding contribution from the Council and NHS Barking and Dagenham in terms of Substance Misuse. Both of these areas are priorities set out within the Community Safety Partnership Plan 2008-2011. Again, by securing the contributions within this legal agreement we can ensure that the funding for these priority areas is maintained.

Property / Asset Issues

- 6.16 There will be some impact on the Council's property and assets. The creation of a new division within the Council will mean that those staff that are seconded within

the transfer will need to be housed within a Council building. The Asset Management and Capital Delivery division have been involved closely with the transition work to enable this. It is proposed that the Public Health team will transfer from the Clockhouse to Barking Town Hall following the signing of the agreements.

6.17 Within the agreements, details are set out for the relevant premises that are used for the services described. As the agreements largely contain details of services that already exist, it does not propose the sale or purchase of any property/asset away from the Council's Capital Programme.

6.18 It should also be noted that there are many reciprocal arrangements between the health sector and the council for the accommodation of each other's staff groups, including at the Clockhouse (the adult commissioning team), the Child & Family Centre (the community learning disability team) and the Town Hall (public health functions).

7 Options appraisal

7.1 Within so complex an agreement, there are indeed many options as to what to include and what to leave out. The proposal put before Members has been subject to considerable work and scrutiny by officers to ensure that it offers the best balance of services included and those left out.

7.2 The principal alternative option, therefore, would be to do nothing and leave the funding arrangements in their current state. However, as a number of the agreements for the funding contributions remain relatively informal, this would leave the services at risk of being destabilised during this period of transition and uncertainty, and would leave commissioning officers with considerable negotiations to undertake with a changing set of partner commissioners. By entering into this legal agreement both organisations are setting out their commitment to improving the health and wellbeing of our local residents by securing the funding for these key projects until 2013.

8 Background Papers Used in the Preparation of the Report:

- Cabinet Report – Implications of the Health White Paper “Equity & Excellence: Liberating the NHS” for Barking and Dagenham (2 November 2010, Minute 55)
- Department of Health – Equity and Excellence: Liberating the NHS
- Department of Health - Healthy People, Healthy Lives

9 List of appendices

- Appendix 1 - Overview of Agreements, including financial commitments
- Appendix 2 - Governance of the agreement