

PART ONE - PUBLIC

Decision Maker: Executive
For Pre-Decision Scrutiny by Care Services PDS Committee on
26th June 2014

Date: 10th July 2014

Decision Type: Non-Urgent Executive Key

Title: ONE SECTION 75 AGREEMENT WITH BROMLEY CCG

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Chief Officer: Executive Director of Education, Care & Health Services

Ward: N/A

1. Reason for report

- 1.1 This report sets out the legal framework for how integrated commissioning and joint services between The London Borough of Bromley and Bromley's Clinical Commissioning Group will be administered.
- 1.2 The report proposes that all our existing and future (e.g. *Better Care Fund*) joint commissioning and joint service delivery be captured under one overarching arrangement. The report proposes to use a single *Section 75* agreement as set out in the National Health Service Act 2006. The agreement will set out the principles around governance and financial management under which all these arrangements can take place and will also contain a list of schedules which capture at a high level all the existing agreements in one place.
- 1.3 The purpose of the report is to seek Executive approval to this proposed approach in preparation for further integration over the coming year.
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2. RECOMMENDATIONS

- 2.1 Care Services PDS are asked to note and comment on the proposals set out in the report.
- 2.2 The Executive is asked to:

- (i) approve the proposed approach to legally administering our integrated commissioning and service delivery arrangements under one high level Section 75 agreement between The London Borough of Bromley and Bromley's Clinical Commissioning Group; and**
- (ii) delegate to the Chief Executive the power to approve the final Section 75 agreement between LB Bromley and Bromley CCG. The agreement will be re- signed and re-sealed on an annual basis.**

(N.B. New individual agreements proposed by the Joint Integrated Commissioning Executive will be covered under a deed of variation and will be subject to the standard financial and contract regulations based on the level of funding involved. For example if a new agreement involves funding contributions of over £1m it will be taken through Executive for a decision first.)

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council:
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Financial

1. Cost of proposal: This agreements currently captures all existing funding arrangements previously (minus placements) approved for health and care services:
 - A) Over £13m in one off funding sitting with the local authority for integrated services and to maintain eligibility criteria
 - B) A smaller amount of ongoing revenue commitments made between the two organisations totalling £3.5m p.a.
 2. Ongoing costs: There is a commitment by both partners to deliver certain activities and services in an integrated way. However the level of ongoing financial commitment is subject to annual review
 3. Budget head/performance centre: Executive Director, Education, Care and Health for London Borough of Bromley
 4. Total current budget for this head:£34m care services controllable budget
 5. Source of funding: ECHS revenue budget
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Staff

1. Number of staff (current and additional): No additional staff
 2. If from existing staff resources, number of staff hours: The proposal is to streamline multiple existing Section 75, 76 and 256 agreements into one overarching agreement which is flexible enough to deliver against the fast changing integration agenda. Also to reduce the staff hours currently spend on this administrative work which is becoming considerable.
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Legal

1. Legal Requirement: Non statutory requirement : Government Guidance. Under current legislation (National Health Service and Community Care Act 1990 Section 47) the Council's statutory assessment function can only be carried out by a local authority or by an NHS organisation on behalf of the local authority through an agreement under Section 75 of the National Health Service (NHS) Act 2006.
 2. Call-in: Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): There will be no impact on service users from the proposals contained in the report as these cover existing agreements already in place. Future integrated commissioning and services will have a direct impact on service users as delivery is joined up to target better outcomes for service users.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1 Background

3.1.1 Over the past ten years there have been a number of partnership agreements made between social care and health to facilitate the joint commissioning and delivery of services. These have all been legally underpinned by Section Agreements, the latest versions of which are covered under the National Health Service Act 2006.

Explanation of Section Agreements in use

3.1.2 **Section 75** - allows the pooling of funds where payments may be made towards expenditure incurred in the exercise of any NHS or 'health-related' local authority functions. Section 75 also allows for one partner to take the lead in commissioning services on behalf of the other (lead commissioning) and for partners to combine resources, staff and management structures to help integrate service provision, commonly known as 'Health Act flexibilities'. Here staff can be seconded/transferred and managed by another organisation's personnel. (Section 113 of the Local Government Act allows staff to be available to 'non-employing' partner organisations). The Act also makes provision for the functions (statutory powers or duties) to be delivered on a daily basis by another partner, subject to the agreed terms of delegation. This legislation only applies to local authority and health partners.

3.1.3 **Section 76/256** – there are also additional 'lighter touch' legislative provisions in the NHS Act 2006 to enable joint health and social care funding can be quickly aligned when there is a good reason to do so. Section 76 allows local authorities to make payments (service, revenue or capital contributions) to NHS bodies to support specific additional NHS services, where this ensures a more efficient use of resources. Section 256 allows CCGs to make the same such payments to local authorities to support or enhance specific council services.

Local Use of these agreements

3.1.4 In 2013/14 locally there were 11 such agreements in place which covered a number of services and activities which can be summarised as:

- Joint funded posts
- Contributions to joint contracts with community groups
- Access to call off from a partners contract
- Grants normally from DoH passed through Health to LB Bromley
- One-off sums for specific Programmes (e.g. CCG's Promise Programme)
- Rent for use of a building

3.1.5 The advent of the Better Care Fund and the plans to further integrate Care and Health represents a step change in the scale and depth of local integration. The way that both organisations jointly administer these agreements needs to reflect that. Some of these existing arrangements have been in place for many years and grew organically over time. Over the past year processes have been formalised and existing agreements reviewed, rewritten and any outstanding issues resolved.

3.1.6 Part of this process of review is setting out a way to streamline the administrative burden as both organisations have limited resources to allocate to drawing up individual partnership agreements for each and every piece of integration work however small (e.g. a shared post). Because there is a requirement from both sides to make efficiencies and to reduce any existing bureaucratic processes wherever possible senior officers, through the *Joint Integrated*

Commissioning Executive, have reviewed the existing processes and concluded that it would be better to:

- Have one overarching Section 75 which sets out the core principles under which all these individual agreements can take place.
- That this key document should have attached a set of schedules, which detail all active partnership agreements so as they are captured in one document to make it easier for finance and legal administrators and to keep a clear and transparent audit trail of this fast changing agenda.
- Where further details are required such as full contract specifications with a provider, or detailed project and programme deliver plans or full commissioning strategies these can be referenced in the schedules but held elsewhere to prevent the document from becoming unmanageable.

3.1.7 This approach has been checked with finance, legal and audit to ensure that it complies with our own corporate standards as well as being a practical solution to capturing the ever increasing amount of integration taking place across our services.

3.2 Existing agreements that will be included in a Section 75 for 2014/15

3.2.1 The below summaries the existing services which will be captured in the Section 75 for 2014/15. All these agreements have already been through the appropriate authorisation processes depending on the level of funding involved.

3.2.2 LB Bromley currently pay a contribution towards two large contracts held by the CCG for:

- Short term breaks service for Children
- Intermediate Care

3.2.3 Bromley CCG pay a contribution to:

- Two commissioning posts
- Several community contracts, including day opportunities and mental health services
- Using the Council's Community Equipment contract
- Rental of space at Yeoman House

3.2.4 In addition the CCG's one-off Promise programme funding that sits with LB Bromley is also included

- Promise Programme

3.2.5 The Better Care fund, which comes into full effect in 2015/16, is likely to greatly increase what is included and captured in this Section 75. In 2014/15 the final version for sign off will also include the funding (£992k) that NHS England have made available for the 'planning year' in order for Local Authorities and CCGs to get ready for the Better Care Fund.

3.2.6 Governance, financial management and risk arrangements will be clearly defined and set out in this agreement, particularly the extent of delegation agreed. With most of these agreements one partner acts as the host to undertake the other's functions, including management of staff on behalf of both parties (also described as integrated management). But as the scale of integration increases services could be delivered under pooled budgets and jointly funded posts where the role of host partner will be harder to define in services that deliver on both health and care outcomes. In these circumstances it will be increasingly important to have

strong leadership and good working relations underpinned by a robust set of agreements. As such the agreement should include clear guidance on decision making, resolution of disputes, two way process on information flow, compliance with financial regulations and contract procedures and audit requirements.

3.2.7 A draft Section 75 has already been drawn up and is being finalised at officer level between both organisations ready for final approval.

4. POLICY IMPLICATIONS

The proposals in the report contribute to the Council's Building a Better Bromley priority of supporting independence by enabling further integration of health and social care to benefit social care clients. It also contributes to Excellent Council by demonstrating partnership working to provide seamless services to vulnerable clients and to streamline administrative processes wherever practical to do so.

5. FINANCIAL IMPLICATIONS

- 5.1 Both LB Bromley and Bromley CCG will remain responsible for obtaining the appropriate approvals through their individual governance structures to agree their respective contributions within their wider corporate budget cycles.
- 5.2 Financial Contributions shall be adjusted each year dependent on what services and commissioning activity has been agreed to be delivered through the Section75 agreement. An annual review process will be overseen by respective Directors through the Joint Integrated Commissioning Executive (JICE) to look at the performance of the services and to set joint efficiency targets.
- 5.3 Current funding is split into two types. Firstly one off funding including the funds passed across by the BCCG for integrated care projects including Promise as well as the DoH Social Care Grant and the BCF planning year funding, the combined value of which stands at £13m. Then secondly there is a smaller amount of ongoing revenue commitments as explained in 3.1.4 made between the two organisations totalling £3.5m per annum. Some of these LBB pay BCCG for services e.g. *intermediate care* and *children's short breaks* service which are provide through their community health provider. Other services BCCG pay LBB such as for the use of our call off contract with Mediquip for the provision of community equipment.
- 5.4 In future years both organisations shall agree their contributions for the following Financial Year before 31st March working within their existing departmental budgets. This figure will be subject to due diligence before the agreement is finalised. The agreement would also set out how any underspends would be apportioned between the parties.
- 5.5 New arrangements added to the Section 75 as a deed of variation will be subject to exactly the same financial and contractual procedure rules before being added.

6. LEGAL IMPLICATIONS

- 6.1 The agreement establishes a legal framework for administering integrated services between local social care and health commissioners in the Borough.
- 6.2 The Section 75 Agreement is designed to further the consolidation and co-ordination of provision of Care and Health services. Under these arrangements the legal requirement for the Council to meet its statutory duties will remain with the Council. However, the proposed

Agreement allows for either LB Bromley or Bromley CCG to commission or directly deliver services on each other's behalf where it makes sense to do so.

7. PERSONNEL IMPLICATIONS

- 7.1 Any staffing implications arising from the proposed changes to the current Section 75 arrangements would be the subject of a staff and staff representatives' consultation process pursuant to the Council's Managing Change Procedure. Staff and their representatives and any other stakeholders would be consulted in a timely manner.

<p>Non-Applicable Sections:</p>	
<p>Background Documents: (Access via Contact Officer)</p>	<p>ADULT SOCIAL CARE – IMPACT OF THE CARE BILL AND FUTURE NHS FUNDING – report to Executive by the Executive Director of Education, Care and Health Services 20th November</p> <p>BETTER CARE FUND (Formerly Integration Transformation Fund ITF) – report to Health and Wellbeing Board by the Executive Director of Education, Care and Health Services, 28th January</p>