


<p style="text-align: center;">Health and Wellbeing Board Tuesday 5th September 2017</p>	
<p>Report of the London Borough of Tower Hamlets</p>	<p>Classification: Unrestricted</p>
<p>Better Care Fund, 2017-19</p>	

Lead Officer	Denise Radley, Corporate Director, Health, Adults & Community, Tower Hamlets Council Simon Hall, Acting Chief Officer, Tower Hamlets CCG
Contact Officers	Suki Kaur, Head of Partnership Development , Tower Hamlets CCG Steve Tennison, Senior Strategy, Policy and Performance Officer – Integration Lead, Tower Hamlets Council
Executive Key Decision?	No

REASONS FOR URGENCY

The report was not published five clear days in advance of the meeting due the need to submit the most up-to-date possible version of the Better Care Funding Plan (BCF Plan) to the Board. The BCF needs to be submitted to NHS England by the 11th of September which means that it cannot be deferred to the next HWBB. Prior sign off by HWBB is required for submission to NHS England.

Summary

This report seeks the endorsement of the Health and Well-Being Board for the proposed Better Care Plan for 2017-19. It covers the draft Better Care Fund Narrative Plan and its associated planning template (Appendices 1 and 2).

Following the Health and Well-Being Board's consideration of the proposed BCF plan and programme at the present meeting, the Plan and template will be submitted to NHS England for assessment.

It is anticipated that Better Care Fund resources channelled to the borough via the CCG - the so-called CCG 'minimum' - will be formally approved in early October, though plans may need to be resubmitted with further information.

Once approval of funding is given, the council and the CCG will be invited formally to adopt the BCF programme, which will be reflected in a legal agreement under section 75 of the NHS Act 2006.

Recommendations:

The Health & Wellbeing Board is recommended to:

1. Approve the draft BCF plan and planning template for 2017-19, as set out in Appendices 1 and 2, subject to final amendments.
2. Agree that final sign-off of the documents should be delegated to the relevant Chief Officers of the CCG and the Council (Simon Hall and Denise Radley).
3. Note that it is proposed to increase substantially the amount of money pooled through the BCF section 75 agreement.
4. Note the timetable for the submission of BCF plans, their scrutiny and moderation by NHS England and the finalisation of the associated Section 75 agreement, as set out in paragraph 2.11.
5. Agree that, in the event of the BCF plan and template needing to be amended and resubmitted, responsibility for overseeing its production should be delegated to the Joint Commissioning Executive, and that the final version will be submitted to the 7 November 2017 HWBB for formal ratification.
6. Note that the section 75 agreement will be submitted to council and CCG decision-making bodies for formal agreement as soon as practicable following the approval of the BCF plan by NHS England, and prior to the national deadline of 30 November 2017.

1. REASONS FOR THE DECISIONS

- 1.1 There is a need to review and update the Better Care Fund programme. This takes the form of the submission of a draft Better Care Plan to NHS England, together with a planning template, which sets out how the BCF will be spent, performance metrics and targets and confirms that national BCF conditions have been met. The government expects Health and Well-Being Boards to approve local Better Care Plans.

2. INTRODUCTION

- 2.1 The aim of the Better Care Fund (BCF) is to deliver better outcomes and secure greater efficiency in health and social care services through better integration of provision. The BCF programme needs to be agreed jointly by the council and the CCG and approved by the HWBB. The jointly agreed programme is then incorporated in a formal agreement under Section 75 of the NHS Act 2006.
- 2.2 The Government's intends that, by 2020, health and social care services will be more fully integrated across England. BCF plans need to set out how CCGs and local authorities are working towards fuller integration and better co-ordinated care, both via the BCF and through wider service provision. Narrative plans are expected to set out the joint vision and approach for integration, including how the activity in the BCF plan will complement the direction set in the Next Steps on the NHS Five Year Forward View.
- 2.3 Plans are also expected to take into account the wider context, including the development of Sustainability and Transformation Partnerships (STPs), the requirements of the Care Act, 2014, and wider local government transformation in the area covered by the plan - for example other NHS programmes, such as Integrated Personal Commissioning.
- 2.4 In line with the drive towards greater integration of health and social care functions, it is proposed to increase the number of functions pooled via the Better Care Fund Section 75 agreement. In 2016-17, Tower Hamlets' BCF programme comprised approximately £21 million of initiatives. The majority were funded via BCF resources channelled via the CCG - the so-called 'CCG minimum' funding. In addition, Disabled Facilities Grant resources allocated to the council were also required to be pooled, alongside the CCG 'minimum'. In addition, the CCG provided further recurrent and non-recurrent funding from its own resources for a number of initiatives.
- 2.5 The proposed BCF plan for 2017-19 includes the above funding sources. It also includes the Improved Better Care Fund resources allocated to the council for the three-year period, 2017-20, plus funding for a number of other existing initiatives. This increases the size of the proposed pool to approximately £45m.
- 2.6 As part of the BCF planning framework for 2017-19, NHSE requires four national conditions to be met (reduced from eight in 2016-17):
- That a BCF Plan, including at least the minimum contribution to the local pooled fund specified in the national BCF funding allocations, must be signed off by the Health and Wellbeing Board (HWBB), and by the constituent local authority and CCG;
 - A demonstration of how the area will maintain in real terms the level of spending on social care services from the CCG minimum contribution;

- That a specific proportion of the area's allocation is invested in NHS-commissioned out-of-hospital services or retained pending release as part of a local risk sharing agreement; and
 - All areas must also implement the High Impact Change Model for Managing Transfers of Care to support system-wide improvements in transfers of care.
- 2.7 Narrative plans need also to describe how partners will need to continue to build on improvements locally against the following former national conditions:
- Agreement for the delivery of 7-day services across health and social care to prevent unnecessary non-elective (physical and mental health) admission to acute settings and to facilitate transfer to alternative care settings when clinically appropriate.
 - Better data sharing between health and social care, based on the NHS number;
 - Ensure a joint approach to assessments and care planning and ensure that, where funding is used for integrated packages of care, there will be an accountable professional;
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- 2.8 Local partners are required to develop, and agree, through the relevant Health and Wellbeing Board:
- a short, jointly agreed narrative plan including details of how they are addressing the national conditions; and how their BCF plans will contribute to the local plan for integrating health and social care; and
 - a completed planning template, demonstrating:
 - confirmed funding contributions from each partner organisation including arrangements in relation to funding within the BCF for specific purposes;
 - a scheme-level spending plan demonstrating how the fund will be spent; and
 - quarterly plan figures for the national metrics (i.e Non Elective Admissions, Residential Admissions, Reablement and Delayed Transfers of Care).
- 2.9 BCF plans will be approved and permission to spend the CCG minimum contribution to the BCF given once NHS England and the national Integration Partnership Board have agreed that the conditions attached to that funding have been met.
- 2.10 For 2017-19, following discussions at the Joint Commission Executive earlier in the year, it is proposed to increase the size of the pooled fund by incorporating a number of additional CCG and local authority initiatives. The size of the pool has also been increased by the inclusion of Improved Better Care Fund (IBCF) resources, a grant paid to local authorities for the purposes of 'meeting adult social care needs; reducing pressures on the NHS, including supporting more people to be discharged from hospital when they are ready; and ensuring that the local social care provider market is supported'. In addition, the BCF Plan needs to include the Disabled Facilities Grant, a capital grant paid to the council to support people to live independently in their own homes for longer.
- 2.11 The timetable for the submission and sign off of the BCF Plan and planning template is as follows:

BCF Plan and template submitted for endorsement by Health and Well-Being Board	5 September 2017
Tower Hamlets Together Board	7 September 2017
BCF Plan and template submitted to NHS England	11 September 2017
Scrutiny of BCF plans by regional assurers	12-25 September 2017
Regional moderation	w/c 25 September 2017
Cross regional calibration	2 October 2017
Approval letters issued giving formal permission to spend (CCG minimum)	From 6 October 2017
Deadline for areas with plans rated approved with conditions to submit updated plans.	31 October 2017
All Section 75 agreements to be signed and in place	30 November 2017

- 2.12 A draft of the BCF narrative and template are attached as Appendices 1 and 2. As noted above, these need to be completed and submitted to NHS England by 11 September 2017. Further work will take place over the coming weeks. The Integration and Better Care Fund planning requirements for 2017-19 are attached as Appendix 3. Appendix 4 sets out the Key Lines of Enquiry which will be used by NHS England to assess and evaluate BCF submissions.

3. COMMENTS OF THE CHIEF FINANCE OFFICER

- 3.1 Better Care Fund (BCF) is a combination of central government funding streams that used to flow to LBTH and the NHS. The aim of the BCF is to support the integration of health and social care and to seek to achieve the National Conditions and local objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose.
- 3.2 The 2017-19 BCF Planning Guidance was published at the end of July 2017. It is anticipated that the 2017-18 Tower Hamlets BCF programme will mostly be reflective of the 2016-17 programme. The main areas of potential change will be around incorporating other services and contracts, with the aim of improving quality and efficiency for service users.
- 3.3 The S.75 agreement is formed of Better Care Fund CCG Minimum (BCF), CCG additional direct funding, Disabled Facilities Grant (DFG) and the Improved Better Care Fund (IBCF). The BCF is received by the CCG and amounts to £18.17m in 2017-18, of which £7.58m relates to services commissioned by the Council. The DFG (£1.734m in 2017-18) and Improved Better Care Fund (£7m in 2017-18) are received by the Council. The CCG also has additional schemes which it funds directly. Table 1 below provides a breakdown.

- 3.4 It should be noted that the DFG is a capital grant with conditions. It is time limited and can only be used for specific purposes that meet capital accounting criteria. The Council has established a DFG working group, which will ensure that the conditions are adhered to.
- 3.5 The IBCF schemes have been drawn up by the Council, with service sustainability being the priority scheme, where additional funds are deemed to be required for sustainability, this may result in the need to review and amend other schemes funded from the IBCF monies.

Table 1: Funding Summary

	2017/18	2018/19	2019/20
BCF (CCG Minimum)**	18,165,075	18,510,211*	18,861,905*
CCG Direct Funding**	16,636,731	16,952,829*	17,274,933*
DFG (Council)	1,733,988	1,895,435	1,895,435*
IBCF (Council)	7,017,243	4,200,000	2,100,000
	43,553,037	41,558,475	40,132,273

* These items are estimates

** 2018/19 and 2019/20 figures have been uplifted by inflationary 1.9%

- 3.6 The 2017-18 S75 agreement in place, largely addresses the relevant financial/non-financial risks and the mitigating actions. However the risk share should be reviewed regularly and reflected in the allocation. Failure to review the risk may lead to extra base budget pressures for both the Council and the CCG.

4. LEGAL COMMENTS

Better Care Fund

- 4.1 The Care Act 2014 places a duty on the Council to exercise its functions by ensuring the integration of care and support provision with health provision, promote the well-being of adults in its area with needs for care and support and contribute to the prevention or delay of the development by adults in its area of needs for care and support. The 2014 Act also amended the National Health Service Act 2006 to provide the legislative basis for the Better Care Fund. It allows for the NHS Mandate to include specific requirements relating to the establishment and use of an integration fund.
- 4.2 The Government provides funding to local authorities under the Better Care Fund to integrate local services. The funding is through a pooled budget which is made available upon the Council entering into an agreement with a relevant NHS body under section 75 of the NHS Act 2006. Such agreements may be entered into where arrangements are proposed which are likely to lead to improvement in the way that prescribed NHS functions and prescribed health-related functions of the Council are exercised.
- 4.3 In order to receive the Better Care funding, the Government requires the Council to set out its plans for the application of those monies. The Government published a policy framework for the 2017-19 Integration and Better Care Fund programme in March 2017 which indicated that plans should be agreed by the Council's Health and

Wellbeing Board ("**HWB**"), then signed off by the Council and CCG. This is consistent with the general policy, reflected in the Health and Social Care Act 2012, of giving HWBs responsibility for joint health and wellbeing strategies and the joint strategic needs assessment. The 2017-19 policy framework sets out the requirements for the plan to demonstrate how the area will meet certain national conditions.

Contracting

- 4.4 Pursuant to section 75 of the National Health Service Act 2006, the NHS Bodies and Local Authorities Partnerships Arrangements Regulations 2000, the s75 Agreement provides for the establishment of funds made up of contributions from the Council and NHS CCG out of which payments may be made towards expenditure incurred in the exercise of their functions; for the exercise by NHS CCG of the Council's functions and for the exercise by the Council of the NHS CCG's functions in writing. In addition, the s75 Agreement covers specific objectives in relation (including but not limited) to:
- 4.4.1 agreed aims and outcomes of the partnership including the Council and NHS CCG's respective legal and regulatory responsibilities, and the client groups for whom the services will be delivered under the arrangement
 - 4.4.2 operational arrangements for managing the partnership including performance and governance structures encompassing the resolution of disputes, conditions for renewal and termination of the partnership, provision and mechanisms for annual review, the treatment of VAT, legal issues, complaints and risk sharing
 - 4.4.3 the respective financial contributions and other resources provided in support of the partnership including arrangements for financial monitoring, reporting and management of pooled, delegated and aligned budgets
 - 4.4.4 linking in with existing governance arrangements including the role and function of the Integrated Care Board
 - 4.4.5 achieving best value from Service Providers and principles in connection with the management of staff; and
 - 4.4.6 flexibilities for the Council and NHS CCG in being permitted to add relevant service provisions and deciding future budgets for existing services within the remit of the s75 Agreement.
- 4.5 The s75 Agreement must be consistent with the 2017-19 Better Care Fund Plan approved by HWB and entering into it formalises the arrangements agreed by the Council and NHS CCG in accordance with the statutory, regulatory and guidance frameworks.

Wellbeing Principle and Equalities Duties

- 4.6 The Care Act 2014 places a general duty on the Council to promote an individual's wellbeing when exercising a function under that Act. Wellbeing is defined as including physical and mental health and emotional wellbeing and in exercising a function under the Act, the Council must have regard to the importance of preventing or delaying the development of needs for care and support or needs for support and the importance of reducing needs of either kind that already exist. The wellbeing principle should therefore inform the delivery of universal services which are provided to all people in the local population, including services provided through the Better Care Fund.

- 4.7 The Equality Act 2010 requires the council in the exercise of its functions to have due regard to the need to avoid discrimination and other unlawful conduct under the Act, the need to promote equality of opportunity and the need to foster good relations between people who share a protected characteristic (including age, disability, maternity and pregnancy) and those who do not.

Procurement Obligations

- 4.8 It should be noted that the section 75 agreement does not in itself satisfy either party's obligations to subject expenditure to competition as required by the Public Contract Regulations 2015 and the general treaty principles stated in the Treaty On The Operation Of The European Union. The Section 75 agreement provides for the pooling of funds but when those funds are expended on goods works and or services these obligations will apply to that expenditure.
- 4.9 As detailed above the Council has many statutory functions in respect of the provision of care. Section 111 of the Local Government Act 1972 provides the ancillary power to the Council to enter into contracts in the satisfaction of any of its statutory functions. It is presumed that the CCG would be similarly empowered although this should be considered as each individual circumstance requires.
- 4.10 It is presumed that one of the significant advantages of the pooled budget will be the ability to jointly purchase items required by the delivery of the joint service. However, the Council must satisfy itself that its own Procurement obligations have been observed. It is notable that in the event of a defective procurement where the contract was intended to be used by both parties, both parties will be liable for the defective procurement regardless of which party was carrying out the procurement activity.
- 4.11 Where the Council intends to make use of a contract procured by the CCG albeit to the benefit of third parties, in the absence of taking the appropriate actions (detailed below) in order to satisfy its own procurement obligations such an arrangement would be deemed to be a single supplier purchase in the absence of competition i.e. the Council will be deemed to have just picked the CCG to provide the goods / services in the absence of a Council run competitive exercise and thereby breach its own procurement obligations.
- 4.12 Therefore, prior to each joint procurement exercise (or on a continuing basis by mutual agreement for example within the section 75 agreement itself) the Council should clearly appoint the CCG (where the CCG is the lead procurer) as the procurement body on behalf of the Council. Also, notices advertising contracting opportunities placed by the CCG should clearly state that the Council will be a purchaser of the goods and or services as well as the CCG and any stated estimated contract value must include the value intended to be purchased by the Council.
- 4.13 Many of the goods and services funded out of the pooled budget will be in Schedule 3 to the Public Contracts Regulations 2015. This means that a higher contract value threshold applies of £589,148 before the Public Contracts Regulations apply but beyond this threshold each opportunity must be advertised in Europe.
- 4.14 The Council also is obligated to comply with its Best Value duty in accordance with Section 3 of the Local Government Act 1999 when purchasing and delivering services. The economy element of the duty will be satisfied provided that the CCG appropriately tenders each purchase and ensures that tenders are evaluated against criteria designed to discern the most economically advantageous tender in terms of a

mix of quality and price. The evaluation criteria also need to be transparent, pre-advertised and applied equally to all tenders.

- 4.15 The Best Value duty is not one which may be satisfied by a third party. Therefore, the Council needs to ensure that each contract and the Section 75 agreement allows the Council sufficient scope to request information and engage in such contract monitoring activities as may be required to ensure that its part of the pooled budget is being utilised appropriately and in accordance with the duty. The contracts themselves that the CCG create also require clauses in order to support the implementation of contract monitoring in order to ensure good quality service provision.
- 4.16 The Council also needs to ensure that any contract meets its own social and policy commitments, such as in respect of sustainability, ethical governance and the Council's London Living Wage Licence.

5. ONE TOWER HAMLETS CONSIDERATIONS

- 5.1 The Better Care Fund is concerned with better integrating health and social care services to people with a diverse range of illnesses and conditions. These include people with mental health problems, people at risk of being admitted to hospital and people able to be discharged from hospital with appropriate support. It also funds services concerned with Reablement - supporting people to learn or relearn skills necessary for daily living following ill-health or disability; the adaptation of the domestic accommodation of people with disabilities to enable them to live at home, and the training of staff in the use of assistive technology.

6. BEST VALUE (BV) IMPLICATIONS

- 6.1 The Better Care Fund is concerned with achieving best value in the health and social care economy, by ensuring that services are provided most appropriately across the system and that the allocation of resources supports efficiency improvements, as well as better outcomes for service users. It also seeks to reduce the historic problem of financial savings in one sector being achieved at the expense of additional costs in the other, through better joint planning and shared priorities.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The Better Care Fund has no direct implications for the environment.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The section 75 agreement will specify pooled funds within the BCF, commissioning arrangements and the arrangements for risk share, including how overspends and underspends will be dealt with for each pooled fund.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The Better Care Fund is not principally concerned with crime and disorder reduction. However, several initiatives within the Improved Better Care Fund are concerned with groups at risk of offending, or community safety issues more generally. These include the establishment of a Community Multiagency Risk Assessment Case Conference (MARAC) and an independent Antisocial Behaviour Victim Advocate; a project to support people with mental health concerns who are often at risk of coming

into contact with the police and another, which seeks to reduce the potential self-harm and harm to others caused by hoarders.

Linked Reports, Appendices and Background Documents

Appendices

- Appendix 1 - Draft BCF narrative
- Appendix 2 - Draft BCF template
- Appendix 3 - Integration and Better Care Fund planning requirements for 2017-19
- Appendix 4 - A Guide to the Assurance of Plans, including Key Lines of Enquiry which will be used by NHS England to assess and evaluate BCF submissions

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

- None

Officer contact details for documents:

Steve Tennison, Senior Strategy, Policy and Performance Officer – Integration Lead
E: steve.tennison@towerhamlets.gov.uk
T: 020 7364 2567

Suki Kaur, Head of Partnership Development – CCG
E: suki.kaur1@nhs.net
T: 020 3688 2356