


Health and Wellbeing Board Insert Date	
Report of the London Borough of Tower Hamlets	Classification: Unrestricted
Integrated Care: Better Care Fund section 75 agreement	

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Executive Key Decision?	Yes

Executive Summary

The Tower Hamlets Better Care Fund plan was submitted to the Department of Health in April 2014, a revised version was submitted in September 2014 and approval of the plan was confirmed by NHS England on 07 January 2015 (see Appendix 1). The plan has effect from 01 April 2015. The planned expenditure covered by the Better Care Fund plan is £21.577 million in 2015/16.

In order to provide a governance framework for the commissioning and delivery of the Better Care Fund and the management of the budget and expenditure, an agreement made under section 75 of the National Health Services Act 2006 is required. This agreement includes the following core components:

- Commissioning arrangements, including confirmation of which agency will act as Lead Commissioner for each element of the fund;
- Governance arrangements, including arrangements for reporting progress in delivering the plan to the Health and Wellbeing Board;
- Arrangements for management of the pooled funds;
- Arrangements for managing risk across the partners to the agreement;
- Information about each of the individual schemes which together make up the Better Care programme; and
- A standard range of terms and conditions covering issues such as dispute resolution and information sharing. A detailed table of contents is included on pages i to ii of the section 75 agreement, which is attached to this report as Appendix 2.

The report introduces the terms of the section 75 agreement, as well as proposing for specific approval the intended governance arrangements.

Recommendations:

The Health and Wellbeing Board is recommended to:

1. Note that the terms of the Tower Hamlets Better Care Fund section 75 agreement between NHS Tower Hamlets Clinical Commissioning Group (the CCG) and the London Borough of Tower Hamlets (the Council) as attached at Appendix 2 to this report are consistent with the Better Care Fund Plan approved by HWB on 9 September 2014 and recommend approval of the agreement to the CCG and the Council;
2. Note the lead commissioning arrangements for managing the delivery of the Tower Hamlets Better Care Fund;
3. Delegate authority for overseeing delivery of the Better Care Fund plan to the Tower Hamlets Integrated Care Board and to note the arrangements for reporting of progress back to the Health and Wellbeing Board.

1. REASONS FOR THE DECISIONS

- 1.1 The standard conditions applied by NHS England to the funding provided under the Better Care Fund require that a section 75 pooled budget arrangement is in place for 01 April 2015. The approval letter at Appendix 1 to this report confirms that requirement.

2. ALTERNATIVE OPTIONS

- 2.1 The requirement to have a section 75 pooled budget arrangement in place in order for the Better Care Funds to be released by NHS England mean that there is no alternative option to having such an agreement in place other than to agree not to draw down the Better Care Funds. These funds amount to c£20.5 million in 2015/16 and their loss to the borough would have a significantly deleterious impact on health and social care services locally.
- 2.2 The Board could resolve to retain direct oversight of plan delivery as an alternative to devolving this responsibility to the Tower Hamlets Integrated Care Board (the ICB). Given, however, that the ICB is a sub-group of the Health and Wellbeing Board, and that individual members of the ICB have sufficient executive authority to resolve the significant majority of issues that may arise during plan delivery, it is recommended that this is unnecessary. The Board may however wish to propose that the ICB provide more frequent progress reports than currently proposed.

3. DETAILS OF REPORT

- 3.1 The Tower Hamlets Better Care Fund plan was submitted to the Department of Health in April 2014, with an updated version being submitted in September 2014 and approval of the plan was confirmed by NHS England on 07 January 2015 (see Appendix 1). The plan has effect from 01 April 2015. The planned expenditure covered by the Better Care Fund plan is £21.577 million in 2015/16. The final version of the plan, as approved by NHS England is included at Schedule 6 in Appendix 2 to this report.
- 3.2 It is a requirement for the release of the funding that the Council and CCG have agreed a pooled budget arrangement for managing this funding. This agreement is to be made pursuant to section 75 of the National Health Services Act 2006 (s75). NHS England commissioned Bevan Brittan LLP to develop a template s75 agreement for this purpose, which has been used as the basis from which the Tower Hamlets agreement has been developed.
- 3.3 A detailed table of contents for the s75 agreement can be found at pages i to ii of Appendix 2, but its core content can be summarised as including the following:
- Commissioning arrangements, including confirmation of which agency will act as Lead Commissioner for each element of the Fund;

- Governance arrangements, including arrangements for reporting progress in delivering the plan to the Health and Wellbeing Board;
- Arrangements for management of the pooled funds;
- Arrangements for managing risk across the partners to the agreement;
- Information about each of the individual schemes which together make up the Better Care programme; and
- A standard range of terms and conditions covering issues such as dispute resolution and information sharing.

Commissioning arrangements

3.4 **The Section 75 agreement gives the CCG the overall role of Lead Commissioner for the Better Care Fund, with the Council retaining Lead Commissioning responsibility for specific schemes.**

3.5 The individual schemes within the Better Care Fund plan are set out below along with the Lead Commissioner for each of the schemes identified:

Scheme	Sub-scheme	Lead Commissioner
Integrated Community Health Team	Integrated Community Health Team	CCG
	Reablement and Rehabilitation Joint Working Pilot	
	Seven day working by the Social Work Team at Royal London Hospital	
	Integrated Health and Social Care	
	Continuing Health Care Assessment	
Mental Health Support and Liaison	RAID	CCG
	Recovery College	
Independent Living	Independent Living	CCG
Integrated Care Incentive Scheme	Integrated Care	CCG
	Incentive Scheme	
Protection of adult social care services	Personalisation	Council
	Carers	
	Information, advice and support	

	Quality Safeguarding Assessment and eligibility Veterans Law reform	
Carers	Carers assessments Carers services	Council
Capital funding	Disabled Facilities Grants Social Care Capital Grant	Council

- 3.7 In addition to the BCF schemes set out at 3.6 above, the CCG has also decided to include the following schemes, each of which supports the delivery of the BCF plan, within the scope of the section 75 agreement:

Scheme	Lead Commissioner
Social Prescribing	CCG
Additional Community Geriatrician	CCG
Personalisation and Integrated Personal Commissioning	CCG

- 3.8 Irrespective of which agency has the Lead Commissioning role for individual schemes, it will be necessary to put in place management arrangements which ensure that the overall Lead Commissioner has the authority necessary to direct the actions of commissioners from the partner agency in respect of those services for which the partner agency is responsible for commissioning. It is recommended that these management arrangements be resolved within the wider work that is currently ongoing between the Council and the CCG to establish new joint commissioning arrangements in order to ensure that the arrangements put in place are consistent with this wider work. As an interim measure, and until such time as the wider arrangements are agreed, the ICB will determine suitable working arrangements.

Governance arrangements

- 3.9 The Health and Wellbeing Board is the body to which the Lead Commissioner is ultimately accountable for delivery of the Better Care Fund plan. **It is recommended that the Health and Wellbeing Board devolve responsibility for overseeing delivery of the Better Care Fund plan to the Integrated Care Board, which is a sub-group of the Board. It is further recommended that the Integrated Care Board provide an annual report**

on performance against the plan, to include any recommendations for change. The ICB will report more frequently to the HWBB by exception as required and in particular where actual performance is varying significantly from planned. In this case any exception reporting will include plans for recovering performance and any associated recommendations.

- 3.10 If the recommendation to devolve oversight to the ICB is agreed, the Terms of Reference for the ICB will be amended to reflect the additional requirements relating to overseeing plan delivery. Each partner to the agreement will nominate a Senior Responsible Officer to assist the Board Chair in agenda setting.
- 3.11 The Lead Commissioner will be required to report on performance against the plan on a monthly basis and each of these monthly reports will be provided to the ICB in order that it can properly fulfil its oversight role.

Risk share

- 3.12 Risk in the context of the BCF relates to
- any unanticipated overspends in the fund budget. Given the nature of the services and contractual arrangements included within the scope of the plan the likelihood of this risk materialising is considered to be low; and
 - the risk associated with meeting the targets set out in the plan. The primary impact of this second risk is that the amount of reward that is made available to the Health and Wellbeing Board for allocation to local priorities is reduced proportionate to the level of under-performance. Any amount held back by the CCG to reflect under delivery can only be used to mitigate pressures on the health system directly arising from the under performance in plan delivery (which will manifest itself as a failure to achieve the target reduction in hospital admissions).

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1. The Better Care Fund is worth £3.8 billion nationally. Tower Hamlets overall share of this has been confirmed as £20.550m for 2015/16.
- 4.2. The Councils share of the BCF in 2015/16 is £9.092m with the CCG allocated £11.458m, an additional contribution by the CCG of £1.027m results in a total pooled fund of £21.577m. The S.75 agreement between the CCG and the Council identifies the host partner for individual schemes within the overall BCF.
- 4.3. For the Council's share of the BCF of £9.092m the Council is identified as the host partner, this allows the council to comply with VAT regulations and to carry forward surplus balances in the event of any underspends.
- 4.4. The risk share arrangement in regards to potential overspends within the BCF states that individual scheme overspends are to be absorbed by the partner

managing the scheme. However there is also avenue within the agreement for the ICB to authorise virements from elsewhere in the fund by agreement, if there is sufficient underspend in other areas of the pooled budget.

5. LEGAL COMMENTS

Better Care Fund Plan

- 5.1 The Care Act 2014 places a duty on the Council to exercise its function 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.
- 5.2 The Government is providing funding to local authorities under the Better Care Fund to integrate local services. The funding is to be made available via two statutory mechanisms –
- In 2014/2015, NHS England made payments under section 256 of the National Health Service (NHS) Act 2006. Such payments could be made to support social services functions, education for the benefit of disabled persons, the provision of housing and health-related functions.
 - In 2015/2016, a pooled budget will be 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.
- 5.3 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 guidance related to the Better Care Fund programme which indicated that plans should be agreed by the Council's Health and Wellbeing Board ("**HWB**"). 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.
- 5.4 The joint plan was agreed by the CCG and the Local Authority and approved through the HWB on 24 March 2014, as endorsement of the plan falls within the Terms of Reference for HWB. That commitment and sign off by the Council was a key decision for the Mayor to take, and the plan was therefore approved by Cabinet on 2 April 2014. The Council's proposal complied with the Better Care Fund Planning Guidance issued by NHS England in December 2013. However, on 18 August 2014, a revised Better Care Fund Planning Guidance and technical guidance documents were issued by NHS England, so a more detailed plan was approved by HWB on 9 September 2014, and approved by Individual Mayoral Decision on 18 September 2014.

Contracting

- 5.5 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:
- 5.5.1 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
 - 5.5.2 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
 - 5.5.3 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
 - 5.5.4 linking in with existing governance arrangements including the role and function of the Integrated Care Board
 - 5.5.5 achieving best value from Service Providers and principles in connection with the management of staff; and
 - 5.5.6 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.
- 5.12 The s75 Agreement is consistent with the Better Care Fund Plan approved by HWB on 9 September 2014 and entering into it formalises the arrangements agreed by the Council and NHS CCG in accordance with the statutory, regulatory and guidance frameworks.

Recommendations

- 5.6 Although it is an executive function of the Council and CCG to finalise the terms of the section 75 agreement and to make arrangements to sign it on behalf of the respective bodies, HWB should note that the terms of the agreement are consistent with the approved Better Care Fund Plan. The first 2 recommendations made in this report therefore fall within the HWB's functions.
- 5.7 In respect of the third recommendation, the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 modify

s101 of the Local Government Act 1972 to permit HWB to arrange to discharge any of its functions by a sub-committee of the HWB, unless the Council otherwise directs.

- 5.8 In respect of its functions under section 196(2) of the 2012 Act (arranging for the Health and Wellbeing Board to exercise any functions that are exercisable by the Council), the HWB may arrange for the discharge of any of those functions by a sub-committee of the Board or an officer of the authority unless the Council otherwise directs. Further, unless the Board otherwise directs, the sub-committee may then arrange for the discharge of any of those functions by an officer of the authority.
- 5.9 Oversight of delivery of the Better Care Fund plan falls within the HWB's functions and therefore the recommendation to delegate authority for this function to the Tower Hamlets Integrated Care Board is also within HWB's powers.

Welfare Principle and Equalities Duties

- 5.10 The Care Act 2014 (coming into effect on 1 April 2015) creates a general duty on the Council to promote an individual's well-being when exercising a function under that Act. Well-being is defined as including physical and mental health and emotional well-being 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 well-being 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.
- 5.11 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.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The target cohorts to which services will be delivered via the Better Care Fund plan are those identified as being at Very High, High and Moderate risk of admission to hospital. This cohort includes many of the most vulnerable residents of the borough, including older people, those with complex long term conditions, with mental health difficulties and with a range of other health and social care needs. The activities which form the basis of the plan are designed to improve the wellbeing and quality of life of the individuals within the target cohort, and to reduce their risk of experiencing unplanned hospital admissions. Successful delivery of the plan will therefore positively contribute

to the wider work of the One Tower Hamlets partnership to address equalities issues relating to older people and people with disabilities.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 There are no identifiable environmental impacts arising from the delivery of the Better Care Fund plan.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. Detailed risk management and risk sharing arrangements have been developed within the section 75 agreement and can be found at section 12 and schedule 3 of the agreement. These arrangements include explicit agreement about the proportion of the financial risk accruing to each party to the agreement.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 The Better Care Fund plan does not have any identifiable impact on Crime and Disorder reduction.

10. EFFICIENCY STATEMENT

- 10.1 The management and delivery arrangements for the Better Care Fund plan set out in the attached s75 are intended to ensure the efficient delivery of the plan. In particular the governance, joint commissioning and pooled fund management arrangements are intended to ensure that any duplication of effort across the two partners is removed wherever practicable and minimised where necessary.

Appendices and Background Documents

Appendices

Appendix 1: Letter from NHS England, dated 07 January 2015, confirming approval of the Tower Hamlets Better Care Fund plan;

Appendix 2: Final Draft Framework Partnership Agreement Relating to the Commissioning of Health and Social Care Services to deliver the Tower Hamlets Better Care Fund Plan

Background Documents

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