

# MAYOR'S EXECUTIVE DECISION MAKING

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Wednesday, 25 March 2015

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Mayor's Decision Log No. 83

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1. **SECTION 75 BETTER CARE FUND (Pages 1 - 14)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: John S. Williams, Service Head, Democratic Services

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# Agenda Item 1

<b>Individual Mayoral Decision Proforma</b> Decision Log No: 83	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Robert McCulloch-Graham, Corporate Director: Education, Social Care and Wellbeing.	<b>Classification:</b> Unrestricted
<b>Integrated Care: Better Care Fund section 75 agreement</b>	

<b>Is this a Key Decision?</b>	<b>Yes</b>
<b>Decision Notice Publication Date:</b>	18 February 2015
<b>General Exception or Urgency Notice published?</b>	<b>Not required</b>
<b>Restrictions:</b>	Unrestricted

## EXECUTIVE SUMMARY

The Tower Hamlets Better Care Fund plan was submitted to the Department of Health in April 2014, an updated version was submitted in September 2014 and approval of the plan was confirmed by NHS England on 07 January 2015. The plan has effect from 01 April 2015. The planned expenditure covered by the Better Care Fund plan is £21.57 million in 2015/16. This figure includes £1.02 million of additional funding made available by the CCG for specific schemes 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.

The report recommends that approval be given to enter into the required section 75 agreements with Tower Hamlets Clinical Commissioning Group.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; and other relevant matters are set out in the attached report.

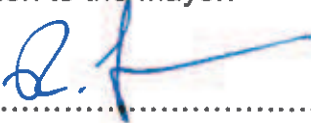
## **DECISION**

1. To approve entering into the S75 Agreement between the Council and NHS Tower Hamlets Clinical Commissioning Group.
2. Authorise the Corporate Director, Education Social Care and Wellbeing after consultation with the Head of Legal Services to finalise the terms of the S75 Agreement.
3. Authorise the Head of Legal Services to execute all necessary documents to give effect to this decision.

**APPROVALS**

**1. Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Mayor.

Signed  Date 24/3/15

**2. Chief Finance Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 24/3/15

**3. Monitoring Officer or his/her deputy**

I have been consulted on the content of the attached report which includes my comments.

I confirm that this decision:-

(a) has been published in advance on the Council's Forward Plan

Signed  Date 24/03/15


**4. Mayor**

I agree the decision proposed in paragraph 1 and 2 above for the reasons set out in the attached report.

Signed  Date 24/03/15

1. The first part of the document discusses the importance of maintaining accurate records of all transactions.

2. The second part of the document discusses the importance of maintaining accurate records of all transactions.

<p align="center"><b>Individual Mayoral Decision</b> <b>24 March 2015</b></p>	 <p align="center"><b>TOWER HAMLETS</b></p>
<p align="center"><b>Report of: Robert McCulloch-Graham, Corporate Director, Education, Social Care and Wellbeing</b></p>	<p align="center"><b>Classification: Unrestricted</b></p>
<p align="center"><b>Integrated Care: Better Care Fund section 75 agreement</b></p>	

<b>Lead Member</b>	Cllr Abdul Asad, Cabinet Member for Health and Adult Services
<b>Originating Officer(s)</b>	Dome Kanareck, Interim Service Head: Commissioning and Health
<b>Wards affected</b>	All wards
<b>Community Plan Theme</b>	A Healthy and Supportive Community
<b>Key Decision?</b>	Yes

## **EXECUTIVE SUMMARY**

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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.

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Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; and other relevant matters are set out in the attached report.

## **Recommendations:**

The Mayor is recommended to:

1. To approve entering into the S75 Agreement between the Council and NHS Tower Hamlets Clinical Commissioning Group.
2. Authorise the Corporate Director, Education Social Care and Wellbeing after consultation with the Head of Legal Services to finalise the terms of the S75 Agreement.
3. Authorise the Head of Legal Services to execute all necessary documents to give effect to this decision.

## **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.

## **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 £20.55 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 Recovery College	CCG
Independent Living	Independent Living	CCG
Integrated Care Incentive Scheme	Integrated Care Incentive Scheme	CCG
Protection of adult social care services	Personalisation Carers Information, advice and support Quality Safeguarding Assessment and eligibility Veterans Law reform	Council
Carers	Carers assessments Carers services	Council
Capital funding	Disabled Facilities Grants Social Care Capital Grant	Council

3.6 In addition to the BCF schemes set out at 3.5 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

3.7 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 Tower Hamlets Integrated Care Board (ICB) will determine suitable working arrangements.

### **Governance arrangements**

- 3.8 The Health and Wellbeing Board (HWBB) is the body to which the Lead Commissioner is ultimately accountable for delivery of the Better Care Fund plan. **It has been recommended to the HWBB that it devolves responsibility for overseeing delivery of the Better Care Fund plan to the ICB, which is a sub-group of the Board. It has been further recommended that the ICB 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.
- 3.9 Each partner to the agreement will nominate a Senior Responsible Officer to assist the ICB Chair in agenda setting.
- 3.10 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**

- 3.11 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 HWBB 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 (the NHS Act) 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. For 2014/2015 the funding was made under section 256 of the NHS Act. However, from 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 required the Council to set out its plans for the application of those monies. The

Council's plan was prepared in April 2014 in accordance with guidance published by the Government for the Better Care Fund programme. The plan was amended in September 2014 in accordance with revised Better Care Fund Planning Guidance and technical guidance documents issued by NHS England in August 2014. At each stage the Council's plans have been approved by the Health and Wellbeing Board and the Mayor.

- 5.4 The arrangements that the Council may enter into with an NHS body under section 75 of the NHS Act include: the establishment and maintenance of a pooled fund; the exercise by the NHS body of the Council's health-related functions (and vice versa); and the making of payments from the NHS body to the Council (and vice versa). The detail of the arrangements which may be made are prescribed in the NHS Bodies and Local Authorities Partnerships Arrangements Regulations 2000.
- 5.5 Consistent with the legislative framework, the proposed section 75 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.
- 5.6 The proposed section 75 agreement is consistent with the better care fund plan approved by the Health and Wellbeing Board on 9

September 2014 and by the Mayor on 18 September 2014. Entering into the agreement formalises the arrangements agreed by the Council and NHS CCG in accordance with the statutory, regulatory and guidance frameworks.

- 5.7 Nothing in section 75 of the NHS Act or the related regulations absolves the Council's obligation to procure services in accordance with the prevailing European and domestic law. Where the CCG purchases services that are designed to be utilised as part of the better care fund plan, the CCG must comply with the obligations under the Public Contracts Regulations 2015. This is particularly the case because the CCG is a contracting authority for the purposes of the application of these Regulations.
- 5.8 The agreement contemplates the making of collaborative procurements. Where purchases are to be paid from some form of joint fund (funded jointly with the Council) or are purchases to which the Council pays a contribution, any advert which advertises the procurement opportunity must clearly state that the CCG is also purchasing on behalf of the Council. This ensures that the Council as well as the CCG will be complying with its procurement obligations
- 5.9 From 1 April 2015, the Care Act 2014 places 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.
- 5.10 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 and those who do not (the public sector equality duty). A proportionate level of equality analysis is required, to ensure the Council complies with this duty. The Council's equality analysis should assist it to understand how the changed delivery of services may affect people who have protected characteristics. This may require consultation with those affected by the changes, if necessary to get a proper understanding of the needs and their impact.

## **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.

6.2. An Equalities Analysis of the impact of the Better Care Fund plan was undertaken during the development of the plan, and reported to the Mayor in Cabinet in April 2014.

## **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.

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## **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**

NONE

Approved  
ABM

24/7/15

LUTKIN RAHMAN