

<b>Cabinet</b>  19 December 2017	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Denise Radley, Corporate Director, Health, Adults & Community	<b>Classification:</b> Unrestricted
<b>Better Care Fund 2017-19 - Section 75 agreement</b>	

<b>Lead Member</b>	Councillor Denise Jones, Cabinet Member for Health & Adult Services
<b>Originating Officer(s)</b>	Steve Tennison, Senior Strategy, Policy and Performance Officer – Integration Lead
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	A Healthy and Supportive Community

### **Executive Summary**

The proposed Better Care Fund programme for 2017-19 was endorsed by the Health and Wellbeing Board (HWBB) on 5 September 2017, prior to its submission to NHS England (NHSE). The latter has now approved the borough's BCF Plan. This means that the borough is authorised to spend the BCF resources allocated to it.

It is a condition of receipt of Better Care Fund resources that there should be a joint agreement between the Council and the CCG under Section 75 of the NHS Act 2006 on how the money will be spent and the arrangements for its governance. Following formal NHSE approval, CCG funding agreed within BCF plans must be transferred into one or more pooled funds established under the 2006 Act. The Mayor in Cabinet is therefore recommended to agree to the Council entering into a joint agreement with Tower Hamlets Clinical Commissioning Group (CCG), under Section 75 of the NHS Act 2006, to give formal effect to the Better Care Fund Plan and programme.

### **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Agree to the Council entering into a joint agreement with Tower Hamlets Clinical Commissioning Group (CCG), under Section 75 of the NHS Act 2006, to give formal effect to the Better Care Fund Plan and programme.
2. Approve the draft section 75 agreement attached as Appendix 1 and agree that any final amendments to the s75 agreement should be delegated to the Corporate Director, Health, Adults & Community, following consultation with the Corporate Director, Governance and Monitoring Officer.

## **1. REASONS FOR THE DECISIONS**

- 1.1 It is a condition of receipt of Better Care Fund resources that there should be a joint agreement between the Council and the CCG under Section 75 of the NHS Act 2006 on how the money will be spent and the arrangements for its governance.

## **2. ALTERNATIVE OPTIONS**

- 2.1 N/A

## **3. DETAILS OF REPORT**

- 3.1 The aim of the Better Care Fund (BCF) is to deliver better outcomes and secure greater efficiency in health and social care services through increased integration of provision. To receive BCF funding, a local BCF plan and programme needs to be agreed jointly by the council and the CCG, endorsed by the Health and Well-Being Board (HWBB) and finally approved by NHS England (NHSE). The jointly agreed programme then needs to be incorporated in a formal agreement under Section 75 of the NHS Act 2006.
- 3.2 The Government intends that, by 2020, health and social care services will be more integrated across England. BCF plans 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.
- 3.3 BCF plans are expected to set out the local joint vision for, and approach to, 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. 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, programmes, such as Integrated Personal Commissioning.
- 3.4 The HWBB agreed the borough's BCF plan for 2017-19 at its meeting on 5 September 2017, and a BCF narrative plan and template were submitted to NHS England for approval on 11 September. NHS England wrote formally approving the BCF plan on 27 October.
- 3.5 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. Disabled Facilities Grant resources allocated to the council were also pooled. In addition, the CCG provided further recurrent and non-recurrent funding from its own resources for a number of initiatives.
- 3.6 In line with the drive towards greater integration of health and social care functions, the proposed BCF plan for 2017-19 increases the value of functions

pooled via the Better Care Fund Section 75 agreement to approximately £45m in 2017-18. The main additions are the Improved Better Care Fund (a three-year 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'); provision for inflation in respect of the CCG 'minimum' contribution, and the inclusion of a number of other functions - mainly, though not entirely, CCG-funded activity.

- 3.7 The government expects Section 75 agreements to have been signed by 30 November 2017. In view of the late agreement of BCF Plans by NHS England, this will not be practicable. However, the majority of the BCF programme has been running since the beginning of the financial year and the signature of the section 75 agreement formalises what has already been agreed by the HWBB. Therefore, the practical effects of the delay are minimal. The proposed agreement is attached as Appendix 1.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 The proposed Better Care Fund programme for 2017-19 was endorsed by the Health and Wellbeing Board (HWBB) on 5 September 2017 and most recently by NHS England (NHSE) on 27th October 2017. This report is a request for Mayoral approval to sign a joint agreement with Tower Hamlets Clinical Commissioning Group (CCG), under Section 75 of the NHS Act 2006, to give formal effect to the Better Care Fund Plan and programme. There is also a request to agree to delegate any final amendments to the s75 agreement to the Corporate Director of Health, Adults & Community, in consultation with Corporate Director of Law, Probity and Governance.
- 4.2 The proposed BCF plan for 2017-19 increases the value of functions pooled via the Better Care Fund Section 75 agreement to approximately £45m in 2017-18. This is split by pooled funding hosted by the Council (£19.6m) and the CCG (£25.6m). The BCF funding is channelled via the CCG, whilst the Disabled Facilities Grant (£1.734m in 17/18) and the Improved Better Care funding (£8.658m in 17/18) are received by the Council.
- 4.3 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 who will ensure that the conditions are adhered to.
- 4.4 The 2017/19 Better Care Fund programme 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.

## 5. LEGAL COMMENTS

### Better Care Fund

- 5.1 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.
- 5.2 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.
- 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 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. The proposed Better Care Fund programme for 2017-19 was endorsed by the Health and Wellbeing Board (HWBB) on 5 September 2017 and most recently by NHS England (NHSE) on 27th October 2017.

### Contracting

- 5.4 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.
- 5.5 The s75 Agreement must be consistent with the 2017-19 Better Care Fund Plan approved by the 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

- 5.6 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.

- 5.7 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

- 5.8 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 then a procurement exercise will apply to that expenditure. Legal advice will be provided in respect of such an exercise.

### **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 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.

### **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 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.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

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

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 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.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 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.

## **11. SAFEGUARDING IMPLICATIONS**

11.1 A significant part of the services included in the Section 75 agreement is aimed at vulnerable people. However, there are no immediate safeguarding implications.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE

#### **Appendices**

- Appendix 1 - Draft Section 75 agreement

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- NONE

#### **Officer contact details for documents:**

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