


<b>Cabinet</b>  21 October 2020	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Denise Radley, Corporate Director - Health Adults and Community	<b>Classification:</b> Unrestricted
<b>Financial Arrangements for Tower Hamlets' Better Care Fund 2019-20 Programme (Section 75)</b>	

<b>Lead Member</b>	Councillor Blake, Deputy Mayor and Cabinet Member for Adults, Health and Wellbeing
<b>Originating Officer(s)</b>	Warwick Tomsett Director of Integrated Commissioning
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	15 September 2020
<b>Reason for Key Decision</b>	Financial Threshold
<b>Strategic Plan Priority / Outcome</b>	1. Strong, resilient and safe communities 2. Better health and wellbeing.

### Executive Summary

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 Better Care Fund plans must be transferred into one or more pooled funds established under the 2006 Act. The Mayor in Cabinet is therefore recommended to:

1. Agree to the Council entering into a joint agreement with Tower Hamlets Clinical Commissioning Group, under Section 75 of the NHS Act 2006, to give formal (retrospective) effect to the 2019-20 Better Care Fund Plan and programme and delegate the Corporate Director Health, Adults and Community the power to authorise the execution of the S75 agreement and any related documents
  
2. Approve the draft Section 75 agreement attached as Appendix 1 to this report and agree that any final amendments to the Section 75 agreement should be delegated to the Corporate Director Health, Adults and Community, following consultation with the Corporate Director, Governance and Monitoring Officer;
  
3. Agree to delegate to the Corporate Director, Health, Adults & Community the

authority to make amendments and enter into subsequent Better Care Fund Section 75 agreements for a period of five years from 2020/2021 including the power to authorise the execution of any of the relevant S75 agreements and any other related documents. Formal delegation will end on 31<sup>st</sup> March 2025.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Agree to the Council entering into a joint agreement with Tower Hamlets Clinical Commissioning Group, under Section 75 of the NHS Act 2006, to give formal (retrospective) effect to the 2019-20 Better Care Fund Plan and programme and delegate the Corporate Director Health, Adults and Community the power to authorise the execution of the S75 agreement and any related documents
2. Approve the draft Section 75 agreement attached as Appendix 1 to this report and agree that any final amendments to the Section 75 agreement should be delegated to the Corporate Director Health, Adults and Community, following consultation with the Corporate Director, Governance and Monitoring Officer;
3. Agree to delegate to the Corporate Director, Health, Adults & Community the authority to make amendments and enter into subsequent Better Care Fund Section 75 agreements for a period of five years from 2020/2021 including the power to authorise the execution of any of the relevant S75 agreements and any other related documents. Formal delegation will end on 31<sup>st</sup> March 2025.

## **1 REASONS FOR THE DECISIONS**

- 1.1 It is a condition of receipt of Better Care Fund (BCF) resources that there should be a joint agreement between the Council and the CCG under Section 75 of the NHS Act 2006 outlining how the money will be spent and the arrangements for its governance
- 1.2 A signed Section 75 is required for audit purposes in support of local Better Care Fund plans and at present plan for 2019-20 is not supported by an up to date Section 75 agreement. This report seeks agreement of our Section 75 agreement for this period and also requests delegation for agreement of future BCF plans providing that BCF plans are supported by the Health and Wellbeing Board.

## **2 ALTERNATIVE OPTIONS**

- 2.1 Not to agree delegation of future Section 75 agreements and to continue with current arrangements which require Section 75 agreements to come to Cabinet for Mayoral approval on an annual basis.

### **3 DETAILS OF THE REPORT**

- 3.1 Currently in it's fifth year 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 BCF plans 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 NHS Long Term Plan and are also expected to take into account the wider context, including the development of Integrated Care Systems; 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.
- 3.3 The Health and Wellbeing Board who are required to approve Borough plans agreed our Better Care Fund plan for 2019-20 at its meeting on the 19<sup>th</sup> November 2019 and we received formal NHS approval of our BCF plan in December 2019.
- 3.4 The BCF programme in 2019-20 totalled £53.8M which was made up of CCG minimum contribution (£20.8m - an increase of 6.7% compared with 2018-19), the Disabled Facilities Grant (£2.0m), Improved Better Care Fund (£14.9m) and Winter Pressures Grant (£1.5m). Both the CCG and Council make additional contributions to the pooled fund of £13.7m and £0.9m respectively.
- 3.5 Note that the Better Care Fund is not additional funding to the council, instead it represents a continuation of existing funding to support the base budget spend on integrated services. A full list of services funded by the Better Care Fund in 2019-20 is included in the Better Care Fund Plan 2019-20 attached to this report (Appendix 2).
- 3.6 The government expects Section 75 agreements to have been signed within several months of the Plan being approved however this was not possible in 2019-20 due to the late agreement of BCF plans by NHS England (in this the plan was agreed 9 months into delivery) and the subsequent coronavirus pandemic. However, due to the BCF programme being rolled over from 2016-19 into 2019-20 the schemes have continued to run from 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.
- 3.7 We are still awaiting guidance on the 2020-21 programme however due to the coronavirus pandemic we are anticipating a second annual rollover taking the current programme up to March 2021 after which we expect the aims of the fund will be refreshed in line with the national Better Care Fund review.

Details of this will be confirmed following the Comprehensive Spending Review in Autumn 2020. However, funding for 2020-21 has been confirmed with no significant uplift.

- 3.8 In order to minimise administration this paper proposes that approval of future Section 75 agreements in support of Better Care Fund Plans be delegated to the Corporate Director, Health, Adults & Community for a period of five years providing that the Health and Wellbeing Board have approved the Better Care Fund plan and the Section 75 agreement is supported by the Corporate Director, Governance and Monitoring Officer.
- 3.9 A similar request is being made through Tower Hamlets Commissioning Group which proposes delegated authority for approval of the 2019-20 Section 75 (and future agreements) to the WEL CCG Managing Director.

### **Aligning community and social care budgets between LBTH and THCCG**

- 3.10 A joint project between the Council and CCG is currently underway to understand the totality of spend across the two organisations for all community health and social care services in Tower Hamlets and to identify areas where budgets spent on the same cohorts of people or conditions could be aligned. This would build on the alignment already in place through the Better Care Fund.
- 3.11 Budget alignment of this kind has been undertaken to varying degrees by other local authority areas across England, and within North East London examples include Hackney, City of London and Waltham Forest.
- 3.12 The expected benefits of aligning budgets could include:
- 3.13 improving outcomes for service users where smarter commissioning and/or joint funding is enabling a more streamlined and holistic approach to service provision and potentially providing enhanced care through increased spending power;
  - 3.14 providing a greater understanding of the total amount spent on certain services across the borough, allowing smarter commissioning of services where spending decisions by one organisation are made with an awareness of the wider system resources;
  - 3.15 identifying any opportunities for joint funding on certain services to reduce duplication and better realise value for money;
  - 3.16 laying the foundations for pooling budgets in future and more deeply embedding community health and social care provision
- 3.17 This is an ongoing piece of work, due to provide initial proposals by Autumn 2020. Any proposals will first be brought back to Cabinet for review and decision.

## **4 EQUALITIES IMPLICATIONS**

- 4.1 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.

## **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 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.

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 The proposed Better Care Fund programme for 2019-20 was endorsed by the Health and Wellbeing Board (HWBB) on 19 November 2019 and most recently by NHS England (NHSE) in December 2019. 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.
- 6.2 The proposed BCF plan for 2019-20 increases the value of functions pooled via the Better Care Fund Section 75 agreement to approximately £53.78m in 2019-20. The funding within the oversight of the BCF comprises the Council (£19.23m) and the CCG (£34.55m) investments. The core health contribution to the BCF is channelled via the CCG, whilst the Council contribution also includes the Disabled Facilities Grant (£2.045m), the Improved Better Care Fund (£14.851m) and Winter Pressures Grant (£1.465m).
- 6.3 It should be noted that the DFG is a capital grant that has to be used within the conditions of the grant. 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.
- 6.4 The 2019-20 Better Care Fund programme addresses the relevant financial / non-financial risks and sets out 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.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Council has a duty under the Care Act 2014 to promote the well-being of its residents and ensure that adequate level of care and support is provided by integrating care and support provision with health provision. The Care Act 2014 also amended the National Service Act 2006 to provide the legislative basis for the Better Care Fund.
- 7.2 The Government through the Better Care Fund policy framework provides Financial support for Councils and NHS organisations to jointly plan and deliver local services. NHS England is required to put in place arrangements for CCGs to pool a mandated minimum amount of funding. Local authorities are required to continue to pool grant funding from the Better Care Fund, Winter Pressures funding and the Disabled Facilities Grant. A condition for receiving the funding is that Councils and NHS bodies enter into a section 75 agreement.
- 7.3 The Government published a policy framework to set National Conditions for the Better Care Fund in 2019-2020. The allocation of the Better Care Fund will be made via section 31 Grant. The Council is required to jointly work with the NHS to ensure that conditions set under the section 31 grant are met. This can only be achieved by entering into a section 75 agreement. Failure to do so will put the Council in breach of the section 31 grant conditions.
- 7.4 A Section 75 agreement provides for the establishment of funds made up of contributions from the Council and NHS CCG and delegates certain Council and CCG' health related functions to improve the way these functions are exercised. Whilst no competition is required to enter into this agreement as it is a condition to meet the Government Policy Framework, the Council is not absolved from carrying out a procurement exercise to purchase the related services. The Council and CCG will carry out collaborative procurements in compliance with the Public Contracts Regulations 2015 to purchase services designed to meet the Better Care Fund plan.
- 7.5 The s75 agreement attached to this report at Appendix 1 has been drafted to reflect the 2019-2020 Better Care Fund Plan and define the Council and CCG' respective roles and responsibilities to meet the current Government Policy Framework requirements. It seems reasonable to delegate any future amendments to this s75 agreement to the Corporate Director Health, Adults and Community considering the nature of the contract and future changes to the Government Policy Framework.
- 7.6 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010, namely to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between those who share a protected characteristic and those who do not,

and foster good relations between those who share a protected characteristic and those who do not. The prevention and or delay to the development of needs for care and the reduction of needs of either kind that already exists among its residents will assist with the execution of the Council's Equality Duty in this regard.

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

### **Linked Report**

- None

### **Appendices**

- Better Care Fund Plan 2019-20
- Better Care Fund - Section 75 Agreement 2019-20

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

- None

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

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