



**Section 75 Agreement for Integrated Commissioning**

**Key Decision No. CACH Q13**

**CABINET MEETING DATE (2019/20)**

**17 June 2019**

**CLASSIFICATION:**

**Open**

**WARD(S) AFFECTED**

**All Wards**

**CABINET MEMBER**

**Cllr Feryal Clark**

**Deputy Mayor & Cabinet Member for Health, Social Care, Transport & Parks**

**KEY DECISION**

**Yes**

**REASON**

**Spending or savings; affects all wards**

**GROUP DIRECTOR**

**Anne Canning – Group Director for Children, Adults & Community Health**

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 The London Borough of Hackney is committed to working closely with partners to achieve fully integrated health and social care which improves the lives and outcomes of Hackney residents
- 1.2 The London Borough of Hackney entered into integrated commissioning arrangements with NHS City and Hackney Clinical Commissioning Group ("CCG") in April 2017 and the partners have been making good progress with integrating our provision and working towards a neighbourhood delivery model for community services.
- 1.3 This report recommends entering into a new s75 agreement to commence on 1<sup>st</sup> August 2019.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1 The London Borough of Hackney entered into integrated commissioning arrangements with NHS City and Hackney Clinical Commissioning Group in April 2017, supported by a Section 75 Agreement for the financial years 2017-19. On 27 March 2019, this agreement was extended with effect from 1 April 2019 until 31 July 2019 to allow for the development of a new Section 75 Agreement for the financial year 2019/20. This report seeks the approval of Members to enter into the new Section 75 Agreement, which is to commence on 1 August 2019.
- 2.2 The current integrated commissioning arrangements are working well. Each of the four care workstreams have developed significantly over the last two years.
- 2.3 We are currently exploring further areas for pooling budgets including social care packages and continuing care packages

## **3. RECOMMENDATION(S)**

### **3.1 Cabinet is recommended to:**

- i. Approve that the Council enter into a new overarching Section 75 Agreement (the "Agreement") for integrated commissioning for health and social care with the NHS City and Hackney CCG as attached at Appendix 1.**
- ii. Delegate authority to the Group Director for Children, Adults & Community Health and the Group Director for Finance and Corporate Resources to finalise and complete the Agreement and all other associated contractual documentation with the NHS City and Hackney CCG.**

- iii. **Delegate authority to the Group Director for Children, Adults & Community Health and the Group Director for Finance and Corporate Resources to be able to extend the Agreement further , and to agree further amendments and variations as necessary subject to consultation with the Lead Member for Health, Social Care, Transport and Parks.**

## **4.1 BACKGROUND**

4.1.1 The London Borough of Hackney entered into integrated commissioning arrangements with City and Hackney CCG in April 2017 to commission together across health, public health and social care. The City of London also entered into similar but separate arrangements with City and Hackney CCG.

4.1.2 The integrated commissioning arrangements are supported by a Section 75 (s75) Agreement which is an Agreement made under section 75 of the National Health Service Act 2006 between a local authority and an NHS body in England. These agreements can include arrangements for pooling resources and for delegation of certain health related functions between the NHS body and local authority if this would lead to an improvement in the way those functions are exercised.

4.1.3 Separate s75 Agreements were developed for the City of London Corporation and the London Borough of Hackney covering the period 2017-19. These were extended until the 31 July 2019 whilst the new documents for 2019/20 were prepared. This report seeks approval to enter into this new s75 Agreement for the London Borough of Hackney and City and Hackney NHS Clinical Commissioning Group.

4.1.4 The agreement for 2019-20 mirrors the agreement for 2017-19 however it contains further details of the exit agreement, amended governance requirements and further data protection provisions as a result of recent legislation. It should be noted that the agreement includes an option for a two year extension until March 2022.

### **Current Position**

4.1.6 As part of the integrated commissioning arrangements, for both the LB Hackney and the City of London Corporation there is an Integrated Commissioning Fund which is made up of two parts, a pooled budget and an aligned budget.

4.1.7 The aligned budget is made up of budgets that cannot legally be pooled or budgets where partners are not yet ready to pool, but want to work collectively to plan their use. It is planned that there will be further incremental pooling over time.

4.1.8 The London Borough of Hackney and City & Hackney CCG estimated integrated commissioning fund for 2019/20 is £517.7m. Of this, pooled funds are estimated at £57.8m comprising £32.2m from the London Borough of Hackney and

£25.6m from City and Hackney CCG. The remaining £459.9m are 'aligned funds' which are comprised of £388.7m from the CCG and £71.2m from the London Borough of Hackney.

4.1.9 The Financial Framework within the s75 Agreement sets out the general rules and scope for the management and expenditure of funds that make up the Integrated Commissioning Fund. The s75 Agreement details which budgets are included and whether they are pooled or aligned.

4.1.10 The Financial Framework also sets out the requirements and makes provision for governance and accountability of:

- The Integrated Commissioning Fund
- The formal scheme of delegation
- Financial planning and management responsibilities
- Budget setting and budgetary control
- Performance Management.

4.1.11 As with the previous s75 Agreement, it is proposed that the London Borough of Hackney will be the host partner for the Integrated Commissioning Fund. As a minimum, the host partner will deliver regulatory requirements set out in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 around accounts and audits, managing a pooled fund and reporting.

## **4.2 Policy and Strategy Context**

4.2.1 Following the publication of the NHS Five Year Forward View in 2014, local areas are required to produce Sustainability and Transformation Plans (STPs) to show how health and social care organisations (known as systems) will work together to tackle issues of financial sustainability, quality of care and health inequalities. Following the publication of the NHS long-term plan, all areas are required to form integrated care partnerships by April 2020. City and Hackney is well advanced in developing our integrated care arrangements. The Guidance on the long-term plan will be issued over the coming weeks.

## **4.3 Equality Impact Assessment**

4.3.1 As this is a decision asking Cabinet Members to approve the further commissioning arrangements, no equalities impacts are anticipated and, accordingly, no EqlA has been carried out in relation to the specific recommendations of this report.

4.3.2 However, where there are any new schemes commissioned through the s75 agreement, specific EqlAs will be carried out.

## **4.4 Sustainability**

4.4.1 There are no impacts on the physical or social environment anticipated by this decision.

## **4.5 Consultations**

4.5.1 To date, there has been extensive resident and patient engagement about our integrated health and care plans.

## **4.6 Risk Assessment**

4.6.1 As outlined in the report that went to Cabinet in February 2017, there are some potential risks associated with this model, namely that there would be potential loss of direct control over some of our social care and public health budgets.

4.6.2 There are a number of ways in which this risk will be mitigated. The Integrated Commissioning Board established as a sub-committee of the executive will operate within the scheme of delegation agreed by the London Borough of Hackney. The London Borough of Hackney will retain ultimate statutory responsibilities through the Integrated Commissioning Board.

4.6.3 The S75 Agreement including the financial framework sets out:

- The scope of pooled and aligned budgets;
- Ground rules for its use and treatment of overspends; and
- How conflicts in budget-setting priorities would be settled.

4.6.4 The S75 Agreement also sets out the risk share agreement; should there be an overspend, the party with statutory responsibility for the function or budget will be responsible.

4.6.5 The S75 Agreement will initially expire on 31 March 2020 but has the option to be extended for 2 further one-year periods. Either party may terminate the agreement upon 6 months' notice so this will ensure that the Council is able to withdraw from these arrangements if it has concerns.

4.6.6 The budget and approach will be negotiated and agreed each year to reflect changing circumstances.

## **5 COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

5.1 This report recommends that Cabinet approves a S75 agreement with the City and Hackney CCG in relation to Integrated Commissioning funds for the period from the expiry of the current agreement (31<sup>st</sup> July 2019) until the 31<sup>st</sup> March 2021.

5.2 Schedule one to the S75 agreement sets out the funds in the scope of the Integrated Commissioning Arrangements. These funds are split between 'pooled' and 'aligned' funds. Under the Integrated Commissioning Board (ICB) structure agreed by Full Council in March 2017 and amended in January 2018, the ICB has authority to make decisions in relation to pooled funds only. Decisions in relation to the Local Authority's 'aligned' funds remain within the

remit of the Council's scheme of delegation. The table below summarises schedule one to the agreement with 2019/20 budget estimates.

<b>Fund type: Pooled Vs Aligned</b>	<b>CCG</b> £'000	<b>LBH</b> £'000	<b>TOTAL</b> £'000
<b>A. S75 'Pooled' Budgets</b>			
<b>1. Unplanned Care</b>			
-BCF	15,263	-	15,263
-IIT	3,676	-	3,676
-IBCF		1,029	1,029
-Learning Disabilities			0
	18,939	1,029	19,968
<b>2. Planned Care</b>			
-BCF ( <i>LA figs is funding from DGF Capital</i> )	748	1,525	2,273
-Learning Disabilities (LD)	5,881	14,546	20,427
-iBCF Local Authority allocation		13,714	13,714
-Winter Pressures Local Authority allocation		1,405	1,405
<b>3. Prevention</b>			
-BCF		-	0
<b>Total Contribution into 'Pooled' budgets</b>	<b>25,568</b>	<b>32,219</b>	<b>57,787</b>
<b>B. 'Aligned' Budgets</b>			
Aligned - Planned Care	192,175	34,281	226,456
Aligned - Unplanned Care	115,324	4,270	119,594
Aligned - Children/Young people	49,570	9,049	58,619
Aligned - Prevention	3,415	23,554	26,969
Aligned – Corporate	28,246		28,246
<b>Total Contribution into 'Aligned' budgets</b>	<b>388,731</b>	<b>71,154</b>	<b>459,885</b>
<b>Total Integrated Commissioning Fund 2019/20<sup>1</sup></b>	<b>414,299</b>	<b>103,373</b>	<b>517,672</b>

5.3 Cabinet first agreed Integrated Commissioning pooling arrangements in February 2017. At this stage it was anticipated that all Adults Services and Public Health budgets would be pooled along with CCG budgets which they were legally able to pool. Subsequent CCG engagement with NHS England (NHSE) regarding the integrated commissioning arrangements restricted pooling to funds which were already pooled, namely the Better Care Fund and Learning Disabilities. As a result a greater proportion of LBH budgets within the scope of these arrangements are within 'aligned' funds.

5.4 Going forward the ICB has agreed in principle the pooling of Adult Social Care packages with Continuing Healthcare packages. Arrangements around how this will work in practice are currently being worked through.

<sup>1</sup> Budgets maybe subject to change in year e.g. to reflect additional investment/efficiency savings, transfer of services from one workstream to another. Process for budget 'virements' (changes) is specified in the S75 financial framework (schedule three).

5.5 As stated in paragraph 4.6.3, the financial framework is contained within Schedule 3 of the S75 agreement and specifies the parameters and rules governing the fund, notably:

- The Council will host the fund and the appointed pooled fund manager will be the Group Director, Finance and Corporate Resources
- For the period of the agreement it is anticipated that there will be no changes to transactions or 'who pays who'
- The totality of the fund will be reported in a note to the Council's accounts as with existing Section 75 agreements
- The risk of overspend will remain with the lead commissioner of the services forecast to overspend

### **5.1. VAT Implications on Land & Property Transactions**

5.1.1 None anticipated.

## **6 COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES**

- 6.1 These integrated commissioning arrangements have been in place since April 2017 by virtue of Cabinet agreeing them in February 2017 under section 75 of the National Health Service Act 2006. The term of the original Agreement ran from 1 April 2017 until 31 March 2019. This Agreement was extended for a further 4 months pending a review of the arrangements until 31 July 2019. Cabinet Members will note that the integrated commissioning partnership has been working well over the last few years other than certain issues with the governance arrangements.
- 6.2 The Council now wishes to enter into a new Agreement for potentially up to another 2 years and eight months. In relation to recommendation 3.1 (iii) a Cabinet decision can be delegated to an officer as is set out in Section 9E of the Local Government Act 2000. Accordingly, as set out in Part 2 Article 13 of the Council's Constitution (paragraph 13,6), a decision to delegate authority to the Group Director for Children, Adults & Community Health and the Group Director for Finance, in consultation with the Lead Member, to make changes as necessary to the Section 75 is permissible.
- 6.3 This report confirms the new Agreement is very similar to the previous one other than incorporating provisions made necessary by the Data Protection Act 2018. There are also new governance arrangements which will necessitate amendments to the Council's constitution. As such these changes will need to go to full Council in accord with Article 15 of the Council's constitution. Amendments were last made to these governance arrangements by Council in January 2018 which established the single Integrated Commissioning Board comprised of the existing three committees.

## **7. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

7.1 The alternative option considered was determining to withdraw from the single integrated commissioning model with City & Hackney CCG.

### **Withdrawing from the integrated commissioning model**

7.2 Withdrawing from the integrated commissioning model would ensure that the London Borough of Hackney keeps sole control of its own social care and public health budget, however there are risks with this approach:

- We would lose a lot of work towards developing integrated care systems in the City & Hackney CCG area since Cabinet first approved the S75 arrangements in 2017. Furthermore, goodwill with partners would suffer significant damage and there would be other reputational costs regarding the London Borough of Hackney's relationship with its residents and stakeholders.
- Wider reconfiguration of health services in NE London could impact on Hackney residents with less opportunity to influence change. An integrated commissioning model mitigates against this risk.
- No further integration of services and continued complexity of offer for all current Hackney residents and service users.
- Potential loss of a local commissioning focus if health and social care integration is focused on the STP footprint; and
- Exclusion from more innovative ways of commissioning and delivering services.

### **APPENDICES – NOT EXEMPT**

- S75 agreement.

### **BACKGROUND PAPERS**

**In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required**

#### **Description of document (or None)**

<http://mginternet.hackney.gov.uk/documents/s53533/Cabinet%20report%20v12%2016%20Feb.pdf>



<b>Report Author</b>	<i>Devora Wolfson - Tel: 020 3816 3287 Programme Director: Integrated Commissioning <a href="mailto:devora.wolfson@nhs.net">devora.wolfson@nhs.net</a></i>
<b>Comments for and on behalf of the Group Director of Finance and Resources</b>	<i>Jackie Moylan - Tel: 020 8356 3032 Director of Finance <a href="mailto:jackie.moylan@hackney.gov.uk">jackie.moylan@hackney.gov.uk</a></i>
<b>Comments for and on behalf of the Interim Director of Legal &amp; Governance</b>	<i>Sean Eratt - Tel:0208 356 6012 Legal Partner for Business and Growth, <a href="mailto:Sean.Eratt@Hackney.gov.uk">Sean.Eratt@Hackney.gov.uk</a></i>

