


## LONDON BOROUGH OF WALTHAM FOREST

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| Meeting / Date                    | <b>Cabinet</b><br><b>9 June 2022</b>   |  |
| Report Title                      | <b>Section 75 Partnership Agreement for Health and Social Care</b>   |  |
| Cabinet Portfolio                 | Councillor Louise Mitchell,<br>Portfolio Lead Member for<br>Adult Services   |  |
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| Wards affected                    | All  |  |
| Public Access                     | Open   |  |
| Appendices                        | Appendix 1 – Equalities Screening Document   |  |

### 1. SUMMARY

- 1.1 It is a mandatory responsibility to have a Section 75 agreement in place for the Better Care Fund (BCF), to allow the transfer of BCF funding between the NHS and the Local Authority with oversight and transparency and a new Section 75 agreement is being developed to discharge this responsibility.
- 1.2 On 11<sup>th</sup> July 2017, Cabinet agreed that the Council enter into a revised s75 agreement with the NHS Clinical Commissioning Group to govern the delivery of the approved Better Care Fund Plan for Waltham Forest for the period 2017/2019. Following the expiry of this agreement a Memorandum of Understanding (MoU) has been agreed by North East London Clinical Commissioning Group (NEL CCG) and the Council for the financial years 2019/2020; 2020/2021 and 2021/2022. This MoU provides evidence of compliance for the purpose of financial audit but does not satisfy the conditions for having a legal framework for the BCF.

- 1.3 The Council has entered into a number of financial arrangements for the management of other pooled funding for the delivery of areas such as mental health and learning disability services.
- 1.4 There is an opportunity to expand the remit of the BCF Section 75 agreement into a wider system partnership Section 75 agreement that would allow other funds to be pooled between the NHS and LBWF and Cabinet is asked to agree to this wider remit.
- 1.5 The Section 75 agreement will enable an integrated approach to providing and funding services locally in line with clear accountability, good governance, and transparency for the movement of funds between North East London Clinical Commissioning Group and the Local Authority for a variety of pooled funds.

## **2. RECOMMENDATIONS**

- 2.1 Cabinet is recommended to:
  - 2.1.1 Agree that the Council enters into a Section 75 agreement with North East London CCG to manage the Better Care Fund and other funding arrangements for a period of 3 years with an option to extend beyond end of financial year 2024/2025
  - 2.1.2 Delegate authority to sign and approve the final terms of the s.75 agreement to the Strategic Director of People, in consultation with the Portfolio Lead Member for Adult Services, the Strategic Director of Finance and Governance, and Director of Governance and Law
  - 2.1.3 Delegate authority to agree to extend the proposed s.75 agreement, beyond end of financial year 2024/2025, to the Strategic Director of People, in consultation with the Portfolio Lead Member for Adult Services, Strategic Director of Finance and Governance and Director of Governance and Law for a period of up to two years.

## **3. PROPOSALS**

- 3.1 Both nationally and locally there is a commitment to person-centred integrated care with health, social care and the wider systems working together to provide better joined up care for people. Integration of health, social care, and other public services such as housing will help to avoid duplication of spend, ensure best use of resources, better outcome for local people and sustainability.
- 3.2 The BCF is one of the government's national vehicles for driving health and social care integration as a national programme which requires Local Authorities and NHS Clinical Commissioning Groups to pool defined budgets through a section 75 arrangement.
- 3.3 The BCF supports LBWF's Integrated Care Strategy and is a key driver to deliver the strategy. In 2021/22 Waltham Forest's BCF allocation was £32,001,450, spent across a variety of Health and Social Care

interventions. This funding will continue to be a key element of driving forward place based integration as we move into the new Integrated Care Systems.

- 3.4 A Section 75 Agreement is mandated in the administration and governance of the Better Care Fund. The 'Section 75 Agreement' refers to Section 75 of the NHS Act 2006 which sets out the arrangements between NHS bodies and local authorities. This will allow NEL CCG and LBWF to contribute to a common fund which can be used to commission health or social care related services
- 3.5 Historically within Waltham Forest Section 75 agreements have been in place, however during the Covid 19 pandemic the previous Section 75 agreement ended and due to resource pressures on the system, work was not undertaken in 21/22 to replace this. During this time a Memorandum of Understanding was signed by LBWF and the CCG and whilst this satisfied financial audit purposes, we must now ensure that a full Section 75 agreement is formalised and put in place to discharge our responsibilities for the BCF.
- 3.6 Whilst a Section 75 agreement is mandated for the BCF, this is not the only area in which a Section 75 agreement can be utilised to facilitate the delivery of integrated services across health, social care, and the wider system.
- 3.7 A Section 75 is a mechanism that can be used to enable wider partnership agreements which permit the local authority and the CCG to widen the scope of the agreement and enter an arrangement in relation to the governance of funds other than the BCF that is transferred between the parties.
- 3.8 As per the BCF requirement, a S75 Agreement is needed to facilitate and govern the relationship between the NEL CCG and LBWF. A wider partnership arrangement is also an enabler in progressing the working relationships which underpins the creation of place-based Integrated Care Systems, as set out in the DHSC's white paper (February 2021). The S75 Partnership Agreement is a mechanism for streamlining processes and agree a clear, transparent, and accountable governance for transferring funds between LBWF and NEL CCG.
- 3.9 This will enable LBWF and NEL CCG to be compliant to the terms of the BCF legal framework and also establish a wider partnership arrangement which constitute process for governance, reporting and recharging of funds between NEL CCG and LBWF for the BCF as well as funds for S117 Aftercare and grant funding for the Vanguard Violence Reduction Pilot.
- 3.10 This proposal would allow the Section 75 Agreement to cover the Better Care Fund as well as incorporate a wider partnership arrangement for interventions such as the reporting and recharge of Section 117 Aftercare under the Mental Health Act 1983 (S117 MHA) and the Vanguard Violence Reduction Pilot (VVRP), which is grant funding in place for three years.

3.11 The benefits of entering into such a Section 75 Partnership Agreement that incorporates wider funding includes:

3.11.1 Enabling an agreed process for recharging of funds

3.11.2 Ensuring there is an agreed reporting process for funds

3.11.3 providing clear accountability and ensuring good governance, and transparency for the movement of funds between NEL CCG and LBWF.

3.11.4 Providing clear oversight over multiple pooled funds to maintain a strategic oversight.

3.11.5 Provide a legal framework flexible enough to take into account changes and unforeseen circumstances where funding arrangements are required.

#### **4. OPTIONS & ALTERNATIVES CONSIDERED**

4.1 **Option 1:** Continue to manage the Better Care Fund under a Memorandum of Understanding.

The Council could continue to seek to manage the BCF under Memorandum of Understandings. In the absence of a Section 75 Agreement, a Memorandum of Understanding (MoU) has been agreed by NEL CCG and LBWF for previous financial years. However, the MoU only provides evidence of compliance for the purpose of financial audit but does not satisfy the conditions for the legal framework for the BCF.

The BCF is a government mandated programme underpinned by a legal framework. The S75 is required by law to transfer money from the CCG to the LA. Without a S75 in place, LBWF would be working in contravention of the law.

The LBWF BCF plan for 21-22 was approved and signed off by the BCF National Programme partners on the grounds that a S75 would be signed off by the 31 January 2022 in accordance to the National Condition of the BCF Planning Guidance 2021-22. Without a signed off S75 agreement, under the BCF National Planning Guidance Assurance section, it would mean that the LBWF BCF Plan 2021-22 is not approved.

The non-compliance of having a S75 agreement can result in LBWF being highlighted by the BCF Regional team when reporting nationally to government departments and other partners. This could result in additional scrutiny of 2022-2023 LBWF BCF Plan and require evidence of sign off of S.75 agreement for both 21-22 and 22-23 prior to the approval of 2022-23 plan.

4.2 This option is not recommended.

4.3 **Option 2:** Agree a S75 Agreement for the BCF only.

A section 75 is government mandated for the BCF legal framework for funding an integrated health and social care service. If the agreement were restricted to BCF funding only the benefits set out in paragraph 3.10 to 3.11.5 would not be realised.

4.4 This option is not recommended.

4.5 **Option 3:** Agree a S75 Agreement for the BCF as well as incorporate a wider partnership arrangement for recharge of other fundings such as those set out in paragraph 3.10.

A section 75 is government mandated for the BCF legal framework for funding an integrated health and social care service. The proposal is that this Section 75 is devised to be broader than the management of only the BCF to enable the benefits set out in paragraphs 3.10 to 3.11.5 to be realised.

4.6 This option is recommended.

## **5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)**

5.1.1 Under Part 3 of the Care Act 2014, LBWF has a duty to exercise its functions with a view to ensuring the integration of care and support provision with health provision and health-related provision. The Care Act, requires an integrated approach to the planning and delivery of services to people at a place-base level across local population.

5.1.2 The Better Care Fund is a core enabler to integration between health, social care and the wider system by providing a mechanism for funding to be pooled and governed by a S 75 agreement.

5.1.3 The LBWF Integrated Care Strategy is a key driver to deliver several transformational change programmes. The BCF supports LBWF Integrated Care Strategy and provides a vehicle for achieving changes that delivers better outcomes for LBWF residents at a place-base level across health, social care, housing and the wider system.

5.1.4 The Department of Health and Social Care's (DHSC) white paper published in February 2021 sets out the national policy direction and the legislative changes for integrated working through Integrated Care Systems. ICSs are partnerships that bring together providers and commissioners of NHS services across a geographical area with local authorities and other local partners, to collectively plan and integrate care to meet the needs of their population. Section 75 Partnership Agreements are an important enabler to integration

## **6 CONSULTATION**

6.1 Consultation has not been undertaken for this decision as it is a duty to have a legal mechanism in place to transfer funds for the Better Care

Fund. Before entering into the Section 75 arrangement proposed the Council and CCG are required to ensure that any obligations to inform and consult interested parties are properly discharged where the entering into the agreement of itself leads to changes made to any current service delivery.

## **7 IMPLICATIONS**

### **7.1.1 Finance, Value for Money and Risk**

- 7.1.2 There are no direct financial implications from the recommendation to agree to enter in to a s75 Partnership Agreement with NELCCG.
- 7.1.3 As part of the s75 agreement itself, financial schedules are included to cover the appropriate finance arrangements. These will be updated and revised each year of the agreement to reflect any changes in funding levels. The current Better Care Fund covers around £32 million and is contributed by both LBWF and NELCCG.
- 7.1.4 The current expenditure included in the Better Care Fund pool arrangements is funded from a combination of existing budgets in Adults Social Care, Government Grants, such as Disabled Facilities Grant (£2.4 million) and the Improved Better Care fund Grant (£9.2 million) and the Minimum Guaranteed contribution from NELCCG for the Better Care Fund arrangements (£20.4 million)
- 7.1.5 In the absence of a full s75 agreement, the current financial arrangements have been covered by a Memorandum of Understanding, signed by both LBWF and NELCCG.

### **7.2 Legal**

- 7.2.1 Local authorities and NHS bodies have the power to enter into partnerships under Section 75 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 and the Care Act 2014) to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised. The Better Care Fund allocations are set by NHS England and must be pooled into a section 75 agreement. As set out in the report the Section 75 agreement approved by Cabinet in July 2017 expired in 2019 and whilst the Council has since entered into Memorandum of Understandings since that time in order to provide evidence of compliance for the purpose of financial audit this does not satisfy the conditions for having the correct legal framework for the BCF.
- 7.2.2 Cabinet is being asked to agree that the Council takes steps to enter into a Section 75 agreement with North East London CCG to manage the Better Care Fund and other funding arrangements for a period of 3 years with an option to extend beyond end of financial year 2024/2025 and to delegate the authority to approve its' final terms to the Strategic Director of People.
- 7.2.3 Before entering into the Section 75 agreement, the Council and NEL CCG are required to ensure that any obligations to inform and consult

interested parties are properly discharged where the entering into the agreement of itself leads to changes made to any current service delivery.

- 7.2.4 The Council must take into account its Public Sector Equality Duty (PSED) under Section 149 of the Equality Act 2010 when making its decision. The attention of Members is drawn to Appendix 1 to this report (the Equality Analysis – Screening Template).
- 7.2.5 Any Section 75 Agreement entered into between the Council and the CCG should include provisions for either party to terminate on sufficient written notice so that any such termination will not take effect prior to alternative management of individual schemes being identified. Individual schemes are those which the Council and the CCG agree will be included within the Agreement.
- 7.2.6 In the event of any changes in the structure and/or responsibilities of either of the parties, or in the event that the responsibilities of the CCG are transferred to another body during the agreement, the general principles of contract law and employment law will apply.

### **7.3 Equalities and Diversity**

- 7.3.1 The BCF is a funding mechanism to enable partners to pooled fund and used at a local level for the benefit of the whole population. A key element of the Section 75 Partnership Agreement will be to ensure that the parties to this agreement, NEL CCG, LBWF are working together to develop insight into local communities, their resilience and a profile of their populations which builds on the Integrated Care Strategy, on local knowledge and on the views of local communities.
- 7.3.2 The Better Care Fund Plan 2021-2022 builds on learning from the COVID pandemic and LBWF's response to it, to ensure that demand for services is fully understood including those who are vulnerable and have previously not been known to the health and social care system. The assessment for and provision of service will be made, irrespective of protected characteristics.
- 7.3.3 All services within the Section 75 Agreement are commissioned or re-commissioned, LBWF full Equality Impact Assessments is or will be undertaken. The Equality Screening is at Appendix 1.

### **7.4 Sustainability (including climate change, health, crime and disorder)**

- 7.4.1 The Section 75 partnership agreement is a mechanism to ensure that funding can be pooled and transferred between the NHS and Local Authority to enable better use of funding across health and social care and support local systems. This supports the integrated approach to improved and sustainable Health and Social Care within Waltham Forest.
- 7.4.2 As a legal framework, the section 75 agreement itself does not have sustainability implications in terms of climate change, however the services and interventions planned with the funding will require clear and transparent assessment on the implications and opportunities to the environment. Given much of the nature of Health and Social Care

services being peripatetic delivered by key members of staff, the focus of individual assessments should be on transport, CO2 mitigation and waste, with a focus on green transport wherever possible.

## **7.5 Council Infrastructure**

- 7.5.1 Whilst a section 75 Partnership Agreement does enable a locally joined-up system-wide approach through enabling NHS CCG, LBWF, Housing and the wider system/VCS to work closely aligned and achieve better outcomes for local people this will not directly affect any Council Infrastructure.

## **BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)**

None