

SECTION 75 JOINT COMMISSIONING AGREEMENT FOR OLDER PEOPLE'S SERVICES AND OCCUPATIONAL THERAPY

To: **Cabinet**

Date: **17 April 2012**

From: **Executive Director – Children and Young People's Services and Adult Social Care**

Electoral division(s): **All**

Forward Plan ref: **2012 /021** *Key decision:* **Yes**

Purpose: **To provide an update on revisions to the section 75 agreements between Cambridgeshire County Council, Cambridgeshire Community Services and NHS Cambridgeshire for the integrated delivery of older people's (OP) and occupational therapy (OT) services**

Recommendation: **That Cabinet:**

- (a) Note the progress on revising the section 75 agreements for Older People and Occupational Therapy Services;**
- (b) Agree to end the existing section 75 agreement with NHS Cambridgeshire in respect of Older People and Occupational Therapy Services**
- (b) Delegate authority to approve and sign the final version of the Section 75 Agreement with Cambridgeshire Community Services to the Cabinet Member for Adult Social Care in consultation with the Executive Director – Children and Young People's Services and Adult Social Care.**

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1. BACKGROUND

- 1.1 Since 2002, the Council has entered into a number of partnership agreements with the National Health Service (NHS), initially using Section 31 of the Health Act 1999. Section 31 was subsequently repealed and replaced by Section 75 of the National Health Service Act 2006.
- 1.2 The powers described under Section 75 cover the same three areas as the original Section 31 i.e.
- **Pooled funds** - the ability for partners each to contribute agreed funds to a single pot, to be spent on agreed projects for designated services
 - **Lead commissioning** - the partners can agree to delegate commissioning of a service to one lead organisation
 - **Integrated provision** - the partners can join together their staff, resources, and management structure
- 1.3 A fundamental review of the original agreements between the Council and the NHS was carried out in 2006, building on the learning from the original agreements and taking account of the changes to the NHS, introduced in July 2005, and referred to as 'Commissioning a patient led NHS'. These changes required Primary Care Trusts to separate the commissioning and provider functions. As a consequence of the 2006 review, a major update of the partnership agreements for Older People's services, occupational therapy services, integrated community equipment services, adult mental health (AMH) services and learning disability services was undertaken and approved by Cabinet in July 2007. Two types of agreement were developed, one for Pooled Budgets and Lead Commissioning and one for Integrated Management.
- 1.4 This report focuses on the Section 75 agreements for Older People and Occupational Therapy. The agreement for the pooled budget and lead commissioning was between the Council and NHS Cambridgeshire (NHSC), and the agreement for integrated management is between the Council and Cambridgeshire Community Services (CCS).

2. MAIN ISSUES

- 2.1 Over the last year the Council, NHSC and CCS have reviewed the existing arrangements, and in particular the arrangements between the Council and NHSC, and have reached a common view that the pooled budget and lead commissioning arrangements have led to a lack of clear accountability for CCS in delivering the statutory responsibilities delegated to them through the Section 75 agreement for integrated management.
- 2.2 Also, in 2011/12, the pooled budget has not been operating on a pooled arrangement with the under or overspend related to each partner's statutory responsibilities returned to that partner. Risk is not shared within the arrangement and the position is made complex with NHSC being the lead commissioner and commissioning OP and OT services from CCS on the

Council's behalf. This creates an overly complex arrangement for both accountability and the flow of funding.

- 2.3 In addition, there have been a number of developments to both the Older People and Occupational Therapy services since the last Section 75 agreement was agreed. New services have been created, such as re-ablement, which are not adequately reflected in the current agreements. These additional services have received additional funding directly from the Council and do not receive any additional benefits from joint commissioning or pooling of budgets.
- 2.4 As a consequence, a more fundamental review of the use of Section 75 agreements for OP and OT services is required.
- 2.5 It is proposed that the current Section 75 between the Council and NHSC ceases i.e. that the pooled budget and lead commissioning arrangements for OP and OT services end, and that the Section 75 between the Council and CCS is refreshed. A draft of the refreshed agreement between the Council and CCS is attached as Appendix 1.
- 2.6 As a consequence of the above arrangement, the pooled budget with NHSC will be replaced with separate financial arrangements between each commissioning organisation i.e. NHSC and the Council, and CCS. The Cambridgeshire Care Partnership will cease to be involved in monitoring the Section 75 agreement between the Council and CCS. In its place, two new groups will be established. The first will be a monthly officer group, including representation from Finance, Performance and Quality Assurance from both the Council and CCS; to be chaired by the Service Director, Strategy and Commissioning (Adult Social Care). In addition, a Member and Non-executive group will meet quarterly to govern the arrangements and discuss high-level issues relating to older people and occupational therapy services.
- 2.7 Following the removal of the pooled budget and lead commissioning arrangements for OP and OT, a separate Section 75 between the Council and NHSC will no longer be necessary. However, there is an ongoing commitment by both organisations to work jointly as commissioners to ensure adequate oversight of integrated OP and OT services. To support this commitment, a memorandum of understanding will be drawn up between the two organisations.
- 2.8 It is expected that these arrangements will effectively streamline performance monitoring relating to OP and OT services, and provide the Council with more direct control over finance and performance in the services commissioned through CCS. It is also envisioned that the new arrangements will provide more flexibility to CCS to provide services in an efficient and effective way.
- 2.9 The drafting of the new Section 75 agreement will also provide the opportunity to change the approach that the Council takes to the delivery of its statutory responsibilities in respect of OP and OT services through CCS. A greater focus will be given to managing the contract on the outcomes required from CCS rather than specifying exactly how CCS delivers these outcomes. The aim will be to give CCS greater operational freedom to deliver services whilst ensuring the Council's statutory responsibilities, objectives and priorities are secured. The Council will also seek to ensure that social work has the profile that it requires within CCS.

3. FINALISING AND SIGNING THE SECTION 75 AGREEMENTS

- 3.1 There are a number of areas still to be completed in the draft Section 75 agreement attached, which is subject to ongoing negotiation between the parties concerned. An officer group has been meeting regularly to finalise the documents including the financial arrangements and performance targets. The financial arrangements agreed will be within the budget allocated to OP and OT services in the current Integrated Plan, and plans to deliver the service within the finances available will influence final performance targets.
- 3.2 It is therefore recommended that the Cabinet gives the Cabinet Member for Adult Social Care delegated authority to agree and sign the revised agreements once the financial contributions and performance targets (including agreements to establish baselines) are agreed for 2012/13.
- 3.3 Service specifications are being checked, as are the statutory functions, which are being updated to reflect changes in legislation.

4. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

4.1 Supporting and protecting vulnerable people when they need it most

- 4.1.2 The report above sets out the implications for this priority in paragraph 2.9.

4.2 Helping people live healthy and independent lives in their communities

- 4.2.1 The report above sets out the implications for this priority in paragraph 2.9.

4.3 Developing the local economy for the benefit of all

- 4.3.1 There are no significant implications for this priority.

4.4 Ways of Working

- 4.4.1 The following bullet point sets out implications identified by officers for 'Making sure the right services are provided in the right way':
- Section 75 agreements provide a way to integrate frontline health and social care delivery, whilst providing assurance that the Council's statutory obligations will be met.
- 4.4.2 The following bullet points set out implications identified by officers for 'Investing in prevention':
- The new Section 75 agreement will better reflect preventative services that have been developed since the previous agreement, such as re-ablement;
 - As set out in paragraph 2.9 above, it will also allow greater flexibility for CCS to deliver services in the best possible way to meet the Council's desired outcomes.

- 4.4.3 The following bullet point sets out implications identified by officers for 'Working together':
- This approach ensures that the Council and the NHS will continue to work towards shared objectives whilst simplifying the arrangement through the removal of complex and unclear accountabilities outlined in paragraph 2.2.

5. SIGNIFICANT IMPLICATIONS

5.1 Resource and Performance Implications

- 5.1.1 Effective governance is required to ensure that the services are delivered within the allocated budgets. Officers will have to work closely to ensure that services are delivered within the allocated budgets, especially with current financial constraints. The new governance arrangements will need to hold officers to account for the delivery of services and performance within budget. The governance arrangements are described in the Section 75 agreement.
- 5.1.2 In order to manage these risks a number of mitigating actions need to be taken that are set out in the agreements:
- a) Clarity in respect of the accountabilities of both the Council and CCS
 - b) The requirement for an annual risk assessment with management actions identified and monitored throughout the year.
 - c) The risk assessment will cover risk to corporate reputation, any risk arising from actions of the workforce, risk of claims from clients/patients, financial risks and financial risk sharing, as well as any other risks identified through the annual assessment.

5.2 Statutory, Risk and Legal Implications

- 5.2.1 The agreements have a statutory basis, as set out in the report, and the Health and Social Care Bill reinforces the requirement for integrated working between Local Authorities with social care responsibilities and the NHS.
- 5.2.2 The Section 75 agreements carry the following key risks:
- a) There is a risk that the Council's corporate reputation could be damaged through adverse publicity created by the actions of partners.
 - b) There is a risk that the budgets held by and deployed by CCS will overspend.
 - c) There is a risk of failure to perform to the required performance level

5.3 Equality and Diversity Implications

- 5.3.1 The agreements support the integration of health and social care to support people requiring these services, and which is underpinned by principles of access and inclusion.

5.4 Engagement and Consultation

- 5.4.1 There are no significant implications for any of the prompt questions within this category"

Source Documents	Location
Draft Section 75 Agreement (attached)	Service Director - Adult Social Care