

A review of the Learning Disability Partnership Section 75 pooled budget financial risk share arrangements

To: Adults and Health Committee

Meeting Date: 5 October 2023

From: Patrick Warren-Higgs, Executive Director, Adults, Health and Commissioning

Electoral division(s): All.

Key decision: Yes

Forward Plan ref: 2023/097

Outcome: Agreement to a partial or full termination of the Section 75 partnership agreement between Cambridgeshire County Council and Cambridgeshire and Peterborough Integrated Care Board for the Learning Disability Partnership dependent on continuing discussions between the Council and the ICB.

Recommendation: The Adults and Health Committee are being asked to:

- a) Delegate all necessary legal steps to facilitate termination of the section 75 Agreement to the Executive Director.
- b) Note the potential financial impacts as set per para. 2.11 of this report.
- c) Allow the DASS to proceed and terminate arrangement and put in a new model of working as per section 3 of this report.
- d) Support the Council in seeking to retain the management of Integrated Health and Social Care Teams for People with Learning Disabilities.

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1. Background

- 1.1 This report follows the report received by Committee in March 2023 (forward plan 2023/027) where it outlined the full options presented to modify the Section 75 Agreement for the Learning Disability Partnership. This report is to provide an update on progress and a new recommendation for the way forward.
- 1.2 The Cambridgeshire Learning Disability Partnership (LDP) has been in existence since 2002 and provides an integrated health and social care service to adults over 18 with a learning disability and their families,
- 1.3 Since inception, Cambridgeshire County Council and Cambridgeshire and Peterborough CCG (now ICB) have had a Section 75 Agreement in place to support development and delivery of this integrated service. There are two aspects to the Section 75 agreement, firstly the delegated authority to run an integrated service and secondly a pooled health and social budget.
- 1.4 A significant component of the LDP is the pooled budget, which brings together into a single budget health and social care funding, including that for placement and care package costs, day services, inpatient (Assessment & Treatment Unit) beds, operational teams (social workers, nurses and allied health professionals) together with commissioning and management of the service. The pooled budget currently operates on the following split basis:

2022/2023	Annual Budget (£'000)	% Split
Total Budget	122,050	
Cambridgeshire County Council's Contribution	93,710	76.78%
Cambridgeshire and Peterborough ICB's Contribution	28,340	23.22%

- 1.5 In June 2022 we commissioned an independent review, as detailed in the March 2023 Adults and Health Committee report (2023/027), to complete a review of the LDP Section 75 pooled budget arrangement and present options to the Council. These options informed the recommendations presented to Committee in March 2023.
- 1.6 The report received by Committee in March 2023 outlined the following recommendations:
- a) endorse the recommended approach of Option 3 to seek to adjust the risk share to a level between 70:30 and 60:40, depending on the outcome of reassessment activity
 - b) agree to the associated financial impact outlined within this report
 - c) delegate the responsibility to reach a negotiated settlement to the section 151 Officer and the Director of Commissioning

The following additional recommendation was discussed within the meeting:

- d) in line the report and with the intention to maintain and develop services to

people with Learning Disabilities indicated the County Council's intention to serve notice to the ICB to end the pooled budget arrangements, should the current negotiations about rebalancing finances not be successful and fully in-line with the terms of the agreement.

All of these recommendations were agreed by the Committee.

2. Main Issues

- 2.1 Since March 2023, both parties (the Council and the ICB) have attempted to resolve the significant funding and service issues but have been unable to reach an amicable conclusion. We stated in our communicated our intention to serve notice unless we could make significant progress.
- 2.2 The agreement does not appear to be operating in the way it was originally intended. Significantly, the governance arrangements specified in the agreement are not being fulfilled which presents a significant governance risk to the Council and does not accord with the way in which the Agreement is intended to operate. This means that the Council is unable to mitigate financial risk and no appropriate mechanism exists for resolving issues such as the financial contributions which has left the Council at a disadvantage, which is unsustainable.
- 2.3 There has been no progress in revising the risk share arrangement in a timely manner. This means the Council is carrying significant financial risk and cannot invest its resources fully to support people with social care requirements.
- 2.4 Given the above, we wrote to the ICB on 24 August 2023 to give advance notice of our intention to partially terminate the agreement for the following:
 - the pooled budget arrangement for social care and specialist health care; and
 - the responsibility for the Lead Commissioning of specialist community health care for People with Learning Disabilities

The letter highlighted the Council's commitment to retaining the management of Integrated Health and Social Care Teams for People with Learning Disabilities. This would avoid an adverse impact on the outcomes for people who use the service and offer some assurance to them and their families about continuity of a joined-up health and social care offer.

- 2.5 The Council received a response from the ICB on 31 August 2023, where they accepted the termination of the agreement and stated their commitment to involve people with lived experience and staff as we work through the notice period.
- 2.6 The ICB have stated that they cannot commit to the Council retaining the management of Integrated Health and Social Care Teams for People with Learning Disabilities, but that they do remain committed to integrated working.
- 2.7 In response to this, we have offered to enter into a reconciliation process to run concurrently with the notice period, with a view to mitigate the impacts.
- 2.8 Notice can therefore be considered given and accepted and the Section 75 Agreement will cease on 31 August 2024.
- 2.9 Committee are therefore asked to review the impacts and agree the scope of the termination and ending of the joint staffing arrangement set out in the next section.

Impact

- 2.10 As provided in the independent review, of ending pooled budget entirely, including separating commissioning, staffing, day care and other services budgets. The potential would remain for agreements to be made for specific shared arrangements – e.g., shared funding of a joint commissioning team or a jointly funded community learning disabilities team could still be included within a Section 75 agreement.
- 2.11 In March 2023, the Committee was informed about the potential savings of £7.1m which are already built into the Business Plan. Following the response by the ICB, resulting in the entirety of Section 75 Agreement being terminated, the savings could potentially rise. Work undertaken by an independent review suggested additional saving to CCC of circa £1.55m could be possible. Our next steps are to work through details to update the financial information i.e., to bring it to 23/24 levels, the staff implications, and prepare a new model of working.
- 2.11 The potential would remain for agreements to be made for specific shared arrangements – e.g., shared funding of a joint commissioning team or a jointly funded community learning disabilities team could still be included within a Section 75 agreement
- 2.13 Governance pre-requisites:
There would continue to be the need for a Section 75 governance group to oversee any aspect of the Section 75 agreement which continues once the pooled budget is ended. More consistent performance in completing annual case reviews for all individuals would provide confidence in appropriate assessment.
- 2.14 A complete separation will entail significant levels of change and challenge for both partners with a move towards new commissioning and contracting arrangements being put in place. Whilst there is an existing process in place for the agreement of costs, this won't negate the need to reassess individual packages where shared funding is in place to determine the funding level for each party once the pooled budget is ended. It is likely that the majority of these costs will fall on the County Council as a result of withdrawing from the pooled budget. It is inevitable that there will be a negative financial impact if the shared services agreement is ended; both in terms of one-off costs to manage the process and the on-going loss of economies of scale. These costs are difficult to quantify at this stage, so further work would be required.
- 2.15 Whilst the Section 75 agreement could continue to secure the principles of the LDP, there are risks of the service becoming aligned rather than integrated, resulting in people with lived experience of our services and their families potentially experiencing more complexities of negotiating across with two systems. Inadvertently, it is likely that there will be greater transparency around cases which are classified as CHC 100% funded, and therefore greater clarity around eligibility for client contributions. In addition, this option may reduce the complexity for service users' understanding since their health needs and funding provision to meet those is processed by a health organisation (the ICB).

Risks and Benefits

Value for money		
Benefits	Detractors	Risks
Responsibility is more reflective of health and social care needs as calculated against actual individual needs and outcomes.	There is a need for the reassessment of a large number of funding arrangements for individuals in order to establish an	Duplication of costs for both partners, loss of economies of scale

	accurate risk share. This will require a dedicated staff resource and will take time. The calculation of the health and social care component costs for individuals will need to be revalidated at the conclusion of these reassessments	
Both partners are able to evidence value for money	Financial complexity increases as calculations are made for each placement/care package	One off costs, which are likely to be significant, will have to be incurred to manage the process
More control over ability to achieve planned savings		Reduces cost effective decision making and purchasing power
Increasing budget pressures within CCC are addressed		

System Benefits		
Benefits	Detractors	Risks
The council can focus its resource on meeting statutory social care responsibilities in line with assurance expectations and the views of people with lived experience	Implementation requires changing contractual arrangements for existing placements and care packages	Lack of capacity to manage contractual changes within CCC and ICB
Responsibility for health commissioning will transfer to the ICB who have broader expertise in commissioning health services.	Loss of efficiencies of integrated case management, review and commissioning teams	Duplication of resource required to complete assessments and back-office functions
	Reduces efficiencies achieved through integrated working	Smaller suppliers might exit the market due to increased complexity of commissioning leading to supply pressures
	Annual review of cases and placements needed from both Health and Social Care Cases require both health and social care professionals	Limits opportunities to access external sources of funding previously available only to a partner organisation.
		Providers may be reluctant to agree to contractual changes which separate out health and care needs
		Potential for disagreement between health and social care professions at assessment and review

		Lack of ICB capacity for case management and commissioning of care and support for people who are 100% health funded
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Benefits for individuals who have lived experience of accessing services		
Benefits	Detractors	Risks
Responsibility for meeting health and social care needs and achieve individual outcomes is held by the organisation(s) best placed to meet needs and improved outcomes for individuals are achieved.	Delays in reaching agreement between health and social care about where responsibility should be held.	Arrangements for individuals cannot be put in place in a timely way, or the opportunity is lost due to protracted decision making on funding arrangements
	Transitional arrangements may delay agreements about responsibility being made	Moves focus away from the individual as more time will need to be spent on processes

Environmental, Strategic, Political		
Benefits	Detractors	Risks
Accords with local drivers around achieving value for money	Moves learning disabilities provision away from an integrated approach	Potentially undermines commitment to integration
	More difficult to align quality assurance frameworks across the system	
	May have social value impacts since procurement opportunities may become more complex as ICB and CCC will commission separately for provision adding complexity due to two forms of contract monitoring and uplift processes for providers.	

3. New model of working

- 3.1 We will develop a new model of working over the coming months. This work will be led by the Executive Director of Adult Social Care (DASS). There is a meeting arranged with the ICB on 25 September 2023 to agree the programme for the next 12 months. We will adopt a co-production approach and ensure that people with lived experience are involved in the development of the new model.
- 3.2 The meeting outcomes will be shared with the Corporate Leadership Team. Consequently, plans will be developed with support from directors from across the organisation to facilitate progression and a positive outcome.

4. Alignment with corporate priorities

- 4.1 Environment and Sustainability
There are no significant implications for this priority.
- 4.2 Health and Care
There are significant implications for this priority to ensure support to people still takes place but under a changed governance arrangement.
- 4.3 Places and Communities
There are no significant implications for this priority.
- 4.4 Children and Young People
There are no significant implications for this priority.
- 4.5 Transport
There are no significant implications for this priority.

5. Significant Implications

- 5.1 Resource Implications
The report above sets out details of significant implications in para 2.11 and para 2.14
- 5.2 Procurement/Contractual/Council Contract Procedure Rules Implications
The Procurement and Commercial Team will be involved in procurement planning as early as possible and that any procurements will be compliant with the Council's Contract Procedure Rules.
- 5.3 Statutory, Legal and Risk Implications
The report above sets out details of significant implications in para 2.6 with option details in para 2.4. Should para 2.6 comes into effect work to support people still takes place but under a different governance arrangement
- 5.4 Equality and Diversity Implications
There are no significant implications for this priority.
- 5.5 Engagement and Communications Implications
There are no significant implications for this priority.
- 5.6 Localism and Local Member Involvement
There are no significant implications for this priority.

5.7 Public Health Implications

There are no significant implications for this priority.

5.8 Environment and Climate Change Implications on Priority Areas

5.8.1 Implication 1: Energy efficient, low carbon buildings.

Positive/neutral/negative Status: Neutral

Explanation:

5.8.2 Implication 2: Low carbon transport.

Positive/neutral/negative Status: Neutral

Explanation:

5.8.3 Implication 3: Green spaces, peatland, afforestation, habitats and land management.

Positive/neutral/negative Status: Neutral

Explanation:

5.8.4 Implication 4: Waste Management and Tackling Plastic Pollution.

Positive/neutral/negative Status: Neutral

Explanation:

5.8.5 Implication 5: Water use, availability and management:

Positive/neutral/negative Status: Neutral

Explanation:

5.8.6 Implication 6: Air Pollution.

Positive/neutral/negative Status: Neutral

Explanation:

5.8.7 Implication 7: Resilience of our services and infrastructure, and supporting vulnerable people to cope with climate change.

Positive/neutral/negative Status: Neutral

Explanation:

Have the resource implications been cleared by Finance? Yes

Name of Financial Officer: Justine Hartley

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the Head of Procurement and Commercial? Yes

Name of Officer: Clare Ellis

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or Pathfinder Legal? Yes

Name of Legal Officer: Emma Duncan

Have the equality and diversity implications been cleared by your EqIA Super User?

Yes

Name of Officer: Lisa Sparks

Have any engagement and communication implications been cleared by Communications?

Yes

Name of Officer: Matthew Hall

Have any localism and Local Member involvement issues been cleared by your Service

Contact? Yes

Name of Officer: Will Patten

Have any Public Health implications been cleared by Public Health?

Yes

Name of Officer: Emily Smith

If a Key decision, have any Environment and Climate Change implications been cleared by the Climate Change Officer?

Yes

Name of Officer: Emily Bolton

6. Source documents guidance

6.1 None