

Birmingham City Council

Report to Cabinet

26 November 2019



Subject: ANNUAL APPROVAL OF SECTION 75 AGREEMENTS
FOR ADULT SOCIAL CARE AND HEALTH INTEGRATED
COMMISSIONING – 2019/20

Report of: Professor Graeme Betts
Director for Adult Social Care

Relevant Cabinet Member: Cllr Paulette Hamilton - Health and Social Care

Relevant O &S Chair(s): Cllr Rob Pocock - Health and Social Care

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 007017/2019		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1. Executive Summary

- 1.1 The purpose of this report is to seek approval from Cabinet for the Council to continue financial support for the 3 integrated commissioning arrangements for the financial year 2019/20 through 3 renewed Section 75 agreements with Birmingham and Solihull Clinical Commissioning Group (CCG) and Sandwell and West Birmingham CCG for:
- Better Care Fund (BCF)
 - Mental Health (MH)
 - Learning Disabilities (LD)
- 1.2 S75 arrangements for Better Care Fund, Learning Disabilities and Mental Health are well-established in Birmingham. For the financial year 2019/20, a variation of the wording of the S75 agreements is proposed to be undertaken – primarily to reflect changes to the governance of the CCGs as a result of the creation of a single CCG for Birmingham and Solihull (previously NHS Birmingham Cross-city CCG, NHS Birmingham South Central and NHS Solihull CCG).

2. Recommendations

- 2.1 That Cabinet;
- 2.1.1 Approves the following financial contributions for 2019/20 to the three S75 agreements as follows:
- a) £78.765m for Better Care Fund;
 - b) £14.789m for Mental Health;
 - c) £108.281m for Learning Disability.
- 2.1.2 Authorises the Director of Adult Social Care to conclude negotiations with Birmingham and Solihull CCG and Sandwell and West Birmingham CCG in respect of the funding approved under para 2.1.1 above on three S75 agreements in respect of the Better Care Fund, Mental Health and Learning Disability.
- 2.1.3 Notes that a further report will be presented to Cabinet to approve further Better Care Fund Funding for 2020/21.
- 2.1.4 Authorises the Cabinet Member for Health and Social Care and Cabinet Member for Finance & Resources in consultation with the Interim Chief Finance Officer and Director, Adult Social Care to extend or amend the scope of each of these S75 agreements within the existing budget and policy framework, including increasing the value of Council financial contributions from approved Adult Social Care budgets, for and within the 2019/20 financial year.

- 2.1.5 Authorises the City Solicitor (or their delegate) to conclude and enter into all legal documents to give effect to the above.

3. Background

- 3.1 Section 75 agreements are a mechanism designed to enable integrated commissioning for health and social care. A S75 agreement provides a legal framework that allows CCGs and Local Authorities to align or pool financial resources. The benefits of these arrangements are that CCGs and the Council can then act as a single commissioner. This has the potential to avoid duplication and to deliver a better co-ordinated response to supporting the health and well-being of citizens.

- 3.2 Within Birmingham, the Council, Adult Social Care commissioners, are working increasingly closely with CCG colleagues to explore opportunities for integrated commissioning. Integrated working promotes a system-wide approach to improving health and wellbeing, which contributes to the Council's outcome framework, and will also contribute to the creation of a sustainable health and care service in the local area.

3.3 Better Care Fund

The Better Care Fund is a mandatory, national programme with specified minimum contributions from CCGs and Local Authorities. For 2019/20, the Council is required to contribute funding allocated from government for Improved Better Care Fund (IBCF), Disabled Facilities Grants (DFG) and Winter Pressures into the BCF S75. This equates to £78.765m of a total minimum budget of £171.162m. This is the first year that Winter Pressures funding has been mandated for inclusion within the BCF. Government's intention is to encourage more proactive joint planning ahead of winter and to minimise seasonal pressures as detailed in the [2019-20 Better Care Fund: Policy Framework](#).

3.4 Learning Disabilities and Mental Health

- 3.4.1 S75 arrangements for Learning Disabilities (LD) and Mental Health (MH) are local arrangements that have been established since 2010 to facilitate better outcomes for citizens. The original agreement dated 31st March 2010 covered both Mental Health and Learning Disabilities, setting out an arrangement between the Council and the three Primary Care Trusts (PCT) operating at that time which were; Birmingham East and North PCT, South Birmingham PCT and Heart of Birmingham PCT.

- 3.4.2 The geographical area covered the combined PCT and Council footprint, namely for the population of Birmingham. However, since its inception, a number of things have changed including:

- The Governance arrangements for the Section 75 agreement were changed in 2015 and the services moved from an integrated board to

separate boards for LD and MH. These arrangements differ to the governance arrangements originally agreed in the historic Section 75 agreement

- Establishing aligned health and social care budgets under a single manager rather than fully pooled budgets for both LD & MH
- Changes in legislation, organisations, organisational structures and teams.

3.4.3 The S75 agreement did not have an end date or a requirement for regular review and has not been updated since it was originally written. The Council and the CCGs recognised the need to review and vary the agreement to reflect changes in how services are currently operating and to agree new governance arrangements with relevant Partner organisations.

4. Options considered and Recommended Proposal

4.1 Better Care Fund

4.1.1 The Better Care Fund is a mandatory national policy for the integration of health and social care. The Council is required to pool a prescribed minimum amount into a S75 agreement. The value of both the Council and CCG contributions can be increased if parties consider that this would be beneficial in terms of improving outcomes for citizens. It is envisaged that the evolving, closer working arrangements between the Council and CCG commissioners will result in further opportunities to align funding for integrated commissioning or to reconfigure existing budgets to more closely align to strategic outcomes. Therefore, no alternative options were considered.

4.2 Learning Disabilities and Mental Health

4.2.1 Whilst S75 agreements for Learning Disabilities and Mental Health are local arrangements and could be discontinued, arrangements for integrated commissioning of services have been in place since 2010 with the CCGs. Senior officers within the partnership have indicated an appetite to continue with the S75 arrangements but recognise that the agreements need to be reviewed and updated to reflect the current delivery and new funding arrangements.

4.2.3 Do nothing and end the current alignment of budgets and joint commissioning of services: this was not seen as a viable option as this could lead to double funding, inconsistent service provision and a lack of viable services for the citizens of Birmingham.

5. Consultation

5.1 The contents of this report were discussed at the Better Care Fund Board on the 10th September 2019 and the Board are supportive of recommendations made within this report.

- 5.2 This report was presented to the Adult Commissioning Management Team on the 4th October 2019 and they were supportive of the recommendations made within this report.
- 5.3 This report was presented to the Adult Social Care Management Team on the 9th October 2019 and they were supportive of the recommendations made within this report.
- 5.4 The Corporate Director – Adult Social Care has been consulted on this report and is supportive of the recommendations.
- 5.5 Officers from Birmingham & Solihull CCG and Sandwell & West Birmingham CCG have been consulted on the preparation of this report and will also be seeking approval in their relevant organisations for the implementation of the recommendations.
- 5.6 Officers from City Finance, Legal & Governance Services have been involved in the preparation of this report.
- 5.7 The Cabinet Member for Health and Social Care has been consulted on the proposals within this report and is supportive of the recommendations.

6. Risk Management

- 6.1 Management and sharing of risk are a key element of the S75 agreements that are currently in place between the Council and CCG partners.

6.2 Better Care Fund

A governance framework is in place for the Better Care Fund. This includes a Programme Board, Commissioning Executive and accountability to the Health and Well-being Board.

6.3 Mental Health and Learning Disabilities

- 6.3.1 The existing Integrated Commissioning Board (ICB) for LD will be dis-banded and replaced by two new Integrated Commissioning Committee's (ICC): one for LD and one for MH.
- 6.3.2 Both ICC's will provide strategic oversight, direction and ensure delivery. The ICC is based on a working group structure and each member of the ICC will have individual delegated responsibility from the relevant organisation employing them to make decisions to enable the ICC to carry out its duties and functions.
- 6.3.3 Where decisions are required that affect the Statutory Responsibilities of each organisation, it is proposed that the ICC reports into the relevant organisations through established governance structures. For the Council this will initially be into the Adult Social Care Management Team, which will escalate requests as appropriate.

7. Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The decision is consistent with the City Council's priorities: Birmingham is an aspirational city to grow up in and Birmingham is a fulfilling city to age well in. The recommendations within this report will contribute to these priorities by enabling citizens to live independently and contribute to their community for as long as possible, and, if citizens need care and support to do so, we will ensure it is of high quality, and their experience of the Birmingham health and social care system is good.

7.2 Legal Implications

7.2.1 Better Care Fund

The BCF represents a unique collaboration between NHS England, the Ministry of Housing, Communities and Local Governments, Department of Health and Social Care and the Local Government Association. The legal framework for the BCF derives from the amended NHS Act 2006 (s.223GA), which requires the Council and CCG transfer a minimum allocation (as set out in the Mandate) into one or more pooled budgets established under Section 75 of the Act.

The DFG and IBCF Grants are subject to grant conditions set out in the grant determinations made under Section 31 of the Local Government Act 2003.

Section 75 of the 2006 National Health Service Act gives powers to the Council and the CCG's to establish and maintain pooled funds.

Integration and Better Care Fund Policy Framework sets out the integration of health, social care and other public services, it provides an overview of related policy initiatives and legislation, including the implementation of the statutory Better Care Fund.

7.2.2 Mental Health and Learning Disabilities

The Council and CCG partners have agreed to enter into the Partnership Arrangements for the purposes of pooling of budgets, and lead commissioning of certain Services and have given formal notification to the relevant Authority as required by HSC 2000 (010) and LAC 2000 (9).

The objective of the Partnership Arrangements is to improve the Services for users through closer working between the National Health Service and Local Government through which the Partners will co-operate with each other through the commissioning of Services.

The Partnership Arrangements have been established pursuant to Section 75 of the National Health Service Act 2006 (2004 c.41, Part 3, Section 75) and the Regulations.

7.3 Financial Implications

- 7.3.1 Section 75 agreements enable payment to be made towards expenditure incurred in the exercise of prescribed local authority and prescribed NHS functions.
- 7.3.2 The framework for the Better Care Fund derives from the government's mandate to the NHS for 2019-20, issued under Section 13A of the NHS Act 2006, which sets an objective for NHS England to ring fence £3.84 billion to form the NHS contribution to the BCF. These Planning Requirements set allocations for each CCG from this ring fence and apply conditions to their use. Planning requirements also prescribe the value of BCC contributions.
- 7.3.4 For Learning Disabilities and Mental Health services, there is a commitment from Partners to undertake integrated commissioning across Birmingham. The new S75 agreements set out the Partnership arrangements for:
- Services for people with Mental Health conditions including:
 - Over 18 years of age for social care provision and;
 - Aged 0-25 and 25+ including older adults for health care provision; and separately
 - Services for adults from 18 years of age with a learning disability.
- 7.3.5 Partners have confirmed that at this stage, there is no intention to 'pool budgets' and therefore the Section 75 documents for Learning Disabilities and Mental Health describe the 'aligned budget' arrangements that are in place currently.
- 7.3.6 BCC contributions are from existing 2019/20 Adult Social Care budgets and total:
- Better Care Fund - £78.765m

Figure 1: Better Care Fund contribution breakdown by theme area

Spend Area	Annual Value
Disability Facilities Grant	£11,407,088
Winter Pressures	£5,600,295
Placements (residential short and long term)	£52,389,000
Contracts	£1,437,025
Support to meet the social care need	£2,300,284
Support to the NHS to reduce demand	£3,966,007
Support to the provider market	£1,665,723
Total	£78,765,422

- Mental Health - £14.789m

Figure 2: Mental Health contribution breakdown by theme area

Spend Area	Annual Value
Transport	£12,500
Direct Payments	£611,000
Home Support	£4,806,000
Placements	£11,842,955
Grants	£1,986,489
Contribution to Joint Funded Placements (credit)	+£4,469,655
Total	£14,789,289

- Learning Disability - £108.281m

Figure 3: Learning Disability 2019/20 breakdown by theme area

Spend Area	Annual Value
Day services	£13,195,484
Catering & Facilities	£468,540
Direct Payments	£11,090,000
Home Support & Supported Living	£32,116,063
Placements	£51,116,555
Transport	£295,000
Total	£108,281,642

7.6 Public Sector Equality Duty

7.6.1 The purpose of the Section 75 agreements is to enable funding to be pooled and/or aligned between NHS bodies and the Council, this report seeks to continue the current arrangements. The process of commissioning will ensure that equality impacts are actively considered and acted on by commissioners throughout the implementation of the services within the these agreements.

7.6.2 See **Appendix 1** - Equality Impact Assessment (EQUA406)

8. Appendices

1. Equality Impact Assessment

9. Background Documents

Department of Health and Social Care, Ministry of Housing, Communities and Local Government, and NHS England, Better Care Fund Planning Requirements for 2019/20.