

	Officer Key Decision
	Report to the Strategic Director, Community Wellbeing
Authority To Approve The Extension Of The Existing Section 75 Agreement In Respect Of The Better Care Fund Pooled Budget And The Award Of A Contract For Rehabilitation Beds.	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Tom Shakespeare Director of Health and Social Care Integration Email: tom.shakespeare@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report seeks approval to extend the existing Section 75 Agreement in respect of the Better Care Fund pooled budget for a period of 12 months in accordance with Contract Standing Order 112 and the award of a contract for rehabilitation beds as required by Contract Standing Order 88.

2.0 Recommendation(s)

That the Strategic Director of Community Wellbeing:

- 2.1 Approves the extension to the existing Section 75 Agreement in respect of the Better Care Fund pooled budget with Brent Clinical Commissioning Group for a period of 12 months.
- 2.2 Approves the award of a contract for rehabilitation beds to Birchwood Grange Care Home (TA Avery Healthcare) for a period of 12 months.

3.0 Detail

- 3.1 Integration of health and social care services and joint working has been a national and local priority for some time, during which the Council has worked together with CNWL and Brent Clinical Commissioning Group (CCG) to provide a range of integrated and / or commissioned services. Following the introduction of the National Health Service Act 2006 this co-operation has been pursuant to s75 of that Act.
- 3.2 The Better Care Fund (BCF) aims to support closer integration between health and social care. Cabinet at its meeting in June 2015 gave approval to enter into an agreement pursuant to s75 of the National Health Service Act 2006 (a “s75 Agreement”) in respect of the Better Care Fund with the CCG and pool funds for one year. Subsequently, Cabinet in November 2016 approved entry into a longer term s75 Agreement. The s75 Agreement provided for an initial term followed by the ability of the parties to agree annual extensions.
- 3.3 The funding for the BCF s75 Agreement is negotiated on an annual basis with the CCG and subject to agreement, the s75 Agreement extended. There has been delay this year in the publication of national guidance regarding the BCF. Such guidance informs discussions with the CCG regarding the s75 Agreement. As a result of the delay in publishing the BCF national guidance, the Council has only recently been able to conclude negotiations with the CCG regarding funding and Officers are therefore now in a position to recommend extension of the s75 Agreement.
- 3.4 The purpose of this extension is to enable the continued delivery of agreed services between the Brent Council and Brent CCG, and to formally enable funding to be transferred from the CCG to the local authority for the delivery of those services
- 3.5 Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Strategic Directors are able to extend contracts and agreements without the need for Cabinet approval:
- (a) provided that the extension would not be in breach of the European Procurement Legislation.
 - (b) provided that the extension does not substantially alter the terms and conditions of the contract.
 - (c) provided that there is sufficient existing budgetary provision.

- (d) if the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract:
 - (i) in the case of any contract, agreement, deed or other transaction with a life of not more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of six months; or
 - (ii) in the case of any contract, agreement, deed or other transaction with a life of more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of one year.
- (e) the relevant cabinet member shall be consulted prior to a decision within (d) (i) or (ii) above and may request that the decision instead be referred to them.

3.6 Using the numbering / lettering detailed above, it is considered that you have delegated authority as:

- (a) The s75 Agreement is an arrangement specifically provided for by National Health Service Act 2006 and is not a procurement that would breach European Procurement Legislation.
- (b) The extension is specifically permitted by the s75 Agreement and the agreement of the finances with the CCG do not substantially alter the terms and conditions of the agreement.
- (c) Agreement with the CCG regarding finances has confirmed that there is sufficient existing budgetary provision to enable the delivery of the s75 Agreement's objectives.
- (d) The extension is being made in accordance with the extension provisions of the s75 Agreement.
- (e) the relevant cabinet member was consulted about the extension when seeking a waiver of Contract Standing Orders and has not requested the decision is referred to them.

3.7 One element of the extended s75 Agreement is the new addition of the provision of rehabilitation beds and packages of care as part of the CCG minimum contribution to the Better Care Fund. This will be provided from the pooled budget by the Council.

3.8 The requirement for rehabilitation services relates to 35 CCG commissioned beds in Central Middlesex Hospital that were decommissioned by Central North West London Trust in the run up to the start of Covid-19 pandemic. The provision of the rehabilitation beds

is critical as the health and care system prepares for Winter pressures, and the potential second wave of Covid-19, to ensure there is sufficient capacity in the system to support timely hospital discharge. Failure to procure the beds would have a significant detrimental impact on the system's resilience to cope with any increased pressure.

- 3.9 The Council and CCG have determined that 20 rehabilitation beds need to be urgently procured for a period of 12 months within Brent to support timely and organised discharge of patients before the expected second wave of Covid-19. Officers do not consider that there is time to invite tenders for a contract for rehabilitation beds and wish therefore to proceed with the direct award of a contract. Officers have made enquiries and have identified only one provider in Brent that is capable of providing 20 beds with the level of care required for the rehabilitation beds. This is at Birchwood Grange Care Home. Officers have sought and obtained an exemption pursuant to Contract Standing Order 84(a) of the requirement to tender a contract for rehabilitation beds, and Officers therefore recommend the direct award of a contract for 20 rehabilitation beds at Birchwood Grange Care Home for 12 months.

4.0 Financial Implications

Better Care Fund

- 4.1 Brent Council and Brent CCG have a pooled fund of £40.8m for 2020/21.
- 4.2 The Council's contribution to the BCF pooled fund is £17.6m inclusive of the Disabled Facilities Grant of £4.7m.
- 4.3 This agreement does not include a specific risk share agreement with any overspends being picked up by the commissioning organisation.

Rehabilitation services

- 4.4 Of the 20 beds that are being procured from Birchwood Grange, 19 will be provided as a block contract, procured by the Council from 1 November 2020 to 31 October 2021. The total cost of provision of the 19 beds for this period is £1,094,704 and Brent CCG agrees to fund this sum through the s75 BCF Agreement.
- 4.5 £35,000 of additional funding will be provided from Brent CCG to the Council over the same time period, to cover the spot purchase of one additional bed, should this be required when all 19 block purchased beds have been filled.
- 4.6 In addition, there is £416,000 additional funding for packages of care for people in receipt of rehab at home. This will be brokered by the local

authority on behalf of the Brent CCG.

- 4.7 The funding transfer from the Brent CCG to the Council for both the block and spot purchased beds and the packages of care will be charged pro rata in two periods: 1 Nov 2020- 31 March 2021 and 1 April 2021—31 October 2021.
- 4.8 The council and Brent CCG will jointly monitor the usage of the beds, packages of care and the number of days of additional spot purchased bed. Any over or underspend will be reconciled both at the 20-21 financial year-end and at the end of the 12 month contract. Any additional unforeseen costs associated with the beds or the delivery of the rehab service will be the responsibility of Brent CCG .

5.0 Legal Implications

- 5.1 The legal implications of extending the s75 agreement are addressed in paragraphs 3.5 and 3.6.
- 5.2 Officers seek authority to directly award a contract for rehabilitation beds. These services are valued at c. £1M over the 12 month contract term and the proposed contract is thus classified as a Medium Value Contract under Contract Standing Orders. Contract Standing Orders provide that a Medium Value Contract should be procured by way of a tender process but for the reasons detailed in Section 3 of the report, Officers do not consider it is possible to procure the contract by way of a tender process. Officers have therefore sought and obtained Lead Member approval to waive the Contract Standing Order Requirements to tender thus permitting direct award.
- 5.3 The value of the services Officers are proposing to procure is in excess of the Public Contracts Regulations 2015 (“PCR 2015) threshold of £663,540 for Schedule 3 services. The services are therefore subject to the requirements of the PCR 2015 applicable to Schedule 3 services, to include competitive procurement. Based on the information contained in Section 3, it is considered that the Council could rely on Regulation 32(2)(c) of the PCR 2015 which permits the use of the negotiated procedure without prior publication (i.e. a direct award) in circumstances of extreme urgency brought about by events unforeseeable by the contracting authority.
- 5.4 Extending the s 75 agreement and award of the rehabilitation contract are considered to be a Key Decision due to the value of the s75 agreement and the contract and the significance of the s75 Agreement in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions of the borough. This would ordinarily require notice of the key decision to be publicised for 28 days prior to the key decision being taken and for the decision not to be

implemented until the expiry of a call in period. The Chair of the Community and Wellbeing Scrutiny Committee has however agreed to dispense with the usual requirements for prior notice of the decision and to dis-apply the usual call-in period following the decision. In the circumstances, it is legally permissible for the Strategic Director, Community Wellbeing is able to proceed with extension of the s75 agreement and award of the rehabilitation contract.

6.0 Equality Implications

6.1 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.

7.0 Consultation with Ward Members and Stakeholders

7.1 Brent Health and Wellbeing Board has formal authority to approve the Better Care Fund

8.0 Human Resources/Property Implications (if appropriate)

8.1 The range of services to be provided under an extended s75 Agreement are proposed to continue to be delivered in line with existing arrangements and there are no implications for Council staff arising from extending the s75 Agreement.

8.2 This rehabilitation beds are a new service and there are no implications for Council staff arising from directly awarding the contract.

Relevant Documents:

Individual Member Decision Report to Cabinet Member for Adult Social Care for approval to waive Contract Standing Orders to permit procurement of Rehabilitation Beds through a direct award

Report sign off:

Helen Woodland
Operational Director of Adult Social
Care