



Cabinet
15 November 2016

**Report from the Strategic Director
Community Well-being**

Wards Affected:
ALL

**Authority to enter into partnership arrangements under
Section 75 of the National Health Service Act 2006**

1.0 Summary

1.1 This report seeks approval for the Council to enter into three separate partnership arrangements under Section 75 of the National Health Service Act 2006 in respect of:

- the delivery of the approved Better Care Fund Plan with NHS Brent Clinical Commissioning Group (Brent CCG);
- the provision of Brent's Integrated Community Equipment Services (BICES) with Brent CCG and
- the delivery of adult mental health social care with Central North West London NHS Foundation Trust (CNWL)

1.2 This report details the operational benefits of the longstanding collaboration between the Council, Brent CCG & CNWL for the provision of integrated and jointly commissioned services. With the exception of BICES, these agreements have been short term and subject to regular approvals. All of the s75 agreements need to be renewed, and given that health and social care integration continues to be a national and local long-term priority, officers consider it would be beneficial to have longer term arrangements.

1.3 This report also seeks delegated authority to award Mental Health contracts with a value of up to £1m.

2.0 Recommendations

- 2.1 That Cabinet delegates approval to the Strategic Director Community Wellbeing in consultation with the Chief Finance Officer and Chief Legal Officer to enter into partnership agreements pursuant to Section 75 of the National Health Service Act 2006 for such period or periods as may be agreed but with all partnership agreements to conclude by 31 March 2023, in respect of the following:
- the delivery of the approved Better Care Fund Plan with NHS Brent Clinical Commissioning Group (Brent CCG);
 - the provision of Brent's Integrated Community Equipment Services (BICES) with Brent CCG and
 - the delivery of adult mental health social care with Central North West London NHS Foundation Trust (CNWL).
- 2.2 That Cabinet give approval for the Council to act as lead agency on behalf of the partners for the continued operation of a pooled budget with Brent CCG and CNWL under the partnership agreement of which Brent Council will be the budget holder.
- 2.3 That Cabinet give approval for the transfer of the Council's pro rata contribution as set out in paragraph 4.1-4.3.1 for the financial year 2016/17 to relevant pooled budgets with annual financial contributions to the pooled budgets for subsequent financial years to be delegated to the Strategic Director of Community Wellbeing in consultation with the Chief Finance Officer provided that there is no substantial change in Partnership arrangements.
- 2.4 That Cabinet delegate to the Strategic Director Community Wellbeing, in consultation with the Chief Legal Officer and the Chief Finance Officer the exact form of that written agreement required to enter the proposed partnership agreements as detailed in 2.1.
- 2.5 That Cabinet delegate to the Strategic Director Community Wellbeing, in consultation with the Chief Legal Officer and the Chief Finance Officer award of Mental Health contracts with a value not exceeding £1m.

3.0 Detail

Background

- 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 CCG (prior to that the Primary Care Trust) to provide a range of integrated and or commissioned services. Following the introduction of the National Service Act 2006 ("NHS Act 2006) this co-operation has been pursuant to s75 of that Act. Parties have entered into partnership agreements pursuant to Section 75 of the NHS Act 2006 ("Section 75 partnership

agreements"). Under Section 75 partnership agreements the parties pooled their budget to jointly provide or commission services. Under the Section 75 partnership agreements the Council has been the budget holder of the pooled budget and in most circumstances, the lead commissioner.

- 3.2 The Better Care Fund (BCF) formerly the Integration Transformation Fund aims to support closer integration between health and social care. The initial plan was approved by Government on 29 October 2014. Details of the various schemes within the scope of the BCF plan and governance are appended to this report at Appendix A. Section 121 of the Care Act 2014 requires BCF arrangements to be underpinned by pooled funding arrangements, the Cabinet meeting of 29th June 2015 gave approval (to pool funds with Brent CCG) for one year.
- 3.3 The services under BiCES includes provision of equipment such as profiling beds, pressure care, hoists and slings and specialist bespoke equipment (including tele-care equipment) to support adults and children in Brent. Further details of the service are appended to this report at Appendix B. By pooling Brent's community equipment budget, the Councils purchasing power has doubled resulting in savings in equipment prices and lower activity price. The partnership has also promoted the efficient sharing of business processes, IT systems and also the redistribution of community equipment borough wide, this could not have been achieved without joint working. Subject to Cabinet approval and completion of relevant procurement process for the supply of community equipment, the intention would be for the Council to enter into a contract with a provider to deliver BICES from 1 April 2017 for up to four years with an option for the Council to extend for a further two years. Further details in respect of our procurement intentions to deliver BICES next year are set out in a report to be considered by members.
- 3.4 The Council delivers its adult mental health and social care responsibilities in partnership with Central and North West London NHS Foundation Trust (CNWL). Further details of the service are appended to this report at Appendix C. The delivery of various mental health services with CNWL has existed since April 2001 and has been successively extended. At the Cabinet meeting on 17th February 2014 a S75 agreement with CNWL was agreed to continue building upon the Mental Health Service Improvement Programme, developing integrated commissioning arrangements with CNWL.
- 3.5 The partnerships has achieved positive outcomes for service users who have benefited from; service improvements to equipment services, early intervention services across health and social care and the development of whole systems integrated care approach within mental health (focusing not only on service users mental health but also their physical wellbeing), by promoting independence and enabling service users to remain in their own homes or within the community for longer.

By working collaboratively, service users have access to seamless support that is responsive to their changing needs and delivered by health and social care professionals with a common purpose and assessment criteria, wherever they access services.

- 3.6 Officers met with Brent CCG and CNWL to review current arrangements and considered that continuation of the Section 75 partnership agreements are the most operationally advantageous way forward for the Council, Brent CCG and CNWL to continue to fulfil their work in a seamless and integrated way to improve outcomes for service users as outlined in paragraph 3.5 of this report.
- 3.7 In discussions with Brent CCG concerning the proposed partnership arrangement for the Better Care Fund and for community equipment, it was considered that the Council should continue to host the pooled budget which both parties will continue to contribute to. In order to tie in with the proposed contract for the supply of community equipment as detailed in paragraph 3.3 and long term integration priorities, it is proposed that the new agreements will conclude by 31 March 2023.
- 3.8 For the reasons detailed in paragraph 3.2-3.5, officers wish to enter into Section 75 partnership agreements in respect of the following:
 - 3.8.1 the delivery of the approved Better Care Fund Plan with Brent CCG;
 - 3.8.2 the provision of Brent's Integrated Community Equipment Services (BICES) with Brent CCG; and
 - 3.8.3 the delivery of adult mental health social care with CNWL.
- 3.9 Whilst officers from the Council, Brent CCG and CNWL favour Section 75 partnership agreements culminating on 31 March 2023 this term has not to date been agreed by the relevant governing bodies of these organisations. In the circumstances, delegated authority is sought to enable the Strategic Director Community Wellbeing in consultation with the Chief Finance Officer and Chief Legal Officer to enter into Section 75 partnership agreements for such period or periods as is considered appropriate by the relevant parties, subject to no agreement expiring beyond 31 March 2023.
- 3.10 Due to the increased value and volume of mental health contracts as a result of commissioning services with health, delegated authority is sought to enable the Strategic Director of Community Wellbeing in consultation with the Chief Legal Officer and the Chief Finance Officer to award mental health contracts with a value of up to £1m.
- 3.11 In July 2016, Cabinet gave approval for the award of two accommodation based mental health contracts, valued at £482k per annum. Following a review of the evaluation, an alternative provider's proposal was identified as the Most Economically Advantageous (MEAT) offer. The details of the evaluation process and the bidder's

rankings will be presented to the Strategic Director of Community and Wellbeing when the request to award will be made in late November 2016.

4.0 Financial Implications

4.1 Better Care Fund

4.1.1 The BCF is worth £3.9bn nationally. Brent Council and Brent CCG has a pooled fund of £23.7m for 2016/17.

4.1.2 The Council's contribution to the BCF pooled fund in 2016/17 is £9.8m inclusive of the Disabilities Facilities Grant (DFG) of £3.6m.

Contribution	£m's
Brent CCG	13.8
LB Brent	9.9
BCF Total	23.7

4.1.3 The Council and the CCG will charge to the pooled budget any expenditure they have incurred up to the maximum amount that they have contributed to the pool and therefore the agreement does not include a specific risk share arrangement with any overspends being picked up by the relevant commissioning organisation.

4.2 BICES

4.2.2 The proposed financial arrangements are that Brent CCG contribute 59% of the pooled budget, and Brent Council contribute 41%. This is considered equitable by both parties and is in line with current spend. Any spend over or under budget, should it occur, would be applied pro rata.

4.2.2 The total pooled budget for 2016/17 is £1.1m, with £0.45m being Brent Council's contribution.

Contribution	£m's
Brent CCG	0.45
LB Brent	0.65
BiCES Total	1.1

4.3 Brent Mental Health Service

- 4.3.1 The Council and CNWL agreed not to pool their main resources for mental health services and their individual financial contribution for the financial year 2016/17 is summarised in the table below. Any spend over or under budget, should it occur, would be managed by each individual organisation.

Budgets	£m's
CNWL	19.9
LB Brent	4.6
Mental Health Service Total	24.5

4.4 Accommodation Based Mental Health Contracts

- 4.4.1 As stated in paragraph 3.11, the award of the two accommodation based mental health contracts was previously considered by Cabinet in July 2016 but following a review of the evaluation, an alternative provider's proposal was identified as the most economically advantageous offer. The total cost of the two contracts equates to £1.44m over the life of the 3 year contracts. This estimate falls within the Adult Social Care budget allocation for this service.

5.0 Legal Implications

- 5.1 Section 75 of the NHS Act 2006 provides the legal basis under which local authorities and health bodies can work together to improve health and social care provision. This includes making arrangements for flexible funding and working, such as arranging for the pooling of budgets and delegating responsibility for commissioning health related functions to the other. The parties are required to enter into a Section 75 partnership agreements to record their intentions as regards the integration of the services and the establishment of a pooled fund.
- 5.2 The Council's Contract Standing Order 85 provides that no partnership arrangement may be entered into unless they are approved by the Chief Finance Officer and a formal written agreement covering the arrangement is signed by the parties.
- 5.3 Cabinet approval is sought to delegate authority to the Strategic Director Adults Social Care, in consultation with the Chief Legal Officer and Chief Finance Officer to enter into Section 75 partnership agreements as detailed in paragraph 3.8 for such period or periods as may be agreed, such agreements to conclude by 31 March 2023. Delegated authority is also sought for the Strategic Director to also agree the final form of the written Section 75 partnership agreements required for the proposed partnership arrangement. Section 75 partnership agreements should include express provision permitting termination on notice to enable the council to withdraw from the long term arrangements proposed should this be considered appropriate.

- 5.4 Under section 3(1) of the Local Government Act 1999, Brent Council, as a “best value authority” is under general duty of best value to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. Under the duty of best value, the Council should consider overall value, including environmental and social value, when reviewing service provision. In March 2015 the Government circulated revised Best Value Statutory Guidance and the full guidance is available here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418505/Revised_Best_Value_Statutory_Guidance_final.pdf

- 5.5 Officers have indicated in the report, specifically at paragraphs 3.5 and 3.6, ways in which Section 75 partnership agreements assist the Council in achieving best value.
- 5.6 The Equality Act 2010 (the Act) introduced a new public sector equality duty requiring the Council in the exercise of its functions, to have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - advance equality of opportunity between people who share a protected characteristic and those who do not
 - foster good relations between people who share a protected characteristic and those who do not
- 5.7 Members are referred to Section 6 below and will note that there are no negative diversity implications.
- 5.8 Chief Officers have powers delegated to them under Part 4 of the Constitution to inter alia award contracts with a value of up to £500k. Delegated authority is sought to enable the Strategic Director of Community and Wellbeing in consultation with the Chief Legal Officer and the Chief Finance Officer to award mental health contracts with a value of up to £1m for the reasons detailed in paragraph 3.10.

6.0 Diversity Implications

The proposals in this report have been subject to screening and officers believe that there are no negative diversity implications.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 A Joint Pooled Fund Manager is funded through the Section 75 partnership agreement pooled budget arrangement in respect of the BICES service. The post holder (managed by the Council) is responsible for managing the operations and development of the BICES contract.

- 7.2 The mental health services included in the Section 75 partnership agreement (appended to this report at appendix C) will be provided from Brondesbury Road Mental Health Resource Centre, and operate under a single management structure in which management responsibility for Council staff is delegated to the Trust. The Council will continue to employ existing Council staff in the integrated services under existing terms and conditions appended to this report at appendix C. It is not currently anticipated that any job losses will occur in relation to Council staff.
- 7.3 There are no staffing implications in the Section 75 partnership agreement in respect of the delivery of the approved Better Care Fund Plan with Brent CCG.

8.0 Public Services (Social Value) Act 2012

- 8.1 Since 31st January 2013, the Council, in common with all public authorities subject to the EU Regulations, has been under duty pursuant to the Public Services (Social Value) Act 2012 to consider how services over the EU threshold being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the council might act with a view to securing that improvement and whether the council should undertake consultation.
- 8.2 Authority is being sought to enter into a partnership arrangement under S75 of the NHS Act 2006 in respect of BCF, BICES & Mental Health Services with Brent CCG & CNWL which does not involve undertaking a procurement of services. However, details of how the services being procured to deliver BICES for both the Council and Brent CCG might improve the economic, social and environmental well-being in the Brent area was reported to members on 15 August 2016 when approval was sought to participate in the collaborative procurement of Community Equipment Goods and Services as part of the London Consortium.

9.0 Background Papers

Cabinet Report - 15th August 2016 – Authority to Participate in the Joint Procurement of Community Equipment Goods and Services as part of the London Community Equipment Consortium

Appendices A (BCF), B (BICES) & C (MH)

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