Cabinet – 26th October 2016

Health and Social Care Funding Allocations

Portfolio: Councillor D Coughlan

Related portfolios:

Service: Adult Social Care

Wards: All Wards

Key decision: Yes

Forward plan: Yes

1. Summary

1.1 Walsall Metropolitan Borough Council ("WMBC") and Walsall Clinical Commissioning Group ("WCCG") have a number of joint funding arrangements that have been in place for a number of years.

1.2 As resources change in the public sector, we are reviewing these arrangements to ensure they are accurate and transparent enough to provide assurance to both WMBC and WCCG that their investment is being apportioned appropriately and is consistent with financial regulations.

1.3 There is evidence to suggest that current costs are not being apportioned appropriately and therefore the attribution of cost requires realigning to ensure that each partner only pays for that which they are responsible. This involves adjusting current agreements and practice.

1.4 In 2016 WCCG was placed in special measures and is required to resolve their financial position. The CCG believe that they have over-extended its commitments across the system and in reviewing the situation they consider that this over-commitment extends to the arrangements between WCCG and WMBC.

1.5 WCCG have reviewed their funding and have stated that future commissioning arrangements should have an agreed financial baseline contribution that has been properly corrected to a more appropriate value, based on good practice, regional benchmarking and adjustments on pooled funding arrangements.

1.6 The main areas for consideration from a WCGG perspective are:

- Learning Disability Pooled Budget contribution - £2.5m
- Mental Health S117 Aftercare contributions - £2.8m
- Continuing Healthcare (CHC) contributions - £2m
- Better Care Fund contributions - £3.6m

1.7 WCCG believe that this amounts to an over-commitment total value of 10.9m.

1.8 WMBC accepts that an adjustment needs to take place, but that it is significantly less than £10.9m

1.9 Current arrangements to attribute costs of individual packages of care for Adults with Learning Disabilities and Adults with Mental Health needs previously agreed between partners are no longer viewed as adequate and transparent. These arrangements have been reviewed and new processes have been developed.

1.10 Through the Joint Commissioning Committee an analysis of the Learning Disability and Mental Health S117 budgets has been completed and an agreed approach has been developed for the future allocation of costs between WCCG and WMBC. This exercise has not yet been undertaken in relation to CHC contributions.

1.11 Learning Disability Services are delivered through a pooled budget hosted and led by WMBC on behalf of both WMBC and the WCCG. A detailed analysis of this budget has been undertaken which indicates that WCCG is over-committing to the pooled budget by £1.57m.

1.12 Mental Health s117 is a joint responsibility of WCCG and WMBC. A 'Joint Decision Tool' ('the tool') has been developed, overseen by the JCC, to improve accuracy and transparency of allocating costs.

1.13 The Mental Health s117 tool has been tested against 25% of the existing s117 clients. The financial impact assessment indicates that based on this calculation, up to approximately £445k of costs per annum could shift from WCCG responsibility to WMBC responsibility by applying the tool as new cases are assessed and existing cases are reviewed on a case by case basis. Some of this will take effect as cases are reviewed in 2016/17.

1.14 The overall impact of these changes is likely to add increased pressure to WMBC Adult Social Care Budget.

2. Recommendations

2.1 That Cabinet agrees the implementation of the draft 'S117 Joint Decision Tool' for the distribution of S117 costs for a trial period of 6 months, acknowledging that it is likely higher costs will be attributed to WMBC than were previously and delegates authority to the Executive Director of Adult Social Care to consider the findings of the trial and decide if to adopt the recommendations in the long term.

2.2 That Cabinet approves the outcome of the pooled budget disaggregation exercise and approves the subsequent reduction of Walsall Clinical Commission Group contribution via the Section 75 Partnership Agreement for Commissioning of Services to the learning disability pooled budget of £1,577,059 (full year effect) from 27th October 2016. This equates to £678,000 for the period 27th October 2016 – 31st March 2017.

2.3 That Cabinet notes that any overspend against the learning disability pooled budget will be proportionately split, based on the revised contributions per partner (78.5% and 21.5%) as per the Section 75 Agreement.

2.4 That Cabinet approves the 'Learning Disability Joint Funding Process' detailed within Appendix 2 for the distribution of learning disability package costs for a trial period of 6 months acknowledging that the financial impact of this is unknown and could possibly result in higher costs being attributed to Walsall Metropolitan Borough Council than were previously

2.5 That Cabinet delegates to the Executive Director for Adult Social Care to enter into a variation (if necessary) to the relevant partnership agreement(s) between Walsall Metropolitan Borough Council and Walsall Clinical Commissioning Group for the learning disability pooled budget, by using the most appropriate procedures and to subsequently authorise the sealing of any deeds, contracts or other related documents for such an agreement.

2.6 That Cabinet agrees that the Joint Commissioning Committee should oversee a piece of work to review the development and application of the Continuing Healthcare plan.

2.7 That Cabinet notes that discussions in relation to budgets within the Better Care Fund will be overseen by the JCC and Health & Wellbeing Board.

3. Report detail

Section 117 Aftercare

3.1 Section 117 Mental Health Act 1983 confers a statutory duty on both Health and Local Authorities to provide after-care for people who have been detained under certain Sections of the Mental Health Act (1983/2007).

3.2 Services provided under Section 117 are specifically intended to reduce the prospect of compulsory or informal readmission to hospital on mental health grounds. Needs that relate only to the physical health or disability of the person (and not related to mental health needs) are not subject to Section 117.

3.3 The duties to provide after-care services continue until both authorities are "satisfied" that the person no longer needs any after-care services.

3.4 To date, decisions have been made by the joint mental health commissioning team as to how the costs of the aftercare package should be apportioned to WCCG and WMBC based on their interpretation of what is a health or social care need i.e. there is no formal decision making tool between the two organisations in place.

3.5 The need to develop and implement an agreed S117 Joint Protocol to appropriately apportion the costs between WMBC and WCCG was identified and MH Commissioners have worked with finance and clinical staff from both organisations to develop a tool.

3.6 A ‘Joint Protocol Decision Tool’ (‘the tool’) has been developed, drawing on models used by other CCG/LA’s and has been tested against 25% of the existing s117 clients. The progress of this has been overseen by the Joint Commissioning Committee (“JCC”) and amendments have been made based on the recommendations of the committee.

3.7 A financial impact assessment was conducted to determine the likely ‘shift’ in funding responsibility if the tool was applied to the existing s117 cohort. As previously stated, around 25% of the whole MH s117 client group contributions were tested with the tool and the value in the financial impact assessment is a forecasted estimate based on the extrapolation of the 25% sample to the whole S117 cohort.

3.8 The financial impact assessment, attached at **Appendix 1**, indicates that based on this calculation, up to approximately £445k of costs per annum could shift from WCCG responsibility to WMBC responsibility by applying the tool as new cases are assessed and existing cases are reviewed on a case by case basis. Some of this will take effect as cases are reviewed in 2016/17.

Learning Disability Pooled Budget

3.9 Learning Disability Services are delivered through a pooled budget hosted and led by WMBC on behalf of both WMBC and the WCCG through a Section 75 agreement dated 2 December 2009 (“Section 75 agreement”). The pooled budget is monitored through the JCC.

3.10 At the JCC in August, WCCG presented a paper indicating that they believed that the CCG level of contribution was too high and sought JCC approval to request that the budget was reviewed to determine appropriate contributions.

3.11 The CCG has completed comparator data in relation to Continuing Healthcare Care (“CHC”) which has shown Walsall is an outlier in terms of spend and number of CHC approved individuals. However further comparator financial analysis has been requested to establish if Walsall does have a higher level of contribution to Learning Disability (“LD”) spend than other areas.

3.12 At the request of both partners a disaggregation exercise has been completed to understand how the partners contribute to the pooled budget and how that budget is spent.

3.13 The majority of the pooled budget relates to items that are relatively static, such as, staffing and a contribution to Adult Social Care overheads etc. The balancing budget continuously changes as it relates to individual package costs to meet assessed needs. The disaggregation exercise did not look to review and redefine the percentage split of individual package costs.

3.14 The outcome of this exercise was presented to JCC in September 2016. The disaggregation shows that that the CCG is contributing £1.577m more to the pooled budget than the costs identified. The reasons for the shift relate to:

- CHC cases within the pooled budget no longer meeting CHC criteria
- A reduction in overall overhead costs has resulted in a proportionate reduction in CCG contribution towards these costs

- It has been assumed that until the application of the joint process that costs relating to packages of care that are not eligible for CHC will be 100% Social Care funded.

3.15 At the end of 2015/16, in recognition that work was still ongoing to determine the true split of costs between partners, the Council accepted responsibility for the totality of the overspend on the pooled budget for that year. The historic agreement is that any overspend should be shared between partners based on their historic contribution to the total budget (27.90% for the CCG and 72.10% for the Council). The proportionate share of the 2015/16 total overspend (which was £740k) attributable to the CCG on this basis was £206k, however as set out the Council agreed to meet this overspend in full.

3.16 Any overspend in the final budget in 16/17 and going forward needs to be addressed in accordance with the new allocation of our contributions. In the current Section 75 agreement, this would be based on the revised contributions per partner (78.5% and 21.5%). At the current value of the forecast overspend for 2016/17 WCCG would therefore pay approximately £88k, but the final amount would be calculated at the year end. We will need to amend the Section 75 to reflect this new split and the way it should be applied to future under/overspends.

3.17 As previously indicated the disaggregation exercise did not look to review and redefine the percentage split of individual package costs. Moving forward it is accepted that the current method of determining cost apportionment for individual packages of care is not accurate nor transparent enough to provide assurance to both WMBC and WCCG that their investment is being apportioned appropriately, and as such the lead commissioner was asked to develop a joint funding process to establish future allocation of cost for individual care packages.

3.18 A proposed three stage process to allow a transparent allocation of contribution to support packages from the CCG and Local Authority and a rationale for calculating contributions in this way was developed, detailed at **Appendix 2**, and was endorsed at JCC to be trialled for a period of 6 months. A clinical post has now been advertised by the CCG to carry out the assessments in partnership with local authority care managers.

3.19 It is not known at this stage what the financial impact of the implementation of this joint process will be, however, this will be monitored monthly by the JCC. A Financial Impact Analysis will be produced at the end of the trial period and any likely significant shifts in cost will be reported to Cabinet.

Better Care Fund ("BCF")

3.20 WCCG have stated that they believe that WMBC utilise £1.8m of BCF funds to meet the cost of Long Term Social Care services that do not meet the objectives of the BCF and have therefore argued that the costs for this should be met by WMBC outside of the BCF and that the funds within the BCF could then be utilised to offset other CCG spend that does contribute to the BCF objectives i.e. SWIFT Ward.

3.21 WMBC does not accept that the £1.8m referred to by WCCG funds Long Term Social Care as claimed, but that it funds short term support to facilitate hospital

discharge, prevent hospital admissions and prevent long term social care placements, thus meeting the objectives of the BCF.

3.22 WMBC does not accept that the BCF should fund the SWIFT Ward or a sum equivalent to its costs, as it is a hospital ward, commissioned by the CCG and is not a model of delivery that WMBC would support.

3.23 There are a number of matters that we should consider when reviewing the BCF allocations:

- Adult Social Care (ASC) is entitled to a minimum allocation in the BCF of £6.9m to protect adult social care.

- A business case to remodel intermediate care and reablement is being developed through the Walsall Together Programme. We believe this will release savings for the WMBC and WCCG.

- WMBC need to realise £900k savings through the remodelling of Intermediate Care to meet our budget settlement. We accept that the CCG will wish to release savings from their investment in Intermediate Care services too.

3.24 WMBC therefore proposes that the business case for Intermediate Care informs the next planning round of the BCF and those savings are released through that work.

Continuing Healthcare

3.25 WCCG does not benchmark well with comparator CCG's in regard to levels of CHC commitment, with the current level of funded adult clients in this category being 178 per 100,000 compared to a regional average of 140 per 100,000.

3.26 This indicates that a potentially disproportionate number of clients have been supported via this route at an enhanced level of funding and therefore WCCG have stated that they must develop an action plan to address.

3.27 The council accepts that WCCG is a regional outlier for CHC allocation to individuals and that WCCG may seek to develop an action plan to bring their spend in-line with comparator CCG's. There is a risk that this may result in costs previously met through CHC transferring to WMBC.

3.28 It has been agreed that WCCG will share this plan with WMBC and that WMBC will work in partnership to ensure that costs of individual packages are apportioned appropriately in line with legislation, guidance and best practice.

4. Council priorities

The partnership arrangements with WCCG contributes to the Council priority for *Improving health and wellbeing, including independence for older people and the protection of vulnerable people*. The way it does this is through providing information, advice, assessment, support planning and support packages to adults with eligible mental health and learning disability needs.

5. Risk management

5.1 WCCG are currently stating that it has been there intention to reduce their LD pooled budget contribution since 2015/16 and that adequate notice has been given to WMBC through the JCC to do so. Therefore, WCCG may seek for the reduction in contribution to be implemented from April 2016.

5.2 It is the belief of WMBC that previous arrangements in relation to the pooled budget should be honoured until evidence that a reduction in contribution could be considered. This evidence was first presented at the September JCC and has been presented for decision to the first Cabinet after it was produced. WMBC therefore conclude and recommend to Cabinet that the reduction to the pooled budget, if agreed, should be implemented from 27th October 2016.

5.3 If the Board of Governors at WCCG do not agree with this recommendation there is a risk that appropriate dispute resolution procedures may need to be instigated.

6. Financial implications

6.1 It is recognised that the adoption of the S117 Protocol will potentially lead to additional costs during 2016/17, however until the tool has been embedded it is not possible to identify the exact part year financial impact (as this will be dependent on the timing of individual reviews against the protocol).

6.2 In relation to the CCG reduction in its contribution to the learning disability pooled budget, assuming this is implemented from the date of the Cabinet decision the estimated part year cost for 2016/17 is £678k.

6.3 Any financial impact of the above in 2016/17 is not currently included within the forecast position for the year that has been reported to date. As such for 2016/17 this would need to be funded from a further drawdown from general reserves, and work is currently being undertaken to identify options to replenish reserves to avoid any impact on the budget for 2017/18.

6.4 For 2017/18 onwards the implementation of the S117 Joint Protocol, and the reduction in the CCG contribution to the learning disability pooled budget is likely to see a full year increase in costs to the Council of circa £2.022m, and this impact is being planned for as part of the budget setting process.

7. Legal implications

7.1 If the recommendations are agreed, it will be necessary to undertake a variation to the relevant partnership agreement(s) s75 that sets out the terms of the learning disability pooled budget. The Council's Legal Services Team are to be consulted in relation to the form of the variation to the relevant partnership agreement(s). will assist with developing such a variation to the agreement.

7.2 Legal Services will work with officers to ensure that all necessary legal processes will be in place to minimise the risk to the Council, whilst ensuring that the processes are not onerous.

7.3 If the Board of Governors at WCCG do not agree with these recommendations there is a risk that dispute resolution procedures may need to be instigated. Legal advice will be sought to ensure that the interests of WMBC are adequately represented and that the process is fair and transparent.

8. Health and wellbeing implications

There will be no adverse implications from the recommendations to services provided to adults with a learning disability or mental health need. WMBC and WCCG will continue to commission services to provide information, advice, assessment, support planning and packages of support to adults with eligible learning disability and mental health needs.

9. Staffing implications

There are no direct staffing implications for the Council.

10. Equality implications

There are no equality impacts arising from the recommendations. Health and social care services provided through S117 aftercare and the LD Pooled budget must be sensitive and ensure they address the different needs of all of the community. The shift in cost between Commissioners should not have an impact on the services that are delivered.

11. Consultation

There is no requirement to consult.

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18 October 2016

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18 October 2016

Appendix 1

Financial Impact Assessment on both Walsall CCG and Walsall council of employing Mental Health s117 funding tool (based on East Staffs integrated assessment tool)

Option 4 - Model which scores only relevant and weighted domains

	Current CCG funded care		Current ASC funded care		
Type of package	**CCG funded (FYE)**	**ASC funded (FYE)**	**CCG funded (FNC or joint funding) (FYE)**		**ASC funded (FYE**
Step down from hospital - rehab placements					
Existing cost	641,238	0			
Proposed cost after applying s117 tool	147,609	493,629			
Increase (+), reduction (-)	**-493,629**	**493,629**			
CBU >65					
Existing cost	780,052	0	73,125	**FNC effec**	671,507
Proposed cost after applying s117 tool	582,308	197,744	552,394		192,239
Increase (+), reduction (-)	**-197,744**	**197,744**	**479,269**		**-479,269**
CBU <65					
Existing cost	252,259	0	0		0
Proposed cost after applying s117 tool	128,423	123,836	0		0
Increase (+), reduction (-)	**-123,836**	**123,836**	**0**		**0**
Supported Living					
Existing cost	400,716	0	0		0
Proposed cost after applying s117 tool	203,027	197,689	0		0
Increase (+), reduction (-)	**-197,689**	**197,689**	**0**		**0**
>65 Nursing					
Existing cost			162,500	**FNC effec**	406,046
Proposed cost after applying s117 tool			160,735		407,811
Increase (+), reduction (-)			**-1,765**		**1,765**
<65 Nursing					
Existing cost			75,712	**FNC effec**	374,186
Proposed cost after applying s117 tool			74,109		375,789
Increase (+), reduction (-)			**-1,603**		**1,603**
<65 Residential					
Existing cost			0		224,511
Proposed cost after applying s117 tool			55,593		168,917
Increase (+), reduction (-)			**55,593**		**-55,593**
>65 Residential					
Existing cost			0		421,917
Proposed cost after applying s117 tool			80,002		341,914
Increase (+), reduction (-)			**80,002**		**-80,002**
Rehab (Lonsdale House)					
Existing cost			65,859		98,789
Proposed cost after applying s117 tool			21,404		143,243
Increase (+), reduction (-)			**-44,455**		**44,455**

Appendix 2

Report to the Joint Commissioning Committee 19/09/2016
Joint Funding Process for Learning Disabilities

Background

Learning Disability Services are delivered through a pooled budget led by the Council on behalf of the CCG through a Section 75 agreement. In recent years at the request of both partners a disaggregation exercise has been completed to understand how the partners contribute to the pooled budget. This leads to clearly identified Local Authority funding, CCG funding and areas of joint funding.
The majority of joint funded areas are allocated on a percentage basis and agreed by both partners. This is shown in a separate report on 2016/17 disaggregation. The balancing allocation of CCG funding has traditionally been held against the highest cost cases on an incremental basis. Moving forward it is accepted that this is not accurate enough or transparent enough to justify the level of CCG investment. The lead Commissioner was asked to develop a joint funding process to be applied to establish allocation of funding against care packages.

Approach

This report sets out the proposed three stage process to allow a transparent allocation of contribution to support packages from the CCG and Local Authority and a rationale for calculating contributions in this way. The three stage process that is proposed:

1. The support package is costed in three component parts
2. The type of support package is identified
3. The decision making is split into 2 components. The first is ensuring all the preparation and appropriate challenge has been completed to reduce the potential cost of the package to both parties.

This process would be tested out with the following cohorts

- Original CHC group reassessed as no longer meeting CHC
- All individuals assessed as no longer meeting CHC in the last twelve months and now funded by local authority
- All Forensic and In-Patient Step-Down clients
- Once filtered for the above any remaining of the top 30 high cost packages

After a period to be agreed, it is proposed that the process is reviewed, the learning is applied, the process adjusted if necessary, and applied to the remaining clients with a costed package within the pooled budget. This should then be subject to annual review.

Timescales for implementation of this process are dependent on the CCG providing a clinical assessor and the local authority providing experienced Care Managers
A risk to this approach is that initially it had been agreed that a clinical nurse post would be recruited to support this strategy; this post would help develop the process and carry out the joint funding assessments along with taking on the Clinical role at CTR's and providing clinical input to clinical specification and pathway reviews. Unfortunately, we were not able to appoint and this is currently being reviewed. No other clinical support has been made available and therefore the lead commissioner

has completed the work to prevent further delay recognising the financial pressures on both parties.

Recommendations

1. **JCC approve the implementation of the Joint Funding Process for LD.**
2. **Local Authority and CCG provide operational staff to complete the assessments.**
3. **Lead Commissioner provides update reports on outcomes to JCC and Finance leads on a monthly.**

Draft Joint Funding Process - Learning Disabilities

Process to be completed by Local Authority Care Manager and Clinical Assessor.

Total Cost of Package.

For joint Funding Consideration the package should be broken down into three components:

- Basic cost
- Additional hours of support (1-1, 2-1 etc.)
- Specialist costs and equipment

Types of Package

- Registered Care – Possible Joint Funding
- Registered Nursing Care - Possible Joint Funding
- In Patient Bed – CCG funded
- Supported Living - Possible Joint Funding
- Community Based Support - Possible Joint Funding
- Building Based Day Care - Possible Joint Funding
- Residential College Placement/Educational Placement - Possible Joint Funding

Decision Making

Decision making is split into 2 parts – Part A (Preparation) & Part B (Allocation of Funding)

A - Preparation

Challenge Questions

- A1 - Have all commissioned Prevention services, Information and Advice been offered before establishing eligible need and a costed support plan

- A2 - Confirmation that the client is ‘usually resident in Walsall’ and/or has a Walsall GP for’ responsible commissioner’ and is our funding responsibility. (If unsure check with Complex Needs Commissioners)

- A3 - If local, have all the specialist LD health services provided by the BCPFT been utilised

- A4 - If out of area, are there specialist health services being delivered by the provider that should be provided by specialist health services in that area

- A5 - Are there any health services being delivered by the provider that should be delivered through Primary or Secondary Health Care
- A6 - Has the DST been applied for CHC and full consideration been given

If answering NO to A1, A2, A3 or A6 or YES to A4 or A5, take action and adjust package costs accordingly.

Once preparation is complete move on to Part B

B - Establishing Joint Funding

- Registered Care – Establish clinical elements of package including, managing behaviour and Mental Health including requirement for specialist trained staff, if identified 25% contribution to basic cost of Care Package by CCG. If this is a forensic package with specialist provision and where relevant home office approval for sex offender, paedophile, fire starter, violent behaviour or other offending behaviours CCG contribution is increased to 50%.

- Registered Nursing Care – As with Registered Care except deduct Funded Nursing Care Contribution from any identified CCG contribution

- Supported Living - Establish clinical elements of package including Managing behaviour and Mental Health including requirement for specialist trained staff, if identified 25% contribution to basic cost of Care Package by CCG. If this is a forensic package with specialist provision and where relevant home office approval for sex offender, paedophile, fire starter, violent behaviour or other offending behaviours CCG contribution is increased to 50%.

- Community Based Support – This package will be costed on hourly rates, if package requires highly trained specialist staff linked to clinical interventions, calculate difference between standard hourly rate and specialist rate as set out in the provider's contract and CCG will contribute the difference between the 2 rate.

- Building Based Day Care - Establish clinical elements of package including Managing behaviour and Mental Health including requirement for specialist trained staff, if identified 25% contribution to basic cost of Care Package by CCG. If this is a forensic package with specialist provision and where relevant home office approval for sex offender, paedophile, fire starter, violent

behaviour or other offending behaviours CCG contribution is increased to 50%.

- Residential College Placement / Educational Placement – There should be an Educational Health Care Plan, once the cost of the Educational component has been calculated (This includes educational elements of residential provision e.g. Teaching Life Skills), at present the remaining Care Component is either paid by CCG if it meets CHC or Local authority if not CHC. Apply the rules for Registered Care and Building Based Day Care to establish a CCG contribution.

- Additional Hours – Are the additional hours a result of a clinical risk assessment, for example:
  - Discharge from an Inpatient bed,
  - Epilepsy and additional observations,
  - MAPPA trained staff required to carry out a prescribed physical intervention
  - Safely carry out a clinical intervention

  If YES to above, CCG fund this as part of joint funding, otherwise funded by Council.

- Specialist Costs and Equipment - Specialist Equipment should be provided through Integrated Community Equipment Service or Medical loans. Other identified specialist costs should be considered on their own merit if separated out within the support plan establishing the clinical elements as set out above for other packages. E.g. A number of Counselling / Therapy sessions in relation to Anger Management, Self Harm or Abuse. If all the preparation set out in A is completed this should be rare.