

Cabinet – 18 March 2020

Provider Section 75 Agreement – Walsall Healthcare NHS Trust and Walsall Council

Portfolio: Councillor Rose Martin, Adult Social Care

Related portfolio: Councillor Bal Chatta

Service: Adult Social Care

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

- 1.1 The aim of this report is to seek authority for the Council to enter into a Section 75 agreement (the 'Agreement') with Walsall Healthcare NHS Trust (the 'Trust') to allow integrated joint working for NHS and local authority related functions, within a defined governance structure and level of formality between the partners, allowing, for expansion and further services to be added at future points in time.

2. Summary

- 2.1 The report seeks to inform Cabinet of the detail regarding the proposal for entering into the Agreement as part of the 'Walsall Together Programme'.
- 2.2 This is a key decision affecting more than two wards.
- 2.3 Section 75 of the National Health Service Act 2006 empowers Local Authorities and National Health Service (NHS) bodies to enter into partnership arrangements in relation to prescribed NHS and local authority related functions, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.
- 2.4 The Walsall Health and Care system partners are developing new integrated ways of working to improve the health and wellbeing outcomes of their population, increase the quality of care provided, and provide long term financial sustainability for the system. The "Walsall Together" partners will align non-acute services in the community to meet these objectives.
- 2.5 The Trust will act as the "Host" and as such lead body to be accountable for the services in the Agreement's scope and the overall transformation of health and wellbeing outcomes for Walsall people.

2.6 On 13 February 2019, Cabinet approved the formation of a Section 75 agreement during 2019/20 and for the Executive Director of Adult Social Care to bring that back to Cabinet for consideration. The form of the agreement has now been agreed with the Trust and sets out the partners duties, how staff will be managed, and how financial and performance accountability be achieved.

2.7 With effect from 1 April 2020 the main changes are as follows:

- The Director of Adult Social Care will have dual line management responsibility and will report into the Executive Director of Integration at Walsall NHS Healthcare Trust as well as reporting to the Executive Director of Adult Social Care.
- Co-location of Council Adult Social Care staff and Trust staff into locality bases.
- There will be no transfer of funding, and pooling budgets between the Council and Trust.
- The initial term of the Agreement will be for 5 years from 1 April 2020 until 31 March 2025, with an option to extend the arrangement for up to a further 5 years.

2.8 The Agreement has flexibility and allows for future changes, additions of services and evolution of the Walsall Together Alliance. Any future changes will be subject to further Cabinet agreement.

3. Recommendations

3.1 Following consideration of the confidential information in the private session of the agenda, that Cabinet:

- a) Authorises the Executive Director for Adult Social Care to enter into an agreement pursuant to Section 75 of the NHS Act 2006 with Walsall Healthcare NHS Trust for an initial term of 5 years, from 1 April 2020 until 31 March 2025, with an option to extend the arrangements for up to a further 5 years.
- b) Delegates authority to the Executive Director Adult Social Care, in consultation with the portfolio holder, to make minor amendments to the Section 75 agreement.
- c) Approves any changes to the Section 75 agreement as part of future phases of the Walsall Together Programme.

4. Report detail - know

Context

4.1 Appendix A to this report sets out the key components of the Agreement

Council Corporate Plan priorities

4.2 The integration of health and social care delivery is in line with the following Council Corporate priorities:

- *People: have increased independence, improved health and can positively contribute to their communities.*

- *Communities: are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.*

Risk Management

- 4.3 The Agreement has been drafted to ensure that both parties can have confidence that arrangements are in place to manage resources effectively and deliver a shared agenda.
- 4.4 Each service schedule to be added to the Agreement, will have a risk register setting out known risks and mitigating actions.

Financial Implications

- 4.5 The Agreement does not immediately require the Council to transfer funding into a pooled fund and therefore does not place the Council into any form of financial risk sharing with the Trust, with both partners continuing to have ownership, control and responsibility of their own funding and budgets.
- 4.6 However as part of these joint working arrangements, the Trust will have visibility of a number of Adult Social Care Budgets, which will be reported to the CPPRM (Contract Performance and Partnership Review Meeting) and ICP (Integrated Care Partnership) Board. As a result the Trust, through the governance arrangements of the Agreement will have some influence over Adult Social Care budgets, but will not have any decision making power over them. The Council will continue to be free and have control to set and amend its budgets which form part of this agreement, as it may require.
- 4.7 Any proposed changes to the above financial arrangements will be brought to Cabinet for consideration and approval.

Adult Social Care Budgets to be aligned

- 4.8 It is proposed that all staffing areas reporting to the Director of Social Care are aligned as follows:
 - Assessment and Care Management including 4 locality teams, the Mental Health Team and the Complex Team and Strategic Safeguarding and Partnerships;
 - Intermediate Care service. A multi-disciplinary team operated jointly between Walsall Healthcare NHS Trust and Walsall Adult Social Care;
 - Resources to include Goscote, Shared Lives, Employment services and Emergency Duty Team.

Demand Management Budgets

- 4.9 It is intended that Walsall Council will continue to commission and procure this expenditure but the Trust will have management oversight of this area through the CPPRM.
 - Intermediate Care
 - Rapid Response

- Transitional Care Support Team
- Residential and Nursing Care
- Direct Payments
- Domiciliary Care Expenditure
- Supported Living Expenditure
- Extra Care Housing
- Payments to Shared Lives Carers

Adult Social Care Budgets excluded

4.10 It is intended that the following areas of Adult Social Care budgets are excluded:

- Non-staffing budgets for aligned areas
- All income
- SLAs for preventative services e.g. Carers
- Support functions e.g. Brokerage, Business Support, Performance and Programme Management
- IBCF (Improved Better Care Fund)
- Senior Management Team
- Housing 21 contract

4.11 The total of the aligned budgets and those with management oversight is expenditure of £85.098m.

4.12 In future phases of the programme it is intended to develop service level agreements between the support functions such as Brokerage, Business Support, and Performance and Programme Management to clearly define service levels to the host organisation.

Legal Implications

4.13 Section 75 of the National Health Service Act 2006 permits local authorities and NHS bodies to enter into partnership arrangements in relation to prescribed functions of NHS bodies and prescribed health-related functions of local authorities, whereby.

4.14 The partners agree that certain functions of one partner may be delivered by the other subject to agreed terms of delegation to achieve the partnership objectives, although ultimate accountability rests with the original partner.

4.15 The Agreement has been drafted by external legal advisors (with the approval of Legal services) on behalf of the Council and reviewed by the Trust and its legal advisors. The form of the agreement is consistent with legislative requirements and guidance on Section 75 agreements produced by the Audit Commission. The Agreement will put in place an agreed framework for partnership working and set out clear roles, responsibilities, duties and liabilities for both parties.

- 4.16 The proposed term for the Agreement will be for 5 years from 1 April 2020 with the potential to extend for another 5 years; a summary of the core terms of the agreement is set out in Table 1, below

Table 1 – Scope of Agreement

Interpretation, Duration, Partnership Arrangements, Functions, Basic Commitments of the Partners
Pooled Funds and Funding, Governance, Finances, Financial Reporting, Liabilities
Insurance, Joint Working Protocols, Standards of Conduct and Service
General Service Standards, Equality and Equal Opportunities, Deprivation of Liberty Safeguards
Quarterly Reporting and Review, Annual Review and Reporting, Changes in Law
Substandard Performance, Monitoring Arrangements, Complaints, Management of Serious Incidents
Information Sharing, Public Relations, Winding Down Arrangements
Termination, Confidentiality, Freedom of Information and Environmental Information
Ombudsman, Entire Agreement, Governing Law, No Partnership, Notice
Severance, Waiver, Contracts (Rights of Third Parties) Act 1999, Good Faith, Counterparts

- 4.17 The Agreement will contain a number of separate Service Schedules which will be reviewed annually.
- 4.18 Legal Services will be consulted regarding any changes required to the Council's constitution to ensure alignment with the Section 75 agreement.

Procurement Implications/Social Value

- 4.19 Subsequent phases of the Walsall Together programme will have procurement implications for the Council and Cabinet will receive further updates as appropriate.

Property Implications

- 4.20 There are no property implications arising directly from this report, however through transformation activity in 2020/2021 any potential implications on the Council's existing property portfolio will start to be considered, as well the future estate needs of the partnership. An estate strategy focused upon delivery of services will be necessary and it will be important that this is designed in line with the Council's Proud Programme and its theme 'Optimising Assets' which in itself will be preparing options for how the Council's estate will need to be utilised in the future.
- 4.21 Premises will be adapted for co-location and locality access with likely shorter-term accommodation requirements arising from this new way of working. There could therefore be some short-term property implications ahead of a wider estate strategy being developed. Therefore any requirements will need to be considered on a case-by-case basis and decisions relating to the Council's property assets made in accordance with local governance arrangements and the Scheme of Delegations.

Health and Wellbeing Implications

- 4.22 The main aim of this arrangement is to enhance the health and wellbeing of Walsall people. This is based on the partners to the Agreement moving to a population based management style whereby they are collectively responsible for enhancing the health and wellbeing of local residents.

Staffing Implications

- 4.23 The Council's Director of Adult Services will have a dual reporting line to the Trust's Executive Director of Integration and operate in that senior team but retain all accountability for the Council's statutory delivery, performance, staff and finances to the Executive Director of Adult Social Care. This arrangement will take effect from 1 April 2020 or as soon as practically possible. The Director of Social Care will remain a Council employee on a Council employment contract on existing terms and conditions but will be seconded to the Trust.
- 4.24 The Director of Social Care will have regular management meetings with Trust's Executive Director of Integration and be part of the Trust's Management Team. The Director of Social Care will become aligned to the senior management structure within the Trust.
- 4.25 It is proposed that all staffing areas reporting to the Director of Social Care are aligned as follows:
- Assessment and Care Management including 4 locality teams, the Mental Health Team and the Complex Team and Strategic Safeguarding and Partnerships.
 - Intermediate Care service. A multi-disciplinary team operated jointly between Walsall Healthcare NHS Trust and Walsall Adult Social Care.
 - Resources to include Goscote, Shared Lives, Employment services and Emergency Duty Team.
- 4.26 The services to be managed by the Agreement relate to staff employed across a diverse range of Council teams. These staff will remain reporting to current managers although the Trust will act as the lead agency in the Walsall Together programme will have overall accountability for such Council staff via a virtual senior team.
- 4.27 Arrangements will be put into place to enable staff to be managed in an integrated way

Reducing Inequalities

- 4.28 The main purpose of the Agreement is to reduce the health and life opportunity inequalities of Walsall residents.
- 4.29 Comprehensive Equality Impact Assessments will be produced at each stage of proposed service changes to inform the impact of this development; and be further informed by the public engagement and consultation phase.

Consultation

- 4.30 There has been no specific consultation about the development of the Agreement which, in part, regularises arrangements that are already in place. However there was extensive consultation with service users, carers, service providers, voluntary sector other interested stakeholders on the Walsall Together Programme.
- 4.31 Staff will be engaged and enabled to support the improvements planned as and when there are changes which affect them.
- 4.32 A specific briefing session took place for Cabinet, CMT, Council and NHS stakeholders on 12 February 2020 at which no concerns were raised about the proposal that is the subject matter of this report.
- 4.33 A specific briefing session took place for key NHS and Council staff on 14 February 2020. A further series of staff briefings will take place during March 2020.

5. Decide

- 5.1 Various Health and Social Care integration models were examined as part of the Walsall Together Programme. The chosen model of a Section 75 agreement between the Council and the Trust was deemed most appropriate for the first phase of the programme. Further phases will be required for Walsall Clinical Commissioning Group, Dudley and Walsall Mental Health NHS Trust, Walsall Council Public Health, Walsall Council Children's Services and One Walsall as the programme develops

6. Respond

- 6.1 The new arrangements will be implemented on 1 April 2020.

7. Review

- 7.1 Quarterly reviews will be undertaken by the CPPRM
- 7.2 Annual reviews will take place before 3 months of the year end to include:
- An evaluation of performance against agreed performance measures targets and priorities agreed by the Joint Contract Review Meeting;
 - How far the aims of the Agreement are being achieved;
 - The extent to which the exercise of the flexibilities in Section 75 of the National Health Service Act 2006 is the reason for improved performance, or a reduction in the performance of the services;
 - How the partnership arrangements compare with the previous arrangements and other approaches to providing the services;
 - A review of the targets;
 - Service changes proposed;
 - Shared learning and apportionments for joint training;
 - An evaluation of any statistics or information required to be kept by the Department of Health from time to time;
 - The functions of each partner that have been carried out by the other partner; and,
 - Updating and refreshment of the services and Financial information contained within the Agreement

7.3 The Council and the Trust shall prepare a joint annual report documenting the matters referred to above.

Background papers

None

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Paula Furnival

Executive Director – Adult Social Care

9 March 2020



Councillor Rose Martin

Portfolio holder Adult Social Care

9 March 2020

Appendix 1 – Key elements of the Section 75 agreement

Structure of the agreement	<p>The agreement allows for a level of formality between Walsall Council and Walsall Healthcare NHS Trust that allows for expansion and further services to be added at future points in time. The agreement is also future proof in reflecting national policy changes. Walsall Healthcare NHS Trust will manage the aligned services and the Council will monitor the performance of the Trust through the Contract Performance and Partnership Review Meetings (CPPRM).</p>
Strategic Governance	<p>The Integrated Care Partnership Board (ICP) role is one of oversight and assurance and the CPPRM deals with day to day management of the agreement. Governance in relation to each organisation's decision making process has to go through the existing governance arrangements of each organisation.</p> <p>Both the Council and Walsall Healthcare NHS Trust have internal governance processes and will work to existing schemes of delegation and Standard Financial Instructions.</p> <p>Walsall Healthcare NHS Trust has provided a vehicle for governance of the Integrated Care Partnership (ICP) by establishing the ICP (Integrated Care Partnership Board) Board within the framework of its existing corporate structure.</p> <p>The ICP board is the governance mechanism for the whole Walsall Together partnership including multiple organisations. The ICP oversees the wider Walsall Together Programme.</p> <p>The ICP Board will meet at least at least quarterly. The role of the Board will be to:</p> <ul style="list-style-type: none">a) Provide strategic direction on the overall programme and Individual Services.b) Receive reports on the financial and service performance of the programme.c) Review the operation of this Agreement and performance of the Individual Services.d) Agree such variations to this Agreement from time to time as it thinks fit, within the authority delegated to its members by the respective Partners.e) Review and agree annually revised Schedules as necessary; <p>Officers on the ICP Board will be able to make decisions consistent with the authority delegated to them by their employing organisation.</p>
Management of the S75 agreement	<p>The management of the Section 75 agreement will be the responsibility of:</p> <p>Director of Commissioning – Walsall Council Executive Director of Integration – Walsall Healthcare Trust</p>

Role of Director of Integration (Walsall Healthcare NHS Trust Employee)	Jointly manages Director of Operations (Walsall Healthcare NHS Trust) and Director of Social Care (Walsall Council).
Role of Director of Social Care (Walsall Council Employee)	<p>Director of Adult Social Care will :</p> <ul style="list-style-type: none"> • Manage the Council staff as part of the agreement • Be jointly managed by the Executive Director of Integration and the Executive Director of Adult Social Care • Remain on a Council employment contract on existing terms and conditions but be seconded to the Walsall Healthcare NHS Trust as soon as practical post 1 April. Variation to the Section 75 agreement will not be required to enable this to take place. • Have regular management meetings with the Executive Director of Integration and the Executive Director of Social Care and will become aligned to the senior management structure within Walsall Healthcare NHS Trust. • Have no responsibility for managing Walsall Healthcare NHS Trust staff.
Role of Director of Operations (Walsall NHS Trust employee)	Director of Operations manages Walsall Healthcare Trust Staff.
Management of Finance and Performance	<p>Commissioning oversight (both LA and CCG) of the partnership will be done through the CPPRM who will monitor finance and performance on a monthly basis. The CPPRM has a dedicated Terms of Reference.</p> <p>The CPPRM will provide day-to-day management oversight of the arrangements and scrutiny of the Trusts role as the host organisation.</p> <p>The CPPRM is an executive officer group and a Commissioner to Provider review meeting</p> <p>The CPPRM cannot issue direct instructions to the Council or Walsall Healthcare NHS Trust. The CPPRM allows for feed into the ICP Board for example escalation of issues etc but is not a formal decision making body in its own right. Escalation from the CPPRM meeting will go to the relevant Directorate Management Team who will resolve issues and make appropriate decisions.</p> <p>Contractual disputes are not dealt with by the CPPRM.</p> <p>The CPPRM is the main vehicle for managing the arrangement. The CPPRM review meeting will review the performance and quality of relevant services against the requirements of specified targets and standards, eg performance indicators in the Adult Social Care Outcomes framework.</p>

	<p>The CPPRM will have financial oversight of the arrangements and receive monthly budget monitoring information in relation to relevant services and report this back to the Council.</p> <p>There are no direct financial penalties for sub-standard performance</p> <p>The CPPRM will have oversight of any financial recovery plan but not implementation.</p>
Duration of agreement	The duration of the contract will be 5 years from 01/04/2020 to 31/3/2025 with the potential to add another 5 years at the 01/04/2025 unless formally terminated by either partner, after the initial 3-year period.
Statutory responsibilities	The Section 75 agreement does not impact upon the existing statutory responsibilities of the Council and Walsall Healthcare NHS Trust. Accountability for Adult Social Care remains with Executive Director Adult Social Care.
Dispute Resolution	<p>The Section 75 agreement contains specific dispute resolution procedures. The overarching principle is that disputes should be resolved promptly and amicably.</p> <p>In the event there is a dispute one party will serve notice on the other.</p>
Termination	<p>The agreement may be terminated by using the termination procedures although not in the first 3 years.</p> <p>In the event of either party deciding to terminate the agreement, the termination period will be 12 months.</p> <p>Termination can take place at any point due to a material breach of the agreement</p>
Budget alignment	There is an expectation that Walsall Healthcare NHS Trust will manage services as part of broader financial resources although cannot make decisions outside of delegated authority or existing governance arrangements of Walsall Council.
Review	The CPPRM will conduct quarterly and annual reviews.
Variation	Arrangements can be altered by both parties using the variation procedures.
Financial Risk sharing	There are no pooled budgets, transfers of funding or financial risk sharing between partners at this stage but the agreement makes provision for this in the future if both parties agree. Each partner is responsible for funding their own budget variations. Each partner will set its budget through their normal budget cycles which will inform the budget for the agreement in the coming year.

Staff Location	Walsall Council staff will remain in existing locations although this may change in the future. Each partner is responsible for each building. A 'heads of terms' will be developed for each building in a 'non-financial contributions' schedule of the Section 75 agreement.
Employment	<p>There is a delegation of functions from the Council to Walsall Healthcare NHS Trust in respect of certain services. There is joint employment and a joint working protocol but no formal secondee or joint funding of posts arrangements in this phase of the programme, although this may be considered in the future.</p> <p>Staff will remain as Council employees with the same terms and conditions and with the exception of the Director of Adult Social Care, will report to their existing line manager.</p>
Information Governance	<p>Detailed arrangements have been agreed between Adult Social Care - Walsall Council and Walsall Healthcare NHS Trust agreed between SIROs (Senior Information Risk Owner) and DPOs (Data Protection Officers) of both organisations.</p> <p>There will be an Initial data exchange agreement to cover the personal data that needs to be shared between the two parties in order to work in partnership and identify and deliver the services. Initially data will be shared in relation to :</p> <ul style="list-style-type: none"> • Employees • Employees' family, dependants and next of kin • Job applicants • Referees • Complainants and those involved in serious incidents • Patients • Carers/family members of patients: As above. • Any other Personal Data • Any other Special Category Data • Any other Clinical Data • Any other Corporate Data • Any other Anonymised Data <p>Both parties are responsible for ensuring data protection compliance and adhering to their obligations and responsibilities.</p> <p>The Walsall Information Governance Group (WIGG) overarching sharing agreement will form the main data sharing provisions as it defines the responsibilities of the signatory parties when undertaking data sharing. This agreement is signed by the Executive Director of Integration (Walsall Healthcare NHS Trust) and Caldicott Guardian and SIRO (Walsall Council).</p> <p>Each and every sharing initiative/project will require a data exchange agreement as per the overarching sharing protocol and will form a new schedule to the agreement.</p>

	<p>Initially staff will not be accessing each other's IT systems and information will be shared via MDT (Multi-Disciplinary Team) meetings. This will develop over time at which point Information Governance arrangements will be addressed.</p> <p>DPIAs (Data Protection Impact Assessments) will be considered for each data exchange agreement.</p> <p>Both Walsall Council and Walsall Healthcare NHS Trust are joint data controllers.</p> <p>Agreement that lawful basis for processing data are :</p> <ul style="list-style-type: none"> • Contract (art 6(1)(b)) and public task (art 6(1)(e)) for the normal personal data; and • Processing necessary for obligations relating to employment, social security and social protection (Art 9 (2)(b)) and processing is necessary for the assessment of the working capacity of the employee, the provision of health or social care or treatment or the management of health or social care systems and services (art 9(2)(h) for any special category data.
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