



Better Care Fund – Section 75 Agreement

1.0 SUMMARY

- 1.1 An agreement between the Clinical Commissioning Group (CCG) and the Council under Section 75 of the Health Services Act 2006 is required to define the legal framework for the partnership arrangements.
- 1.2 The agreement has been drafted in line with government guidance which has provided a standard template. The Health and Well Being Board is asked to recommend the agreement for signature by the CCG, and for sealing by the Council.

2.0 RECOMMENDATION

- 2.1 To recommend the Section 75 legal agreement for approval by the Governing Body of the CCG and the Council Cabinet.

3.0 HOSTING POOLED FUND

- 3.1 The recommendation for the Council to host the pooled budget has been accepted by Council Cabinet and the Governing Body of the CCG. Reporting of planned and actual expenditure by the Council will be part of a joint accountability framework. This decision makes it possible to finalise the Section 75 agreement.

4.0 SECTION 75 AGREEMENTS

- 4.1 Section 75 agreements for joint commissioning have been in place for some time in Walsall and so the legal teams of Walsall CCG and Walsall Council were asked to provide advice on the arrangements necessary to meet the combined aim to update previous Section 75 arrangements, and to establish a Pooled Budget for the Better Care Fund.

- 4.2 In Walsall, a partnership model for joint commissioning was established in 2009 whereby the majority of the service budgets of each agency have largely remained separate, but have been simultaneously the responsibility of a joint team of both health and social care commissioners. This has had a major benefit in that the budget responsibility has largely remained within each agency, whilst still achieving greater cost effectiveness and improved outcomes through a higher level of integration. Within this model, there were two pooled budgets under Section 75 of the National Health Act 2006, one for learning disability services and one for the Integrated Community Equipment Service, both hosted within the Council.
- 4.3 The agreement for this arrangement transferred from NHS Walsall to Walsall CCG when the CCG was established in April 2013, and the Joint Commissioning Unit was retained within the CCG local management structure. A recent independent review of the joint commissioning arrangements has concluded that there is a need to update this arrangement, and Walsall CCG and Walsall Council are therefore exploring further development of the model.
- 4.4 There is also now a new requirement to establish a pooled budget specifically for the Better Care Fund. The legal advice has been that updating the previous arrangements and creating a pooled budget for the BCF can be done by establishing three new agreements:
- a separate S75 agreement for the pooled budget for the BCF. This is needed because there are funding conditions for the BCF that do not apply to other pooled funds i.e. Pay for Performance Targets;
 - a further S75 agreement covering delegated transfer of statutory responsibility from one party to the other – either as a pooled budget or as a S256 transfer. This is needed because the separate Section 75 agreement for the Learning Disability pooled budget will be continuing, and to allow for other pooled funds under delegated transfer of statutory responsibility to be created if appropriate – this will also cover where there is delegation without a pooled fund (e.g. for continuing health care payments that are channelled to providers via Council payment systems); and
 - a framework agreement covering transfers of funding that are not a delegated transfer of statutory responsibility . These will all be transfers of funding under Section 256 of the National Health Act 2006, for instance relating to some grant payments from the CCG to voluntary agencies that are channelled via Council payment and procurement systems.
- 4.5 The Department of Health requires the Section 75 agreement for the Better Care Fund to be finalised by the deadline of 23 April 2015 to enable the transfer of funding from the Clinical Commissioning Group to the Council as the host agency for the pooled budget to take place.

To that end, the legal teams for the Council and the CCG have been drafting the agreement since the decision was taken that the Council will host the pooled fund and based on government guidance issued at the end of March 2015. The final version of the agreement will be sent separately to the members of the Health and Well Being Board.

- 4.6 The agreement follows a template that was prepared by Bevan Britten, and has a series of terms and conditions which form the actual agreement, and then a set of schedules as follows:

Ref	Schedule
1	<p>The Better Care Fund</p> <p>This schedule sets out the financial arrangements for the Better Care Fund.</p>
2	<p>Better Care Fund Work-streams</p> <p>The schedule summarises the work-streams. There are eight in the Walsall Plan as follows:</p> <ul style="list-style-type: none"> Community Integration Transitional Care Pathways Assistive Technology Dementia Care Mental Health Services Support to Carers Long Term Social Care Voluntary Sector
3	<p>Governance Arrangements</p> <p>This schedule describes the role of the Joint Commissioning Committee as the Partnership Board with delegated authority for overseeing the Better Care Fund arrangements reporting to the Health and Well Being Board. Delegated authority is via the Accountable Officer of the CCG, and the Executive Director for the Council, in line with the delegated authority policies and procedures of each agency.</p> <p>Where decisions are required to be taken by the Governing Body of the CCG and the Council Cabinet, then these decisions will be as recommended via the Health and Well Being Board.</p>
4	<p>Risk Share and Overspends</p> <p>This schedule sets out the arrangements for the Payment for Performance Fund and the agreement for sharing risk associated with overspends within the Better Care Fund.</p>

	<p><i>N.B. the Payment for Performance Fund is a sum that is agreed between the partners (i.e. the CCG and the Council), and is held back as a contingency in the event that the target for reducing emergency admissions to hospital is not met. Should this be the case, then the CCG will determine how this funding will be spent, in agreement with the Council. In Walsall, the partners have agreed that this is a sum of £1,050,000, and the proposed use for this funding will be reported to the Health and Well Being Board.</i></p>
5	<p>Joint Working Obligations</p> <p>This schedule sets out the obligations of the Council as the host for the pooled fund (i.e. the lead commissioner), and the CCG (i.e. the other partner). The schedule therefore sets out at high level the joint accountability framework (see below).</p>
6	<p>Better Care Fund Plan</p> <p>This is the Walsall Plan as submitted in final form at December 2014, together with the Annexes.</p>
7	<p>Policy for the Management of Conflicts of Interest</p> <p>This will refer to the Nolan principles on public life, the relevant provisions of the Council's Code of Conduct for members and the CCG Code of Conduct for Governing Body Members and policies for managing conflicts of interest to the extent relevant.</p>
8	<p>Information Governance</p> <p>A data sharing protocol.</p>
9	<p>Performance Schedule</p> <p>This will describe the arrangements for joint performance monitoring of the BCF metrics.</p>

4.7 Work will continue to prepare the other Section 75 agreement that will include the arrangements for the pooled budget for learning disability services, and for an agreement over other financial transfers between the CCG and the Council. These arrangements will also be reported to the Health and Well Being Board in due course.

5.0 JOINT ACCOUNTABILITY FRAMEWORK

- 5.1 There is a need for clear accountability across the Council and the CCG which includes transparent reporting of expenditure against budgets; activity against targets; contractual arrangements; and risk management. In the case of funding for in-house Council services and funding for services currently within Walsall CCG block contracts with NHS providers this will mean clear and transparent reporting of activity levels and performance against the Better Care Fund metrics.
- 5.2 The plan for the BCF is complex and wide ranging because the redesign of the current health and social care system requires major structural change by way of a shift of emphasis from hospital based care to care in the community, and integration of services between primary care, social care, community health and mental health services. There is a need to:
- articulate the vision for the future of the health and social care system;
 - agree steps to achieving that vision over an agreed timescale;
 - develop demand and capacity trajectories within each BCF work-stream related to the achievement of performance metrics;
 - make explicit the impact on providers so that they can plan effectively for the change, and maintain financial viability;
 - for management of change capability and capacity to achieve the vision.
- 5.3 The plan has been divided into eight work-streams to provide a structure to this complex change process, and a means of reporting. Each work-stream is subsequently divided in to several elements, for instance the Assistive Technology work-stream has four sub elements “telehealth”; “telecare and the Independent Living Centre”; “Community Equipment Service”; and “Disabled Facilities Grant”. Each of these is a major element of work in its own right, and needs to be part of a joint accountability framework.
- 5.4 In preparation for this, progress on each work-stream for the BCF has been incorporated in to the CCG Programme Management Office reporting process. For each element within each work-stream there will be a PID with a clear outline plan, targets, metrics and timescales. This will cover activity commissioned by both the Council and the CCG and include delivery of services by the Council, NHS Trusts, primary care, and the independent and voluntary sector.

- 5.5 This will also be reported via the Council programme management process, and via the JCC to the Health and Well Being Board. Work is currently underway to define the elements within each work-stream in a way which will effectively set out the content of the plan for the BCF.
- 5.6 The combination of an overarching strategy for achieving the vision for health and social care in the future; the finalisation of the Section 75 agreement; establishing the financial and activity/metrics reporting; and setting out the detail of the eight work-streams as part of the PMO arrangements, will form the basis of the joint accountability framework.

6.0 CONCLUSION

- 6.1 Further progress has been made to clarify the financial support arrangements, governance arrangements, and on the Section 75 agreement.

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