

Executive Councillor

**Open Report on behalf of Glen Garrod,  
Executive Director of Adult Social Services**

Report to:	<b>Councillor Mrs PA Bradwell, Executive Councillor for Adult Care, Health and Children's Services</b>
Date:	<b>07 September 2016</b>
Subject:	<b>Approval for the continuation of a Partnership Agreement with Lincolnshire NHS Partnership Foundation Trust (LPFT) under Section 75 of the Health Act 2006 - Mental Health</b>
Decision Reference:	<b>I011994</b>
Key decision?	<b>Yes</b>

**Summary:**

The purpose of this report is to:

- Present an overview of the proposed partnership arrangements negotiated between Lincolnshire County Council (LCC) and Lincolnshire Partnership NHS Foundation Trust (LPFT) through a newly revised Section 75 (S75) Agreement contract for mental health services (18-64).
- Describe in brief the proposed S75 arrangements whereby responsibility for undertaking certain Adult Social Care (ASC) functions in respect of people with mental health needs are delegated to LPFT.
- Request that the Executive Councillor considers the content of this report and approves the entering into of a new S75 Agreement.

**Recommendation(s):**

That the Executive Councillor :-

- (i) Approves the continuation of partnership arrangements under Section 75 of the National Health Service Act 2006 between the County Council and Lincolnshire Partnership NHS Foundation Trust in respect of adults with mental health needs through a S75 Agreement based on the principles set out in this report and
- (ii) Delegates to the Executive Director Adult Social Services in consultation with the Executive Councillor for Adult Care, Health and Children's Services to determine the final form of the S75 Agreement and approve the entering into said Agreement.

**Alternatives Considered:**

Do nothing – existing contractual arrangements provide for expiry on 31 March 2017 so current arrangements will expire on that date. If they are not continued or replaced by amended arrangements responsibilities currently delegated by LCC to LPFT to complete assessments and deliver social care support to adults with mental health needs will revert back to the Council. The Council has had partnership arrangements for Adult Mental Health services to be delivered by LPFT since 2002 and has neither the resources nor the skills to support and administer this vital service. As a result both the Council and the people who use services would be placed at considerable risk.

**Reasons for Recommendation:**

Work to strengthen and finalise improvements to the S75 Agreement and associated documents (including contractual terms and conditions, the various schedules and associated financial arrangements) has now concluded. Therefore, a decision from the Executive Councillor is requested and recommended.

LCC colleagues have been working closely with LPFT colleagues for a number of months to re-negotiate the existing S75 Agreement and contractual arrangements in order to ensure that revised arrangements are fit for purpose and represent value for money.

The existing S75 Agreement has an expiry date of the end of March 2017 and the arrangements are currently being continued on existing terms pending sign off of the proposed new Agreement. Revised arrangements require approval and prompt implementation in order to ensure continued social care services are delivered to adults with mental health needs.

**1. Background**

The Council has completed negotiations for an updated partnership arrangement to replace the long standing S75 Agreement between Lincolnshire County Council (LCC) and the Lincolnshire Partnership NHS Foundation Trust (LPFT). S75 Agreements can be agreed for one or more of the following purposes:

- Pooled funds – the ability for partners to contribute agreed funds to a single pot, to be spent on agreed projects for designated services.
- Lead Commissioning – the partners can agree to delegate commissioning of a service to one lead organisation.
- Integrated provision – the partners can join together their staff, resources and management structures to integrate the provision of a service from managerial level to front line.

The S75 Agreement with LPFT for adult mental health creates integrated provision with LPFT taking on the exercise of specified Council functions and employing the staff to exercise the Council functions alongside health functions in the delivery of an integrated service.

The overarching aim of a S75 Agreement is to enable partners to join together to design and deliver improved, cost effective and modernised services around the needs of users and carers, and to allow organisations to work around their individual boundaries. These arrangements help to eliminate unnecessary gaps and duplications between services and reduce inequalities.

The existing S75 has been in place for a number of years, however the review carried out in 2014 identified a number of areas where service specifications were in need of update and this has given us opportunities to strengthen service delivery and outcomes for stakeholders.

Although not exhaustive the negotiations around implementing revised partnership arrangements have involved the following:

- Focussing the partnership outcomes on Prevention and Recovery
- Moving the Mental Health Promotion Fund specification from Schedule 2 to a Schedule of its own, now Schedule 3. This is BCF funding which is non recurrent and is used to fund projects within the Managed Care Network.
- Agreement of a risk share in terms of the Best Interest Assessor Service
- Updates to legislation and language
- In the delivery of all functions LPFT will use Mosaic as the recording system which will make activity and reporting much more transparent
- LPFT will carry out Quality Audits against the Quality Audit Standards
- LCC and LPFT will work in partnership over the next six months to develop an improved 24 hour Approved Mental Health Professional (AMHP) Function fit for Lincolnshire. The AMHP Function has also been given its own Schedule (Schedule 7) as this enables it to be treated as a separate service.
- Governance and Quality Assurance has been strengthened
- A Memorandum of Understanding will be added to Schedule 6
- Training will be shared / jointly commissioned where possible
- Safeguarding, Serious Incidents and legal emphasis has been made more prominent
- We will seek for LPFT to access LCC's Homecare contracts to improve service users ability to remain in the community and to reduce costs in direct payments.

These partnership arrangements take into account the need for both partners to ensure that services can be provided or commissioned in line with the Agreement. The framework allows for the Service Schedules to be routinely updated by means of formal contract variations, for example to include agreed budget figures for the new financial year or allow for changes in legislation.

Following negotiations the Agreement contains the following key components to ensure that they represent good value and protect the Council's position.

### ***Financial provisions***

Negotiations for the Agreement going forward have agreed the same level of funding with uplifts to cover the costs of increases to the usual cost of residential fees for the provision of mental health residential services. The current contract value is £5.659m.

The new arrangements detail a defined set of outputs and outcomes which include identified numbers of individuals to be supported, and a number of targets around the services to be delivered. The outputs have been agreed in partnership between LCC and LPFT and are related to the funding of the Agreement.

### ***Responsibility for functions***

LCC retains its duty to arrange the provision of Adult Social Care mental health functions for adults aged 18 to 64 years and equally important, retains accountability.

The S75 Agreement identifies in detail the statutory functions delegated to LPFT through the S75 Agreement but in general terms these include Adult Social Care assessments, carers assessments and financial assessments; support planning; self-directed support; reviews; transition planning; budget management; brokerage; and micro-commissioning. Commissioning remains the responsibility of LCC, and commissioning intentions will be shared with LPFT on a regular basis. As a result strategic direction will be set by LCC while direct purchasing will be carried out by LPFT in the form of brokerage and micro-commissioning or by individual service users via Personal Budgets.

The S75 Agreement specifies the ways in which LPFT will support LCC in fulfilling its duty by providing and arranging access to a range of provisions, which are outlined below:

- Prevention – LPFT will help service users gain access to information, advice, Assistive Technology, advocacy and involvement, peer support, and Primary Care Mental Health Services.
- Recovery – LPFT will provide early intervention, crisis management, and recovery support.
- Maintenance – LPFT will help service users gain access to day opportunities (including social and cultural activities), community support, short breaks, employment and other vocational opportunities, and residential provision.

Clearly in circumstances where the Council retains ultimate responsibility for a function but has delegated its exercise, suitable provisions need to be put in place to protect the Council should LPFT do something which gives rise to liability on the part of the Council. Appropriate indemnities are therefore part of the Agreement.

## **Governance**

Equally, if not more important for LCC, are the mechanisms available to LCC to monitor and performance manage the S75 Agreement.

Governance for, and oversight of, the S75 Agreement have been strengthened and will be carried out as follows:

- Mental Health Governance Board Meeting – monthly meeting between delegated officers of both LCC and LPFT to discuss performance, accountability and governance issues.
- Bi-monthly Legal and Safeguarding Meeting
- Authorised Officers LCC and LPFT 1:1 Monthly Meetings
- Introduction of Quality Assurance Audits
- Annual Joint Review

In addition to the above and via quarterly contract management and monitoring meetings, performance management will be examined across a number of matrices that demonstrate performance, competency, quality and service user outcomes. Requirements are detailed within the agreement.

## ***Term, termination and exit provisions***

It is proposed that the S75 Agreement will be for an initial period of three years until 31 March 2020 with an option to extend for a further two years. The Agreement could be terminated within that period by either party providing one year's notice is given. On termination, transition to new arrangements would be carried out. A one year notice period would be required in order to support a transition of this magnitude.

## **General**

In addition to the above, the Agreement aims to:

- Deliver the best possible social care, healthcare and wellbeing outcomes, including promoting equality.
- Provide the best possible health and social care provisions for adults aged 18 to 64 years with mental health needs.
- Commission health and social care services which deliver the agreed outcomes and that meet people's assessed needs, within a contracting framework which is flexible and provides the necessary protection for service users and carers.
- Ensure people with mental health needs who come within the remit of the Agreement are fully involved in all planning and support activities.
- Ensure that people who have an eligible Adult Social Care need but whose primary needs are not related to mental health, are supported appropriately through joint working arrangements with other social care practitioners.
- Ensure that people with mental health needs who come within the remit of the Agreement, and who have additional needs that are not related to

mental health are supported appropriately through joint working arrangements with other social care practitioners.

- Ensure that where a primary need cannot be determined, or where joint working is appropriate, a lead professional is appointed through discussion and negotiation with other practitioners.
- Ensure the best use of available resources to achieve these overarching aims.

In order to have the power to enter into an Agreement under S75 of the National Health Service Act 2006, the Council must have complied with a number of statutory pre-conditions. These are set out below along with commentary on how they have been met.

1. The parties must be able to show that such arrangements are likely to lead to an improvement in the way in which the NHS functions and the Council's transferred functions are exercised;

The new S75 Agreement and contractual arrangements will generate a number of improvements and benefits compared with previous arrangements. These include:

- Establishment of a robust and fit for purpose S75 Agreement and contract which provides clarity about local priorities for service provision and improvements.
- A strong focus on prevention and recovery.
- Improvements to existing working arrangements involving LCC and LPFT within a legally described and formalised framework.
- Clearly defined Adult Social Care functions which are delegated to LPFT including a single process to assess the needs of service users and to manage and deliver health and social care, thereby reducing levels of bureaucracy.
- Identification and effective management of financial resources and associated risks.
- Improved arrangements to deliver on the personalisation agenda through increased access to Personal Budgets thereby creating greater choice, personal control and responsibility and improving outcomes for people who use services and their carers.
- Supporting market development which is able to respond to the needs of local people in a flexible manner.
- Provision of rigorous governance arrangements.
- Implementation of clearly defined and measurable output and outcome performance reporting frameworks which will be reviewed through regular contract management arrangements.
- Easier identification of gaps in provision.
- Through partnership arrangements, the production of joined up strategies and the development of seamless Care Pathways.
- Flexibilities which will enable LCC and health partners to respond to changes in national and local policy directives, financial requirements and efficiencies.
- Flexibility to delegate additional services through the agreement.

2. The parties must consult such persons as appear to the NHS body and the local authority to be affected by such arrangements.

The proposals set out in this report do not change the way in which functions are exercised and services are provided at present in the sense that the S75 arrangements themselves already exist in the same form in terms of the extent of functions delegated and the services delivered in exercise of those functions. It does not therefore appear that persons are affected by the S75 proposals as such. To the effect that changes in service are proposed under the Section 75 arrangements these would be subject to separate consultation as appropriate.

In addition statutory Regulations set out certain matters that must be contained in any S75 Agreement as follows:

- the agreed aims and outcomes;
- the payments to be made by local authorities to the NHS bodies and how those payments may be varied;
- both the NHS functions and health-related functions to be exercised and the persons in respect of whom and the kinds of services in respect of which such functions may be exercised;
- the staff, goods, services or accommodation to be provided by the partners;.
- the duration of the arrangements and the provision for the review or variation or termination of the arrangements;
- the arrangements for monitoring the exercise by the NHS bodies of the health-related functions and the NHS functions; and
- in the case of the exercise of functions in respect of the provision of accommodation, the arrangements in place for determining the services in respect of which a user may be charged and for informing users about such charges;
- Where pooled funding arrangements are to be set up, further detailed requirements apply but that is not anticipated here.

These requirements have been met by the proposed S75 Agreement.

### *Equality Act 2010*

The Council needs to make sure that it complies with the public sector equality duty set out in S149 Equality Act 2010 when coming to a decision on the proposals. In doing so, the Executive Councillor as decision-maker must have due regard to the needs to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section

149(1). The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149(7).

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others.

A reference to conduct that is prohibited by or under this Act includes a reference to:

- (a) A breach of an equality clause or rule
- (b) A breach of a non-discrimination rule

It is important that the Executive Councillor is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.

To discharge the statutory duty the Executive Councillor must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

The continuation of S75 arrangements are not considered to raise any negative impacts on people with a protected characteristic. However, as services are delivered, commissioned, developed and changed under the S75 Agreement, LCC will ensure that those duties are fully taken into account in decision-making. LPFT themselves are a body covered by the Equality Act duty.



The new S75 Agreement and the changes in funding attached to the agreement will ultimately lead to significant changes in how services are delivered to people with a Mental Health need and an eligible Adult Social Care need in Lincolnshire. This will mean a number of changes for people who receive services and Carers. LCC and LPFT will work together alongside new and existing partners to ensure that these changes are consulted on as appropriate, that the impact of these changes are minimised or mitigated and that individuals are supported through any future transition.

### *Child Poverty Strategy*

The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.

Although the proposed S75 Agreement relates to adult mental health functions and there is a separate S75 Agreement relating to Child and Adolescent Mental Health Services, the support provided through the adult mental health S75 Agreement does impact on the lives of many children, as the individuals who receive assistance in relation to adult mental health issues are parents of children, or otherwise live in households where children are present.

### *Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS)*

The Council in exercising its functions must have regard to both the JSNA and the JHWS.

The services governed by the S75 Agreement for adult mental health have a positive direct impact on the health and wellbeing of people with mental health problems and the changes included in the new Agreement are considered to improve the exercise of the Council's functions and health functions in this regard.

### *Crime and Disorder*

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting

the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Adult mental health services can have a positive direct impact on the prevention of crime and disorder issues and it is expected that the changes made in the S75 Agreement will lead to improvements in the way services are delivered.

## **2. Conclusion**

In summary, the new arrangements established through the S75 will provide a clear picture regarding LPFT's performance, outcomes for people who use services and where investment is being spent each year. Furthermore, the S75 represents the commitment demonstrated by LCC and LPFT to continue working in partnership through a common vision of health and wellbeing that will meet local needs.

### **3. Legal Comments:**

The Council has power to enter into the proposed Agreement. The statutory pre-conditions to the entering into of a s75 Agreement and the matters that must be taken into account in reaching a decision are addressed in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor if it is within the budget.

### **4. Resource Comments:**

The current Section 75 Agreement can be funded within the available mental health budget. The new Section 75 agreement has not identified additional pressures which would lead to an increase in the budgetary requirement.

## **5. Consultation**

### **a) Has Local Member Been Consulted?**

n/a

### **b) Has Executive Councillor Been Consulted?**

Yes

### **c) Scrutiny Comments**

The Report will be considered by Adults Scrutiny Committee on 7<sup>th</sup> September 2016 and the comments of the Committee will be reported to the Executive Councillor.

#### **d) Policy Proofing Actions Required**

See the body of the Report

#### **6. Appendices**

None

#### **7. Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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