

**Open Report on behalf of Glen Garrod, Executive Director –
Adult Care and Community Wellbeing**

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| Report to: | Executive |
| Date: | 01 March 2022 |
| Subject: | Learning Disability - Section 75 Agreement |
| Decision Reference: | I025459 |
| Key decision? | Yes |

Summary:

A Section 75 Agreement is a legal, contractual agreement between local authorities and NHS bodies. It allows one party to delegate delivery of specified functions to the other party if those arrangements will lead to improved outcomes.

The Learning Disability (LD) Section 75 (S75) is a commissioning Section 75 and effectively creates a pooled budget, a lead commissioner and also provides for an integrated assessment and care management function for Adult Social Care and Continuing Health Care. Lincolnshire County Council (LCC) are the lead commissioner the host for the pooled budget and the associated integrated arrangements.

The Learning Disability Section 75 arrangements have been in place between LCC and the responsible Health commissioners for over a decade and delivers outcomes and value for money that would not be achieved in the absence of these arrangements.

The existing Learning Disability Section 75 agreement formally ends on 31 March 2022 and there is no provision to extend the existing agreement past this date. A new agreement will therefore need to be developed and agreed for 1 April 2022 in order that the benefits gained through these arrangements can continue.

This would be as existing with only such changes as are necessary to

- (i) adjust the finances to reflect the creation of a new Pooled Budget and
- (ii) provide a mechanism for further amendments to allow the development of a new Section 75 agreement for adults with complex needs subject to future agreement by LCC and NHS organisations.

Members are asked to consider the information contained in this report regarding current and proposed commissioning arrangements for Adult Learning Disability Services and approve the recommendations made herein.

Approval is therefore sought for the entering into of a Section 75 Agreement with the

Lincolnshire Clinical Commissioning Group (LCCG) for Learning Disability Services for a period of five-years commencing from on 01 April 2022 and with the opportunity to extend for a further two years subject to the agreement by both parties.

Executive should be made aware that the Section 75 agreement will also need the formal approval of the Lincolnshire CCG and that a parallel decision process is being progressed by health colleagues. The proposed Section 75 agreement includes a draft risk share agreement that sets out respective contributions to the pooled budget for 2022-23 which is also subject to agreement. The risk share agreement is agreed annually traditionally as a delegated decision.

Recommendation(s):

1. That the Executive approves the establishment of a Section 75 Agreement between LCC and Lincolnshire Clinical Commissioning Group for Adult Learning Disability services based on the principles set out in this report.
2. That the Executive approves the Executive Councillor for Adult Care & Community Wellbeing and the Director of Adult Social Services to agree the annual risk share agreement on behalf of the Council within the principles set out in the Section 75.

Alternatives Considered:

Do Nothing

'Doing nothing' would result in the Section 75 Agreement lapsing and would require that the Clinical Commissioning Groups take on the commissioning function for those eligible. This is not recommended as Clinical Commissioning Groups do not have the infrastructure in place to lead commissioning within the timescales, it would result in a duplication in commissioning activity, and it would miss an opportunity to provide an integrated health and care function which utilises the expertise of partner agencies. As a result, both the Council and the people who use services would be placed at considerable risk. There would also be additional costs for LCC as the current assessment and care management arrangements are shared 50/50.

Clinical Commissioning Groups have confirmed that they see LCC as best placed to lead the commissioning of the service.

Reasons for Recommendation:

The Learning Disability Section 75 agreement that facilitates a pooled budget and lead commissioner arrangements for adults with a learning disability who are eligible for Adult Social Care and/or Continuing Health Care (CHC,) including an integrated assessment and care management function, has been in place for over a decade and continues to deliver joined up outcomes for service users and good value for money for both LCC and LCCG.

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.

1. Background

Section 75 of the NHS Act 2006 allows partners (NHS bodies and councils) to contribute to a common fund which can be used to commission health or social care related services. This power allows a local authority to commission health services and NHS commissioners to commission social care.

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.

Lincolnshire has a strong history of integrated working across Specialist Adult Services.

- There is a high level of aligned funding facilitated via Lincolnshire's Better Care Funding arrangements.
- The Learning Disability Section 75 agreement facilitates a pooled budget and lead commissioner arrangements for adults with a learning disability who are eligible for Adult Social Care and/or Continuing Health Care (CHC,) including an integrated assessment and care management function. This allows a more joined up approach to the market management of care services provided by the independent sector, enhanced value for money by allowing the sharing of transactional costs and a more joined up experience for eligible people.
- The LCC Section 75 agreement with Lincolnshire Partnership NHS Foundation Trust (LPFT) is another example of integrated working, in place for adults aged 18 to 64 with a primary support reason of mental illness.

The above examples provide enhanced co-ordination of health and social care services, development of expertise in managing particular support needs, a more joined up approach to procurement and contract management. These arrangements help to eliminate unnecessary gaps and duplications between services and reduce inequalities. Most importantly, these benefits also lead to improved outcomes for service users.

LCCG have confirmed that their preference is to commence a new S75 Agreement with LCC for Learning Disability services with LCC continuing to act as lead commissioner and pooled budget manager. This would be as existing with only such changes as are necessary to adjust the finances to reflect the creation of a new Pooled Budget for people with complex needs subject to the future agreement by LCC and relevant NHS organisations.

Pooled Budget Risk Share Agreement

An element of the existing Learning Disability Section 75 agreement is a risk share agreement that is updated each year to confirm the value of the partner contributions to the pooled fund based on certain formula of how cases supported within the pooled fund should be funded and splitting the costs of the integrated assessment and care management function.

The LCCG contribution to the pooled budget in 2021/22 in relation to CHC related costs is circa £18.282million. With the increased cost of care and forecast growth, the forecast full year cost for health in 2022/23 is £19.546million. LCC's contribution for Adult Social Care related costs will be approximately £51.965million per annum and £14.593 million Better Care Fund. This provides an indicative 2022-23 S75 Pooled Budget of £86.104 million. The proposal includes a continuation of the £0.700million Better Care Fund risk share agreement. Full details of the risk share agreement are included within Appendix 8 of the proposed Section 75 agreement provided with this report.

It is proposed the Section 75 Agreement will be for an initial period of 5 years (2022/23, 2023/24, 2024/25, 2025/26, 2026/27). This can be extended upon the written agreement of both parties for an additional 2 years. The Agreement could be terminated by either party providing one year's notice, which would allow time to support a transition of this level.

Compliance with Statutory Pre-Conditions

In order to have the power to enter into a Section 75 Agreement 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 for Learning Disability Services:

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 health-related functions are exercised.

The Section 75 Agreement for Adult Learning Disability Services generates several improvements and benefits. These include:

- Clarity on local priorities for service provision and improvements.
- A more joined up experience of care for Adults with a Learning Disability.
- The sharing of the cost of the assessment and care management function.
- A clearly defined and measurable performance reporting framework which will be regularly reviewed.
- Flexibilities which enable LCC and health partners to routinely respond to changes in national and local policy directives, financial requirements and efficiencies.
- Ongoing good working relationships with Lincolnshire Clinical Commissioning Group, within a legally described and formalised framework.
- Identification and effective management of financial resources and associated risks.
- Provision of rigorous governance arrangements in relation to the management of the pooled fund and respective commissioning responsibilities.

- Through partnership arrangements, the production of joined up strategies and the development of seamless care pathways.
- Easier identification of gaps in provision.
- Supporting supplier market development which can respond to the needs of local people in a flexible manner.

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

Entering into a new Section 75 Agreement with LCCG will not change the way in which functions are currently exercised and services are provided. Consequently, persons should not be affected by such arrangements as they are like-for-like. Any changes to service provision that would affect persons would be subject to separate consultation as appropriate.

Engagement has taken place with individuals through Lincolnshire's Learning Disability Partnership Board who have confirmed support for the creation of the learning Disability Section 75 to allow the continuation of the existing arrangements.

3. The parties must be satisfied that such partnership arrangements fulfil the objectives set out in the health improvement plan of the health authority in whose area the arrangements are to operate.

The Section 75 arrangements have been discussed with partners within NHS Lincolnshire and Clinical Commissioning Group representatives to ensure that the proposals fulfil the objectives of the commissioning organisations. Other key benefits of the Section 75 Agreement include:

- Providing the best possible health and social care provisions for adults aged over 18 years with learning disabilities.
- Ensuring the best use of resources to achieve overarching aims.
- Commissioning health and social care services that meet people's assessed needs and deliver improved outcomes, within a contracting framework that is flexible and provides the necessary protection for service users and carers.
- Promoting and support integrated working and involve key stakeholders in service development.
- Ensuring that a stable market that meets local needs exists.
- Clarity about local priorities for service provision and improvements.

Members are assured that the continuation of existing arrangements under a new Section 75 Agreement is not considered to raise any issues with the Council's compliance with the Equalities Act 2010.

Compliance with Statutory Content of a Section 75 Agreement

The Section 75 Regulations set out certain matters that must be contained in any Section 75 Agreement which are as follows:

- Agreed aims and outcomes.
- Payments to be made by the NHS body to the Local Authority (or vice versa) and how those payments may be varied; and, where pooled funding arrangements are to be set up, further detailed requirements apply.
- NHS functions and health related functions to be exercised and the persons in respect of whom, and kind of services in respect of which, such functions may be exercised.
- Staff, goods, services or accommodation to be provided by the partners.
- Duration of the arrangements and the provision for the review or variation or termination of the arrangements.
- Arrangements for monitoring the exercise of the functions.
- 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 informing users about such charges.

The proposed Section 75 Agreement will continue to fulfil these requirements.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

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.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

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 section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker 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 Equality Act duty has been reviewed but there are not considered to be any adverse impacts on people with a protected characteristic. In particular, the new Section 75 will continue to provide improved health and wellbeing outcomes to all regardless of protected characteristics where eligible.

The partners will keep under review the potential impacts of the services commissioned and undertake consultation as appropriate.

The Care Act 2014

Part 1 outlines the general responsibilities of local authorities that they must promote the efficient and effective operation of a market in services for meeting care and support needs with a view to ensuring that any person in its area wishing to access services in the market,

(a) has a variety of providers to choose from who (taken together) provide a variety of services,

(b) has a variety of high-quality services to choose from

A local authority must also have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of adults in its area and the needs for support of carers in its area.

The new Section 75 Agreement and contractual arrangements will continue to generate improvements and benefits, including supporting market development which is able to respond to the needs of local people in a flexible manner.

The Section 75 ensures that commissioning and commercial levers are used to maximise

the value delivered by commissioning spend, including joint health and social care commissioning.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

The Joint Health and Wellbeing Strategy aims to:

- have a strong focus on prevention and early intervention.
- ensure a focus on issues and needs which will require partnership and collective action across a range of organisations to deliver.
- deliver transformational change through shifting the health and care system towards preventing rather than treating ill health and disability.
- focus on tackling inequalities and equitable provision of services that support and promote health and wellbeing.

The services governed by the Section 75 Agreement for Learning Disabilities have a positive direct impact on the health and wellbeing of people LD 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.

The Section 17 matters have been considered but there are not considered to be any implications arising out of this Report.

3. Conclusion

In summary, the new arrangements established through the Section 75 will provide a clear outcome for people who use services and where investment is being spent each year. The Section 75 represents the commitment demonstrated by LCC and LCCG to continue working in partnership through a common vision of health and wellbeing that will meet local needs.

4. Legal Comments:

The Council has power to enter into the proposed Agreement. The statutory pre-conditions to the entering into of a Section 75 Agreement and the matters that must be considered 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.

5. Resource Comments:

With the uplift applicable to the cost of packages of care and growth in demand based on that seen during 2021-22, there is a forecast financial increase on CCG funded packages of approx. £1.264million. In previous S75, forecast uplifts have been funded through the CCGs increase in the Better Care Fund minimum contribution. The CCG are expecting a 5.3% uplift in 2022-23 however confirmation of its use can't be confirmed as the BCF framework hasn't yet been published nationally. The funding source for the CCG increase remains indicative at this point.

The forecast cost increase on social care packages has been built into the 2022-23 budget setting paper going to full council in February 2022.

6. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The comments of the Scrutiny Committee will be reported to the Executive at its meeting on 1 March 2022

d) Risks and Impact Analysis

See the body of the report, appendices and Care Act considerations

7. Appendices

These are listed below and attached at the back of the report

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| Appendix A | Learning Disability Section 75 Agreement to commence 1 April 2022 |
| Appendix B | Equality Impact Assessment |

8. 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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