

**DERBYSHIRE COUNTY COUNCIL
CABINET**

24 March 2015

**Joint Report of the Strategic Director of Adult Care and the Director of
Finance**

**BETTER CARE FUND; PARTNERSHIP FRAMEWORK AGREEMENT
UNDER SECTION 75 OF NATIONAL HEALTH SERVICE ACT 2006**

1. Purpose of the Report

To seek approval for an agreement to be concluded between Derbyshire County Council, Erewash, Hardwick, North Derbyshire, Southern Derbyshire and Tameside and Glossop CCG's effective from the 1 April 2015 which sets out the terms on which services will be commissioned from the Better Care Fund for 2015-16.

The Agreement will also cover existing partnership arrangements relating to the provision of medical equipment.

2. Information and Analysis

Background

Section 75 of the NHS Act 2006 provides the legal basis within which Councils and CCGs can delegate responsibility for commissioning certain health and health related functions to each other. The parties are required, under the BCF initiative, to enter into a section 75 agreement to record their intentions as regards the integration of such services and the establishment of a pooled fund.

As reported to the Health and Wellbeing Board on the 15 January 2015 the original Better Care Fund (BCF) plan was submitted for approval to NHS England on 4 April 2014. A final revised version was submitted to NHS England on 28 November 2014 and was approved on the 22 December 2014. A list of the individual schemes covered by the BCF is set out in the plan.

BCF funding is to be made available subject to the following national standard conditions:

- The Fund being used in accordance with the final approved plan and through a section 75 pooled fund agreement;
- The full value of the element of the Fund linked to non-elective admissions reduction target will be paid over to Clinical Commissioning Groups (CCGs) at the start of the financial year. However, CCGs may only release the full value of this funding into the pool if the admissions reduction target is met as detailed in the BCF Technical Guidance 1.

The Council and the CCG's have jointly carried out consultations with stakeholders via the Health and Wellbeing Board, and with the public, prior to entering into the agreement as there is an existing legal requirement for this to be done. The consultation responses relating to the Agreement that have been received will be reported to Cabinet. Subsequently the Department of Health has issued draft regulations (NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015) which will amend the existing regulations so as to disapply the requirement to consult, where the bodies are required to enter into partnership arrangements in connection with Section 223GA of the NHS Act 2006.

The Derbyshire BCF plan is based on a significant amount of engagement and consultation with the public and stakeholders over an extended period of time, as detailed in the plan.

A Programme Co-ordinator post has been advertised and it is intended that the post will be a secondment from either within the Council or from the NHS and paid for from the pooled budget.

Key principles

The entering into of the S75 Agreement requires formal approval by all partners through their own decision making bodies i.e. Cabinet for the Council and Governing Bodies for CCG's.

The following key principles have been agreed and will be enshrined in the final legal agreement:

Financial

- The BCF is to be operated as a closed fund and therefore individual partners' contributions will not exceed the initial agreed amounts. The

pooled fund will not overspend, responsibility for managing within allocated funds will rest with the relevant commissioner(s). The use of any underspends, returned to the pooled fund, will be determined by the Programme Board.

- The operation of the pooled fund will be on the basis of net contributions.
- The duties and responsibilities of commissioning and contracting partners and the contracting arrangements in respect of each scheme will be set out in the agreement.
- The pooled fund will be overseen by the Director of Finance of the Council who will be accountable to all partners. The costs of management of the pool will be borne by the fund.
- The process for managing the element of the Fund linked to non-elective admissions reduction target will be as set out in the 22 December 2014 BCF approval letter.

Governance

- A BCF Programme Board made up of representatives from the Council and the CCG's will have responsibility for key decision making in relation to these arrangements.
- Each partner will retain its normal approval mechanism for decision making lying outside of delegated authority of the relevant officers.
- The Health and Wellbeing Board will have strategic oversight of the BCF and will receive update reports and performance information as appropriate.
- Day to day management of schemes will rest with the commissioning arrangements and funding for each scheme.
- Each partner will comply with its own conflict of interest and complaints policy. The agreement will include an agreed process for considering any conflicts that may arise.
- There will be a process in the agreement for the Programme Board to sanction adding a new scheme to the framework (in the event of any underspends) or making significant alterations to an existing one.
- The agreement will include appropriate provisions relating to information governance, in particular data security and confidentiality.

3. Legal Considerations

Both the Council and the CCG's have sought separate legal advice on the form and contents of the agreement which will be formally concluded only once all partners are satisfied as to the terms of the agreement and have been advised that it is legally sound.

4. Financial Considerations

The BCF totals £61.489m for 2015-16. The fund is made up of contributions from the 5 Clinical Commissioning Groups and Derbyshire County Council as follows:

Tameside and Glossop CCG £2,178m
Southern Derbyshire CCG £17,641m
North Derbyshire CCG £20,348m
Hardwick CCG £7,631m
Erewash CCG £6,614m
Derbyshire County Council £7,077m

In line with the national conditions, part of the BCF is linked to the non-elective admissions reductions target. This element of £4.89m will be held by the CCGs to fund activity associated with failure to deliver the non-elective reductions in the acute hospital sector. Any unspent funds will be paid back into the pool quarterly in arrears, based on performance information. This will fund additional non-recurrent activity to priority projects, as set out in the BCF plan (Contingency Plan and Risk Sharing).

Where existing S75 pooled budgets exist i.e. community equipment where the local authority is the lead partner and have been subsumed into the new section S75, those rules will still apply unless agreement is reached to make changes.

5. Other Considerations

In preparing this report the relevance of the following factors has been considered: legal, prevention of crime and disorder, equality of opportunity; and environmental, health, human resources, property and transport considerations.

6. Key Decision

Yes

7. Waiver of call In

There is requirement for the agreement to take effect on the 1 April 2015. In order to achieve this it has been necessary to request Councillor Clive Moesby, Chair of the Improvement and Scrutiny Management Committee to consider the proposed waiving of call in in respect of the report. Councillor

Moesby has agreed both that the decision proposed is reasonable and to it being treated as a matter of urgency in order to ensure that the Agreement takes effect from the 1 April 2015.

8. Background Papers

The final Derbyshire BCF Plan Parts 1 and 2 can be found on the Derbyshire County Council website:

http://www.derbyshire.gov.uk/social_health/integrated_care/default.asp

22 December 2014 BCF approval letter (Publications Gateway Ref. No. 02396)

Draft NHS Bodies and Local Authorities Partnership Arrangements (Amendment) Regulations 2015.

9. OFFICER'S RECOMMENDATION

That approval is given to the entering into of a section 75 Agreement as described in the report.

Mary McElvaney
Acting Strategic Director Adult Care

Peter Handford
Director of Finance