



Date of Meeting	<b>29<sup>th</sup> May 2018</b>
Portfolio	Integrated Commissioning
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Public/Private Document	Public

## Health & Social Care Pooled Fund – Update on the Section 75 Agreement

### Executive Summary

- 1.1 The purpose of this report is to update ICB on progress being made on the draft Section 75 Agreement for the Pooled Fund.
- 1.2 The Section 75 is based on the Section 75 for the Better Care Fund in 17/18, which in itself was based on the industry standard Bevan Brittan template.
- 1.3 This report confirms that the draft Section 75 for the Pooled Fund has been reviewed by the Chief Finance Officers from both the Council and the CCG, their respective Deputies and Senior Managers within their Services and is currently being reviewed by a combination of Legal Officers within the Council / external Legal Partners as well as by the VAT officer within the Council.
- 1.4 It is thought that the Section 75 is now almost complete and will only be subject to minor changes arising from feedback from Legal / VAT officers. If the changes are only minor then it is recommended that final sign off of the Section 75 be delegated to the Pooled Fund Manager (Chief Finance Officer for Health & Social Care Integration). If the feedback on the legal / VAT issues requires significant changes to the Section 75, it is recommended that a full report be brought back to the next meeting of the ICB on 26<sup>th</sup> June.
- 1.5 It is recognised that this is a period of significant change in the integrated Health and Social Care economy. As we learn more about different commissioner and provider models it is quite possible that the Section 75 will need to be revised in the future. If this is the case, further reports will be brought to the ICB updating it on these changes and the impact of them on the Section 75.

## **Recommendation**

- 2.1 Review the progress made on the production of the Section 75 agreement for the Pooled Fund and the agreement for the Council and CCG to progress with the operation of the pooled fund from 1<sup>st</sup> April as if the formal Section 75 was in place.
- 2.2 That the final sign off of the Section 75 agreement be delegated to the Pooled Fund Manager / Chief Finance Officer for Health & Social Care Integration once the Section 75 has been revised to reflect advice from Legal Services / VAT officers, if the changes don't materially change the Section 75. If the changes are material, then a further report should be brought to ICB on 26<sup>th</sup> June 2018 updating on these changes and asking for formal sign off of the Section 75 by ICB.
- 2.3 As the integrated Health and Social Care economy develops, further reports may be brought to ICB updating it on these changes and the impact of them on the Section 75.

## **Reason for Recommendation**

- 3.1 A Section 75 agreement is required for the operation of a Pooled Fund, and this report therefore confirms the progress being made on its development.

## **Key Points for Consideration**

- 4.1 The current draft Section 75 attached at Appendix 1 is based on the 17/18 Section 75 for the Better Care Fund, which in itself was based on the industry standard Bevan Brittan template.
- 4.2 It has already been subject to review by the Chief Finance Officers of both Partners and their Senior Managers and is currently out for review by Legal Officers at the Council / external Legal Partners of the Council.
- 4.3 VAT advice is being sought from the Council's Tax Advisers as to how to best meet VAT regulations and the Pooled Fund VAT position is also the subject of discussion at the GM VAT Officers group. The wording around Lead Commissioning arrangements is therefore still subject to change based on the final advice given.
- 4.4 Agreement has been gained with External Auditors re the accounting methodology for the Pooled Fund. In order to prevent unnecessary complexities and onerous transactions, transactions for the commissioning functions of Partners (the Council and the CCG) will be incorporated within the Pooled Fund, the specific transactions underpinning the provision of social

care by the Council will remain within the Council's financial ledger outside of the pooled fund accounts.

- 4.5 Schedules 1 & 6 that detail the size of the Pooled Fund and the contributions made by the two Partners to the Fund reflect the figures reported to ICB on 10<sup>th</sup> April 18 in the "18/19 Opening Budgets" report. Schedule 1 also includes details of the revised gap as disclosed in a separate report being brought to ICB on 29<sup>th</sup> May, with the impact of this on both Partners being detailed should the Risk Share Agreement be invoked.
- 4.6 Schedule 2 reflects the Governance arrangements reflected in the report taken by the Joint Director of Integrated Commissioning to ICB on 8<sup>th</sup> August 2017. If changes to the Governance arrangements are made in the future, it is proposed that once these are approved by ICB then they should be inserted into Schedule 2 replacing those agreed on 8<sup>th</sup> August 17.
- 4.7 Schedule 3 reflects the Risk Share arrangements approved by ICB on 10<sup>th</sup> October 2017, by the CCG's Governing Body on 17<sup>th</sup> November 2017 and the Council's Cabinet on 28<sup>th</sup> November 2017.
- 4.8 Schedule 4 reflects the Conflicts of Interest protocols reflected in the Governance arrangements incorporated in the report taken by the Joint Director of Integrated Commissioning to ICB on 8<sup>th</sup> August 2017.
- 4.9 Schedule 5 has been extracted from the Information Governance schedule within the 17/18 Better Care Fund Section 75, albeit with reference now being made to the revised Information Governance arrangements arising from General Data Protection Regulations (GDPR) with effect from 25<sup>th</sup> May 2018.
- 4.10 Once all the outstanding issues around VAT have been confirmed and Legal Services have completed their review of the agreement, it is hoped that subject to materiality of any changes that might be necessary, approval for the sign off of the Section 75 can be delegated to the Pooled Fund Manager / Chief Finance Officer Health & Social Care Integration.

### **Costs and Budget Summary**

- 5.1 The total value of the Pooled Fund, the contributions made to it by the Partners and the risk share agreement that would be actioned were the Pooled Fund to outturn in either a surplus or deficit position are all detailed in Schedules 1, 6 and 3 respectively within the Section 75 Agreement attached at Appendix 1.

### **Risk and Policy Implications**

- 6.1 Section 75 of the NHS Act 2006 allows local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an

improvement in the way their functions are exercised. The legal mechanisms allowing budgets to be pooled under the section 75 partnership agreement enable greater integration between health and social care and more locally designed services. Section 75 permits formation of a pooled budget comprised of contributions by both the Council and the CCG from which payments can be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body and health-related functions of the council. The Act precludes CCGs from delegating any functions relating to family health services, the commissioning of surgery, radiotherapy and certain other invasive treatments and emergency ambulance services. For local authorities, the services that can be included within section 75 arrangements are broad in scope and a detailed exclusions list is contained within Regulations of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

<b>Consultation</b>
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7.1 The Chief Finance Officers from both the Council and the CCG have been consulted on the content of this report whilst the Head of Legal Services is still reviewing the report from a legal perspective. Further advice has been sought in relation to VAT.

<b>8.Background Papers</b>	<b>Place of Inspection</b>
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8.1 There are no background papers to this report	
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