

Contains Confidential or Exempt Information	NO
Title	Extension and variation of S75 Framework Partnership Agreement between the Council and Ealing Clinical Commissioning Group relating to the Commissioning of Health and Wellbeing and Social Care and Education Services for Adults and Children
Responsible Officer(s)	Judith Finlay, Executive Director Children, Adults & Public Health
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Portfolio(s)	Cllr Binda Rai, Portfolio Holder Adults & Public Health Cllr Yvonne Johnson, Portfolio Holder Children and Families
For Consideration By	Cabinet
Date to be Considered	16 th March 2021
Implementation Date if Not Called In	29 th March 2021
Affected Wards	All
Keywords/Index	Health and Wellbeing, Integration, Better Care Fund, Adults, Children, Social Care, COVID, Discharge, Funding

Purpose of Report:

This report seeks authority to vary and extend for up to two years the current partnership agreement between the Council and the Ealing Clinical Commissioning Group (CCG) dated 24th March 2016 relating to the Commissioning of Health and Wellbeing and Social Care and Education Services for Adults and Children (“the Partnership Agreement”).

1. Recommendations

That Cabinet:

- 1.1. Authorises the Executive Director for Children, Adults & Public Health to
 - a) extend the Partnership Agreement (and associated service schedules) for two years from 1 April 2021 to 31 March 2023 and
 - b) to vary it to include a new COVID discharge schedule.
- 1.2. Delegates authority to the Executive Director for Children, Adults & Public Health, the following powers only where they are specifically derived from expenditure, pooled funds and commissioning and procurement arrangements within the Partnership Agreement relating to the Commissioning of Health and Wellbeing and Social Care and Education Services for Adults and Children and

subject to the limits of the powers delegated to her under the Council's constitution.

- i. to approve the annual submission of the Better Care Fund (BCF) plan to the Department of Health, following consultation with the Health and Wellbeing Board, the Portfolio Holder for Adults & Public Health and the Clinical Commissioning Group (CCG)
- ii. The authority to vary the contents of the Service Schedules in Part 2 of the Partnership Agreement following consultation with the Director of Legal and Democratic Services and the Chief Finance Officer. This includes the power to vary the extent of the delegation of the exercise of the functions of the CCG to the Council
- iii. The authority to enter into agreements under S256 NHS Act 2006 with NHS England or the CCG
- iv. The authority to enter into separate agreements under Section 75 NHS Act 2006 or under Section 10 Children Act 2004 with provider organisations for operational service delivery of integrated arrangements that are relevant to the Framework Partnership Agreement following consultation with the Director of Legal and Democratic Services and the Chief Finance Officer

1.3. The delegated powers do not extend:

- I. To adding or deleting Service Schedules to the Partnership Agreement.
- II. To the delegation of the exercise of Council functions covered within the Partnership Agreement to NHS bodies.

1.4. Notes that, as a minimum, the Partnership Agreement extension will be on the existing levels of financial commitment into 2021/22 and will also comply with the national BCF policy guidance as and when published.

1.5. Notes the restructure of the North West London (NWL) CCGs is expected to result in changes in the partnership arrangements between the NHS, Council, and governance arrangements with key health providers in future years. The nature of the changes are not yet determined but are under review. Changes are expected to be agreed at local and NWL level during 2021/22 and will be tabled for Cabinet approval if required. In 2019 the NHS and the Council established a new Integrated Care Partnership including West London NHS Trust and other key partners, envisaging a different form of partnership relationship for the future.

2. Reason for Decision and Options Considered

2.1. Ealing CCG and Ealing Council work together under the Partnership Agreement through which they can jointly commission services to improve health and wellbeing and social care for adults and children in the Borough. Cabinet approved the Partnership Agreement in March 2015.

- 2.2. The purpose of the Partnership Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and wellbeing and social care services for adults and children through lead or aligned commissioning arrangements. It is the means through which the Partners may delegate the exercise of their functions to each other, pool funds and align budgets as agreed between the Partners. This includes the arrangements for pooling funds required for the Better Care Fund (BCF).
- 2.3. On 17 March 2020, Cabinet agreed to delegate authority to extend the existing Section 75 Partnership Agreement (including service schedules) with the Clinical Commissioning Group to 31 March 2021. At that time North West London Clinical Commissioning Groups were consulting on significant changes to the structure of NHS commissioning in the sector with a view to the establishment of one North West London Clinical Commissioning Group from 2021/22.
- 2.4. During 2020/21 the new structures across NWL have become more defined in shadow form ahead of the planned formal establishment of one NWL CCG in April 2021. These structures reflect both local and more centralised NHS commissioning arrangements across the sub region. This has involved a significant amount of change to functions and personnel.
- 2.5. Earlier in the year, Health and Wellbeing Boards (HWBs) were advised that BCF policy and planning requirements would not be published during the initial response to the COVID-19 pandemic and that they should prioritise continuity of provision, social care capacity and system resilience and spend from ringfenced BCF pots based on local agreement in 2020 to 2021, pending further guidance. Given the ongoing pressures on systems, Departments and NHS England and NHS Improvement have agreed that formal BCF plans will not have to be submitted to NHS England and NHS Improvement for approval in 2020 to 2021. Locally BCF arrangements from 2019/20 have rolled over into 2020/21.
- 2.6. In addition to the NHS restructure, both the Council and NHS have diverted significant resources to respond to the COVID health crisis. Partnership arrangements have continued to be effective; working to shared and nationally defined BCF, integration and public health priorities. However, the impact of COVID and the NWL wide restructure of the CCGs has resulted in delays to further joint strategic review or refresh of the existing Partnership Agreement.
- 2.7. Agreement is sought to extend the existing Section 75 arrangements for a further two years, to provide time for the development of a new agreement. Having a signed Section 75 agreement is a requirement of the BCF each year, and the COVID Discharge Arrangements for the current financial year. The requirement to extend the Partnership Agreement (and associated service schedules) for 2 years to March 2023, instead of one year, is proposed in case environmental factors impact our ability to fully renegotiate the Partnership Agreement during a time of structural change and uncertainty in relation to the COVID health crisis. This option would enable partners to

continue to work in line with the current Partnership Agreement, national requirements for integration, health and wellbeing in the interim. The option to extend to March 2023 would also allow a window of continuity for the existing Partnership Agreement and associated service schedules to be signed by organisational parties reflective of the Integrated Care System (at NWL level) and Integrated Care Partnership (at Borough level) at that point in the future. The Partnership Agreement can be terminated at any time in the 2-year extension period, on 6 months' written notice by either party.

- 2.8. There is a need to vary the current Section 75 agreement to include a new COVID discharge schedule to meet the requirements set out in the Covid-19 Hospital Discharge Service Requirements. This schedule, agreed at NWL level, will reflect the national funding agreements introduced by central government in March 2020 to support rapid discharge from acute settings during the COVID period to 31st March 2021, funded by £1.6bn NHS support package.
- 2.9. The COVID Discharge Schedule will confirm arrangements for commissioning and funding responsibility for care commissioned during defined periods in year, in line with national guidance and local discharge pathways in place during 2020/21.
- 2.10. The COVID Discharge Schedule will also aim to set out the appropriate joint arrangements for managing the resulting statutory assessments and risk share for these packages of care into 2021/22. This is required to provide shared and reasonable approaches to mitigate the on-going financial risks to partner organisations at the point of exit from the current national COVID Discharge funding arrangements.
- 2.11. Joint funding arrangements for these packages are confirmed by national guidance until 31st March 2021. In the event that no further Government guidance is issued to extend COVID discharge arrangements, any joint funding of care commissioned under these arrangements beyond 2020/21 remain under review with Councils and the NHS, and are informing risk assessment of potential pressures on Adult Social Care budgets in the next financial year.
- 2.12. National guidance for the specific requirements of the 2021/22 Better Care Fund (BCF) has yet to be published. Existing BCF arrangements, as included in the current Section 75 have been rolled over into the current year, with inflationary uplifts and minimum partner contributions transacted as per BCF Policy Guidance for 2020/21.
- 2.13. It is proposed that as a minimum, the Partnership Agreement extension will be on the existing levels of financial commitment into 2021/22 and will be updated where necessary to comply with the new national BCF policy guidance for 2021/22, when published. Updated BCF plans are routinely tabled for agreement by the Health and Wellbeing Board.

3. Key Implications

- 3.1. The aims and benefits of the Partners in extending the Partnership Agreement are to:
- a) improve access to high quality health and social care for adults and children
 - b) commission services based on an agreed picture of needs rather than historical service configurations
 - c) commission services which present good value for money and best value
 - d) commission services which seek to promote emotional and physical good health and work to overcome social exclusion
 - e) commission services which are culturally competent in meeting the needs of people from black and minority ethnic communities
 - f) take a whole systems approach by preventing duplication of services and making more effective use of current resources through integrated care pathways
 - g) establish robust arrangements to collect performance management information and use the information to evaluate performance against targets, monitoring both the effectiveness of the commissioning process and the commissioned services, as set out in Part 2 – the Service Schedules
 - h) meet the National Conditions and Local Objectives in respect of Services related to the Better Care Fund; and
 - i) make more effective use of public resources through the establishment and maintenance of pooled funds for revenue expenditure on certain Services and aligned commissioning in other Services.
 - j) The addition of a COVID Discharge Schedule will formalise local implementation of the Government's Discharge requirements guidance to reduce pressure on those hospitals providing acute services, and the respective funding responsibilities in a reasonable and sustainable way.
- 3.2. The Partnership Agreement was drawn up by DAC Beachcroft on behalf of the Council and reviewed by the CCG's legal advisors. It is consistent with legislative requirements and the guidance on S75 agreements produced by the Audit Commission. The Partnership Agreement put in place an agreed framework for partnership working and set out clear roles, responsibilities, duties and liabilities for both parties.
- 3.3. The Term for the Partnership Agreement is five years. Under Clause 32 of the Agreement, no variation of the Agreement shall be valid unless expressly agreed by the Parties in writing. The Council and the CCG wish to vary the Partnership Agreement and through an appropriate Deed of Extension and Variation.
- 3.4. The Deed of Extension and Variation will be prepared for signature by the Parties with the purpose of extending the Partnership Agreement by a minimum of 24 months from 1st April 2021.
- 3.5. The specific service schedules, and related joint funding contributions are covered in Part 2 of the Partnership Agreement are as follows:

- Better Care Fund
- Learning Disabilities
- Community Equipment
- Mental Health
- NHS Fast Track Commissioning
- Services for Children and Young People with Additional Needs
- Early Start Ealing
- Safeguarding Children
- Safeguarding Adults
- Integrated Commissioning Team
- Voluntary Sector Grants
- JSNA and Joint Health and Wellbeing Strategy

It is proposed that the new COVID Discharge schedule is added to Part 2 of the Partnership Agreement

4. Financial

- 4.1. The Partnership Agreement does not of itself contain financial commitments but does set out the governance arrangements for the various types of commissioning arrangements, pooled budgets and aligned budgets.
- 4.2. The Partnership Agreement provides for early termination by either partner subject to appropriate protections. The extension of the Partnership Agreement would be on the existing terms, and the previous Deed of Variation.
- 4.3. The financial contributions are set out in the individual Service Schedules which form Part 2 of the Partnership Agreement (as listed in point 3.5).

5. Financial impact on the budget

- 5.1. The Service Schedules, which are under preparation for 2021/22, include the Better Care Fund, will set out Council and CCG commitments for a range of services. The Council budget figures will be consistent with Adults' and Children's departmental budgets, including the existing levels of CCG contributions to Adult Social care and other services where relevant. No changes to levels of partner contributions are proposed for 2021/22, except to adjust for variable elements of baseline budgets, prescribed inflationary uplifts or the allocation of financial contributions to schemes within nationally defined descriptions of "minimum" and "additional" contributions. All council expenditure will be contained within existing Adults' and Children's revenue and capital budget (where relevant) assumptions for 2021/22 and as noted the agreement of the schedule is subject to consultation with the Chief Finance Officer.
- 5.2. The published policy statement for Better Care Fund 2020/21 (3rd December) set out the following planning national assumptions for 2021 to 2022

- *The Spending Review 2020 confirmed that the iBCF grant will continue in 2021 to 2022 and be maintained at its current level (£2.077 billion).*
 - *The Disabled Facilities Grant will also continue and will be worth £573 million in 2021 to 2022.*
 - *The CCG contribution will again increase by 5.3% in line with the NHS Long Term Plan settlement.*
 - *The Policy Framework and Planning Requirements will be published in early 2021.*
- 5.3. Risks associated with NHS funding are kept under review as part of routine monthly budget monitoring within Adult Social Care and Children's and are being factored into financial planning assumptions, along with proposed MTFS savings and cost avoidance measures for 2021/22.
- 5.4. Hosting Arrangements - the regulations require that one of the partners is nominated as the host of a pooled budget and this body is then responsible for the budget's overall accounts and audit. The host will appoint/nominate a pool manager whose role is covered appropriately by standing financial instructions/ prime financial policies and the scheme of delegation. The host will ensure arrangements are in place to deliver quarterly reporting to the Integration Board, the Health and Wellbeing Board and to the Cabinet, where required, of:
- Income
 - Expenditure
 - Performance information as data becomes available (via national and local data collection processes) to ensure that progress is transparent and can be regularly reviewed.
- 5.5. In addition, they will:
- Co-ordinate regular and timely receipt of performance reports by the HWB
 - Ensure that where elements of the pooled budget are ring-fenced for a particular purpose, the necessary supporting information is available to provide assurance that those elements have been used appropriately and to support the accounting arrangement applied
- 5.6. To meet the requirements in relation to an annual return the host must prepare and publish a full statement of spending, signed by the accountable officer/Chief Finance Officer to provide assurance to all other parties to the pooled budget for the Better Care Fund This is likely to include:
- Contributions to the pooled budget – cash
 - Expenditure from the pooled budget
 - The difference
 - The treatment of the difference
 - Any other agreed information.

- 5.7. The host should also liaise with other partners to identify if there is any other information they require for their year-end reporting and the corresponding date that it is required in order to meet external reporting deadlines and must review all other requirements specified in the signed agreement and ensure compliance.
- 5.8. It has been agreed between the parties that the Council will host the pooled budget for the Better Care Fund along with other pooled budgets as set out in para 5.2 above. This brings certain responsibilities and accountabilities that have been accommodated within existing Adults, Children's, and Corporate Resources revenue budgets.

6. Legal

- 6.1. The statutory duty of partnership working between NHS bodies and Local Authorities was established under the Health Act 1999 and the NHS Act 2006 updated and consolidated this legislation.
- 6.2. Under S10 Children Act 2004 Local Authorities and Clinical Commissioning Groups are under a duty to cooperate to improve the wellbeing of children and young people in the area and may provide staff, goods, services, accommodation or other resources to one another and make contributions to a fund out of which payments may be made.
- 6.3. Under S26 Children and Families Act 2014 Local Authorities and CCG's are required to put in place joint commissioning arrangements for children with Special Educational Needs and Disabilities
- 6.4. Section 3 of the Care Act 2014 places a duty on local authorities to carry out their care and support responsibilities with a view to joining-up services with those provided by the NHS and other health-related services (for example, housing or leisure services). The duty will apply where the local authority considers that integration of services would either promote the wellbeing of adults with care and support needs (including carers), contribute to the prevention or delay of developing care needs, or improve the quality of care in the local authority's area.
- 6.5. Under S75 National Health Service Act 2006 Local Authorities and NHS bodies have the power to enter into partnership arrangements and agree to extend them.
- 6.6. The powers permit:
 - The Partners to agree that certain functions (statutory powers or duties) of one Partner may be delivered by the other subject to agreed terms of delegation to achieve the partnership objectives, although ultimate accountability rests with the original partner.
 - Arrangements to pool funds

- 6.7. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617) set out the rules governing such partnerships.
- 6.8. Both local authorities and CCGs are subject to the Public Contracts Regulations 2015 ("2015 Regulations"), as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/560. The 2015 Regulations set out a range of obligations that contracting authorities (such as CCGs and local authorities) must comply with when procuring goods and services.
- 6.9. In response to the Covid-19 pandemic the Government has issued updated Covid-19 Hospital Discharge Service Requirements setting out the work that organisations are expected to undertake to mitigate pressure on NHS resources, and specifically hospital beds. Updated arrangements for Hospital Discharge Scheme 2 (HDS2) from 1 September 2020 to 31 March 2021 were set out in NHSE/I guidance published on 21 August 2020. This sets out how health and care systems can ensure that people are discharged safely from hospital to the most appropriate place continue to receive the care and support they need after they leave hospital. The current Section 75 agreement is therefore to be varied to take account of these requirements.
- 6.10. Local authorities are not subject to the NHS (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 ("2013 Regulations") which apply to all health care services for the purposes of the NHS (including those that may also constitute adult social care services).

Where the Council procures services on its behalf it will have to comply with the PCR 2015 and the Council's CPRs. Where the Council procures health care services either on behalf of the CCG or jointly which fall within the 2013 Regulations it will need to ensure that it acts in a way that is consistent with the 2013 Regulations.

7. Value for Money

- 7.1. The Partnership Agreement enables the Council to work more effectively with the NHS to commission integrated health and social care and educational services for the residents of Ealing, thereby making more effective use of public money.
- 7.2. Each of the Service Schedules sets out the benefits of an integrated approach for the service concerned and includes monitoring and evaluation requirements.

8. Sustainability Impact Appraisal

- 8.1. The Framework Partnership Agreement relates to the commissioning of health and wellbeing, social care and education services for adults and

children. Within the arrangements for each of the services concerned consideration will be given to the sustainability impact of the service.

9. Risk Management

- 9.1. The Framework Partnership Agreement has been drafted by the Council's legal advisors to ensure that both parties can have confidence that arrangements are in place to manage resources effectively and deliver the shared agenda.
- 9.2. Each Service Schedule, including the BCF, is subject to risk assessment and mitigating actions and oversight through the governance arrangements for the Partnership Agreement.

10. Community Safety

- 10.1. The services contained within the agreement relate to the provision of care for vulnerable adults and children and, as such, contribute to improved community safety.

11. Links to the 3 Key Priorities for the Borough

- 11.1. The Council's administration has three key priorities for Ealing. They are:
 - Good, genuinely affordable homes
 - Opportunities and living incomes
 - A healthy and great place

12. Equalities, Human Rights and Community Cohesion

- 12.1 The Partnership Agreement relates to the provision of services for vulnerable adults and children and, as such, contributes to the delivery of care for a range of disadvantaged groups.
- 12.2 The Service Schedules address how they will meet the needs of particular equality groups.

13. Staffing/Workforce and Accommodation implications:

- 13.1 Staffing/workforce and accommodation implications are addressed within each of the specific Service Schedules.

14. Property and Assets

- 14.1 The report does not involve property. Where there are property implications relating to particular services this is reflected in the Service Schedule.

15. **Any other implications - none**

16. Consultation

- 16.1 There has been no specific consultation on the extension of the Partnership Agreement which, in part regularises arrangements that are already in place and those required as a minimum by Government. Ealing CCG are working in parallel to enter into the varied and extended Partnership arrangements on the same terms through their own Governance arrangements.

17. Timetable for Implementation

- 17.1 The Framework Partnership Agreement commenced on 1st April 2015 for a period of five years. The extension to the Agreement started on 1st April 2020 for a period of up to one year, terminating on 31st March 2021. The proposed further extension of the agreement would start on 1st April 2021 for a period of up to one year, with a further option to extend to March 2023 if required.

18. Background Information

Information regarding the Better Care Fund policy statement for 2020/21 is published [Better Care Fund: policy statement 2020 to 2021 - GOV.UK \(www.gov.uk\)](http://www.gov.uk/better-care-fund-policy-statement-2020-to-2021)

The Government set out expectations of local areas COVID Discharge Requirements in published guidance in March 2020 and August 2020. These are available at [Hospital discharge service guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk/hospital-discharge-service-guidance)

Previous Cabinet Decision 17th March 2020

[CMIS > Meetings](#)

Consultation (Mandatory)

Name of consultee	Post held and Department	Date sent to consultee	Date received from consultee	Comments appear in report paragraph:
Internal				
Kerry Stevens	Director of Adult Services	16.02.21		
Judith Finlay	Executive Director Children, Adults & Public Health	16.02.21		
Kathleen Ennis	Principal Lawyer, social care and housing	16.02.21	18.02.21	
Chuhr Nijjar	Senior Contracts Lawyer	16.02.21	22.02.21	Throughout
Russell Dyer	Assistant Director of Accountancy	16.02.21	04/03/21	Throughout

Jumoke Adebisi	Interim Finance Manager A&PH	16.02.21		
Anna Bryden	Director of Public Health	18.02.21		
Charles Barnard	Assistant Director Integrated Early Years, Preventative and Youth Services	18.02.21		
Carolyn Fair	Director Children and Families	18.02.21		
Cllr Binda Rai	Portfolio Holder	17.02.21		
Cllr Yvonne Johnson	Portfolio Holder			
External				
Neha Unadkat	Borough Director Ealing CCG	17.02.21		
Rashesh Mehta	AD Integration and Delivery, Ealing CCG	17.02.21	18.02.21	

Report History

Decision type:	Urgency item?
Key decision	Yes
Report no.:	Report author and contact for queries:
	Adenike Tilleray, Assistant Director, Commissioning and Use of Resources, Adult Social Care Tilleraya@ealing.gov.uk