**MUNICIPAL YEAR 2013/2014**

| **MEETING TITLE AND DATE** | **Agenda - Part: 1** | **Item: 6** |
|---|---|---|
| **Health and Wellbeing Board**<br>**12 December 2013** | **Subject:** Section 75 Agreement (Adults) 2013-2014 Half Year Review<br><br>**Wards:** All | |
| **Report of:** Ray James, Director of Health, Housing and Adult Social Care | | |
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## 1. EXECUTIVE SUMMARY

In April 2013 the revised Section 75 Agreement for commissioned services for adults became operational. This report provides an update on the partnership arrangements between April – September 2013. Generally, the partnership arrangements are working well.

However, the payment is outstanding from the CCG for Q1 and Q2, and due to delays with the set-up of the new payment process for the public health services contracts, payment has not yet been made from the Council to the CCG.

Whilst a notice of termination of the Agreement was issued by the CCG, this has since been withdrawn (following clarity of the termination clauses) so the Agreement will continue for at least the first six months of 2014-2015 unless any changes are mutually agreed. The future of the partnership Agreement will be discussed as part of the Integrated Transformation Fund planning.

## 2. RECOMMENDATIONS

2.1 To note the content of the Section 75 Agreement half year review.

2.2 To note that payment is outstanding from the CCG for Q1 and Q2, and from the Council to the CCG. This is being progressed.

2.3 To note that a signed version of the Agreement is outstanding from the CCG but legal advice states that the relationship of the parties is governed by the conduct of both parties and is therefore governed by implied contract.

## 3. BACKGROUND

In April 2013 the revised Section 75 Agreement for commissioned services for adults became operational. Enfield Clinical Commissioning Group (CCG) has not

yet signed the Agreement under seal though approval has been given; however, legal advice confirms that there is an implied contract by conduct in place in accordance with the terms of the new Agreement. The table below shows the Schedules within the Agreement and the contribution of each Party.

In line with the Agreement this report provides a high level half year review of each Schedule from April – September 2013, to provide an update on performance and the effectiveness of the partnership arrangements. Generally the partnership arrangements are working well. A key concern of the Council is

| Service | Pooled/Integrated/ Lead | NHS Enfield CCG Contribution | Council Contribution |
|---|---|---|---|
| Mental Capacity Act and Deprivation of Liberty Safeguards | Pooled & Lead | £70,908 | £199,100 |
| Joint Commissioning Team | Integrated | £115,650.82 | £587,664.92 |
| Voluntary and Community Sector | Lead | £409,907 | £0 |
| Integrated Community Equipment Service | Pooled & Lead | £395,000 | £972,642 |
| Public Health | Integrated | £0 | £101,000 |
| Integrated Learning Disabilities Service | Pooled & Integrated | £1,459,430 | £3,970,850 |
| **TOTAL** | | **£2,450,895.82** | **£5,832,256.92** |

the absence of a signed Agreement from Enfield CCG, so this continues to be pursued. Additionally, payment has not yet been received for Q1 and Q2 from Enfield CCG to the Council pending confirmation of a payment code. Payment is also due from the Council to the CCG for the Public Health schedule, pending receipt of an invoice. The CCG issued a termination notice on 30th September but this was later withdrawn with a commitment to work with the Council to agree future partnership arrangements in light of the accepted benefits of closer working between health and social care and also the Integration Transformation Fund.

## 2. Mental Capacity Act and Deprivation of Liberty Safeguards

### 2.1 Overview of Schedule

The Local Authority Social Services Act 1970 outlines the requirement for the local authority to provide services to people of all ages with mental health

problems in Enfield. The National Health Services Act 2006 states that NHS Enfield CCG is required to provide mental health services to people of all ages in Enfield and beyond. Whilst the responsibilities of the functions relating to the Supervisory Body of the Deprivation of Liberty Safeguards (DoLS) transferred to the Council, CCGs retain the statutory responsibilities for the practice under the Mental Capacity Act (MCA) 2005. NHS Enfield CCG needs to ensure that the organisation and all the services it commissions are compliant with the MCA. The MCA and DoLS schedule identifies a partnership arrangement which permits information sharing between the Parties and the delivery of specialist experience of delivering training and auditing services. This includes a Joint Safeguarding Nurse Assessor post to provide pivotal support for adult safeguarding and to ensure that the requirements for professional supervision are met.

## 2.2 Governance

The governance structure outlined in the Agreement is being followed. The service is continuing to be managed by the Head of Safeguarding Adults, Quality Assurance and Complaints at the Council, who reports to the Assistant Director Strategy and Resources. Decisions about running the service are being made by officers at the Council responsible for delivering the service.

The Joint Safeguarding Nurse Assessor post has been employed by NHS Enfield CCG and line management arrangements are joint; clinical supervision is provided by the Head of Safeguarding within NHS Enfield CCG and day to day management is provided by the Head of Safeguarding Adults within the Council. All major projects are being developed and scoped jointly with appropriate arrangements in place for joint monitoring and review.

## 2.3 Financial

The contributions in the Agreement total £270,008. To date £80,267 has been spent, however, payment is outstanding from the CCG.

## 2.4 Key Achievements

- The DoLS Office has processed 32 DoLS applications, of which 26 have been authorised and six have been declined since April 2013. One application was receive from North Middlesex Hospital and 10 from Chase Farm Hospital.
- A system of recording is being maintained, with all DoLS applications and outcomes stored and available on requests.
- Three days of training has been delivered to Chase Farm Hospital and one day to North Middlesex Hospital.
- The partnership is allowing the CCG to access specialist advice from the Council.
- The number of DoLS applications has increased, which suggests that the awareness raising activity has been successful.
- DoLS applications are being processed within the legal timeframes.

## 2.5 Key Challenges

One of the main challenges for this time frame has been a further increase in the number of DoLS applications. In 2012-2013 there were a total of 33 DoLS applications, three of which were from Chase Farm Hospital. To date in 2013-2014 there have been over 33 DoLS referrals in a six month period, therefore it is a challenge to respond to the applications within the legal timeframes within existing resources. This increase in applications has had to take priority and has delayed some of the planned work for 2013-2014 with regards to the MCA training and the development of the DoLS action plan.

## 2.6 Key Priorities before 31st March 2014

- Develop a joint action plan with Enfield CCG for commissioned and provider services to raise awareness of the Mental Capacity Act and Deprivation of Liberty Safeguarding and use of the best interest decision making with all Health and Social Care providers. This will include additional training events and actions to ensure close working relationships with partner agencies including the CQC and Court of Protection.

- Deliver a further four days of training for CCG and hospital staff to promote awareness of the MCA and DoLS.

# 3. Joint Commissioning Team

## 3.1 Overview of Schedule

The Schedule establishes a Joint Commissioning Team across health and social care which seeks to work in partnership to manage an increase in demand against diminishing resources.

## 3.2 Governance

The Assistant Director Strategy and Resources is responsible for the joint commissioning function. Joint commissioning activity continues to be reported to the Joint Commissioning Board, a sub group of the Health and Wellbeing Board.

## 3.3 Finance

The contributions in the Agreement total £703,316. To date, £258,208 has been spent by the Council. Payment is outstanding from the CCG for the jointly funded posts.

## 3.4 Key Achievements

- There has been a significant reduction in the use of the Seacole Unit overnight bed days. This has delivered efficiencies; from £1.3 m spend in 2011/12 to a projected £213 k on beds days in the first 5 months of the financial year. This has prevented an overspend and contained usage within the existing contracting terms.

- Changes to the way services are commissioned for people with learning disabilities have been implemented in accordance with the Winterbourne View Concordat. The partnership was acknowledged by the Joint Improvement Partnership for its innovative approach to reducing admissions to assessment and treatment and the strength of partnership working.
- An integrated process for support planning and brokerage for personal health budgets has been agreed.
- Joint work is ongoing to establish the pilot for direct payments in residential care.
- Negotiations have commenced regarding the incorporation of Continuing Health Care equipment purchasing into the ICES schedule.
- Enfield Healthwatch was commissioned and established.
- Good progress continues to be made in relation to the implementation of the joint commissioning strategies. For example, the Palliative Care Support Service has enabled patients to choose where they die.
- Enfield's Dementia Action Alliance has formed and to date has 20 care and non-care private and voluntary sector organisations signed up.

### 3.5 Key Challenges

- Changes of personnel in the CCG following the NHS transition has meant identification of responsibility has been difficult.
- The Physical Disabilities Partnership board has not had CCG representation, which has limited the degree of joint working led by service user engagement.

### 3.6 Key Priorities before 31st March 2014

- Prepare for the implementation of the Social Care Bill.
- Agree allocation of the Integrated Transformation Fund.
- Further develop plans for the integration of the wheelchair service into ICES.
- Further develop plans for the implementation of personal health budgets.
- Issue a variation to the schedule once the revised structure has been agreed, following the resignation of post holders within the team.

## 4. Voluntary and Community Sector

### 4.1 Overview of Schedule

Under this Schedule the Council obtained the responsibility for commissioning 10 services from Voluntary and Community Sector (VCS) organisations on behalf of Enfield CCG.

### 4.2 Governance

There have been no changes made to the governance structure since the production of the Agreement.

### 4.3 Financial

The 10 contracts equate to a value of £409,907. To date, £164,986 has been spent and the remaining £244,921 will be paid when invoices are received from the organisations in Q3 and Q4.

### 4.4 Key Achievements

- Signed Service Level Agreements are in place with defined service aims, objectives, outcomes, terms, conditions and performance management arrangements.
- There is now consistent payment, monitoring and performance management requirements across health and social care, which has resulted in process and transactional efficiencies for both commissioners and providers.
- Positive feedback has been received from the VCS as a result of the approach to co-produced service level agreements and a consistent single point of monitoring and payment.
- Payments are being made quarterly in advance, subject to the production of monitoring data which is avoiding a lengthy time lag between service delivery and payment and enabling VCS organisations to remain viable.
- Service is being targeted appropriately to the health and social care needs of the local population demographics.
- Prior to the Section 75 Agreement the Service Level Agreements (SLAs) included generic descriptions, focusing on outputs only and had expired. The transfer of commissioning responsibility via the Section 75 Agreement has provided the opportunity to review the commissioning approach and resulted in new SLAs which contain individual service user outcomes, together with outputs, targets and key performance indicators. All the SLAs were co-produced with the voluntary and community sector organisation.
- Where appropriate, SLAs to cover both LBE and PCT funding have been combined, which has resulted in consistent monitoring and performance management requirements, process and transaction efficiencies and consistent user experience.
- Analysis of monitoring to date has revealed an overall compliance with specified requirements and delivery against targets.

### 4.5 Key Challenges

- Uncertainty of longer term funding arrangements restrict the degree of service development and innovations.

- The availability of resources within LBE to continue to be able to robustly validate monitoring returns for the 10 contracts, without any additional management funding through the Agreement.

### 4.6 Key Priorities before 31st March 2014

To ensure service aims, objectives, outcomes and targets are achieved through regular monitoring of service provision.

## 5. Integrated Community Equipment Service

### 5.1 Overview of Schedule

In line with the NHS and Community Care Act 1990, National Assistance Act 1948 and the Chronically Sick and Disabled Persons Act 1970, the Council and CCG provide an Integrated Community Equipment Service.

### 5.2 Governance

There have been no changes to the format of governance arrangements since the production of the agreement. The ICES steering group meets monthly to monitor spend, trends and to address challenges. The delivery and performance KPI's are monitored monthly within Provider Services, with data escalated via departmental financial scrutiny and performance monitoring processes as required.

### 5.3 Financial

The total contribution of both parties is £1,367,642. To date £658,526 has been spent. The service is reporting a zero variance at year end.

### 5.4 Key Achievements

- A mixed procurement model for equipment is being explored.
- Agreement has been reached regarding need and funding for SADLS support role to continue.
- A pilot for electric vans in progress.
- The service is operating well with a stand-alone store.
- The service is receiving positive feedback both from customers and other agencies/departments.
- 93.92% of items have been supplied within seven days.

### 5.5 Key Challenges

The ICES Manager has had a period of sick leave, so contingency plans have had to be put in place to ensure that the service could continue to operate.

### 5.6 Key Priorities before 31st March 2014

- Explore the financial viability of incorporating wheelchair services, incontinence services and equipment for Continuing Health Care customers into the Agreement.

## 6. Public Health

### 6.1 Overview of Schedule

On 1st April 2013 the Public Health function transferred to local authorities. As part of this the Council will commission and monitor three LES contracts with local GP Practices. However, it is problematic for the GPs to receive payment directly from the Council therefore the schedule formalises the transfer of funding for three specific contracts to NHS Enfield CCG so payment can be made via the Commissioning Support Unit through NHS Enfield CCG's core offer.

### 6.2 Governance

The responsibility for Healthchecks and Sexual Health contraception has been transferred to local authorities. Payments to GPs are being made through the National Commissioning Support Unit. The contracts are being monitored by the Council.

### 6.3 Financial

An indicative breakdown of payments is below:

| Public Health Service (previously known as Local Enhanced Service) | Projected budget (based on 2012/13 actual) |
|---|---|
| Healthchecks | £109,000 |
| IUCD contraception | £74,000 |
| Nexplanon | £39,400 |

To date, no payments have been made to Enfield CCG as a completed Vendor Form is outstanding from the CCG.

### 6.4 Key Achievements

- The payment process has been set up following liaison with four organisations.
- All practices signed up to the Public Health Services can input into a system that they are familiar with and receive payment via the preferred mechanism.

### 6.5 Key Challenges

- Getting agreement from all four organisations to complete the payment process via Open Exeter.
- Providing adequate assurance to Enfield GPs that they would be paid for their services over five months into the financial year during the set up.
- Obtaining monitoring information from the GPs.

### 6.6 Key Priorities before 31st March 2014

- Ensure that GPs are paid for the services carried out to date and that payment is made promptly in the future.
- All Public Health Services to be reviewed before 31st march 2014.
- Produce a specification for Healthchecks.

## 7. Integrated Learning Disabilities Service

### 7.1 Overview of Schedule

This Schedule formalises the arrangements for an adult specialist learning Disability service which covers both health and social care services.

### 7.2 Governance

The Integrated Learning Disabilities Service reports to the Health and Wellbeing Board through the Learning Disabilities Partnership Board and Joint Commissioning Board. At an operational level, the service is managed within the management structure of the Adult Division of Health, Housing and Adult Social Care. The service has monthly financial and performance reporting.

The service has a management and clinical governance structure including clinicians and managers. An external GP provides additional clinical advice to the governance meeting. Clinical governance feeds in to the ECS/BEH clinical governance structures. The ILDS reports to the CCG's LD Steering group and has a governance reporting line to the CCG Clinical Quality Committee.

### 7.3 Financial

The contributions total £5,430,280 in 2013-2014. To date, £2,092,812 has been spent with £3,337,488 remaining. It is anticipated that the LD pool will come in on budget in this financial year.

### 7.4 Key Achievements

There have been a number of significant achievements in the year 2013/14 to date. These include:

- Significant reduction in the Assessment & Treatment bed days used in 2013/14.
- All Winterbourne reviews have been completed with plans in place to place in alternative more local provision where necessary.
- High numbers of people being supported locally in the community with exceptionally low numbers of people in OATS.
- No permanent residential placements made in this financial year to date.
- Shared electronic health & social care record implemented in community nursing and occupational therapy. To be rolled out to all services by March 2014.

- Achieved approximately £900k care purchasing savings to half year position with an additional 600k projected to year end.
- Agreement with North Mid & Royal Free Trusts to continue the LD Acute Liaison Nurse role.

In addition the service is on target to achieve all performance indicator targets by the year end with the exception of D40. A plan is in place to address performance with D40 and to ensure achievement by March 2014. See below.

| Description | Target 13/14 | At 30.09.13 |
|---|---|---|
| NI130 Self Directed Support | 100% | 100% |
| NI130 Direct Payments | 180 | 153 |
| NI132 Timeliness of assessment (28 days) | 87% | 100% |
| D40 reviews | 82% | 31.4% |
| NI145 people with LD in settled accommodation | 79% | 78.6% |
| NI 146 People with LD in Paid Employment | 147 | 150 |
| NI135 Carers Assessments | 48% | 34% |
| C73 New admissions to Residential care | 6 max | 0 |

## 7.5 Key Challenges

- Achieving significant savings whilst continuing to provide effective services.
- Lack of LD acute liaison nurse function at Barnet & Chase farm Hospital Trust.
- Although a reduction in the numbers of safeguarding referrals on last year, overall an 80% increase over past 4 years with no additional resources. Increased complexity of alerts and increase need for police investigations.
- Continued inappropriate (and poor) transfers of care from other London boroughs/PCTs resulting in additional pressure/risks for the ILDS.
- Increased number of people becoming Ordinarily Resident in Enfield resulting in significant financial pressure.
- Increased number of people deemed to be no longer eligible for Continuing Health Care placing, shifting the financial pressure to the local authority.

## 7.6 Key Priorities before 31st March 2014

Continuing priorities for 2013/14 include:

- Continue to roll out the electronic health & social care record.
- Increase the numbers of people on direct payments.
- Introduce outcome focussed review process.
- Identify and achieve further savings and achieve balanced budget.
- Maintain reduce use of in-patient Assessment & Treatment beds and length of stays.
- Plan for the return (as appropriate) for those currently in OATS.
- Reduce the time from safeguarding alert to closure where possible and ensure effective oversight of longer term complex safeguarding investigations.
- Maintain excellent performance in PIs.

## 4. ALTERNATIVE OPTIONS CONSIDERED

**4.1** A number of options were considered about the most appropriate partnership arrangements prior to the production of the Section 75 Agreement, which was found to be the most suitable mechanism to formalise partnership arrangements. The half year review is a requirement of the Agreement, therefore must be undertaken to ensure compliance with the agreed terms between the Parties.

## 5. REASONS FOR RECOMMENDATIONS

- The Section 75 Agreement sets out the key partnership arrangements between the Council and NHS Enfield Clinical Commissioning Group. The half year review outlines the key achievements and challenges for each schedule and the Health and Wellbeing Board is asked to note this review, to monitor progress and the effectiveness of the partnership.

- This report highlights that whilst the services have been provided, payment is outstanding and needs to be progressed in accordance with the terms of the Agreement.

- The Agreement has not yet been formally signed and sealed by both organisations, so this is a priority for both Parties and the Health and Wellbeing Board is asked to note this.

## 6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

### 6.1 Financial Implications

The total pooled funding within the section 75 Agreement between CCG and LBE is £8.282m for 2013/14. Detail of the financial position for each service at the mid-point in the year has been included within the main body of the report.

It should be noted that there remains a cash flow risk to the authority whilst the CCG have not formally signed the contract and released payment towards their contribution for Q1 and Q2 of the agreement.

## 6.2 Legal Implications

6.2.1 The Council has the power to enter into the partnership Agreement with the CCG pursuant to section 75 of the National Health Service Act 2006 ("NHSA 2006") as amended by the Health and Social Care Act 2012 ("HSCA"). The HSCA 2012 abolished the Primary Care Trust and amends the Act to include CCG's in the definition of NHS bodies able to enter into Section 75 Agreements. The unsigned Section 75 Agreement referred to in this report has been drafted in accordance with the requirements of the NHSA 2006 and the half yearly review is in accordance with the terms of the Agreement.

6.2.2 The Council should obtain a written confirmation from the CCG that it would make the outstanding payments in accordance with the terms of the Agreement as the Services have been delivered in accordance with the terms of the Agreement based on the understanding of both parties.

6.2.3 As the parties have carried out their obligations from April 2013 in accordance with the terms of the unsigned Agreement with the CCG, the Courts are likely to take the view that the terms of the unsigned agreement govern the relationship of the parties based on the conduct of the parties. To ensure certainty of contractual terms, the Council should ensure that both parties execute the contract and ensure that payment is received.

6.2.4 Any amendments to be made to the Agreement must be in accordance with the NHSA 2006 and must be in a form approved by the Assistant Director of Legal Services.

## 7. KEY RISKS

- The Agreement is terminated and partnership working is adversely affected. This is mitigated by a six month notice period forming part of the Agreement, to ensure sufficient notice to terminate contracts resulting from the Agreement. Notice has not been provided and both parties have indicated a commitment to continue the Agreement in 14-15.

- Payment is not received for the services provided placing financial burden on the Council for monies owed from NHS Enfield Clinical Commissioning Group and those owed from the Council to NHS Enfield Clinical Commissioning Group.

- The absence of a signed Agreement destabilises the partnership working. This has been mitigated by continuing the arrangements in line with the schedules pending formal approval.

## 8. IMPACT ON PRIORITIES OF THE HEALTH AND WELLBEING STRATEGY

### 8.1 Healthy Start – Improving Child Health

This priority is not applicable to the Adult Section 75 Agreement.

### 8.2 Narrowing the Gap – reducing health inequalities

The Section 75 Agreement includes a Public Health schedule and three sexual health contracts, which are contributing to reducing health inequalities.

### 8.3 Healthy Lifestyles/healthy choices

This priority is not applicable to the Adult Section 75 Agreement.

### 8.4 Healthy Places

This priority is not applicable to the Adult Section 75 Agreement.

### 8.5 Strengthening partnerships and capacity

The Section 75 Agreement sets out the parameters of the key partnership working between Enfield Council and NHS Enfield Clinical Commissioning Group. This provides a framework for the parties to work together, strengthening arrangements and utilising local resources to best effect.

## 9. EQUALITIES IMPACT IMPLICATIONS

An Equalities Impact Assessment was undertaken at the production of the Agreement.

**Background Papers**

None.