

## **Divisions Affected -**

### **Delegated Decision by Cabinet Member for Adult Social Care**

**30 March 2023**

### **Oxfordshire s75 NHS Act Pooled Commissioning Budget**

### **Report by Interim Corporate Director of Adult Services**

## **RECOMMENDATION**

### **1. The Cabinet Member for Adult Social Care is RECOMMENDED to**

#### **a) Approve**

- i. the Agreement of a s75 NHS Act 2006 pooled commissioning budget with Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board from 1 April 2023. The draft Agreement is attached as Annex 1.
- ii. delegation to Corporate Director of Adult Services and the Council s151 Officer to finalise the Agreement prior to signature in line with the Council's scheme of delegation
- iii. the financial contributions as set out at paragraph 10 and the risk share set out at paragraph 30.

#### **b) Note**

- i. The Agreement will commence on 1 April 2023. It has been approved for completion by the Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board at its meeting on 21 March 2023. The Agreement replaces that dating from 1 April 2013 with the former Oxfordshire Clinical Commissioning Group
- ii. The Agreement gives authority to, and binds, the Council and the ICB to pool financial and other resources to deliver better outcomes for the people of Oxfordshire. The Agreement extends the approach to integrated commissioning led by the Council on behalf of the partners and will support the further development and implementation of partnership working in Oxfordshire. The Agreement incorporates the Better Care Fund for Oxfordshire.
- iii. the governance arrangements for the new s75 Agreement
- iv. that any future development of the s75 Agreement which proposes an expansion of strategic scope, and the relevant budgets may require wider public consultation

## **Executive Summary**

2. Oxfordshire has organised its joint commissioning arrangements around Section 75 (s75) NHS Act 2006 pooled funding agreements for many years. The current agreement was signed with effect from 1 April 2013 by the Council (OCC) and the then Oxfordshire Clinical Commissioning Group ("the CCG")

and has been varied in format and length on several occasions. The CCG's responsibilities under the agreement novated to the ICB from 1 July 2022. The latest extension to the current agreement expires on 31 March 2023.

3. The new Agreement incorporates the Oxfordshire Better Care Fund. It has been reviewed to reflect:
  - a. The development and implementation of the Integrated Commissioning Team for Health, Education and Social Care [HESC] hosted by the Council and funded jointly by the Council and the ICB since March 2021 and the ensuing delegations and commitments between the partners.
  - b. The vision for HESC of a "life course, tier need" approach to commissioning across health and social care that would focus on prevention, partnership, co-production and personalisation.
  - c. The opportunity and ambition set out in the Health & Care Act 2022 for increased system and partnership working, including the development of provider collaboratives.
4. The Agreement will be backed by a Memorandum of Understanding (MOU) which sets out the strategic direction of travel for the s75 and the mechanism for managing joint funded posts within HESC. The MOU will cover
  - (a) Background and scope of the s75 and partnership approaches more generally.
  - (b) Annual Development Plan for the s75 arrangements as required by the Agreement.
  - (c) Operating and governance arrangements for those parts of HESC that are not covered by the Agreement (eg Children and Young People's Services).
  - (d) The agreement to cover joint funded staff in terms of responsibilities and liabilities of both Partners.
5. The new s75 agreement in many areas is a continuation of the preceding agreement other than:
  - a. Those provisions relating to HESC set out in the s75.
  - b. The increased level of ambition that the agreement should be a strategic delivery vehicle for better health and care outcomes for Oxfordshire
  - c. Changes to the financial risk share in the current agreement
6. The key features of the new Agreement are as follows:
  - a. The agreement is open-ended: it can be varied at any point by agreement or on three months' notice.
  - b. The agreement can be terminated on six months' notice.
  - c. The agreement incorporates the budgets set out at pp54ff of the agreement and the contracts set out at pp 61ff.
7. The Agreement will govern the Better Care Fund (BCF) and contracts and arrangements for the delivery of hospital discharge, some aspects of admission avoidance, community capacity and prevention, mental health services for adults and children and services for adults living with learning disability and/or autism. It covers individual care packages commissioned by the Council and by the ICB in terms of NHS Continuing Healthcare.

8. It is the intention of the Council and the ICB that the Agreement could be reviewed and expanded regularly where this furthers system priorities, improves outcomes, develops partnerships and makes best use of the 'Oxfordshire pound'. Key areas that may be varied into the agreement include:
  - a. Further alignment of funding and services that support independence, prevention and addressing health inequalities
  - b. Hospital admission services where these support the delivery of Better Care Fund and enable more people to be supported without admission to hospital
  - c. Expansion of the scope of the pooled budgets in relation to children and young people.
  - d. Increased alignment of mental health, primary and community health services where this collaboration improves outcomes and efficiency for the people of Oxfordshire

### Exempt Information

9. Not applicable

### The case for a s75 NHS Act 2006 Pooled Budget Agreement

10. The Council and the ICB held a s75 NHS Act Pooled Commissioning Budget since 2013, which was in turn the successor of prior arrangements with the former Primary Care Trust. The new Agreement will be supported by a combined Budget for 2023/24 of £413,406,400. This is made up as follows:

	£	£
<b>Oxfordshire County Council</b>		
Age Well	54,015,700	
Live Well - Physical Disability	19,538,400	
Live Well - Mental Health	8,682,400	
Live Well - Learning Disability	88,848,000	
iBCF	10,705,300	
Discharge Grant 2023/24	1,500,900	
<b>Total OCC</b>		<b>183,290,700</b>
<b>BOB ICB:</b>		
Age Well	78,269,000	
Live Well - Physical Disability	14,633,000	
Live Well - Mental Health	68,790,000	
Live Well - Learning Disability	18,542,000	
Discharge Grant 2023/24	3,185,200	
<b>Total BOB ICB</b>		<b>183,419,200</b>
<b>Better Care Fund</b>		
Social Care	27,828,500	
Health	18,868,000	
<b>Total Better Care Fund</b>		<b>46,696,500</b>
<b>Total Pooled Fund</b>		<b>413,406,400</b>

- (a) The Better Care Fund (including the Improved Better Care Fund grant) is incorporated into the Agreement and is designed to deliver
  - (i) the partnership working and integration that reduces the need for people to be conveyed and admitted to hospital

- (ii) a reduction in the time people wait in hospital before discharge
    - (iii) a Home First approach to support people on discharge from hospital
    - (iv) a reduction in the number of Council funded permanent admissions to residential or nursing home care
    - (v) impact from reablement services on keeping people safe and well at home 91 days after an intervention.
  - b. The Better Care Fund plan and local trajectories against national targets are agreed by the Health & Wellbeing Board.
11. The pooled budget approach has enabled the Council and the ICB to develop joint approaches that have benefited our population:
- (a) The development of a mental health outcomes-based contract supporting recovery and wellbeing delivered by a partnership of NHS, social care, and voluntary and community sector organisations
  - (b) The development of the Home First model to support people to return home after a stay in hospital, integrating reablement and domiciliary care provided by the independent sector under the leadership of a multidisciplinary social care and health team hosted and led by the Council
  - (c) An integrated health and social care contract for equipment and assistive technology to support people at home, overseen by clinical leads from both social care and health
  - (d) An integrated pathway for people needing a step-down bed after an acute hospital stay bringing together independent nursing homes, and a multidisciplinary team across social care, hospital discharge and community therapists
  - (e) Generally, a common sense of purpose and established joint working practices that, for instance, supported Oxfordshire's covid response. This was especially true in relation to maintaining hospital capacity and flow where the county was able to rely to a larger extent on established jointly commissioned services and protocols than was the case in other systems
  - (f) The opportunity to manage system strategic risks at a senior level: for instance, the Oxfordshire response to the Transforming Care programme for people living with learning disability and/or autism
  - (g) The ability to manage financial risks across complex pathways. In the current agreement this has enabled the parties to agree an approach to the management of needs and associated costs that fall outside of the Mental Health Outcomes Based Contract and jointly to work with clinicians and providers to develop the care pathways to support our population.
  - (h) The ability to map performance across health and social care by bringing together a range of datasets in reports to Health & Wellbeing Board

12. In 2020/21 the Council and the then CCG developed the Health, Education and Social Care [HESC] integrated commissioning team to focus on outcomes for individuals and better value for the system from a new approach:
  - (a) A life course approach across Start Well, Live Well and Age Well that reflect how people use and experience services during their lives
  - (b) A tiers of need model that emphasises prevention, enablement, and support to intervene early, help people maintain independence in the wider community, and provide support and protection when they need it
13. This new commissioning approach moves away from condition-specific care linked to separately commissioned services. It seeks to
  - (a) support the person in their own community and enable them to gain and retain independence for as long as possible building on their own strengths and ambitions
  - (b) build advice, support, interventions, and care around the person rather than seek to slot the person into a service or pathway
  - (c) address health and care inequalities and develop services in a co-produced way
  - (d) create a consistent approach to the quality of support and care throughout commissioned services
  - (e) increase integration across social care and health investing money and resources where it will have the most impact to support these aims.
  - (f) Increase our use of technology and other innovative and person-centred ways to enable to manage their own care and health needs more independently in the community
  - (g) Create single purchasing and contracting opportunities where this supports the aims above and providers better value for the Oxfordshire pound
14. The new HESC team hosted by the Council came into place from 1 March 2021. It incorporates 18 joint funded posts and is headed by a joint funded Deputy Director, Commissioning who is employed by the Council and reports to the Corporate Director of Adult Services and Place Director in Oxfordshire for the ICB, with a “dotted line” relationship to the Director of Children’s Services and the Director of Public Health.
15. The current agreement needs to change to support these aims. Specifically, it needs to
  - (a) incorporate the delegations and commitments from the partners to clarify and support the functions of the HESC team, and
  - (b) Embrace the parties’ joint ambition to increase independence and prevention and support more people in their own community
16. The new Agreement does not map exactly onto the new structure. In setting up the Health, Education and Social Care team, it was the ambition of the Council that the scope of the team should include both Children’s services and Public Health. Some of these services are already in scope and some are currently aligned. The new Agreement should incorporate the flexibility to

extend the pooled budget to include these elements as set out above when appropriate

## **Scope of new s75 NHS Act 2006 agreement**

17. The new Agreement covers those services set out in the old agreement and there are no plans to change this scope in terms of budgets or services in April 2023.
18. The main changes to the new agreement are as follows:
  - (a) In the new commissioning structure, the ICB has delegated certain functions in relation to NHS commissioning, performance and financial management to the County which are set out in the s75 agreement.
  - (b) To support the delivery of the Agreement the ICB and the Council will provide various support to commissioners in terms of contract and quality management, data and business intelligence, financial accounting and reporting and legal advice and support which are set out in the s75 agreement
  - (c) The Agreement is open-ended with a requirement that the partners review the performance of the agreement annually against agreed financial and delivery metrics annually and confirm that the agreement should continue subject to any required contract variations. Both parties are able to break the agreement on notice.
    - a. These arrangements will avoid the need for contract extensions by variation and require the partners actively to review the agreement each year
  - (d) The Agreement contains provisions for the future extension of scope of the agreement where that is agreed by the parties
19. **The Cabinet Member for Adult Social Care is asked to approve the Agreement of a s75 NHS Act 2006 pooled commissioning budget with Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board 1 April 2023 as set out above**
20. **The Cabinet Member for Adult Social Care is asked to approve delegation to Corporate Director of Adult Services and the Council s151 Officer to finalise the Agreement prior to signature in line with the Council's scheme of delegation**

## **Governance**

21. In March 2021 the preceding Joint Management Groups for the current s75 agreement resolved to dissolve themselves and transfer their responsibilities for the management of the finance and performance of the pooled funds to the Joint Commissioning Executive.
22. This arrangement continues in the new Agreement. The Joint Commissioning Executive is accountable respectively to Cabinet and to the ICB Board for the management of budgets and performance of commissioned services funded by the pool and for any risks relating thereto. This includes national NHS measures managed via the services commissioned from the pooled budget.

23. The Joint Commissioning Executive is also responsible for the delivery of the Better Care Fund Plan and metrics to the Health & Wellbeing Board
24. **The Cabinet Member for Adult Social Care is asked to note the governance arrangements for the new s75 Agreement**

## Strategic Alignment

25. The new Agreement will deliver the Council's obligations in respect of the Better Care Fund and those parts of the NHS Long Term Plan as fall within scope.
26. The new Agreement is fully aligned to the Health and Care Act 2022.

## Corporate Policies and Priorities

27. The new Agreement supports the delivery of the Council's Corporate Vision for Thriving Communities.
  - (a) Strive to give every child a good start in life and protect everyone from neglect: the agreement includes the Child and Adolescent Mental Health Services and will support the development of an enhanced offer
  - (b) Enable older and disabled people to live independently and care for those in greatest need.
  - (c) Tackle inequality help people live safe and healthy lives and enable everyone to play an active part in their community.
  - (d) Support a thriving and inclusive local economy that recovers strongly from the COVID crisis.
28. The new Agreement will also support the Council's intention to create a fairer county, especially:
  - (a) Tackle inequalities in Oxfordshire
  - (b) Prioritise the health and wellbeing of residents
  - (c) Support carers and the social care system
  - (d) Create opportunities for children and young people to reach their full potential

## Financial Implications

29. The financial contributions are set out at paragraph 10 above.
30. It is proposed, from April 2023, to amend the risk shares between the partners in the new Agreement as detailed below.

Service Area	How is risk assigned
Age Well	Aligned
Live Well – Physical Disability	Aligned
Live Well – ABI	Aligned
Live Well – Learning Disability	Aligned

Live Well – MH abated	OCC take first £200k, further risk split equally
Live Well – MH non abated	Aligned

# aligned means that each partner takes the pressure or underspend associated with their own contribution and spend and subsequently there is no sharing of risk.

\* "abated": social care costs relating to people aged 18-65 under the care of Oxford Health NHS FT but who are not in scope according to diagnostic criteria of the ICB's Outcomes Based Contract.

31. In summary the changes being proposed are that the Learning Disability risk and the Mental Health "non abated" risk will be aligned to the specific partner going forward. This significantly reduces the exposure of the Council to risks arising from NHS over-spend in the new Agreement.
32. **The Cabinet Member for Adult Social Care is asked to approve the financial contributions as set out at paragraph 10 and the risk share set out at paragraph 30.**

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### Approved by

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## Legal Implications

### Legislative Background

33. Under the Care Act 2014 local authorities have a mandatory duty to integrate care and support provision with health provision and health related provision. The National Health Service Act 2006 ("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.
34. The powers permit the formation of a fund (pooled budget) made up of contributions by both parties "out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the authority or authorities" (section 75(2)(a)(ii), NHS Act 2006).
35. In addition the powers permit the exercise of certain prescribed functions of each body by the other (section 75(2)(b) and (c), NHS Act 2006) and the provision of staff, goods or services, or the making of payments between the two partners, in connection with the above arrangements (sections 75(2)(d)-(f), NHS Act 2006).
36. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617) (the Regulations) (as amended by SI 2003/629 and SI 2012/3094), set out the rules governing such partnerships and the agreement



between the local authority and the NHS body (known as a s75 Agreement) must contain certain prescribed provisions.

### **Current Arrangements**

37. There has been in place a s75 Agreement between Oxfordshire County Council ("the Council") and Oxfordshire Clinical Commissioning Group ("the CCG") since 2013 which itself consolidated a number of separate s 75 Agreements dating back to 2009. The current s75 Agreement has been extended by agreement a number of times and ends 31st March 2023. Since 1 July 2022 the agreement has been between the Council and the ICB.

### **The Proposed s 75 Agreement**

38. The proposed s75 Agreement is designed to reflect new governance structures and formalise certain amendments agreed by the parties but essentially continue current arrangements subject to the changes outlined in this report.
39. Each partner will have all the usual contractual remedies where the other partner is in breach including the right to claim damages for all losses arising from a breach. It should be noted however that the nature of these agreements is one of partnership and trust between two public bodies. The bodies are engaged in a joint commissioning exercise with aligned interests rather than buying services from each other. There is a dispute resolution process which should be engaged before any legal action is taken.
40. It is proposed that the s75 Agreement will be a rolling contract where either partner can terminate the s75 Agreement and/or any pooled fund arrangement on 12 months' notice. In addition, termination may be on shorter notice in certain situations (e.g. where one party is in default or where it has not been possible to agree contributions for a forthcoming financial year).

### **Future Changes**

41. It should be noted that any future proposed substantial expansion of delegated functions could also trigger a statutory obligation for the Council and the ICB to jointly consult those affected by the arrangements such as service users, carers, or voluntary groups.
42. It is recommended that the Memorandum of Understanding referenced at paragraph 4 above dealing with the HESC arrangements is made legally binding and negotiated and agreed with the ICB as soon as reasonably practical following completion of the s 75 Agreement.

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**Approved by**  
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## **Staff Implications**

43. There are no staff implications associated with signing a new s75 agreement with the ICB. The resources to manage the funds and deliver the strategic intention are located within the HESC team which is jointly funded outside of the s75 agreement by the Council and the CCG. These arrangements will be governed in the MOU referred to at paragraph 4 above.

## **Equality & Inclusion Implications**

44. The new Agreement maintains the scope of the current arrangements and seeks to address health and other inequalities especially in relation to older people, people living with physical disability, mental health issues or learning disability and/or autism. The Agreement will be a key enabler to support Oxfordshire's delivery of national equality and inclusion targets as set out in the Better Care Fund guidance and the NHS Long Term Plan
45. The new Health, Education and Social Care structure incorporates Oxfordshire Public Health and the Director of Public Health sits on the Joint Commissioning Executive and Public Health services are mapped onto the Life stage and tiers of need model. The annual plan for the s75 Agreement will reflect the Joint Strategic Needs Assessment and will set targets to address identified local equality and inclusion gaps.

## **Sustainability Implications**

46. The development of a new s75 Agreement has no impact on sustainability. However, there are opportunities for the partners to explore how the new integrated commissioning arrangements can support both organizations' sustainability commitments. NHS England now requires that sustainability is considered and promoted as part of Oxfordshire's Better Care Fund Plan.

## **Risk Management**

47. There is one identified risk in relation to the new s75 Agreement
  - (a) Further to the implementation of the Health and Care Act 2022 the MHS partner body to the s75 works across the whole of Buckinghamshire, Oxfordshire and West Berkshire, Wokingham and Reading District Councils. There is a risk that decisions on budgets and scope of the s75 agreement may be impacted by this broader geography.
  - (b) This risk is mitigated by the decision of ICB Board to approve the new Agreement at its meeting on 21 March 2023. This reflects the ICB Board's commitment to the development of the Oxfordshire "Place".
  - (c) Further, the development and delivery of the Better Care Fund will continue to be managed on a Health & Wellbeing Board footprint.

- (d) Any changes to the budgets and/or scope of the Agreement would need to be agreed by the Partners.
- (e) Therefore, this risk is mitigated for the Council.

## Consultations

- 48. The move from the current to proposed s75 NHS Act 2006 agreement does not require consultation as the budgets involved and the client groups impacted do not change. This decision can therefore rely on the other earlier consultation prior to the current agreement.
- 49. Any future expansion of the Agreement (e.g., to include further services for Children and Young People) may trigger the requirement for consultation as set out in the Act. This would need to be explored before any further proposals were developed.
- 50. **The Cabinet Member for Adult Social Care is asked to note that any future development of the s75 Agreement which proposes an expansion of strategic scope and the relevant budgets may require wider public consultation**

Karen Fuller Interim Corporate Director of Adult Services

Annex: Draft s75 Agreement

Background papers: Nil

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