

DELEGATED DECISION BY CABINET MEMBER FOR ADULT SERVICES – 19 MARCH 2013

SECTION 75 AGREEMENT – ALL CLIENT GROUPS

Report by Director for Social and Community Services

Introduction

1. The purpose of this report is to seek approval for an agreement to continue formal joint working arrangements and pooled budgets with Oxfordshire Clinical Commissioning Group from April 2013 onwards.

Background

2. Section 75 of the National Health Services Act 2006 contains powers enabling NHS Bodies to exercise certain local authority functions and for local authorities to exercise various NHS functions. This in turn enables better integration of health and social care, leading to a better experience and outcomes for patients and service users.
3. The County Council has three existing agreements under Section 75 with Oxfordshire Primary Care Trust to pool resources and deliver shared objectives, often referred to as 'pooled budgets'. These agreements cover services for Older People and people with Physical Disabilities, people with Learning Disabilities and for people with Mental Health needs.
4. These existing agreements end on 31 March 2013, at the same point that the Oxfordshire Primary Care Trust ceases to exist.
5. Both the County Council and the new Oxfordshire Clinical Commissioning Group (which formally comes into being from 1 April 2013) are committed to continuing the existing joint working arrangements, and building on them to ensure even greater integration of health and social care, best use of resources, and improved outcomes for the people of Oxfordshire.
6. Experience of operating the existing, separate agreements has shown that although they are positive in encouraging joint working and improving outcomes, they limit the flexibility to move resources between 'pools' to reflect demand. There is also some inconsistency between agreements in terms of risk, and a perceived lack of transparency and oversight due to them not being brought together in a single agreement.
7. As such, the development of a single Section 75 agreement to come into effect from 1 April 2013 has been identified as a priority within the Oxfordshire Joint Health and Wellbeing Strategy. A joint working group involving officers from both partners has developed the new agreement, which is also being

presented to the Executive Committee of the Clinical Commissioning Group at the end of March.

Single Section 75 Agreement

8. The proposed agreement governs the pooled budgets for Older People, People with Physical Disabilities, People with Learning Disabilities and for People with Mental Health needs. It sets the specific purpose for each, and which partner will have lead commissioning responsibilities (see Annex 1).
9. The proposed agreement sets out the mechanisms by which the contributions from the County Council and the Clinical Commissioning Group are managed and used. It details the aims and objectives of the pooled funds, the services that will be commissioned, the governance arrangements and agreement between the partners for management and contractual arrangements.
10. The proposed agreement essentially carries over most of the content of the existing agreements, as generally these are considered to be working well. However, the new agreement seeks to standardise as much as possible and where it is felt appropriate to do so, for example in the roles and responsibilities of Joint Management Groups and pooled budget managers that are responsible for the implementation of the section 75 agreement.
11. Greater emphasis has been placed on the development and delivery of joint commissioning strategies, rather than having separate aims, objectives and performance measures for the section 75 agreement. This also helps with greater transparency, as the commissioning strategies are based on wide consultation and are publicly available. Current joint commissioning strategies are available on the Source Oxfordshire website, at <http://www.sourceoxfordshire.org.uk/cms/content/business-plans>

Future Variations to the Proposed Agreement

12. There are areas where it is likely that variations will be needed to the initial agreement, and provision has been made for this within the draft agreement.
13. For example, there is a great deal of work that is ongoing to bring more resources into the Older People's pooled budget in particular, linked to the development of the Joint Older People's Commissioning Strategy. This work will not be completed by 1 April as the strategy will be reported to Cabinet in June. Proposed changes to the pooled budget will be reported to Cabinet at the same time, and made through variation to the overall section 75 agreement once agreed.
14. It is also hoped to develop the existing risk sharing arrangements so they are more closely linked to contributions from each partner, and for this to be consistent across all client groups. Again, any proposed changes will be reported to Cabinet for approval and made through variation to the overall section 75 agreement once agreed.

Risks

15. As the Oxfordshire Primary Care Trust will cease to exist on 31 March 2013, it is not possible to simply renew or carry over the existing Section 75 agreements. As such there is a risk that pooled budget arrangements will not be able to continue in 2013/14, unless new arrangements are agreed with the Oxfordshire Clinical Commissioning Group by 1 April. Failure to agree new arrangements would significantly impact on both partners ability to ensure appropriate services are commissioned to meet people's needs across all client groups.

Financial and Staff Implications

16. The full financial implications to the Council are set out in the draft agreement, in particular Schedule 3. The Council's financial contribution will be as set out in the budget agreed by Council on 19 February 2013.

Equalities Implications

17. In line with the Council's Equality Policy 2012-2016, a Service and Community Impact Assessment has been completed to consider the implications of the Section 75 Agreement for all client groups. This is attached at Annex 2.
18. There are not considered to be any direct implications of this agreement on individuals, communities, staff or providers of services as the agreement does not vary significantly from previous agreements and is essentially a mechanism for the delivery of joint commissioning strategies.
19. These joint commissioning strategies are all developed following significant consultation with clients, the public, providers and organisations involved in the commissioning and delivery of services. In most cases they are specifically targeted at improving outcomes for more vulnerable people, and each has its own impact assessment.
20. Similarly, individual impact assessments are completed for all commissioning activity, service changes and contracts awarded linked to the development and delivery of the joint commissioning strategies. Where appropriate, the outcomes of these assessments are reported to Cabinet to inform decision-making on new policies, contracts and service changes.

RECOMMENDATION

The Cabinet Member for Adult Services is RECOMMENDED to approve the Section 75 Agreement for All Client Groups, subject to the inclusion of any necessary changes in the text which may be required following consideration by Oxfordshire Clinical Commissioning Group and finalisation of the financial contributions of both parties as agreed by the Director for Social & Community Services after consultation with the Cabinet Member for Adult Services.

CMDAS4

JOHN JACKSON
Director for Social and Community Services

Background papers: Draft Agreement

Annex 1: Details of the Pooled Funds

Annex 2: Service and Community Impact Assessment (SCIA)

Contact Officer: Ben Threadgold, Strategy Manager – Joint Commissioning
Tel: (01865) 328219

March 2013

Details of the Pooled Funds

OLDER PEOPLE POOLED FUND

- The Older People Pooled Fund shall consist of contributions from the OCCG and the Council to commission services for older people.
- The Council shall be the Host Partner for the Older People Pooled Fund. The Services delivered shall be the social care services and specialist health services for older people.
- The Council shall be the Lead Commissioner for some elements of these Services and the OCCG shall be the Lead Commissioner for other elements of these Services. The division of responsibility for the commissioning of these Services is set out in Schedule 2 of the agreement.
- The aim of the Older People Pooled Fund is to use resources efficiently to commission a range of health and social care services which enable older people to live independent and successful lives that are healthy and personally and socially fulfilling.
- The Older People Pooled Fund will be used for commissioning a range of services for all client groups where the majority of users are older people (for example support for carers, equipment, reablement).

LEARNING DISABILITY POOLED FUND

- The Learning Disability Pooled Fund shall consist of contributions from the OCCG and the Council to commission services for adults with learning disabilities
- The Council shall be the Host Partner for the Learning Disability Pooled Fund and shall act as Lead Commissioner for social care services and specialist health services for adults with a learning disability.
- The aim of the Learning Disability Pooled Fund is to use resources efficiently to commission a range of health and social care services which enable adults with learning disabilities to live healthy, active lives in their local communities.

MENTAL HEALTH POOLED FUND

- The Mental Health Pooled Fund shall consist of contributions from the OCCG and the Council to commission specialist and targeted mental health services for children and young people, and mental health and well-being services for adults aged 16 and above with functional mental health problems .
- The OCCG shall be the Host Partner for the Mental Health Pooled Fund and shall act as Lead Commissioner for social care services and specialist health

CMDAS4

services for children, young people and adults over the age of 16 with mental health needs.

- The aim of the Mental Health Pooled Fund is to use resources efficiently to commission a range of health and social care services which achieve better outcomes for people of all ages living with mental health problems.

PHYSICAL DISABILITY POOLED FUND

- The Physical Disability Pooled Fund shall consist of contributions from the OCCG and the Council to commission services for adults with physical disabilities
- The Council shall be the Host Partner for the Physical Disability Pooled Fund and shall act as Lead Commissioner for social care services and some health services for adults with a physical disability.
- The aim of the Physical Disability Pooled Fund is to use resources efficiently to commission a range of health and social care services which enable adults with physical disabilities to live healthy, active lives in their local communities.

Service and Community Impact Assessment (SCIA)

Front Sheet:

Directorate and Service Area:
Joint Commissioning, Social and Community Services

What is being assessed (eg name of policy, procedure, project, service or proposed service change):
Single Section 75 Agreement for All Client Groups

Responsible owner / senior officer:
Sara Livadeas

Date of assessment:
4th March 2013

Summary of judgement:

There are not considered to be any direct implications of this agreement on individuals, communities, staff or providers of services as the agreement does not vary significantly from previous agreements and is essentially a mechanism for the delivery of joint commissioning strategies.

These joint commissioning strategies are all developed following significant consultation with clients, the public, providers and organisations involved in the commissioning and delivery of services. In most cases they are specifically targeted at improving outcomes for more vulnerable people, and each has its own impact assessment.

Similarly, individual impact assessments are completed for all commissioning activity, service changes and contracts awarded linked to the development and delivery of the joint commissioning strategies. This will include any decisions to move significant amounts of money between pools. Where appropriate, the outcomes of these assessments will continue to be reported to Cabinet to inform decision-making on new policies, contracts and service changes.

Detail of Assessment:

Purpose of assessment:

This assessment considers the impact of having a new, single Section 75 agreement between the County Council and Oxfordshire Clinical Commissioning Group that will cover all client groups and improve the flexibility to move resources between pooled budgets to reflect demand, consistency between agreements in terms of risk, and transparency and oversight compared to having separate agreements.

Section 149 of the Equalities Act 2010 (“the 2010 Act”) imposes a duty on the Council to give due regard to three needs in exercising its functions. This proposal is such a function. The three needs are:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic, and those who do not.

Complying with section 149 may involve treating some people more favourably than others, but only to the extent that that does not amount to conduct which is otherwise unlawful under the new Act.

The need to advance equality of opportunity involves having due regard to the need to:

- remove or minimise disadvantages which are connected to a relevant protected characteristic and which are suffered by persons who share that characteristic,
- take steps to meet the needs of persons who share a relevant protected characteristic and which are different from the needs other people, and
- encourage those who share a relevant characteristic to take part in public life or in any other activity in which participation by such people is disproportionately low.
- take steps to meet the needs of disabled people which are different from the needs of people who are not disabled and include steps to take account of a person’s disabilities.

The need to foster good relations between different groups involves having due regard to the need to tackle prejudice and promote understanding.

These protected characteristics are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race – this includes ethnic or national origins, colour or nationality
- religion or belief – this includes lack of belief
- sex
- sexual orientation
- marriage and civil partnership

Context / Background:

Section 75 of the National Health Services Act 2006 contains powers enabling NHS Bodies to exercise certain local authority functions and for local authorities to exercise various NHS functions. This in turn enables better integration of health and social care, leading to a better experience and outcomes for patients and service users.

The County Council has three existing agreements under Section 75 with Oxfordshire Primary Care Trust to pool resources and deliver shared objectives. These agreements cover services for Older People and people with Physical Disabilities, people with Learning Disabilities and for people with Mental Health needs.

These existing agreements end on 31 March 2013, at the same point that the Oxfordshire Primary Care Trust ceases to exist.

Both the County Council and the new Oxfordshire Clinical Commissioning Group (which formally comes into being from 1 April 2013) are committed to continuing the existing joint working arrangements, and building on them to ensure even greater integration of health and social care, best use of resources, and improved outcomes for the people of Oxfordshire.

Proposals:

Experience of operating the existing, separate agreements has shown that although they are positive in encouraging joint working and improving outcomes, they limit the flexibility to move resources between 'pools' to reflect demand. There is also some inconsistency between agreements in terms of risk, and a perceived lack of transparency and oversight due to them not being brought together in a single agreement.

As such, the development of a single Section 75 agreement to come into effect from 1 April 2013 has been identified as a priority within the Oxfordshire Joint Health and Wellbeing Strategy. A joint working group involving officers from both partners has developed the new agreement, which is also being presented to the Executive Committee of the Clinical Commissioning Group at the end of March.

The proposed agreement essentially carries over most of the content of the existing agreements, as generally these are considered to be working well. However, the new agreement seeks to standardise as much as possible and where it is felt appropriate to do so, for example in the roles and responsibilities of Joint Management Groups and pooled budget managers that are responsible for the implementation of the section 75 agreement.

Greater emphasis has been placed on the development and delivery of joint commissioning strategies, rather than having separate aims, objectives and performance measures for the section 75 agreement. This also helps with greater transparency, as the commissioning strategies are based on wide consultation and are publicly available.

Evidence / Intelligence:

The proposal to have a single section 75 agreement has been discussed in detail with senior officers from the County Council and the Clinical Commissioning Group (CCG), as well as the lead commissioners from both organisations. They believe it is an important way to ensure consistency across pools, increase transparency and flexibility to move money to where it is most needed, and to help develop a more mature risk sharing arrangement between partners.

The proposal was included in consultation on the Oxfordshire Joint Health and Wellbeing Strategy in June 2012, and again as part of the consultation on the draft Joint Older People's Commissioning

CMDAS4

Strategy in January 2013. It has also been discussed by Joint Management Groups for various client groups, that include service user representatives and providers of services.

In all cases the response to the proposals has been positive, although the agreement itself is seen as a mechanism to deliver the joint commissioning strategies and ensure good governance rather than having any direct impact itself.

Alternatives considered / rejected:

As the Oxfordshire Primary Care Trust will cease to exist on 31 March 2013, it is not possible to simply renew or carry over the existing Section 75 agreements. As such there is a risk that pooled budget arrangements will not be able to continue in 2013/14, unless new arrangements are agreed with the Oxfordshire Clinical Commissioning Group by 1 April. Failure to agree new arrangements would significantly impact on both partners ability to ensure appropriate services are commissioned to meet people's needs across all client groups.

Negotiating separate Section 75 Agreements for different client groups will not improve the consistency, flexibility and oversight to the same extent as having a single agreement covering all client groups.

Impact Assessment:

Identify any potential impacts of the policy or proposed service change on the population as a whole, or on particular groups. It might be helpful to think about the largest impacts or the key parts of the policy or proposed service change first, identifying any risks and actions, before thinking in more detail about particular groups, staff, other Council services, providers etc.

It is worth remembering that 'impact' can mean many things, and can be positive as well as negative. It could for example relate to access to services, the health and wellbeing of individuals or communities, the sustainability of supplier business models, or the training needs of staff.

We assess the impact of decisions on any relevant community, but with particular emphasis on:

- Groups that share the nine protected characteristics
 - age
 - disability
 - gender reassignment
 - pregnancy and maternity
 - race – this includes ethnic or national origins, colour or nationality
 - religion or belief – this includes lack of belief
 - sex
 - sexual orientation
 - marriage and civil partnership
- Rural communities
- Areas of deprivation

We also assess the impact on:

- Staff
- Other council services
- Other providers of council services
- Any other element which is relevant to the policy or proposed service change

For every community or group that you identify a potential impact you should discuss this in detail, using evidence (from data, consultation etc) where possible to support your judgements. You should

CMDAS4

then highlight specific risks and any mitigating actions you will take to either lessen the impact, or to address any gaps in understanding you have identified.

If you have not identified an impact on particular groups, staff, other Council services, providers etc you should indicate this to demonstrate you have considered it.

Impact on Individuals and Communities:

All Communities / Groups

There is not considered to be any direct impact on individuals or communities from having a single Section 75 agreement rather than separate ones for different client groups. The agreement is a mechanism to enable the effective use of resources in commissioning services, and the implementation of joint commissioning strategies that are intended to have a positive impact on outcomes for individuals and communities and are themselves subject to consultation and separate impact assessments.

There is a risk that the agreement does not align closely to the joint commissioning strategies and therefore client need. This is mitigated by flexibility being built into the agreement to ensure that changes to the strategies are reflected, and the involvement of services users, carers and providers in the Joint Management Groups responsible for the implementation of the strategies and section 75 agreement. New policies, services and contracts will also be subject to separate impact assessments and consultation as appropriate to ensure alignment to client need.

The Joint Management Groups (JMGs) for Older People, Physical Disability, Learning Disability and Mental Health are responsible for and implementation of the agreement and the management / use of pooled funds. The JMGs are responsible for ensuring alignment with the joint commissioning strategies, and that the impact of any decisions on new policies or contracts, or to move money between pools, is fully considered. The JMGs include senior officers from the Clinical Commissioning Group and County Council, as well as representatives from key partners / providers and service users. This ensures the impacts can be fully appreciated and considered as part of decision making. However, there is a need for clearer governance across the JMGs to ensure decisions in one JMG for a particular client group also consider the implications on other client groups, particularly when moving money between pools.

CMDAS4

Risks	Mitigations
Implementation of section 75 agreement does not fully align to client need.	<p>Flexibility built into the agreement to ensure that changes to the strategies are reflected, and the involvement of services users, carers and providers in the Joint Management Groups responsible for the implementation of the strategies and section 75 agreement.</p> <p>New policies, services and contracts will also be subject to separate impact assessments and consultation as appropriate to ensure alignment to client need.</p>
Greater flexibility to move money between pools could have unintended consequences for some clients if resources are no longer available when levels of demand change / increase	All significant changes to pooled budgets will be subject to an impact assessment, and consultation where appropriate
Decisions in one JMG for a particular client group do not fully consider the impact on other client groups	<p>Senior officers sit across more than one JMG</p> <p>Lead commissioners meet regularly to discuss cross-cutting issues</p> <p>Separate impact assessments are prepared for policy changes, contracts and moving money between pools</p> <p>Significant issues and proposals are escalated within County Council and Clinical Commissioning Group governance arrangements as appropriate</p> <p>Review of the across and around JMGs</p>

Impact on Staff:

There is not considered to be any direct impact on staff of having a single agreement. The greater flexibility to move money between pools will enable them to ensure resources can be utilised to meet changing levels of demand more easily. However any changes will be subject to a separate impact assessment to ensure unintended consequences are avoided.

Risks	Mitigations
Greater flexibility to move money between pools could have unintended consequences for some clients if resources are no longer available when levels of demand change / increase	<p>All significant changes to pooled budgets will be subject to an impact assessment, and consultation where appropriate</p> <p>Significant issues and proposals are escalated within County Council and Clinical Commissioning Group governance arrangements as appropriate</p> <p>Review of the across and around JMGs</p>

Impact on other Council services:

Reducing the number of agreements that need to be negotiated and monitored should have a positive impact on colleagues in Legal Services and Finance through reduced workload.

CMDAS4

Risks	Mitigations
<p>Section 75 agreement is not appropriately governed, monitored or implemented leading to significant work to resolve disputes or redefine agreement.</p>	<p>Joint Management Groups meeting at least 6 times a year will have responsibility for oversight and implementation.</p> <p>Governance and monitoring requirements are specified within agreement, including roles and responsibilities for pooled budget managers, Joint Management Groups</p> <p>Legal and Finance colleagues from both partners involved in drawing up agreement, and monitoring implementation</p> <p>Significant issues and proposals are escalated within County Council and Clinical Commissioning Group governance arrangements as appropriate</p> <p>Review of the across and around JMGs</p>

Impact on providers:

There is not considered to be any direct impact on providers of having a single Section 75 Agreement. There may be impacts as a result of the commissioning activity, contracts and services that happen as a result, but these will be linked to commissioning strategies that providers are consulted on, and will have separate impact assessments. Providers are also invited to attend Joint Management Groups.

Action plan:

Action	By When	Person responsible
Ensure all projects, policies, contracts, services and significant changes to pooled budgets have separate impact assessments	As each is developed	Lead Commissioners
Review of the across and around JMGs	September 2013	Deputy Director for Joint Commissioning
Review this SCIA to ensure no unanticipated impacts emerge	September 2013	Lead Commissioners

Monitoring and review: See actions above

Person responsible for assessment: Ben Threadgold

Version	Date	Notes (eg Initial draft, amended following consultation)
1	4 March 2013	Initial draft
2	8 March 2013	Amended to include links to wider governance review