

Divisions Affected -

CABINET 15 March 2022

Oxfordshire s75 NHS Act Pooled Commissioning Budget

Report by Interim Corporate Director of Adult Services

RECOMMENDATION

The Cabinet is RECOMMENDED to

- a) Approve the agreement of a s75 NHS Act 2006 pooled commissioning budget with Oxfordshire Clinical Commissioning Group from 1 April 2022.
- b) Approve a single, fully integrated Pool Budget and Risk Share for Live Well and Age Well services
- c) Delegate to the Interim Corporate Director of Adult Services in consultation with the Director of Finance (Section 151 Officer) to finalise and sign the agreement

Executive Summary

1. Oxfordshire Clinical Commissioning Group (CCG) and the Council have held a s75 NHS Act 2006 agreement to pool health and social care commissioning budgets since April 2013. This agreement has been extended by contract variation and the latest such variation expires on 31 March 2022. The current agreement is made up of two pools with total budget of £399.115m:
 - Live Well (Adults with Support Needs) – current budget of £190.585m
 - Age Well (Better Care Fund) – current budget of £208.530m
2. In addition, the Health, Education and Social Care Integrated team oversees two budgets that have been aligned to the current s75 agreement totalling £90.320m:
 - Start Well (Children's services) – current budget of £60.987m
 - Public Health – current budget of £29.333m.
3. Together these give a combined joint commissioning budget of £489.136m

4. In 2020/21 Oxfordshire Clinical Commissioning Group and the Council developed the Health, Education and Social Care integrated commissioning team to improve the impact and efficiency of joint commissioning arrangements in Oxfordshire. This new structure came into effect on 1 March 2021 and includes 18 joint funded commissioning posts headed by a jointly funded Deputy Director, Commissioning. The new structure is hosted by the Council on behalf of the partners.
5. The partners also put in place a Joint Commissioning Executive to provide strategic direction to the new integrated team and accountability to each organisation for the finance, performance, and impact of the new arrangements. The Joint Commissioning Executive is chaired by the Interim Corporate Director of Adult Services and comprises senior executives from the partners. 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.
6. The current s75 agreement needs to be refreshed to reflect this new structure and to support the delivery of the Council and CCG ambitions in relation to integrated commissioning that improve outcomes for individuals, our population, and our systems.
7. The proposed new agreement retains several elements from the current s75 and proposes the following key changes
 - (a) Organisation of the funds into one pooled budget hosted by the Council that reflects the Health, Education and Social Care organisational structure hosted by the County on behalf of the partners
 - (b) A single financial risk share based on contribution by each party
 - (c) Agreement on the delegations and commitments from the partners to reflect the change to a single pool hosted by the Council on behalf of the partners
 - (d) Provision for future changes to increase the scope of the s75 agreement in the future to include Children Services and Public Health budgets and services in line with the Health, Education and Social Care vision

Exempt Information

8. Not applicable

The case for a s75 NHS Act 2006 Pooled Budget Agreement

9. The Council and Clinical Commissioning Group have 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 current agreement is supported by a combined Budget of £399.115m (based on budget for current year (2021/22)) made up of:

a) Age Well service budget of £208.530m:

This commissions support and care for older adults which covers prevention, hospital avoidance and residential care. This pool incorporates the Better Care Fund which totals (2021/22) **£69.659m**.

- (1) It is a statutory requirement for the Council to hold the funds related to the Better Care Fund in a s75 agreement with the local NHS.
- (2) The Better Care Fund 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.
- (3) The Better Care Fund plan and local trajectories against national targets are agreed by the Health & Wellbeing Board.

b) Live Well services; budget of £190.585m:

The commissioned services provide care to adults with support needs which broadly seeks to achieve better outcomes for people living with mental illness, for people with living with learning disability and/or autism, and for people impacted by acquired brain injury

10. The joint arrangements also include Start Well (Children services) Budget of £90.320m) and Public Health, Budget of £29.333m. The plan is for these services to work within the integrated arrangements but remain outside of the s75 Pooled Budget at this stage.
11. The pooled budget approach has enabled the Council and the Clinical Commissioning Group 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 Clinical Commissioning Group reviewed the opportunities for integrated commissioning and concluded that a fresh approach was required to achieve the full value and impact for our population and our system.
13. In the light of this review the Council and Clinical Commissioning Group developed the Health, Education and Social Care 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
14. 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
15. The new Health, Education and Social Care 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 Interim Corporate Director of Adult Services and the Deputy Chief Executive for the Clinical Commissioning Group, with a “dotted line” relationship to the Corporate Director of Children’s Services and the Corporate Director of Public Health.
16. 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 Health, Education and Social Care commissioning team, and
 - (b) move to a single pooled budget approach to create the flexibility that will enable the partners to invest in a way that increases impact and value from a more targeted, preventative and enabling approach.
 - (c) Embrace the parties’ joint ambition to increase independence and prevention and support more people in their own community
17. The new agreement does not map exactly onto the new structure. In setting up the Health, Education and Social Care team, it is the ambition of both the Clinical Commissioning Group and 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
18. The Government White Paper *Integration and Innovation: working together to improve health and social care for all* sets out expectations for the NHS and social care to work together in new structures in “place”. These arrangements are proposed to include Public Health and would be intended to deliver the ambitions of the White Paper and the NHS Long Term Plan to
- (a) Support the delivery of *joined up care*
 - (b) Deliver
 - (1) *Better health and wellbeing for all*
 - (2) *Better quality of health services and*
 - (3) *Sustainable use of NHS resources*
 - (c) Providing a vehicle that supports *greater collaboration between the NHS and local government* and will support the development of place-based joint working across *health, public health, and social care*
19. The White Paper indicates that the Government intends to review the operation and scope of s75 NHS Act 2006 agreements and the role and scope of the Better Care Fund. The White Paper recognises the role as the “expert in

place” of the Health & Wellbeing Board. Any such changes would require a further review of the proposed agreement and as such a further Cabinet decision as and when indicated.

20. At this stage the proposed new s75 agreement is aligned to the strategic direction as set out in the White Paper

Scope of new s75 NHS Act 2006 agreement

21. 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 2022.
22. The main changes to the new agreement are as follows:
- (a) There will be a single pooled budget which will report against the Start Well, Live Well, Age Well structure embedded in the integrated commissioning team. The single pooled budget will enable commissioners to deploy resources where they are most needed to have the greatest impact. It will also enable commissioners to take a broad view in terms of managing financial and performance risks. It will over time enable commissioners to move resources towards prevention and enablement. This will support self-help and independence and reduce the need for avoidable lengthy and high-cost interventions. It will enable a single purchasing approach across health and social care which will improve our engagement with the market and drive value in contracts.
 - (b) The single pooled budget will be hosted by the Council as the hosts of the integrated commissioning team. The pooled budget manager will be the Deputy Director, Commissioning for the Council who manages the integrated commissioning team and who will be accountable for the spend, performance and the management of any risks associated with the single pooled budget to the Joint Commissioning Executive.
 - (c) The single pooled budget will incorporate Oxfordshire’s Better Care Fund and the Deputy Director, Commissioning as pooled budget Manager will be responsible for the delivery of performance targets set in the delivery of the Better Care Fund Plan by the Health & Wellbeing Board.
 - (d) In the new structure the Clinical Commissioning Group has delegated certain functions in relation to NHS commissioning, performance and financial management to the County which will be set out in the s75 agreement.
 - (e) To support the delivery of the s75 agreement new structure the Clinical Commissioning Group and the Council will be required to 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 will be set out in the s75 agreement
 - (f) The agreement will be 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 will be able to break the agreement on notice.

- (1) These arrangements will avoid the need for contract extensions by variation and require the partners actively to review the agreement each year
- (g) The agreement will contain provisions for the future extension of scope of the agreement where that is agreed by the parties
- 23. **Cabinet is asked to approve the agreement of a s75 NHS Act 2006 pooled commissioning budget with Oxfordshire Clinical Commissioning Group from 1 April 2022 as set out above**
- 24. **Cabinet is asked to approve delegation to Interim Corporate Director of Adult Services and the Section 151 Officer to finalise the agreement prior to signature in line with the Council's scheme of delegation**

Governance

- 25. 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.
- 26. It is proposed that this arrangement continues in the new agreement. The Joint Commissioning Executive is accountable respectively to Cabinet and to the Clinical Commissioning Group Governing Body 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.
- 27. The Joint Commissioning Executive is also responsible for the delivery of the Better Care Fund Plan and metrics to the Health & Wellbeing Board.
- 28. **Cabinet is asked to note the governance arrangements for the new s75 agreement**

Strategic Alignment

- 29. 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.
- 30. The new agreement is fully aligned to the Government White Paper NHS *Integration and Innovation: working together to improve health and social care for all*.

Future of the agreement

- 31. The new agreement will be between the Council and Oxfordshire Clinical Commissioning Group from 1 April 2022. In line with the Government White Paper, it is anticipated that the Clinical Commissioning Group will in due course be replaced by a successor body which would assume responsibilities under the agreement. The current timeline for this is that the change would take place on 1 July 2022. **Cabinet is asked to note this and that if there are any other changes required to the agreement at that point these would be brought back to Cabinet for a further decision**

32. As noted above, the White Paper indicates that there may be a review of s75 agreements and Better Care Fund requirements which may require a change to the proposed agreement. There may also be changes to NHS structures in Oxfordshire. The timeline for this is as yet unknown, but **Cabinet is asked to note that if indicated, this may require change to the agreement that would be the subject of a future Cabinet decision.**

Corporate Policies and Priorities

33. The new s75 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.
34. 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

35. The financial implications are detailed in the Joint Commissioning Executive financial plan for this year, 2021/22. The pooled budget totals £399.115m based on 2021/22. Subject to local and national policy developments, the agreement may need to be amended in the future beyond 2021/22. This will be reported to the Joint Commissioning Executive, Health & Wellbeing Board, and the proposed new NHS structures when confirmed.
36. A single Pool Budget and Risk Share approach has been tested and approved as the proposed basis for the financial management under the Section 75 Agreement. It is proposed to use the Risk Share to apportion over and underspends. The Risk Share based on this year's Outturn Forecast is indicating 51% would be Oxfordshire CC and 49% would be the CCG.

Cabinet is asked to approve a single, fully integrated Pool Budget and Risk Share for Live Well and Age Well services

37. As part of the integrated arrangements the Joint Commissioning Executive also has oversight of the Start Well (Children's and Public Health services. It is proposed to continue to incorporate the two services in the S75 Agreement on

an aligned basis. The services have a combined budget of £90.320m (based on 2020/21) which is made up of:

- Start Well (Children's services) – current budget of £60.987m
- Public Health – current budget of £29.333m.

In total the Joint Commissioning Executive has oversight for a combined budget of £489.136m.

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Legal Implications

Legislative Background

38. 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.
39. 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).
40. 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).
41. 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

42. 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 2022.

The Proposed s 75 Agreement

43. 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.
44. 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.
45. 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 6 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

46. Significant changes to the structures and organisation of NHS bodies imposed by central government whereby one NHS body replaces another will have significant impact on any partnering agreement involving such body. The transfer of rights and liabilities under any such agreement is likely to be the subject of a statutory transfer scheme. It may be that a successor body to the CCG such as an Integrated Care Board will simply step into the shoes of the CCG under any existing s 75 Agreement pursuant to such scheme. Alternatively, the parties may need to agree to terminate existing arrangements and enter into a new agreement.
47. It should be noted that any future proposed substantial expansion of delegated functions could also trigger a statutory obligation for the Council and the CCG to jointly consult those affected by the arrangements such as service users, carers, or voluntary groups.

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Staff Implications

48. There are no staff implications associated with signing a new s75 agreement with Oxfordshire Clinical Commissioning Group. 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.

Equality & Inclusion Implications

49. 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

50. 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

51. 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

52. There are two identified risks in relation to the new s75 agreement
- (a) There is a risk that changes in legislation in the current White Paper may require changes to the governance set out in this paper and identified in the legal commentary paragraph 45 above. The agreement from April 2022 will be written so that any changes to the governance to that set out at paragraphs 25-28 would be subject to a further decision by Cabinet as set out at paragraphs 31 and 32.
 - (b) The changes in legislation in the current White Paper would bring together the NHS in Oxfordshire with NHS commissioners in Berkshire West and Buckinghamshire. There is a risk that decisions on budgets and scope of the s75 agreement may be impacted by this broader geography. The agreement from April 2022 will be solely focussed on delivery in Oxfordshire and will be written so that any changes to the financial contribution, risk share and delivery targets would be subject to a further decision by Cabinet as set out at paragraphs 31 and 32.

Consultations

53. 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.
54. 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.
55. **Cabinet 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**

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Annex: Nil

Background papers: Nil

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