



## CABINET

21 JANUARY 2015

**Subject Heading:**

**Cabinet Member:**

**CMT Lead:**

**Report Author and contact details:**

**Policy context:**

**Financial summary:**

**Better Care Fund Section 75 Agreement**

**Councillor Wendy Brice-Thompson**

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Health & Social Care Act 2012

Care Act 2014

Havering Corporate Plan 2011-2014  
(includes 'Living Ambition' agenda)

Cabinet Reports – January 2014, February 2014 and July 2014.

Integrated Care in Barking and Dagenham, Havering and Redbridge, 2012 (Integrated Care Coalition)

Havering Health & Wellbeing Strategy 2012-2014

Havering Market Position Statement (ASC) 2013

The fund provides £3.8bn nationally in 2015/16 to be spent on Health and Social Care.

Havering's pooled budget totals £18.9m, of which £16.9m is recurring funding, representing Havering's minimum contribution.

Of this £16.9m, £4.6m is the Local Authority revenue allocation, and £1.4m is the Local Authority capital allocation.

There is also £590k Local Authority non-recurrent revenue funding and £850k contribution from base budget.

CCG elements are £10.9m recurring and £590k non-recurrent.

**Is this a Key Decision?**

The fund includes an element of performance related funding with regard to hospital admissions, totalling £875k.

Yes – Spending in total of £18.9m of which £7.4m (£4.6m plus £1.4m revenue and £1.4m capital) falls to the Council. Impacts across the borough in terms of joint health and social care service delivery.

**When should this matter be reviewed?**

Review periods shall be subject to the final section 75 agreement.

**Reviewing OSC:**

Individuals.

**The subject matter of this report deals with the following Council Objectives**

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Valuing and enhancing the lives of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

**SUMMARY**

This report seeks approval for the Council to enter into an agreement under section 75 of the National Health Services Act 2006, with Havering NHS Clinical Commissioning Group, to govern the delivery of the approved Better Care Fund Plan for 2015/2016.

The governance for this in Havering will be the Health and Wellbeing Board, with delegated authority to the Group Director Children, Adults and Housing to make executive decisions, and to the Joint Management and Commissioning Forum, which is a joint committee of the Clinical Commissioning Group and Local Authority, to undertake monitoring and scrutiny of the operation of the arrangements.

<b>RECOMMENDATIONS</b>
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That Cabinet:

1. Agree to enter into a section 75 agreement with Havering NHS Clinical Commissioning Group, on the terms and conditions outlined in this report, to

govern the delivery of the approved Better Care Fund Plan for Havering for the period 2015/2016 and for an agreed period thereafter.

2. Delegate authority to approve the final terms of the proposed section 75 agreement to the Lead Member for Adult Services and Health, after consultation with the Leader of the Council and the Group Director for Children, Adults and Housing.
3. Delegate the function of monitoring the implementation and operation of the Better Care Fund and s75 Agreement to the Joint Management & Commissioning Forum, upon the draft terms of reference set out in the attached Appendix A.
4. Delegate authority for all necessary decisions with respect to the implementation and operation of all matters relating to the Better Care Fund and section 75 agreement, involving the Council and NHS bodies, to the Group Director, Children, Adults and Housing.

<b>REPORT DETAIL</b>
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**1. The Better Care Fund (BCF)**

- 1.1 The Better Care Fund (BCF) is a highly ambitious programme announced by the Government in the June 2013 spending review. It aims to ensure a closer integration between health and social care, putting person centred care and wellbeing at the heart of decision making.
- 1.2 The BCF is a vital part of both NHS planning and local government planning. In Havering, the BCF plan supports both budget strategy and the implementation of the Care Act 2014.
- 1.3 Nationally, £3.8bn in 2015/2016 is provided, as laid out in the June 2013 spending review. Of this, £1.9bn is NHS funding, and £1.9bn existing 2014/2015 funding; comprised of £130m carers, £300m reablement, £354m capital and £1.1bn existing transfer from health to adult social care.
- 1.4 The minimum contribution to the pooled fund in Havering is £16,884,000. The actual total will be £18,914,000, as approved by the Health and Wellbeing Board on the 10 September 2014 and submitted to Government on 19 September 2014.
- 1.5 There are several BCF metrics that will be used to measure performance. One metric, related to a reduction in total emergency admissions, is linked to payment by performance. The amount of related funding within Havering's pooled fund is £875,301.

- 1.6 The local BCF plan was considered by the Health and Wellbeing Board at its meetings on 12 February 2014, 19 March 2014 and 10 September 2014. BCF plans were submitted in accordance with the Government's time-table.
- 1.7 Following the initial submission of the draft BCF plan on 4 April 2014, the Government confirmed nationally that it required further work and assurance from the parties before BCF plans were approved. This led to revised plans being produced, in accordance with revised technical and planning guidance, over the summer period for re-submission on 19 September 2014.
- 1.8 Approval of BCF plans was via a Nationally Consistent Assurance Review (NCAR) process. This put plans into one of four categories: approved, approved with support, approved subject to conditions, or not approved.
- 1.9 Havering submitted a revised BCF plan to Government on 19 September 2014. Havering's BCF plan was approved with support in October 2014. The parties are working towards approved status and feel that this is achievable.
- 1.10 The BCF vision is underpinned by four design principles:
  - 1.10.1 Individuals and communities will be empowered to direct their care and support and to receive the care they need in their homes or local community as a priority.
  - 1.10.2 The 'locality' identity will be central to organising and co-ordinating people's care.
  - 1.10.3 Services will be integrated around GP registration to simplify access and make co-ordination and integrated delivery easier.
  - 1.10.4 Our systems will enable the provision of integrated care; providers will assume joint accountability for achieving outcome goals and deliver efficiencies.
- 1.11 There are seven BCF schemes in place to support delivery of the vision. There is also some capital funding.

## **2 Section 75**

- 2.1 Section 121 of the Care Act 2014 requires the BCF arrangements to be underpinned by pooled funding arrangements; this is best facilitated by a section 75 agreement.
- 2.2 A section 75 agreement is an agreement made under section 75 of the National Health Services Act 2006 between a local authority and an NHS body in England. It can include arrangements for pooling resources and delegating certain NHS and local authority health related functions to the other partner(s).
- 2.3 In order to secure the BCF funding minimum allocation of £16,884,000 for 2015/2016, together with the agreed local top up of £2,030,000 (total fund value £18,914,000), there is a requirement for a pooled fund to be set up

from April 2015. It is therefore necessary for the Council and Havering NHS Clinical Commissioning Group to enter into an agreement under section 75 of the National Health Service Act 2006.

- 2.4 The section 75 agreement governing the creation and management of the pooled fund must be finalised before 1 April 2015.
- 2.5 Under the BCF plan, pooled funds can be managed in a number of ways. The pooled funds need to be hosted by one 'accountable' organisation; this could either be the Council or Havering NHS Clinical Commissioning Group.
- 2.6 It has been agreed in principle by the Joint Management & Commissioning Forum that the section 75 agreement will not immediately affect current commissioning and contracting arrangements. Both parties acknowledge that it takes time to properly review contracts, so a period is needed to evaluate and agree future arrangements, and the accounting treatment thereafter.
- 2.7 It is proposed that all schemes in the BCF plan are to be run as a pooled fund, and that there will be no establishment of non-pooled funds for any schemes.
- 2.8 The proposal that the Council host the pooled fund, as set out in the BCF submission, was considered at a meeting of the Joint Management & Commissioning Forum on 8 December 2014, and it was agreed that the host shall be the Council. The matter will be further considered by the Health and Wellbeing Board at its meeting on 14 January 2015. Any comments or recommendations from the Health and Wellbeing Board will be reported to Cabinet.
- 2.9 There are potentially advantages with the Council hosting the pooled fund. These are:
  - 2.9.1 VAT provision, the Council is VAT registered whilst the Havering NHS Clinical Commissioning Group is not.
  - 2.9.2 Recognising the difference in NHS and local authority year end reporting requirements, it would appear that the local authority process better lends itself to managing the fund.
- 2.10 The final section 75 agreement will be based on a template section 75 agreement prepared by solicitors, Bevan Brittan, on behalf of the national BCF programme office. It will contain detailed provisions concerning a number of key issues, including performance, governance, fund management and risk sharing.
- 2.11 A basic principle, per our BCF plan submission, is that risk share shall be apportioned in line with the percentage of budget held by each partner. The parties are still finalising the terms of the performance element risk share.
- 2.12 Detailed provisions about the various schemes which are within the scope of the BCF plan will be included in the section 75 agreement. The agreement is

to allow flexibility for the arrangements to continue for a number of years, or to be terminated if the funding stream is discontinued.

- 2.13 The terms of the agreement are yet to be formally agreed, but will be settled pursuant to the delegated authority granted by the decision of Cabinet at Recommendation 2 above, and will be reviewed regularly thereafter.

### **3 Governance**

- 3.1 The Health and Wellbeing Board already has delegated powers in the Constitution at Part 3 Section 2.7 (a) To advise, support and encourage (where appropriate) section 75 arrangements under the National Health Service Act 2006 in connection with the provision of health services.
- 3.2 The Joint Management & Commissioning Forum will work to the (appended) terms of reference in monitoring the operation of the BCF and s 75 agreement.
- 3.3 The Group Director, pursuant to the delegated power granted at recommendation 4, will have authority to take decisions in respect of s75 agreements generally.
- 3.4 A joint BCF performance pack is developed and will be presented to the Joint Management & Commissioning Forum on a monthly basis, so that both parties have oversight of both activity and performance measures. This information will also be presented in summarised form to the Health and Wellbeing Board, the Care Act Programme Board and the Corporate Management Team on a regular basis.

### **4 The Care Act 2014**

- 4.1 The BCF underpins the implementation of the Care Act 2014, from a health integration perspective. A BCF national condition is the protection of social care services. The schemes will help support Care Act principles, as services are developed to be more personalised and person centred across the whole system.
- 4.2 Section 121 of the Care Act 2014 (Integration of care and support with health services: integration fund) provides for section 75 agreement with regard to expenditure on integration.

## **REASONS AND OPTIONS**

### **Reasons for the decision:**

There is a statutory requirement for the BCF funds to be managed via pooled funding arrangements.

The reasons for this decision are that we are required to have a section 75 in place with regard to the BCF pooled fund by April 2015. This is a statutory obligation in order for us to deliver our BCF ambition.

As part of s75 agreement governance protocol, The Joint Management and Commissioning Forum is established to ensure there is a partnership forum for monitoring and scrutiny purposes.

**Other options considered:**

The option of not entering into an agreement would only be feasible if we were not signing up to BCF principles and delivery, which is not a desirable option.

A Section 75 agreement with the CCG in relation to the BCF is a Government requirement. This needs to be in place before the beginning of the financial year 2015/16.

## **IMPLICATIONS AND RISKS**

### **Financial implications and risks:**

The funding agreements between the two bodies has been identified and agreed as per the table below into the Schemes laid out:

<b>Scheme Name - 2015/16 BCF £'000</b>	<b>CCG</b>	<b>Local Authority</b>	<b>Total BCF</b>	<b>Source of Funding</b>
BCF 01 - Customer Interface	79	300	379	CCG minimum contribution
BCF 02 - Integrated Care Pathway	1,992	1,199	3,191	CCG minimum contribution
BCF 02 - Integrated Care Pathway	0	1,250	1,250	Local Authority (base budget £850k & non recurrent)
BCF 03 - Integrated Localities Working	6,522	500	7,022	CCG minimum contribution
BCF 03 - Integrated Localities Working	295	0	295	Additional CCG contribution
BCF 04 - Carers & Voluntary Sector	61	920	981	CCG minimum contribution
BCF 04 - Carers & Voluntary Sector	0	190	190	Local Authority (non recurrent)
BCF 05 - Learning Disabilities	0	800	800	CCG minimum contribution
BCF 06 - Long Term Conditions	2,232	90	2,322	CCG minimum contribution
BCF 06 - Long Term Conditions	295	0	295	Additional CCG contribution
BCF 07- Integrated Commissioning	0	800	800	CCG minimum contribution
Disabled Facilities & Social Capital Grants	0	1,389	1,389	Local Authority capital
<b>Total</b>	<b>11,476</b>	<b>7,438</b>	<b>18,914</b>	

The Local Authority contribution is made up of £4.6m revenue and £1.4m capital allocation from the BCF funding

There is an additional £590k non recurrent funding and £850k contribution from the Local Authority base budget, totalling £7.4m.

The risk share arrangements shall stipulate the proportion of shared risk to both the Local Authority and the Clinical Commissioning Group once the s75 has been agreed.

It should be noted that there is a performance element totalling £875k within the pool. This is related to the non-elective admissions performance metric, which has a target activity reduction of 2.5%. Should this not be achieved the performance related funding will be reduced on a pro-rata basis. The funding will instead be transferred to health outside the pool to help offset acute pressures.



As part of the September resubmission process, a “ready reckoner” tool was issued. This is a Department of Health tool that calculates local authority allocations related to Care Act funding (nationally £135m has been allocated within the BCF for this purpose). The tool showed that £609k needed to be re-allocated from Health to the Local Authority. However, there was not sufficient time before the resubmission to adjust scheme budgets. The change will need to be reflected in the s75 agreement.

As host partner, the Council will be responsible for performance and financial reporting. The costs of hosting will be considered as part of the s75 process.

There may be added benefits to the Council hosting the s75 agreement in technical terms; the exact detail of this is being discussed between partners, as well as VAT advantages.

**Legal implications and risks:**

The Better Care Fund grant regime requires the Council to work jointly with the CCG. The section 75 NHSSA 2006 Agreement is the vehicle by which the services that are to be delivered; the mechanism for expenditure; and delivery of outcomes are clarified to ensure each party knows exactly how it will operate and to reduce the risk of disputes. There is no alternative but to enter into the agreement in order to prudently use and retain the grant funding. The terms of the agreement will need to be carefully considered to ensure the Council's interests are not prejudiced in any way and that the risk of disputes are minimised. Legal advice will be provided throughout this process.

The proposed governance arrangements appear to ensure that there is sufficient authority to take appropriate decisions and scrutiny of those decisions and the operation of the arrangements generally.

**Human Resources implications and risks:**

There are no direct HR implications or risks affecting the Council, or its workforce, that can be identified from the recommendations made in this report.

**Equalities implications and risks:**

This decision is to ensure that the Council has a section 75 in place by April 2015. Individual schemes and initiatives funded by the Better Care Fund will be subject to robust Equality Impact Assessments. This is to ensure compliance with the Equality Act 2010 and pay due regard to the Public Sector Equality Duty.

All identified opportunities for integrated delivery of care and effective integrated commissioning in Havering will be informed by the local population needs identified in the Joint Strategic Needs Assessment and the priorities for health improvement and wellbeing set out in the Health and Well-Being Strategy.

The programme of integration initiatives should enable partner organisations to identify more effective ways of meeting future demographic challenges in the delivery of health and social care services across Havering, such as the significant and growing proportion of older people in the borough and increasing ethnic

minority population. There will also be implications for disabled people and individuals with caring responsibilities.

<b>BACKGROUND PAPERS</b>
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- Havering Better Care Fund Submission 19 September 2014.
- The Care Act 2014.
- Health and Wellbeing Board reports – February 12th, March 19th and September 10<sup>th</sup> 2014.
- Cabinet Reports – January 2014, February 2014 and July 2014.
- Executive Decisions - Approval of submission to NHS (England) for the Better Care Fund Programme April and September 2014.
- Integrated Care, Better Care Fund Guidance / Toolkit, NHS England.
- Bevan Brittan s75 template (on behalf of the national BCF programme office).