

Notice of KEY Executive Decision

Subject Heading:	Variation of the BCF Section 75 Agreement in line with HM Government's Hospital Discharge Service: Policy and Operating Model Guidance
Cabinet Member:	Councillor Jason Frost, Cabinet Member for Adult Services and Health
SLT Lead:	Barbara Nicholls, Director for Adults Social Care and Health
Report Author and contact details:	Imani Nassor, Senior Commissioner & Projects Manager 01708 433588 Imani.nasoor@havering.gov.uk
Policy context:	The Havering Plan (2020) Vision Theme: Helping young and old fulfil their potential through high-achieving schools and by supporting people to live safe, healthy and independent lives.
Financial summary:	To allow for costs relating to discharged persons aged 18+ to be recharged to the CCG from 1 st September to 31 st March 2021 in accordance with the NHS England & NHS Improvement Covid-19 Hospital Discharge Finance Guidance within the s75 BCF Deed of Variation Agreement.

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Reason decision is Key	The cumulative value of the schemes associated with the decision is: likely to result in expenditure, which is over £500,000; and to be significant in terms of its effects on communities living or working in two or more wards.
Date notice given of intended decision:	07/04/21
Relevant OSC:	Overview and Scrutiny Board
Is it an urgent decision?	Yes. The government is making additional funding available to support the health and social care systems to implement this approach during the financial year 2020 to 2021. Local authorities and NHS bodies need to continue to work together to put this approach into practice. Any delay would seriously prejudice the Council's and the public interests.
Is this decision exempt from being called-in?	Yes

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

Communities making Havering	☒
Places making Havering	☐
Opportunities making Havering	☐
Connections making Havering	☐

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

The government is making additional funding available, via the NHS, for the implementation of its *Hospital Discharge Service: Policy and Operating Model Guidance*¹, on how to support the safe and timely discharge of people who no longer need to stay in hospital (the “Discharge Requirements”).

This report seeks approval:

- to accept the additional NHS funding for pooled funds use under the Better Care Fund (BCF) Section 75 Partnership Agreement (the “Partnership Agreement”); and
- to enter in a Deed of Variation of the Partnership Agreement between the London Boroughs of Havering, Redbridge, Barking & Dagenham; and the respective Clinical Commissioning Groups, to effect the necessary changes.

AUTHORITY UNDER WHICH DECISION IS MADE

London Borough of Havering’s Constitution, Part 3 – Responsibility for Functions

- Paragraph 3.6.1 Director of Adult Services and Health
(k) To manage Adult Social Care grants as appropriate, including the use and application of grants and delivery.
- Paragraph 3.10.3 S.151 Officer Functions
(m) To accept grants and the terms and conditions thereof for and on behalf of the Council.
- Rule 19 of the Contract Procedure Rules permitting variations, extensions and modifications of contracts

STATEMENT OF THE REASONS FOR THE DECISION

COVID-19

1. COVID-19 is the illness seen in people infected with a new strain of coronavirus not previously seen in humans. On 31st December 2019, Chinese authorities notified the World Health Organisation (WHO) of an outbreak of pneumonia in Wuhan City, which was later classified as a new disease: COVID-19

¹ <https://www.gov.uk/government/publications/hospital-discharge-service-policy-and-operating-model/hospital-discharge-service-policy-and-operating-model>

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2. The illness has since spread across the world, the UK, London and Havering. The arrangements that are allowed for in this paper are designed to mitigate the worst impacts on vulnerable people coming from hospital in Havering.

Amendment to Partnership Agreement

3. The BCF is a programme spanning both the NHS and local government which seeks to join-up health and care services, so that people can manage their own health and wellbeing, and live independently in their communities for as long as possible.
4. The related Partnership Agreement exists between the following partners for the purposes of integrated commissioning and the establishment of one or more pooled funds:
 - London Borough of Havering
 - London Borough of Redbridge
 - London Borough of Barking & Dagenham
 - NHS Barking and Dagenham Clinical Commissioning Group
 - NHS Havering Clinical Commissioning Group
 - NHS Redbridge Clinical Commissioning Group
5. The partners have agreed to enter into a Deed of Variation, in a form prescribed by the government guidance, incorporating the inclusion of the council's Covid-19 Hospital Discharge Scheme, also based on template documents received from NHSE and further to discussions and legal opinion via the Partnership BCF Management Group. The additional services were introduced in response to the global Covid-19 pandemic and more specifically to implement the government's Discharge Requirements to reduce pressure on those hospitals providing acute services.
6. The Council's additional Schemes includes the provision of the following services:
 - Carers Trust COVID Emergency Homecare Service
 - Covid-19: Designated Settings Care Home block bookings
 - Lodge Group COVID Emergency Homecare Service
 - Brunswick Court Temporary COVID Step Down Facility
7. This amendment will be effective for the phase of the 'COVID Period' from September 1st 2020 to 31st March 2021 in addition to prior schemes identified in schedule 2 that ran from May 2020 to 31st August 2020.

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Finance

8. The Deed of Variation prescribes the use of the NHS funding and how it will be utilised and how the process of recharging actual costs incurred by each Local Authority will be reclaimed from Barking Havering and Redbridge CCG.

Recommendation

9. It is recommended that the inclusion of the Deed of Variation and relevant annexes within the BCF Section 75 Agreement be approved to allow the utilisation of the NHS Funds for the Discharge Schemes. Further delegated authority given to the Joint Commissioning Unit lead to progress the Deed of Variation

OTHER OPTIONS CONSIDERED AND REJECTED

Do nothing

This option was considered and rejected because:

- The hospital will be unable to discharge patients into the community which prevents it from admitting new patients
- Service users will remain in hospital for longer which will increase the likelihood of contracting Covid-19 and decrease their physical and mental wellbeing
- Havering's vulnerable adults in the community will not receive any care and support
- The London Borough of Havering would not receive from the Section 75 the funding it expended.

PRE-DECISION CONSULTATION

Internally we have consulted with the Lead Member for Adult Social Care, officers in Finance, Legal and Adult Social Care departments. Externally the Council consulted with London Borough of Redbridge, London Borough of Barking & Dagenham, and Barking Havering and Redbridge Clinical Commissioning Group.

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NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: John Green

Designation: Joint Commissioning Unit

Signature:



Date: 19/03/21

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. The Council can rely on various legal powers in support of the decisions recommended in this report. Section 1 of the Localism Act 2011 allows the Council to do anything an individual can do subject to any statutory restrictions which may apply.
2. Under paragraphs 3.6.1(k) of Part 3 [Responsibility for Functions] of the Council's Constitution, the Director of Adult Services and Health has delegated authority, *"To manage Adult Social Care grants as appropriate, including the use and application of grants and delivery."* The Chief Operating Officer is empowered, *"to undertake all other financial matters arising within the Council"*, including *"To accept grants and the terms and conditions thereof for and on behalf of the Council."*
3. Rule 19.1 (Variations, Extensions and Modifications of Contracts) of the Council's Contract Procedure Rules states that, *"subject to the authority given under the Council's Scheme of Delegation and CPRs 3 and 4, an officer who has responsibility for the day to day management and performance of an awarded contract may (subject to having the authority to do so) approve a variation or modification by way of additional works, services or supplies..."*
4. Section 75 of the NHS Act 2006 grants powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
5. The relevant Partnership Agreement between the Council, the relevant local authorities, clinical commissioning groups, makes provision for variations if the changes are recorded in writing and duly signed.
6. The Partnership Agreement affords the appropriate governance arrangements to fulfil the parties' responsibilities and obligations in respect of the proper administration of the NHS funding.

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FINANCIAL IMPLICATIONS AND RISKS

This paper proposes a variation of the BCF Section 75 Agreement in line with HM Government's Hospital Discharge Service: Policy and Operating Model Guidance. This allows costs relating to discharged persons aged 18+ to be recharged to the CCG from 1st September to 31st March 2021 in accordance with the NHS England & NHS Improvement Covid-19 Hospital Discharges Finance Guidance.

The expenditure for this provision is incurred in cost centre A32615 (NHS 6 Week Funding) and will be claimed back from the CCG via the claims process which currently applies to COVID 19 NHS Scheme 2 Discharges. Claims are made on a monthly basis and recharged to the CCG. This is therefore cost neutral for the Council if the expenditure claimed meets all of the guidance criteria.

This NHS pathway is currently scheduled to cease on 31st March 2021, therefore alternative funding sources would need to be identified should any of the contracts included in the variation continue beyond 31st March 2021. Alternative funding sources should be identified prior to extending any arrangements.

The contracts covered by this variation are listed below. The actual expenditure of each contract will be recharged to the CCG.

Scheme	Duration of Period	Approximate Cost
TuVida COVID Emergency Homecare Service	01/09/2020 – 30/04/21 (Covered from 07/05/20 – 31/08/2020 by first hospital discharge scheme)	£227,004 with variable monthly costs for procuring PPE
The Lodge Care Home COVID-19: Hospital discharge Care Home Designated Setting block booking	01/09/20 – 31/03/21 (Covered from 19/03/20 – 31/08/2020 by first hospital discharge scheme)	£229,500
The Fountains Care Centre - COVID-19: Hospital discharge Care Home Designated Setting block booking	17/12/20 – 31/03/21	£571,617
Brunswick Court Temporary COVID Step Down Facility	11/01/21 – 31/03/21	£151,040
Lodge Group COVID Emergency Homecare Service	17/12/20 - 14/02/21 06/01/21 - 14/02/21 Additional capacity commissioned	£62,760 £39,840
COVID-19: Hospital discharge Care Home Designated Setting block	11/01/20 – 31/03/21	£561, 960

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booking – Moreland House Care Home		
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HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

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HEALTH AND WELLBEING IMPLICATIONS AND RISKS

The utilisation of the additional NHS funds to ensure the safe and timely discharge of people who no longer need to stay in hospital would positively impact the community by:

- avoiding residents remaining in hospital for longer which will decrease their physical and mental wellbeing
- potentially reduce the risk of residents admitted for non COVID 19 reasons from contracting COVID 19 in hospital
- further reduce the spread of COVID 19 infection in community as residents will be discharged into designated accommodation until they recover
- ensure more spaces are freed up in hospitals to treat others with more serious COVID 19 and other health conditions
- avoid the NHS acute sector being seriously overwhelmed by COVID 19 positive patients
- ensure Discharge to Access patients are supported by a therapist for up to 6 weeks whilst their assessment for longer term needs is taking place
- ensure there is sufficient capacity in the homecare market to accommodate a COVID-19 emergency swift hospital discharge

The decision is therefore recommended.

BACKGROUND PAPERS

None

FOR INFORMATION

The Havering Plan (2020)

https://www.havering.gov.uk/info/20007/council_and_democracy/654/the_havering_plan

Hospital Discharge Service: Policy and Operating Model Guidance

<https://www.gov.uk/government/publications/hospital-discharge-service-policy-and-operating-model>

Better Care Fund – Risk Sharing / S.75 Agreement Guidance

<https://www.england.nhs.uk/ourwork/part-rel/transformation-fund/bcf-plan/risk-sharing/>

London Borough of Havering: Constitution

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https://www.havering.gov.uk/info/20045/councillors_senior_staff_and_decision_making/205/our_constitution

NHS Act 2006

<https://www.legislation.gov.uk/ukpga/2006/41/section/75>

Equality Act 2010

<https://www.legislation.gov.uk/ukpga/2010/15/contents>

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Approved

Details of decision maker

Signed



Name: Barbara Nicholls

Cabinet Portfolio held:

CMT Member title: Director of Adult Social Care & Health

Head of Service title

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____