

7 September 2016		ITEM: 14 Decision 01104383
Cabinet		
The Award of Better Care Fund Contracts for Community Health Care Services		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Susan Little, Cabinet Member for Children's and Adult Social Care		
Accountable Head of Service: Les Billingham, Head of Adult Services		
Accountable Director: Roger Harris, Corporate Director of Adults, Housing and Health		
This report is Public		

Executive Summary

On 9 March 2016, Cabinet approved the Better Care Fund Section 75 Agreement between the Council and NHS Thurrock Clinical Commissioning Group. The Agreement allowed the creation of a pooled fund, to be operated in line with the terms of the Agreement, to promote the integration of care and support services.

Guidance from NHS England stipulates that "Local partners will need to develop a joint spending plan that is approved by NHS England as a condition of the NHS contribution to the Fund being released into pooled budgets." Approval for the plan covering the period April 2016 to March 2017 was received on 13 July 2016.

The Council is the 'host' organisation for the pooled fund, which means that it will need to enter into contracts with providers of Community Health Services. In view of the lateness of the receipt of approval from NHS England, Cabinet approval is sought a) to waive the requirement for a competitive procurement, and b) to award the contracts for these services in line with the Section 75 Agreement and the decision on 9 March 2016.

1. Recommendation(s)

- 1.1 That Cabinet approve the award of Better Care Fund contracts for Community Health Care Services.**
- 1.2 That the requirement in the Council's Constitution for competitive tendering be waived, to allow for a negotiated procurement procedure without prior publication.**

2. Introduction and Background

- 2.1 At a meeting on 9 March 2016 Cabinet agreed to the Council entering into a further Better Care Fund Section 75 Agreement with NHS Thurrock Clinical Commissioning Group for 2016/17, based on the terms set out in the 2015/16 Agreement.
- 2.2 The legal framework for the Fund derives from the amended NHS Act 2006, which requires that in each area the Fund is transferred into one or more pooled budgets, established under Section 75, and that plans are approved by NHS England in consultation with Department of Health and the Department of Communities and Local Government.
- 2.3 Guidance stipulates that “Local partners will need to develop a joint spending plan that is approved by NHS England as a condition of the NHS contribution to the Fund being released into pooled budgets.” Approval for the plan covering the period April 2016 to March 2017 was received from NHS England on 13 July 2016.
- 2.4 The terms of the Section 75 Agreement means the Council is the ‘host’ organisation for the pooled fund. This in turn means that it will need to enter into contracts with the providers of Community Health Services in Thurrock (North East London Foundation NHS Trust and South Essex Partnership University NHS Foundation Trust) and pay them from the Fund for the provision of services covered by the Plan.

3. Issues, Options and Analysis of Options

The Procurement Regulations

- 3.1 The Council’s Contract Procedure Rules stipulate that Cabinet must approve the award of contracts above £750,000. The Rules also stipulate that a report seeking Cabinet approval to award a contract shall include a statement from the Responsible Officer that in their opinion, the tender process has been fair and transparent and in compliance with the relevant European Union Rules, and these Contract Procedure Rules, or alternatively shall include a statement from the Responsible Officer which clearly sets out any anomalies that have occurred. Procurement Governance Form Stage 1: Approval to Proceed covering this requirement is attached as an Appendix to this Report.
- 3.2 The Council’s contract with North East London Foundation NHS Trust and South Essex Partnership University NHS Foundation Trust for the provision of Better Care Fund services in 2015/16 expired at the end of March. In the absence of the approval of the Better Care Fund 2016/17 the providers have of necessity continued to provide the relevant services. It is understood that responsibility for payment for those services has been assumed by NHS Thurrock Clinical Commissioning Group for the year to date. Now, with the

approval of the Plan, It is now proposed that the Council will re-assume responsibility for paying for the services from October 2016 for the remainder of the contract term.

- 3.3 The lateness of the approval for the Pooled Fund from NHS England and the complexity of the health care services provided means it is not possible for any meaningful competition to be undertaken for the provision of those services which could lead to the award of the contract before the end of 2016/17. Accordingly Cabinet approval is sought a) to waive the requirement for a competitive procurement and b) to award the contracts for these services in line with the decision of Cabinet in March 2016.

Contracting arrangements

- 3.4 In 2015/16 the Council, as host of the Pooled Fund, entered into contracts with third party providers – namely North East London Foundation NHS Trust and South Essex Partnership University NHS Foundation Trust. The NHS standard contract is used for these services with the Council becoming an equal commissioning partner. This arrangement will continue into 2016/17 with the majority of the Fund relating to existing NHS contracts.

- 3.5 The contract values for 2016/17 are as follows:
- North East London Foundation NHS Trust £10,462,240
 - South Essex Partnership University NHS Foundation Trust £683,261

- 3.6 In view of the fact that 5 months have elapsed since the start of the contract term, and that NHS Thurrock Clinical Commissioning Group has assumed responsibility for payment for the provision of services during this period, it has been agreed with the Clinical Commissioning Group that an appropriate adjustment will be made in respect of the monies to be transferred into the Pooled Fund.

4. Reasons for Recommendation

- 4.1 The award of contracts under the terms of the Section 75 Agreement must be approved by Cabinet for the Council to be able to pay providers of services contained within the Better Care Fund.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 A specific consultation on the establishment of the pooled fund to drive through the integration of health and social care services, as required under the terms of the Health and Social Care Act 2012, was held in September and October 2014.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 A key aim of the Better Care Fund is to reduce emergency admissions, which brings with it the potential to invest in services closer to home to prevent, reduce or delay the need for health and social care services or from the deterioration of health conditions requiring intensive health and care services. This will contribute to the priority of 'Improve Health and Wellbeing' and the vision set out within the refreshed Health and Wellbeing Strategy 2016-2021.
- 6.2 Achieving closer integration and improved outcomes for patients, service users and carers is also seen to being a significant way of managing demand for health and social care services, and so manage financial pressures on both the NHS Thurrock Clinical Commissioning Group and the Council.

7. Implications

7.1 Financial

Implications verified by: **Joanne Freeman**
Management Accountant

- 7.1.1 The Better Care Fund is made up of contributions from the Council and NHS Thurrock Clinical Commissioning Group. The mandated amount as published on the 9th February 2016 is £9,871,000 for NHS Thurrock Clinical Commissioning Group and £899,000 for Thurrock Council. Additional contributions for 2016/17 take the total value of the fund to £27,150,072.
- 7.1.2 The nature of the expenditure is an agreed ring-fenced fund. Financial risk is therefore minimised and governed by the terms set out in the Agreement.
- 7.1.3 The Fund will be accounted for in accordance with the relevant legislation and regulations, and the Agreement between the Local Authority and NHS Thurrock Clinical Commissioning Group.
- 7.1.4 Financial monitoring arrangements are in place, ensuring that auditing requirements are met, as well as disclosure in the financial statements.

7.2 Legal

Implications verified by: **Paul O'Reilly**
Projects Lawyer

- 7.2.1 In the particular extreme urgency circumstances of this situation, as outlined elsewhere in this Report, the Council is entitled to avail itself of the exception permitted under the Public Contracts Regulations 2015, Regulation 32(2)(c). This enables the Council to avoid the obligation to hold a competitive tendering process and to enter into contracts directly with North East London

Foundation NHS Trust and South Essex Partnership University NHS Foundation Trust. This regulatory exemption is the basis of the waiver being sought.

7.2.2 Legal Services will be available to assist and answer any questions that may arise in relation to the award of the contract(s) and the completion of the compliant procurement exercise.

7.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**
Community Development and Equalities
Manager

7.3.1 The vision of the Better Care Fund is improved outcomes for patients, service users and carers through the provision of better co-ordinated health and social care services. The commissioning plans developed to realise this vision will be developed with due regard to the equality and diversity considerations.

7.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

None

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Cabinet Report March 2016
<http://democracy.thurrock.gov.uk/documents/s7457/Thurrock%20Better%20Care%20Fund%20Section%2075%20Agreement.pdf>
- Technical Guidance Annex 4 – Better Care Fund Planning Requirements for 2016-17
<https://www.england.nhs.uk/wp-content/uploads/2016/02/annex4-bcf-planning-requirements-1617.pdf>

9. **Appendices to the report**

- Appendix 1 - Better Care Fund Section 75 Agreement
- Appendix 2 - Letter of approval from NHS England
- Appendix 3 -Procurement Governance Form – Stage 1: Approval to Proceed

Report Author:

Christopher Smith
Programme Manager
Adults, Housing and Health