

BOARD MEETING

Date of Meeting: 21 March 2023	Agenda item: 13
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Title of Paper: Section 75 agreement between ICB and Oxfordshire County Council.

Paper is for: (Please ✓)	Discussion		Decision	✓	Information	
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<p>Executive Summary This paper sets out:</p> <ul style="list-style-type: none"> The scope and purpose of the proposed Section 75 (s75) NHS Act 2006 agreement between the ICB and Oxfordshire County Council. The financial and other key implications for the ICB of signing the new s75 agreement. The proposed governance route to signing the s75 agreement for 1 April 2023.
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<p>Action Required The Board is asked to:</p> <ul style="list-style-type: none"> Approve the s75 agreement as drafted and agreed by officers of the ICB and the Council on advice from each party's solicitors. Review and agree the financial risk share. Note the development of a Memorandum of Understanding and that once agreed it will be incorporated in the s75 agreement by way of variation to the main s75 agreement. Authorise the Interim Chief Executive and Interim Chief Finance Officer of the ICB to sign the agreement with effect from 1 April 2023.
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Date and Name of Committee/meeting at which Paper Reviewed: Executive Management Committee

Author: Ian Bottomley, Lead for Age Well, Oxfordshire Integrated Commissioning Team, Dan Leveson, Place Director, Oxfordshire (financial risk share proposal reviewed by Julia Boyce, Assistant Director of Finance)

Executive Lead/Senior Responsible Officer: Matthew Tait, Interim Chief Delivery Officer
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Date of Paper: 8 March 2023

Conflicts of Interest:	
The Partner Member Local Authorities (SC) is employed by Oxfordshire County Council who are the other party to this agreement and the Member for Mental health (NB) leads an organisation that is commissioned through the pooled budget. The agreement has been worked up in partnership receiving input from interested parties so these members may take part in the discussion but due to the conflict.	
No conflict identified	
Conflict noted: conflicted party can participate in discussion and decision	
Conflict noted, conflicted party can participate in discussion but not decision	✓
Conflict noted, conflicted party can remain but not participate in discussion	
Conflict noted, supported paper withheld from conflicted party e.g. pecuniary benefit	
Conflicted party is excluded from discussion	

SECTION 75 AGREEMENT BETWEEN ICB AND OXFORDSHIRE COUNTY COUNCIL

Introduction

1. Oxfordshire has organised its joint commissioning arrangements around Section 75 (s75) NHS Act 2006 pooled funding agreements for many years. The current agreement was signed with effect from 1 April 2013 by Oxfordshire County Council (OCC) and the then CCG and has been varied in format and length on several occasions. The latest extension expires on 31 March 2023.
2. The s75 agreement incorporates the Oxfordshire Better Care Fund. It has been reviewed to reflect:
 - The development and implementation of the Integrated Commissioning Team for Health, Education and Social Care [HESC] hosted by the Council and funded jointly by the Council and the ICB since March 2021 and the ensuing delegations and commitments between the partners.
 - The vision for HESC of a life course, tier need approach to commissioning across health and social care that would focus on prevention, partnership, co-production and personalisation.
 - The opportunity and ambition set out in the Health & Social Care Act for increased system and partnership working, including the development of provider collaboratives.
3. The s75 agreement will be backed by a Memorandum of Understanding (MOU) which sets out the strategic direction of travel for the s75 and the mechanism for managing joint funded posts within HESC. It has been proposed by the partners' solicitors that the MOU should be incorporated into the s75, when the s75 is next reviewed.
4. The new s75 agreement in many areas is a continuation of the preceding agreement other than:
 - Those provisions relating to HESC set out in the s75.
 - The increased level of ambition that the agreement should be a strategic delivery Vehicle for Place, including the opportunity to underpin and enable provider-led collaboratives.
 - Changes to the financial risk share in the current agreement

Scope and purpose of the proposed s75 Agreement

5. The key features of the new s75 agreement are as follows:
 - The agreement is open-ended: it can be varied at any point by agreement or on three months' notice.
 - The agreement can be terminated on six months' notice.
 - The agreement incorporates the budgets set out at pp54ff of the agreement and the contracts set out at pp 62ff.
6. If The agreement will govern the Better Care Fund (BCF) and contracts and arrangements for the delivery of hospital discharge, some aspects of admission avoidance, community capacity and prevention, mental health services for adults

and children and services for adults living with learning disability and/or autism. It covers individual care packages commissioned by the Council and by the ICB in terms of NHS Continuing Healthcare.

7. It is important to note Oxford Health NHS FT (via their Chief Executive) has requested OCC and the ICB consider signing a fixed-term s75 agreement for 1 year, with the stated intent to use the duration to jointly develop future ways of working for mental health, in-line with the development of the emerging Provider Collaborative.
8. It is the intention of OCC and ICB that the s.75 will be reviewed and varied by the end of quarter 2 to incorporate the MOU (summarises ways of working for HESC) and changes in Continuing Healthcare.
9. It is the intention of OCC and ICB that the s75 could be reviewed and expanded regularly where this furthers system priorities, improves outcomes, develops Place and makes best use of the Oxfordshire pound. Key areas that may be varied into the agreement include:
 - Further alignment of Public Health funding and services as part of the focus on independence, prevention and addressing health inequalities
 - Hospital admission services where these support the delivery of Better Care Fund metrics, eg Virtual Wards, Urgent Community Response.
 - Expansion of the scope of the pooled budgets in relation to children and young people.
 - Increased alignment of mental health, primary and community services where this enables provider collaboratives (at scale and at place) that should be aligned to commissioned services from the pool.
10. The agreement has on commencement relatively low levels of risk-shared pooling of financial resources. This reflects difficult financial operating positions over the last 3-4 years. It is the ambition that the partners identify opportunities for effective risk-and/or gain-share where that improves the impact and quality of care. Some of these opportunities are considered in relation to financial risk share below. There are also several joint-funded contracts:
 - ICB mental health outcomes-based contract for adults aged 18-65.
 - OCC Contracts for
 - Pathway 2 short stay beds to support discharge from hospital (funded by ICB, OCC and OUH).
 - Dementia Support Services.
 - Carers services.
 - Specialist nursing dementia beds.
 - The community equipment contract (also used by Oxford Health and Oxford University Hospitals).
11. The s75 agreement sets out the Governance for the pooled budget which will be to the Joint Commissioning Executive (JCE) established by the Partners to manage HESC. This reports respectively to the ICB Executive Management Committee and to the Council Cabinet. The Pooled Budget Manager is the Deputy Director, Integrated Commissioning a joint funded post that reports respectively to the Place Director for the ICB and to the Director of Adult Services for the Council.
12. The Joint Commissioning Executive is additionally accountable to the Health & Wellbeing Board for the delivery of the Better Care Fund and those other parts of the Oxfordshire Health & Wellbeing Strategy that are within scope of the Pooled Budget.

13. These arrangements will be kept under review. The agreement sets out that there should be a quarterly review of the operation of the s75, and this will form the basis of exploring the relationship with the Place-Based Partnership, and the role of Providers and Provider collaboratives within the agreement. There is a need additionally to expand the engagement with service users and carers around the development and delivery of these arrangements.

Scope and Purpose of the Proposed MOU

14. The MOU remains in development and will cover:

- Background and scope of the s75 and partnership approaches more generally.
- Annual Development Plan for the s75 arrangements as required by the Agreement.
- Operating and governance arrangements for those parts of HESC that are not covered by the s75.
- The agreement to cover joint funded staff in HESC (18 posts, 4 of which are currently ICB employees) in terms of responsibilities and liabilities of both Partners.

15. The MOU will be finalised when the current restructure of ICB and of the delivery of NHS Continuing Healthcare functions is confirmed (anticipated in Q1 2023/24) as there are functions that are currently delivered as legacy by HESC staff which would not form part of the s75 agreement.

Detail and financial implications for the ICB of the new s75 Agreement

16. The current Section 75 agreement covers various services as detailed below, together with the risk shares between the partners.

Service Area	How is risk assigned
Age Well	Aligned #
Live Well – Physical Disability	Aligned
Live Well – ABI	Aligned
Live Well – Learning Disability [LD]	OCC take all risk
Live Well – Mental Health [MH] abated *	OCC take first £200k, further risk split equally
Live Well – MH non abated	OCC take risk

17. It is proposed, from April 2023, to amend the risk shares between the partners as detailed below.

Service Area	How is risk assigned
Age Well	Aligned
Live Well – Physical Disability	Aligned
Live Well – ABI	Aligned
Live Well – Learning Disability	Aligned
Live Well – MH abated	OCC take first £200k, further risk split equally
Live Well – MH non abated	Aligned

aligned means that each partner takes the pressure or underspend associated with their own contribution and spend and subsequently there is no sharing of risk.

* "abated": social care costs relating to people aged 18-65 under the care of Oxford Health NHS FT but who are not in scope according to diagnostic criteria of the ICB's Outcomes Based Contract.

18. In summary the changes being proposed are that the LD risk and the MH non abated risk will be aligned to the specific partner going forward. In financial terms and using 2022/23 FOT's, this means that the ICB would pick up c.£5.5m of LD costs and c.£15k of MH costs if these costs were incurred in future years.

19. The LD overspend has arisen specifically on LD clients with Continuing Healthcare (CHC). Over the years the number of clients and their costs has risen sharply, from a caseload of 21 in March 2018 to the current caseload of 53 (December 22). This increase has been driven by an increase in case complexity amongst this population and is also due to former challenges relating to assessment of these cases. The NHS has a legal responsibility to pay CHC costs. The contribution the CCG/ICB has made in 2022/23 and in preceding years is not now enough to cover these increased costs.

20. The Council has made it clear they would not sign up to a further s75 agreement where the ICB does not take responsibility for the LD CHC and associated financial risk.

21. The total investment in the new Agreement is as follows:

	£	£
Oxfordshire County Council		
Age Well	54,015,700	
Live Well - Physical Disability	19,538,400	
Live Well - Mental Health	8,682,400	
Live Well - Learning Disability	88,848,000	
iBCF	10,705,300	
Discharge Grant 2023/24	1,500,900	
Total OCC		183,290,700
BOB ICB:		
Age Well	78,269,000	
Live Well - Physical Disability	14,633,000	
Live Well - Mental Health	68,790,000	
Live Well - Learning Disability	18,542,000	
Discharge Grant 2023/24	3,185,200	
Total BOB ICB		183,419,200
Better Care Fund		
Social Care	27,828,500	
Health	18,868,000	
Total Better Care Fund		46,696,500
Total Pooled Fund		413,406,400

Risks to the ICB

The Interim CFO has confirmed that there is no new funding available to cover this £5.5m pressure. Draft financial plans for 2023/24 have been based on Forecast Outturn (FOT) at M10, which excludes the LD £5.5m pressure, with an uplift of 2.9% applied for CHC.

If the ICB does not sign the new agreement the risk is that the current integrated commissioning arrangement might be in jeopardy.

(i) Mitigating the impact of the new s75 agreement

The ICB will need assurance that this pressure can be met from savings plans to be delivered in 2023/24. There are several plans and other options currently under consideration to cover the shortfall which include:

- Invest to save business case for review of CHC.
- LD CHC reviews and evaluation of the current caseload.
- Use of Discharge Fund in 2023/24 to fund discharges from hospital, prevent readmissions and fund new services.
- Better and more informed use of the LD block contract with Oxford Health.

Route to signature to the Agreement

22. An earlier version of the proposed agreement was developed in March 2022 and was approved in principle by OCC Cabinet. The CCG was unable to agree to some of the proposed changes at that point as a legacy for the incoming ICB.

23. It is understood that the Agreement as drafted does not need a fresh Cabinet decision.

24. The agreement has a financial value and system impact such that it needs to be signed off at Board level in the ICB's scheme of delegation. The draft agreement is presented to the ICB Board for agreement so that it can come into force from 1 April 2023.

Recommendations

25. The Board is asked to:

- Approve the s75 agreement (Annex 1) as drafted and agreed by officers of the ICB and the Council on advice from each party's solicitors.
- Review and agree the new financial risk share.
- Note the development of a Memorandum of Understanding and that once agreed it will be incorporated in the s75 agreement by way of variation to the main s75 agreement.
- Authorise the Interim Chief Executive and Interim Chief Finance Officer of the ICB to sign the agreement with effect from 1 April 2023.