

**Report of the Director of Adult Social Services**

**Report to Executive Board**

**Date: 17th October 2012**

**Subject: Strategy for governance in integrated working with Health**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. This report deals with the means by which more integrated commissioning and providing arrangements between NHS commissioners and providers of services and their Local Authority counterparts will be encouraged and supported in the future. The report sets out the intention to use the powers contained in the 2006 Health Act, principally sections 75, 76<sup>1</sup> and 256<sup>2</sup>, to use the legal flexibilities contained within those sections to ensure good governance and accountability for the use of public funds in the pursuit of joint improvement .
2. This sets out the intention to have one overall Section 75 Agreement to cover all joint commissioning arrangements between Leeds City Council Adult Social Care and NHS Leeds or its successors in title.
3. The report also sets out how other dedicated Section 75 agreements will be used to ensure good governance and accountability between providers of NHS care for specific services and their Local Authority counterparts, principally between Leeds Community Healthcare, Leeds and York Partnership Foundation Trust and Adult Social Care provided services.

<sup>1</sup> S76 allows the local authority to transfer money etc to a CCG etc and is the mirror opposite of s256. Leeds City Council has never used it but it is available to us.

<sup>2</sup> The overarching agreement will not cover ss76 and 256

4. The adoption of robust legal agreements for joint working in the provision of care and support ensures a consistency of approach within the terms of the constitution of the Local Authority and makes efficient use of officer and legal services time. It also ensures we have a robust approach to the governance of services provided by both health and social care staff working as part of joint team arrangements.
5. The basis for the agreement centres upon promoting effective partnership working with the aim of the more effective and efficient use of resources in order to meet the health and social care needs of the citizens of Leeds.

## **Recommendations**

That the approach to Section 75, S76 and Section 256 agreements for the governance and pooling of Health and Social Care resources be endorsed.

That the process for the Director of Adult Social Services to approve future agreements under the delegations afforded to her within the Council's Constitution, Officer Delegation Scheme (Executive Functions) be noted.

That the agreements will be subject to formal review every three years and monitored annually during this time to assure their continuing relevance and effectiveness be noted.

### **1. Purpose of This Report**

- 1.1 The purpose of the report is to seek the endorsement of Executive Board to the direction of travel in our approach to partnership arrangements with NHS bodies in Leeds.
- 1.2 Recent years have seen a healthcare system emerging in the City that has expanded in size and in complexity. The NHS 'Family' of organisations has effectively split into essentially two types, Commissioners of care on the one hand, three Clinical Commissioning Groups responsible for the effective planning and purchase of healthcare services. On the other hand NHS organisations who are principally concerned with the actual provision of care, these include; Leeds and York Partnership Foundation Trust, Leeds Community Healthcare and Leeds Teaching Hospital Trust.
- 1.3 There are a significant number of overlaps between that which the NHS and local Authority commissions (or wishes to commission) and that which is directly provided to people with health and social care needs. In order to provide a cogent governance structure for the oversight of joint initiatives and to ensure that financial and organisational risks are identified and addressed, officers from NHS organisations and the local authority have developed a suite of agreements which it is intended will be used into the future to manage all joint commissioned or jointly provided endeavors<sup>3</sup>.

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<sup>3</sup> There are a number of joint commissioning programmes where the local authority and the PCT work jointly and draw down contracts from the same framework arrangement but these are not caught by the s75 agreement.

## **2. Background Information**

- 2.1 S256 of the National Health Service Act 2006 (NHS Act 2006) permits a PCT to transfer to the local authority sums of money or resources which, in the view of the NHS, furthers their statutory objectives to provide better and more efficient health services or prevent ill-health. The local authority will then procure services alongside their own which helps to meet that objective. There is no transfer of statutory functions.
- 2.2 S76 is a mirror image of S256 in that it permits a local authority to transfer monies or resources to a PCT (or CCG as of 1 April 2013) towards expenditure incurred by the NHS in relation to their statutory functions. Again there is no transfer of statutory functions.
- 2.3 However, unlike a S256 and S76 agreements, a s75 agreement allows one of the partners to delegate its statutory duties to the other. In Leeds the PCT, for example, has delegated its statutory duty to ASC for the assessment and provision of services to people with a learning disability who are in need of a care package which would be funded by the NHS under the continuing health care legislation. The local authority assessment and commissioning teams have developed specialist knowledge and expertise in identifying needs and how those can best be met, most cost effectively. The delegation of NHS statutory functions to the Council allows the statutory partners to better integrate their services, cost effectively to achieve a seamless and client focused service.
- 2.4 Section 75 of the NHS Act 2006 provides that health bodies and health related Local Authority services can pool money and integrate resources and management structures. These powers are intended to support partnership working and result in service improvements through the joining up of existing services or the development of new initiatives.
- 2.5 These agreements can be pooled budget arrangements for the commissioning of services, lead commissioning by one organisation on behalf of another or integrated provider agreements. The agreement to be used depends on whether we are commissioning the service e.g. Learning Disability services and Joint Equipment services or working together to provide a service, for example Mental Health Assessment services, and the intermediate care service to be provided from Harry Booth House.
- 2.6 In Leeds we have a number of partnership arrangements already in place between Health and Social Care and through the Transformation Programme we have been looking at how to progress further opportunities for joint working going forward. It should also be noted that the development of further opportunities will be a key responsibility of the Health and Wellbeing Board in the future.
- 2.7 In the past we have had a number of separate agreements in place governing jointly commissioned services. Moving forward we are proposing to implement new agreements which provides a legal framework and a more robust approach to governance.

### **3. Main Issues**

- 3.1 Leeds has a very long history of using 'Health Act Flexibilities' primarily in Learning Disability services where a joint commissioning service has commissioned care using a budget pooled between the NHS and Local Authority for the past 12 years. However, in recognising the rapidly changing organisational landscape for NHS organisations and the significantly harsher financial climate, officers had determined that the agreements that had served well in the past were unlikely to do so in the future.
- 3.2 The revised agreements have the benefit of a contemporary overview of current (rather than historic) national policy and guidance, providing a clear rationale and governance for our partnerships. The design of an overall S75 agreement to be adopted by commissioners for joint commissions of service is that this provides a written, formalised and robust baseline from which to develop partnership relationships on the context of ongoing organisational change.
- 3.3 The documents which are specific to the joint commissioning terms and conditions (including the management of pooled fund agreements) have been drafted by Adult Social Care officers working with legal advice and in co-operation with the three emerging Clinical Commissioning Groups who will be counter-signatories to the agreements.
- 3.4 The overall commissioning agreement under Section 75 of the National Health Service Act 2006 sets out the arrangements in particular: to establish the lead commissioner; establishing and maintaining the pooled budgets within the agreement; establishing and maintaining a charging policy and protocol ensuring that the Council retains the power to charge eligible service users for certain functions whilst ensuring that the delivery of health care through NHS functions remain free at the point of delivery; gives detailed arrangement for financial contributions from both parties and the arrangements for the management of the fund; the governance arrangements for the oversight of the partnership arrangements and the standards of service and monitoring.
- 3.5 With the overall S75 agreement having taken care of overall governance and risk sharing arrangements, all that remains is the addition of a service schedule specific to the particular activity under commission, for example, one schedule specific to the Learning Disability service, one for the intermediate care service.
- 3.6 Each service schedule requires (for consistency) a minimum data set. This will contain a descriptor of the partnership including the aims and objectives, specific governance and reporting arrangements (including terms of reference for partnership boards and reference groups), details of financial contributions, which will include any pooled budget arrangements and staff or other resources which are committed against the agreement. Performance management arrangements will also be included within the specific schedules as will functions of staff that support the delivery of the partnership.
- 3.7 Section 75 agreements between the Local Authority in its role as a provider of support and care services and their NHS counterparts, will operate in precisely the same way covering the specifics of day to day operation and risk sharing and in

particular covering: the governance, monitoring and strategic planning arrangements; inspection arrangements; financial arrangements ensuring that whilst there is no Pooled Fund arrangement both parties agree to adhere to reporting on expenditure and that financial officers attend relevant meetings of the Partnership Board; staffing roles for the staff managed under the agreement; dispute and complaints processes.

- 3.8 This process toward greater integration of both commissioning and provided services will continue to run alongside the lesser used Section 256 of the 2006 Health Act. There are some circumstances in which NHS commissioners will wish the local authority to commission services on their behalf and, rather than enter into a pooled fund arrangement, will simply transfer the value of the service under commission for the local authority to administer. These arrangements will continue where appropriate as part of this developing approach. These types of agreement cover in particular: the conditions of transfer of monies; ensuring that the annual sum shall be used for the specified purpose; the arrangements for authenticating, accounting and auditing; the governance and meeting arrangements to discuss the provision of services.
- 3.9 The establishment of agreements with our Health partners under the National Health Service Act 2006 provides a good practice framework for future working by ensuring a consistent approach across the city and providing stability in the transitional timescale from PCT to Clinical Commissioning Groups (CCGs) under the 2012 Health and Social Care Act. Under this legislation NHS commissioning responsibilities will be overseen by the NHS Commissioning Board (NHSCB). Some acute and most community based commissioning will be delegated to the CCGs by the Board. Working relationships with the NHSCB will be developed through the Health and Wellbeing Board.

## **4. Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1. The work of these agreements has been led by Adult Social Care and the three emerging Clinical Commissioning Groups (CCGs) and rigorous reporting procedures have been followed including consultation and communication with the Executive Member for Adult Social Care, Partnership Boards, the voluntary sector, Learning Disability Commissioning Executive and the Clinical Commissioning Group Collaborative. The agreements could be modified for application to other services in the authority in due course.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1. An Equality Impact screening assessment will be carried out on each individual agreement as it is prepared and processed prior to approval. Following the screening, a full assessment will be carried out as required.

### **4.3 Council Policies and City Priorities**

- 4.3.1. The direction of integration is in line with current City Council and Adult Social Care priorities and the NHS drivers for Partnership and Change. The Vision for Leeds

2011-2030 states that 'Leeds will be the best city for Health and Wellbeing, Leeds will be a healthy and caring city for all ages where people are supported by high quality services to live full, active and independent lives'. On a more specific level a formal approach to partnership agreements will strengthen partnership arrangements, increase the optimum use of resources and will support increased personalisation.

- 4.3.2. This initiative contributes to National Indicator 142, the percentage of vulnerable people supported to achieve independent living.
- 4.3.3. This contributes to the City Priority Plan 2015 by supporting people to live safely in their own homes and increases the opportunities for more significant choice and control in relation to health and social care services.
- 4.3.4. This contributes to the Council Business Plan 2011-2015, Adult Social Care Directorate Priorities and Performance Measures by ensuring more people with poor health remain living at home longer.
- 4.3.5. This initiative supports adults whose circumstances make them vulnerable to live safe and independent lives.
- 4.3.6. This further provides easier access to joined up health and social care services underpinned by Valuing People principles amongst other substantial policy drivers and Self Directed Support.

#### **4.4 Resources and Value for Money**

- 4.4.1. The extension of joint commissioning and joint provision of services between the Local Authority and NHS organisations presents significant opportunity to deliver more effective and efficient public services in the City in which outcomes are maximized for Leeds citizens by better use of the 'Leeds £'. However, all organisations need to be assured, through good governance, that their resource contribution generates the anticipated benefits and efficiencies required by their own sponsors.
- 4.4.2. An example of this working in practice is the pooled budget for people with Learning Disability which is managed by the Local Authority on behalf of all commissioners and is valued at £63M in this financial year. Over the past 2 years more than £3M of efficiencies have been made by more effective contract negotiation and management, these have enabled both the Local Authority and their Health commissioning partners to manage demand for services within their existing resources and provide a regular and detailed account of the outcomes achieved for people using this budget.
- 4.4.3. The recent Winterbourne View Hospital Serious Case Review significantly highlighted the need for responsible commissioners to take a much more proactive stance in the promotion of good governance and accountability to protect people whose circumstances make them especially vulnerable. It can be seen that the quality assurance, contract monitoring and compliance measures deployed under

the pooled fund arrangement offers enhanced protection to those people whose care is funded through the pool.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1. The process for formulating the agreements (S75 Commissioner/ Provider & S256) has been undertaken with detailed advice, support and assurance from the Council in house legal services team and their NHS lawyer colleagues to ensure full compliance with the requirements of the Health Act 2006.
- 4.5.2. All agreements are subject to approval by the Director of Adult Social Services, Leeds City Council, under her powers of Delegated Decision making after appropriate consultation with the Executive Lead Member. The first tranche of agreements will be the overall S75 Commissioning agreement (which will have attached as schedules the updated agreements around the Learning Disability joint commissioning service, Leeds Equipment Service and the arrangements governing the joint commission of the South Leeds Intermediate Care Centre (formerly Harry Booth House). In addition, the provider S75 agreements for the provision of care in relation to the former Harry Booth House and the joint provision of a range of mental health services will also be approved by this means. A S256 agreement will also be made to enable £340K to be transferred to the Local Authority for the administration of some services to carers on behalf of the NHS.
- 4.5.3. It is proposed that all such decisions to produce new schedules for the overall commissioning agreement or to produce new agreements between provider functions will be made by the means highlighted above. However, because the scale and nature of agreements will vary into the future some may not be subject to call-in. The agreements highlighted at 4.5.2, by virtue of their value will be subject to call-in.
- 4.5.4. We have assessed the Partnership agreements against the 'Advisory note for Directors - Partnerships Governance' tool and can confirm that it meets the requirements stated within.
- 4.5.5. In terms of elected members, governance and scrutiny, The Director of Adult Social Services via the Executive Lead Member will continue to remain statutorily accountable for both the commission and provision of service and the constitution of the Council needs no amendment by the approach set out in this report. However, Members will be aware of the potential for significantly more extensive integration of Council and NHS services, taken to their fullest this would require further reports to the executive seeking authorisation to proceed.
- 4.5.6. Colleagues in Internal Audit have confirmed that they are satisfied that the Section 75 agreement meets their requirements around governance.

#### **4.6 Risk Management**

- 4.6.1. In many respects S75/256 agreements are mechanisms for identifying, mitigating and sharing risks between Health and Local Authority bodies. By having such agreements in place, whether between providers or commissioners, organisations

are making explicit in a legally binding agreement between them, how they will improve outcomes for people.

- 4.6.2. At the same time the agreements articulate how risks and benefits are to be shared between the organisations and how statutory duties are to be discharged. The agreements seek to limit organisational and reputational risk alongside legal and, of course, financial. Members can be assured that the content of the agreements as described at point 3 above ensure due diligence for the Council.
- 4.6.3. Operating or commissioning services jointly in the absence of such agreements is therefore inherently risky, potentially exposing one of the partners to the endeavor to greater than acceptable financial or organisational exposure.

## **5. Conclusions**

- 5.1 This report has set out the intent that Section 75 and Section 256 agreements will be used to ensure good governance and accountability between commissioners and providers of NHS care and their Local Authority counterparts. The adoption of robust legal agreements for joint working in the commission and provision of care and support ensures a consistency of approach and makes efficient use of officer and legal services time. It also ensures we have a robust approach to the governance of services provided by both health and social care staff working as part of joint team arrangements and financially efficient effective arrangements for demonstrating improved outcomes for people.

## **6. Recommendations**

- 6.1 That the approach to Section 75, S76 and Section 256 agreements for the governance and pooling of Health and Social Care resources be endorsed
- 6.2 That the process for the Director of Adult Social Services to approve future agreements under the delegations afforded to her within the Council's Constitution, Officer Delegation Scheme (Executive Functions) be noted.
- 6.3 That the agreements will to be subject to formal review every 3 years but monitored annually during this time to assure their continuing relevance and effectiveness be noted.

## **7. Background Documents<sup>4</sup>**

None

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<sup>4</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.