

## CABINET MEETING – 8 DECEMBER 2022

### EXECUTIVE SUMMARY SHEET – PART I

**Title of Report:**

2022/23 Better Care Fund Section 75 Agreement and Future Collaborative Working Arrangements with the NHS

**Author(s):**

Executive Director of Health, Housing and Communities

**Purpose of Report**

The purpose of the report is to seek:

- (i) Cabinet's approval for the Council to enter into a Section 75 agreement with the Integrated Care Board (ICB), to enable improved health and care integration and to meet national conditions of the 2022/23 'Better Care Fund' (BCF) programme; and
- (ii) authority to explore appropriate place-based joint governance arrangements with the ICB, with a view to bringing a report back to Cabinet ahead of the anticipated timescales for implementation by April 2023.

**Description of Decision (Recommendations):**

Cabinet is requested to authorise:

- (a) the entering of an agreement by the Council in accordance with Section 75 of the National Health Act 2006 (a Section 75 agreement), as outlined in the report, on terms agreed by the Executive Director of Health, Housing & Communities, in consultation with the Portfolio Holder for Health and Social Care, Director of Finance, the Assistant Director of Law and Governance and the Assistant Director of Integrated Commissioning which:
  - (i) makes provision for the exercise of functions, duties, budgets and governance arrangements that effectively meets the conditions of the 2022/23 BCF; and
  - (ii) ensures that the BCF Section 75 agreement is fit-for-purpose in encompassing wider integrated health and care provisions, in order to support the effective implementation of place-based collaborative working arrangements by 2023, in-line with the government's integration White Paper 'Joining Up Care for People, Places and Populations';
- (b) the Executive Director of Health, Housing & Communities, in consultation with the Portfolio Holder for Health and Social Care, to take such steps as are considered necessary to secure the completion of the Section 75 agreement; and

- (c) the Executive Director of Health, Housing & Communities, in consultation with the Portfolio Holder for Health and Social Care, Director of Finance, the Assistant Director of Law and Governance and the Assistant Director of Integrated Commissioning to explore appropriate place-based collaborative working arrangements with the ICB, with a view to bringing a report back to Cabinet ahead of the anticipated timescales for implementation by April 2023.

**Is the decision consistent with the Budget/Policy Framework?** \*Yes

**If not, Council approval is required to change the Budget/Policy Framework**

**Suggested reason(s) for Decision:**

The Better Care Fund (BCF) programme is a key enabler of health and care integration - supporting the joint delivery of person-centred and sustainable health and care provision that delivers better outcomes for people, place and population. The BCF enables the Council and Integrated Care Board (ICB) to establish a joint budget arrangement (a Section 75 Agreement) that supports effective collaboration in delivering on the NHS Long-Term Plan, alongside local strategies to improve population health and reduce inequalities.

In the 2022/23 planning round, there is an expectation that nationally approved BCF plans will be supported by a Section 75 agreement by 31 December 2022. Failure to agree plans and/or the associated Section 75 agreement, may result in the withholding of grant funding to deliver critical health and care services.

In addition to meeting national BCF conditions, the Section 75 agreement has the potential to include wider elements of health and care integration that will support achievement of strategic objectives within the Healthy City Plan and emerging Integrated Care Strategy. As such, a comprehensive Section 75 agreement between the ICB and Council, is sought on the basis that it will:

- Lead to improved patient and population health and care outcomes, including delivery of the strategic objectives of the Healthy City Plan and emerging Integrated Care Strategy.
- Enable better use of scarce system resource to deliver improved cost effectiveness, increased efficiencies and achieve economies of scale.
- Support shared approaches to risk management to support continuity of care and system resilience.
- Create new opportunities to leverage the benefits of collective capacity to deliver innovation, improved market confidence and coordinated sustainable development activities, including community wealth building.

**Alternative options to be considered and recommended to be rejected:**

Potential alternative options include not entering into a Section 75 agreement with the ICB. For elements related to the BCF, this option would result in a failure to meet national conditions, which may lead to a reduction or withdrawal of Integrated BCF (IBCF) funding. This funding is critical to health and care delivery, including the ability of the Council to fulfil its obligations under the Care Act 2014. More widely, without a Section 75 agreement, there would be no mechanism to support the pooling of budgets and effective place-based collaborative working arrangements, resulting in a reduced ability of partners to achieve the benefits outlined in section 5.3 of the report, and may impact on the deliverability of strategic objectives within the Healthy City Plan and the emerging Integrated Care Strategy.

<b>Impacts analysed;</b>			
<b>Equality</b>	<b>Privacy</b>	<b>Sustainability</b>	<b>Crime and Disorder</b>
<div>Y</div>	<div>N/A</div>	<div>Y</div>	<div>NA</div>
<b>Is the Decision consistent with the Council's co-operative values? Yes</b>			
<b>Is this a "Key Decision" as defined in the Constitution?</b>			<b>Yes</b>
<b>Is it included in the 28 day Notice of Decisions?</b>			<b>Yes</b>



## **CABINET – 8 DECEMBER 2022**

### **2022/23 BETTER CARE FUND SECTION 75 AGREEMENT AND FUTURE COLLABORATIVE WORKING ARRANGEMENTS WITH THE NHS**

#### **Report of the Executive Director of Health, Housing and Communities**

#### **1. Purpose of the Report**

1.1 The purpose of the report is to seek:

- (i) Cabinet's approval for the Council to enter into a Section 75 agreement with the Integrated Care Board (ICB), to enable improved health and care integration and to meet national conditions of the 2022/23 'Better Care Fund' (BCF) programme; and
- (ii) authority to explore appropriate place-based joint governance arrangements with the ICB, with a view to bringing a report back to Cabinet ahead of the anticipated timescales for implementation by April 2023.

#### **2. Description of Decision (Recommendations)**

2.1 Cabinet is requested to authorise:

- (a) the entering of an agreement by the Council in accordance with Section 75 of the National Health Act 2006 (a Section 75 agreement), as outlined in the report, on terms agreed by the Executive Director of Health, Housing & Communities, in consultation with the Portfolio Holder for Health and Social Care, Director of Finance, the Assistant Director of Law and Governance and the Assistant Director of Integrated Commissioning which:
  - (i) makes provision for the exercise of functions, duties, budgets and governance arrangements that effectively meets the conditions of the 2022/23 BCF; and
  - (ii) ensures that the BCF Section 75 agreement is fit-for-purpose in encompassing wider integrated health and care provisions, in order to support the effective implementation of place-based collaborative working arrangements by 2023, in-line with the government's integration White Paper 'Joining Up Care for People, Places and Populations';
- (b) the Executive Director of Health, Housing & Communities, in consultation with the Portfolio Holder for Health and Social Care, to take such steps as are considered necessary to secure the completion of the Section 75 agreement; and
- (c) the Executive Director of Health, Housing & Communities, in consultation with the Portfolio Holder for Health and Social Care, Director of Finance, the Assistant Director of Law and Governance and the Assistant Director of Integrated Commissioning to explore appropriate place-based collaborative working arrangements with the ICB, with a view to bringing a report back to Cabinet ahead of the anticipated timescales for implementation by April 2023.

### 3. Introduction/Background

- 3.1 The Better Care Fund (BCF) programme is a key enabler of health and care integration, supporting the joint delivery of person-centred and sustainable health and care provision that delivers better outcomes for people, place and population. The BCF enables the Council and Integrated Care Board (ICB) to establish a joint budget arrangement that supports effective collaboration in delivering on the NHS Long-Term Plan, alongside local strategies to improve population health and reduce inequalities.
- 3.2 The BCF process is underpinned by a nationally determined policy and planning framework, alongside funding contributions from:
- A minimum allocation of NHS funding
  - Disabled facilities grant (DFG)
  - Improved BCF (iBCF) social care funding grant
  - Winter pressures grant funding to local authorities
  - Additional voluntary contributions from the Council and/or ICB to further ambitions for improved integration of health and care.
- 3.3 These arrangements must be pooled into a Section 75 agreement between the ICB and Council, in order to support robust governance and accountability of the BCF.
- 3.4 In the 2022/23 planning round, there is an expectation that nationally approved BCF plans will be supported by a Section 75 Agreement by 31 December 2022. Failure to agree plans and/or associated s75 arrangements, may result in the withholding of grant funding to deliver critical health and care services.
- 3.5 In addition to the BCF planning requirements, the Government's integration White Paper '*Joining Up Care for People, Places and Populations*', has set out further expectations for place-based collaborative working arrangements between ICBs and local authorities to be in place by 2023. These arrangements will support effective delivery of the Integrated Care Strategy at place-level and include, but are not limited to, local BCF arrangements.
- 3.6 Options for place-based collaborative working arrangements suggested in the White Paper include:
- A place-based **Consultative Forum**, with a broad membership, which would act in an advisory capacity to the Executive Directors of Place-Based Delivery but could not make binding decisions.

- A formal **Place Committee of the ICB**, coterminous with a single local authority (or group of neighbouring local authorities), with formal delegation of NHS resources and a direct line of reporting and assurance to the ICB. The chair and members of such a committee could include ICB staff and a range of partners but the ICB would retain the majority quorum, and the Committee would be formally accountable to the ICB.
- A **Joint Committee**, coterminous with a single local authority (or group of neighbouring local authorities), allowing collective decisions to be made within its scope of authority on behalf of a number of organisations. Such a committee would have a direct line of reporting and assurance to both the ICB and the other constituent statutory bodies, requiring agreement by all parties to the level of delegated authority or statutory decisions set out in a formally approved agreement.

- 3.7 In January 2022, a paper was circulated to Cabinet that set out the proposed approach to establishing place-based joint governance arrangements with the expectation that this arrangement would likely evolve into a Joint Committee arrangement. In September 2022, statutory guidance was issued by NHS England which further clarified the arrangements for delegations and joint exercise of statutory NHS functions in relation to the option outlined in section 3.6. This guidance is now being interpreted locally to assess which mechanism for delegation and joint exercise of function will best achieve the overarching principles and drivers for integration originally set out in the January 2022 Cabinet report. In addition, this assessment will consider which place-based joint arrangement will best support the effective oversight of the BCF s75 agreement.
- 3.8 The report therefore additionally seeks delegation to explore the above options for place-based governance, in order to ensure that the BCF and associated Section 75 agreement sits within a comprehensive governance framework to deliver effective health and care integration at place-level. A further report will be provided to Cabinet on the outcome of a review of the available options before any arrangements are put in place. The current timetable for the implementation of such arrangements is by April 2023.

#### 4. Current Position

- 4.1 In September 2022, the Council and the ICB agreed BCF planning documentation that set out the proposed schemes and funding allocations to be pooled into the 2022/23 Better Care Fund (BCF).
- 4.2 This included high-level proposals for securing cost effective health and care investment that would:
- Address local health and care priorities aligned to two overarching policy objectives (i.e. ‘enabling people to stay well, safe and independent at home for longer’ and ‘right care, right time, right place’), alongside the strategic objectives of the Healthy City Plan and emerging Integrated Care Strategy; and

- Build effective place-based governance arrangements, including a comprehensive s75 partnership arrangement to provide the mechanisms to support a pooled budget arrangement, alongside joint decision-making and appropriate delegations of powers.

- 4.3 The total proposed investment for Sunderland was £265,944,818, consisting of: local authority DFG and iBCF grant-funding; a minimum NHS contribution; and, £215,639,758 of additional Council and ICB voluntary contributions (see table below).

Funding Sources	Income	Expenditure	Difference
DFG	£4,055,399	£4,055,399	£0
Minimum NHS Contribution	£27,565,872	£27,565,872	£0
iBCF	£18,683,789	£18,683,789	£0
Additional LA Contribution	£78,276,008	£78,276,008	£0
Additional ICB Contribution	£137,363,750	£137,363,750	£0
<b>Total</b>	<b>£265,944,818</b>	<b>£265,944,818</b>	<b>£0</b>

- 4.4 As per the BCF planning requirements, the Council and ICB submitted a joint narrative to describe how its BCF proposal would meet both BCF objectives and wider place-based integration ambitions. This included proposed infrastructure investment to develop effective local collaborative working arrangements in-line with the available options outlined in section 3.6.
- 4.5 With over 80% of the total BCF investment sitting outside of the required pooled budget amounts, the BCF framework represents a more ambitious strategy for health and care integration than those stipulated within the national BCF conditions. This therefore formed part of Sunderland's BCF narrative plan in order to align and embed the BCF within the emerging place-based collaborative working arrangements for health and care integration.
- 4.6 In-line with national requirements, these proposals were ratified by the Health and Wellbeing Board, ICB Executive Board and the Chief Executive and submitted to the regional Better Care assurance panel for moderation and approval. Approval letters are anticipated to be returned by 30 November 2022, with the expectation that partners will agree a Section 75 agreement to bring these proposals into effect by 31 December 2022.
- 4.7 It is proposed that the Section 75 agreement will cover the agreed functions, duties, budgets and governance arrangements needed to secure effective integrated health and care provision in Sunderland, with schedules within the Section 75 agreement incorporating:
- BCF provisions
  - Non-BCF related health and care provision for adults
  - Non-BCF related health and care provision for children and young people
- 4.8 A transitional roadmap and programme initiation document has been developed to oversee the agreement of the Section 75 agreement and wider place-based collaborative working arrangements.



## **5. Reason for the Decision**

- 5.1 The Better Care Fund (BCF) programme is a key enabler of health and care integration supporting the joint delivery of person-centred and sustainable health and care provision that delivers better outcomes for people, place and population.
- 5.2 The BCF enables the Council and Integrated Care Board (ICB) to establish a joint budget arrangement that supports effective collaboration in delivering on the NHS Long-Term Plan, alongside local strategies to improve population health and reduce inequalities.
- 5.3 In addition to meeting national BCF conditions, the Section 75 agreement has the potential to include wider elements of health and care integration that will support achievement of strategic objectives within the Healthy City Plan and emerging Integrated Care Strategy. As such, a Section 75 agreement between the ICB and Council, is sought on the basis that it will:
- Lead to improved patient and population health and care outcomes, including delivery of the strategic objectives of the Healthy City Plan and emerging Integrated Care Strategy.
  - Enable better use of scarce system resource to deliver improved cost effectiveness, increased efficiencies and achieve economies of scale.
  - Support shared approaches to risk management to support continuity of care and build system resilience.
  - Create new opportunities to leverage the benefits of shared system capacity and powers to deliver innovation, improved market confidence and coordinated sustainable development activities, including community wealth building.
- 5.4 The proposal to utilise the BCF planning framework and associated Section 75 agreement requirement to underpin broad elements of health and care integration, creates a unique opportunity to deliver both improved integration and effective delegations at place-level that will help transform the provision of health and care in Sunderland.

## **6. Alternative Options**

- 6.1 Potential alternative options include not entering into a Section 75 agreement with the ICB. For elements related to BCF, this option would result in a failure to meet national conditions, which may lead to a reduction or withdrawal of Integrated BCF (IBCF) funding. This funding is critical to health and care delivery, including the ability of the council to fulfil its obligations under the Care Act 2014.
- 6.2 More widely, without a Section 75 agreement, there would be no mechanisms to support pooling of budgets to support effective place-based collaborative working arrangements, resulting in a reduced ability of partners to achieve the benefits outlined in section 5.3, and may impact on the deliverability of strategic objectives within the Healthy City Plan and the emerging Integrated Care Strategy

## 7. Impact Analysis

7.1 A summary impact analysis for the proposed extensions is provided below.

7.2 The outlined proposal aims to reduce inequalities by establishing appropriate mechanisms to support collaborative action to reduce inequalities. A key requirement of the Section 75 agreement, includes ability to deliver the ambitions of the Healthy City Plan and emerging Integrated Care Strategy, both of which have established targets and strategic policy objectives to reduce inequalities in Sunderland.

**(a) Equalities - TBC**

(i)

**(b) Co-operative Values –**

**(c) Financial Implications –** The cost of the BCF will be met from iBCF and DFG grant funding provisions, alongside contributions from the Public Health ring-fenced grant to support additional action to address inequalities and embed prevention. The allocation of funding from both the ICB and Council are outlined in section 4.3, with £101,015,196 of the total pooled costs (c£265,944,818) deriving from Council funding.

**(d) Legal Implications –** Under Section 75 National Health Services Act 2006 a local authority and an NHS body in England may enter into an agreement to allow for the pooling resources and the delegation of certain NHS and local authority health-related functions to the other partner(s) if it would lead to an improvement in the way those functions are exercised. Where a pooled budget is in place Regulations require any pooled fund agreement to be in writing and specify:

- The agreed aims and outcomes of the pooled fund arrangements.
- The contributions to be made to the pooled fund by each of the partners and how those contributions may be varied.
- Both the NHS functions and the health-related functions the exercise of which are the subject of the arrangements.
- The persons and the kinds of services likely to be affected by the functions exercised by the partnership.
- The staff, goods, services or accommodation to be provided by the partners in connection with the arrangements.
- The duration of the arrangements and provision for the review or variation or termination of the arrangements.
- How the pooled fund is to be managed and monitored, including which body or authority is to be the host partner.

**(e) Policy Implications –** The scheme aims to support the shared values within the Sunderland Healthy City Plan, in particular, focusing on prevention, tackling health inequalities and equity.

**(f) Health & Safety Considerations –** There are no current identified Health & Safety Considerations associated with the proposal, however, should these emerge as part of work streams undertaken these shall be fully considered.

**(g) Procurement – C**