



REPORT TITLE: Extension of existing Section 75 (joint funding arrangements) between Gloucestershire County Council and NHS Gloucestershire to 31 March 2025.

Cabinet Date	25 th January 2023
Cabinet Member	Cllr Carole Allaway-Martin Cabinet Member for Adult Social Care Commissioning
Key Decision	Yes
Purpose of Report	To seek authority to exercise a 2-year extension option under the council's Framework Partnership Agreement with NHS Gloucestershire Integrated Care Board (NHS GICB), (the successor body to NHS Gloucestershire Clinical Commissioning Group (GCCG) with whom the agreement was entered into originally) relating to the commissioning of health and social care services
Recommendations	That Cabinet approves the exercise of a 2-year extension option under a Framework Partnership Agreement between the council and NHS GICB relating to the commissioning of health, public health, children's and adult social care services (in exercise of powers under Section 75 of the National Health Service Act 2006) that was entered into pursuant to a Cabinet decision on 11 March 2020 (the "Section 75 Agreement").
Reasons for Recommendations	<p>The extension will allow the continuation of the Council's existing Section 75 Agreement with NHS GICB relating to the commissioning of health, public health, children's and adult social care services (in exercise of powers under Section 75 of the National Health Service Act 2006).</p> <p>It will also enable the council and NHS GICB to explore the possibility of expanding the range of services in relation to which the council and NHS Gloucestershire shall collaborate under the Section 75 Agreement, to include, where appropriate, other mainstream services that are currently the subject of Funding Transfer Agreements between the council and NHS Gloucestershire (pursuant to Sections 76 and 256 of the National Health Service Act 2006).</p> <p>Any such expansion of services will be the subject of a separate decision.</p>

Resource Implications	<p>No additional resources are required.</p> <p>The Section 75 Agreement in Financial Year 2022/23 (subject to year-end variations) totals £188m as reported to the Joint Commissioning Partnership Executive on the 24 November 2022 i.e., £149m NHS GICB and £39m GCC. This includes Continuing Health Care and Funded Nursing Care which is solely NHS at a value of £46m</p> <p>It also includes Adult and Children’s Mental Health services at £79m of which £61m relates to Adult Mental Health within NHS Gloucestershire It covers the Better Care Fund (BCF) at a value of £54m including Carers</p> <p>The remainder is Integrated Community Equipment Services, Occupational Therapy, and Integrated Brokerage staffing.</p> <p>The financial schedule within the Section 75 Agreement is reviewed annually to reflect any funding changes, such as demographic growth, inflation and savings.</p> <p>The council and NHS Gloucestershire Integrated Care Board are mandated to have a Section 75 Agreement in place for the Better Care Fund.</p> <p>The use of a Section 75 Agreement is required under new government funding re: the DHSC: Adult Social Care Discharge Fund funding announced on the 18 November 2022 to be included in the BCF. This new funding will be in addition to the existing £54m in the BCF.</p> <p>All commissioning and procurement processes, including the council’s Financial Regulations are followed by the council where spend is being incurred.</p> <p>The other mainstream services that are already commissioned under the Section 76 and Section 256 transfer agreements are outside the scope of this decision. Their future inclusion within the Section 75 Agreement will be subject to further consideration and any such expansion will be subject to a separate decision. As of 19/12/22, the following Section 76s and Section 256 Agreements are in place:</p> <p>The council has 40 Section 76 Funding Transfer Agreements with NHS GICB under which the forecast out-turn in the period 2022/2023 is c£14.2m, of which £11.6m relates to Public Health services. Other examples include Community Wellbeing, Dementia and Extra Care.</p> <p>NHS GICB has 28 Section 256 Funding Transfer Agreements with the Council under which the forecast out-turn in the period 2022/23 is c£14.2m, of which over £10.4m will be used to fund placements for complex children and adults with a learning disability. This is in addition to the forecast ICB spend £15.8m (£12.1m placements).</p>
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Background Documents	<p>Cabinet Decision (11/03/2020): Section 75 Agreement with the Gloucestershire Clinical Commissioning Group for the commissioning of health and social care services</p> <p>Officer Decision (22/03/2021): Section 75 Agreement with Gloucestershire Clinical Commissioning Group</p>
Statutory Authority	<p>Gloucestershire County Council</p>
Divisional Councillor(s)	<p>All</p>
Officer	<p>Name: Donna Miles Tel. no: 07823 662122 Email: donna.miles@nhs.net / donna.miles@gloucestershire.gov.uk</p>
Timeline	<p>Proposed contract extension to commence 1st April 2023</p>

Background

1. Section 75 of the National Health Service Act 2006 consolidated Section 31 of the Health Act 1999 and in so doing became the statutory authority both for the continuation of existing partnership agreements between Health and the Council and for any new such agreements entered into. The section provides for designated Health and Social Care bodies to act on each other's behalf in the commissioning or delivery of services for people for whom there is a shared responsibility.

2. In May 2022, at the request of the Joint Commissioning Partnership Executive (JCPE), a review of current Joint Funding Arrangements between Gloucestershire County Council (GCC) and NHS Gloucestershire Integrated Care Board (NHS GICB) (formerly Gloucestershire Clinical Commissioning Group) commenced, in order to ensure that aligned funds are used as effectively and efficiently as possible. GCC services includes Adults, Children and Public Health.

3. This review initially included:

- Council spend under the Section 75 Agreement
- Transfers of money by the council to the NHS under funding transfer agreements pursuant to Section 76 of the National Health Service Act 2006
- Transfers of money by NHS to the council under funding transfer agreements pursuant to Section 256 of the National Health Service Act 2006
- Funds that require agreements to be in place e.g., one-off funding, transformation projects etc.

4. The aim of this review was to:

- Agree what 'good' looks like
- Clarify and streamline processes
- Clarify governance regarding how expenditure under the agreement is approved
- Reduce transactions via invoices
- Consider the possibility of transferring mainstream health and social care services within annual Section 76 and Section 256 Funding Transfer Agreements into the Section 75 Agreement
- Reduce the accumulated year-end balances held on GCC's balance sheet in respect of spend under Section 256 Funding Transfer and Better Care Fund Agreements. These balances largely relate to planned spend being stood down for COVID.
- Engage the Institute of Public Care to benchmark One Gloucestershire's joint funding arrangements and identify, if any, further opportunities exist to maximise use of the Section 75 Agreement

5. Definitions of the Sections:

* Funding Transfer Agreements – Statutory Powers

Pooled Funding Agreement pursuant to Section 75 of the National

The ability for each partner organisation to make contributions to a common fund, to be spent on agreed projects or delivery of specific services or delegated functions.

OR

Health Service Act 2006	Lead Commissioning where one partner takes the lead in commissioning services on behalf of another
Funding Transfer Agreement pursuant to Section 256 of the National Health Service Act 2006	The NHS can transfer moneys (service revenue or capital contributions) to the local authority to support specific additional local authority services provided that the transfer will secure more health gain than an equivalent expenditure of money on the National Health Service. For example, where older people require a greater level of care in the community
Funding Transfer Agreement pursuant to Section 76 of the National Health Service Act 2006	Local Authorities can transfer moneys (service revenue or capital contributions) to the ICB to support specific ICB commissioned services provided that the transfer is likely to secure a more effective use of public funds than the deployment of an equivalent amount on the provision of local authority services.

Options

6. The options available are to either:

- (a) agree to extend the term of the existing Section 75 Agreement without increasing the number of service types to be commissioned thereunder,
- (b) agree to extend the term of the existing Section 75 Agreement and then proceed to consider whether to include the commissioning of additional service types thereunder, subject to the agreement of both the council and NHS Gloucestershire ICB
- (c) to continue to utilise Section 76 and Section 256 Funding Transfer agreements between the council and NHS Gloucestershire ICB in respect of the commissioning of mainstream services.

7. Option (b) is the recommended option. The extension of the Agreement will secure continuity of the funding arrangements for a further two years, and enable discussions to take place with relevant parties, including the Executives of ICS partner organisation, lead commissioners and strategic financial partners, regarding the option of expanding the Agreement to include additional mainstream services that receive recurrent funding and are presently funded via Section 76 and Section 256 Funding Transfer Arrangements. Any decision to expand will be subject to a separate decision which will be taken in line with the requirements of the Council's constitution and will include consideration of the impact on administrative and financial transactions; and the level of oversight afforded to the relevant commissioners and financial partners.

Risks

8. The proposed extension to the term of the Section 75 Agreement is provided for under its provisions, as is the mechanism for ensuring that a Joint Commissioning Partnership Executive, comprised of:

Sarah Scott, Executive Director of Adult Social Care, Wellbeing and Communities

Kim Forey, Director of Integrated Commissioning
Siobhan Farmer, Director of Public Health
Chris Spencer, Executive Director of Children's Services
Steve Mawson, Deputy Chief Executive and Executive Director of Corporate Resources
Mary Hutton, CEO of NHS Gloucestershire ICB
Cath Leech, Chief Finance Officer, NHS Gloucestershire ICB)

has oversight of all joint commissioning arrangements thereby reducing any risk to the Council of unforeseen financial or operational risk. Individual service schedules will require their own individual risk assessment, hence, any expansion of the range of services in relation to which the council and NHS Gloucestershire Integrated Commissioning Board shall collaborate under the Section 75 Agreement will require a separate risk assessment for each new service.

Financial implications

9. The latest 2022/23 position for the s75 (as reported to JCPE 19/12/22) is:

- £188m under S75 - £149m NHS and £39m for GCC
- This includes Continuing Health Care and Funded Nursing Care which is solely NHS at a value of £46m
- It also includes Adult and Children's Mental Health services at £79m of which £61m relates to Adult Mental Health within NHS Gloucestershire
- It covers the Better Care Fund (BCF) at a value of £54m including Carers
- The remainder is Integrated Community Equipment Services and Occupational Therapy

10. The financial schedule within the overarching s75 is reviewed annually to reflect any funding changes, for such factors as demographic growth, inflation and savings.

11. The council and NHS Gloucestershire are mandated to have a S75 agreement for the BCF and the use of a S75 agreement is required under funding guidance e.g., the DHSC: Adult Social Care Discharge Fund funding announced on the 18 November 2022.

12. All commissioning and procurement processes, including Finance Procedure Rules are followed in the relevant organisation where the spend is being incurred.

13. Section 76s and Section 256s are currently outside the scope of this decision; but will be considered as part of any subsequent expansion.

14. The council has 40 Section 76 Funding Transfer Agreements with NHS GICB under which the forecast out-turn in the period 2022/2023 is a total value of approximately £14.2m, of which £11.6m relates to Public Health services. Other examples of services within these agreements include Community Wellbeing, Dementia and Extra Care.

15. NHS GICB has 28 Section 256 Funding Transfer Agreements with the Council under which the forecast out-turn in the period 2022/23 is a total value of approximately £14.2m, of which over £10.4m will be used to fund placements for complex children and adults with a learning disability. This is in addition to the forecast ICB spend £15.8m (£12.1m placements).

16. The above describes the current position as at 22/11/22.

Climate change implications

17. In accordance with GCC's sustainability commitments (Climate change strategy) and the NHS's sustainability commitments (Greener NHS), all services covered by the Section 75 agreement consider climate change implications and sustainability measures.

Equality implications

18. An overarching Equality Impact Assessment is not required as individual services commissioned under the Section 75 Agreement will themselves be subject to individual equality impact assessments as and when appropriate. The arrangements between the NHS Standard Contract with Gloucestershire Health and Care NHS Foundation Trust enables the Council to comply with its equality duties.

Data Protection Impact Assessment (DPIA) implications

19. A Data Protection Impact Assessment decision checklist has been completed for this report and, as this report does not relate to the processing of any personal or special category data, a DPIA is not a requirement. There will be a DPIA completed for the services within the Section 75 Agreement, with assistance from the Information Management Service.

Social value implications

20. As this paper is associated with the mechanism of the transfer for funds between organisations, the social value implications will be considered as part of any commissioning or re-commissioning decisions.

Consultation feedback

21. Engagement meetings have been held with the key stakeholders outlined below. The views of all stakeholders have been taken into account and incorporated into this report.

22. Key stakeholders engaged include:

- Executives – CEO, Directors, Assistant or Associate Directors
- Councillors
- All Heads of Integrated Commissioning
- Strategic Finance Business Partners Leads and wider Teams
- Legal (GCC)
- Contracts (NHS) & Procurement (GCC)
- Human Resources
- Communication Team
- Institute of Public Care
- Adult Senior Management Team meeting
- Joint Commissioning Partnership meetings
- Operational Executives meeting
- Lead Members meetings
- Integrated Care Strategic Executive meeting
- Non-Executive Executive Directors meeting
- Integrated Care Board Development Board

Officer recommendations

23. The recommended option is to extend the Agreement for a two-year period. The extension of the Agreement will secure continuity of the funding arrangements for a further two years and enable discussions to take place with GCC and NHS GICB regarding the possibility of incorporating within the Section 75 Agreement additional services that are recurrently funded and which are presently funded via Section 76 and Section 256 Funding Transfer Agreements.

Performance management/follow-up

24. Regular updates on progress will be presented to JCPE and escalated where appropriate in accordance with their Terms of Reference.