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**BETTER CARE FUND SECTION 75 AGREEMENT BETWEEN DARLINGTON  
BOROUGH COUNCIL AND DARLINGTON CLINICAL COMMISSIONING GROUP**

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**Responsible Cabinet Member  
Councillor Andy Scott,  
Health and Partnerships Portfolio**

**Responsible Director  
Murray Rose, Director of Commissioning**

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**SUMMARY REPORT**

**Purpose of the Report**

1. Current arrangements for the financial management of Better Care Fund (BCF) payments are set out in a Section 256 Agreement between Darlington Borough Council and Darlington Clinical Commissioning Group. This agreement covers funds held up to 31 March 2015. With the introduction of the Care Act 2014, Section 121, there is a requirement to use Section 75 (S.75) agreements rather than Section 256 Agreements between Darlington Borough Council and Darlington Clinical Commissioning Group in relation to the BCF. This mechanism establishes pooled budgets between the 2 organisations and allows for delegating the functions of one organisation to the other.
2. There are three options for the pooled fund arrangements and this report sets out the different implications. The options are: the funds to be held by Darlington Borough Council; the funds to be held by Darlington Clinical Commissioning Group or for there to be more than one pooled budget under the S.75 in place so that maximum benefit can be gained from the different financial arrangements in place in the two organisations.
3. The requirement for a S.75 agreement considered in this paper is for the financial year 2015-2016 and it is expected that a similar arrangement will be required for 2016/17.

**Summary**

4. A S.75 Agreement is an agreement made under S.75 of the National Health Services Act 2006 between a local authority and an NHS body in England (in this case Darlington Clinical Commissioning Group). S.75 Agreements can include arrangements for pooling resources and delegating 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.

5. The BCF arrangements require a pooled fund, and the Care Act 2014, Section 121 provides for this. Any agreement must contain clear arrangements for governance, accountability and risk, whichever organisation hosts a pooled budget. This paper sets out the potential advantages and disadvantages that exist for each organisation acting as a host and proposes that more than one pooled budget should be established under a single S.75 Agreement if there are clear financial benefits to Darlington residents in doing so.
6. The minimum amount that must be in the pooled fund in Darlington for 2015/16 is £7,175,000. However the BCF agreed by the Health and Wellbeing Board and submitted to government is £9,522,418.

### **Recommendation**

7. It is recommended that:-
  - (a) Cabinet approve the S.75 Agreement Heads of Terms as set out in this report.
  - (b) Delegate the approval of the final wording of the agreement to the Director (Neighbourhood Services and Resources), in consultation with the Cabinet Member for Health and Partnerships and the Director of Commissioning.

### **Reasons**

8. The recommendations are supported by the following reasons:-
  - (a) In accordance with the Care Act 2014, a S.75 Agreement must be in place to allow for the transfer of any monies allocated through the BCF programme to health and social care services.
  - (b) Final wording and the identification of the most beneficial arrangements for hosting the S.75 Agreements need to be agreed in partnership with Darlington Clinical Commissioning Group.

**Murray Rose**  
**Director of Commissioning**

### **Background Papers**

None

Author: Murray Rose Extension: 2099

S17 Crime and Disorder	There is no direct impact on S17 Crime and Disorder.
Health and Well Being	The BCF programmes that this report relates to ensure that health and social care needs are met in a way that supports an individual's health and wellbeing, promotes their independence and is cost effective.
Carbon Impact	There are no carbon impacts in this report.
Diversity	There are no diversity issues relevant to this report.
Wards Affected	All wards
Groups Affected	This will particularly benefit older and/ or disabled people who are more likely to require care and support.
Budget and Policy Framework	This falls within the Council's budget and policy framework.
Key Decision	This is not a Key Decision.
Urgent Decision	This is not an Urgent Decision.
One Darlington: Perfectly Placed	The BCF contributes to ensuring that people are healthy and supported.
Efficiency	The recommendations in the report will deliver the most beneficial use of public funds to meet health and social care needs.

## MAIN REPORT

### Information and Analysis

9. A Section 75 Agreement is required between the Local Authority and the Clinical Commissioning Group in order to access and spend the funds allocated through the BCF. There is a choice to be made about whether the Council or the CCG hosts the pooled BCF or whether two or more pooled funds are established. Paragraphs 11 to 33 set out the Heads of Terms that would be included in the S. 75 Agreement and the supporting information required in order to reach a decision about the financial arrangements to be put in place.
10. It is recommended that Darlington Borough Council and Darlington Clinical Commissioning Group establish more than one pooled budget within a single S.75 Agreement, to ensure that the financial benefits to Darlington's residents are maximised by the benefits associated with each of the partners' financial and contracting arrangements. The information contained in this report will set the parameters for the final agreement.

### What is a Pooled Budget?

11. Pooled budgets are usually put in place to support joint commissioning of services. Funds from more than one organisation are put into a joint budget and are then spent by one organisation on behalf of another. Where a pooling arrangement exists for the delivery of statutory services there is no transfer of accountability to the hosting organisation; each partner retains its accountabilities and responsibilities and will do so in the agreement proposed here.
12. Whilst there is not a formal requirement to make joint or shared commissioning arrangements as part of the S.75 Agreement, in practice it is usually advantageous. This could be through a "Lead Commissioning" Agreement where the Council or the CCG exercise the others functions or through joint commissioning where the Council and the CCG continue to take their own decisions but the arrangements provide for co-ordination. In Darlington, the arrangement would cover the posts included in the joint working between the Council and the clinical commissioning group; by delegation of functions and authority to officer members of the Joint Management Team who take separate decisions together; and by coordinating decision making reports so that the Council and the CCG's Formal Executive are sighted on each other's commissioning intentions and decisions.
13. The following paragraphs set out the principles and arrangements which will form the basis of the S. 75 Agreement.

### Governance

14. Governance arrangements must be in place which respect the sovereignty of both organisations party to the arrangements and which include reference to the Health and Wellbeing Board, who have oversight of the BCF, and the Joint Management Team which brings together the implementation of the commissioning intentions of both organisations. This will include provision for review.

## **Contracting Arrangements**

15. Existing contracts between the CCG and providers and the Council and providers will not be affected by the creation of a single host for any pooled funds. However, arrangements will be required to deal with any under or overspends relating to these contracts once pooled budgets are established. Future contracting, using pooled funds, will be carried out under the governance arrangements established for this S.75 Agreement.

## **Information Sharing**

16. Organisations involved in providing services have a legal responsibility to ensure the way that they use personal data is lawful. Each partner needs to be aware of their obligations and feed this into their ways of working. In addition, to developing joint working and governance structures, it is each partner's individual responsibility to ensure that their organisation and security measures protect the lawful use of information.

## **Financial Contributions**

17. A financial schedule to the agreement will set out the detail for each scheme that is covered by the pooled fund and which organisation will host the pooled budget. This schedule, but not the hosting arrangements, has been previously agreed by both Cabinet and the CCG Executive in the BCF submission. Where additional funds are pooled or where there are associated functions such as IT or estates that are pooled, then these could be considered on a scheme by scheme basis or on agreed overarching principles which will apply all new financial and non-financial contributions.
18. The partners will pay the financial contributions into the pooled fund in advance – the frequency of payment (monthly/quarterly etc) needs to be agreed. The agreement will also propose that the Council and the CCG agree the overarching principles that each party will provide such non-financial contributions to ensure the success of each scheme as deemed necessary by the scheme's commissioner and this shall not count as a call upon the initial pooled funds.
19. Any arrangements for preparing capital expenditure need to be made separately and in accordance with Section 256 (or Section 76) of the NHS Act 2006 and Direction made thereunder. If a need for capital expenditure is identified this must be agreed by both partners.

## **Pooled Fund Management**

20. Each individual service where there is a pooled fund, shall have a designated pooled fund manager who will be an existing officer within one of the statutory partners, with the following duties and responsibilities:-
  - (a) The day to day operation and management of the pooled fund;

- (b) Ensuring that all expenditure from the pooled fund is in accordance with the provisions of the S.75 Agreement and the relevant scheme specification;
- (c) Maintaining an overview of all joint financial issues affecting the Council and the CCG in relation to the services and the pooled fund;
- (d) Ensuring that full and proper records for accounting purposes are kept in respect of the pooled fund;
- (e) Reporting to the Joint Management Team as required (this would be through the overall pooled fund manager);
- (f) Ensuring action is taken to manage any projected under or overspends relating to the pooled fund in accordance with the S.75 Agreement;
- (g) In conjunction with the overall pooled fund manager, preparing and submitting to the Joint Management Team quarterly reports (or more frequent reports if required) and an annual return about the income and expenditure from the pooled fund together with such other information as may be required to monitor the effectiveness of the BCF and to enable the CCG and the Council to complete their own financial accounts and returns;
- (h) In conjunction with the overall pooled fund manager, preparing and submitting reports to the Health and Wellbeing Board as required by it.

21. The Joint Management Team may agree to the virement of funds between pooled funds, in line with Council and NHS Financial Regulations.

### **Capital Expenditure**

22. Clarification will be set out about whether the use of pooled fund money can be used towards capital expenditure.. This would not normally happen unless specifically agreed to.

### **VAT**

23. The VAT implications for the respective parties will be set out.

### **Risk Share Arrangements, Overspends and Underspends**

24. Risk share arrangements are required to deal with overspends and underspends. Potential overspends should be identified by the scheme pooled fund manager and reported by them to the Joint Management Team, who will decide what action to take to deal with the overspend.

25. As a minimum, for current contracts that move into the S.75 Agreement the table, below, sets out how overspends and underspends will be dealt with.

<b>Risk share</b>	<b>Investments</b>	<b>Benefits</b>
<b>Overspend</b>	<p>Darlington Borough Council will be responsible for the overspend that takes place in programmes where they are currently lead commissioners.</p> <p>Darlington CCG will be responsible for the overspend that takes place in programmes where they are currently lead commissioners.</p>	<p>Darlington Borough Council will assume the loss of benefits associated with overspend for the programmes that they are currently lead commissioners for.</p> <p>Darlington CCG will assume the loss of benefits associated with overspend for the programmes that they are currently lead commissioners for.</p>
<b>Underspend</b>	<p>Darlington Borough Council will be responsible for the underspend that takes place in programmes where they are currently lead commissioners.</p> <p>Darlington CCG will be responsible for the underspend that takes place in programmes where they are currently lead commissioners.</p>	<p>Darlington Borough Council will assume the benefits associated with underspend (dependent on meeting minimum performance criteria) for the programmes that they are currently lead commissioners for.</p> <p>Darlington CCG will assume the benefits associated with underspend (dependent on meeting minimum performance criteria) for the programmes that they are currently lead commissioners for.</p>

26. For newly commissioned areas of work both partners will need to agree the risk and again share arrangements which are likely to be that unavoidable overspend and other financial risks will be shared by the Council and the CCG proportionally to each organisations financial contribution to the BCF schemes.
27. Local authorities and the NHS operate within different financial regimes and potential impacts of these must be considered when determining which organisation should host a pooled budget. There may be some existing contracts

where it may be to the benefit of the residents of Darlington if the contracts were to novate between the partners.

### **Audit & Right of Access**

28. The parties will each have responsibilities for audit and so the arrangement needs to provide for the responsibilities of the host partner relating to audit and the right of internal and external auditors to be given access to anything they need to carry out their duties.

### **Liabilities, Insurance & Indemnity**

29. The S.75 Agreement will include agreement about what would happen in relation to the acts and omissions of each partner which contribute to losses or give rise to a claim for liability. The parties will also have a requirement to consider their respective insurance position and take advice from their own insurance providers. The clause also provides for the parties to always take reasonable steps to mitigate any loss for which one party may be entitled to bring a claim against the other in relation to the agreement.

### **Performance Management**

30. The performance management for the pooled fund is critical and underpins the governance and day-to-day operational arrangements which will be implemented. The metrics which will be used are the suite of indicators approved in the BCF submission.

### **Conflicts of Interest**

31. Provision will be made on how conflicts of interest between the parties will be reported and managed.

### **Complaints**

32. Details will need to be set out about the complaints procedure that will apply and whether it will be a joint procedure.

### **Termination and Default**

33. Provision will be made detailing the arrangements for dealing with termination and default, both for individual schemes and generally.

### **Dispute resolution**

34. A dispute resolution procedure will be included to enable the resolution of problems and issues in a proportionate way.



## **Confidentiality and information sharing**

35. This will provide that confidential information must be kept strictly confidential by the parties and not disclosed to other parties other than for the performance of their obligations under the agreement or as required by law.
36. A protocol for information governance will be agreed to ensure legal compliance.

## **Force Majeure**

37. This provides for neither party providing liability to the other in respect of a force majeure event and will incorporate a provision that the parties act in good faith.

## **Financial Implications**

38. This S.75 Agreement governing the creation and management of the pooled fund applies to the 2015/16 financial year.
39. A template S.75 Agreement prepared on behalf of the national BCF programme office contains the following clause:-

“When introducing a Pooled Fund in respect of an Individual Scheme, the Partners shall agree:-

- (a) Which of the partners shall act as Host Partner for the purposes of NHS Bodies and Local Authorities Partnership Regulations 2000 no 617 (NHSBLAP) and shall provide the financial administrative systems for the pooled fund;
  - (b) Which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the NHSBLAP Regulations.”
40. Each pooled fund need to be hosted by one ‘accountable’ organisation – this could be either Darlington Borough Council or Darlington Clinical Commissioning Group. The partners have agreed that one of them (“the host partner”) will be responsible for the accounts and audit of the pooled fund arrangements and the host partner shall appoint an officer of theirs (“the pool manager”) to be responsible for:-
    - (a) Managing the pooled fund on their behalf; and
    - (b) Submitting to the partner’s quarterly reports, and an annual return, about the income of, and expenditure from, the pooled fund and other information by which the partners can monitor the effectiveness of the pooled fund arrangements.
  41. The partners may agree that an officer of either may exercise both the NHS functions and local government functions which are the subject of the pooled fund arrangements. In its most simple form, a S.75 Agreement can be used to host pooled funds with a single organisation for all purposes; in this case either Darlington Borough Council or Darlington Clinical Commissioning Group.

42. There are potentially some advantages to hosting some pooled funds via the Council and others via the CCG; for every potential pooled budget the advantages will be considered when determining the hosting arrangements.
43. It is recommended, that a single S.75 Agreement will be used to provide the overarching framework for a number of separate pooled budgets.

### **Legal Implications**

44. There are no separate legal comments to those already set out in this report

### **HR Implications**

45. There are no Human Resource implications of this decision.

### **Equalities Considerations**

46. There are no specific equalities impacts as a result of this report; existing contracts are unaffected and new contracts will be let in accordance with equality impact assessments and recommendations.

### **Consultation**

47. No consultation has taken place with respect to this report. Advice has been provided by the national BCF Programme team and by regional bodies.