

Report to Keith Hinkley, Executive Director Adults and Health

September 2021

Better Care Fund Section 75 Agreement 2020-21 and 2021-22

**Report by Chris Clark, Joint Strategic Director of Commissioning,
Adults & Health**

Electoral division(s): All

Summary

The Better Care Fund (BCF) is a programme spanning both the NHS and local government which seeks to join-up health and care services, so that people can manage their own health and well-being and live independently in their communities for as long as possible.

The national BCF programme requires local systems to enter into a joint commitment via an Agreement under Section 75 of the NHS Act. This enables budgets and decision-making authority to be delegated between West Sussex County Council and West Sussex Clinical Commissioning Group (CCG), to the benefit of the BCF Programme. A legal agreement now needs to be concluded between West Sussex County Council and West Sussex Clinical Commissioning Group to provide a legal framework for the Better Care Fund arrangements and to ensure that funding is transferred into a pooled budget.

This decision will confirm that West Sussex County Council will enter into the BCF Section 75 agreement (Appendix 1), which retrospectively updates the terms for 2020-21, and also provides the agreement for 2021-22.

Recommendation

The Executive Director Adults and Health is asked to approve that West Sussex County Council enters into the Better Care Fund Section 75 agreement (as attached to this report at Appendix 1), for 2020-22.

Proposal

1 Background and context

1.1 The Better Care Fund (BCF) programme is planned and delivered at Health and Wellbeing Board area level across England. For West Sussex, day to day oversight of BCF is within the remit of the Joint Commissioning Strategy Group

on behalf of the Health and Wellbeing Board. The programme is a collaboration between: The Department of Health and Social Care, The Ministry of Housing, Communities and Local Government, NHS England and Improvement and The Local Government Association.

- 1.2 First launched in 2015, the programme established pooled budgets between the NHS and local authorities, aiming to reduce the barriers often created by separate funding streams. The current pooled budget is a combination of contributions from the following areas: Minimum allocation from NHS Clinical Commissioning Group(s) CCG(s), Disabled Facilities Grant – local authority grant, Social Care Funding (Improved Better Care Fund) including Winter Pressures Grant Funding – local authority grant.
- 1.3 It is important to note that, despite the nomenclature, the BCF does not consist of a pool of funding pending distribution. Rather it forms core allocation funding supporting key schemes commissioned by West Sussex County Council (WSCC) and West Sussex Clinical Commissioning Group.
- 1.4 Delivery of Better Care Fund Programmes in local systems requires the application of pooling or allocating aligned budgets between West Sussex County Council and West Sussex NHS Clinical Commissioning Group. The budgets are not a new commitment of investment, rather a clearly defined programme of expenditure from within budgets, which contribute to schemes designed to deliver the objectives of the Better Care Fund Programme.
- 1.5 Therefore, within these arrangements, delegation of responsibility for managing these budgets is often exchanged between the CCG and WSCC. The purpose of the Section 75 agreement is to ensure there are mutually agreed contractual terms for this delegated activity. The Section 75 agreement is a legal document, derived from Section 75 of the 2006 NHS Act (later amended in 2012).
- 1.6 The agreement described in this decision report covers the years 2020-21 and 2021-22 BCF activities (Covid-19 pandemic circumstances resulted to a national pause in the process during 2020). By signing the agreement, this secures the appropriate terms for WSCC to work in partnership with the CCG in the BCF programme.
- 1.7 It should be noted that further national guidance is expected shortly on 2021-22 BCF, following which this year's plan will be agreed and finalised with partners. This may change some of the agreed schemes but does not affect the legal terms & conditions of the S75 agreement, only the reported scheme schedules. These will be amended in the agreement by means of variation, and a final copy of the agreed BCF plan is expected to be presented to the Health and Wellbeing Board in October 2021.

2 Proposal details

- 2.1 To manage the BCF retrospectively for 2020-21 and the year 2021-22 the Council and CCG will enter into a Section 75 (S75) agreement (Appendix 1).
- 2.2 During the year 2020-21, the unprecedented circumstances of Covid-19 meant that the national monitoring of BCF was suspended, and in addition the planning guidance for that year was not issued until December 2020, allowing only for a very limited planning opportunity. This resulted in agreements from the previous year being rolled forward.

- 2.3 Following a further opportunity that has now been had to review the previous Section 75 agreement in place, an updated 2-year version has been drafted to retrospectively cover the year 2020-21 (last year) and this year's programme – 2021-22. The core terms of the agreement are very similar to previous agreements, however key items have been updated for accuracy. These clarify some terms as well as reflect the local reorganisation of Clinical Commissioning Groups in 2020.
- 2.4 The updated draft of the Section 75 agreement (Appendix 1) has been appraised by County Council Legal Services, and also independently by CCG legal services, and is now ready to be signed by West Sussex County Council and the CCG.
- 2.5 As 2021-22 national planning guidance is not expected to be issued until August 2021 an update to the financial schedules of the agreement will be introduced by variation during the year, once this year's planning is complete. However, it is considered good practice to enter into this agreement as soon as possible to ensure a suitable legal agreement is in place for the current arrangements.
- 2.6 This decision will confirm that West Sussex County Council will enter into the BCF Section 75 agreement, which retrospectively updates the terms for 2020-21, and also provides the agreement for 2021-22.

3 Other options considered (and reasons for not proposing)

- 3.1 A section 75 agreement is mandated for the statutory BCF programme, therefore there is no alternative arrangement option.

4 Consultation, engagement and advice

- 4.1 The Section 75 agreement has been drafted in consultation with West Sussex Clinical Commissioning Group, following national guidance, and has been appraised by WSCC Legal Services and separately appraised by CCG independent Legal Services.
- 4.2 The Health and Wellbeing Board was presented with the BCF planning expectations 2021/22 at the meeting on 24 June 2021. A BCF update is included on every Agenda as a Standing Item and so a further report on BCF plans is scheduled to be presented to the Health and Wellbeing Board meeting on 7 October 2021.

5 Finance

- 5.1 Revenue Budget. There are no financial implications associated with this decision. The use of a Section 75 agreement to manage the BCF is a mandatory requirement, so this is a technical decision which puts that need into place. Once national guidance is published, West Sussex County Council and the CCG will jointly agree a spending plan, which will be ratified by the Health and Wellbeing Board, for the £95.2m of funding that will fall under the remit of the agreement in 2021/22. The effect of the proposal:

(a) How the cost represents good value

Deployment of the iBCF (Improved Better Care Fund) and winter grant is mandated within the BCF national terms. Schemes funded through the BCF

must demonstrate quality and service improvements within the service domains set out in the national BCF guidance.

(b) Future savings/efficiencies being delivered

WSCC Adults and Health services manages a service improvement and efficiency programme, which has a relationship with schemes within the better care fund programme. The common themes are:

- A focus on prevention
- A focus on supporting more individuals in their own homes, avoiding or delaying residential care
- Supporting self-care
- Preventing emergency admissions to hospital or emergency escalation of care
- Embedding a firm principle of partnership working with the NHS to deliver the best services and health & care outcomes for West Sussex residents

(c) Human Resources, IT and Assets Impact

A BCF Manager, hosted by West Sussex CCG, is funded by the programme to oversee programme management, and produce monthly assurance reports to the Joint Commissioning Strategy Group, and quarterly submissions to NHS England, overseen by the Health and Wellbeing Board.

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
Overspend of budgets	A formal joint governance process is in place, overseen by the Joint Commissioning Strategy Group, to monitor budgets on a monthly basis and make recommendations where there is a forecast risk, to manage within annual budgets. The Section 75 agreement includes a clause describing how budget overspend risk is managed reasonably as a dual responsibility between the two commissioning parties.

7 Policy alignment and compliance

- 7.1 The s75 Agreement has been reviewed and approved by the WSCC Commercial Legal Team.
- 7.2 Compliance with the National Better Care Fund Programme (NHS England), The 2006 & 2012 NHS Act, Health and Wellbeing Board Statutory Duties for oversight of the BCF, WSCC Standing Financial Instructions for awarding or accepting delegated budget responsibility with external organisations.

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Appendices

Appendix 1 2020-2022 BCF Section 75, two-year agreement

Background Papers: None