

Committee: Community and Children's Services – For decision	Date: 7 June 2019
Subject: Section 75 agreement and updated Governance Structures for integrated commissioning	Public
Report of: Andrew Carter, Director	For Decision
Report author: Ellie Ward, Integration Programme Manager	

Summary

The City of London Corporation entered into integrated commissioning arrangements with City and Hackney Clinical Commissioning Group in April 2017, supported by a Section 75 Agreement for the financial years 2017-19. This was then extended to the 31st July 2019 to allow for the development of a new Section 75 Agreement for the financial year 2019/20. This report seeks the approval of Members to enter into the new Section 75 Agreement which is to commence on the 1st August 2019.

Members are also asked to specifically agree updated Terms of Reference for the Integrated Commissioning Board following an independent review undertaken by external consultants.

Recommendation(s)

Members are asked to:

- Approve entering into a new Section 75 Agreement for integrated commissioning
- Delegate authority to the Director of Community and Children's Services (in consultation with the Chairman and Deputy Chairman of the Community and Children's Services Committee) to finalise all necessary detail and arrangements in relation to the Section 75 Agreement
- Agree the updated Terms of Reference for the Integrated Commissioning Board which includes the Integrated Commissioning Sub-Committee

Main Report

Background

1. The City of London Corporation entered into integrated commissioning arrangements with City and Hackney Clinical Commissioning Group (CCG) in April 2017 to commission together across health, public health and social care. The London Borough of Hackney also entered into similar but separate arrangements with City and Hackney CCG.
2. The integrated commissioning arrangements are supported by a Section 75 (s75) Agreement which is an Agreement made under section 75 of the National Health Service Act 2006 between a local authority and an NHS body in England. These agreements can include arrangements for pooling resources and for delegation of certain health related functions between the NHS body and local authority if this would lead to an improvement in the way those functions are exercised.
3. Separate s75 Agreements were developed for the City of London Corporation and the London Borough of Hackney covering the period 2017-19. These were then extended until the 31st July 2019 whilst new ones for 2019/20 were prepared. This report seeks approval to enter into this new s75 Agreement for the City of London Corporation with the sign off of final details delegated to the Chief Officer, in conjunction with the Chairman and Deputy Chairman of Community and Children's Services Committee.
4. At the end of 2018, a governance review of integrated commissioning was undertaken by external consultants. There have been changes to the Transformation Board and the establishment of an Accountable Officers Group. As a result, the Terms of Reference for the Integrated Commissioning Board, which includes the Integrated Commissioning Sub-Committee have been updated.

Current Position

5. As part of the integrated commissioning arrangements, for both the London Borough of Hackney and the City of London Corporation there is an Integrated Commissioning Fund which is made up of two parts, a pooled budget and an aligned budget.
6. The pooled budget for the City of London is made up of Better Care Funding (BCF), Improved Better Care Funding (iBCF), winter pressures funding and funding for a street triage service for rough sleepers. It is governed by a s75 Agreement and this was in place for 2017-19. It was extended to 31st July 2019 whilst a new agreement to cover the period 2019/20 was prepared.
7. The aligned budget is made up of budgets that cannot legally be pooled or budgets where partners are not yet ready to pool but want to work collectively to plan their use. It is planned that there will be further incremental pooling over time.

8. The City Corporation pooled fund is around £1.3mn comprising around £390,000 from the City of London Corporation and £900,000 from City and Hackney CCG. The estimated aligned fund for the City Corporation is £12mn from the CCG and £7.4mn from the City Corporation.
9. The Financial Framework within the s75 Agreement sets out the general rules and scope for the management and expenditure of funds that make up the Integrated Commissioning Fund. The s75 Agreement details which budgets are included and whether they are pooled or aligned.
10. The Financial Framework also sets out the requirements and makes provision for governance and accountability of:
 - The Integrated Commissioning Fund
 - The formal scheme of delegation
 - Financial planning and management responsibilities
 - Budget setting and budgetary control
 - Performance Management
11. As with the previous s75 Agreement, it is proposed that the City of London Corporation will be the host partner for the Integrated Commissioning Fund. As a minimum, the host partner will deliver regulatory requirements set out in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 around accounts and audits, managing a pooled fund and reporting.

Legal Framework

12. S75 of the National Health Service Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 enable local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way in which their functions are exercised.
13. This allows NHS bodies to exercise health-related functions of local authorities, and local authorities to exercise NHS functions, in prescribed circumstances. It also allows the provision of staff, goods, services or accommodation between partners. Partners may not enter into partnership arrangements unless they have consulted jointly such persons as appear to them to be affected by such arrangements.
14. There will be a separate s75 Agreement for each of the Integrated Commissioning Funds (one for the London Borough of Hackney and one for City of London Corporation) for 2019/20. Each will set out, amongst other things, the strategy for the use of the funds and the details of the Financial Framework in relation to issues such as risk share arrangements and overspends / underspends. Each s75 Agreement will have a six month break clause and be for a period of one-year with the option of extensions for up to two years. There is scope to vary the Agreement including for example where more incremental pooling takes place, and to include the City's Better Care Fund once the required guidance has finally been published.

15. The new Agreement will include provisions for exit, and the amended GDPR provisions which were agreed in consultation with the Comptroller and City Solicitor and the City of London Corporation's Data Protection Officer, for the current s75 Agreement.
16. The Integrated Commissioning Sub-Committee meets in common with an Integrated Commissioning Committee established by the City and Hackney CCG and an Integrated Commissioning Committee established by the London Borough of Hackney and together they are known as the Integrated Commissioning Board. This is reflected in the joint Terms of Reference.
17. It is anticipated that once the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 have been appropriately amended, the parties may decide to constitute the Integrated Commissioning Board as a joint committee under the National Health Service Act 2006 and the Local Government Act 1972.

Corporate & Strategic Implications

18. The Departmental Business Plan for Community and Children's Services has a priority objective for independence, involvement and choice. One way this will be delivered is through greater integration of health and social care funding and commissioning which will improve outcomes and experience for service users.
19. This ties in with the Corporate Strategy objective of contributing to a flourishing society which includes people enjoying good health and wellbeing.

Implications

Legal implications

20. Contained in the body of this report.

Financial implications

21. Entering into any kind of pooled budget arrangement exposes the City of London Corporation to a level of inherent risk that would otherwise not exist, particularly around City funds not being used for the purposes and outcomes desired by the City of London Corporation, or the City Corporation becoming liable for the financial obligations of others. The s75 Agreement and supporting financial and governance framework are designed to mitigate this risk. These clearly set out the scope of the pooled budget, the ground rules for its use and the treatment and responsibility for overspends, as well as address how conflicts in budget-setting priorities will be settled.
22. The Integrated Commissioning Board is only able to operation within the scheme of delegation agreed by the City of London Corporation and City and Hackney CCG, as both retain ultimate statutory responsibilities.

23. The Chamberlain has been consulted regarding any VAT risk that might arise from the integrated commissioning arrangements. Currently, the City of London is only commissioning services under the s75 Agreement that are the statutory responsibility of local authorities and will be able to fully recover any VAT incurred under the local authority VAT regime.
24. The City may have responsibility for commissioning a mix of local authority and NHS services in future years. Further advice will be sought from the Chamberlain and our tax advisors at the appropriate time to ensure there are no adverse VAT implications arising from these arrangements. There is scope within the s75 Agreement for the City of London Corporation to review its Vat position.

HR implications

25. As one of the lead commissioners, appointment to posts will need to adhere to City of London Corporation standing orders and employment policies including safeguarding requirements as appropriate.

Procurement implications

26. Any services commissioned by the City of London Corporation as Lead Commissioner through the s75 Agreement will be procured in accordance with the City of London Procurement Code.
27. The City of London Corporation, will, within the new s75 Agreement reserve the right to consult with the City's Social Value Panel (SVP) in the pre-procurement phase of any contracts over the OJEU threshold regardless of whether the service includes both NHS Functions and Health Related Functions. The City of London Corporation's SVP, where used, will make recommendations only to consider in respect of social value consideration for contracts that fall within the scope of the Public Services (Social Value) Act or amendments thereof.
28. Where City and Hackney CCG acts as Lead Commissioner for any contracts over the OJEU threshold, then they may, subject to the City of London Corporation's agreement, use the City's SVP to consider social value issues relevant to contracts. All members of the SVP, and any other attendees who are not employed directly by the City of London Corporation are required to sign a Non-Disclosure Agreement ensuring that they do not disclose confidential information to third parties or for any purpose other than that for which they are specifically engaged by the City of London Corporation. SVP members are also required to declare any conflicts of interest.

Equalities Implications

29. Where any new schemes are commissioned through the s75 Agreement, specific equalities Test of Relevance will be undertaken.

Conclusion

30. The City of London Corporation entered into integrated commissioning

arrangements with City and Hackney CCG in April 2017. This was governed by a s75 Agreement for 2017-19. This has now been extended for 3 months to the 31st July 2019 while a new Agreement for 2019-20 is agreed. This paper asks Members to approve entering into this new Agreement.

31. As part of this, Members are specifically requested to agree new or updated Terms of Reference for an Accountable Officers Group, the Transformation Board and the Integrated Commissioning Sub-Committee.

Appendices

- Main S75 Agreement as at 8 May 2019. There are a number of appendices to the s75 agreement – many of which are currently being updated. These can be provided to Members, on request, once updated.
- Updated Terms of Reference for the Integrated Commissioning Board

Background Papers

<http://democracy.cityoflondon.gov.uk/documents/s76006/Integrated%20Commissioning%20-%20FINAL.pdf>

<http://democracy.cityoflondon.gov.uk/documents/s86954/Committee%20Report%20FINAL%20VERSION.pdf>

Ellie Ward

Integration Programme Manager

T: 020 7332 1535

E: ellie.ward@cityoflondon.gov.uk