

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 15th April 2015Modern.gov123</p>
<p>Title</p>	<p>Overarching Section 75 Agreement Adults Service Schedule dated 1 February 2014 – Voluntary Services Prevention Commissioning</p>
<p>Report of</p>	<p>Mathew Kendall, Director of Adults and Communities</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>None</p>
<p>Officer Contact Details</p>	<p>Ian Hutchison Commissioning Lead Adult and Communities ian.hutchison@barnet.gov.uk 020 8359 4281</p>

<p>Summary</p> <p>This report recommends agreement to the Council entering into a Section 75 Agreement for a term of 26 months commencing on the 1 February 2014 for Voluntary Services Prevention Commissioning. This report recommends agreement to this being included within the overarching Section 75 Agreement between the London Borough of Barnet and NHS Barnet Clinical Commissioning Group.</p>
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<p>Decisions</p> <ol style="list-style-type: none"> 1. Agreement to the council to entering into a Section 75 Agreement for a term of 26 months commencing on the 1 February 2014 for Voluntary Services Prevention Commissioning and including this within the overarching Section 75 Agreement between London Borough of Barnet and NHS Barnet Clinical Commissioning Group.

1. WHY THIS REPORT IS NEEDED

- 1.1 National government has long encouraged local authorities and health to work together to provide joined up care and support services for residents. It has recently announced an aspiration for integrated health and social care services to become the norm across the country by 2018. This aspiration is underpinned by a new patient centred vision for integrated care and is supported by the national organisations that form part of the public sector health and social care economy.
- 1.2 Local authorities and NHS clinical commissioning groups are able to use section 75 agreements to pool, delegate or align budgets in order to deliver integrated services together or, on behalf of either partner.
- 1.3 The Health and Wellbeing Board has developed a vision for health and social care integration in Barnet. The Council and the NHS Barnet Clinical Commissioning Group, through the Health and Wellbeing Board, approved the delivery of a programme to integrate health and social care services in partnership with a range of local partners.
- 1.4 Management of this programme was delegated to a Health and Social Care Integration Programme Board comprising commissioners and providers that operate in Barnet. All member organisations have signed up to a concordat that sets out a service-user centred vision of integrated health and social care services in the Borough.
- 1.5 The Council and the NHS Barnet Clinical Commissioning Group, as the lead commissioners, have already begun to deliver two jointly financed and managed initiatives with the approval of the Board. It is anticipated that a number of other projects will be established as part of the programme.
- 1.6 **The Council has already entered into the agreement and this Report notes and agrees this course of action.**

2. REASONS FOR DECISIONS

- 2.1 Previously the Council has entered into separate Section 75 agreements as and when services have been established using local authority and health funding streams. As the Council and NHS Barnet Clinical Commissioning Group move towards the commissioning of a greater number of integrated services more and more agreements will need to be set up. Standalone agreements require approval from HB Public Law for Barnet and the NHS Barnet Clinical Commissioning Group's legal counsel, Capsticks, which has cost implications for both organisations, therefore providing rationale for having an overarching Section 75 Agreement.
- 2.2 An overarching agreement contains all the 'generic' terms that are required as part of any agreement and the principles by which services will be commissioned and managed. It provides a platform for the Council and the

NHS Barnet Clinical Commissioning Group to robustly manage and finance new and existing integrated services, reducing costs and streamlining the process.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.1 No other options were considered.

4. POST DECISION IMPLEMENTATION

4.1 The Agreement is already in place.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The on-going and planned commissioning and procurement activity related to the contracts funded through the pooled budget contribute to the priorities of the Council's Corporate Plan 2013/14-15/16 by promoting 'a healthy, active, independent and informed over 55 population in the borough so that Barnet is a place that encourages and supports residents to 'age well'. Creation of the new Section 75 Agreement will support further health and social care integration which will help foster 'a strong partnership with the local NHS, so that families and individuals can maintain and improve their physical and mental health'.

5.1.2 Barnet's Health & Wellbeing Strategy 2012-15 aims to reduce health inequalities by focusing on how more people can 'Keep Well' and 'Keep Independent'. The development of a Section 75 Agreement and closer working relationship with NHS Barnet Clinical Commissioning Group will support the aims of this strategy to 'work in collaboration with partners in the statutory, commercial and third sectors, and with stakeholders in the community, to enhance individual and family self-reliance'. This will further support 'the delivery of safe, high-quality health and social care services, within available resources directed to providing the greatest benefit for the greatest number of people in need'.

5.1.3 The Government has announced an aspiration for integrated health and social care services to become the norm across the country by 2018. This aspiration is underpinned by a new patient centred vision for integrated care and is supported by commitment from the key national organisations that form part of the public sector health and social care economy. The development of an overarching Section 75 Agreement for adult's health and social care services establishes an important mechanism for jointly funding and managing integrated services that will support the Council and NHS Barnet Clinical Commissioning Group in meeting the national aspiration set by the Government.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The overarching Section 75 Agreement includes the following:

5.2.1.1 Agreed aims and outcomes of the partnership including the partners' respective legal and regulatory responsibilities, and the client groups for whom the services will be delivered under the arrangement.

5.2.1.2 The operational arrangements for managing the partnership. This will include joint performance and governance structures to manage the partnership agreement. It will encompass the resolution of disputes, conditions for renewal and termination of the partnership, provision and mechanisms for annual review, the treatment of VAT, legal issues, complaints, and risk sharing.

5.2.1.3 The respective financial contributions and other resources provided in support of the partnership. It will also include the arrangements for financial monitoring, reporting and management of Pooled, Delegated or Aligned Budgets.

5.2.2 The overarching agreement accommodates for, and links in with, existing governance arrangements being used to drive forward health and social care integration (i.e. the Health and Wellbeing Board, Health and Wellbeing Board Financial Planning Group and the Health and Social Care Integration Programme Board) and approves funding for associated projects and initiatives.

5.2.3 The overarching Section 75 Agreement acts as an enabler for the Council and the NHS Barnet Clinical Commissioning Group to use resources more effectively to meet residents' health and social care needs.

5.2.4 The overarching Section 75 Agreement covers the initiatives and services delivered through the Health and Social Care Integration Programme.

S75 Agreement 26 Month Values				
Dates	Barnet Council Corporate	Barnet Council Adults and Communities	Barnet Clinical Commissioning Group	Total Pooled Budget
1 Feb 14 - 31 Mar 14	£34,167	£283,970	£122,047	£440,183
1 Apr 14 - 31 Mar 15	£205,000	£1,567,193	£732,227	£2,504,420

1 Apr 15 - 31 Mar 16	£205,000	£157,193	£732,227	£2,504,420
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- 5.2.5 To ensure the good performance and value for money of services, for the duration of contracts, providers are regularly monitored to ensure that they meet the specified outcomes and represent value for money.
- 5.2.6 Contributions from the Council and NHS Barnet Clinical Commissioning Group are detailed in the new Voluntary Services Prevention Commissioning schedule which will be added to the overarching Section 75 Agreement.
- 5.2.7 The Council will invoice NHS Barnet Clinical Commissioning Group for their contribution quarterly to the respective address as specified in Clause 23 in the overarching Section 75 Agreement.
- 5.2.8 All internal and external auditors and all other persons authorised by the Parties (the Council and Barnet NHS Clinical Commissioning Group) will be given the right of access to any document, information or explanation relating to this Agreement that they may require from any employee, member or contractor of the Parties in order to carry out their duties for this service. This right is not limited to financial information or accounting records.
- 5.2.9 Contributions shall be made in the following circumstances as detailed in the Overarching Section 75 Agreement:
- 5.2.9.1 Aligned Budgets – one or both parties agree to allocate funding for the purposes of developing integrated services from base budgets or from section 256 of the National Health Service Act 2006 (the “2006 Act”) funding streams. For the avoidance of doubt this budget is not a pooled budget.
- 5.2.9.2 Delegated Budgets – means a budget that is transferred from one Party to the Host Party and remains separate in its use for the purpose of the Agreement.
- 5.2.9.3 Integrated Provision – the Parties can join together their staff, resources and management structures to integrate the provision of a service from managerial level to the front line.
- 5.2.9.4 Lead Commissioning – the Parties agree to delegate the commissioning of a Service to one of the Parties;
- 5.2.9.5 Pooled Funds – the ability for the Parties each to contribute funds to a single pot to be spent on agreed projects;

- 5.2.10 Financial risk shall be shared by the Parties proportionate to their respective financial contributions, unless expressly agreed otherwise in the Schedules.
- 5.2.11 The Parties acknowledge that Section 75 of the 2006 Act and Local Authorities Partnership Arrangements Regulations 2000 (“the Regulations”) permit the funding in the Pooled, Delegated and Aligned Budget to be spent only for the performance of the NHS Functions and the Council Health Related Functions.
- 5.2.12 The Council shall not use monies from the Pooled Fund, Delegated Budget or Aligned Budget to finance any services other than those integrated services which it was intended to be used for as agreed by the Parties.
- 5.2.13 The Council shall use all reasonable endeavours to ensure that the NHS Functions and the Council Health Related Functions are delivered in accordance with the Section 75 Agreement and within the Aligned Budget or the Pooled Fund. For the avoidance of doubt the Council shall not be liable for the breach of the Section 75 Agreement if;
- 5.2.13.1 it was acting in accordance with the terms of the Agreement; and
- 5.2.13.2 under the direction of the Parties; and
- 5.2.13.3 any such overspend shall be caused by circumstances beyond its reasonable control including increased demand for services as long as its managed in line with section 9.12-9.27 of the Agreement.

5.3 Underspends

- 5.3.1 Where the contributions made by the Parties are not fully spent, the following arrangements shall apply:
- 5.3.1.1 save for where the Agreement is coming to an end in accordance with Clause 21, where the sum not spent is less than £5,000, it will automatically roll over into the budget for the subsequent financial year taking into account each Party's financial rules on roll over of budgets;
- 5.3.1.2 where the sum not spent is equal to or exceeds £5,000, the Parties shall agree, acting reasonably, whether this amount should be rolled over or if it should be divided between the Parties proportionate to the contributions made by each Party as detailed in the Voluntary Services Prevention Commissioning schedule taking into account each Party's financial rules on roll over of budgets.
- 5.3.2 If an underspend occurs, the Council shall identify to the NHS Barnet Clinical Commissioning Group that the underspend was projected at the earliest opportunity and that all reasonable endeavours were undertaken to appropriately manage such underspend.

- 5.3.3 Any projected underspend should be spent within a reasonable period of time following the notification of the projected underspend.

5.4 Overspends

- 5.4.1 The Council shall not make any financial commitment that will exceed the Pooled Fund or the agreed contributions for each commissioned service without first securing explicit written agreement from the NHS Barnet Clinical Commissioning Group to invest further.
- 5.4.2 The Council shall keep the NHS Barnet Clinical Commissioning Group informed of the budgetary position and of any projection that suggests the Pooled Fund or agreed contributions of both Parties will be insufficient to meet projected or actual expenditure in any current Financial Year within seven calendar days of such a projection being made.
- 5.4.3 If an overspend occurs, the Council shall identify to the NHS Barnet Clinical Commissioning Group that the overspend was projected at the earliest opportunity and that all reasonable endeavours were undertaken to attempt to rectify such overspend.
- 5.4.4 If an overspend cannot be managed within the Pooled Fund or the agreed contributions of each Party, then where additional funding is agreed, the additional funding shall be provided as a proportion of the original contribution to the Pooled Fund.
- 5.4.5 The Council shall review the projected out turn position for the Pooled Fund, Delegated Budget and Aligned Budget as part of the budget setting process. The budget setting process should take into account population and ethnographic shifts in the borough, demand pressures, inflation and uplifts using national guidance.
- 5.4.6 Should inflationary or other pressures arise, each Party shall consider the uplift agreed by its organisation, taking into account financial strategy and cost efficiency requirements, to commissioned services and staff salaries at the beginning of each financial year or as otherwise set out in the Schedules.
- 5.4.7 Where a Pooled Fund is established, either Party may make additional contributions, the terms and conditions of which are to be agreed and confirmed in writing.
- 5.4.8 The Council will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Pooled Fund, Aligned Budget and the Delegated Budget (as relevant), meeting all required accounting, auditing and controls obligations.
- 5.4.9 The Council will be responsible for establishing effective and efficient accounting arrangements for all funds transferred into a Pooled Fund,

Delegated Budget or Aligned Budget (as relevant) by the Clinical Commissioning Group and the Council, such arrangements to include a separate cost centre for all such funds.

- 5.4.10 The Parties will provide whatever information is deemed necessary to enable effective auditing of the Pooled Fund, Delegated Budget or Aligned Budget (as relevant). Each Financial Year, the Council will arrange for the audit of the accounts of each of the Aligned Funds for which it is responsible and will require the Audit Commission to make arrangements to certify an annual return of those accounts under Section 28(1) (d) of the Audit Commission Act 1998.
- 5.4.11 The Parties shall agree a sum prior to each Financial Year which is to be spent on management costs including administration of the Pooled Funds and performance reporting.
- 5.4.12 The Parties shall agree and nominate an individual to act as the Pooled Fund Manager in respect of any Pooled Funds set out in the Schedules. The Pooled Fund Manager shall be responsible for:
 - 5.4.12.1 managing the Pooled Fund, including management and escalation as appropriate of any financial risk within the Pooled Fund and;
 - 5.4.12.2 submitting to the Authorised Officer in NHS Barnet Clinical Commissioning Group appropriate reports and forecasts on the Pooled Fund, and an annual return and all other information as agreed by the Parties in order to monitor the Pooled Fund.
- 5.4.13 The monies in any of the Pooled Funds as detailed in the Voluntary Services Prevention Commissioning schedule may be expended on either the NHS Functions or the Council Health Related Functions in different proportions to that in which the Parties have contributed to the Pooled Fund in order to deliver the commissioning objectives as detailed in the relevant Service Schedule.
- 5.4.14 In the event that either Party wishes to change its contribution to a Pooled Fund it must give not less than six month's written notice to the other Party before the commencement of the Financial Year in which the change is to take effect notwithstanding the notice period that the commissioned services should be given on any changes in funding flows during the Agreement Period. The Party shall then negotiate in good faith and in a reasonable manner to agree new financial contributions. In the event that agreement cannot be reached by the commencement of the relevant financial year (following the negotiations and the dispute resolution procedure at Clause 20 of the overall section 75 agreement) either Party may, by notice in writing to the other Party, terminate this Agreement in relation to the Services funded from the relevant Pooled Fund with effect from the commencement of the new Financial Year. In so doing each Party shall maintain the commissioning and financial liability for the

commissioned services that were covered in this Agreement for the rest of the Agreement Period.

5.4.15 When determining the Parties' contributions to any Pooled Funds in financial years subsequent to the first financial year of any Pooled Funds established under the Section 75 Agreement, it is the intention of the Parties, in normal circumstances, to apply the following principles:

5.4.15.1 each Party shall take its previous financial year's baseline contribution and add to that the relevant inflation factor and any other cost pressure on the relevant Services, subject to local and national efficiency saving requirements and commissioning intentions; and

5.4.15.2 in determining financial contributions for subsequent financial years, the Parties will also consider whether it is possible to fund any growth proposals and increase in activity due to increased health needs.

5.4.16 Where a Pooled Fund is in existence as detailed in the Schedules, the Pooled Fund Manager shall ensure that:

5.4.16.1 full and proper records are kept for accounting purposes;

5.4.16.2 accounts are kept in accordance with 'proper practices' which means compliance with the terms of the Code of Practice on Local Authority Accounting and the relevant NHS Code of Practice;

5.4.16.3 a memorandum of account is prepared and maintained throughout the financial year and is submitted to the Authorised Officers.

5.5 Grants

5.5.1 The Parties will review all additional grants that may be available to support the Services from time to time. This refers to a financial contribution by an external organisation or Government department to an eligible recipient for specified purposes, The Parties will apply for all appropriate grants where it is reasonable to do so.

5.5.2 The Parties will agree, acting reasonably, the manner in which any grant application should be made and the terms on which any such grant shall be administered and applied.

5.5.3 All grants received will be made available for the Services and such sums shall, if appropriate, be utilised as agreed by the Parties.

5.5.4 The Parties shall ensure that all monies from any grants received shall be applied in a proper manner and in accordance with any grant criteria where applicable. In the event that a Party misapplies monies received

from any grant the Party in default must reimburse the other Party to the extent that the monies were misapplied.

- 5.5.5 The Parties (representatives of the Council and the Clinical Commissioning Group, at a Director level and above) will decide where appropriate to reimburse both Parties if the grant replaces a contribution of one or both Parties in proportion to the contributions made.
- 5.5.6 The accounts of the Pooled Fund will be audited and certified in accordance with section 28(1) (d) of the Audit Commission Act.
- 5.5.7 No charges shall be made to service users for services pursuant to the NHS Functions. In the event that the Council shall determine that service users should be charged for any element of the integrated service the Council will be responsible for implementing and administering the policy of any such charges.
- 5.5.8 The Parties shall allocate the sum agreed up to the agreed amount, from funds from the budget of the relevant Integrated Commissioning Scheme.

5.6 Legal and Constitutional References

- 5.6.1 Pursuant to Section 75 of the National Health Service Act 2006 the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (the 'Regulations'), NHS Bodies and local authorities can enter into partnership arrangements for the exercise of specified functions. The Regulations define the nature of the partnership arrangements. They provide for the establishment of a fund made up of contributions from the Partners (in this case Barnet Council and Barnet NHS Clinical Commissioning Group) out of which payments may be made towards expenditure incurred in the exercise of their functions; for the exercise by NHS Bodies of local authority functions and for the exercise by local authorities of NHS functions; and require the Partners to set out the terms of the arrangements in writing. The specific objectives for implementing Section 75 Agreements are:
 - (i) to facilitate a co-ordinated network of health and social care services, allowing flexibility to fill any gaps in provision;
 - (ii) to ensure the best use of resources by reducing duplication (across organisations) and achieving greater economies of scale; and
 - (iii) to enable service providers to be more responsive to the needs and view of users, without distortion by separate funding streams for different service inputs.
- 5.6.2 Statutory regulations and Government guidance indicates how such arrangements should be set up and emphasis is placed on good governance.

- 5.6.3 The overarching Section 75 Agreement covering the Health and Social Care Integration Programme will allow each specific initiative that will be jointly delivered to be governed through an arrangement most suitable to individual circumstances.
- 5.6.4 A Section 75 Partnership Agreement is not subject to the public procurement regime.
- 5.6.5 In accordance with the Cabinet Resources Committee report dated 18 July 2013 and as set out above at paragraph 1.3 the Director for Adults and Communities has the power to authorise a new Voluntary Services Prevention Commissioning Agreement with the Barnet NHS Clinical Commissioning Group, following the expiry on the 31st January 2013 of the previous agreement for the same services. To rectify the position and cover the period of service where no written contract was in place between the Parties, it is anticipated that the Agreement will be backdated to the 1st of February 2014. The Agreement will be made pursuant to the overarching Section 75 Agreement.
- 5.6.6 Council's Constitution, Responsibility for Functions - Paragraph 7, Powers Delegated to Officers, provides that Chief Officers (i.e. the Chief Executive, Directors and Heads of Service as listed in Article 11) can take decisions, in consultation with the Cabinet Member concerned (or without consultation where it is a decision authorised to be taken by the Chief Officer under the Contract Procedure Rules or it involves the implementation of policy or earlier decision of the Council or Cabinet or Committee or it is in respect of operational matters within the Chief Officer's sphere of managerial or professional responsibility and is not significant in terms of budget or policy): to discharge the functions allocated to them or dealt with by them or their staff, except for matters specifically reserved to Executive Members, Cabinet meeting, Cabinet Committees, Committees or Council.

5.7 Risk Management

- 5.7.1 The issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations as integrated commissioning has a key role to play in increasing efficiencies by reducing duplication. If integrated commissioning processes are not put in place, opportunities to achieve value for money may be lost. This could impact adversely on budgets at a time when resources need to be managed carefully.
- 5.7.2 Integrated commissioning supports planning for changes at a borough level which enable more coherent planning and resource provision helping to create smoother service pathways for Barnet residents.

5.8 Equalities and Diversity

- 5.8.1 Under current Equalities legislation the Council and all other organisations exercising public functions on its behalf are required

when doing so to have due regard to the need to:

- 5.8.1.1 Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited under the Equality Act 2010.
- 5.8.1.2 Advance equality of opportunity between those with a protected characteristic and those without.
- 5.8.1.3 Promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.8.1.4 This duty also applies to a person who is not a public authority but who exercises public functions and therefore must, in the exercise of those functions, have due regard to the general equality duty. This includes any organisation contracted by a local authority to provide services on its behalf.
- 5.8.1.5 The overarching agreement sets out both partners' responsibilities with regards to complying with the equalities legislation. Any contracts funded through the Section 75 Agreement will include explicit requirements fully covering the Council's duties under equalities legislation.

5.9 Consultation and Engagement

- 5.9.1 No consultation or engagement was required for this decision

6. BACKGROUND PAPERS

- 6.1 Cabinet Resources Committee (28 July 2011) agreed that the Cabinet Member for Adults be authorised to approve the Council entering into a two-year Section 75 National Health Service Act 2006 pooled funding agreement with NHS Barnet (NHSB), with the Council acting as lead commissioner for voluntary sector prevention services, subject to the legal and financial terms of the agreement being approved by the Assistant Director – Legal and the Chief Finance Officer.
- 6.2 Following the Cabinet Resources Committee decision on 28 July 2011 a Section 75 Agreement for Voluntary Services Commissioning within a Prevention Framework commenced on the 1 February 2012, for a two year period, ending 31 January 2014.
- 6.3 Cabinet Resources Committee (18 July 2013) agreed Integrated Adults Health and Social Care arrangements including the following recommendations:
 - 6.3.1 That the Committee authorises the development of an overarching Section 75 National Health Services Act 2006 Agreement (Section 75 Agreement) between London Borough of Barnet and NHS Barnet

Clinical Commissioning Group to jointly commission adult health and social care services as part of the Health and Social Care Integration Programme.

- 6.3.2 That the Committee delegates authority to the Cabinet Member for Resources and Performance and the Cabinet Member for Adults to approve the full scope of financial arrangements under the Section 75 Agreement.
- 6.3.3 That the Committee delegates approval of further amendments to the Agreement to the Director for Adults and Communities.
- 6.3.4 In the future where feasible and desirable the joint commissioning of community equipment and Voluntary Services Commissioning within a Prevention Framework may be incorporated within the overarching agreement.
- 6.4 The Cabinet Member for Adults approved (14 August 2013) via delegated powers to enter into an overarching Section 75 Agreement between the London Borough of Barnet and Barnet Clinical Commissioning Group to support the delivery of integrated adults health and social care services.
- 6.5 The overarching Section 75 Agreement between the London Borough of Barnet and Barnet Clinical Commissioning Group to support the delivery of integrated adults health and social care services commenced on 16 August 2013 for a three year period, which will end 15 August 2016.

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action

- 8.1 **The Council to enter into a Section 75 Agreement for a term of 26 months commencing on the 1 February 2014 for Voluntary Services Prevention Commissioning and to include this within the overarching Section 75 Agreement between London Borough of Barnet and NHS Barnet Clinical Commissioning Group**