

Forward Plan reference number: FP/995/02/21

Report title: Better Care Fund Plan and arrangements - 2021/22	
Report to: Cabinet	
Report author: Councillor John Spence, Cabinet Member Health and Adult Social Care	
Date: 16 March 2021	For: Decision
Enquiries to: Peter Fairley, Director, Strategy, Policy and Integration; email peter.fairley@essex.gov.uk	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 To seek agreement to vary the six BCF (Better Care Fund) section 75 agreements entered into by the Council with the five Essex CCGs (Clinical Commissioning Groups), to ensure that the use of the mandatory funding contributions for 2020/21 meet the national conditions.
- 1.2 To seek agreement for interim arrangements for the management of the Essex BCF between the end of 2020/21 and the establishment of the new 2021/22 BCF Plan once national planning guidance has been published.

2. Recommendations

- 2.1 Agree to vary the six BCF section 75 agreements to reflect:
 - the national 2020/21 5.3% uplift to the minimum CCG contributions (total Essex BCF £159.7m) as agreed by the Council and the five CCGs but not yet formalised due to the delay caused by Covid-19 pandemic; and
 - the national 2021/22 uplift to the 2020/21 contributions (Uplifted Contributions) which are being uplifted by 5.3% for 2021/22 (total Essex BCF £165.2m).
- 2.2 Agree that the Cabinet Member for Adult Social Care and Health may authorise subsequent variation of the six BCF section 75 agreements to reflect the final allocated contributions (Final Allocations), if and when these are published, if different from the Uplifted Contributions.

3. Summary of issue

- 3.1 The BCF was announced by Government in June 2013. It was intended to provide an opportunity to transform local services through better integrated care and support. Health and Wellbeing Boards (HWBs) have been obliged to submit BCF Plans since then that meet mandated minimum financial values and

demonstrate achievement of a series of NHS England's national conditions. The BCF is overseen by the Health and Wellbeing Board and incorporates funding to support social care (the Improved Better Care Fund) that is subject to conditions that it be pooled into the BCF and used to ease pressures in the health and care system. It also includes the Disabled Facilities Grant.

- 3.2 The BCF funds a range of health and care services including NHS community services and short term support to people leaving hospital or to prevent hospital admission (such as reablement). It also provides the opportunity for collaboration between NHS and local authority partners and investment in new or integrated models of care to support HWB objectives (a summary of the key areas of expenditure is set out in Appendix A). Agreeing the interim arrangements ensures continuity of services and payments to providers in parallel with the progression of the annual NHS planning cycle.
- 3.3 The Improved Better Care Fund (iBCF) is included as part of the wider BCF and is part of the county wide section 75 agreement. It is a grant provided to Adult Social Care from the Ministry of Housing, Communities and Local Government (MHCLG) worth £45m to the Council in 2020/21 and 2021/22. The grant must be used for the purposes of:
 - meeting adult social care needs,
 - reducing pressures on the NHS, including seasonal winter pressures,
 - supporting more people to be discharge from hospital when they are ready, and
 - ensuring that the social care provider market is supported.
- 3.4 The Disabled Facilities Grant (DFG) is transferred directly from the Council to the twelve District, Borough and City councils to allow them to discharge their statutory duty with regard to DFGs.
- 3.5 The Spending Review 2020 confirmed that the iBCF grant will continue in 2021/2022 and be maintained at its current level (£2.077 billion). The Disabled Facilities Grant will also continue and will be worth £573 million in 2021/222022.
- 3.6 The CCGs' contribution will again increase by 5.3% in line with the NHS Long Term Plan settlement in 2021/22.
- 3.7 The Policy Framework and Planning Requirements will be published in early 2021 (this has not happened yet).
- 3.8 COVID-19 Emergency**
 - 3.8.1 At the start of the COVID-19 pandemic, Health and Wellbeing Boards (HWBs) were advised that BCF policy and planning requirements would not be published during the initial response to the pandemic and that they should prioritise continuity of provision, social care capacity and system resilience and spend from ringfenced BCF pots based on local agreement in 2020/21, pending further guidance.

- 3.8.2 Given the ongoing pressures on systems, it was confirmed in December 2020 that formal BCF plans will not have to be submitted to NHS England and NHS Improvement for approval in 2020/21. HWB areas must, however, ensure that use of the mandatory funding contributions (CCGs minimum contributions, iBCF grant and the DFG) has been agreed in writing, and that the national conditions are met.
- 3.8.3 The Council continued to use BCF funding under the six section 75 agreements in compliance with the law and guidance and agreed with the CCGs to apply the Uplifted Contributions for 2020/21. This report is seeking to formalise those arrangements already agreed, now that it is confirmed that no further guidance will be issued for the 2020/21 financial year.

National Conditions

- 3.9 The National Conditions for the BCF in 2020-21 are that:
- 3.9.1 **Plans covering all mandatory funding contributions have been agreed by HWB areas and minimum contributions are pooled in a section 75 agreement.**
The plan will be presented to the Health and Wellbeing Board on 17 March. The funds will be pooled as necessary through the recommendation to vary the six section 75 agreements.
- 3.9.2 **The contribution to social care from the CCG via the BCF is agreed and meets or exceeds the minimum expectation.**
The 2019 spending round confirmed that contributions to social care from CCGs via the BCF for 2020/21 should increase by 5.3% nationally in line with NHS revenue spend. For the Essex HWB area the minimum contribution from the five CCGs is £40.928m and this condition is met within the plan.
- 3.9.3 **Spend on CCGs commissioned out of hospital services meets or exceeds the minimum ringfence.**
The CCGs commissioned out of hospital services exceeds the minimum ringfence of £29.222m set out in the BCF allocations published by NHS England.
- 3.9.4 **CCGs and local authorities confirm compliance with the above conditions to their Health and Wellbeing Boards.**
As stated in paragraph 3.9.1, the BCF plan will be presented to HWB on 17 March.

3.10 BCF Arrangements

- 3.10.1 The Council manages the six Essex BCF Pooled Funds under section 75 agreements with the CCGs that are linked to the BCF Plan. Under these arrangements the Council is responsible for making payments to NHS-commissioned providers of BCF services on behalf of the CCGs. These are estimated to amount to over £43.6m in 2021/22, as set out in the financial

implications. the Council will also receive an estimated £43.1m from CCG contributions to fund social care in 2021/22.

3.10.2 The arrangements for 2020/21 will end on 31 March 2021, but local councils still await the publication of the national guidance and deadlines for development of the 2021/22 Better Care Fund Plan. If these services are going to continue and the Council is going to continue to receive the NHS funding for social care then the Council and the CCGs need to agree interim arrangements to cover the period between the end of the existing Plan for 2020/21 and establishment of the new Plan for 2021/22.

3.10.3 Purchase orders will need to be raised for payments to providers of NHS-commissioned BCF services from 1 April 2021 to ensure continuity of provision and the Council will need to adjust its spending unless the BCF money used to fund social care continues to be received.

3.10.4 The CCGs have been asked to provide letters of assurance confirming that they will underwrite these purchases ahead of approval of the Essex BCF Plan for 2021/22 and provide the Council with sufficient funds to make the necessary payments.

4. Options for the BCF Arrangements

4.1 **Option 1 (recommended):** To approve the interim arrangements and amend the six section 75 agreements to reflect the same and the uplifted NHS contributions.

4.2 This is considered the best option as:

- It allows purchase orders to be raised before the end of March 2021 and the April 2021 invoices for NHS commissioned services to be paid on time.
- The risks to the Council in adopting this approach are low as the CCGs have agreed to provide the Council with sufficient funds to pay the BCF funded providers, and the purchase orders will be raised on the basis that funds will only be released if they have been received from the CCGs.
- The risk of reputational impact on and legal challenges against the Council the Council in not paying the NHS providers on time is high as due to the value of the invoices could cause considerable cash flow issues to NHS providers.

4.3 **Option 2 (not recommended):** Delay amending the six section 75 agreements and wait for NHS England to publish the final allocations for Essex.

4.4 This option is not considered to be appropriate as:

- NHS England has not, at the time of writing this report, issued BCF guidance and financial allocations. It would therefore be unlikely that a draft plan would be available for consideration by Cabinet until at least its May

2021 meeting and that the final plan would not be available for consideration until after that.

- Approval by Cabinet in May 2021 would result in purchase orders not being available for NHS commissioned services until the end May or early June and invoices for the first quarter of 2021/22 not being paid on time.
- The risk of reputational impact on and legal challenges against the Council the Council in not paying the NHS providers on time is high as, due to the value of the invoices, could cause considerable cash flow issues to NHS providers.

5. Issues for consideration

5.1 Financial implications

- 5.1.1 The Council is the pooled fund holder for the Essex BCF. Formal assurance for plans is not required for 2020/21, however local approval of the BCF plan clears the way for the Council and the CCGs to draw up section 75 agreements for 2020/21. This forms part of the national conditions.
- 5.1.2 The minimum CCG contributions were increased nationally by 5.3% in 2020/21. Allocations at CCG level were published by NHSE on 4 February 2020, which confirmed that the average uplift across the five Essex CCGs was in fact 5.36%.
- 5.1.3 The tables below summarise the funding sources and planned expenditure at a countywide and local level for 2020/21.

Better Care Fund Summary	£m
Funding Sources	
Minimum CCG Contribution	102.8
Additional CCG Contribution	-
iBCF	45.0
DFG	11.9
Total BCF Pooled Budget	159.7
Expenditure	
Community Services	61.9
Social Care (min CCG contribution)	40.9
iBCF Meeting Social Care Needs	36.1
iBCF Countywide & Locality Schemes	8.9
DFG funded	11.9
Total Expenditure	159.7

CCG Area Allocations	Community Services	Social Care (min CCG contr'n)	iBCF Meeting Social Care Needs	iBCF County-wide & Locality Schemes	DFG funded	Total
Basildon & Brentwood	11.4	7.2	-	0.1	1.9	20.6
Castle Point & Rochford	7.4	5.1	-	0.1	1.4	13.9
Mid Essex	15.0	10.6	-	0.2	2.8	28.5
North East Essex	15.2	9.6	-	0.1	3.8	28.8
West Essex	12.9	8.4	-	0.2	2.1	23.6
Subtotal - Locality	61.9	40.9	-	0.7	11.9	115.4
Countywide	-	-	36.1	8.2	-	44.3
Total	61.9	40.9	36.1	8.9	11.9	159.7

5.1.4 The planned expenditure meets the national conditions of minimum CCG contribution to social care (£40.928m) and exceeds the minimum ringfence for CCGs commissioned out of hospital services (£29.222m). The total for 2020/21 does not include any additional funding to support the Hospital Discharge Service policy, which is accounted for outside of BCF reporting, and at any rate would not count towards the minimum social care contributions or minimum ringfence for out of hospital services.

5.1.5 Final estimates of the Essex BCF Plan for 2021/22 cannot be concluded until the final BCF guidance is issued by NHS England. The recommendations for 2021/22 in this report relate to the management arrangements for the part of the BCF expenditure to be funded from CCGs' financial contributions. In addition to this funding, it is also a condition of the Council's iBCF Grant (£45m) and Disabled Facilities Grant (£11.9m) that these too are pooled within the 2021/22 BCF plan, and so the plans for the application of these grants will be incorporated in the final BCF plan.

5.1.6 In the absence of an approved BCF plan for 2021/22, to ensure continuity of funding to NHS-commissioned providers of BCF services after April 2021, the Council requires written confirmation from each CCG partner that they will underwrite all NHS Commissioned spend with the providers and continue to make their contributions to support social care.

5.1.7 The estimated monthly value of the purchase orders for Social care and NHS-commissioned services are shown in the table below. Without the confirmed level of uplift to be applied to 2021/22 contributions at CCG level, the national figure of 5.3% has been applied to the 2020/21 values. It should be noted that the same national uplift was applied in 2020/21 and the final allocation was different for Essex CCGs by only 0.06% percentage points, or £56,000.

Countywide		
Monthly Schedule of Invoice Payments (Subject to amendment once final BCF is agreed and approved)		
	Annual Value £	Monthly Invoice Value (Provisional) £
Social care		
Protection of Social Care	33,441,707	Apr-21 7,224,603
Care Act	4,163,090	May-21 7,224,603
Reablement	4,833,307	Jun-21 7,224,603
Carers Breaks	657,949	Jul-21 7,224,603
Sub - Total	43,096,053	Aug-21 7,224,603
		Sep-21 7,224,603
		Oct-21 7,224,603
		Nov-21 7,224,603
NHS Commissioned Services		Dec-21 7,224,603
Stroke Psychology	200,475	Jan-22 7,224,603
Community Mental Health	109,095	Feb-22 7,224,603
Community Services Head of Dementia	34,848	Mar-22 7,224,603
Community Services Programme & Admin	75,648	
Community Health Services	43,179,120	
Sub -Total	43,599,185	
Total	86,695,239	Total 86,695,239
CCG		
Mid Essex	26,130,213	
North East Essex	26,163,929	
West Essex	8,861,972	
Basildon & Brentwood	19,640,284	
Castle Point & Rochford	5,898,840	
Total	86,695,239	

5.1.8 The £86.7m total in the invoice schedule does not include payments made directly to providers by CCGs, for example those mandated by NHS England to be paid to Essex Partnership University NHS Foundation Trust (EPUT) for community health services. Adjusting for these would add an additional £21.6m, bringing the total estimated CCG minimum contribution to £108.3m in 2021/22. Furthermore, incorporating the iBCF and DFG values makes the BCF worth an estimated £165.2m in 2021/22.

Better Care Fund Summary	2020/21 £m	2021/22 £m
Funding Sources		
Minimum CCG Contribution	102.8	108.3
Additional CCG Contribution	-	-
iBCF	45.0	45.0
DFG	11.9	11.9
Total BCF Pooled Budget	159.7	165.2

5.2 Legal implications

- 5.2.1 The mandate from the Secretary of State to NHS England may include specific requirements relating to the establishment and use of an integration fund. In recent years the Secretary of State has done this by requiring CCGs to establish better care funds.
- 5.2.2 In Essex the BCF is established by means of five bilateral partnership agreements under section 75 of the National Health Service Act 2006 between the Council and each of the five CCGs operating within Essex, together with a multilateral partnership section 75 agreement between all five CCGs and the Council (which contains the iBCF).
- 5.2.3 Any changes to the section 75 agreements must be agreed separately by each partner. The Health and Wellbeing Board's role is to consider reports as requested by the Department of Health and under the section 75 agreements. This is part of the Board's role to promote the integration of health and social care.
- 5.2.4 Following approval of the final BCF Plan for 2021/22, this will be submitted to the Health and Well Being Board for endorsement.
- 5.2.5 The CCGs have confirmed their commitment to the proposed BCF arrangements described in paragraph 3.8 so as to ensure continuity of delivery by way of a formal letters signed by their Chief Finance Officers. The Section 75 agreements will need to varied by virtue of deeds of variation to reflect the Contributions and formalise the uplift applied for 2020/21 in the first instance, and a potential later variation will be required to reflect the Final Allocations in Essex, if different from the Uplifted Contributions.

6. Equality and Diversity implications

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc on the grounds of a protected characteristic unlawful

- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment (appendix 1) indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

7. List of appendices

Appendix A – BCF Expenditure Summary 2020/21
Equality Impact Assessment

8. List of Background papers

- 8.1 Letters from the CCGs confirming payment
- 8.2 Current section 75 agreements and BCF plan