

Forward Plan reference number: FP/469/07/22

Report title: Section 75 Partnership Agreement: New agreement with Essex Partnership University NHS Foundation Trust	
Report to: Cllr Kevin Bentley, Leader of Essex County Council	
Report author: Peter Devlin, Director of ASC Mental Health	
Date: 13 September 2022	For: Decision
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County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1 The purpose of this paper is to improve care and support for those with mental health needs in Essex.
- 1.2 It proposes to seek agreement for a continuation of the existing satisfactory arrangement with the Essex Partnership University NHS Foundation Trust (EPUT), who deliver mental health services on behalf of the Council.
- 1.3 Through these arrangements the Council delegates its legal duties for adult mental health social care to EPUT. As part of these arrangements the Council's adult mental health social care resources, funding and workforce, is under the operational control of EPUT. This partnership working allows the Council and EPUT to provide integrated joined-up mental health services with the aim of achieving the best outcomes for the residents of Essex.
- 1.4 During the period of this continued arrangement, we will continue, and finalise, a review of services, aimed at creating further improvements in services for the future. This review is being undertaken in tandem with other partners, including three Integrated Care Boards (ICBs), across Essex with the aim of enabling new agreements to be put in place from 1 April 2025. The request now made in this decision is, therefore, for a period of 30 months, from 1 October 2022, to run up to that date.
- 1.5 Everyone's Essex sets out the strategic aim of "promoting health, care, and wellbeing for all the parts of our population who need our support". The proposals in this paper accord entirely with that strategic aim and will contribute to all five of the Health commitments in Everyone's Essex: healthy lifestyles, promoting independence, place-based working, increasing the support of carers, and levelling up health.
- 1.6 Through greater focus on prevention and early help, the proposals in this paper align with the Council's Levelling Up commitments recognising the close links between poverty, deprivation and mental health.

- 1.7 The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

2 Recommendations

- 2.1 Agree to enter into a new Section 75 Agreement with Essex Partnership University NHS Foundation Trust for the period of two years and six months starting on 1 October 2022.
- 2.2 Agree to delegate authority to the Executive Director for Adult Social Care in consultation with the Monitoring Officer to agree the terms of the new Section 75 agreement.

3 Summary of the Proposal

- 3.1 The Council has had formal partnership arrangements in place with the NHS Mental Health Trusts in Essex over the last 18 years. These arrangements have allowed the Council to delegate its legal duties for adult mental health social care to the Mental Health Trusts to perform on the Council's behalf. Under this arrangement the Council has provided the funds to enable the NHS trusts, currently EPUT, to provide these services.
- 3.2 These arrangements have proved effective in enabling the delivery of integrated health and social care services for adults with mental health needs and their family carers . They were further strengthened when the Council brought the Approved Mental Health Professional (AMHP) Service responsible for conducting Mental Health Act assessments back in-house in 2019. Therefore, the AMHP Service is not in scope of the planned review work.
- 3.3 The existing Partnership Agreement expires on 30 September 2022. Under this Agreement, most of the Council's mental health social work workforce is embedded within the Trust's operational services and managed by the Trust. Some staff are employed by the trust and others are employed by ECC and seconded to the trust

A new Section 75 Agreement for the period to 31 March 2025

- 3.4 Although previous agreements have been for a three-year period, it is proposed this time to put in place a new Section 75 Agreement for a period of two years and six months – a period that matches the timeframe of the NHS Transformation of Community Mental Health Services Programme which forms part of the NHS Long Term Plan.
- 3.5 It has been agreed with the Trust that the new Agreement will contain a number of provisions to reflect the common purpose and interests of both partners. It will:

- strengthen the Council's oversight and scrutiny over those duties delegated to EPUT to discharge on its behalf. It will do this by enhancing existing reporting and providing a direct line of sight for designated Council Officers.
- include an uplift for inflation for those staff that are employed by the Trust but delivering Council services. This will be the same uplift as that which the staff would have received if they had been employed by the Council;
- ensure alignment, by introducing a direct line of reporting, between safeguarding and quality assurance in the mental health services and the processes in the Council, consistent with the Council's preparations for CQC assurance

3.6 The continuation of the Partnership and the review of the operating model have a strategic fit with the Council's and Trust's strategic objectives, and with the NHS Community Mental Health Services Transformation Programme. The Trust Executive Team has confirmed its support to a new Section 75 Agreement.

Long term plans: review of arrangements

3.7 The Council commenced a review of arrangements for its Mental Health Social Work services in February 2022 in partnership with the Trust. This was in anticipation of the approaching end of the Section 75 agreement and in alignment with the work in the Trust to implement the NHS England Community Mental Health Services Framework. The review is being conducted in phases as set out in Appendix A.

3.8 Phase 1 (diagnostic) is complete. The review will:

- work at "locality" or "place" level across the County, aligning with the proposed changes in Adult Social Care, recognising the importance of local engagement and ownership of services, but with common standards of outcome across all services;
- meet the Adult Social Care Business Plan priorities to "develop a prevention and early intervention offer to help reduce or delay the onset of health and care needs" and "implement place-based working and integration".

3.9 This paper does not seek any agreement or decision about the review but includes its details purely to explain what will be happening during the lifetime of the proposed agreement and why it is proposed to extend for the proposed period. A further report will be brought to Cabinet on the future arrangements for these services

4. Links to our Strategic Ambitions

- 4.1 This Report supports the strategic priority in the Council's Organisational Strategy 'Everyone's Essex': *Health wellbeing and independence for all ages*.
- 4.2 The continuation of these arrangements and the ongoing review referred to above will contribute to all five of the Health commitments in Everyone's Essex: healthy lifestyles, promoting independence, place-based working, increasing the support of carers, and levelling up health.
- 4.3 By improving the wellbeing and mental health of the population, the Report will support the following aims in the Essex Vision:
- Enjoy life into old age
 - Strengthen communities through participation
 - Connect us to each other and the world
 - Share prosperity with everyone
- 4.4 Approving the recommendations in this Report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030.

5. Options

5.1 Option 1: Do nothing (not recommended)

- 5.1.1 This option is to let the Section 75 Agreement expire on 30 September 2022, which would see Council-funded social work staff, some of whom are ECC employees seconded to EPUT and some directly employed by the Trust, moving to be under the direct management and oversight of the Council. This would likely result in some employees transferring from EPUT to ECC
- 5.1.2 This would fracture the partnership with the Trust and be detrimental to those who rely on the current integrated mental health services to access both health and social care support in a single place. An upheaval of this nature is likely to result in the loss of valued and experienced staff from these services.

5.2 Option 2: Extend the current Section 75 Agreement without update (not recommended)

- 5.2.1 To extend the current Section 75 Agreement in its current form would represent a missed opportunity to put in place an agreement that reflects the shared aspirations of the Partnership to transform community mental health and improve the experience of those who need the support of mental health services. It would also represent a missed opportunity to develop the early help and prevention end of the pathway in conjunction with the development of neighbourhood working within ASC.
- 5.2.2 The governance arrangements and safeguarding and quality assurance in the agreement need to be updated to align with the Council's preparations for CQC

assurance. CQC inspections of Adult Social Care are expected to commence during the period of this option/requested extension.

5.3 Option 3: New Section 75 Agreement on a rolling twelve-month basis (not recommended)

5.3.1 This option would mean that, unless renewed, at the end of a twelve-month period the Section 75 Agreement would lapse. This was considered carefully, as it could possibly provide flexibility for ECC in the context of two other interrelated programmes of change.

5.3.2 However, there is a real need to provide greater certainty in the relationship between ECC and EPUT than a rolling contract of twelve months duration can provide. This is important in ensuring that mental health social work has its rightful place within the newly emerging community mental health pathways, for the benefit of those who require mental health support. A second consideration is the message that might be given to staff, especially social work staff, working in mental health, and this might destabilise a workforce that is already facing great pressure from the post-pandemic increased volume of work.

5.4 Option 4: New Section 75 Agreement for a period of two years and six months to 31 March 2025 (recommended)

5.4.1 This option provides continuity and enables the Council and EPUT to build on the progress achieved in recent years, through the review of joint working arrangements and the development of the future operating model.

5.4.2 This option will enable the development and delivery of better services and outcomes for mental health service users.

6. Issues for Consideration

6.1 Financial implications

6.1.1 The Medium Term Resource Strategy (MTRS) includes £12.7m for the 2 year and 6 months period from 1 October 2022 until 31 March 2025. The Council's proposed contribution to the Section 75 agreement is £338,000 higher than this at £13m, as set out in the table below. In 2022/23, the pressure will be contained within the Adult Social Care budget. For future years, this pressure will be addressed through the budget setting process. For 2023/24, the contribution includes an allowance for a 2% inflationary uplift for pay. The inflationary uplift for 2024/25 will be in line with the level applied to other ECC staff budgets.

	2022/23 (part year) £'000	2023/24 (Indicative) £'000	2024/25 (Indicative) £'000	TOTAL £'000
Indicative MTRS	2,477	5,054	5,155	12,686
S75 proposed contribution	2,537	5,170	5,317	13,024
Variance	60	116	162	338

6.1.2 In addition, the proposed Section 75 Agreement allows for the creation of a joint commissioning post at an annual cost of approximately £105,000, with EPUT contributing £70,000 (2/3) and ECC contributing £35,000 (1/3). The cost to ECC is £90,000 for the 2 years and 6 months of the Section 75 Agreement, allowing for some inflationary uplift over that time. There is sufficient funding within the Adult Social Care commissioning budget to pay for the contribution to this post.

6.1.3 There is no direct savings target associated with the new Section 75 Agreement within the Council's Medium Term Resource Strategy (MTRS). However, it is important to note that there is a savings target already built into the Mental Health budget is directly linked to EPUT activity, where they are reviewing individuals within the Council's care. The Mental Health savings target for 2022/23 is £500,000, with a further additional target for 2023/24 of £500,000.

6.2 Legal implications

6.2.1 The delegation of certain functions in respect of the delivery of mental health related social services can lawfully be implemented under s75 of the National Service Act 2006. Such delegation needs to be formalised into a partnership agreement which will need to include certain mandatory elements to qualify as a statutory s75 agreement. The mandatory elements are set out in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

6.2.2 The Council will need to enter into a new s75 agreement with EPUT to formalise the delegation of the functions by the Council as described in this report. The s75 agreement will commence on 1 October 2022 and expire on 31 March 2025.

6.2.3 The s75 agreement will include terms to deal with performance management and reporting criteria, indemnities in favour of the Council, terms in respect of secondment and management of staff, obligations on EPUT to achieve required quality standards, safeguarding and data sharing obligations.

6.2.4 It has been agreed with the EPUT that the new agreement shall contain a number of changes (to the current system) to reflect both partners' commitment to carry out the transformation in services described in this report and below:

- The shared vision and purpose of the Partnership will be updated to include the work on the Review of Mental Health Social Work, addressing the findings of the Phase 1 work as described above
- Expectations regarding the delegated Council duties under the Care Act 2014 will be updated

- Governance arrangements will be refreshed to bring stronger accountability to the Council for the delivery of services
- The required measures to implement the Accommodation Pathways Project will be included
- Performance schedules will be updated and redesigned to keep track of current activity and of the impact of changes in service delivery

6.2.5 Public procurement legislation does not apply to a statutory delegation of functions.

7. Equality and Diversity Considerations

7.1 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.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, 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).

7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this Report will not have a disproportionately adverse impact on any people with a particular characteristic.

8. List of Appendices

8.1 Appendix A: Outline of the Review of Mental Health Social Work Services

8.2 Appendix B: Equalities Impact Assessment

9. List of Background Papers

Community Mental Health Services Framework for Adults and Older Adults
September 2019: <https://www.england.nhs.uk/publication/the-community-mental-health-framework-for-adults-and-older-adults/>

Care Programme Approach Position Statement July 2021

<https://www.england.nhs.uk/publication/care-programme-approach-position-statement/>

ECC Adult Social Care Business Plan

I approve the above recommendations set out above for the reasons set out in the report.	Date
Cllr Kevin Bentley, Leader of Essex County Council	14.09.22

In consultation with:

Role	Date
Executive Director, Corporate Services (S151 Officer)	05.09.22
Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	05.07.22
Paul Turner	