

**Forward Plan reference number: FP/286/01/22**

|  |                      |
|--|----------------------|
| <b>Report title: Better Care Fund Plan and arrangements – 2022/23</b>  |                      |
| <b>Report to:</b> Cabinet  |                      |
| <b>Report author:</b> Councillor John Spence, Cabinet Member Health and Adult Social Care                        |                      |
| <b>Date:</b> 15 March 2022   | <b>For:</b> Decision |
| <b>Enquiries to:</b> Peter Fairley, Director, Strategy, Policy and Integration; email peter.fairley@essex.gov.uk |                      |
| <b>County Divisions affected:</b> All Essex  |                      |

## 1. Everyone's Essex

- 1.1 Thousands of Essex residents and their carers rely on health and care services to support them. By working more closely with partners in the NHS, integrating our approaches, we can provide services in a more joined-up way. Doing this well leads to better outcomes for residents across Essex levelling up those with disabilities and chronic conditions
- 1.2 The Better Care Fund (BCF) was a programme created to help this approach by bringing together funding pooled between the NHS and, in our case, Essex County Council, to spend together on services and support, providing a more integrated approach to health and social care services. In 2021/22 this funding amounts to £165m (£108m from NHS and £57m from the Department for Levelling-Up, Housing and Communities).
- 1.3 ECC's Cabinet, and the Essex Health and Wellbeing Board, approved in November 2021 the Better Care Fund Plan for 2021/22 following the delayed publication of the national planning guidance in September 2021. This plan ends on 31 March 2022. We are awaiting publication of national planning guidance for 2022/23 so there is a need for Cabinet approval to enable interim arrangements to be put in place from 1 April 2022 to ensure continuity.
- 1.4 This paper seeks agreement to implement interim arrangements for the management of the Essex Better Care Fund (BCF) between the beginning of the financial year 2022/23 and the establishment of the new 2022/23 BCF Plan once national planning guidance has been published. This will involve varying the six BCF section 75 agreements entered into by the Council with the five Essex Clinical Commissioning Groups (CCGs) to continue the funding commitment for the financial year 2021/22 into 2022/23 unchanged.
- 1.5 There are no direct implications for climate change in these proposals

## 2. Recommendations

- 2.1 Agree that the BCF Plan for Essex, approved by NHS England and NHS Improvement (NHSEI) on 12 January 2022 for the financial year 2021/22, continues to be implemented in the financial year until new arrangements are able to be agreed following the publication of BCF Policy Framework for 2022/22.
- 2.2 Agree to vary the six section 75 agreements relating to the BCF entered into by the Council with the five Essex Clinical Commissioning Groups to ensure that the CCGs' funding commitments to the BCF Pooled Fund continues at the same level as approved by NHSEI for the financial year 2021/22 into the financial year 2022/23 and until such time as NHSEI publishes the 2022/23 BCF allocations for Essex.
- 2.3 Agree that the Cabinet Member for Adult Social Care and Health is authorised to agree subsequent variations to the six BCF section 75 agreements if required to reflect the BCF Policy Framework for 2022/23.
- 2.4 Agree that the Executive Director for Adult Social Care is authorised to agree the terms of the deeds of variation required to vary the six BCF section 75 agreements pursuant to paragraphs 2.2 and 2.3 above.

### **3. Summary of issue**

- 3.1 The BCF was announced by Government in June 2013. It was intended to support local systems to deliver the integration of health and social care to promote better outcomes for people and carers and provide an opportunity to transform local services through better integrated care and support.
- 3.2 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 that are set out annually in the BCF Policy Framework. 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.
- 3.3 The BCF Policy Framework contains minimum allocations that must be pooled by each CCG into the BCF. These allocations are set by NHS England and must be pooled into a section 75 agreement alongside grants paid to local government.
- 3.4 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 of the Essex BCF is set out in Appendix 1.

- 3.5 Each year the BCF Policy Framework is published by the Department of Health and Social Care and the Department for Levelling Up, Housing and Communities and local areas are required to submit BCF plans in response. These plans include ambitions for improving outcomes and funding streams. Once the BCF plan has been approved, relevant s75 Agreements are drawn up (or amended) in accordance with the approved BCF Plan.
- 3.6 The Council is the host of the pooled funds for the Essex BCF. There are 6 pooled funds: one pooled fund between ECC and each CCG (five in total) and a multilateral pooled fund between ECC and all five CCGs. There are six s75 Agreements in place to govern these arrangements. As host of the pooled funds, the s75 agreements require that the Council is responsible for making payments to NHS-commissioned providers of BCF services on behalf of the CCGs.
- 3.7 The BCF Policy Framework for 2022/2023 has not yet been published and, in the absence of an approved BCF plan for 2022/23, and to ensure continuity of funding to NHS-commissioned providers of BCF services from April 2022, the Council requires confirmation of the funding arrangements that will be in place from April 2022. It is important that ongoing arrangements are agreed because the Council is responsible for making payments to NHS commissioned providers. It is therefore proposed that the current interim arrangements that were agreed by Cabinet in November 2021 for 2021/2022 are carried forward into 2022/2023 until such time as NHSEI produces the BCF Policy Framework for 2022/23.
- 3.8 The Improved Better Care Fund (iBCF) is also 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 Department for Levelling Up, Housing and Communities (DLUHC) worth £46.4m to the Council in 2022/23 (up from £45m in 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.
- 3.9 The Disabled Facilities Grant (DFG) also forms part of the wider BCF and 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.
- 3.10 The Spending Review in 2021 confirmed that the iBCF grant will continue in 2022/23 and will increase nationally in line with inflation. The Disabled Facilities Grant will also continue, although the value has not been confirmed. It is expected that the Policy Framework and Planning Requirements for this funding will be published in early 2022 but this is still awaited.
- 3.11 Following discussions with the CCGs, the Council has received written confirmation from each CCG that they are in agreement with the proposals in

this report and they will continue to underwrite all NHS commissioned spend with the providers and continue to make their contributions to support social care on this basis. Agreeing the interim arrangements will ensure continuity of services and payments to providers in parallel with the progression of the annual NHS planning cycle. We expect another decision will be required to ensure ongoing commitment from Integrated Care Systems post July 2022 once these new partnerships are set up.

- 3.12 Purchase orders will need to be raised for payments to providers of NHS-commissioned BCF services from 1 April 2022 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. The proposals set out in this report will ensure that interim arrangements are in place until such time as the arrangements for 2022/2023 are known and will mean that no adjustment to spending is required.
- 3.13 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 2022/23 and provide the Council with sufficient funds to make the necessary payments. This risk is further mitigated by including the relevant funding commitments within the six BCF section 75 agreements through proposed deeds of variations.
- 3.14 It is proposed that the Cabinet Member for Adult Social Care and Health is authorised to agree subsequent variations to the six BCF section 75 agreements if required to reflect the BCF Policy Framework for 2022/23 when it is published. This may include changes to the financial contributions, changes to outcomes and metrics and changes in the commissioned services.

#### **4. Links to our Strategic Ambitions**

- 4.1 This report links to the following aims in the Essex Vision:
- Enjoy life into old age
  - Strengthen communities through participation
  - Connect us to each other and the world
- 4.2 Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030.
- 4.3 This report links to the following strategic priorities in the Organisational Strategy 'Everyone's Essex':
- Health wellbeing and independence for all ages

#### **5. Options**

5.1. **Option 1 (recommended option):** To approve the interim arrangements and amend the six section 75 agreements to ensure the funding commitments for the financial year 2021/22 continue unchanged into the financial year 2022/23 until such time NHSEI publishes the Essex allocations for the financial year 2022/23.

5.2. This is considered the best option as:

- It allows purchase orders to be raised before the end of March 2022 and the April 2022 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 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.

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

5.4. This option is not recommended 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 May and that the final plan would not be available for consideration until after that.
- Approval by Cabinet in May 2022 would result in purchase orders not being available for NHS commissioned services until the end of May or early June and invoices for the first quarter of 2022/23 not being paid on time.
- The risk of reputational impact on and legal challenges against 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.

## **6. Issues for consideration**

### **6.1. Financial implications**

6.1.1. Final estimates of the Essex BCF Plan for 2022/23 cannot be concluded until the final BCF guidance is issued by NHS England. The recommendations for 2022/23 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 (increasing to £46.4m in 2022/23) and Disabled Facilities Grant (£11.9m in 2021/22) that these too are pooled within the 2022/23 BCF plan, and so the plans for the application of these grants will be incorporated into the final BCF plan.

6.1.2. In the absence of an approved BCF plan for 2022/23, to ensure continuity of funding to NHS-commissioned providers of BCF services from April 2022, 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.

6.1.3. The monthly value of the purchase orders for social care and NHS-commissioned services are shown in the table below. Without any confirmed level of uplift to be applied to contributions, the values will remain the same for 2022/23 until actual values are published.

| Countywide  |                   |  |                   |
|---|-------------------|--|-------------------|
| Monthly Schedule of Invoice Payments (Subject to amendment once final BCF is agreed and approved) |                   |  |                   |
| Annual Value<br>£   |                   | Monthly Invoice Value<br>(Provisional) £ |                   |
| <b>Social care</b>  |                   | Apr-22                                   | 7,224,622         |
| Protection of Social Care   | 33,427,465        | May-22                                   | 7,224,622         |
| Care Act  | 4,193,044         | Jun-22                                   | 7,224,622         |
| Reablement  | 4,892,988         | Jul-22                                   | 7,224,622         |
| Carers Breaks   | 613,176           | Aug-22                                   | 7,224,622         |
| <b>Sub - Total</b>  | <b>43,126,673</b> | Sep-22                                   | 7,224,622         |
| <b>NHS Commissioned Services</b>  |                   | Oct-22                                   | 7,224,622         |
|   |                   | Nov-22                                   | 7,224,622         |
|   |                   | Dec-22                                   | 7,224,622         |
|   |                   | Jan-23                                   | 7,224,622         |
|   |                   | Feb-23                                   | 7,224,622         |
|   |                   | Mar-23                                   | 7,224,622         |
|   |                   |  |                   |
|   |                   |  |                   |
|   |                   |  |                   |
|   |                   |  |                   |
|   |                   |  |                   |
| <b>Sub - Total</b>  |                   |  |                   |
| <b>Total</b>  |                   | <b>Total</b>                             | <b>86,695,464</b> |
| <b>CCG</b>  |                   |  |                   |
| Mid Essex   | 26,053,887        |  |                   |
| North East Essex  | 26,248,451        |  |                   |
| West Essex  | 8,895,744         |  |                   |
| Basildon & Brentwood  | 19,650,535        |  |                   |
| Castle Point & Rochford   | 5,846,847         |  |                   |
| <b>Total</b>  | <b>86,695,464</b> |  |                   |

- 6.1.4. 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 £21.7m, bringing the total CCG minimum contribution to £108.4m (the 2021/22 value). Furthermore, incorporating the iBCF and DFG values shows that the BCF was worth £165.3m in 2021/22.

| <b>Better Care Fund Summary</b> | <b>2021/22<br/>£m</b> |
|---------------------------------|-----------------------|
| <b>Funding Sources</b>          |                       |
| Minimum CCG Contribution        | 108.4                 |
| Additional CCG Contribution     | -                     |
| iBCF                            | 45.0                  |
| DFG                             | 11.9                  |
| <b>Total BCF Pooled Budget</b>  | <b>165.3</b>          |

## 6.2. Legal implications

- 6.2.1. 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).
- 6.2.2. The CCGs have confirmed their commitment to the proposed interim BCF arrangements described in this report so as to ensure continuity of funding to NHS-commissioned providers of BCF services from April 2022 by way of a formal letters signed by their Chief Finance Officers.
- 6.2.3. The Section 75 agreements will need to be varied to reflect the proposals set out in this report. A further variation to these agreements may be required when the BCF Planning Requirements for 2022/23 are published.

## 8. Equality and Diversity implications

- 8.1 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.

- 8.2 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).
- 8.3 The equality impact assessment (Appendix 2) indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **9. List of appendices**

- 9.1 Appendix 1 – BCF Expenditure Summary 2021/22
- 9.2 Appendix 2 - Equality Impact Assessment

## **10. List of Background papers**

- 10.1 Cabinet paper FP/995/02/21 on 16 March 2021 – approved interim arrangements for the financial year 21/22, pending NHSE's approval of the Essex allocations and guidance. This decision also approved the variation of the BCF s75 agreements
- 10.2 Cabinet paper FP/180/10/21 on 24 November 2021 – approved the BCF Plan to be submitted to NHSEI and again the variation of the BCF s75 agreements
- 10.3 NHSEI approval of the 21/22 BCF Plan on 12 January 2022.
- 10.4 Letters from the CCGs confirming payment of interim arrangements.
- 10.5 Current section 75 agreements