

TRAFFORD COUNCIL

Report to: Executive
Date: 21 March 2022
Report for: Decision
Report of: Executive Member for Health, Wellbeing and Equalities

Report Title

REPORT: FUTURE COMMISSIONING AND FINANCIAL ARRANGEMENTS FOR HEALTH AND SOCIAL CARE

Summary

This report provides details of current contractual arrangements in respect of health and social care and proposals to secure a mechanism which will enable the Council to manage joint working with health, and other partners following the development of the Greater Manchester Integrated Care System (ICS) and disestablishment of Trafford Clinical Commissioning Group (CCG) on 30 June 2022.

Recommendation(s)

It is recommended that the Executive:

- 1. Approves the proposal to enter into a single section 75 agreement for two years to secure joint commissioning arrangements for locality-based services between Trafford Council and the NHS GM Integrated Care Board (“GM ICB”) underpinned by an aligned budget; and**
- 2. Approves the proposal to continue the current contractual arrangements to deliver Community Health Services through the GM ICB as detailed in the report; and**
- 3. Delegate authority to the Corporate Director of Adult Services, in consultation with the Corporate Director of Governance and Community Strategy and the Director of Finance, to agree the final financial amounts and services in scope and to agree the terms and conditions of and to enter into any relevant legal documentation as required pursuant to these recommendations.**

Contact person for access to background papers and further information:

Name: Helen Gollins , Acting Director of Public Health
Extension: 4276

Relationship to Policy Framework/Corporate Priorities	This paper relates to our corporate priorities of Health and Well-being, Targeted Support and Children and young people
Relationship to GM Policy or Strategy Framework	Our People, Our Place, Greater Manchester Strategy Greater Manchester Sexual Health Strategy Taking Charge of our Health and Social Care in Greater Manchester
Financial	The financial implications for the Council are set out below:- <ul style="list-style-type: none"> the funding of the community health services for 21/22 is £6.8m and is met from within existing public health and children's budgets. The funding for 22/23 is still to be agreed but will be contained within the public health budget for 22/23. the funding of the BCF for 21/22 is £27.8m with the Council's share being £10.5m. This is met from within existing adult revenue and capital budgets. The overall funding for 22/23 is yet to be finalised as the CCG await confirmation of their overall allocation. The Council's share is contained with the adult's budget for 22/23 the funding of the Learning disability pooled fund is £26.2m in 21/22 with the Council's share being £23.9m which is met from within existing adult budgets. The overall funding for 22/23 is yet to be finalised as the CCG await confirmation of their overall allocation The Council's share is contained with the adult's budget for 22/23.
Legal Implications:	Statutory obligations and relevant legislative principles are referenced in the report. Advice in respect of s75 arrangements, Public Procurement Regulations 2015, Health and Social Care Bill (2021) and associated NHS commissioning legislation has been provided in order to appraise the service delivery options detailed in the report. Noting the Council's overarching legal duty, the prevailing context of healthcare reform and the ongoing impact of the Covid-19 pandemic, have necessitated pragmatic decisions to be taken in relation to healthcare services and procurement.
Equality/Diversity Implications	All services will have a requirement to tailor support to residents with protected characteristics, to be detailed in individual service specifications. There will be a positive impact on diverse groups of Trafford residents through the provision of these services.
Carbon Reduction	There will be a requirement for any providers to commit to carbon reduction as part of the contract or agreement.
Sustainability Implications	There will be a requirement for any providers to commit to sustainability as part of the contract or agreement.
Resource Implications e.g. Staffing / ICT / Assets	None for Trafford Council directly- all would be considered within the individual service specifications and contractual arrangements.
Risk Management Implications	Risk that public health grant is not spent on public health services. Risk that services will stop provision if an appropriate contract or agreement is not put in place- this would have significant implications on the health and wellbeing of Trafford residents.
Health & Wellbeing Implications	All services listed significantly impact the health and wellbeing of Trafford residents directly.
Health and Safety Implications	Health and safety will be considered within individual service specifications

1.0 Background

- 1.1 The Executive report on Future Governance Arrangement for Health and Social Care outlines the current health and social care landscape and progress on future governance. This paper will outline further detail to the current commissioning and service delivery elements within this system and proposals for future arrangements when the Health and Social Care bill abolishes Trafford CCG on 30 June 2022 and replaces it with the statutory Greater Manchester Integrated Care System (ICS). The board leading this structure, the NHS Greater Manchester Integrated Care Board (ICB) will take on the NHS commissioning functions of CCGs as well as some of NHS England's commissioning functions. It will also be accountable for NHS spend, performance and delivery within the system.
- 1.2 In 2013, the responsibility for certain public health services transferred to local authorities pursuant to section 12 of the Health & Social Care Act 2012 (HSCA). Community health services fall under the scope of the Council's prescribed functions and the Council is under a legal duty to ensure the continued provision of the services. Allowing the service provision to lapse will result in the Council failing to fulfil its statutory duty, likely cause significant reputational damage to the Council and be detrimental to the health of the residents of the Council's Borough.
- 1.3 Trafford's Local Care Organisation (TLCO) was established on 1 October 2019. It brings together community health services provided by Manchester University NHS Foundation Trust (MFT) and adult social care services provided by Trafford Council. The community health services provided by MFT include those funded through Trafford Council's Public Health Team, All Age Commissioning and those funded through Trafford Clinical Commissioning Group (CCG).

2 Current S75 Partnership Agreement Position

- 2.1 Section 75 of the NHS Act 2006 allows the pooling of funds where payments may be made towards expenditure incurred in the exercise of any NHS or 'health-related' local authority functions. Section 75 also allows for one partner to take the lead in commissioning services on behalf of the other (lead commissioning) and for partners to combine resources, staff and management structures to help integrate service provision (integrated management or provision), commonly known as 'Health Act flexibilities'. Here staff can be seconded/transferred and managed by another organisation's personnel. (Section 113 of the Local Government Act allows staff to be available to 'non-employing' partner organisations). The Act also makes provision for the functions (statutory powers or duties) to be delivered on a daily basis by another partner, subject to the agreed terms of delegation. Under regulation 8 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000s, the partners may enter into arrangements where the NHS partner exercises the health-related functions of the local authority in conjunction with the exercise of their own NHS functions.
- 2.2 Trafford Council currently has the following section 75 arrangements in place:
- **Learning Disability Commissioning.** There is a section 75 outlining the commissioning of learning disability services between Trafford Council and Trafford CCG which expires in March 2022 which has included a pooled budget. It specifically relates to pass-through costs for the clinical commissioning of specialist health and clinical services for people with learning disabilities and

offers opportunities for integrated commissioning in the future. It also includes the learning disabilities care package budget. This equates to £26.2m.

- **Better Care Fund.** There is a section 75 for the management and pooled budget for the Better Care Fund between Trafford CCG and Trafford Council which expires in March 2022 equating to £27.8m. The BCF enables the development and delivery of integrated approaches across the CCG and the local authority on supporting older people in the community with specific reference to hospital discharge.
- **Children’s Clinical Commissioning.** There is a long-standing section 75 between Trafford CCG and Trafford Council for the commissioning and delivery of Children’s Clinical Services equating to £80k. Trafford CCG provide the funding and Trafford Council employ the staff team and commission the services. This agreement does not reflect current structures and will need to be reviewed in order to ensure that our integrated arrangements are fit to meet the challenges (and changes) of the future.
- **Management of the TLCO.** Trafford Council has a section 75 agreement in place with MFT for the management of TLCO which is reviewed annually and currently expires in March 2023.

3 Future Section 75 Agreement Proposal

- 3.1 It is clear that a broad section 75 agreement is needed to describe how the locality commissioning responsibilities will be met across the health and social care economy.
- 3.2 **The proposal is to enter into a single section 75 agreement for two years to secure joint commissioning arrangements for locality based services between Trafford Council and the NHS GM Integrated Care Board (“GM ICB”) underpinned by an aligned budget. This would replace the current section 75 agreements and give the opportunity to review and update these.**
- 3.3 One of the key issues in determining the format of any section 75 agreement is the degree of risk each of the partners is prepared to enter into, and in particular financial risk. Operational risk is managed through robust governance arrangements, and financial risk through a decision on whether a pooled budget or aligned budget is the most appropriate mechanism, together with a risk share agreement. Having a section 75 agreement with aligned budgets will enable us to develop a place-based approach but still give us comfort in terms of managing budgets and risk, whilst delivering the best outcomes for people.
- 3.4 Aligned budgets involve two or more partners working together to jointly consider their budgets and align their activities to deliver agreed aims and outcomes, while retaining complete accountability and responsibility for their own resources.
- 3.5 A pooled budget (or fund) is an arrangement where two or more partners make financial contributions to a single fund to achieve specified and mutually agreed aims. It is a single budget, managed by a single host with a formal partnership or joint funding agreement that sets out aims, accountabilities and responsibilities.
- 3.6 The entirety of the ICS structure is still in the early formation stages and there is much to be implemented. This includes clarity around roles and responsibilities

including leadership for place, and appointments to those positions – this directly impacts on the Council's ability to maintain the strong partnerships that it has developed with the CCG over time and it is likely that new partnerships will need to be formed.

- 3.7 We ultimately need to secure resources in order to safeguard services for our residents, but as the ICB is an organisation in development, with a deficit budget, we do need to manage the risks that working together will bring.
- 3.8 In Trafford, the history of our section 75 BCF is that both organisations took a prudent approach, utilising aligned budgets and finally moving to a pooled budget approach this year when our partnerships had matured. The ICB will inherit the financial deficits that many GM CCGs have been struggling with over the years. For these reasons, it is not in our interest to pool budgets initially, and instead it is recommended that we establish an aligned budget with the ICB.

4 Current Contract Position

- 4.1 Manchester Foundation Trust (MFT) currently deliver community health and social care services through Trafford LCO via a contract which was procured by and lead by Manchester Health and Care Commissioning (MHCC) (The MHCC Contract). Trafford CCG are an associate pursuant to the MHCC contract and as such, receive a range of services from MFT. Trafford Council, via its local commissioning arrangements with Trafford CCG, has utilised Trafford's CCG associate status to also fund the provision of a number of services by MFT.
- 4.2 Trafford Council funds various school nursing, health visiting, infection control and weight management services through the current MHCC contract with the annual contract amount for 2021-22 totalling £5.7m. The new contract will be established from April 2022 to March 2023 and will novate to the NHS Greater Manchester Integrated Care Board in July 2022 when Trafford CCG and MHCC will cease to exist. The final figures for the future services are currently being negotiated between Trafford Council, Trafford CCG and MFT.
- 4.3 Trafford Council's All Age Commissioning Service commission children's health services such as children's sensory and occupational therapy, plus a contribution to Child and Adolescent Health Services (CAMHS) and intensive behaviour support. These contracts total £512k and are provided via the MHCC contract and will need to be included in future funding arrangements.
- 4.4 Trafford Public Health has historically funded some NHS services that may be in scope for future health commissioning via the NHS Greater Manchester Integrated Care Board (ICB). These include community nutrition and dietetics, district nursing and some additional elements of the specialist weight management service. Trafford Council has agreed to fund these from April to June 2022 to enable a wider piece of work to be completed on the future delivery of these services with MFT and the ICB. Depending on the outcome of this work, some funding for these services may need to be included in any agreements from 1 July 2022. The contracts total £588,623 in 2021-22.
- 4.5 Stockport Metropolitan Borough Council (Stockport) is party to a contract with Central Manchester University Hospitals NHS Foundation Trust (now Manchester University NHS Foundation Trust (MFT)) for the provision of Sexual and

Reproductive Health Services for the Boroughs of Stockport, Tameside and Trafford (the Contract). The Contract was formally procured on inception in 2016, on broadly standard community health contract terms. Trafford Borough Council (the Council) (amongst others) also benefit from the Services under the Contract as a Partnering Organisation. This contract expires in March 2022.

5 Options for Future Contracts

- 5.1 The Council is under a legal duty to ensure the continued provision of the Services. To enable Trafford Council to continue to provide these community health services for Trafford residents, the Council must secure a contractual mechanism for the services to be delivered when the Health and Social Care bill abolishes Trafford CCG on 30 June 2022 and replaces it with the statutory Greater Manchester Integrated Care System (ICS).
- 5.2 An options appraisal has been undertaken to explore the following contractual routes for service delivery:
- Route One: Procurement via tender exercise
 - Route Two: Vary the current section 75 management agreement with the TCLO
 - Route Three: Continue the current contractual arrangements with MHCC and Trafford CCG and allow these to novate to the ICB from 1 July 2022

Options appraisal

5.3 Route One: Procurement via tender exercise

Benefits:

- A formal re-procurement is legally compliant route to secure the future delivery of health and social care services, being in-keeping with the current procurement regime mandated by the Public Contracts Regulations 2015.
- At face value, re-procurement would demonstrate that the Council is seeking to achieve value-for-money and drive service quality / development with a view to improving health outcomes.
- Again, at face value, a formal re-procurement maximises the pool of prospective bidders.
- This method reduces the risk of legal challenge from a procurement law perspective.

Challenges

- Procurement challenges detailed below
- Given time constraints, it is likely to be unworkable to devise a procurement which properly accounts for all factors to drive value and improved health outcomes under the contract – the efficacy of a formal process is likely to be undermined:
- Running a competitive process within the time constraints presented is likely to be costly and unlikely to represent good value in the round.
- Despite opening up the Services to a broad range of bidders, there are concerns regarding the actual appetite in the market to tender for the Services due to capacity constraints

- An expedited procurement process may also undermine the continuity of the Services, without time to consider any transition properly.
- A full re-procurement may deprive the Council of the benefits which may soon be afforded by the Provider Selection Regime.

Summary: Based on the challenges detailed above and the rationale set out below, it is not recommended that a procurement exercise is undertaken at this time.

- Local evidence has shown that for community health services, tendering has a substantial detrimental impact on the service effectiveness and delivery standards. Retendering for the sexual health service in 2015/16 led to a large reduction in access to sexual health services in the years following. Figures show that it has taken a substantial amount of time to recover to previous levels. The greatest impact during this time was on younger women (those aged 20 and under). Nationally there is a drive for increased contract lengths and different types of arrangements for NHS services to address this. No other providers competed against MFT to deliver our Local Care Organisation in 2019;
 - It is not in Trafford Council's interests to have services delivered by a provider other than Manchester University NHS Foundation Trust (MFT) at this time of instability across the health and social care sector. This is because MFT currently successfully manage our Local Care Organisation and have worked in close partnership with to enable a system wide integration of local health and social care. MFT also manage all local acute hospital services and those in Manchester. It is important that community health services are provided through the same provider to ensure smooth referral links and a whole system approach to healthcare for the local area.
- NHS England's 2019 engagement exercise found that the current competition and procurement rules are not well suited to the way healthcare is arranged, and creates barriers to integrating care, disrupts the development of stable collaborations, and causes protracted processes with wasteful legal and administration costs.
- The procurement landscape, in particular in relation to the provision of healthcare services, is currently in a period of significant change, with a leaning towards much greater collaboration between local government and the NHS soon likely to be enshrined in statute.
- The timescales associated with a procurement exercise and subsequent implementation/mobilisation phase also present a number of risks to the Council, particularly where there is a service delivery transfer to one or more new providers.
- In recognition of these barriers, the new Health and Social Care Bill (2021) aims to support the development of existing service provision where the arrangements are working well and there is limited or no value in seeking an alternative provider as an alternative to procurement. The bill will instead allow commissioners and providers greater certainty and continuity of service provision to improve partnerships between providers and increase integration of services.
- Both the NHS and public procurement regimes are subject to imminent transformational change and reform. Under the Health & Care Bill, integration between NHS bodies and local government is to be increased under a duty to

co-operate and Integrated Care Boards (ICBs) are to be made statutory bodies, absorbing clinical commissioning groups (CCGs).

- Under the Government's Transforming Public Procurement proposals, a new public procurement regime is under development, with proposals expected to make the regime more proportionate for contracting authorities. It is currently expected that, alongside NHS healthcare services, healthcare services commissioned by local authorities will fall into the ambit of a new Provider Selection Regime, which is currently being consulted on.
- Notably, paragraph 2.7 of the consultation paper sets out the intent of the change to "encourage and simplify joint working between local authorities and NHS bodies". Whilst direct awards are contemplated, it is not entirely clear the extent to which commissioners will be encouraged to make direct contract awards without running procurement processes.

5.4 Route Two: Vary the current section 75 management agreement with the TCLO.

The option to vary the current section 75 agreement between Trafford Council and MFT to incorporate the delivery of the additional in-scope community health services and extend its current period has been explored.

Summary: Based on the recommendations in respect of the singular s75 Agreement and the challenges and the rationale set out below, it is not recommended that the current s75 management agreement is varied.

- Although this option is legally possible, section 75 agreements exist to combine finances and to allow partnership arrangements between bodies. They are a management and commissioning function, and not designed for operational service delivery. It would need significant legal resources to enable this type of arrangement to be drawn up.
- The section 75 agreement would need to include detailed specifications and finances for each service listed with clear outcomes and data capture, alongside agreed performance monitoring and governance arrangements. These would need to be finally negotiated with MFT within the proposed budgets available:
- The section 75 agreement would need a mechanism to build in flexibility to alter services according to budgets and needs each year with an agreed process for this.
- The term of the section 75 agreement would need to be varied also for two years. This will give time for the changes occurring from the Health and Social Care Bill (2021) to be enacted and bedded in.
- Section 75 Agreements are more complex than pure service-for-payment contracts (due to the pooling of budgets etc), which will make the Services more complex to manage.
- MFT have expressed an unwillingness to support a move to incorporate service delivery within the s75 Agreement.

5.5 Route Three: Continue the current contractual arrangements with MHCC and Trafford CCG and allow these to novate to the ICB from 1 July 2022 and vary the scope of the contract to incorporate sexual health services.

Summary: Based on the rationale set out below, it recommended that the current contractual arrangements with MHCC and Trafford CCG remain in situ and that these contract arrangements are allowed to novate to the ICB from 1 July 2022.

- In the context of the NHS Standard Contract (the mandated form used between NHS England, CCGs and NHS Trusts), guidance states that services which are crucial for the local community and must be delivered may continue by implication (i.e. an implied contract on the same terms but continuing to run).
- The NHS standard contract describes NHS Trusts as Essential Services. This means the provision of services under the MHCC Contract are protected where the continued availability of those services is regarded as essential. This enables contracts within the NHS to be renewed year on year without the need to go out to procurement.
- The MHCC Contract resulted from a procurement exercise in 2019 and expired on 31 March 2020. MHCC renewed the contracts for the financial years 2020-21 and 2021-22. There is a process underway to establish a new contract for 2022-23 using the same rationale as set out above.
The procurement landscape, in particular in relation to the provision of healthcare services, is currently in a period of significant change, with a leaning towards much greater collaboration between local government and the NHS soon likely to be enshrined in statute.
- Finally, Trafford CCG will transfer to the Greater Manchester Integrated Care System (ICS) structure from 1st July 2022. The MHCC Contract will novate from MHCC and Trafford CCG to the ICB. As such, the ICB will continue to contract with MFT for health services. Trafford Council will continue to access service delivery as an associate commissioner.
- It is important that Trafford Council align our community health services to the same NHS provider for consistency and partnership working across Trafford.
- This is a continuation of our current contractual arrangement so is less resource intensive in implementing.
- When Trafford CCG and MHCC are disestablished on 30 June 2022, the NHS standard contract allows for all contracts to automatically novate into the ICB on 1 July 2022. Trafford Council will continue to be an associate to this contract via a new collaborative commissioning agreement
- This option also works in partnership with MFT and this option would support the further development of that partnership and allow the continuity of current services. MFT have a preference that we use this option.
- The contract has an established mechanism to vary specifications and budgets each year and there is an agreed process for this.
- This option still gives Trafford Council the ability to directly contract for services when legislation allows this option in the future.

6 Conclusion & Recommendations

- 6.1 Noting the Council's overarching legal duty, the prevailing context of healthcare reform and the ongoing impact of the Covid-19 pandemic, a formal re-procurement will not be possible to complete within the required timescales and would likely lead to disruption in the service provision.
- 6.2 In the short to medium term, it is recommended that the Council should take a pragmatic approach to ensure continued service delivery, with a commitment to a re-procurement in the longer term. The pragmatic solution is a short-term extension to

the current contractual arrangements in preparation for a wider review of changes to the health and social care landscape.

- 6.3 Longer term, the Council should consider options to re-procure the services, reflective of its newly-framed relationship with the NHS, to ensure value-for-money and to drive the quality of the services under a new contract.
- 6.5 It is recommended that a broad section 75 agreement is developed to allow the Council to enter into a single section 75 agreement for two years to secure joint commissioning arrangements for locality based services between Trafford Council and the NHS GM Integrated Care Board (“GM ICB”) underpinned by an aligned budget. This would provide an opportunity for the Council to review and update all s75 arrangements and will see current arrangements replaced by a new singular section 75 agreement.
- 6.6 For the delivery of health and social care services, it is recommended that the Council’s current contractual arrangements with MHCC and Trafford CCG remain in place and allow these contracts to novate from MHCC and Trafford CCG to the ICB from 1 July 2022. It is also recommended that the scope of the MHCC Contract is varied to incorporate sexual health services, ensuring that all health and social care services are delivered by MFT via one contractual mechanism. This option also enables to Council to reassess its contractual options following anticipated changes to procurement legislation.

7 Consultation

7.1 None

8 Reasons for Recommendation

8.1 Trafford Council requires strong and robust governance arrangements to manage the local health and social care system. There needs to be mechanisms to continue the joint commissioning of services and the provision of mandated health and social care services in accordance with legislation. Trafford Council must ensure that any future arrangements for commissioning or the delivery of service are secured by July 2022 when the CCGs are abolished and that these manage the financial, governance and service delivery risks for Trafford Council in working with a new ICS structure.

Key Decision: Yes

If Key Decision, has 28-day notice been given? Yes

Finance Officer Clearance GB

Legal Officer Clearance DS

[CORPORATE] DIRECTOR’S SIGNATURE *(electronic)*.....



To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.