

Report to the Cabinet

Meeting to be held on Thursday, 13 July 2017

Report of the Head of Service Policy, Information and Commissioning (Start Well)

Part I

Electoral Divisions affected:
All

Mental Health Partnership Agreement with Clinical Commissioning Groups for Jointly Funded Rehabilitation Services

(Appendices 'A' and 'B' refer)

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Executive Summary

This report sets out proposals to develop a Section 75 Agreement with the Lancashire Clinical Commissioning Groups to manage the funding arrangements for a specialist rehabilitation framework for Care and Support services for adults with mental health needs.

This is deemed to be a Key Decision and the provisions of Standing Order No.25 have been complied with.

Recommendation

The Cabinet is recommended to:

- (i) Agree that the County Council should commence negotiations with the aim of establishing a Section 75 partnership agreement with the following Lancashire Clinical Commissioning Groups (CCGs) to provide the governance for a new framework for Mental Health Rehabilitation Services:
 - Chorley and South Ribble CCG
 - Greater Preston CCG
 - West Lancashire CCG
 - Fylde and Wyre CCG
 - East Lancashire CCG
 - Morecambe Bay CCG (Lancashire North)
- (ii) Authorise the Director of Adult Services and the Director of Legal and Democratic Services to agree the terms of the Section 75 Agreement.

Background and Advice

A Mental Health Rehabilitation Service is currently being procured which will provide specialist time limited support (up to 2 years) to deliver effective rehabilitation and recovery, addressing both Health and Social Care needs and establishing outcomes which will lead to Service Users making choices, taking control and progressing to independent living.

Typically, someone receiving this service will have severe and complex mental health needs, will have become 'stuck' and will not be progressing with their recovery and will present a risk to themselves and/or others. Without this service, the person would become (or may already be) a demanding user of inpatient or community services.

The County Council and the Lancashire Clinical Commissioning Groups (CCGs) listed above currently spend around £6.2m annually supporting approximately 86 Mental Health Rehabilitation Service Users in Residential care, Nursing care and Supported Housing settings. Services are delivered by providers from the independent and voluntary sectors. Most placements are jointly funded by the County Council and CCGs on a 50:50 basis with a cost to the County Council of approximately £3m per annum.

Although there is a good practice guide issued by the Department of Health based on the principles of Continuing Care and partners have joint responsibilities via Mental Health Section 117 aftercare, there are currently no formal arrangements, guidelines or policies in place as to local funding arrangements for the joint funded packages of care and support in Lancashire. Typically, arrangements are negotiated at an individual package level which has resulted in no clear audit trail with regard to decision making and therefore making it hard to reclaim funding from CCGs.

The Lancashire CCGs have indicated their willingness to work in partnership with the County Council to develop new governance arrangements to manage responsibilities for joint funded rehabilitation packages.

It is therefore proposed that, for the commissioning of all jointly funded rehabilitation placements, the County Council and all Lancashire CCGs enter into an Agreement under Section 75 of the National Health Services Act 2006 which will bring much needed transparency and reduce the bureaucracy of the current arrangements. The relevant background to the basis of the proposed Section 75 Agreement, its benefits and the proposed governance arrangements are set out in Appendix 'A'.

Consultations

Regulations issued pursuant to the 2006 Act stipulate that partners should, prior to entering into an agreement under Section 75 of the Act, consult with anyone likely to be affected. This would usually mean staff, service users and other NHS bodies.

All Lancashire CCGs have been involved in the development of the mental health rehabilitation framework agreement.

A separate Section 75 Agreement is already in place to cover County Council Social Work staff working within Lancashire Care Foundation Trust, who therefore work closely with the County Council to deliver integrated health and social care assessment and care co-ordination. They have been made aware of the County Council's intentions and are supportive of the proposal, as it simplifies arrangements for delivery of an integrated health and social care service.

In 2015/2016, discussions were initiated with service providers and key stakeholders regarding a new rehabilitation service. An online stakeholder survey was used to assist in the development of the framework. Results from this were favourable with, for example:

- 94% of respondents agreed that the draft service specification set out the requirements in an understandable way.
- 84% agreed that they can deliver what is required by the draft service specification.
- 90% agreed that it was reasonable to ask for the information required from the Key Performance Indicators.

Service users will not be affected by the parties entering into the Section 75 Agreement and it is not therefore considered that any separate consultation is required.

Implications:

This item has the following implications, as indicated:

Risk management

If Lancashire CCGs and the County Council fail to reach agreement and the Section 75 Agreement is not put in place the County Council will have to develop alternative options to ensure that robust governance is established and that financial accountability for each funding body is clear and transparent.

In those circumstances the financial risks to the County Council would be that:

- Some existing rehabilitation placements are not joint funded due to a lack of clarity and transparency around the funding arrangements.
- The County Council has to recover costs on an individual case by case basis.
- The associated difficulty of reclaiming money back from CCGs due to the lack of a clear audit trail.

It is clear that the current governance arrangements are not fit for purpose and all Lancashire CCGs have agreed to review the current arrangements as proposed.

This service will clearly establish rehabilitation as a key element of the overall mental health pathway of service provision. There is a risk that current spend will increase due to increased demand. To address this, it will be the responsibility of Commissioners to educate those referring service users to the service (e.g. Social Workers) as to the eligibility requirements and for LCC to ensure only appropriate referrals are approved. Whilst CCGs may commission services from the framework

agreement for their own purposes without recourse to LCC or being subject to the LCC approval, the cost of those services will be borne entirely by the CCG. All jointly commissioned services for which costs will be split on a 50:50 basis will be subject to LCC approval.

Financial

The current position is that due to the lack of transparency around the commissioning and funding arrangements for joint funded packages, some rehabilitation packages which meet the criteria for joint funding by CCGs are in fact being fully funded by Lancashire County Council, particularly in community settings.

In addition, there still remains in some cases substantial difficulty in reclaiming placement costs from CCGs where joint funding is agreed, resulting in labour intensive investigation and negotiation.

In line with the County Council and NHS joint responsibilities for aftercare, it is proposed that all placements for jointly funded rehabilitation sourced via the rehabilitation framework are commissioned on a default position of a 50/50 basis, regardless of setting, to include both residential and community based placements. This will greatly reduce the negotiation of individual packages of support around proportions of health and social care input and introduce a pragmatic solution, based on fair principles.

As there are already joint funding arrangements in place for current service users receiving a rehabilitation service, costing £6.2m annually, and CCGs currently commit budgets for the delivery of jointly funded rehabilitation, financial commitments and risks are already incurred.

The risk of potential overspend on existing County Council budget provision for joint funded Mental Health rehabilitation will be managed through review of monitoring information provided to the Section 75 Partnership Group and, where potential pressures arise as a result of decision making within integrated Lancashire Care Foundation Trust/Lancashire County Council teams, through the existing Operational Interface Group.

As part of market shaping activity, including the new rehabilitation framework, it is anticipated that the number of community rehabilitation placements will increase as these are not currently available across Lancashire. Community rehabilitation in supported housing is seen as a more preferable environment for rehabilitation as it reflects a community living setting. This will result in increased expenditure for community rehabilitation, but will be offset by:

- The reduced use of more costly (residential and nursing) rehabilitation placements.
- An improved rehabilitation pathway to facilitate the flow from fully funded (secure) placements, commissioned from the CCG funded Independent Sector Mental Health framework (for fully NHS funded rehabilitation), stepping down to jointly funded placements.

Jointly funded packages will be sourced via the County Council's Care Navigation Team which contains a full time post dealing with mental health placements. This

post is funded by the County Council but at some point in the future it may be necessary to review the resources required for delivery of the framework and Section 75 Agreement, particularly if demand for the service increases and additional staffing input is required.

The County Council is developing new ways of working with social work practitioners already embedded in integrated teams with Lancashire Care Foundation Trust. This will involve an appropriate and proportionate level of assessment to enable patients to quickly regain their independence, if possible before considering a requirement for further assessment and care. Monitoring activity and performance will be key to delivering the change.

Legal

The power to enter into a Section 75 Agreement is conditional on the following criteria:

1. The arrangements are likely to lead to an improvement in the way in which those functions are exercised.
2. The partners have jointly consulted people likely to be affected by such arrangements

The information outlined above indicates that those criteria will be met. However, the details of the Agreement are to be negotiated between the parties and it is therefore not possible at present to comment upon any specific legal risks. Ongoing involvement in the drafting of the s75 Agreement will be required to ensure that the Agreement contains the required information and fulfils the relevant statutory criteria.

Equality and Diversity/Human Rights

An Equality Analysis was completed in November 2014 to support a previous report "Reshaping Mental Health Services: A Case for Change". The Equality Analysis has been updated and refreshed to consider the implications of the recommendations set out in this report and is attached at Appendix 'B'. This will therefore take fully into account the duties imposed by Section 149 of the Equality Act 2010.

List of Background Papers

Paper	Date	Contact/Tel
Development of Commissioning and Procurement Arrangements for the Mental Health Care and Support Market http://council.lancashire.gov.uk/ieDecisionDetails.aspx?ID=7271	October 2015	Julie Dockerty & Jon Blackburn - Programmes and Project Management

Commissioning and Procurement Arrangements for the Mental Health Residential and Nursing Home Market for People with Mental Health Needs

<http://council.lancashire.gov.uk/ieDecisionDetails.aspx?ID=7164>

September 2015

Julie Dockerty & Jon Blackburn – Policy, Information & Commissioning

Reshaping Mental Health Services: A Case for Change

<http://council.lancashire.gov.uk/mgIssueHistoryHome.aspx?Id=31284>

May 2014

Steve Gross Executive Director Adult Services, Health and Wellbeing

Reshaping Mental Health Services in Lancashire
May 2014

November 2014

Julie Dockerty & Jon Blackburn – Policy, Information & Commissioning