

**Report to the Cabinet Member for Adult and Community Services**  
**Report submitted by: Executive Director of Adult Services, Health and Wellbeing**  
**Date: 15 January 2015**

**Part I**

Electoral Divisions affected:  
All

**Implementing the Care Act: Development of a s75 Partnership Agreement with Lancashire Care Foundation Trust for meeting the County Council's responsibilities for provision of Social Care in Prisons**

(Appendix 'A' refers)

Contact for further information:

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**Executive Summary**

A previous report to the Cabinet Member in September 2014 set out that under s.76 of the Care Act 2014 the County Council must establish effective governance and operational arrangements for the assessment of need and for the provision of a broad range of support into the five prisons and two approved premises located in Lancashire.

Negotiations have been taking place with Lancashire Care Foundation Trust (LCFT) for several months with a view to establishing a new Section 75 partnership agreement under the NHS Act 2006. Such s75 agreements enable NHS and local authority bodies to undertake each other's functions in order to support the delivery of local objectives. The new s75 agreement with LCFT would mean it will discharge the substantive majority of the County Council's responsibilities for social care in prisons as part of an integrated health and social care service for prisoners.

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

**Recommendation**

The Cabinet Member for Adult and Community Service is recommended to:

- (i) Approve the negotiation and completion of a Section 75 partnership agreement with Lancashire Care Foundation Trust to enable that organisation to discharge

the Council's responsibilities under s76 of the Care Act including making provision for the social care assessments and meeting identified need in Lancashire's prisons and other approved premises (as defined by statute). It is proposed that the agreement would remain in place for an initial period of 2 years, commencing 1 April 2015, with the option to extend for a further 3 years;

(ii) Authorise the Executive Director of Adult Services, Health and Wellbeing, in consultation with the County Secretary and Solicitor, to agree the finalised Section 75 agreement.

## **Background and Advice**

Section 76 of the Care Act 2014 sets out the new responsibility for Local Authorities to assess and meet the social care needs of offenders in prison and approved premises. In the past, it has been unclear which group of statutory bodies is accountable for meeting the social care needs of prisoners, and that continues to be the position. From the implementation date in April 2015 all adults in prisons settings should expect broadly similar access to and levels of social care and support as the rest of the population. Councils will receive funding from central government towards the associated costs.

In Lancashire, there are five adult men's prisons, with approximately 3,900 places, and the County Council will become responsible for providing social care to those prisoners in need from April 2015. This report sets out the Council's commissioning proposals to deal with this new responsibility.

The County Council will become responsible for the assessment of prisoners' social care and support needs of all those detained in the relevant institutions in Lancashire. Prisons are obliged to co-operate and assist the Council in the undertaking of this work.

Further provisions of the Care Act mean that responsibility for providing prisoners' care and support will rest with prisons up to a specified threshold. Above this threshold, the responsibility for provision of care will rest with the County Council. The eligibility threshold reflects that which applies to people who live in the community and require care and support.

## **Commissioning and Delivery Options**

In Lancashire, NHS England invited the County Council to collaborate with the intention of jointly commissioning an integrated Health and Social Care service and some initial discussions have been had to explore the feasibility. However the timescales for re-commissioning in Lancashire will not enable the council to meet its responsibilities in the required timeframe. Nevertheless, we will continue to work with NHS England to see if there are benefits in aligning our commissioning approaches and timescales at some future date.

LCFT already provides health care services into all five Lancashire prisons, so given its strategic and operational experience in this field, together with their appetite to extend their existing partnerships with the County Council, they have been seen as the obvious external organisation to partner with for delivery of these new services. Securing LCFT as the lead

organisation to start quickly on this work has built confidence that Lancashire can deliver to a challenging project timescale. LCFT has also been able to provide existing information about need and demand which is obviously necessary for commissioning any other provision likely to be required.

As an existing partner of the County Council, LCFT has indicated its willingness to respond positively to provide social care services from April 2015. The intention is therefore to develop a partnership agreement between the County Council and LCFT using the flexibilities contained in s75 of the NHS Act 2006. The requirements of such a S75 agreement are laid out in statutory instrument SI 2000 no 167 which sets out the aims and outcomes of the arrangement, the NHS and Council functions which are subject to the arrangement including how the arrangements are to be managed, monitored and the duration of the arrangement and provision for review of termination of the arrangement.

## **Development of the Section 75 Agreement**

The proposals set out and endorsed in the September 2014 have formed the basis for the further work that has been undertaken. A key step was establishing a Social Care Steering Group to oversee this work including representatives from the County Council, LCFT and the Prison service. The County Council representatives include the Head of Care Act Implementation.

1 April 2015 is the deadline by which robust arrangements must be established. However partners have reached a firm view already that suitable agreement on the business terms for a s75 Partnership between LCFT and the County Council can be reached by the end of this financial year, ready for implementation date. This includes the draft schedules required for the section 75 agreement. The schedules will define the main objectives, resource management and governance requirements

### **1. Services in scope**

The service relates to the discharge of the County Council's responsibilities under the provision of the Care Act 2014, s76.

### **2. Draft Aims**

- To provide an integrated approach to the delivery of social care assessments including assessments for equipment to support rehabilitation and care management service that fulfils the responsibilities of the Authority under the Care Act 2014.
- To undertake a full assessment in order to identify the eligibility and social care needs of Prisoners.
- To provide the most appropriate solution to the prisoners' social care needs by taking into account individual circumstances in a person-centred way and the custodial regime.
- To maintain or increase the functional independence of people within their current setting by giving advice on available options and providing equipment.
- To provide advice and information to reduce, delay or prevent further need.
- Arrange support for the individual and others involved in their care, and enable care to be provided safely which enables them to remain living as independently as possible for as long as possible, whilst in prison and in preparation for resettlement.

### **3. Service users, manner, location and access to the service**

The Trust will provide high quality assessments and interventions to prisoners in Lancashire who have eligible social care needs, to include:

- Assessments which accord with the Care Act requirements
- Customised support plans to meet identified needs and agreed outcomes
- Advice and information with regard to enhancing quality of life
- Demonstrating and instructing in the use of equipment
- Guidance to prison peer supporters and prison officers
- Use of assistive technology identified for use in a prison setting

### **4. Finance**

Details of budgets and services included within the agreement, information in relation to the contributions made by LCFT and the County Council. This schedule will identify the way resources will be managed to meet the identified needs of prisoners with eligible needs including the way we will manage risks and pressures.

### **5. Governance**

The intention is to establish a s75 Prisons' Partnership Board involving LCFT and the County Council with the following responsibilities:

- monitoring the effectiveness of the arrangements for delivery of the service, including the quality and performance;
- monitoring expenditure relating to the Services within the budgets set by the Partners and in accordance with the Annual Development Plan; and
- submitting quarterly reports and an annual return to the Partners, to enable them to monitor the success of the Partnership Arrangements
- Identifying and managing risks in relation to service delivery with the prison service
- establishing information sharing agreements to ensure assessments and support plans are recorded on the County Councils Liquid Logic system
- define the terms by which the partnership agreement can be terminated

The partners will nominate an Authorised Officer, who shall be the main point of contact for the partners and will be responsible for representing each organisations perspectives and will manage the agreement. The Authorised Officers will be responsible for taking decisions concerning the Partnership Arrangements, unless they indicate that the decision is one that must be referred to their respective senior managers or in the case of the Trust to its boards or in the case of the Authority to a Cabinet Member.

### **6. Staffing**

Lancashire Care Foundation Trust will recruit staff to manage the assessment and care service. The staff will play a key role in ensuring the Local Authorities statutory duties are met with regards to the assessment and care planning of Social Care

Needs in prisons and Approved Premises. The two social work posts will report to LCFT's social Care lead, and will be recruited to in accordance with the Authority's vacancy management procedure.

## **7. Consultations**

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

The five Lancashire Prison Governors have been made aware of our intentions and are supportive of the proposal as it simplifies arrangements for delivery of an integrated health and social care service. In addition NHS England the primary commissioner of prison health services are aware and supportive of the proposal.

Relevant staff within LCFT have been fully consulted and engaged in the development of the Section 75 partnership agreement. Formal consultations with staff and staff side representatives will take place in December.

Focus group sessions will have been held with prisoners during December who regularly participate in establish networks to consult and consider the impact of the partnership from their perspective. The groups will focus on the operational aspects of accessing assessment and support for identified needs.

The social care steering group will continue to develop the s75 agreement which will be subject to final approval by the Executive Director of Adult Services, Health and Well Being and via Lancashire Care Foundation Trust Board.

### **Implications:**

This item has the following implications, as indicated:

#### **Risk management**

Negotiations are occurring in good faith on both sides, but there is a risk that LCFT and the County Council fail to reach agreement and the s75 is not approved signed off. In that case the County Council will have to take on operational management of the new services for prisons, which will prove challenging.

#### **Financial**

Further work is required to verify the full costs of these services and the budgets available to meet them. The final allocation of funding from the Department of Health is not expected until late December 2014. However work has already commenced to agree the principles involved in scoping the financial governance requirements with LCFT finance which will identify the costs associated with:

- Prevention
- Cost of assessments
- Cost of support for those with eligible needs

Initial allocations of funding to pay LCFT for a first round of staff recruitment have been agreed, and total £350,000 in a full year 2015/16. Given the timescales for recruitment and security checks, some costs may need to be met from funding identified within the 2014/15 Adult Services budget for general Care Act implementation as there is no specific 2014/15 Care Act in Prisons Grant.

## **Personnel**

Two social work posts are currently being established to be based within LCFT's Specialist Services to manage the assessment activity required.

In addition the Trust will also employ social care support workers to deliver the care identified during the assessment process during the initial period of this new arrangement. These posts will play a key role in ensuring the Local Authorities statutory duties are met with regards to the assessment and care planning of Social Care Needs in prisons and Approved Premises.

## **Legal**

Section 75 of the NHS Act 2006 was introduced to increase flexibility in working arrangements between health and social care agencies where there is any overlap between the provision of health and social care services. The Act also removed any doubts as to whether either partner has the power to commission those services delivered by the other.

The focus of the legislation is aimed at streamlining health and social care services and enabling NHS and local authority bodies to pool resources and/or staff so that services could be commissioned or provided from a single source.

The Care Act reinforces existing good practice in calling on NHS and local authorities to promote the integration of health and social care services, and this particular s75 agreement provides a basis for that in the context of the prisons in Lancashire.

## **Equality and Diversity/Human Rights**

The Council is required by s.149 of the Equality Act 2010 in carrying out its functions to pay due regard to: the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This duty will be fully considered as an integral part of the discussions and negotiations with LCFT in relation to new arrangements for the delivery of Social care assessment and delivery services. A full analysis of any impacts upon groups of persons receiving services who have a relevant protected characteristic is set out at Appendix 'A'. At this stage it is not considered that any potential impacts upon disabled persons or other groups of people with a relevant protected characteristic are of such significance that they fundamentally undermine the business case for the partnership.

## List of Background Papers

Paper	Date	Contact/Directorate/Tel
Preparing for Implementation of the Care Act in Lancashire: <a href="http://council.lancashire.gov.uk/ieDecisionDetails.aspx?ID=5722">http://council.lancashire.gov.uk/ieDecisionDetails.aspx?ID=5722</a>	16/09/2014	Tony Pounder, Adult Services, Health and Wellbeing, (01772) 536287
Care Act - Social Care in Prisons in Lancashire <a href="http://mgintranet/ieDecisionDetails.aspx?ID=5723&amp;\$LO\$=1">http://mgintranet/ieDecisionDetails.aspx?ID=5723&amp;\$LO\$=1</a>	16/09/2014	Julie Dockerty, Adult Services Health and Wellbeing, (01772) 536146
Reason for inclusion in Part II, if appropriate		
N/A		