

Section 75 Agreement 2023/24

| | | | |
|-------------------------------------|---|------------------------------|---|
| Report To (Meeting): | ONE Stockport Health and Care Board | | |
| Report From (Executive Lead) | Michael Cullen, Deputy Chief Executive (Section 151 Officer), Stockport MBC | | |
| Report From (Author): | David Dolman, Associate Director of Finance, Greater Manchester Integrated Care | | |
| Date: | 18 October 2023 | Agenda Item No: | 8 |
| Previously Considered by: | This report is being considered for the first time | | |
| Decision | X | Discuss/Direction | |
| | | Information/Assurance | |

| | | | |
|---|--|--|---|
| Conflicts of Interests | | | |
| Potential Conflicts of Interest: | No conflicts of interest have been identified | | |
| Purpose of the report: | | | |
| The purpose of this report is to obtain approval: <ul style="list-style-type: none"> to vary the s75 agreement between NHS Greater Manchester and Stockport Metropolitan Borough Council so that the agreement is updated to reflect resources to be pooled in 2023/24 and 2024/25. to enter into a Memorandum of Understanding (MOU) with Stockport Metropolitan Borough Council for 2023/24 | | | |
| Key points (Executive Summary): | | | |
| This report details: <ul style="list-style-type: none"> Variation to the s75 agreement to replace the financial schedule (Schedule 1) with a financial schedule detailing pooled funds for 2023/24 and 2024/25 Memorandum of Understanding for 2023/24 | | | |
| Recommendation: | | | |
| The Board are asked to: <ul style="list-style-type: none"> Approve the variation to the s75 agreement. Approve the MOU 2023/24. | | | |
| Aims (please indicate x) | | | |
| Which integrated care aim(s) is / are supported by this report: | People are happier and healthier and inequalities are reduced | | X |
| | There are safe, high-quality services which make best use of the Stockport pound | | X |
| | Everyone takes responsibility for their health with the right support | | |
| | We support local social and economic development together | | |
| Risk and Assurance: | | | |
| List all strategic and high-level risks relevant to this paper | | | |

| | | | | | |
|--|--|--|---|---------------------------|---|
| Consultation and Engagement: | | | | | |
| Local People / Patient Engagement: | <i>Not Applicable</i> | | | | |
| Workforce Engagement: | <i>Not Applicable</i> | | | | |
| Potential Implications: | | | | | |
| Financial Impact: Please note - All reports with a financial implication require detail of the level of funding, funding stream and comments from Finance. | Non-Recurrent Expenditure | | | | |
| | Recurrent Expenditure (please state annual cost) | 2023/24 S75 Agreement - £41,525m of which £22.532m is in the locality delegated budget 2024/25 s75 Agreement - £44,574m of which £24,596m is in the locality budget 2023/24 MOU £6.437m | | | |
| | Funding stream | Yes | x | No | x |
| | Included in the s75 Pooled Budget | 2023/24 s75 £41.525m 2024/25 s75 £44.574m | | 2023/24 MOU £6.437m | |
| | GM ICB (Stockport) delegated budget | 2023/24 s75 £22.532m in locality delegated budget 2024/25 s75 £24,596m in locality budget 23/24 MOU £6.437m | | | |
| | Other, please specify | s75 NHS GM Contributions: <u>2023/24</u> Total £27,315m Locality Budget £22.532m Non-Delegated Budgets £4.783m <u>2024/25</u> Total £29.455m | | | |

| | | | | | | | |
|--|---|---|--|----|---|-----|--|
| | | Locality Budget £24.596m Non-Delegated Budgets £4.859m | | | | | |
| Finance Comments: | | | | | | | |
| Performance Impact: | <p>The BCF facilitates the smooth transition of people out of hospital, reduces the chances of re-admission, and supports people to avoid long term residential care.</p> <p>The BCF is also a vehicle for wider joining up of services across health and local government, such as support for unpaid carers, housing support and public health.</p> | | | | | | |
| Workforce Impact: | No applicable | | | | | | |
| Quality and Safety Impact: | No applicable | | | | | | |
| Compliance and/or Legal Impact: | Section 75 of the National Health Service Act 2006 | | | | | | |
| Equality and Diversity: | General Statement: | | | | | | |
| | Has an equality impact assessment been completed? | Yes | | No | X | N/A | |
| | If Not Applicable please explain why | | | | | | |
| Environmental Impact: | General Statement: | | | | | | |
| | Has an environmental impact assessment been completed? | Yes | | No | X | N/A | |
| | If Not Applicable please explain why | | | | | | |

1.0 Background

1.1 Section 75 of the National Health Service Act 2006 allows partners (NHS bodies and councils) to contribute to a common fund which can be used to commission health or care related services. This power allows a local authority to commission health services and NHS commissioners to commission social care services. It enables joint commissioning and commissioning of integrated services.

- 1.2 The Better Care Fund Policy Framework and National Conditions of funding require the NHS and Councils to pool, “as a minimum”, Better Care Fund (BCF), Improved Better Care Fund (iBCF) and Disabled Facilities Grant (DFG) funding and agree a joint plan for using pooled budgets to be governed by a partnership agreement made under section 75 of the National Health Service Act 2006.
- 1.3 At the ONE Stockport Health and Care Board held on 1 February 2023 the board approved a variation to the Section 75 agreement between NHS Greater Manchester (formally NHS Stockport CCG) and Stockport Metropolitan Borough Council (the Council) with effect from 1 April 2022 to pool only the BCF, iBCF and DFG. Discharge Funding received by the locality is included within the BCF plan and is therefore also pooled.
- 1.4 The decision to pool only the BCF, iBCF and DFG was made for two reasons:
 - I. It was recognised that pursuant to the enactment of The Health and Care Act 2022 (2022 Act) resulting in the abolishment of NHS Stockport CCG and establishment of NHS Greater Manchester that it would take time for NHS Greater Manchester’s operating model to develop and mature.
 - II. The possibility of legislative changes in light of the government’s policy paper “Health and social care integration: joining up care for people, places and populations” in which it was recognised that to enable improved integration existing pooling arrangements (such as Section 75, NHS Act 2006) will need to be reviewed with a view to simplifying the regulations for commissioners and providers across the NHS and local government to pool their budgets.
- 1.5 The ONE Stockport Health and Care Board also agreed on 1 February 2023 that NHS Greater Manchester and the Council enter into a memorandum of understanding (MoU). The purpose of the MoU is to formally document resources and funding contributions transacted between NHS Greater Manchester and the Council which were previously pooled under the Section 75 Agreement but would no longer be pooled because the resources and funding contributions were not funded from BCF, iBCF or DFG resources.
- 1.6 The pooling of the “minimum requirement” should not be viewed as reducing the locality’s ambition to pool maximum resources and full integration but rather developing a foundation to grow in parallel as NHS Greater Manchester evolves and matures with the Stockport locality demonstrating its ambition by jointly considering aligned budgets linked to the ONE Health and Care system principles of:
 - Person-Centred
 - Place-Based
 - Outcomes-Focused
 - Strengths and Asset-Based
 - Fair
 - Sustainable

2.0 Section 75 Agreement Variation 2023/24

- 2.1 Stockport's BCF two-year plan for the period 1 April 2023 to 31 March 2025 was submitted to NHS England and subsequently approved by NHS England on 19 September 2023. The plan details funding contributions into the pooled budget of £41.273 million in 2023/24 and £44.312m in 2024/25.
- 2.2 Subsequent to the BCF planning submission, Local Authorities were notified of additional national DFG capital funding totalling £102 million to be allocated over two years, £50 million in 2023/24 and £52 million in 2024/25. The additional funding is aligned to the "Next steps to put people at the Heart of Care" programme and the Council's share of this national allocation is £0.252 million in 2023/24 and is anticipated to be £0.262 million in 2024/25. The additional DFG funding will be pooled increasing funding contributions into the pooled budget to £41.525 million in 2023/24 and £44.574m in 2024/25.
- 2.3 Section 75 agreements are required to be approved by 31 October 2023. A variation to the agreement has been drafted detailing the funding contributions over the two-year period as detailed in Appendix 1 Schedule 1.

3.0 Memorandum of Understanding (MoU) 2023/24

- 3.1 A MoU for 2023/24 has also been drafted to include the funding contributions transacted between NHS Greater Manchester and the Council for the joint commissioning services which are not included in the Section 75 Agreement and are detailed at Appendix 2 Annex A. The total value of services covered by the MoU is £6.437m.
- 3.2 Other transactions between the NHS GM (Stockport) and the Council are funded through separate contracts and agreements. For example, FNC, joint funded s117 placements.

4.0 Recommendations

- **Approve** the variation to the s75 agreement.
- **Approve** the MoU 2023/24.

DATED

AGREEMENT

between

NHS Greater Manchester Integrated Care Board

and

The Metropolitan Borough Council of Stockport

relating to the use of pooled funds and shared commissioning arrangements for integrated Health
and Social Care provision in Stockport

CONTENTS

CLAUSE

1. Terms defined in the Agreement 3
2. Consideration..... 3
3. Variation 3
4. Governing law and jurisdiction 3

SCHEDULE

Schedule 1 The Pooled Funds and Services..... 5

This agreement is dated

2023

Parties

- (1) **NHS GREATER MANCHESTER INTEGRATED CARE BOARD** of NHS Greater Manchester Integrated Care Board, 4th Floor, Piccadilly Place, Manchester M1 3BN (**NHS GM**)
- (2) **THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT** of Stockport Town Hall, Edward Street, Stockport, SK1 3XE (**Council**)

BACKGROUND

- (A) On 21 June 2016 NHS Stockport Clinical Commissioning Group (**CCG**) and the Council entered into a partnership agreement under section 75 of the National Health Service Act 2006 (**Act**) for the creation of pooled funds and shared commissioning arrangements under the direction of a newly established Health and Care Integrated Commissioning Board (**Partnership Agreement**).
- (B) The Health and Care Act 2022 (**2022 Act**) received Royal Assent on 28 April 2022. On 9 May 2022, the Health and Care Act 2022 (Commencement No 1) Regulations brought into force certain provisions within the Act including those that deal with the establishment and constitution of integrated care boards.
- (C) Pursuant to the Integrated Care Boards (Establishment) Order 2022 and The National Health Service (Areas of Integrated Care Boards: Appointed Day) Regulations 2022, on 1 July 2022 NHS England:
 - (a) abolished the CCG; and
 - (b) established NHS GM, an integrated care board for the local government areas of Greater Manchester, including the Council's area, the Metropolitan Borough of Stockport.
- (D) Notwithstanding the abolition of the CCG and the establishment of NHS GM, and pursuant to a scheme of transfer and clause 31 (Transferability of agreement), the parties to this Variation Agreement have continued to perform their obligations under the Partnership Agreement since 1 July 2022.
- (E) The Better Care Fund Policy Framework and National Conditions of funding require that the NHS GM and the Council agree a joint plan for using pooled budgets to be governed by a partnership agreement made under section 75 of the National Health Service Act 2006.

- (F) The Better Care Fund planning requirements mandate a minimum pooling requirement in respect of the NHS contribution to the Better Care Fund, the Improved Better Care Fund, the Disabled Facilities Grant and Discharge Funding
- (G) The parties' BCF Plan submitted to NHS England was approved by NHS England on 19 September 2023.
- (H) NHS GM has requested that each local authority within Greater Manchester establish a locality board by March 2023, notwithstanding that legislation does not allow for full delegation of powers to locality boards so established to exercise functions jointly in the manner contemplated in the Partnership Agreement.
- (I) Accordingly, and in order to acknowledge the evolving policy and legislative context, the parties varied the Partnership Agreement with effect from 1 April 2022 to meet the minimum pooling requirements referred to in Recital (F) (**First Variation**).
- (J) The parties wish to make the following further amendments to the Partnership Agreement as set out below with effect from 1 April 2023 (**Variation Date**).

Agreed terms

1. Terms defined in the Agreement

1.1 In this variation agreement, expressions defined in the Partnership Agreement and used in this variation agreement have the meaning set out in the Partnership Agreement.

2. Consideration

In consideration of the mutual promises set out in this agreement, the parties agree to amend the Partnership Agreement as set out below.

3. Variation

3.1 With effect from the Variation Date the Parties agree the following amendments to the Partnership Agreement:

| | | |
|----|----------------------|--|
| a) | Schedule 1: Services | Schedule 1 is deleted in its entirety and replaced with Schedule 1 to this Agreement |
|----|----------------------|--|

3.2 References in the Agreement to "this Agreement" shall mean the Agreement as varied by the First Variation and by this Agreement.

3.3 Except as set out in **Error! Bookmark not defined.s Error! Reference source not found.** and 3.2, the Agreement shall continue in full force and effect.

- 3.4 Clauses 8.5, 13, 17, 24 to 27 (inclusive) and 31 of the Partnership Agreement shall apply to this Agreement as if set out in full.
- 3.5 In the event of conflict between the terms of the Partnership Agreement and this Agreement, this Agreement shall prevail.
- 3.6 The Partnership Agreement as amended by the First Variation and by this Agreement shall continue in force in relation to mandated pooled funds until the entry by the parties into a new partnership agreement for joint commissioning and / or pooling budgets.

4. Governing law and jurisdiction

- 4.1 This variation agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the law of England and Wales.
- 4.2 The parties irrevocably agree that the courts of England and Wales have [non-]exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) that arises out of, or in connection with, this variation agreement or its subject matter or formation.
- 4.3 This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The Pooled Funds and Services

| Service | Commissioner Lead | 2023/24 £ million | 2024/25 £ million |
|--|------------------------|----------------------|----------------------|
| Better Care Fund (BCF) | | | |
| Neighbourhood Services | Stockport Council | £4.370 | £4.470 |
| Enhanced Support Service | Stockport Council | £0.565 | £0.606 |
| Reablement | Stockport Council | £1.225 | £1.226 |
| Equipment | Stockport Council | £0.800 | £0.835 |
| Demographic / Demand / Price Inflation for ASC care services | Stockport Council | £9.477 | £10.308 |
| Carers Services | Stockport Council | £0.743 | £0.756 |
| LD Tenancy - Stockport Road apartments | Stockport Council | £0.669 | £0.699 |
| BCF Programme - service delivery | Stockport Council | £0.070 | £0.070 |
| Early Supported Discharge | Stockport Council | £0.553 | £0.553 |
| Telecare | Stockport Council | £0.093 | £0.093 |
| Carers | NHS Greater Manchester | £0.316 | £0.323 |
| Saffron Ward MH - Step Up / Step Down beds | NHS Greater Manchester | £0.990 | £1.010 |
| Community Falls Service | NHS Greater Manchester | £0.172 | £0.175 |
| Dementia | NHS Greater Manchester | £0.036 | £0.036 |
| Expanded Patient Education | NHS Greater Manchester | £0.132 | £0.134 |
| Continuing Health Care | NHS Greater Manchester | £1.436 | £1.759 |
| Bluebell Ward - New Model of care for ward | NHS Greater Manchester | £2.547 | £2.582 |
| GP Development scheme | NHS Greater Manchester | £0.946 | £0.965 |
| Mental Health | NHS Greater Manchester | £0.725 | £0.740 |
| Stockport Health and Care Record | NHS Greater Manchester | £0.182 | £0.182 |
| Staff resource supporting the Stockport Health and Care Record | NHS Greater Manchester | £0.035 | £0.036 |
| Total Better Care Fund | | £26.082 | £27.558 |
| Improved Better Care Fund (iBCF) | | | |
| Demographic / Demand / Price Inflation for ASC care services | Stockport Council | £9.711 | £9.711 |
| Total iBCF | | £9.711 | £9.711 |
| Disabled Facilities Grant (Capital) | | | |
| Disabled Facilities Grant | Stockport Council | £2.886 | £2.886 |
| Total Disabled Facilities Grant | | £2.886 | £2.886 |
| Discharge Funding | | | |
| Discharge to Assess Services | NHS Greater Manchester | £1.233 | £1.897 |
| Discharge to Assess Services | Stockport Council | £1.361 | £2.260 |
| Total Discharge Funding | | £2.594 | £4.157 |
| Total BCF Plan | | £41.273 | £44.312 |
| Additional Disabled Facilities Grant | Stockport Council | £0.252 | £0.262 |
| Total Health and Social Care Pooled Budgets | | £41.525 | £44.574 |
| Contribution from Partners | | | |
| NHS Greater Manchester | | £8.750 | £9.839 |
| Stockport Council | | £32.775 | £34.735 |
| Total Contributions | | £41.525 | £44.574 |

Executed by the Metropolitan
Borough Council of Stockport
by affixing the Common Seal
in the presence of:

.....

Assistant Director Legal &
Democratic Governance /
Designated Authorised
Signatory

.....

Authorised Signatory

Executed by NHS Greater
Manchester Integrated Care
Board

**[NHS GM to confirm
signature arrangements]**

DATED

MEMORANDUM OF UNDERSTANDING

between

NHS Greater Manchester Integrated Care Board

and

The Metropolitan Borough Council of Stockport

CONTENTS

CLAUSE

- 1. Background..... 2
- 2. Key objectives..... 2
- 3. Principles of collaboration 3
- 4. Reporting 3
- 5. Review 3
- 6. Escalation 4
- 7. Term 4
- 8. Variation 5
- 9. Status 5
- 10. Governing law and jurisdiction..... 5

ANNEX

- ANNEX A Contributions and services..... 7

Parties

- (1) **NHS GREATER MANCHESTER INTEGRATED CARE BOARD** of 4th Floor, Piccadilly Place, Manchester M1 3BN (NHS GM)
- (2) **THE METROPOLITAN BOROUGH COUNCIL OF STOCKPORT** of Stockport Town Hall, Edward Street, Stockport, SK1 3XE (**Council**)

1. Background

- 1.1 Pursuant to The Integrated Care Boards (Establishment) Order 2022 and with effect from 1 July 2022, NHS GM is the successor to NHS Stockport Clinical Commissioning Group (**CCG**).
- 1.2 Prior to the establishment of NHS GM and the dissolution of the CCG and a statutory scheme of transfer to NHS GM, the Council and the CCG formally pooled certain budgets and conducted integrated commissioning of certain services pursuant to a partnership agreement under section 75 of the National Health Service Act 2006 (**Partnership Agreement**).
- 1.3 The parties acknowledge that there will be a transition period in the development of the integrated care system across Greater Manchester, and accordingly agreed to vary the Partnership Agreement effective 1 April 2022 so that the Partnership Agreement shall apply to a reduced scope of services and reduced pooled budgets to enable transition to take place in an orderly and structured fashion as the legislative and policy landscapes continue to evolve.
- 1.4 With effect from 1 April 2023, the parties entered into a further variation of the Partnership Agreement to continue the partnership on the reduced basis referred to in clause 1.3.
- 1.5 Notwithstanding the variation of the Partnership Agreement during this transition phase, the parties have agreed to continue to work together in relation to the commissioning of further services and making financial contributions on the terms of this Memorandum.
- 1.6 The parties wish to record the basis on which they will continue to collaborate with each other.

2. Key objectives

- 2.1 The parties shall collaborate to achieve the following key objectives (**Key Objectives**):

- (a) the continued contribution of funding to services commissioned by the parties;
- (b) support the delivery of the One Stockport Health and Care Plan to improve health and wellbeing of people, to improve the quality of services commissioned and provided and to make efficient use of resources for the population of the Metropolitan Borough of Stockport;
- (c) to work with the ONE Stockport Health and Care, Stockport Provider Partnership and the Place Lead for Health and Care Integration to derive maximum possible benefit from integration of services.

3. Principles of collaboration

The parties agree to adopt the following principles (**Principles**):

- (a) collaborate and co-operate;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- (c) be open. Communicate openly about major concerns, issues or opportunities;
- (d) adhere to statutory requirements and best practice. Comply with applicable laws and standards including public procurement rules, data protection and freedom of information legislation;
- (e) act in a timely manner. Recognise and respond accordingly to requests for support;
- (f) manage stakeholders effectively;
- (g) deploy appropriate resources; and
- (h) act in good faith.

4. Reporting

- 4.1 Either party may request reporting and performance monitoring information in respect of the services in the scope of this Memorandum (subject to any duties of confidentiality and protection of privacy which may apply).

5. Review

- 5.1 The services and funding contributions set out in Annex A shall apply during the financial year 1 April 2023 to 31 March 2024. Within one month of the date of this Memorandum, the parties shall agree the dates on which instalment payments are to be made and the amount of each payment instalment.

- 5.2 Each year, no later than 28 February the parties shall meet to review:

- (a) the services in the scope of this Memorandum;
- (b) the contribution made by each party to the cost of providing the services in the scope of this Memorandum;
- (c) the merits of including any further services and/or funding contributions within the scope of this Memorandum.

5.3 Each party acknowledges that the funding environment for public services remains challenging and shall deal with the other reasonably and on an open book basis in respect of any proposals brought forward to make changes to services or funding contributions

5.4 Within one month of the meeting held under clause 5.2, the parties shall agree any changes to the scope of services or funding contributions. If no agreement is reached prior to the commencement of the next financial year, then this Memorandum shall continue on the basis that the services and contributions remain unchanged.

6. Escalation

6.1 The parties representatives for the purpose of this clause shall be:

- (a) for the Council:
- (b) for NHS GM

6.2 If either party has any issues, concerns or complaints about any matter in this Memorandum, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation between the representatives. If consultation between representatives does not resolve the matter, then either party may request the matter be escalated to senior officers to resolve.

6.3 If any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the services set out in Annex A, parties shall co-operate to the extent reasonably required to respond effectively to the inquiry, complaint, claim or threat.

7. Term

7.1 This Memorandum shall take effect from 1 April 2023 (notwithstanding that its date of execution may be later).

7.2 The parties may agree in writing (executed by each party) to terminate this Memorandum on a date specified in the agreement to terminate.

8. Variation

This Memorandum, including the Annex, may only be varied by written agreement of the parties.

9. Status

9.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.

9.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

10. Governing law and jurisdiction

This MoU shall be governed by and construed in accordance with English law and, subject to the escalation procedure set out in clause 6, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

This document has been executed on the date stated at the beginning of it.

EXECUTED by affixing **THE
COMMON SEAL** of **THE
METROPOLITAN BOROUGH COUNCIL OF
STOCKPORT**

In the presence of:

.....
Assistant Director – Legal and Democratic
Governance / Designated Authorised
Signatory (legal officer)

.....
Print Name

.....
Authorised Signatory (legal officer)

.....
Print Name

EXECUTED by **NHS GREATER
MANCHESTER INTEGRATED
CARE**

[note: NHS GM to confirm execution arrangements]

ANNEX A Contributions and services

| Service Description | Recurrent / Non Recurrent | Paying Organisation | Receiving Organisation | Basis of Charge | 2023/24 £000s |
|---|---------------------------|---------------------|------------------------|---|------------------|
| Non-Acure Service for Older People | Recurrent | NHS GM (Stockport) | SMBC | Contribution to service cost | £3,877 |
| Learning Disabilities | Recurrent | NHS GM (Stockport) | SMBC | Contribution to service cost | £1,624 |
| Learning Disabilities - LDRC (Premises) | Recurrent | NHS GM (Stockport) | SMBC | Agreement to fund the total cost of occupancy therefore value is indicative based on expected costs | £245 |
| Mental Health Services | Recurrent | NHS GM (Stockport) | SMBC | Contribution to service cost | £294 |
| Sexual Health Premises | Recurrent | NHS GM (Stockport) | SMBC | Agreement to fund the total cost of occupancy therefore value is indicative based on expected costs | £397 |
| Total | | | | | £6,437 |