

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 21st January 2019
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PART I **KEY DECISION**

DELEGATION OF CONTINUING HEALTH CARE (CHC) COMMISSIONING, PLACEMENT, PROCUREMENT AND CONTRACT MANAGEMENT FUNCTIONS

1 Purpose of Report

The purpose of this report is to gain agreement for the development of a new operating model for Continuing Health Care and Section 117 Mental Health Act 1983 aftercare across East Berkshire. Currently, these services are provided by East Berkshire Clinical Commissioning Group (CCG). Following approval from Cabinet the administration of these services will be delivered in partnership with the three East Berkshire local authorities under the following proposed model:

- Commissioning, Placement, Procurement and Contract Management will be delegated to Slough Borough Council for the following service areas: CHC (continuing healthcare, FNC (funding nursing care) and Sec.117 aftercare (Section 117 Mental Health Act 1983 aftercare) for the residents of East Berkshire with effect from 1st April 2019. For the remainder of this report these collective services where appropriate shall be referred to as CHC.
- Assessment and Case Management for CHC from April 2019 will be subject to a further detailed report. The intention is for a fully developed model to go live by 2020/21. Currently it is anticipated this will be delivered by Bracknell Forest Council subject to approval and sign off by the partnership (System Leaders, the CCG and Cabinet bodies across East Berkshire).

2 Recommendation(s)/Proposed Action

Cabinet is requested to resolve:

- a) That the East Berkshire Clinical Commissioning Group (CCG) functions around CHC commissioning, placement, procurement and contract monitoring, is delegated to Slough Borough Council, Commissioning and Transformation Service with effect from 1st April 2019.
- b) That the new operating model for CHC, including the timelines and governance, is supported by Cabinet; and the Council supports the longer term plans for CHC assessment and case management.

- c) That authority is delegated to the Director of Adults and Communities and the Director for Finance and Resources to agree and execute the Section 75 NHS Act 2006 Agreement (the Section 75 Agreement), Memorandum of Understanding and any related legal agreements to give effect to the delegation of the CHC Commissioning, Placement, Procurement and Contract Management functions to the Council.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Joint Wellbeing Strategy Priorities**

The proposal supports the following JSNA priorities

- Increasing life expectancy by focusing on inequalities
- Improving mental health and well being

CHC services will be redesigned to address the service needs of local residents through a new operating model which delivers a high quality service that offers local residents increased choice and control over their care. Irrespective of the funding stream the care provided for the person would be personalised and seamless. It will do this by promoting wellbeing and enabling service users and families to have control of their health care needs as well as social care needs. Residents across East Berkshire in receipt of CHC services will have personalised care and support.

3b **Five Year Plan Outcomes**

The proposal supports the following Five Year Plan outcomes:

- *Slough children will grow up to be happy, healthy and successful*
- *Our people will be healthier and manage their own care needs*

4 **Other Implications**

- (a) **Financial** The proposed model will require Slough Borough Council to administer the CHC commissioning budget; currently this is managed by East Berkshire CCG. In order to deliver the proposed model, the CCG will delegate the management and administration of the CHC budget to Slough Borough Council to carry out the placement and invoicing functions. There is no risk to the local authority as the CCG will retain budgetary responsibility and all financial risks and will continue to fund associated costs related to the administration of these functions (IT or rental costs for example). Decisions on placement costs for individual packages of care will be approved through the CCG standing financial orders (known as Scheme of Delegation).

The indicative financial envelope of the proposed CHC services in scope is approximately £32.1m in commissioning costs (circa £25.1m for CHC Adults and £7m for Sec.117). The budget for CHC commissioning and placements is funded through the NHS and its management and administration will be formally delegated through a Section 75 Agreement.

Currently children and young people eligible for CHC are out of scope. However following a review of Children's Services this may be incorporated as part of a wider scope at a later stage. Should the opportunity arise, this will be subject to Cabinet approval.

Operational costs have been excluded as there is no intention to transfer NHS staff, and local authority staff would retain their current employment terms and conditions. There are no liabilities associated with pensions or TUPE for the Council.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
Approve delegation of CHC functions to Slough Borough Council	Legal: framework required for formal delegation	Section 75 Agreement currently in place for the Better Care Fund. Legal review is required to ensure the Agreement can be extended to include CHC; alternatively a stand alone agreement will be produced.	Legal – Negligible	Section 75 Agreement to be updated or new Section 75 drafted for 2019/2020 following approval from Cabinet
	Financial – Commissioning Budget delegated to Slough Borough Council for CHC is insufficient	NA	Financial – Critical	There are no financial risks to the Council in undertaking the delegated functions. To mitigate any unknown risk the Section 75 Agreement will include risk arrangements for over and under spends with Scheme of Delegation, with financial accountability to be retained by the CCG

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
	Financial – controlling the market may lead to cost shunting from health to social care or vice versa	NA	Financial – Critical	Gain Share Agreement to be implemented with detailed plans to monitor the impact of the market.
	Limited data leading to insufficient resourcing and poor process/pathways	Currently the CCG is cleansing their data management systems to ensure that resources are appropriate	Political (reputational) – Marginal	On going monitoring of activity to ensure the redesigned service is fit for purpose and achieves the outcomes desired.
	Failure to deliver due to a lack of ring fenced posts and resources to manage transition of service	Dedicated cross Partnership Project Team to be recruited to ensure timelines are met CCG budget allocated for transitional costs (i.e. network connections)	Political (reputational) – Marginal	Identification of an 18 month resource and implementation plan funded by the CCG to allow for new model to be embedded and adjusted
Support the overall plan to redesign CHC	Failure to consult on proposed changes with service users leading to challenge and poor outcomes	Coproduction events to be scheduled for service users and providers.	Communication – Critical Political – Marginal	Service user consultation to be carried out between January 2019 and February 2019 for Phase One. The feedback will inform the process for Phase One and delivery of the delegated services and

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
				the consultation plan for Phase Two
	A number of employment issues may arise during and post implementation; such as staff turnover and limited skill set	Consultation with HR departments across the Council and CCG to ensure staff are consulted on proposed changes	Employment Critical	Feedback from Staff Consultation to be embedded in redesign of service and structure

(c) Human Rights Act and Other Legal Implications

The NHS provides CHC funding to cover the entire health and social care needs for people who meet the eligibility criteria. The funding can be used in either a care home, nursing home, hospice or a person's own home to meet the physical, mental health or social care needs. Choice and control are at the heart of a care plan, regardless of the financial cost and CHC funding cannot be used to dictate how care will be provided. East Berkshire CCG does not operate a cap on costs, and therefore is exempt from a judicial review currently taking place by the Equality and Human Rights Commission. A Choice and Control Protocol is in place across East Berkshire and is compliant with the Human Rights Act.

Section 75 of the National Health Service Act 2006, and the NHS Bodies and Local Authorities Partnership Arrangements Regulation 2000 allows the Council and the CCG to voluntarily enter into arrangements in relation to certain functions of the CCG and/or the Council, if the arrangements are likely to lead to an improvement in the way those functions are exercised.

Regulation 4 of the NHS Bodies and Local Authorities Partnership Arrangements Regulation 2000 stipulates the need for joint consultation with persons affected by the arrangement prior to entering any Section 75 Agreement. In partnership with the CCG, a consultation plan will be developed in January 2019 and implemented no later than February 2019. The feedback from the consultation phase will inform the how Phase One will exercise the delegated services, lead to an improvement plan and inform the consultation process for Phase Two.

Whilst there is no change in employment terms and conditions, there are anticipated changes to the location and duties for affected staff with a consultation plan to be formulated in January 2019. The proposed changes have also been consulted on with the East Berkshire health and care system leaders group (20th November 2018) with plans for further consultation and approval with respective Council Cabinets and CCG Governing Bodies across East Berkshire in the first three months of 2019.

Whilst the Section 75 of the National Health Service Act 2006 arrangement allows for pooled budgets, the Act also permits both the Council and the CCG to form a joint arrangement to take responsibility for the partnership, including the monitoring of arrangements, receiving reports and information about the arrangement. The joint arrangement proposed for CHC will be the Section 75 Partnership Management Group, who will discharge this legal responsibility.

(d) Equalities Impact Assessment The proposed CHC operating model, including the delegated commissioning, placement, procurement and contract monitoring function, is expected to have a positive impact on health inequalities. A detailed EIA (equalities impact assessment) will be carried out by East Berkshire CCG wherever changes to service delivery or configuration are considered.

5 **Supporting Information**

1.1 Continuing Health Care (CHC) is a needs-led service which commissions care for individuals meeting the criteria outlined in the National Framework 2012 (and 2018 Refresh), whereby an assessment identifies patients with a Primary Care (health) Need. For end of life patients, the fast track process is deployed to ensure appropriate care is in place in a timely manner. The function of CHC assessments, purchasing and commissioning care is the responsibility of East Berkshire CCG.

The National Framework 2018 sets out the statutory responsibilities CCGs have with regards to CHC and the Framework describes the process to which CCGs must adhere too. The Framework is designed to remove local interpretation of CHC eligibility, ensure consistency in application and improve transparency given the complex nature of the client groups.

The Framework sets out the following:

- CCGs are responsible and accountable for system leadership for NHS Continuing Healthcare within their local health and social care economy.
- The governance arrangements for NHS Continuing Healthcare eligibility processes and commissioning NHS Continuing Healthcare packages. CCGs are responsible for ensuring systems are in place to record assessments and their outcomes.
- Clear principles and processes for staff to undertake when assessing CHC eligibility.
- Provision of national process and templates for staff to use when making decisions on eligibility – Decision Support Tool (DST) and the Fast Track Tool (FST).
- Commissioning arrangements, both on a strategic and an individual basis.
- Ensures clear arrangements in place with other NHS organisations (e.g. Foundation Trusts) and independent or voluntary sector partners to ensure effective operation of the National Framework.

1.2 The Mental Health Act 1983 provides the legal basis for people with mental illness to be detained or sectioned in a hospital for treatment. Following a discharge from hospital, Section 117 Aftercare (Sec. 117) allows for free community support such as social care, health care and supported accommodation on the proviso the service meets the need relating to the mental health condition and it prevents further hospital admissions. Sec.117 aftercare is not available for all and is applicable if people have been detained under

- Section 3 for treatment
- Section 37 under a hospital order
- Section 45A under hospital direction
- Section 47 or 48 following transfer from prison

The responsibility for providing after-care services rests with the individuals' CCG and the Local Authority. There is no duty to provide particular services and the nature of services provided are tailored to meet the mental health needs of the individual, unless the person has been granted a conditional discharge (in relation to detention for treatment under Section 37). In order to fulfil their obligations, the CCG and the Local Authority must take reasonable steps to identify appropriate aftercare facilities for the person before discharge from hospital. Across East Berkshire arrangements are in place to ensure funding is split when the Sec.117 Aftercare plan requires input from health and social care. This is also the case where Sec.117 requires full NHS funding.

The relationship between Sec.117 and CHC is explained in the CHC Framework, where an individual's eligibility for services under Section 117 should be considered first, and prior to assessing potential eligibility for CHC services. If services which the eligible person requires are to be provided under Section 117, then there is no need for a CHC assessment. In the event of a CHC need, the CHC assessment should focus primarily on physical health needs.

- 1.3 Across East Berkshire, there were in total 260 referrals made to CHC in the first three quarters of 2017/18. A total of 190 assessments were completed with just over 17% (n45) completed within the 28 days target. The number of assessments completed within 28 days is low, the CCG is undertaking a Turnaround Programme to improve performance, staff retention and data recording. At the end of October 2017, there were 1923 patients in receipt of CHC funded packages of care, and 130 people with Section 117 health funding. The CCG is currently undertaking a data cleansing exercise and these figures are subject to revisions.
- 1.4 Strategically, the East Berkshire CCG and Local Authorities understand integrated commissioning between health and social care is fundamental to successfully deliver the Frimley Health and Care Integrated Care System (ICS). There is a strong commitment to integrated commissioning where better outcomes for residents can be achieved. One area that has been chosen to review the opportunities for integrated working is CHC.
- 1.5 As part of the redesign, representatives from East Berkshire CCG, Slough Borough Council and Bracknell Forest Council visited Portsmouth, an area that has integrated the management of CHC with Social Care. Meetings have also been held with Hillingdon Local Authority, where the CCG has delegated commissioning and placement functions to Hillingdon Social Care. Wirral, Isle of Wight and Southampton CCG have all delegated commissioning functions to local authorities to create "integrated commissioning hubs". Nationally, integrated commissioning is gathering pace and the local model will be designed to include learning from other areas.
- 1.6 Redesign of these services is expected to bring wider benefits to the system (residents, providers and commissioners) as it will
 - Improve outcomes for local residents through personalisation and increased choice and control over how the services are to be delivered;

- Increase opportunity to manage the provider market to meet the changing service needs and demands given the local strategic drivers on personalisation, increased choice and control, delaying needs, and increasing independence;
- Provide greater consistency to improve quality of services across the three areas, underpinned by a robust, tried and tested governance process;
- Reduce the contractual transactions required for transition between social care and CHC commitments;
- Remove any ambiguity in relation to displacement of costs between statutory agencies.

1.7 A detailed proposal was submitted to the East Berkshire System Leaders Group in November 2018 seeking support for the redesign of CHC services with the intention to transfer key functions from the CCG to the local authority as detailed below :

1.8 Phase One: Delegation of Commissioning, Placement, Procurement and Contract Management to Slough Borough Council for the following service areas:

- CHC/FNC/Sec. 117 commissioning, brokerage and care purchasing
- CHC/FNC/Sec. 117 contract management functions and processes
- Financial control and reporting with invoice validation with payments to be made through Slough Borough Council's payment system.
- Integrated Commissioning Strategy and market management.
- Statutory returns and performance reporting.
- Provision of joint training and development to the East Berks health and social care workforce.

These functions will be delegated to Slough Borough Council, Adult Social Care Commissioning and Transformation Service. The Service has a well established commissioning and purchasing function, serving the needs of the local population in and out of the borough. Work has taken place to streamline systems and processes as well as better manage the residential and nursing care home market. The team has a track record of building positive working relationships with Providers to negotiate competitive rates for placements. The Service has developed with other local authorities a cross boundary agreement to stabilise market conditions for social care; the same principles can be transitioned to health. As a host authority we can build upon our knowledge of the most cost effective pricing agreement and apply this across the area.

In addition Slough has established a Dynamic Purchasing System (DPS) which can be used to identify the most cost effective way of meeting complex needs both within the home and/or within a residential/nursing care setting. The DPS is open to both Health and Social Care services with the ability for new suppliers to sign up to the framework at any time. This meets the requirements of the Public Procurement Regulations 2015, allows transparency and open competition without the administrative burden. The DPS is already established and can extend its scope to include the CHC procurement functions, this can be used to successfully introduce new providers to the market. Should the DPS not

be suitable for the CHC functions, Slough will procure an alternative means of delivery of the CHC functions. This procurement will be in line with the Public Contracts Regulations 2015.

1.9 Phase Two: Integration of Care and Assessment with Bracknell Forest Council Social Care:

- CHC/FNC/Sec.117 referral, assessment and verification
- CHC/FNC/Sec.117 case management and review
- Quality management
- Business intelligence
- Training and development

Following a detail proposal these functions will be delegated to Bracknell Forest Council Adult Social Care. Bracknell Forest Council has in place an existing agreement to provide CHC case management services for residents with learning disabilities. A review to extend these care management arrangements for all adult clients groups for CHC will take place during 2019/2020. There is an opportunity to increase the provision of joined up health and social care that is personalised with a core offer of Direct Payments and Personal Health Budgets.

1.10 Out of scope:

- Children CHC/Sec.117 – this is subject to a review and is currently outsourced to a local provider
- End of life (the fast track pathway) – this is subject to a separate service development project in partnership with NHS England

1.11 Role of East Berkshire Clinical Group:

- Establish and maintain the governance arrangements for the delegated & integrated functions to ensure statutory compliance with CHC and Sec.117 duties
- Planning and commissioning of population based health care services in the area (e.g. podiatry, mental health)
- Primary care commissioning

1.12 Functions: The functions of the proposed changes for Phase One are to:

- Improve the efficiency of identified appropriate placements across East Berkshire for patients discharged from hospital.
- Procure and commission services that provide better value and target efficiencies where they can be achieved
- Ensure robust governance, providing assurance that CHC is fit for purpose with risks and operational performance managed
- Work in partnership with health and social care to increase the value of service, making the system sustainable
- Improve the quality of services so that they are safe, with patients and carers having excellent experiences and achieving outcomes they want
- Identify individuals who would benefit from a Personal Health Budget

1.13 Benefits: It is hoped that the arrangement will lead to mutual benefits across Slough and the wider Partnership by strengthening our collective leverage within the local health and social care economy. This will make best use of the current staffing, systems and skill sets. By creating a joint brokerage and placements function across the CCG and Council will enable better use of existing resources,

obtain value for money in securing placements and overall improve the quality of outcomes.

In particular the proposed changes will deliver increased flexibility; support improvement in quality of care and reduce duplication. By integrating the resources, Providers can personalise interventions and respond faster to change delivering a range of services to meet the needs of local residents. The Partnership will also benefit from the joint approach through increased purchasing power, this will allow for:

- Controlling the cost of system delivery; avoid replication and duplication across the system
- Sharing of system risk and opportunities across the ICS
- Joint investment decisions
- Developing and monitoring a revised regulatory approach that meets the needs of both health and social care.
- Assertively moderate demand growth; service availability gaps and plan across the three council areas

1.14 Alternative options considered and rejected: a range of alternative approaches were considered including no changes to the current services in place. This was not favoured as it recognised amongst the Partnership that the current service has led to inconsistency and inequity of access, as well as disjointed pathways and duplication of resources.

The development of a joint enterprise would support the benefits joint integration but it was felt that TUPE, governance and transitional costs would be too expensive and complex.

The model outlined in this document and Appendix 1, achieves the benefits of integrated commissioning and allows for a period to evaluate the impact without the need of complex transitional arrangements. It was felt that the proposed model will be less disruptive to staff, providers and service users and would allow the Partnership to retain accountability and governance for each organisation whilst minimising the risks of embedding a new model.

6 **Comments of Other Committees**

Given the wider implications of the redesign of CHC, the proposal will be submitted to the following committees across East Berkshire:

1. East Berkshire Clinical Commissioning Group: Governing Board, 8th January 2019 to approve the delegation of CHC functions to Slough Borough Council and implementation of the new operating model.
2. Royal Borough of Windsor and Maidenhead Council: Cabinet, 7th February 2019 seeking endorsement
3. Bracknell Forest Council: Executive 11th February 2019 seeking endorsement

7 **Conclusion**

The proposed changes to CHC would build on the partnership arrangements between health and social care in East Berkshire and the strong collaboration between statutory agencies to ensure the health and social care needs of the

population are met. These arrangements have been in place for a number of years across a wide spectrum of services such as mental health, learning disabilities and intermediate care; many of which are underpinned by a formal Section 75 agreement.

The collective desire to provide improved outcomes for residents across East Berkshire is gaining momentum and in order to balance the increasingly complex health and social care needs of our population against a financially challenging health and social care landscape. If the Council is to provide better outcomes, better experiences for our population and increased value for money, it is important we drive change and take the opportunity to align and integrate services where appropriate.

The Cabinet is requested to approve the delegation of CHC commissioning, placement, procurement and contract monitoring from East Berkshire CCG to Slough Borough Council, Commissioning and Transformation Service with effect from 1st April 2019.

8 **Appendices Attached**

None.