

<b>Item No.</b> 14.	<b>Classification:</b> Open	<b>Date:</b> 19 November 2013	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Partnership Agreement Via Section 75 with Southwark Council and Southwark Clinical Commissioning Group	
<b>Ward(s) or groups affected:</b>		All wards	
<b>Cabinet Member:</b>		Councillor Catherine McDonald, Health, Adult Social Care and Equalities	

## **FOREWORD – COUNCILLOR CATHERINE MCDONALD, CABINET MEMBER FOR HEALTH, ADULT SOCIAL CARE AND EQUALITIES**

This agreement covers some of the services which support some of the most vulnerable groups in Southwark, and who experience some of the largest inequalities in health in the borough. These include services for people experiencing mental health problems, including residential support programmes and day care support. They also include treatment services for people seeking to address problems with harmful addictions. These are essential to protect and improve the lives of Southwark's most vulnerable groups. These residents experience poorer quality of life and have a reduced life expectancy. It is vital that we ensure support and treatment services work together across Southwark's health and social care services to improve the outcomes of care, build resilience, and tackle the causes of these issues and the health inequalities they cause.

In Southwark, the Council has been working closely with health partners to understand and tackle these issues. The new approach on tackling health inequalities that local partners set out at Southwark's Health and Wellbeing Board and local work towards better integration of services is informing the development of services in these areas. We have also been working with the people who use these services to identify which of our services are working well, and meeting health needs, and which areas we need to develop.

Part of our approach to future service development is to ensure that we have good governance and appropriate arrangements in place for Council to work in partnership with our local Clinical Commissioning Group and ensure that our services are delivering value for money and are effective in tackling health challenges in the borough. This report sets out an improved framework agreement for partnership arrangements between the Council and local health partner. It will ensure that we make the best use of the money we spend together on services that improve health and wellbeing in the borough.

The report formalises existing arrangements for 2013-14 for the services set out in the paper. We are continuing to work to improve our new public health services for residents, and to work better with our health partners. In 2014-15 there are more areas that we will consider including in the framework agreement as set out in the report. There are also more changes that we look forward to putting in place to the existing services, following our work this year with people who use our services and consultations with our residents.

## **RECOMMENDATIONS**

That the cabinet:

1. Notes the partnership approach to commissioning proposed between the Council and the local Clinical Commissioning Group for the services set out within this report.
2. Approves the proposed agreement between the Council and the Clinical Commissioning Group under section 75 of the National Health Services Act 2006 and delegates authority to the Strategic Director of Children's and Adults' Services to execute the agreement.
3. Delegates authority to approve changes to the services contained within the agreement, to the Strategic Director of Children's and Adults' Services.
4. Notes the opportunity for further service transformation to achieve improved health outcomes in Southwark.
5. Agrees to receive an annual report on the progress and performance of services governed by the agreement alongside options for future service transformation.

## **BACKGROUND INFORMATION**

6. On 1 April 2013 responsibility for commissioning public health services transferred from the now abolished Southwark Primary Care Trust (PCT) to the Council. The transfer has resulted in a review of the areas in which the council and new local health partner, NHS Southwark Clinical Commissioning Group (CCG), wish to work together in order to make the best use of local expertise.
7. Prior to the transfer there were partnership arrangements in place between the council and the PCT under s75 of the National Health Services Act 2006, which allows one to delegate all or part of its functions to the other. These included arrangements for the PCT to commission adults' mental health services on behalf of the Council including elements funded through a pooled health and local authority budget. With the abolition of PCTs the s75 agreements lapsed and across the country new agreements have been negotiated and agreed between Councils and the new CCGs. Renegotiating this agreement has also provided an opportunity to review and strengthen arrangements for accountability, impact, and value for money.
8. In parallel, Southwark, Lambeth, Lewisham and Croydon Councils have been working together to draw up a common approach to their respective s75 partnership agreements for the commissioning of mental health services from SLAM, since all four boroughs share the same provider and all wished to set consistent delivery standards and strengthen the ability to hold NHS commissioners to account for outcomes achieved through pooled budgets. In Southwark the approach to some existing public health commissioning and mental health commissioning have been brought together into a single s75 agreement that underpins partnership commissioning arrangements between the council and the CCG. This is the subject of this report.
9. The services proposed to be included in the section 75 agreement are funded in 2013/14 by £4.93m funding from the Council's adult social care revenue budget

for mental health services and £3.85m from the Council's ring-fenced public health grant for public health services.

10. The s75 agreement being proposed does not cover all of the public health services which transferred to the Council. The majority of sexual health services are commissioned through a tri-borough agreement with Lambeth and Lewisham. Additional public health commissioning is advised by the public health team and commissioned through the local authority's Children and Adult's Services department and the Community Safety and Enforcement team. Services are currently commissioned through contracts, grant arrangements and service level agreements with GPs and pharmacies from NHS England on behalf of Southwark.
11. The public health services to be covered initially by the s.75 agreement include adult mental health services, substance misuse treatment services, smoking cessation services and a small number of sexual health services. There are interim arrangements in place under the Department of Health's Transfer Scheme of 31 March 2013. The s75 agreement, will formalise arrangements and set out detailed governance.
12. The local authority is conducting strategic work to review public health services and to review arrangements for joint working. This includes a refresh of the local joint strategic needs assessment to inform commissioning in Southwark, and the local joint Health and Wellbeing Strategy. There are also needs assessments focused on specific services, including the substance misuse treatment services included within this agreement. The Council and Clinical Commissioning Group are working together to develop approaches for more integrated working, and collaboration on commissioning services, of which this agreement forms a part. The Council will continue to examine services to identify opportunities for joint working, and to consider appropriate governance arrangements to support those.

## **KEY ISSUES FOR CONSIDERATION**

13. Further to the commitment to a 'steady-state' transition set out in the council's Cabinet report of February 2013, it was agreed that the NHS, through Southwark CCG, should continue to commission a range of public health services relating to commissioning for 2013-14 on the Council's behalf. These include some substance misuse (drug and alcohol) treatment services, some smoking cessation services, and local enhanced services delivered through pharmacies and GPs for sexual health. These are included in the proposed s75 agreement alongside adults' mental health services.
14. The services and budgets already committed for 2013-4, and for which new governance arrangements will be formalised in the agreement, are as set out below. Note that the services and budgets listed below, which form the s75 agreement, are only a part of the council's service provision and allocated resources for each of these areas.

### **Adult mental health services**

Services include contributions towards a jointly commissioned residential and nursing care placements, as well as day care provision and wellbeing services for people with mental health needs.

i)	Day Care Service	£2,109,666
ii)	Residential Placements	£2,817,000

**Total in this agreement** **£4,926,666**

**Substance misuse treatment services**

Services include inpatient and outpatient support and treatment services, and harm minimisation programmes for people with drug and alcohol misuse problems. These include detoxification programmes, stabilisation and abstinence services.

iii) Community Drug Action Team	£2,994,108
iv) Needle exchange coordination	£ 136,200
v) Inpatients	£ 104,475
vi) Injectable Opiates	£ 80,005
vii) Specialist outpatients	£ 9,000

**Total in this agreement:** **£3,323,788**

**Smoking cessation**

Services include structured support to stop smoking provided in community and primary care services, and access to nicotine replacement therapy. A specialist service is also provided that targets those whose addiction is strongest and particularly targeted at patients at risk of, or experiencing, chronic obstructive pulmonary disease (COPD).

viii) Smoking cessation team at South London and Maudsley	- £79,944
ix) Smoking cessation local enhanced service through GP practices	- £130,005
x) Smoking cessation local enhanced service through Pharmacies, including Nicotine Replacement Therapy voucher	- £114,252

**Total in this agreement:** **£ 324,201**

**Sexual health local enhanced services**

These services provide contraceptive consultations and services, health promotion advisory materials to promote safer behaviours, and screening and testing within primary and community care settings, including targeted support to young people and high risk groups.

xi) Sexual health local enhanced services through GP practices	- £69,591
xii) Sexual health local enhanced services through Pharmacies	- £128,192

**Total in this agreement:** **£ 197,703**

15. Commissioning and spending decisions for 2014/15 and future years for these services will be determined through appropriate Council governance procedures, in line with the Council's constitution.
16. The agreement consists of a core set of terms and conditions setting out aims and objectives, arrangements for governance, strengthened performance and financial monitoring and reporting, annual service reviews, dispute resolution and termination. The agreement also includes schedules setting out the services to be commissioned under s.75 arrangements, identifying which partner will be the lead commissioner and containing more detailed governance, monitoring and reporting arrangements in relation to the particular service. The agreement has been drafted so as to be flexible, allowing for services to be varied, new services

to be included or existing ones removed by agreement as the partnership between the council and the CCG develops, and needs or commissioning strategies change. The form of the agreement is a rolling agreement with a 6 months notice period for termination.

17. Under the core terms, overall governance of the arrangements will sit with the Health and Social Care Partnership Board (HSPB) whose terms of reference will be appended to the agreement. The CCG will be required as a minimum to report to the HSCPB on a quarterly and annual basis setting out performance levels against targets, plans to deal with underperformance and financial returns, including any forecast overspends or underspends. The schedules then require more frequent reporting to Council officers and bodies such as the Drug and Alcohol Team (DAAT) Board and Joint Commissioning Committee (JCC) for Mental Health. Whilst the schedules may detail specific targets, the agreement also contains an agreed set of overall aims and objectives.
18. Arrangements for how financial contributions by the parties are to be dealt with on a pooled or non-pooled basis are laid out in the terms with specific provisions included to deal with potential underspend or forecast overspend. The agreement contains a number of protections for the Council ranging from confidentiality and data protection issues to dispute resolution and termination arrangements including the potential application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). There is also a mutual indemnity covering losses to one partner arising out of the acts or omissions of the other. The agreement also contains appropriate health and safety and equality provisions.
19. In addition to a clear framework against which lead commissioners will be held to account it is intended that by bringing a number of joint commissioning arrangements together in one legal agreement we will be able to ensure greater consistency with providers such as South London and Maudsley NHS Foundation Trust, where there are currently multiple and complex commissioning routes. Potential overlaps, duplications and opportunities for efficiencies across services and/or providers will be more easily identified to support joint decision making on commissioning intentions going forwards. This is particularly important as the financial climate becomes tougher and investment and disinvestment choices need to be made for 14/15 onwards.
20. Whilst strategic oversight rests with the Health and Wellbeing Board governance of the s.75 arrangements would be through the recently constituted Health and Social Care Partnership Board (HSPB) which brings together commissioning leads from all relevant departments of the council, the CCG, performance leads and the public health team. The HSPB will receive the quarterly and annual financial and performance monitoring reports specified in the agreement, and provide a forum to interrogate performance and financial monitoring against agreed outcomes.
21. Alongside the core terms the agreement also includes schedules setting out the services to be commissioned under s.75 arrangements, identifying which partner will be the lead commissioner. The agreement has been drafted so as to be flexible, allowing for services to be varied, new services to be included or existing ones removed by agreement, as the partnership between the council and the CCG develops and needs or commissioning strategies change.

22. There are a number of very effective partnership arrangements in place to oversee joint commissioning, such as the Drug and Alcohol Action Team (DAAT) Board and Substance Misuse Joint Commissioning Group. We are also refreshing our Mental Health Joint Commissioning Group, and developing a robust governance framework for the integrated care programme with Lambeth (Southwark and Lambeth Integrated Commissioning, or SLIC). As the Council's Health and Well Being Board develops over the coming months it will be important to ensure that the governance infrastructure enables the ambitions and priorities to improve the public's health in Southwark lead to commissioning that makes a measurable difference in health and well being outcomes. Opportunities to build on what is currently working and streamline or phase out unnecessary meetings will be maximised.
23. The services the Council is considering for inclusion in the agreement for 2014-15 will be children's mental health commissioning and speech and language therapy. In addition, the Council will act as lead commissioner for learning difficulties and disability services across the whole life course.

### **Policy implications**

24. The Health and Social Care Act 2012 set out responsibilities for local authorities to be responsible for public health commissioning, to convene joint Health and Wellbeing Boards and to use these to reduce health inequalities by taking "such steps as it considers appropriate for improving the health of the people in its area".
25. The Health and Social Care Act set out a role for local authorities in terms of health and wellbeing leadership. This role was articulated in the 2010 *Marmot Review* which set out the limitations in tackling health inequalities in the current system in which "the perception among agencies is that responsibility for the delivery of health improvement lies with the NHS". The Marmot review highlighted that local government and other organisations hold many of the levers that shape and can have an impact on health improvement.
26. Southwark's Health and Wellbeing Board has agreed a joint Health and Wellbeing Strategy in July 2013, in line with its statutory responsibilities. The three priorities set out within that strategy are: to give every child and young person the best start in life; building healthier and more resilient communities and tackling the root causes of ill health; and, improving the experience and outcomes of care for our most vulnerable residents and enabling them to live more independent lives.
27. Section 75 arrangements are being developed in line with the Joint Health and Wellbeing Strategy. The strategy sets out partnership commitment to developing health and wellbeing services that work towards reducing inequality of outcome and can make a measurable difference to the lives of residents. Central to this is ensuring that commissioned services are high quality, can demonstrate impact, promote independence and mental wellbeing and are shaped by the views and experiences of service users.
28. The Health and Social Care Act also sets out a duty for Health and Wellbeing Boards to encourage integrated working, so that the health and social care services in an area work in an integrated manner.

29. The national policy context has increased the pace on the integration between health and other care services at a local level. Partners across the CCG and council are working together to understand what this means for local services and their configurations going forward. Local areas will be able access the local Integration Transformation Fund to support local ambitions by submission of jointly agreed plans between the CCG and LA required by March 2014. Over coming months the potential for joint working and integrated commissioning between partners is being extensively explored under the remit of the health and Wellbeing board. The outcome of which is likely to influence how we choose to exercise future Section 75 arrangements.

### Evaluation and review

30. Local authorities are guided by their local joint strategic needs assessment and health and wellbeing strategy in relation to commissioning, and the objectives within the national public health outcomes framework. There are comprehensive monitoring arrangements proposed within the section 75 agreement to cover the partnership governance, and review and monitoring of services delivered under the agreement.
31. It is also proposed that an annual update is provided to cabinet on the performance and progress of services delivered under the agreement.

### Resource implications

32. The report does not commit to new spending, rather it puts in place a framework agreement which formalises arrangements for 2013/14 expenditure as set out below.
33. The 2013/14 cost of the services provided through the s75 agreement will be as set out below:

Adult mental health	£4,926,666
Substance misuse treatment services	£3,323,788
Smoking cessation services	£324,201
Sexual health treatment services	£197,703
<b>Total</b>	<b>£8,772,358</b>

34. The costs will be met by £4.93m revenue funding from the Children's and Adults' Services Department budget and £3.85m funding from the ring-fenced public health grant funding.
35. Financial reports will be received from the CCG by the HSPB on a quarterly basis and the cabinet on an annually basis.
36. Any cost pressures identified above the level of the agreement will be controlled and managed by the department responsible for the services, and will be met from within existing resources.
37. The local authority will also contribute commissioning resources towards posts identified to deliver partnership commissioning work.

38. The majority of these contracts are fixed price, the risks of the activity led contracts i.e. local enhanced services for sexual health, will be managed by robust contract monitoring.

### **Community impact statement**

39. The services within the agreement support some of the most vulnerable groups in Southwark, and are designed to be accessible to all community groups. The partnership agreement reiterates and acknowledges the Public Sector Equality duties of both bodies to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups. It sets out a joint commitment to carry out appropriate equalities impact assessments at reasonable intervals in relation to existing and new policies relating to the Partnership Arrangements, and to promote equality and diversity through their participation in the Partnership Arrangements.
40. The health and wellbeing of the local population is at the core of commissioning related to health outcomes in the borough. The involvement of communities is a key part of the work of all parts of the health system, including through health and wellbeing boards. The value of including the wider views of individuals and communities is critical to both understanding and tackling the health and wellbeing issues in both Lambeth and Southwark.
41. An initial key principle of the transition was that it would be 'steady-state' due to the scale of change in the NHS and the complex nature of the commissioned services the local authority will be responsible for from 2013. There have been minimal changes to the services which are currently being provided to the community, and none are immediately proposed under this agreement, which deals with the governance for commissioning arrangements.
42. Engagement with the community and with people accessing commissioned public health services is a core principle within future commissioning strategies for the new public health services within the council. The impact of these services on the community, and the views of the local community about these services, will be a core element of any reviews for services. All future changes to services would be fully consulted in line with the Council's responsibilities.
43. The Council has been refreshing its joint strategic needs assessment, and producing a specific needs assessment for substance misuse issues in the borough. These needs assessments involve service users and provide input into the Council's commissioning intentions. There is consultation currently underway on mental health day opportunities in Southwark.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Director of Legal Services**

44. This is an agreement under section 75 of the National Health Services Act 2006. Section 75 of the 2006 Act states that the Secretary of State may, through Regulations, provide for NHS bodies and local authorities to enter into arrangements in relation to certain prescribed functions of theirs, including the exercise by one of the other's prescribed functions alongside their own, and the establishment of pooled funds. This agreement under s.75 of the 2006 Act is a delegation to the CCG of part of the Council's function in relation to public health and mental health services. As such, it is not a contract for services. This being



the case, the Contract Standing Orders (CSOs) in the Council's constitution do not apply to this arrangement.

45. Whilst the Cabinet agreed on 12 February 2013 to delegate to the Strategic Director of Children's and Adults' Services the authority to approve the s.75 agreement in so far as it relates to public health matters, because this agreement now also concerns mental health services to the value of almost £5 million, it is appropriate that this decision is referred to Cabinet.
46. The agreement contains appropriate protections for the Council in relation to confidentiality, data protection and sharing issues, dispute resolution and termination arrangements including the potential application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). We understand that TUPE will not apply on entering into the agreement but that there may be a risk of it affecting the Council directly if commissioning of the relevant services is later brought back into the Council. Governance, performance monitoring and reporting arrangements are all covered by the agreement.
47. The agreement contains equality provisions and equality analyses will be carried out at the appropriate times, as noted in the community impact statement above. Consultation should also take place with the appropriate individuals as required by the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.
48. Although the agreement is complex, seeking to bring within its remit a range of services, these are clearly delineated with provisions for specific governance and monitoring arrangements and separate funding streams set out. Similarly, whilst the agreement is open-ended, terminable on 6 month' notice, terms of duration for the various services covered by it are separately set out.
49. With the current arrangements for the provision of the affected public health services sitting within contracts held by the NHS and a need for essential services to continue whilst the Council carries out contract and service reviews and needs assessments following the public health transfer, and with mental health services already having been provided through a s.75 agreement with the PCT, there seems a clear benefit to the proposed arrangements in the context of the Council's desire to ensure continuity and consistency.

#### **Strategic Director of Finance and Corporate Services (FC13/077)**

50. This report seeks cabinet approval of the proposed agreement between the council and the clinical commissioning group (CCG) under section 75 of the national health services act 2006. This agreement will allow the CCG to commission various services on behalf of the council.
51. The financial implications are detailed in paragraphs 32 to 38 and show that services are funded though a combination of council revenue budgets and department of health grant. Any reduction in available funding will be reported through the council's budget setting process.
52. The strategic director of finance and corporate services notes that robust monitoring will be in place to ensure demand led expenditure and any other pressures are contained within existing resources. In addition, the annual report to cabinet will show the costs of this agreement.

53. This agreement represents an opportunity for further service transformation to achieve improved health outcomes in Southwark. Any changes to services will be subject to a full appraisal of financial implications.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Council Cabinet paper, 17 July 2012	Corporate Strategy 160 Tooley Street London SE1 2QH	<a href="http://moderngov.southwark.gov.uk/documents/s30448/Report%20Public%20Health%20Shared%20Service%20between%20Lambeth%20and%20Southwark%20Councils.pdf">http://moderngov.southwark.gov.uk/documents/s30448/Report%20Public%20Health%20Shared%20Service%20between%20Lambeth%20and%20Southwark%20Councils.pdf</a>
Southwark Council Cabinet paper, 12 February 2013	Corporate Strategy 160 Tooley Street London SE1 2QH	<a href="http://moderngov.southwark.gov.uk/documents/s35420/Report%20Establishment%20of%20Public%20Health%20Leadership%20and%20Commissioning%20in%20Southwark%20Council.pdf">http://moderngov.southwark.gov.uk/documents/s35420/Report%20Establishment%20of%20Public%20Health%20Leadership%20and%20Commissioning%20in%20Southwark%20Council.pdf</a>

## APPENDICES

No.	Title
Appendix 1	Draft Agreement under section 75 of the National Health Services Act 2006 relating to lead commissioning of health, social care and wellbeing services. Available on the Council's website: <a href="http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4552&amp;Ver=4">http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&amp;MId=4552&amp;Ver=4</a>

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Catherine McDonald, Cabinet Member for Health, Adult Social Care and Equalities	
<b>Lead Officer</b>	Romi Bowen, Strategic Director of Children's and Adults' Services	
<b>Report Author</b>	Kerry Crichlow, Director Strategy & Commissioning (Children's and Adults' Services)	
<b>Version</b>	Final	
<b>Dated</b>	8 November 2013	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
	<b>Officer Title</b>	<b>Comments Sought</b>
	Director of Legal Services	Yes
	Strategic Director of Finance and Corporate Services	Yes
	<b>Cabinet Member</b>	Yes
	<b>Date final report sent to Constitutional Team</b>	8 November 2013