

Subject: Children's Services Section 75 Partnership Agreements

Date of Meeting: 9 March 2010

Report of: Director of Children's Services

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Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 In May 2009 the Council and the PCT sought expert advice about the Section 75 agreement in light of the national and local issues identified in paragraphs 3.3 and 3.4 below. The advice concluded that, although ground breaking in 2006, the Section 75 Agreement was no longer entirely fit for purpose and that consideration should be given to creating separate commissioning and provider agreements between the Council and NHS Brighton and Hove (the PCT) and the Council and South Downs Health NHS Trust (SDH) respectively. In July 2009 the Chief Officers Group for the Children and Young People's Trust Partnership initiated a formal review of the Section 75 agreement. A Joint Project Group, including representatives from all three partners, and including no-cost expert consultancy provided by the national Commissioning Support Programme (CSP), has undertaken the review which is scheduled to complete by March 31 2010.
- 1.2 The report sets out proposed changes to the Council's existing partnership arrangements with the PCT and SDH in relation to Children's Services. The report also addresses new draft Statutory Guidance in relation to Children's Trusts Boards.
- 1.3 Cabinet will be asked to approve the principles of the S75 agreements and to delegate authority to the Director of Children's Services to finalise the detailed terms and to the Head of Law to execute the agreements. Governance Committee are being consulted prior to the matter going to Cabinet as there will be consequential changes to the constitution arising from the new agreements.

2. RECOMMENDATIONS:

- 2.1 That the Committee notes the proposed principles of the S75 agreements as set out in Appendix One and the proposed governance arrangements as set out in Appendix Two and makes any comments in relation to those known to Cabinet in time for its meeting on 11 March 2010.
- 2.2 That the Committee notes the proposed new duties in relation to establishing a Children's Trust Board outlined in paragraph 4.1 of the report and notes that these proposals will be taken forward by the Cabinet Member for Children and Young People.

3. RELEVANT BACKGROUND INFORMATION / CHRONOLOGY OF KEY EVENTS:

The existing partnership arrangements

- 3.1 In September 2006 the City Council entered into a Partnership Agreement with SDH and the PCT under Section 31 Health Act 1999 in relation to Children's Services. The Agreement brought together 273 staff from SDH together with 860 staff from the Council's Children's Families and Schools Directorate with the aim of creating a service with multidisciplinary teams and with capacity to provide flexible, integrated services centred on the needs of children and their families.
- 3.2 Since September 2006 the Director of Children's Services has consolidated the governance and management arrangements for the delivery of the integrated front line services. The arrangements were welcomed by stakeholders during consultation for the 2009-12 Children and Young People's Plan. The Annual Performance Assessments by Ofsted in 2007 and 2008 recorded that integrated services had a positive impact on improving outcomes for children and young people. The new children's services annual rating, introduced by Ofsted in May 2009, found that children's services in Brighton and Hove are performing well.
- 3.3 In 2009, the Department of Children, Families and Schools and the Department of Health joint strategy for children's health (Healthy Lives Brighter Futures) identified a wide variation in arrangements across the country for the governance, commissioning and provision of children's services. A Commissioning Support Programme (CSP) has been established to work with local Children's Trusts to address this variation and especially to clarify the distinction between commissioning and provider functions in order to comply with the NHS World Class Commissioning programme.
- 3.4 In Brighton and Hove each partner has acknowledged that issues have, inevitably, emerged since the local agreement was signed, especially the need to clarify commissioning and provider functions and to strengthen the governance of joint commissioning plans and management of the pooled budget.

The proposed new Section 75 agreements

- 3.5 The proposed new Section 75 agreements will be between the Council and SDH in relation to the integrated provision of services and the Council and the PCT in relation to lead commissioning of services. As set out above, it is proposed to separate the provider and commissioning functions to reflect the requirements of the NHS World Class Commissioning Programme.
- 3.6 The key elements of the Section 75 agreements will be:
 - Aims and objectives of the Partnership Agreement:
 - Services covered by the agreements
 - Governance arrangements
 - Workforce matters
 - Finance
 - Liability, indemnity and insurance
 - Review and Variation of the agreements
 - Dispute resolution and termination

- Performance Management

The above elements are described in more detail in Appendix 1. A Governance chart is also attached at Appendix 2.

- 3.7 In addition to the separation of the provider and commissioning agreements, a further significant change will be the creation of two Joint Management Groups (JCMG/JMG) of officers (one provider and one commissioning) to whom monthly performance reports will be taken in relation to key indicators identified in the agreements. There will therefore be a closer, regular scrutiny of the budget and impact of the agreements in a focused arena. Decisions that require Member approval would be made by the Cabinet Member for Children's Services or Cabinet in accordance with current delegations. The Children and Young People's Trust Board will cease to be the top decision making body for the s75 agreements, but will instead fulfil the functions required by the Apprenticeships, Skills, Children and Learning Act 2009 as set out below.

4. THE CHILDREN'S TRUST BOARD AND THE APPRENTICESHIP, SKILLS, CHILDREN AND LEARNING ACT 2009

- 4.1 The governance arrangements in relation to the s75 agreements are designed to manage and monitor the s75 agreements themselves and to ensure that the aims and objectives of the agreements are met. The wider governance arrangements in relation to setting the priorities and monitoring the delivery of all children's services in the City will include a new Children's Trust Board which has become a requirement pursuant to the Apprenticeship, Skills, Children and Learning Act 2009.
- 4.2 Under the new Act it will be a requirement from 1 April 2010 for Local Authorities to make arrangements to establish a statutory body – The Children's Trust Board - which will have the function currently held by Local Authorities to prepare and review a Children and Young People's Plan. The new Board must include representatives of the Council and its "relevant partners" and may include other persons or bodies that the authority thinks appropriate.
- 4.3 There is currently draft secondary legislation and draft statutory guidance which sets out in detail the new requirements and how the Children's Trust Board should be constituted and how it should link to other bodies, such as the LSP and the Local Safeguarding Children's Board. Officers are preparing proposals for implementation of the new requirements based on the information currently available. Once the secondary legislation and guidance has been finalised it is proposed that a report be brought back to the Cabinet Member for Children and Young People to approve the steps necessary to establish the new Children's Trust Board.

5. CONSULTATION

- 5.1 The review has been undertaken jointly by officers from the Council, the PCT and SDH including the Assistant Director Financial Services and the Managing Principal Solicitor.
- 5.2 The review has been shared with the relevant trade unions through the Joint Consultative Committee.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 The joint commissioning agreement will give rise to a s75 partnership arrangement totalling approximately £63 million of which the council's contribution will be approximately £53 million or 84%. The integrated provider agreement will give rise to a s75 partnership arrangement totalling approximately £57 million of which the council's contribution will be approximately £50 million or 88%. Both agreements are still subject to final agreement of budgets to be included in the pooled funds.
- 6.2 In financial management terms, the general principle is that as the host partner (the council) manages the arrangements, it must manage within budget and carry the risk associated with this, in particular where expenditure is incurred without agreement. However, where expenditure is incurred with agreement or in default of agreement, the partners are jointly liable in proportion to their contributions if this causes overspending.
- 6.3 Another general principle is that there is frequent and regular reporting to the JCMG and quarterly reporting to partners to ensure that problems and issues are identified early and escalated where appropriate. The "Revised Annual Finance Agreement" (referred to Schedule 4) will set out the process for managing and reporting forecast deficits.
- 6.4 In terms of potential underspending, the agreement provides that underspends are either carried forward or distributed in proportion to partners' contributions. However, in practice the NHS cannot carry forward underspends.
- 6.5 The agreement specifies that draft budgets must be available by 31 December each year and final budgets must be confirmed by 31 March each year. Budget planning must take into account inflation, planning assumptions (e.g. demographic changes), changes in policy and commitments. The budget process will also be set out in the "Revised Annual Finance Agreement". The budget will be agreed by the partners (Boards and Cabinet/Full Council) following the outcome of the 'annual review'.
- 6.6 The "Revised Annual Finance Agreement" will be agreed each year by JCMG and will, inter alia, set out:
- The contributions for the year following the outcome of the annual review;
 - Invoicing arrangements between the partners and the flow of funds in and out of pooled funds;
 - The use of specific grants and other income;
 - The financial and non-financial reporting requirements (frequency/format), including exception reporting, escalation and recovery procedures for overspend forecasts.

Finance Officer Consulted: Nigel Manvell

Date: 08/02/10

Legal Implications:

- 6.7 The proposals in the report are in line with s75 National Health Service Act 2006 together with associated secondary legislation and guidance, which replaces s31 Health Act 1999. Section 75 enables the Council to enter into arrangements to pool funds and integrate services with health partners. The s75 agreements will be technical documents that will require time to finalise and hence the need for authority to Officers to settle the details based on the principles in this paper.
- 6.8 As set out in the body of the report, the Apprenticeship, Skills, Children and Learning Act 2009 amends the Children Act 2004 to insert requirements for the Council to establish a Children's Trust Board with specified representation and with the function of preparing and reviewing the Children and Young People's Plan. There is currently draft secondary legislation and draft Statutory Guidance which sets out detailed provisions in relation to the role, membership and functions of the Board. As this further legislation and guidance is not yet in force a further report to the Cabinet Member for Children Services will need to address implementation of the new requirements once they are finalised.

Lawyer Consulted:

Elizabeth Culbert

Date: 05/02/10

Equalities Implications:

- 6.9 The provision of integrated services will benefit families from disadvantaged backgrounds who are likely to be more dependent on the services covered.

Sustainability Implications:

- 6.10 There are no adverse sustainability implications arising from these proposals.

Crime & Disorder Implications:

- 6.11 The integrated provision of services will assist in addressing the needs of children and families in a co-ordinated way and therefore contribute to the reduction of crime and anti-social behaviour.

Risk and Opportunity Management Implications:

- 6.12 The proposals for integrated services and pooled funding pose financial and legal risks which have been taken into account in developing the proposals.

Corporate / Citywide Implications:

- 6.13 The proposals will benefit the residents of Brighton & Hove by enabling integrated services to be provided centred on the needs of Children and their family rather than the provider organisation. This is inline with the Council's Corporate priorities.

SUPPORTING DOCUMENTATION

Appendices:

1. Key elements of s75 agreements
2. Governance Arrangements

Documents In Members' Rooms

None

Background Documents:

None