BARNSLEY METROPOLITAN BOROUGH COUNCIL –
Report to Cabinet 25th March, 2015

This matter is a Key Decision within the Council's definition and has been included in the relevant Forward Plan

Report of the Executive Director
of Adults & Communities

BETTER CARE FUND AND SECTION 75 AGREEMENT

1. PURPOSE OF REPORT

1.1 The purpose of this report is to provide Members with an update on the development of the Better Care Fund (BCF) and associated Section 75 Agreement in Barnsley. The s75 Agreement has to be in place between the Council and CCG, and potentially other statutory agencies, from the 1st April 2015 and contains a financial risk share associated with the BCF pool and the basis of establishing a Partnership Board to oversee the agreement on behalf of the partners

2. RECOMMENDATIONS

It is recommended that:-

2.1 Members note the successful outcome of the BCF submission being 'approved' on the 22 December 2014 and due to go live on the 1 April 2015.

2.2 Members agree to the Council entering into an agreement with NHS Barnsley Clinical Commissioning Group, and potentially other statutory agencies pursuant to Section 75 National Health Service Act 2006 in relation to the BCF for the financial year 2015/16 and delegate authority to the Executive Director of Adults and Communities and Director of Legal and Governance, in consultation with the Leader, to finalise the agreement by the 1 April 2015.

2.3 Members agree the basis of establishing a formal Partnership Board (the Senior Strategic Development Group) under the auspices of the Health and Wellbeing Board (H&WB), which will be a joint committee pursuant to Regulation 10(2) NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 and cabinets social care functions in relation to BCF are delegated to the Council's representatives appointed to the partnership board and to the partnership board, to the extent necessary for it to operate within its agreed terms of reference to make decisions on spend, benefits, associated schemes and targets within the formal pool.

2.4 Members note the intention for the CCG to host the pool and agree the financial position on under and overspend within the pool on behalf of the Health and Wellbeing Board.

2.5 Members note the intention for the financial risk share of the performance element of the BCF and agree to delegate authority to the Executive Director of Adults and Communities and Director of Finance, in consultation with the Leader, to agree with health partners the apportionment of risk up to 50%.

2.6 Members note that the H&WB delegates authority to the Chair and Vice Chair (Leader of the Council and Chair of the CCG) to meet before the end of the financial year, or as soon thereafter, to ensure all appropriate plans are in place from the 1st April 2015.

3. INTRODUCTION/BACKGROUND

3.1 The BCF has been introduced by the Coalition Government as one of the most ambitious joint ventures between NHS and Local Government. The programme formally establishes a pool and associated s75 Agreement between the Council and CCG from the 1st April 2015.

3.2 It is also important to note that one of the key drivers for the BCF is the reduction of emergency admissions to hospital, the biggest cost pressure in the NHS. All schemes need to demonstrate impact towards this ambition over 2015/16. At present, the BCF is a one year agreement, whilst national policy direction signals a move to health and care integration, this may be subject to any change in political composition later this year.

3.3 Barnsley submitted its BCF Plan to NHS England on the 19th September 2014. On the 22 December Barnsley received notification that the BCF submission had been approved, as a product of the national assurance process and that ongoing monitoring and assurance would be the responsibility of the NHS England Local Area Team (Yorkshire and Humber).

3.4 This represents significant progress, particularly over the summer and autumn period, with the full and active engagement of all local stakeholders. However, this is the start of the process rather than the end in itself as the programme moves into implementation and delivery from the 1st April 2015.

4. SECTION 75 DEVELOPMENT

4.1 One of the legal requirements of the BCF is that the Commissioning Bodies (Council and CCG) enter into a formal s75 Agreement; as set out in the NHS Act 2006, to oversee and administer the fund on behalf of the H&WB. This agreement can also include other statutory agencies. For Barnsley, this is a formal pool of £20,374,000 for the financial year 2015/16.

4.2 The formal s75 Agreement for the BCF draws largely on a nationally prescribed template. The agreement is underpinned by a formal risk share agreement, which includes a financial risk share and clearly sets out the basis of establishing a ‘Partnership Board’ to oversee and administer the fund on behalf of the two commissioning bodies, other statutory agencies and indeed the H&WB. It includes provisions concerning pooled fund management and the CCG has requested the role of host partner with one of its officers being designated pooled fund manager. It is important that all respective organisations are fully sighted on, and ratify the Agreement.

4.3 The following elements have been agreed between partners as part of the financial risk share and should be noted by members:-

1. **Overspend from budget lines within the pool –**
   As per the BCF submission, any overspend will be the responsibility of the individual commissioning organisation taking funding out of the pool to manage within its overall financial position. This effectively negates any shared risk through the pool arrangements.

2. **Underspend from budget lines within the pool –**
   Any underspend from within the pool will form the basis of discussions between partners on where to invest in order to achieve the greatest benefit. This will be held and agreed by the Partnership Board and recommended to the H&WB.

3. **Risk of not achieving the performance element of the pool –**
   A statement of the source and the application of funds in the BCF is shown at Appendix 1. The risk of not achieving the performance element of the pool has been identified as up to £1,976,672. It is important to note that this is money already in the pool and not additional to the £20,374,000.

   The performance element of the pool is set against an ambition and national expectation to reduce emergency admissions to hospital by 2.9% in 2015/16 - equating to a reduction of 892 emergency admissions. Achievement against this will be assessed quarterly and funds will be released retrospectively against local performance on a sliding scale into the pool.

   It is also important to note that any funds not materialised as part of the BCF performance element of the pool will be used to pay for the demand in acute services which hasn't been disrupted and would therefore stay in the local health economy – albeit outside the formal BCF pool.

   To address the principles of the financial risk share, the Council and its health partners are assessing the apportionment of risk; as such the CCG has accepted 50% of the risk. The Council is seeking to negotiate with BHNFT and SWYPFT to agree an appropriate apportionment of the remaining 50%. A 50% share would present a £988,336 risk to the Council. This will inevitably be reduced depending on the performance against the target of a 2.9% reduction however, with continued demands this cannot be fully quantified at present. If the target is achieved in full, all the performance element will be released to the BCF pool.

4.4 Furthermore, it is proposed that a **Partnership Board** is established, namely SSDG (as the executive group of the H&WB) where partners will delegate authority to oversee and administer the BCF pool as a joint committee. The Partnership Board will consist of representatives from the Council and CCG (and potentially other statutory agencies as mentioned above), and will as appropriate, invite members of other agencies to attend as co-optees but with no voting rights. The Partnership Board will report into the H&WB as overall accountability for the Better Care Fund rests with the H&WB. Cabinet members of the Council and members of the CCG Governing Body will be kept fully abreast of developments throughout 2015/16.

5. APPROACH

5.1 Members are asked to agree the position in principle with regards to the risk share of the BCF, including the proposal for over and underspends and the performance element of the pool. This needs to be concluded and in place for the BCF to go live on the 1 April 2015.

5.2 It is however important to note that to ensure the delivery of the benefits articulated in the BCF submission and to meet the national expectations around reducing emergency admissions to hospital, all schemes should contribute to the national expectation and be monitored robustly with progress overseen by the Partnership Board and reported on an exception basis into the H&WB.

5.3 Correspondingly a BCF risk register will be in place and will form an integral part of the governance of the Partnership Board with exceptions reported to the H&WB. The Council's Senior Management Team and Cabinet will be kept abreast of developments throughout 2015/16, as indeed will the CCG Management Team and Governing Body.

6. CONSIDERATION OF ALTERNATIVE APPROACHES

6.1 The BCF and associated s75 Agreement is mandated.

6.2 However, in terms of the financial risk associated with the performance element of the pool, there were a series of options presented, namely:-

1. **100% CCG risk –** related to non-achievement of emergency admissions reduction.
2. **90% CCG risk / 10% BMBC risk –** related to contributions to the pool.
3. **43.5% CCG risk / 56.5% BMBC risk –** related to the use of contributions from the pool.
4. **30% CCG risk / 70% BMBC risk –** based on the scheme risks relating to benefits realisation.
5. **50% CCG risk / 50% BMBC risk -** in the spirit and ethos of partnership working and the BCF.
6. **50% CCG with the remainder shared between the Council, SWYPFT and BHNFT.**

7. PROPOSAL AND JUSTIFICATION

7.1 The mandatory nature of the BCF and s75 Agreement presents an opportunity to further integrate health and care services to deliver the best possible care and quality of care in Barnsley. The Council and CCG have to enter into a formal s75 Agreement.

8. IMPLICATIONS FOR LOCAL PEOPLE AND SERVICE USERS

8.1 The BCF should facilitate better care for local people and service users through integrated service design and commissioning of services.

9. FINANCIAL IMPLICATIONS

9.1 The total value of the pooled budget is £20.374m made up of contributions from the Council and the CCG as follows:

Contributions to the Pool	£m
Council - Disabled Facilities Grant - Social Care Capital Grant	 1.326 0.690
Total Council	**2.016**
CCG - NHS Current Social Care Transfer - NHS Other Health Funding	 8.801 9.557
Total CCG	**18.358**
Total Pool	**20.374**

9.2 The funding coming out of the pool to each organisation is as set out below:

Funding from the Pool	£m
Council - Disabled Facilities Adaptations - Social Care Capital - Care Packages (Maintain Eligibility) - Intermediate Care - Carers Support - Care Act Implementation	 1.326 0.690 4.794 3.246 0.761 0.700
Total Council	**11.517**
CCG - Health Related Spend	 8.857
Total CCG	**8.857**
Total Monies out of the Pool	**20.374**

9.3 For the Council the monies coming out of the pool effectively equate to the same level of funding the council currently receives via grants and Health in 2014/15 apart from an additional £0.700m associated with the requirements of the Care Act which is additional.

9.4 Any overspends will be managed within the individual commissioning organisation taking funding out the pool, to contain within their overall financial position. Any underspends will be considered jointly by partners to consider how best to utilise the funds.

9.5 Within the overall pool resources £1.977m of the Health funding is dependent on hitting certain performance criteria linked to reducing hospital admissions. To the extent that the target is not achieved there is a risk of the pool being up to £1.977m short. The Council is expected to take a percentage share of this risk, the final position which is still being finalised but could equate up to 50% (£988,336) if the performance target is not achieved.

9.6 This shortfall, were it to materialise in any way would be expected to be contained within the overall resource envelope for Adult Social Care. This in reality could only be achieved from reduced expenditure and hence activity in the following areas:

- Re-ablement Services
- Preventative Services
- Care Packages

In reality it is likely that this would mean managing referrals to budget, which in real terms could mean stacking cases and delaying putting packages of care in place for people; and prioritising the care packages the Council is able to fund targeting those at greatest risk. It is likely this would have a significant detrimental impact in terms of the overall system and could actually increase pressures on hospital admissions, and delay discharges, all of which are against the principles of the strategy and what we are seeking to achieve in terms of systems change.

9.7 The Better Care Fund is currently only a one year programme, although it is assumed it or something similar will continue beyond 2015/16. To the extent that the Health funding currently passed to the Council was to cease in the future this would represent a financial shortfall of £9.5m.

9.8 Financial implications are detailed at Appendix A.

10. LEGAL IMPLICATIONS

10.1 The Director of Legal and Governance has been consulted in relation to the proposals. As mentioned earlier in the report, a condition of the Better Care Fund is that it is used through a section 75 pooled fund agreement. Section 75 National Health Service Act 2006 enables local authorities and NHS bodies to enter into prescribed arrangements in relation to prescribed health related functions of local authorities and prescribed functions of NHS bodies, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised. The options for the arrangements include the establishment and maintenance of a pooled fund, the exercise by a NHS body on behalf of a local authority of certain health related functions in conjunction with the exercise of its NHS functions and vice versa, the exercise by a local authority of certain NHS functions in conjunction with the exercise by a local authority of certain health related functions.

10.2 The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 set out the rules governing such partnership arrangements and require that the partners have jointly consulted people likely to be affected by such arrangements. Regulation 7 (3) sets out what should be specified in a pooled fund agreement, such as the agreed aims and outcomes, how the pool fund should be managed and monitored (including which partner is to be the host partner) the duration of the arrangements and provision for review, variation or termination of the arrangements. These are just some of the requirements, there are others and the section 75 agreement the Council enters into will need to comply with these regulations.

10.3 Regulation 10 (2) sets out that the partners may form a joint committee to take responsibility for the management of partnership arrangements including monitoring the arrangements and receiving reports and information on the operation of the

arrangements. There is no power under the regulations to delegate to bodies other than the partners and it is for this reason the proposal is that members of other agencies, who may be co opted to the partnership board will have no voting rights.

11. EMPLOYEE IMPLICATIONS

11.1 There are no employee implications as a direct product of this report.

12. CONSULTATIONS

a) Chief Executive
b) Executive Director Designate, People
c) Executive Director Designate, Place
d) Director of Public Health
e) Director, Human Resources, Performance & Communications
f) Director, Finance, Assets & Information Services
g) Director, Legal & Governance
h) Trade Unions
i) Adults & Communities Directorate Management Team

13. LIST OF APPENDICES

13.1 Appendix 1 – A statement on source and application of funds in the BCF.

14. BACKGROUND PAPERS

14.1 BCF Submission 19.09.14.

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BCF in Barnsley

The Barnsley BCF for 2015/16 totals £20,374,000. The source of the funding is as follows:

Barnsley CCG	**£000s**	**BMBC**	**£000s**
Reablement funding	2,363	Disabilities Facilities grant	1,326
Carer's break	771	Social care Adaptations grant	690
Mental health	303		
Supporting Voluntary Action Barnsley	114		
Intermediate care	6,718		
S256 *	5,676		
Further CCG contribution to BCF pool	2,413		
Total CCG	**18,358**	**Total BMBC**	**2,016**

*S256 are funds transferred from health to social care if can be demonstrated that spending in social care will result in a health gain higher than could be expected by spending the resource on NHS commissioned care.

In summary 90.1% of BCF funding is coming from the NHS and 9.9% from BMBC.

Application of the BCF Funds

The Barnsley BCF is being applied as follows;

Health Services	**£000s**	**Adult Social Care**	**£000s**
7 day working - BHNFT	1,700	Maintaining eligibility for social care	3,501
Intermediate care - SWYFT	**6,718**	**Intermediate care – BMBC contracts**	**3,246**
Technology Developments – ***H&WB 03.02.15 – Agreed to use to fund 21 tier I Intermediate Care Beds***	439	Maintaining eligibility for social care – demographic increase	1,244
		Reablement	49
		Carers groups	51
		Short term residential placements	710
		Care Act implementation	700
		Disabilities facilities	1,326
		Social care adaptations	690
Total Health	**8,857**	**Total BMBC**	**11,517**

43.5% of funding, £8.8m, is being applied to NHS commissioned Intermediate care and 7 day working. 56.5% of resource, £11.5m, is being applied to protecting adult social care.