

Committee: Cabinet

Date: 15th January 2024

Wards: All

Subject: Mental Health Social Work S75 agreement

Lead officer: John Morgan, Executive Director: Adult Social Care, Integrated Care & Public Health

Lead member: Cllr Peter McCabe

Contact officer: Graham Terry, Director for Adult Social Care

Recommendations:

- a) That notice be given on the current Section 75 agreement with South West London and St Georges Mental Health Trust with social workers and support staff returning to Council service line Management.
 - b) Authorise the Executive Director: Adult Social Care, Integrated Care & Public Health, and the Executive Director, Innovation & Change, to take all actions needed, including any employment matters, to give effect to this resolution.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The current section 75 NHS Act 2006 arrangement no longer provides the best value for the residents of Merton in terms of maximising the social care and social work offer to adults and families living with mental health needs in the borough. If agreed this would bring an end to the integrated secondment arrangements in place with the Council and South West London and St Georges Mental Health Trust (SWLStG MHT). Council employees will return to adult social care to focus our duties on our core statutory responsibilities, whilst working in collaboration with SHFT, but not in an integrated service. A model of MH social work is in development.
- 1.2. The current integrated arrangement has led to an underuse of early intervention, preventative and community-based resources that has resulted in overreliance on high-cost placements, commissioned care package, supported living or 1:1 care.
- 1.3. There are concerns about the workload division between health and social care and who does what as social care functions within the s75 are not keeping pace with other social work services. The Council has limited data with regards to all social care performance under the current section 75 agreement and lacks evidence of equality across health and social care.
- 1.4. The integrated arrangements for adult mental health services are established under section 75 of the NHS Act 2006. The section 75 agreement governs the delegation of functions to meet our statutory duties in relation to adult mental health to the South West London and St Georges Mental Health Trust (SWLStG MHT) to deliver as part of integrated service arrangements. This

report recommends ending the s75 agreement with the SWLStG MHT. On the 16th of November, Cabinet gave initial approval to a savings proposal for 2024-25 that arises from the ending of this S75 agreement.

- 1.5. The S75 agreement requires a 12 month period of notice to be provided by either party unless a shorter period is mutually agreed. The 24-25 savings proposal anticipated an October end to the S75 agreement. Between LBM and SWLStG, we have a shared commitment to completing the transition within a timeframe which balances the risk of uncertainty for staff with the need to effectively manage the operational and financial implications of the change. A definitive date has not yet been agreed but will be between April and October 2024. The agreed priority is to ensure that the new arrangements are safe and effective for all involved.
- 1.6. We are presenting this report to Cabinet at the earliest opportunity to seek approval to separate the decision to end the S75 agreement with the SWLStG MH trust from the and to undertake all the work involved in doing so. This also allows Cabinet the opportunity to consider this strategic decision ahead of and separate to, the savings proposals relating to mental health contained within the council's budget setting process for 2024-25 which concludes in March 2024.
- 1.7. The Council and the SWLStG MH trust are committed to making the ending of the S75 work for service users, staff, stakeholders and both our organisations, whilst preserving the best of our coordinated working. One of our shared ambitions is for a cleaner approach to the delivery of our respective responsibilities and services because of these changes.

2 BACKGROUND

- 2.1. In Merton, secondary mental health care services for people who suffer from Severe and Enduring Mental Illness are delivered by SWLSTG Mental Health Trust. Two operational areas deliver these services: OPCMHT (Older People's Community Mental Health Team) and Adult CMHT (Adult Community Mental Health Team, including.
- 2.2. Merton Assessment Team – the main assessment gateway to adult mental health services for people aged 18-75 who are experiencing mental health problems and who are not responding to primary care interventions.
- 2.3. The Recovery & Support Teams – these teams provide the main treatment, recovery, and support functions where there is no clear diagnosis of a psychosis or mood disorder. The teams are linked to
- 2.4. GP practices and support is provided in the community. The teams also offer education and employment support.
- 2.5. Merton Early Intervention Team – which supports adults aged 18- 65 with a first episode of psychosis.
- 2.6. Merton Crisis & Home Intervention Team – which provides rapid assessment in A&E and in the community.

- 2.7. Merton Placement Review Team – which works closely with the Recovery & Support Teams to support the needs of those who require commissioned social care.
- 2.8. Under the Section 75, there are 23 FTE staff who are on the LBM payroll and 15.5 on trust payroll working for LBM within the MH Trust. These include managers, social workers, and support staff who are seconded to SWLSTG to perform our social care duties and functions of Assessment and Care Planning for Service Users and Carers, Care Management of commissioned social care placements and care packages. In addition, Safeguarding Adults are delegated to SWLSTG and delivered within the integrated health and social care teams which have been operationally managed by SWLSTG since 2014.
- 2.9. NHS staff transferring to local authorities as part of a Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and/or the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP) transfer will receive protection of NHS terms and conditions in line with the principles in TUPE and/or COSOP.
- 2.10. Merton is the only SWL borough left with a mental health section 75 in place.

3 REASONS FOR REPORT RECOMMENDATIONS

The objective of the Section 75 agreement was to deliver enhanced service experience to service users, through improving the quality of care and reducing isolated or silo working. The British Association of Social Work (BASW) found that in some areas this was very effective, with good outcomes for patients and the social care perspective being well integrated into the ethos of health (BASW 2010). (1) However, a survey by BASW (2) in 2013 reviewed the effectiveness of such arrangements over the last few years and identified that some social service departments pulled out of “pooled” arrangements. In fact, the most recent national survey (3) (Lilo et al 2016) reported around 45% of local authorities have removed mental health social care staff from NHS management, with the trend continuing across the country.

- 3.1. There is an extensive body of literature and public policy that highlights integration between health and social care as the means to achieve high quality provision to service users. However, better coordination, while not the same as integration, can also result in gains for service users. The National Collaboration for Integrated Care and Support (4) reports that better coordination “has a palpable merit: It can deliver many, if not most, of the benefits to users of an integrated system (and) it can be a positive, facilitating step towards an integrated system” (National Collaboration for Integrated Care and Support 2013).
- 3.2. Research by Lilo (2016) entitled ‘Mental Health Integration Past, Present and Future’ (5) led by the ADASS National Mental Health Leads Network, sampled a range of English local authorities and their relationship with their health partners in having section 75 agreements. Data returned by 108 of the 148 councils in England showed that 55% had section 75 agreements, which involve some degree of integration of their social workers in NHS

mental health teams, while 45% did not. 12 local authorities terminated or agreements or allowed their section 75 agreements to lapse (ending), citing that the arrangement did not prioritise the social care statutory duties, which led to poor outcomes under the Care Act 2014 for people in mental health services.

- 3.3. The surveys and interviews identify that integration in itself does not deliver an effective outcome for service users. It is the quality and nature of the 'integration' that is crucial. (Lilo et al 2014)
- 3.4. The effectiveness of social work within integrated teams is dependent on maintaining clear job roles, effective job planning and manageability of caseloads including well designed social care operational procedures and infrastructure such as IT systems that can serve the requirements of both health and social care (Lilo et al 2014)
- 3.5. The Council has limited data with regards to all social care performance under the current section 75 agreement, and less evidence of equality across health and social care. Regular Quality Assurance meetings held to discuss performance and recording etc have highlighted issues that have been difficult to address in the current arrangement. Staff have to record their work with clients on RIO the MH trusts client record system and recording on Mosaic the client record system used by adult social care. The RIO system is prioritised over Mosaic and so incomplete work steps and information is an issue that undermines care act performance and reporting accuracy.
- 3.6. We are concerned at the low level of Care Act assessments conducted in the mental health teams and the volume of incomplete client records regarding safeguarding, care and support plans, best interest decisions, mental capacity act assessments and reviews. Managers and staff have worked hard to reduce the volume of incomplete work steps but with a 15% increase in referrals into the mental health teams there are limits to the progress they can make.
- 3.7. The proposal to end the S75 allows LBM to return direct responsibility for ASC MH SW services to the council. LBM will join the other 5 SWL boroughs who have done so.
- 3.8. We want to focus on a sustainable and clear model for MH social work that meets our Care Act duties, re-establishes a social work identity and continues to deliver contribution to coordinated working that is solution focussed, strength based and a more fulfilling job for Merton staff.
- 3.9. The council is currently considering is recruitment and retention challenges and ending the S75 agreement will enable us to directly include MH Social Work in that discussion.
- 3.10. To report directly on our MH SW services and performance to our lead Cabinet member.
- 3.11. The saving proposal to return the Brokerage function for MH placements to Adult Social Care brokerage would be included within the work plan for the ending of the S75 agreement.

- 3.12. Given the relatively short timescale for ending the agreement it is likely to be a lift and drop of LBM MH SW staff and managers back into the ASC structure as a distinctive MH service whilst work continues on a new structure and future model of MH social work.
- 3.13. Our ambition for these changes is,
- To retain the best of integrated working
 - Preserve co-location wherever possible
 - Keep access to RIO, EMIS and Mosaic for LBM and health trust staff
 - Listen to what is important for our staff
 - Listen to the views of service users, carers, and stakeholders
- 3.14. The ending of the section 75 agreement will enable the Council's social work staff and team leaders to (re)focus practice towards our core statutory duties and responsibilities, resulting in support to more people with mental health needs and their families, promoting better equitable access to social care support networks both in Merton and those outside whom we own a duty to (under section 117 of the Mental Health Act 1983 (as amended 2007)). It also means we would benefit from higher quality personalised assessments and detailed support plans that promote independence, wellbeing and address early intervention and prevention. We can also work more closely with primary care networks and build even closer links with non-statutory support services.

4 ALTERNATIVE OPTIONS

- 4.1. 1) To do nothing is not considered an option as the department wishes to focus on continually improving mental health services for adult in the borough and continue to discharge our statutory duties under the Care Act.
- 2) Support the continuation of the section 75 model of integrated care. SWLStG MHT have agreed to end the S75 agreement in the absence of investment to increase the capacity and full-time equivalents (FTEs) of social workers. The option of continuation does not address the required focus on our Care Act duties, particularly consistency of those duties in the context of new CQC Assurance processes and brings further risk to the Council without a direct senior management leadership oversight and accountability held by Adult Social Care.
- 4.2. 3) End the S75 agreement. (Recommended option)
This would enable Merton to introduce clear and unambiguous line management to achieve consistent performance and quality of social work practice. It would also ensure their professional focus is on the social work priorities presently not being effectively applied under the current Section 75 Agreement. A further potential benefit of the Council taking on the operational management would be to further strengthen the links with Primary Care, Children's Services, and Drug and Alcohol Services. The return of social care for adults with dementia receiving health care from secondary care to the same service as those receiving primary care, would result to a consistent

service delivery for this client group providing a platform for the Council to strategically develop services e.g. in line with its priorities and strategic objectives. The potential risks of loss of joint multidisciplinary casework and reduced communication with Secondary Health Care could be effectively mitigated by a colocation model. These factors would need to be worked through carefully so that the new management arrangement strengthens the relationship and work with the Trust, but also supports social workers to concentrate on their statutory roles and responsibilities.

5 CONSULTATION UNDERTAKEN OR PROPOSED

- 5.1. There is no requirement to undertake a public consultation regarding these proposals.
- 5.2. Initial discussions have commenced with the Trust and our affected staff. There was a mixed reaction from staff with some supporting the termination of the Section 75 and current secondment arrangements and a return to Council Management, whilst others voice concerns about losing the integrated working they enjoy along with the care co-ordination element of their current work. Staff would welcome the opportunity over the next 6 -12 months to work to develop protocols and working arrangements to retain effective coordination of the service user care pathway should the proposal be agreed.

6 TIMETABLE

Activity Target Date

Give notice on existing section 75 arrangements Jan 2024

Section 75 agreement ceases between April to October 2024 date tbc

MH social work service returns to Merton Adult Social Care line management on cessation of the S75 agreement.

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 7.1. The current section 75 agreement contain a salary budget without uplift of £1.8m. The mental health placement budget is not part of the s75 agreement and thus would not be affected by cessation of this agreement. LBM and the Trust will also need to consider any TUPE arrangements, employee's benefits, NHS staff terms and conditions and the agenda for change implications on salary budgets.
- 7.2. In the event of redundancies both organisations will need to ascertain where liability for redundancies lay.
- 7.3. There are also issues to consider such as the health staff e.g., nurses currently supporting the current mental health team and the future arrangement regarding the Bradshaw Close supported living accommodation.

8 LEGAL AND STATUTORY IMPLICATIONS

The legal framework for partnership arrangements between local authorities and NHS bodies is set out in section 75 of the National Health Service Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements

Regulations 2000, as amended. The NHS body and local authority should be satisfied that the partnership arrangements are likely to lead to an improvement in the way in which their respective functions are exercised. Arrangements made by virtue of section 75 do not affect the liability of the parties for the exercise of their functions. The report sets out reasons for the termination of the partnership arrangement which include concerns relating to the exercise of local authority functions and the delivery of an effective outcome for service users.

- 8.2 The Initial Term of the current S75 Partnership Agreement expires on 31st March 2024 with the option to extend by agreement of the parties. As per the main body of this report, the Council wishes to end the arrangements with The Trust under the Partnership Agreement with the view that there will be no further obligation on either party under the agreement by October 2024 at the latest. The Partners will need to extend the Initial Term by a period which will give them sufficient time to wind down services and deal with all post termination matters set out at Schedule 8 (Information Sharing) and Schedule 9 (Exit Strategy). For ease of reference, some of the matters set out in the relevant schedules are reproduced as follows:

Addressing all the consequences of termination including the impact on the following categories:

- Service Users.
- Service Providers.
- Staffing.
- The financial impact of termination.
- All other relevant issues.

The Exit plan will address:

- for each of the Services and related positions or functions a timeline, plan (including relevant milestones) and procedure for each Partner and/or a Third-Party Service Provider assuming or reassuming responsibility for the provision of the Services.
- identification of the software and hardware that will need to be replaced and/or will require transition (as applicable) and an overview of a timeline, plan, and procedure for that replacement and/or transition to the relevant Partner and/or a Third-Party Service Provider.
- an overview of the procedures and timeline for communication and consultation with relevant personnel to be transferred under TUPE if relevant.

- if relevant, identification of the roles/functions for which or for which it is likely that the relevant employees will be transferred under TUPE and a timeline for such transfer.
- identification of any third-party contracts, licences and/or leases which relate to the provision of the terminating Services and a timeline, plan and procedure for such contracts, licences and/or leases to be transferred to the Partners or a Third-Party Provider.
- identification of any equipment or other assets which are used exclusively in the provision of the terminating Services and a timeline, plan and procedure for such Equipment and assets to be transferred to the Partner taking on the provision of the relevant part of the Services or a Third-Party Service Provider.
- assessment of the impact of termination with respect to existing and planned services and support activities.
- dealing with Personal Data and other data.

8.3 A detailed analysis of the current staffing arrangements will need to be carried out to understand the TUPE (Transfer for Undertakings (Protection of Employment) Regulations) implications of the proposal. Where applicable it may be necessary to address the requirements of informing and possibly also consulting with staff and employee representatives, particularly if it is proposed to reorganise the staff following the transfer back to the Council. For any staff whose posts are joint funded and provide a joint remit for both parties to the agreement it will be necessary to carefully review how the new arrangements are proposed to work to establish if they would transfer back to the Council or otherwise.

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 9.1. Health equity is a key focus of Merton Health and Wellbeing Strategy and is integral to the work set out in this report
- 9.2. The termination of the section 75 agreement has no direct equalities impact but aims to deliver improved outcomes for service users. Please see Appendix 1 for Equalities Impact Assessment.

10 CRIME AND DISORDER IMPLICATIONS

- 10.1. None directly arising from this report.

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 11.1. Terminating the formal agreement which governs existing partnership arrangements will result in the full responsibility of financial and service delivery risks returning to Council.

11.2. The monitoring of finance and service delivery will return to the framework of performance schedules & reporting already in place for Adult Social Care.

Under section 75 the Service provision risks remain ultimately the legal responsibility of each organisation. The termination of the section 75 will enable the management of Council related risks to return to direct operational responsibility and governance of the Council.

There is a risk that the relationship between the Council and SWLStG MH trust could be affected in a negative way. To minimise this, the Council will ensure open regular conversations of how the service moves forward and how we best collaborate moving forward as working cohesively is still key to delivering the service.

There could be some instability in the service both for the Council and SWLStG MH trust whilst the transition took place. Both sides would need to prepare thoroughly and ensure clear communications for staff and service users. Working collaboratively with SWLStG MH trust on timings and processes will be key.

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- EIA

13 BACKGROUND PAPERS

13.1. Bibliography

(1) *BASW 2010 Annual Survey* <https://new.basw.co.uk/policy-and-practice/resources/basw-annual-survey-social-workers-and-social-work-2021>

(2) *BASW annual survey 2013 & 2023* <https://new.basw.co.uk/policy-and-practice/resources/basw-annual-survey-social-workers-and-social-work-2021>

(3) *Lilo et al Sage Publication 2016* 'Mental Health Integration Past, Present and Future: National Survey into Mental Health Integration in England'. <https://journals.sagepub.com/doi/full/10.1177/1473325020924085>

(4) *NHS England 2013* 'National Collaboration for Integration Care and Support' <https://www.england.nhs.uk/ourwork/part-rel/transformation-fund/>

(5) *NHS Health Education North West 2016* 'Mental Health Integration Past, Present and Future A Report of National Survey into Mental Health Integration in England'. <https://londonadass.org.uk/wp-content/uploads/2017/01/MH-Integration-Past-Present-Future.pdf>

Department Approval	Name of Officer	Date of Comments
Legal	Pamela Clark	6.12.2023
Finance	Lana Hamilton	30.11.2023

