

## **HEALTH AND WELLBEING BOARD**

**21 JANUARY 2015**

### **FUNDING FOR HEALTH AND SOCIAL CARE**

Portfolio Holder: Cllr Brake, Portfolio Holder Adult Services and Health

Report from: Barbara Peacock, Director Children and Adult Services

Author: Kim Carey, Interim Deputy Director Children and Adult Services

#### **Summary**

1. To provide information on the transfer and allocation of the 2014/15 Health Funding for Adult Social Care

#### **1. Budget and Policy Framework**

1.1 NHS England has issued guidance, Gateway Reference: 01597, setting out the transfer of funding from NHS England to Adult Social Care in 2014/15. For Medway the value of funding is £4,573,577.

#### **2. Background and advice and analysis**

2.1 For Medway, prior year funding transfers have been used to support a range of services for older people and adults with disabilities, including:

- Community rehabilitation services and supporting people to live at home - adaptations
- Rapid Response, health and social care team
- Intermediate care (social) services
- Supporting the hospital social work team
- Mental health community and voluntary sector services
- Stroke support
- Support to maintain current Fair Access to Care Services (FACS) eligibility levels at Substantial and Critical to meet assessed need and associated packages of care.

- 2.2 In 2014/15 the funding continues to be integrated into the resources available for delivery of Adult Social Care and continues to be used to support these existing services, which benefit the wider health and social care economy. At section 3 is a summary setting out the allocation of funding, against the Department of Health defined service allocation categories.
- 2.3 The 2014/15 funding will be transferred under a Section 256 Agreement between NHS England and Medway Council. The draft agreement is attached at Appendix 1.
- 2.4 This year the funding has been included within the expenditure plan for the Better Care Fund. The plan for the Better Care fund was discussed and agreed at HWB and Cabinet in September 2014. In future years, this funding will form part of the transfer into the Better Care Fund
- 2.5 The transfer and allocation of funding has been agreed with Medway NHS Clinical Commissioning Group and there has been joint regard to the Joint Strategic Needs Assessment for our local population, and existing commissioning plans for health and social care.

### 3.0 Financial Implications

#### Health Funding for Adult Social Care 2014/15

Health Funding for Adult Social Care Categories	Commentary service and activity	Area Team Subjective Codes	14/15 £
Integrated Crisis and Rapid Response	Rapid Response – social care	52131017	170,000
Intermediate Care Services	Social care support to St Barts	52131020	146,000
Early Supported Hospital Discharge Schemes	Supporting hospital social work team	52131021	164,000
Mental Health Services	Community and voluntary services	52131022	470,048
Other Preventative Services	Stroke support	52131023	134,000
Community Equipment and Adaptations	Community rehabilitation services and supporting people to live at home - adaptations	52131015	687,500
Reablement Services	Reablement Services delivered through Homecare Framework Contract	52131000	170,029
Maintaining Eligibility Criteria	FACS eligibility maintained at Substantial and Critical – in accordance with section 3.3c of the National Health Service Commissioning Board (Payments to Local Authorities) Directions 2013	52131018	2,632,000
<b>Total Investment of Health Funding for Adult Social Care</b>			<b>4,573,577</b>

<b>total allocation</b>	<b>£4,573,577</b>
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## **4.0 Legal Implications**

- 4.1 Under Section 256 National Health Service Act 2006 (“the Act”), NHS England may make payments to a local authority in connection with the provision of social services, housing, meals and recreation for old people and any other local authority functions that (i) have an effect on the health of any individuals, (ii) have an effect on, or are affected any NHS functions and (iii) are connected with any NHS functions. The Secretary of State has exercised his powers under the Act and directed NHS England to transfer health funding to Adult Social Care through Section 256, a draft copy of the Section 256 Agreement is attached to this report.
- 4.2 The decision to enter into the Section 256 Agreement is one for Cabinet.

## **5.0 Risk management**

- 5.1 The transfer of these funds under section 256 prevents a financial risk to the council’s budget of **£4,573,577** for services which are being provided to protect vulnerable people and maintain them in the community.

## **6.0 Recommendations**

The Health and Wellbeing Board approve the report and forward it to Cabinet for formal agreement.

**Lead Officer** Kim Carey, Interim Deputy Director Children and Adult Services  
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Background papers:

None

## **Section 256 Agreement**

**This is the Partnership Agreement made on the                      day of                      2015**

### **BETWEEN**

**Medway Council** of Gun Wharf, Dock Road, Chatham,  
Kent, ME4 4TR (“the Council”)

### **AND**

**NHS England, Kent and Medway Local Area Team**

### **Legislative Provisions**

The statutory duty of partnership on NHS bodies and local authorities was established under the Health Act 1999 and later the Health and Social Care (Community Health and Standards) Act 2003. The NHS Act 2006 more recently reinforced this legislation, further enabling the Health Act Flexibilities (HAFS) set out in the 1999 Act. NHS bodies and local authorities can now more easily delegate functions to one another to meet partnership objectives and create joint funding arrangements.

This arrangement is under Section 256 of the Act (previously Section 28A of NHS Act 1977)

Whereas

- (a) NHS can make payments (service revenue or capital contributions) to the local authority to support specific additional local authority services.
- (b) This is a grant for additional local authority spend (a contribution to the other partner’s costs for care delivery), not a transfer of health functions to the local authority.
- (c) The key criteria for the use of Section 256 funding is consistent with the local Joint Strategic Needs Assessment and commissioning plans.
- (d) The Parties have agreed to nominate officers to act on behalf of the Parties, who will monitor this Agreement and the performance of the Services.
- (e) The objectives and outcomes of the Partnership Arrangement are set out in local commissioning plans and in relation to this funding are to deliver social care services that will benefit the NHS. The arrangement seeks to achieve the objectives of Best Value.
- (f) The Partnership Arrangement has been agreed pursuant to Section 256 of the Act and the Regulations and the Parties seek to deliver the aims and expectations of Services led by the needs of people who may require the Services.
- (g) Approval for the Partnership Arrangement was agreed on behalf of the Council by Cabinet on 10 February 2015 following discussion at Health and Wellbeing Board on 21 January 2015

- (h) In the interpretation and construction of this Agreement:
- i. any reference to any Act of Parliament shall include any modification extension or re-enactment thereof for the time being in force and shall also include all instruments orders and regulations for the time being made thereunder or deriving validity therefrom.
  - ii. the headings in this Agreement are inserted for convenience only and shall be ignored in construing terms and provisions thereof.

#### **DEFINITIONS OF TERMS USED IN THIS AGREEMENT**

For the purpose only of understanding the content of this Agreement (including the recitals) the following terms will have the following meanings. Other terms may have definitions in the Act or in the Regulations.

<b>The Act</b>	The National Health Service Act 2006.
<b>The Commencement Date</b>	1 April 2014.
<b>The Financial Year</b>	2014 – 2015.
<b>The Functions</b>	The Council's functions relied upon for the services in accordance with the eligibility criteria in place at any time.
<b>The Nominated Officers</b>	The group of officers appointed by the Parties who will act jointly to oversee the Partnership Arrangement with powers being delegated by the Parties to whom the Officers will be accountable.
<b>The Parties</b>	The Council, of the first part and the NHS of the second part and any statutory or legal successor to their respective functions.
<b>The Partnership Arrangements</b>	The arrangements provided for in this Agreement for the management and joint provision of the Services by the Parties through a fund or otherwise.
<b>The Fund</b>	The funds designated by the NHS to support Adult Social Care 2014/15 as allocated by the Parties for the purpose of funding the Services and which may otherwise be referred to as the Support for Adult Social Care Fund.
<b>The Services</b>	<p>Provision of</p> <ul style="list-style-type: none"><li>i. services for older people and adults with disabilities in accordance with the Fair Access to Care Services eligibility criteria as determined by the Council.</li><li>ii. social work assessment, support and care services for older people and adults with disabilities who meet the criteria to receive social care services.</li></ul>

Together with all statutory and other social care functions.

## **MEMORANDUM OF AGREEMENT**

### **1. HOW WILL THE FUNDING SECURE MORE HEALTH GAIN THEN AN EQUIVALENT EXPENDITURE OF MONEY IN THE NHS?**

- 1.1. The funding will be used to support the delivery of local commissioning strategies particularly older people, adults with physical disabilities, sensory impairment or long term conditions. The strategies are designed to meet both existing and future health, social care and associated housing support needs of adults who reside in Medway. Working together to deliver the outcomes and services that support and prevent escalation of needs will deliver greater health gain.

### **2. DESCRIPTION OF SCHEME AND RELATIONSHIP TO THE LOCAL COMMISSIONING PLANS**

- 2.1. The Council and the CCG have identified some key actions which will underpin the implementation of the commissioning strategies by focusing on our key priorities, our principles along with our ambition to deliver better health, care and associated housing support outcomes for local people. All of our priorities acknowledge the needs of a diverse ageing population and promote equality. Additionally there is an implicit intention to promote economic wellbeing throughout the range of actions. This is aligned to the local Health and Wellbeing Plan and reinforces our commitment to the delivery of existing commissioning strategies and plans, and commits to strategically significant joint work that will ensure effective services for health, social care and wellbeing in Medway.

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### **3. PLEASE STATE THE EVIDENCE YOU WILL USE TO INDICATE THAT THE PURPOSES DESCRIBED AT QUESTION 1 AND 2 HAVE BEEN SECURED**

- 3.1. The Council will keep proper records in relation to the scheme.
- 3.2. The Council shall report to the Joint Commissioning Management Group to review the scheme and report on performance. The Council shall provide such information as the NHS may reasonably require.
- 3.3. The Council shall on request by the NHS provide vouchers to the NHS in accordance with paragraph 6 of "Directions by the Secretary of State as to the Conditions Governing Payments by Health Authorities to Local Authorities and Other Bodies under Section 28A of the National Health Service Act 1977"

## **IT IS HEREBY AGREED BETWEEN THE NHS AND THE COUNCIL AS FOLLOWS:**

### **4. ARRANGEMENTS FOR DELIVERING THE SERVICES**

- 4.1 The funding will be used to support and deliver Adult Social Care and associated services where they meet eligible need such as adaptations to support older people or adults with disabilities to remain at home.

- 4.2 The Services that the Council will procure will take into account the Joint Strategic Needs Assessment and the existing local health and social care commissioning strategies. The Services will be those that are the responsibility of the Council, that also benefit the NHS.

## **FUNDING AND FINANCIAL ARRANGEMENTS**

### **5. Funding the Partnership Arrangements**

- 5.1 The Parties agree that the funding required for the delivery of the Services shall be the funds designated by the NHS to support Adult Social Care 2014/15 as allocated by the Parties for the purpose of funding the Services. The sums to be transferred are:

	<b>2014/15</b>
<b>NHS England</b>	<b>£4,573,577</b>

### **6. Responsibility for spending over or under budget**

- 6.1 Any over spending in relation to the Fund shall be the responsibility of the Council. Any under spending shall be carried forward to be used to fund services in accordance with this agreement and within any rules put in place from time to time by the Council.

### **7. Audit Arrangements**

- 7.1 The accountancy and audit arrangements will be in line with the usual arrangements with the Council and the Council will ensure that such arrangements comply with the audit requirements of the other Parties.
- 7.2 The Council shall give the other Parties full access to all internal and external audit reports relating to the Partnership Arrangements and shall permit and assist them to undertake their own audit reviews of the Partnership Arrangements should they consider this to be necessary.
- 7.3 Any dispute or disagreement arising from the Fund, charges made or proposed to be made against the Fund or the use of overspending or under spending shall be dealt with in accordance with Clause 15 of this Agreement.

### **8. The Exercise of Functions and Quality Assurance**

- 8.1 The Council will make arrangements for the Functions to be carried out through the Adult Social Care Team but nothing in this Agreement will entitle the Adult Social Care Team to make commitments or take decisions about any services or functions which are specifically excluded by the Regulations.
- 8.2 The Council will provide such reports and information as are deemed necessary by the Joint Commissioning Management Group to enable effective performance management of the Services and the Fund.



- 8.3 The Council will be entitled to enter into agreements and contracts necessary for the delivery of the Services in accordance with the scheme of delegation, standing orders as may be in force at the relevant time.

## **9. Complaints**

- 9.1 Any complaint relating to the Functions or the delivery of the Services shall be dealt with in accordance with the complaints procedures adopted by the Council.

## **10. Term, Termination and Dispute Resolution**

- 10.1 This Agreement commences on the Commencement Date and is for one year: 1 April 2014 to 31 March 2015.
- 10.2 Given that this agreement is for one financial year and supports the transfer of funding to Medway Council, there is no requirement for a terminations clause within this agreement.
- 10.3 In the event of any dispute between the parties arising out of the construction of this Agreement or any of its provisions such dispute shall be referred in the first instance to the Deputy Director, Children & Adults and, if not resolved, to the Director of Children & Adults at the Council and to the Nominated Officer of the NHS, failing which, the matter may be referred at the option of either of the parties to mediation in accordance with the model mediation procedure for the time being of the Centre for Effective Dispute resolution. In default of either Party exercising such an option or such a referral does not lead to a resolution, the matter may be referred by either Party to an arbitrator to be nominated by the President of the Royal Institute of Arbitrators, such reference to be within the provision of the Arbitration Act 1996 (as amended or placed) and the costs of any such arbitration shall be borne by the parties as determined by the arbitrator.

## **11. Management of the Agreement**

- 11.1 The Parties agree that responsibility for managing, planning and monitoring the Partnership Arrangements, the performance of the Services and the Fund and for overseeing the implementation of this Agreement shall be discharged by Nominated Officers of the Council and of the NHS.
- 11.2 The Nominated Officers will agree their own arrangements for meetings and decisions and shall apply the complaints procedures as referred to in clause 9.1 and receive or deliver reports as provided for in this Agreement.

## **12. Review**

- 12.1 This Agreement supports the transfer of funding from NHS to Medway Council as per Department of Health Gateway 01597, which is a one year allocation.
- 12.2 The terms and conditions of this Agreement may only be varied by the written agreement of the Parties.

## **13. Notices**

- 13.1. Any notice to be served by any Party in accordance with the terms of this Agreement shall be served by pre-paid recorded delivery post addressed to the address of the Party shown at the

head of this Agreement (or such business address as shall be notified by such Party after the commencement of this Agreement) or by facsimile transmission or electronic mail and shall be deemed to have been received by the addressee after forty-eight hours of such posting or twenty-four hours of facsimile or electronic mail transmission. Notices to the Council should be marked for the attention of the Deputy Director, Children & Adults . Notices to the NHS should be marked for the attention of the designated officer of the NHS.

#### **14. Assignment or Transfer**

- 14.1. This Agreement and any rights and conditions contained in it may not be assigned or transferred by either Party without the prior written consent of the other Party except to any statutory successor to the relevant Functions.

#### **15. Law and Data Policy and costs of Agreement**

- 15.1 This Agreement shall be governed by the law of England in every particular.

- 15.2 The Parties agree to provide or make available to each other sufficient information concerning their own operations and actions and concerning client and service user information (including material affected by the Data Protection Act in force at the relevant time) as to enable the

efficient operation of the Services and actions covered by the Partnership Arrangements. The Parties agree to abide by the terms of any information sharing protocol which may be agreed by the Parties.

- 15.3. Each Party shall have in place a policy and procedure for compliance with the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000 and shall co-operate with the other Parties and respond in a timely way to any request received from any other Party so as to enable them to comply with their obligations under those Acts.

- 15.4. Each Party shall pay its own costs and expenses incurred in connection with the implementation of this Agreement.

#### **16. No Partnership (Save to the Extent of this Agreement)**

- 16.1 Neither Party to this Agreement shall act as agent of or have the power or authority to make any commitment on behalf of any other Party or compromise the credit of the other Party in any way nor shall this agreement constitute a legal partnership between the Parties save to the extent that is necessary to give effect to the arrangements for delegation of respective Functions and each Party shall be responsible for its own commitments under this Agreement.

#### **17. Confidentiality**

- 17.1. Except as required by law, the Parties agrees to keep confidential at all times during the continuance of this Agreement and after its termination all documents, data or papers which they receive or otherwise acquire in connection with the Services and or this Agreement and which are marked "Commercial – in confidence" or such other similar words signifying that they should not be disclosed, save in so far as such designation of any data cannot lawfully be maintained in compliance with any obligation.

- 17.2 Prior to the issue of any press release about matters relating to the Partnership Arrangements or making any contact with the press on any issue attracting media attention the designated officer

of the NHS and the Deputy Director, Children & Adults of the Council (or such persons as they shall each designate) will consult with each other to agree a joint strategy for the release or handling of the issue. The provisions of this clause are subject to any alternative arrangements that the parties may agree for press relations in particular situations.

**18. The Contracts (Rights of Third Parties) Act 1999**

18.1. Unless the right of enforcement is expressly provided, no third Party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

**EXECUTED BY MEDWAY COUNCIL  
BY:**

..... **Authorised Signatory**

..... **Print Name**

..... **Date**

**EXECUTED BY: NHS England**

..... **Authorised Signatory**

..... **Print Name**

..... **Date**