

<b>Agenda item: 9</b>
<b>Paper no: 5</b>

	Surrey County Council use	ICSs use
<b>Section 151 Finance cleared on:</b>	17/11/22	17/11/22
<b>Legal cleared on</b>	18/11/22	
<b>Executive Director cleared on:</b>	17/11/22	17/11/22
<b>Cabinet Member cleared on:</b>	18/11/22	

<b>Title of Report:</b>	<b>SURREY INTEGRATED COMMISSIONING SYSTEM – LEGAL AND FINANCIAL FRAMEWORK</b>	
<b>Status:</b>	<b>TO APPROVE</b>	
<b>Committee:</b>	<b>Surrey-wide Commissioning Committees in Common</b>	<b>Date: 14/12/22</b>
<b>Venue:</b>	Virtual meeting/ Woodhatch Place, Reigate (Surrey County Council)	
<b>Presented By:</b>	Liz Bruce, Joint Executive Director for Adult Social Care and Integrated Commissioning  Andrew Evans, Health and Care Integration Programme Manager	
<b>Author(s)/ Lead Officer(s):</b>	Andrew Evans, Health and Care Integration Programme Manager	

### Executive Summary:

It is essential that the Local Authority and NHS partners in Surrey work closely together to ensure we use our resources collectively to reduce health inequalities for Surrey residents and provide value for money. One of the ways we can do this is through integrated commissioning, which is a way of understanding our residents’ health and care needs and providing, buying and/or supporting certain services to help meet those needs. It is also part of the new policy framework for the healthcare system – Integrated Care Systems.

This journey of integrated commissioning has already started in Surrey, with an initial focus on joint posts and responsibilities for specific areas of health and care including mental health, children’s community health, learning disabilities and autism, and services for carers.

There are two documents that outline the legal and financial framework for Surrey’s current integrated commissioning system, which is related to joint posts, broader principles for the partnership and financial arrangements through section 75 agreements. These have been drafted and updated a number of times over the last 12-24 months (including being discussed at this Committees in Common in March 2022). They have supported and enabled the existing way of working; however, they have never been formally approved. These documents represent the status of how integrated commissioning and joint posts have been and are currently operating, with specific HR

and financial details, high level principles and a schedule of who is responsible for commissioning what across Surrey County Council, Surrey Heartlands ICB and Frimley ICB.

The purpose of this report is therefore to reaffirm our foundation for integrated commissioning and to exercise good governance.

**Governance:**

<b>Conflict of Interest:</b> The Author considers:	None identified	✓
<b>Previous Reporting:</b> (relevant committees/ forums this paper has previously been presented to)	Committee name: Surrey-wide Commissioning Committees in Common Meeting date: 30/03/2022 Outcome: Noted  Committee name: Surrey Strategic Health and Care Commissioning Collaborative Meeting date: 25/11/2022 Outcome: Approved	
<b>Freedom of Information:</b> The Author considers:	Open – no exemption applies. Part I paper suitable for publication.	✓

**Decision Applicable to:**

Decision applicable to the following partners of the Committees in Common:	Frimley Health and Care Integrated Care System	✓
	Surrey Heartlands Integrated Care System	✓
	Surrey County Council	✓

**Recommendation(s):**

The Surrey-wide Commissioning Committees in Common are asked to:

1. Approve the Surrey Health and Care Integration Commissioning Partnership Agreement, which includes the Section 75 financial schedule for joint posts.
2. Authorise Legal Services to seal the Partnership Agreement, which includes the Section 75 financial schedule, the same on behalf of the Council.
3. Approve the content of the Memorandum of Understanding with the intention to update this document as the shared ambition and new operating model for integrated commissioning is agreed and implemented over the next 6-12 months (and beyond).

**Reason for recommendation(s):**

Approving the documentation will demonstrate effective governance and provide clarity for the existing integrated commissioning system. It is recognised that these documents reflect the current position and that there is a commitment from all parties to a next phase of work, which develops and transforms our commissioning approach and

operating model, and will require the Memorandum of Understanding to be updated to reflect the parties' agreed shared ambition moving forward. Likewise, as we learn and mature as an integrated commissioning system further updates may be required to the Integrated Commissioning Partnership Agreement and so we will continue to review this agreement as is necessary.

## **Next Steps**

Following the approval of the Partnership Agreement, Legal Services will arrange to have the agreed Partnership Agreement (which incorporates the agreed Section 75 Schedule) executed by the parties.

Agreeing these documents is part of a wider integrated commissioning programme to continue our journey of integrated commissioning in Surrey. Between now and the end of the 2022/23 financial year the programme will be:

- Supporting existing integrated commissioning arrangements through enabling collaboration e.g. IT and digital, culture and sharing of information to make more informed joint decisions.
- Further clarifying the Parties' shared ambition for integrated commissioning and what this means in practice, including developing our operating model to deliver this ambition.
- Identifying and working on key integrated commissioning pieces of work.
- Developing an implementation plan for 2023/24 for the agreed operating model
- Return to Committees in Common (early 2023/24) to seek approval of the agreed and updated Memorandum of Understanding, which will reflect our clear shared ambition and operating model for the future.

## 1. Details:

- 1.1 Surrey Heartlands Integrated Care System, Surrey County Council and Frimley Health and Care Integrated System (ICS) are committed to partnership working to improve health and care outcomes for Surrey's residents. As part of its new operating model, Surrey Heartlands ICS executive and Surrey County Council has created integrated directorates. Two Joint Executive Director posts now oversee the management of teams comprising staff employed by Surrey Heartlands ICS and Surrey County Council. (This includes Frimley Health and Care ICS who have an arrangement with Surrey Heartlands ICS to discharge services for the geographical part of the ICS that covers Surrey.)
- 1.2 An integrated commissioning team for Children's Services brings staff from both organisations under a single director for children's commissioning under the Executive Director for Children, Families and Lifelong Learning. This includes for functions around mental health, children's community health, learning disabilities and continuing health care.
- 1.3 An integrated commissioning team for Adult Services brings together specific functions of adults commissioning under the management of a Director for Integrated Commissioning for Adult Social Care, reporting to the Executive Director for Adult Social Care and Joint Commissioning. This includes for functions around mental health, carers, learning disabilities and continuing health care.
- 1.4 An integrated commissioning team for some specific enabling functions including intelligence and data, and estates brings together these functions under the management of a Joint Executive Director for Public Service Reform.
- 1.5 The three partners have also employed three system conveners to operate across the Surrey footprint.
- 1.6 As the partnership evolves, more joint posts and integrated teams have been and may be established. Some of the posts within these teams are jointly funded by some or all partners. Further details can be found in Annex 1: Integrated Commissioning Memorandum of Understanding and Annex 2: Integrated Commissioning Partnership Agreement.
- 1.7 Three elements are required to underpin integrated commissioning arrangements at this stage:
  - 1.7.1 This Integrated Commissioning Memorandum of Understanding (MoU) - setting out high level principles for our way of working, including host and lead commissioning arrangements between the three partners.
  - 1.7.2 Integrated Commissioning Partnership Agreement - is the framework within which integrated teams and joint posts can operate without the need for individual secondment agreements.

- 1.7.3 Section 75 of the NHS Act 2006 - allows partners (NHS bodies and councils) to contribute to a common fund which can be used to commission health or social care related services. This is a Schedule within the Partnership Agreement.

## **1.8 Purpose of the Memorandum of Understanding:**

- 1.8.1 Setting out high level principles for our way of working, including host and lead commissioning arrangements between the three partners. It also includes our governance arrangements for integrated commissioning.
- 1.8.2 An arrangement is required in order for staff who hold commissioning responsibilities within their job descriptions to be able to operate effectively across the Surrey footprint to ensure high quality, consistent services with best patient outcomes for all Surrey's residents. A separate memorandum of understanding (MoU) has been developed, which will provide a framework for establishing a range of coordinating and hosted commissioning arrangements around key contracts and service areas, including those that fall within the scope of these integrated commissioning teams.
- 1.8.3 It is recognised that this document reflects the current position and that there is a commitment from all parties to a next phase of work, which develops and transforms our commissioning approach and will require these documents to be updated to reflect the system's agreed shared ambition moving forward. This will take place in the next 6-12 months.

## **1.9 Purpose of the staffing partnership agreement:**

- 1.9.1 These integrated teams and joint posts require a legal framework to underpin these integrated ways of working so that staff employed by one organisation have the legal authority to conduct their work on behalf of partner organisations.
- 1.9.2 A Partnership Agreement is the preferred mechanism for creating this legal framework. This Agreement is not intended to change the respective accountability or statutory responsibilities of each partner and it does not cover arrangements through which Partners will commission services on behalf of each other.
- 1.9.3 The purpose of this staffing Partnership Agreement is therefore solely to create a framework within which integrated teams and joint posts can operate without the need for individual secondment agreements. The agreement covers all staff in joint posts and partners will not need to produce separate agreements such as secondment agreements for them.
- 1.9.4 It covers a range of detail to support our approach to joint posts including information governance, financial principles, HR and legal considerations, complaints and IT.
- 1.9.5 It is recognised that this document reflects the current position and that there is a commitment from all parties that as we learn and mature as an integrated commissioning system we will need to regularly review and update this document, as is necessary.

## 1.10 Purpose of the Section 75

1.10.1 Some (but not all) of the joint posts are jointly funded posts. The creation of joint posts incurs financial and non-financial costs to partners in the form of staff salaries and on-costs. A Section 75 agreement is required and is incorporated into the Partnership Agreement as a Schedule. The purpose of the Section 75 is to provide a legal framework for the management of a pooled budget to fund costs associated with jointly funded posts. The budget amount to cover estimated staff costs for 2022/23, based on the current list of jointly funded posts, is detailed in table 1 below. The value of posts and contribution from each partner will iterate over time.

1.10.2 Table 1: Estimated 2022/23 funding contributions for jointly funded posts

	Surrey County Council	NHS Frimley CCG	NHS Surrey Heartlands CCG	Total
	£000	£000	£000	£000
2022/23 estimated contribution from each partner organisation	935	45	984	1,963

Table 1: 2022/23 estimated contributions

1.10.3 Table 2 below shows the actual contributions due from the three Partners in 2021/22 to the Joint Posts, which were live in 2021/22, noted within schedule 4 of this agreement. It is accurate as of 17<sup>th</sup> November 2022.

	Surrey County Council	NHS Frimley CCG	NHS Surrey Heartlands CCG	Total
	£000	£000	£000	£000
2021/22 actual contribution due by each partner organisation	701	33	703	1,437

Table 2: 2021/22 actual contributions due

## 2. Consultation:

2.1 These documents have been developed in consultation with legal, finance, HR, information governance and service colleagues (i.e. those operating within these arrangements) across all three partners as appropriate and necessary. This has included formal strategic approval and the Surrey Strategic Health and Care Commissioning Collaborative.

## 3. Risk Management and Implications:

3.1 The main risks associated with the proposals of this paper are those arising either a) as a result of entering into a memorandum of understanding, partnership

agreement and an associated Section 75 pooled budget arrangement or b) as a result of \*not\* entering into the Agreements as recommended.

- 3.2 These risks are described below, including any significant risks, any negative implications and the mitigating actions being taken to address them.
- 3.3 Risks arising as a result of entering into the arrangements arise from the commitment that each partner will make to adhere to an agreed set of processes and ways of working.
- 3.4 For example, by formally entering and executing the Partnership Agreement, partners agree to follow certain HR processes to support the recruitment and management of Staff in joint posts, integrated directorates and teams. There is a risk that where a process is unfamiliar to a Partner organisation's HR team, staff are not properly supported in accordance with the processes as set out in the Agreements and associated schedules. This could expose an organisation to risk where issues of grievance or performance are taken to external tribunals.
- 3.5 Similarly, the Partnership Agreement commits partners to following a set of processes with regards to compliance with organisational data security policies, including a commitment that each organisation will assist partners to comply with their obligations.
- 3.6 Finally, the Partnership Agreement exposes partners to the operational risks of joint working, in that the Agreements are predicated on an understanding that all Partners will commit sufficient resource to support effective working of the joint posts, integrated directorates and teams.
- 3.7 For all these risks, the mitigating actions are similar:
  - 3.7.1 The protocols and processes described in the Partnership Agreement have been jointly developed by the relevant teams within the Partner organisations and have been agreed as acceptable to all parties.
  - 3.7.2 Training and guidance, as necessary, will be provided to all staff supporting joint posts, integrated directorates and teams to ensure that all are aware of the agreed processes and protocols.
  - 3.7.3 Regular monitoring and reporting on the implementation of the Agreements to the Surrey Strategic Health and Care Commissioning Collaborative, to identify and address any issues as they arise, and reporting to this committee as appropriate.
  - 3.7.4 Appropriate and agreed liability and indemnity clauses have been included in the legal Agreements to cover all parties.
- 3.8 The risks associated with \*not\* formally entering and executing the Partnership Agreement as recommended fall within the same categories as described above, with significant risks in the following categories:
  - 3.8.1 HR
    - Without a Partnership Agreement, staff will not be able to recruit or manage staff from a separate organisation, and the partners will not be able to fully realise their ambitions of more integrated working.
    - The two Joint Executive Directors recently appointed by Surrey Heartlands CCG and Surrey County Council will not be able to oversee integrated directorates as intended.

### 3.8.2 IT&IG

- Without a Partnership Agreement, staff will not have formally agreed processes to support the provision of essential IT equipment for joint posts and staff in integrated teams and directorates to be able to perform their assigned duties.

### 3.8.3 Finance

- Without agreement of the financial principles as described in the Partnership Agreement, and the various mechanisms for management of the pooled budget as described in the Section 75 arrangements, partners will not be able to manage the shared funding of posts as agreed.

3.8.4 The Partnership Agreement is intended to mitigate against the key risks associated with joint working outside of any formal arrangements. It is therefore recommended that the Committee approve the decision to enter into the arrangement as proposed.

## 4. Financial and ‘Value For Money’ Implications

4.1 The Agreements facilitate integrated commissioning of health and social care services, including management of services budgets across partner organisations by post holders with joint responsibilities. It does not have any direct financial implications on the service budgets of each partner organisation, although it is expected that improved joint working will deliver some efficiencies across the system.

4.2 The Section 75 pooled budget for joint posts will involve partners committing to funding joint posts across Surrey’s health and social care system on an ongoing basis. In most cases, the cost of these posts is already built into each organisation’s budget based on their agreed funding share. However, the creation of the pooled budget will formalise the joint funding of these posts on an ongoing basis until such time as partners agree to change the arrangements for a post in line with the agreed processes. The Section 75 budget also enables partners to jointly fund the cost of shared posts in the most financially beneficial way to all partners.

## 5. Section 151 Officer Commentary

5.1 Although significant progress has been made to improve the Council’s financial position, the financial environment remains challenging. The UK is experiencing the highest levels of inflation for decades, putting significant pressure on the cost of delivering our services. Coupled with continued increasing demand and fixed Government funding this requires an increased focus on financial management to ensure we can continue to deliver services within available funding. In addition to these immediate challenges, the medium-term financial outlook beyond 2022/23 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term.

- 5.2 In this context the Section 151 Officer recognises how the Memorandum of Understanding, Partnership Agreement and Section 75 pooled budget for jointly funded posts will facilitate effective joint working across system partners so collective benefits can be maximised as integrated commissioning plans continue to develop,
- 5.3 The Section 151 Officer confirms that Surrey County Council's funding commitment for jointly funded posts that are part of the Section 75 pooled budget has been factored into the Council's Medium Term Financial Strategy.

## **6. Legal Implications – Monitoring Officer**

- 6.1 Legal Services will continue to assist and advise, as required, and in particular in relation to the updating of the Memorandum of Understanding.
- 6.2 Legal Services will arrange to have the agreed Partnership Agreement (which incorporates the agreed Section 75 Schedule) executed by the parties.

## **7. Equalities and Diversity**

- 7.1 This work is expected to contribute to more aligned efforts to address health inequalities. The documents ensure that staff continue to receive the same rights and protections from their employment regardless of who their host organisation is. As such there are no expected impacts on any specific group with protected characteristics from these documents.

## **8. Other Implications:**

- 8.1 The potential implications for the following priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

### **8.2 Corporate Parenting/ Looked After Children Implications**

- 8.2.1 The aim of the two documents is to facilitate improved partnership working between Surrey County Council and ICSs. Our ambition is that this improved partnership working leads to improved joint planning and more joined up provision of placements for Surrey's Looked After Children, in particular where those placements have tripartite funding arrangements to meet a child's health, education and care needs.
- 8.2.2 We anticipate that improved joint planning and joint provision will lead to benefits for individual children by helping ensure sufficiency of provision for Looked After Children. The Staffing Partnership Agreement should enable commissioners to work more closely in partnership to ensure that where Looked After Children are placed in County, that there is sufficient and appropriate provision of health services wrapped the family unit in whichever way that is (i.e. residential home, foster care, kinship care etc.).
- 8.2.3 The staffing partnership agreement and associated section 75 pooled budget arrangements do not change or affect any individual partner's statutory responsibilities to corporate parenting and looked after children.

### **8.3 Safeguarding Responsibilities for Vulnerable Children and Adults Implications**

- 8.3.1 The Staffing Partnership Agreement is underpinned by individual data sharing agreements to support the joint working of integrated teams. We anticipate that integrated structures will result in improved information sharing, for example clearer escalation routes where there are safeguarding concerns.
- 8.3.2 We anticipate that improved joint working will lead to a more holistic overview of safeguarding risks through more joint oversight of service provision.
- 8.3.3 We anticipate that improved joint planning will reduce the risk of safeguarding issues.
- 8.3.4 The staffing partnership agreement and associated section 75 pooled budget arrangements do not change or affect any individual partner's statutory safeguarding responsibilities for vulnerable children or adults.

#### **8.4 Environmental Sustainability Implications**

- 8.4.1 An Environmental Sustainability Assessment is not required for this decision.

#### **8.5 Public Health Implications**

- 8.5.1 These documents do not have any public health implications directly, however they provide a framework for integrated commissioning which aims to support the County's and system's vision of ensuring no one is left behind and reducing health inequalities.

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#### **Consulted:**

The proposals outlined in this paper and its annexes have been discussed with stakeholders in Surrey County Council, Surrey Heartlands ICS and Frimley ICS, the Chair and Vice-Chairs of the Adults and Health Select Committee and the Chair and Vice-Chairs of the Children, Families, Lifelong Learning and Culture Select Committee.

#### **Annexes:**

Annex 1: Integrated Commissioning Memorandum of Understanding

Annex 2: Integrated Commissioning Partnership Agreement, which includes S75 schedule for joint posts

#### **Sources/background papers:**

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