

From: Graham Gibbens, Cabinet Member for Adult Social Care and Public Health  
Penny Southern, Corporate Director of Adult Social Care and Health

To: Adult Social Care Cabinet Committee - 12 March 2019

Decision No: 19/00011

Subject: **PARTNERSHIP ARRANGEMENTS FOR THE PROVISION OF MENTAL HEALTH SOCIAL CARE AND HEALTH SERVICES IN KENT.**

Classification: Unrestricted

**Past Pathway of Paper:** Adult Social Care and Health Directorate Management Team - 13 February 2019

**Future Pathway of Paper:** Cabinet Member Decision

**Electoral Division:** All

**Summary:** This report presents details of the review of current legal arrangements supporting the partnership working between Kent County Council [KCC] and Kent and Medway Partnership Trust [KMPT] to deliver mental health social care and health services across Kent.

The report presents the options appraisal undertaken to examine options for the future legal framework for the partnership, following changes made to partnership arrangements under the KCC and KMPT Partnership Transformation programme.

The report presents a recommendation for the future legal framework to underpin the revised working arrangements between the two organisations.

**Recommendation(s):** The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** on the proposed decision (attached as Appendix A) to:

- a) **APPROVE** the new legal framework to support the partnership arrangements for the provision of mental health social care and health services in Kent; specifically, approval for KCC to terminate the existing KCC and KMPT Section 75 Agreement (based on mutually agreed termination between KCC and KMPT) and approval for KCC to enter into a Service Level Agreement with KMPT; and
- b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health, or other nominated officer, to undertake the necessary actions to implement the decision.

## 1. Introduction

- 1.1 The purpose of this report is to inform the Adult Social Care Cabinet Committee about the legal work undertaken under the Kent County Council [KCC] and Kent and Medway Partnership Trust [KMPT] Partnership Transformation programme to review existing legal arrangements between the two organisations. This review was initiated in light of the changes that have been implemented for the delivery of mental health social care and health services in Kent, as previously approved through the Adult Social Care and Health Cabinet Committee.
- 1.2 This report sets out the findings of this review and seeks approval for the proposed new legal framework to underpin the new partnership arrangements for the delivery of mental health social care and health services in Kent.

## 2. Strategic Statement and Policy Framework

- 2.1 The Adult Social Care and Health Directorate is influenced by several corporate policy documents and drivers. The most prominent of these are the strategic outcomes of KCC as set out in *'Increasing Opportunities, Improving Outcomes: Kent County Council's Strategic Statement 2015 – 2020'* and *'A Commissioning Framework for Kent County Council: Delivering better outcomes for Kent residents through improved commissioning'*.
- 2.2 The proposed decision will cement the new partnership arrangements for the delivery of mental health social care and health services in Kent in a new legal framework. As such, the proposed decision links with KCC's Strategic Statement; by ensuring that statutory responsibilities are delivered in a timely and appropriate manner, KCC's strategic outcome "*older and vulnerable residents are safe and supported with choices to live independently*" is supported.
- 2.3 Kent County Council endorsed the *'Your life, your well-being - a vision and strategy for adult social care 2016 - 2021'*. The proposed decision supports the Your Life, Your Wellbeing vision and objectives by providing a framework for integration, in particular *'working in partnership to avoid duplication'* and making *'better use of our resources'*.
- 2.4 The Sustainability and Transformation Plan [STP] has been mandated by NHS England as the delivery vehicle for the Five Year Forward View. The subsequent Five Year Forward View for Mental Health (FYFVMH) will be instrumental for the development of mental health services. Amongst other recommendations, the FYFVMH promotes the *'integration of care spanning people's physical health, mental health and social care needs achieved through partnership working across the NHS, public health and local authority'*. The proposed decision supports an integrated way of working between KCC and KMPT by providing a robust legal framework for the partnership arrangements.
- 2.5 The Corporate Director of Adult Social Care and Health, is a member of the STP work stream for mental health and has ensured that the transformation work KCC has undertaken with KMPT – including the legal framework review and proposed revision - is in line with the strategic changes being planned in mental health for local care and accountable care partnerships.

### **3. Background**

- 3.1 Following the formal executive decision number 17/00053, '*Direction of future provision of Social care and support to adults with mental health needs*' in June 2017, and a subsequent KCC and KMPT Partnership Board meeting in October 2017, the KCC and KMPT Partnership Transformation programme was initiated.
- 3.2 The shared goal of the KCC and KMPT Partnership Transformation programme was for KCC to secure full accountability for the social care workforce within the community mental health teams [CMHTs] and the Approved Mental Health Practitioner [AMHP] service. The project aimed to develop and deliver a new approach which ensures an integrated and seamless response to people and their carers across KMPT, KCC and the wider partnership, ensuring robust delivery of social care statutory responsibilities.
- 3.3 Social care staff working in CMHTs and the Early Intervention Psychosis [EIP] Service returned to the line management of KCC on 01 October 2018. The Forensic Service returned to the line management of KCC on 01 January 2019 and the AMHP service is due to return on 01 April 2019.

### **4. Existing legal framework review**

- 4.1 Due to the changes developed and delivered to the working arrangements between KCC and KMPT under the KCC and KMPT Partnership Transformation programme, a review of the existing legal framework for the partnership was initiated.
- 4.2 It was identified that the current legal framework in place consists of:
  - A revised Partnership Agreement dated 21 August 2012 for the establishment of an Integrated Provision arrangement in respect of specified mental health services under Section 75 of the National Health Service Act 2006 [S75 Agreement];
  - An addendum letter to the S75 Agreement dated 13 October 2013 reflecting changes post Care Act 2014;
  - An addendum letter to the S75 Agreement dated 09 July 2018 regarding KCC and KMPT partnership changes, most notably the change of line management, from 1 October 2018; and
  - An addendum letter to the S75 Agreement dated 12 September 2018 addressing changes to the Forensic Service and EIP Service.
  - It was noted by KCC and KMPT that the existing S75 Agreement signed in April 2012 remains in place, including the addendum letters sent between KCC to KMPT referred to above, and will continue to remain in place until such time as the review and any subsequent revision of the legal framework has been completed.
  - The legal framework review and revision undertaken by KCC and KMPT has been underpinned by the following principles:
  - Any framework should ensure the continued good joint working that already exists between KMPT and KCC and reflect the focus of the wider system transformation and sustainability agenda and Five Year Forward View.

- Any framework should ensure persons accessing health and social care services are not adversely impacted by change and the integrated response to people and their carers across KMPT, KCC and the wider partnership network remains integrated and seamless.
- Any framework should ensure persons working in health and social care services are not adversely impacted by change and the delivery of services remain integrated and seamless.
- Any framework should support robust arrangements for delivery of statutory responsibilities, such as the Care Act 2014, Mental Health Act [MHA] 2007, Mental Capacity Act [MCA] 2005 and Human Rights legislation in Kent, ensuring these are delivered in an effective way and KCC and KMPT services are fit for the future.
- Any framework should support improvement in social care statutory compliance and health contractual key performance indicators [KPIs].
- The binding nature of the framework, whether legally or otherwise, should be considered once the content required from a framework has been developed.
- Any documentation requiring regular revision, such as the detailed service delivery model, should not be embedded within the formal framework but reference may be made to such documents.

## **5. Options for the future**

5.1 It was identified by KCC and KMPT that the content of any future legal framework would need to support the following elements of the partnership:

- Partnership arrangements, including principles of collaboration, governance, key objectives for the service and service pathway
- Information / data sharing, to govern all data sharing from KMPT to KCC
- Accommodation and infrastructure, including co-location considerations, health and safety responsibilities, insurance and access to KMPT networks
- Recharging arrangements
- AMHP specific arrangements, such as KMPT AMHPs being supported to continue to contribute to the KCC AMHP Service

5.2 The following options were subsequently identified by KCC and KMPT for the future governing framework for the partnership arrangements:

- Continue with a S75 Agreement
- Memorandum of Understanding
- Agreement based on a Service Level Agreement
- NHS Standard Contract

5.3 An options appraisal was undertaken on each of the above options by KCC and KMPT, with contribution the Head of Corporate and Commercial at Invicta Law. Please see Table 1 below for this appraisal.

Table 1: Future framework options appraisal

Option	Advantages	Disadvantages
<b>S75 Agreement</b>	<ul style="list-style-type: none"> <li>Existing legal framework (with addendum letters)</li> </ul>	<ul style="list-style-type: none"> <li>Many sections are no longer valid as staff are no longer seconded</li> <li>Not a suitable vehicle; existing S75 agreement would require extensive revision to make suitable for requirements</li> </ul>
<b>Memorandum of Understanding [MoU] (with separate legally binding documentation)</b>	<ul style="list-style-type: none"> <li>Can be standalone with other legally binding documents, such as a licence to cover accommodation, also standing alone</li> <li>Used by Hampshire County Council [HCC] to cover similar arrangements (however HCC do not co-locate)</li> <li>Would replace the S75 (S75 to be mutually terminated) as a more suitable form</li> </ul>	<ul style="list-style-type: none"> <li>May not be a binding contract and therefore unenforceable in the event of breach</li> <li>Lack of legal obligations – unsuitable for partnership accommodation requirements, GDPR information sharing considerations, passing of monies between parties</li> <li>Would require multiple documents – the MoU and then additional individual legally binding documents</li> <li>Very informal – an ‘agreement to agree’</li> <li>New framework - requires new documentation to be drafted</li> </ul>
<b>Service Level Agreement</b>	<ul style="list-style-type: none"> <li>Enables the parties to work together to deliver new partnership arrangements</li> <li>Would replace the S75 (S75 to be mutually terminated) as a more suitable form</li> <li>Permits specific obligations to be included e.g. payment of accommodation costs</li> <li>More formal than MoU</li> <li>Flexible – documents can be incorporated by reference and a change control mechanism for future revisions can be specified</li> <li>Lends itself to supporting ongoing improvements</li> </ul>	<ul style="list-style-type: none"> <li>Requires new agreement to be drafted</li> <li>Requires mutually agreed joint working clauses to be agreed – e.g. clear division of breach, indemnity and ‘no claim, no blame’ joint working provisions required</li> </ul>
<b>NHS Standard Contract</b>	<ul style="list-style-type: none"> <li>NHS standard documentation</li> </ul>	<ul style="list-style-type: none"> <li>Prescriptive - would not lend itself to partnering elements</li> <li>Requires extensive revision to make suitable for requirements</li> </ul>

## **6. Recommended future legal framework**

- 6.1 Following the above options appraisal, it was agreed between KCC and KMPT that the current legal framework, based on the S75 agreement, is no longer suitable. Because staff are no longer seconded to KMPT, much of the S75 agreement is redundant and reliance is instead placed on a series of addendum letters supporting the new arrangements whilst the legal framework is reviewed.
- 6.2 The preferred KCC and KMPT option for the future partnership framework is a Service Level Agreement, which would be flexible yet provide a legally binding framework to support the partnership. This would require the mutual termination of the existing S75 Agreement which can be executed by both parties providing written confirmation of mutual termination to the other party.
- 6.3 The Head of Corporate and Commercial at Invicta Law, has advised that there are no inherent risks of entering into a legally binding Service Level Agreement as long as the parties are agreed about the level and quality of the provision to be supplied, however the extent to which any obligations in the S75 Agreement need to be catered for in the Service Level Agreement would need

## **7. Delegation**

- 7.1 In order to implement the recommended option, the Adult Social Care Cabinet Committee is asked to endorse the proposed decision to terminate the existing S75 Agreement on a mutual basis with KMPT by providing written confirmation of the mutual termination and the signing of a new Service Level Agreement
- 7.2 In it envisaged that subject to endorsement by this committee the S75 Agreement is mutually terminated, and the new Service Level Agreement is entered into in early April 2019.

## **8. Financial Implications**

- 8.1 Any financial implications associated with colocation costs will be set out in the Service Level Agreement.

## **9. Equality Implications**

- 9.1 There are no equality implications associated with this decision. However, all or any future service changes will be subject to a full Equalities Impact Assessment consistent with both our legal responsibilities and the Council's Equalities Objectives.

## **10. Conclusions**

- 10.1 KCC and KMPT have drawn the mutual conclusion that the current S75 Agreement and its subsequent addendum letters are not suitable for the revised partnership arrangements between KCC and KMPT for the delivery of mental health services in Kent.
- 10.2 Both organisations have recommended to their internal governance channels that the existing S75 Agreement is mutually terminated, and an alternative Service

Level Agreement is entered into. The Service Level Agreement will provide a robust, legally binding framework to support the future partnership arrangements.

## 11. Recommendation(s)

11.1 Recommendations: The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make a **RECOMMENDATION** on the proposed decision (attached as Appendix A) to:

a) **APPROVE** the new legal framework to support the partnership arrangements for the provision of mental health social care and health services in Kent; specifically, approval for KCC to terminate the existing KCC and KMPT Section 75 Agreement (based on mutually agreed termination between KCC and KMPT) and approval for KCC to enter into a Service Level Agreement with KMPT; and

b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health, or other nominated officer, to undertake the necessary actions to implement the decision.

## 12. Background Documents

Adult Social Care Cabinet Committee 27 September 2018; 'Development of the Future Provision of Social Care and Support for Adults with Mental Health Needs':

<https://democracy.kent.gov.uk/ieListDocuments.aspx?CId=896&MIId=7955>

Cabinet member decision 21 July 2017; '17/00053 - Direction of future provision of social care and support to adults with mental health needs':

<https://democracy.kent.gov.uk/ieDecisionDetails.aspx?Id=2079>

Your life, your well-being a vision and strategy for adult social care 2016 –2021:

<https://www.kent.gov.uk/about-the-council/strategies-and-policies/adultsocial-care-policies/your-life-your-wellbeing>

Kent and Medway Sustainability and Transformation Plan:

<http://kentandmedway.nhs.uk/stp/>

Five Year Forward View for Mental Health: <https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf>

### **13. Lead Officer**

Hannah Stone  
Transformation Project Manager  
03000 410253  
[Hannah.stone@kent.gov.uk](mailto:Hannah.stone@kent.gov.uk)

### **Relevant Director**

Cheryl Fenton  
Assistant Director Mental Health  
03000 415310  
[Cheryl.fenton@kent.gov.uk](mailto:Cheryl.fenton@kent.gov.uk)