

From: Richard Smith, Corporate Director Adult Social Care and Health

To: Clair Bell, Cabinet Member for Adult Social Care and Public Health

Subject: **STRATEGIC PARTNERSHIP AGREEMENT FOR NEURODIVERSITY**

Decision No: **23/00059**

Classification: Unrestricted

Past Pathway of Report: Adult Social Care Cabinet Committee – 6 July 2023

Future Pathway of Report: Cabinet Member decision

Electoral Division: All

Summary: The review of the formal Kent and Medway wide arrangements for commissioning and delivery of health and social care services to people who are neurodivergent by way of being autistic or having learning disabilities is complete.

The Memorandum of Understanding between Kent County Council and Medway Council is complete and the supporting agreement between Kent County Council and NHS Kent and Medway has been drafted. Neurodivergent people have directly shaped the identity of the partnership and language to be used, which both updates and supports the continued development and adaptation of the partnership and its organisational partners.

Since the completion of the Memorandum of Understanding, Kent County Council and NHS Kent and Medway have begun to restructure their commissioning functions. As this wider environment continues to change, the Strategic Partnership for Neurodiversity must also continuously adapt. The supporting agreements therefore act as a framework to support the continued flexibility and development of the Strategic Partnership for Neurodiversity.

The wider delivery partnership for neurodiversity also includes the delivery collaborative arrangements which will be supported by a lead NHS provider in partnership with Kent County Council and Medway Council. The formal agreements to support this are continuing to be developed within these Kent and Medway arrangements and under the leadership of the Jointly appointed System Program Lead for Learning Disability and Neurodiversity.

Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked to:

a) **ENTER** into a new Strategic Partnership Agreement for Neurodiversity with NHS Kent and Medway; and

b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to vary the agreement to widen the geographical scope and parties to the agreement and to take other relevant actions including, but not limited to finalising the terms of and entering into required contracts or other legal agreements as necessary to implement the decision.

1. Introduction

- 1.1 This report presents the work undertaken since December 2021 to develop the whole system delivery partnership for neurodivergent citizens.
- 1.2 The partnership is currently supported through a Section 75 Agreement between NHS Kent and Medway and Kent County Council (KCC) and a Memorandum of Understanding (MOU) between KCC and Kent and Medway Council.
- 1.3 Progress including Medway Council's formal commitment to the whole system delivery partnership and the underpinning agreements supports the delivery partnership to further progress the formal arrangements to make better use of resource and funding to improve outcomes of, and with its neurodivergent citizens.
- 1.4 Self-advocates have been key to developing the neurodiversity movement, including language development, new theories and more inclusive opportunities. The language used throughout this report, and across the partnership reflects the language preferences of the learning disabled and autistic communities under the umbrella of neurodivergence, including Kent and Medway citizens.

2. Background

- 2.1 Since April 2016 KCC has been in a formal partnership with the previous Kent and Medway Clinical Commissioning Groups (CCG) supported by a Section 75 Agreement. The original ambition to develop wider partnership for service delivery was delivered in 2018 when the Learning Disability Alliance was signed. Since the Alliance Agreement ended on 31 March 2021 there has been no use of delegated functions under Section 75 of the NHS Act 2006.
- 2.2 The development of understanding and relationships, supported by the Section 75 and Alliance Agreements, combined with the development of Integrated Care Systems (ICS) in the context of the Health and Care Act, and the continued inequality experienced by neurodivergent people presented an opportunity for review.
- 2.3 Medway Council and KCC have agreed a MOU until 31 March 2024. This MOU and Strategic Partnership Agreement will support the wider system partnership between health and social care to deliver and strengthen the relationships, including the potential for the legal partnership agreement to expand.

- 2.4 Legal advice has been received to confirm there is no need for a Section 75 Agreement at this stage, and instead a Partnership Agreement can utilise the powers under Regulation 7 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations (2000). The S75 agreement could then be completed at the time that all partners are ready to delegate functions under section 75 NHS Act (2006).
- 2.5 The Joint System Lead has been in post since August 2022, bringing the multiple organisation partners together in delivering the agreed workplan, whilst also future proofing the resources, opportunities and commitment that will better deliver with and for Kent and Medway neurodivergent citizens.

3. Financial Implications

- 3.1 The pooled fund hosted by KCC under the current S75 Agreement includes management of the partnership's commissioning staff arrangements which flows £265,000 per annum through the pool for permanent staffing costs. KCC contribution to this is currently £21,000. This pool also includes other contributions for aftercare costs (currently £770k) and Tier 4 contributions (£300k) which will continue under the new arrangements.
- 3.2 The new Strategic Partnership Agreement creates further flexibility to enable the development for further pooling, hosted by agreed organisational partners. This provides the opportunity to improve joint funding processes and management, for example relating to Mental Health Act Section 117 aftercare, supported by the partnership's commissioning staff arrangements.
- 3.3 The new Strategic Partnership Agreement additionally presents the opportunity and flexibility to align budgets meaning that the partnership can manage jointly commissioned or provided services without needing to pool NHS or Council funds and supports joint decisions and will ensure it maximises the available resources when determining lead partner arrangements and applies a consistent approach to elements such as inflationary increases.
- 3.4 The MOU supports the discussions toward formal agreement of the resource, contributions, and structures between KCC, NHS Kent and Medway, and Medway Council to enter into this partnership agreement. If the partnership is ready to make use of the powers under Section 75 from the 1 April 2024, then this remains an option. The option to align resources without Section 75 flexibilities is retained should this be preferred by the delivery partnership in developing the future collaborative arrangement for delivery.
- 3.5 As partners within the future collaborative arrangement, comprising NHS and local authority services, Kent County Council, and Medway Council will retain oversight and decision making about their own statutory obligations with any additions to pooled or aligned budgets, or resource to be taken through the prescribed governance arrangements for each organisational partner.
- 3.6 The previous Alliance for Learning Disability ended on 31 March 2021 but continues to flow £10 million per annum of NHS funding through the current pooled fund in and then back out to NHS Kent and Medway who hold the

contracts with Kent and Medway Partnership Trust and Kent Community Health Foundation Trust. The new Partnership Agreement removes the requirement to manage this funding flow through the pooled fund, therefore delivering more efficiently.

4. Legal implications

- 4.1 Bevan Brittan is engaged and has been providing the legal support necessary to develop the new Strategic Partnership Agreement as agreed with the Head of Law in February 2022. Bevan Brittan will also support the development of the collaborative arrangements.
- 4.2 An interim MOU between KCC in its hosting capacity under the current Section 75 agreement, and Medway Council is in place until 31 March 2024.
- 4.3 Each statutory organisation will retain control for their delivery and decision making in relation to their statutory obligations under any Section 75 Agreement and the collaborative arrangement.
- 4.4 The completion of the new Strategic Partnership Agreement for Neurodiversity will automatically terminate the current Section 75 agreement for Learning Disability and Autism. It is anticipated that the new arrangements will be completed for the 1 September 2023.

5. Equalities implications

- 5.1 An Equalities Impact Assessment (EQIA), attached as Appendix 1, was completed in 2021 and was updated in October 2022. The continuing development of the social movement for neurodiversity including language evolution is exposing the potential for some previously unseen intersectional inequalities. For example, relating to autistic women, and the possibility of misdiagnosis with conditions such as personality disorder, and cooccurrence with other acquired neurodivergence, for example Post-Traumatic Stress Disorder (PTSD).
- 5.2 The proposed decision to enter into a Strategic Partnership Agreement will enable the partnership to better consider, understand and meet the needs of neurodivergent citizens across Kent and Medway by reducing inequalities potentially attributable to inconsistent approach and service availability. This would have a positive impact on citizens with protected characteristics.

5.3 The language used throughout this report, and the EQIA reflects the language preferences of neurodivergent communities. The current focus of the partnership remains on autistic people and people with learning disabilities but creates the flexibility and potential to additionally meet the needs of people from, or intersecting across neurominority groups, for example people with Attention Deficit Hyperactivity Disorder (ADHD) and those with mental health needs.

6. Other corporate implications

6.1 The delivery partnership integrated staffing arrangements are currently hosted within strategic commissioning, working across Adult Social Care and Health. Section 75 Agreements and the proposed Strategic Partnership Agreement are all age, and in perpetuity creating an overlap within the council for partnership working between Children, Young People and Education and Adult Social Care and Public Health. These relationships are well developed as a result of progress made since 2016.

6.2 The strategic commissioning restructure is underway and creates further opportunity to develop the integrated commissioning functions between NHS Kent and Medway, KCC and in the future, other potential partners. It is proposed that this is explored and where appropriate supported through the new Strategic Partnership Agreement for Neurodiversity.

6.3 This delivery partnership has responsibility for supporting and developing the wider economic wellbeing of neurodivergent people with functions overlapping with Growth, Environment and Transport, and Infrastructure Directorates. These relationships are developing supported by the appointment of a Housing and Accommodation Programme Development Lead.

6.4 The delivery partnership aligns with, supports and is supported by the individual partner's organisational governance arrangements and will continue to evolve as the ICS develops. This will include developing informal relationships with district and borough councils as appropriate in improving wellbeing and reducing inequality, including in response to climate change.

7. Governance

7.1 It's anticipated that the Corporate Director Adult Social Care and Health will inherit the main delegations under the Officer Scheme Delegation for the completion and development of the Strategic Partnership Agreement (including any future use of powers under section 75), and the collaborative arrangement.

8. Conclusions

- 8.1 The delivery partnership, including the Programme Delivery Unit is operational with the support of Kent and Medway Joint System Lead for Neurodiversity. Continuing to work with neurodivergent people, this delivery partnership is ready to further build on and formalise these arrangements.
- 8.2 The Section 75 Agreement between Kent County Council and NHS Kent and Medway requires redevelopment as a result of the review, and the decision by Medway Council to work within the partnership. This presents the opportunity to develop a consistent, coordinated approach and equitable service development across the Kent and Medway geographical areas.
- 8.3 The proposed Strategic Partnership Agreement enables further flexibility to support the development of appropriate financial infrastructure to support service development, to reduce the inequality experienced by neurodivergent citizens, based on need, and in the context of wider economic wellbeing.

9. Recommendations

9.1 Recommendation(s): The Cabinet Member for Adult Social Care and Public Health is asked to:

- a) **ENTER** into a new Strategic Partnership Agreement for Neurodiversity with NHS Kent and Medway; and
- b) **DELEGATE** authority to the Corporate Director Adult Social Care and Health to vary the agreement to widen the geographical scope and parties to the agreement and to take other relevant actions including, but not limited to finalising the terms of and entering into required contracts or other legal agreements as necessary to implement the decision.

10. Background Documents

Kent and Medway Adult Learning Disability and Autism Collective Options
Medway Council Cabinet decision 135/2021 [Agenda and minutes for Cabinet on Tuesday, 14 December 2021, 3.00pm | Medway Council](#)

15/00101 Integrated Adult Learning Disability Commissioning
[Decision - Integrated Adult Learning Disability Commissioning \(kent.gov.uk\)](#)

11. Report Authors

Xan Brooker
Senior Commissioner
03000 411587
Xan.brooker@kent.gov.uk

Marie Hackshall
System Programme Lead – Learning Disability and Neurodiversity Kent and
Medway
03000 411161
Marie.hackshall@kent.gov.uk

Relevant Director

Richard Smith
Corporate Director Adult Social Care and Health
03000 416838
Richard.Smith3@Kent.gov.uk