

Consultation on proposals for a Section 75 National Health Service Act 2006 Agreement

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Consultation closes Tuesday 17 March 2020

1. Introduction

This consultation sets out a proposal for Newcastle City Council (the Council) and NHS Newcastle Gateshead Clinical Commissioning Group (the CCG) to jointly commission a speech and language therapy service for children and young people 0-18 and young people up to 25 years with an Education, Health and Care Plan.

This proposal would involve Newcastle City Council (the Council) and Newcastle Clinical Commissioning Group (the CCG) entering into an Agreement under Section 75 of the National Health Service Act 2006. The agreement would be between the Council and the CCG. The practical impact of this agreement would be to formalise arrangements for the Council and the CCG to pool budgets in order to jointly commission a speech and language therapy service for children and young people in Newcastle. The CCG would be the lead commissioner.

The purpose of the consultation is to:-

- seek feedback about whether the Council has considered all the relevant issues and whether there are any additional issues that need to be considered; and
- understand the impact that any such Section 75 Agreement may have the upon Provider of the speech and language therapy service or any Child/Young Person accessing the speech and language service.

2. How to participate

Consultation responses can be made via the Let's Talk portal www.letstalknewcastle.co.uk or can be emailed to kirsty.williams@newcastle.gov.uk

Alternatively you can write to:

Louise Lane
Commissioner, Inclusion
Adult Social Care and Integrated Services
Newcastle City Council
Civic Centre
Newcastle upon Tyne NE1 8QH

All feedback to the consultation must be received **by 12 noon on Monday 16 March 2020**.

3. Background

The CCG and NCC have a number of contracts for Speech and Language Therapy (SALT) provision.

The CCG have a large block contract with Newcastle upon Tyne Hospitals NHS Foundation Trust (NuTH) to deliver a variety of community services and therapies including SALT. The CCG also have a contract with Cumbria Northumberland Tyne and Wear NHS Foundation Trust (CNTW) to deliver an integrated service to children with very complex disabilities.

Newcastle City Council have a number of contracts through Education and Children Social Care to provide SALT services into schools, special schools and Additional Resourced Centres and into the Community Family Hub areas to deliver SALT services to 0-5 years. All the contracts are with the same provider, NuTH.

In accordance with the Children and Families Act 2014 and the SEND Code of Practice, NCC and the CCG are committed to putting in place joint commissioning arrangements for children and young people (including children and young aged 0-25 with an Education, Health and Care Plan).

4. The consultation

The proposal is that the collaborative approach set out above will be supported by putting in place a Section 75 Agreement between the Council and the CCG. This is explained in more detail below but essentially, this is a legal agreement that enables the Council and CCG to formally work together, to benefit from a joint approach to commissioning, contract management and implementing systems.

5. The Legal Framework

As local authorities and NHS colleagues operate under different legislation, there is a specific mechanism that is designed to enable formal joint working between the two. More specifically, Section 75 of the National Health Service Act 2006, allows NHS bodies, in this case the Clinical Commissioning Group, and Council to make arrangements to exercise prescribed functions together, if the exercise of the arrangements is likely to lead to an improvement in the way in which those functions are exercised.

Essentially, what this means is that both parties need to be satisfied that any proposed joint working will result in benefits for service users, providers and the public generally.

One of the benefits of arrangements made under Section 75 is that it enables the following (known as NHS Act flexibilities) to be put in place:

- **Pooled funds** - the ability for partners each to contribute agreed funds to a single pot, to be spent on agreed projects for designated services.
- **Lead commissioning** - the partners can agree to delegate commissioning of services to one lead organisation.

There are specific requirements set out in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 that govern Section 75 Agreements. These requirements mean that any Section 75 Agreement must include the following information:

- the names of the statutory partners;
- date of agreement;
- start date of the partnership;
- which NHS Act flexibilities are being used (see above);
- the agreed aims and outcomes of the arrangement;
- the intended improvement to services and how the partnership achieves strategic objectives;
- who has been consulted;
- how the partnership promotes existing joint working;
- definition of the service users;
- financial resources of each partner.

The signatories to the Section 75 Agreement, following consultation, need to be satisfied that the following issues are appropriately dealt with:

- governance;
- review of the arrangement;
- human resources;
- information sharing;
- clearly identified functions;
- eligibility criteria and assessment process;
- complaints;
- financial issues;
- resolution of disputes.

6. Relevant Factors

It is proposed that any Section 75 Agreement will provide for the CCG to act as lead commissioner of a speech and language therapy service for children and young people.

The Section 75 Agreement will define how the CCG will exercise its role as lead commissioner and will also detail:-

- which personnel will be involved from each organisation at each stage;
- how contracts with Providers will be monitored and the role of each party in the monitoring arrangements ensuring the outcomes for the Child/Young Person are achieved;
- how information will be shared between all parties in the best interests of the Child/Young Person;
- the financial contribution made by each party to the service;
- how disputes that may arise between the Council and the CCG in relation to the service will be resolved.

The benefits of having a lead commissioner include ensuring consistency of the process so that there is a single point of contact for Providers, service users and their families and carers. This should reduce bureaucracy and provide for a more streamlined approach for those involved. The benefits for those potentially affected by this arrangement are set out more fully below.

7. Providers

The Council has not identified any risks to Providers from this arrangement. The lead commissioning will ensure that Providers only need to engage with one party should there be any issues or concerns in relation to the service. There will also be a single process for reviewing and monitoring the contracts ensuring that there is a reduction in any disruption to the Provider and a single process rather than multiple processes. There will also be consistency in contractual terms from a single contract.

8. Service Users

The intention is to ensure that the Child/Young Person's whole needs are met by the commissioned Provider.

9. Costs Pressures

There is a statutory duty on both the CCGs and local authorities to provide and appropriately fund a speech and language therapy service for children and young people. There will be no costs pressure on either the CCG or the local authority from entering into a Section 75 Agreement. It is anticipated that the changes to the commissioning arrangements as set out in section 3 above will ensure that while the needs of the Child/Young Person are met, the funding is at a level that is sustainable and appropriate.

10. The Equality Act 2010

The proposal does not disadvantage or unfairly treat any particular group. The proposal will in fact ensure that there is equality of treatment for Children/Young People who need a speech and language therapy service. It will also support the service more effectively, improve the quality of the service, and improve the monitoring of the service.

There are not believed to be any implications to the Human Rights of Children and Young People receiving a service or to community cohesion.

The joint commissioning of a service will ensure that there is a transparent and structured approach to the commissioning supported by the terms of the Section 75 Agreement forming a basis for equal treatment in terms of funding.

It is not believed that there are any environmental factors that may be impacted by this proposal.

11. Requests for Feedback

The consultation will be open for a period of 4 weeks as detailed above. The nature of the proposal is not considered to be so complex or detailed to require a longer period of consultation.

Do you agree that Newcastle City Council and Newcastle Clinical Commissioning Group should enter into a Section 75 Agreement which details the governance arrangements for jointly commissioned speech and language therapy service for children and young people 0-18 years and young people 18-25 years an Education Health and Care Plan as described above?

Please provide any additional comments as required to support your view. Please refer to section 2 for details on how to participate.