

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

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Consultation closes **15 October 2015 at 12 noon**

1. Introduction

This consultation sets out a proposal for Newcastle City Council (the Council) and NHS Newcastle Gateshead Alliance Clinical Commissioning Group (the CCG) to change the way that they work together in relation to Placements for 0-25 years in Department of Education registered, non-maintained and independent special schools and colleges for day and residential placements.

The change proposed would involve Newcastle City Council (the Council) and NHS Newcastle Gateshead Alliance 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 the existing arrangements. The Council would exercise the CCG's functions in relation to service users accessing these Placements. It would, however, do so on a delegated basis, which means that the CCG would still be ultimately responsible in law for the proper discharge of those NHS functions.

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 upon Providers of placements within the market or any Child/Young Person accessing placements as a service user or a parent/carer for a Child/Young Person.

2. How to participate

Consultation responses can be made via the Let's Talk portal <https://letstalknewcastle.co.uk/consultations/index/161> or can be emailed to becky.polito@newcastle.gov.uk

Alternatively you can write to:

Bridget Atkins
Commissioner, Children's Services
Wellbeing, Care and Learning Directorate
Newcastle City Council
Civic Centre
Newcastle NE1 8QH

All feedback to the consultation must be received **by 12 noon on 15 October 2015**.

3. Background

In 2014, 12 North East local authorities identified opportunities for improvement in the way they commissioned placements in residential schools. At that time, placements were commissioned in a variety of ways from a range of Providers and it was felt that this meant that local authorities had an inconsistent understanding and approach to monitoring the quality of this service provision and the outcomes for Children and Young People. There was also no consistency regarding price and contracting arrangements across the region. There was a concern that this meant that the provision of these placements was not as good as it could be.

Accordingly, in May 2014 Newcastle City Council convened a meeting of representatives of the 12 North East local authorities and their Clinical Commissioning Groups (CCGs) through the North East Commissioning Service (NECS). The consensus at this meeting was that there was benefit in having a joint approach to the commissioning of these placements.

A number of influencing factors and considerations were identified as supporting the proposed approach including:

- Special Education Needs and Disability (SEND) reforms;
- The personalisation agenda and an increase in families having the ability to commission services directly through individual budgets; parental choice being an important factor in choice of placement under SEND;
- The introduction of Education, Health and Care (EHC) Plans;
- The consideration of services for Children and Young People both pre and post 16 and through transition being brought together under one arrangement;
- Changes in funding arrangements between local authorities and the Education Funding Agency (EFA);
- The variation in placement type; a range of residential placements, day placements and a combination of day and residential 'boarder' placements;
- Services that are joint funded by health, education and social care;

- The current market place; specialist Providers that span the breadth of the sectors, geographical location of current Providers, influence of current 'market leaders', variation in size of Providers within the current market; and
- Existing arrangements for post 16 placements.

Specifically, it was felt that a joint approach would result in the desired outcomes identified by the NE12+ were:-

- To ensure good and improving outcomes for Children and Young People;
- To ensure relationships with all Providers are good and improving; open and transparent;
- To increase financial efficiencies and value for money in all placements;
- To achieve financial transparency in placement costs;
- To achieve fairness of financial contribution from Health, Education and Social Care in those instances where placements are joint funded;
- To ensure a consistency of quality across all Providers;
- To encourage and enable growth in the local market in order to provide a range of choice and suitable placements to meet the needs of Children and Young People;
- To establish 'harmonised' terms and conditions for Providers and purchasers.

The NE12+ Collaborative (NE12+) agreed that the initial scope for this exercise would be:-

"Placements for 0-25 years in Department of Education registered, non-maintained and independent special schools and colleges for day and residential placements."

Although placements in other settings were discussed, including Academies, the NE12+ determined that they would take a 'step approach' to changing practice across this Provider market. The NE12+ would then commit to reviewing the effectiveness of the collaborative structure and, if appropriate, expand this approach.

It was agreed that Newcastle City Council would act as the Lead Authority for this collaborative arrangement.

The NE12+ committed to working with Providers and other key stakeholders to achieve the desired outcomes and effect positive change.

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 local authorities and their health colleagues formally to work together. It means that the parties to the agreement can benefit from taking a joint approach to commissioning, contract management and implementing systems that are supported by health, education and social care colleagues.

At present, the Council arranges the placements and funding is provided by the CCGs for the health elements of each placement. A Section 75 Agreement would formalise this arrangement and ensure that both the Council and the CCG are actively involved in each stage of the process ensuring that the Child/Young Person's needs and outcomes are foremost in arranging the placement.

The NE12+ proposal is that a competitive tender exercise will be carried out to identify appropriately qualified and experienced Providers to be on the Council's Framework. Having been approved for the Framework, these Providers will then be approached on a case by case basis to tender for the provision of individual placements. It is anticipated that the tender exercise will commence in October 2015. It is then anticipated that the new arrangements will be in place for February 2016 to facilitate the making of placements for the academic year 2016-2017.

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 Clinical Commissioning Group(s), and local authorities 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.
- **Integrated provision** - the partners can join together their staff, resources, and management structures to integrate the provision of a service from managerial level to the front line.

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:

- a) the names of the statutory partners;
- b) date of agreement;
- c) start date of the partnership;
- d) which NHS Act flexibilities are being used (see above);
- e) the agreed aims and outcomes of the arrangement;
- f) the intended improvement to services and how the partnership achieves strategic objectives;

- g) who has been consulted;
- h) how the partnership promotes existing joint working;
- i) definition of the service users;
- j) 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.

5. Relevant Factors

It is proposed that any Section 75 Agreement will provide for the Council to act as lead commissioner of placements for 0-25 years in Department of Education registered, non-maintained and independent special schools and colleges for day and residential placements.

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

- how each party will contribute to the assessment of the Child/Young Person's needs;
- how each party will contribute to the development of the Child/Young Person's EHC Plan;
- how each party will contribute to identifying the nature and type of placement required;
- how each party will contribute to the evaluation of the Provider for a particular placement;
- how each party will be involved in the review of the placement;
- 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 role of each party when complaints are made regarding placements;
- the financial contribution made by each party to the placement;
- how disputes that may arise between the Council and the CCG in relation to placements 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.

6. Providers

The Council has not identified any risks to Providers from this arrangement. The lead commissioning and a single point of funding of placements will ensure that Providers only need to engage with one party should there be any issues or concerns in relation to placements. There will also be a single process for reviewing placements 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. The Section 75 Agreement between the Council and the CCG will underpin the contracts for individual placements made between the Council with any Provider to enable these benefits to be achieved.

7. Service Users

The intention is to ensure that the Child/Young Person's whole needs are met by the commissioned Provider. This will mean that the Child/Young Person's education, health and care needs will be delivered as a package to ensure that there is no conflict within the provision. A Section 75 Agreement will ensure that the relevant CCG is fully involved at all stages and remains informed of any issues arising from the Placement, for example by ensuring that the CCGs are involved in the review and monitoring of placements and that complaints arising in relation to health are referred to the CCGs by the Council. This will enable the CCG to act to support any Provider to appropriately address the Child/Young Person's health needs or to arrange to provide for those needs separately, if required.

8. Costs Pressures

There is a statutory duty on both the CCGs and local authorities to provide and appropriately fund these placements. There will be no costs pressure on either the CCG or the local authority from entering into a Section 75 Agreement. It will achieve financial transparency in placement costs and fairness of financial contribution from Health, Education and Social Care. 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.

9. 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 with special educational needs who may have placements made under these arrangements and for Providers of such placements. It will also support the placements more effectively, improve the quality of placements, and improve the monitoring of placements and outcomes for those placed.

The proposal will ensure that the placements are appropriately funded by the correct agency and result in a single point of payment for Providers.

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

It is believed that the proposal will benefit the Children and Young People being placed by the improved monitoring and governance arrangements that will be in place to support the placement and to secure the outcomes desired.

The joint commissioning of placements 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 2 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 NHS Newcastle Gateshead Alliance Clinical Commissioning Group should enter into a Section 75 Agreement which details the governance arrangements for jointly commissioned Placements for 0-25 years in Department of Education registered, non-maintained and independent special schools and colleges for day and residential placements 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.