

Report of the Assistant Director – Commissioning & Integration, Department of Health and Wellbeing to the Executive meeting to be held on 11th June 2019

Subject:

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The proposed Strategic Partnering Agreement (SPA) for the Transformation and Better Integration of Health and Care Services for the Population of Bradford District and Craven

Summary statement:

- 1.1 The proposed Health & Care Strategic Partnering Agreement (SPA) is intended to promote integrated and partnership working within the local health and social care systems in order to progress the Happy, Health at Home vision summarised in Clause 5.
- 1.2 The terms of the SPA have been considered and approved by Bradford Council's Health and Wellbeing Board and also by the Integration and Change Board. The purpose of this report is to summarise the effect of the SPA on the Council's activities and commitments and to seek authority to sign it on behalf of Bradford Council.
- 1.3 Most of the SPA terms are not legally binding upon Bradford Council, and those that are will not affect its current assets and liabilities. They record its commitment to work more closely in the future with the other parties in certain areas, and to seek to integrate its services with theirs in order to improve outcomes and to promote the efficient use of resources throughout the district.
- 1.4 This report recommends that the SPA should be approved and initially implemented for the Councils adults and children's social care and public health services.

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Portfolio:

Healthy People and Places

Overview & Scrutiny Area:

Health and Social care Overview and Scrutiny Committee

1. SUMMARY

- 1.1 The proposed Health & Care Strategic Partnering Agreement (SPA) replaces the previous Alliance Agreement for the local health and care system, and is intended to promote integrated and partnership working within the local health and social care systems in order to progress the *Happy, Health at Home* vision.
- 1.2 The terms of the SPA have been considered and approved by Bradford Council's Health and Wellbeing Board (January 2019), which is the statutory body with responsibility for the promotion of integrated care, and also by the Integration and Change Board (January & March 2019). The purpose of this report is to summarise the effect of the SPA on the Council's activities and commitments and to seek authority to sign it on behalf of Bradford Council.
- 1.3 Most of the SPA terms are not legally binding upon Bradford Council, and those that are will not affect its current assets and liabilities. They record its commitment to work more closely in the future with the other parties in certain areas, and to seek to integrate its services with theirs in order to improve outcomes and to promote the efficient use of resources throughout the district. The SPA proposes by way of implementation of these general aims that where Bradford Council is a provider of services in the areas covered by the SPA then consideration should be given to how those resources can be aligned with others in order to promote the overall vision and strategy set out in the SPA.

2. BACKGROUND

- 2.1 The council has been working in partnership with health partners through its own Health and Wellbeing Board, the Integration and Change Board and the two Health and Care Partnerships for some time. The Care Quality Commission (CQC) system review in February 2018 highlighted the positive relationships and commitment to partnership working but recommended that further work to underpin this with more formal arrangements would be beneficial.
- 2.2 The National Health Service (NHS) Long Term Plan was published in January 2019 and supports and strengthens the ambition to improve partnership and integration where it is of benefit to the citizens we serve. The Strategic Partnering Agreement sets out the values, principles and shared ambition of the current NHS and Local Authority commissioners and providers to work together as an integrated health and care system in Bradford District and Craven.
- 2.3 The Council is both a commissioner and provider of social care services either through direct delivery or through various subcontracts, and the SPA details the proposed operating framework under which it will work with other agencies for the delivery of health and care services in its area. It also records how the parties to the SPA will work together to agree and develop services through the Health and Care Partnerships and the Programme Boards; and how the Integration and Change Board will continue to be the main collaborative forum within which this will take place.

- 2.4 Although the SPA contains a number of ‘good faith’ commitments by its signatories, notably in Clause 7, it is not intended to be legally binding except in relation to specific clauses, namely:
- i. 12 (Information Sharing and Conflicts of Interest),
 - ii. 16 (Liability),
 - iii. 20 (Confidential Information),
 - iv. 21 (Freedom of Information),
 - v. 22 (Intellectual Property),
 - vi. 26 (Counterparts) and
 - vii. 29 (Governing Law and Jurisdiction)

These clauses will give rise to legally binding commitments.

- 2.5 The SPA provisions will not affect the terms of any current commissioning contracts, although they may form the basis for shared funding of such contracts in relation to affected services, which will initially be adult and children’s social care and public health. The obligation in Clause 9.1.1 to use all reasonable endeavours to avoid unnecessary disputes and claims may also impact the dispute resolution arrangements within such contracts, although it is unlikely that this would be onerous for the council.

- 2.6 The SPA is intended to last initially for three years until 31 March 2022, and replaces the previous Alliance Agreement dated 2017 that the council was a partner to but not a signatory.

- 2.7 The Strategic Partnering Agreement document is included at appendix A and has been shared with each of the partner organisations’ boards.

3. OTHER CONSIDERATIONS

- 3.1 The SPA is designed to take us a step further towards greater partnership and collaboration and in working as one system rather than separate individual organisations, and is intended to help us navigate the challenges that we collectively have in supporting the health and wellbeing of citizens in Bradford.

- 3.2 The council is a key partner in this and therefore should take a lead role in these arrangements. The position statement below is intended to outline the scope of the involvement that is sought:

The City of Bradford Metropolitan District Council (CBMDC) intends to be a full and active partner in the health and care partnership in all its roles - e.g. as provider, commissioner, and shaper of place.

As a provider CBMDC will deploy its health and social care teams on a locality basis that supports alignment with Community Partnerships and will support joined up working with all health and care providers serving people, families and communities

As a commissioner CBMDC will work closely with NHS Clinical Commissioning Groups (CCGs) to develop stronger and deeper joint commissioning arrangements. Additionally CBMDC will ensure that through the Health & Care Partnership Boards all local partners (not just commissioners) are engaged in the development of the council's broad commissioning intentions in line with the overall vision, objectives and principles, in the areas of Children's Social Care, Adult Social Care, and Public Health. These are initial areas of commissioning scope which will be reviewed as the Partnership develops.

What this means is that (in relation to the areas in scope) all our partners in the Health & Care Partnership Boards will have visibility of the Council's high level commissioning budget, how it is used, and the outcomes achieved. When changes are considered in response to needs, priorities, and changes in funding available, the Council will discuss this with partners at the Health & Care Partnership Boards and will use our collective ideas and suggestions to inform decisions to be taken. As with all partners to the SPA, responsibility for 'decision taking' remains with the individual parties. In the case of the Council, decisions are taken by the elected representatives of the people of the District.

In undertaking its commissioning activities the council must ensure compliance with the Public Contracts Regulations 2015 and this will necessarily limit the level of detail able to be shared at particular points within the commissioning cycle.

- 3.3 The SPA will be effective from the 1st April 2019, as the approach the signatories will take to partnership working, although it has been agreed that full implementation is phased in line with partner organisations' internal governance arrangements and timetable. The SPA and its operation will be reviewed in October 2019 with consideration of how it is working in practice and what impact it is having. It is seen as a developmental process as opposed to a definitive set of expectations.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The SPA terms include a commitment to operate a common set of financial principles, although this commitment is not legally binding. The commitments include the parties:

- i. Aiming to live within their means,
- ii. Developing and shaping their strategic capital and estates plans across the entire area, maximising all possible funding sources and
- iii. Ensuring that plans support the delivery of the SPA Vision and Objectives.

- 4.2 These principles do not take away any statutory authority or responsibility from the respective partner organisations and therefore the council will maintain oversight and control of its resources. It is intended however, that working together through the SPA will create greater opportunities to consider, in the future, how the system can best utilise its budgets, staffing resources and also how it can communicate more effectively with the people of Bradford and District and with other parts of the

system, such as the Department of Health & Social Care, the Regulators and the council's regional partners.

- 4.3 The financial commitments mean that future investment by the Council in the services in scope should first involve oversight and agreement on commissioning intentions under the SPA principles, and then be considered in accordance with the Council's financial management and governance requirements.
- 4.4 The Bradford CCGs have committed to putting all of their £950 million commissioning resource into the partnership and to make collective decisions on how it is spent. It is proposed that the council includes in the initial scope of this agreement the commissioning budgets for Adult Social Care, Children's Social care and Public Health.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 The governance arrangements for the SPA locally sits under the Health and Wellbeing Board and include the Integration and Change Board, two Health & Care Partnership Boards, 13 Community Partnerships (12 within Bradford MDC area) and a number of agreed partnership work streams/delivery programmes. At the sub regional level, Bradford sits within the West Yorkshire and Harrogate Integrated Care System.
- 5.2 It is unclear at this stage what future opportunities for further integration between health and social care may arise but it is anticipated that any new financial or service delivery agreements would be enacted through a section 75 agreement. Although the current Section 75 agreement for integrated commissioning is a foundation document for the SPA it is now due to be reviewed and re-negotiated, and those negotiations will inevitably be influenced by the SPA provisions and commitments.

6. LEGAL APPRAISAL

- 6.1 The negotiation of the terms of the SPA has been within the framework of the current commitments to achieve some degree of integration of services between the council and the local health service commissioners and providers. These discussions have taken place over several years, and have, in general, been inconclusive in outcome. Critical issues for the council are whether any agreement to integrate its service provision, or share its commissioning activities, will tie its hands in terms of future action, restrict its ability to comply with its statutory obligations or involve it in unfunded financial commitments.
- 6.2 The terms of the SPA reflect similar agreements that have been mooted in the past, and represent continuing efforts to identify a framework that meets the Council's requirement for its autonomy and also provides a means of planning and implementing shared services. The arrangements that are proposed therefore represent a compromise, and are to be implemented within a statutory framework that was not originally designed to facilitate them.

- 6.3 Although the SPA provisions are framed in language that emphasises their lack of legal formality, the practical effect of co-operative service development on the basis of commonly agreed principles will be to establish precedents and systems. Both of these will continue to influence service provision into the future, and shape formal service integration and development. Legal appraisal of the SPA should therefore include an examination of both the immediate and likely future legal consequences for the Council of agreeing to be bound by its terms.
- 6.4 The immediate consequences are very limited, and consist of an additional degree of external involvement in the data governance and confidentiality arrangements relating to the affected services. These will involve a protocol to manage conflicts of interest (both actual and perceived) and a protocol to manage the sharing of information in accordance with competition law requirements. Both protocols remain to be developed; and the council should ensure that they are both consistent with its aims and obligations, and any other current over-arching arrangements, such as, for example, its inter-agency information sharing protocol.
- 6.5 The long-term consequences are more difficult to identify. The SPA Changes Procedure at Schedule 5 commits the council to use a specified procedure when making any changes to in-scope services. Whilst the procedure reflects what would normally occur when changes were proposed to a shared service, Schedule 5 imposes a new formality on that process; and this will restrict the Council's freedom of action.
- 6.6 In addition to this procedural restriction, the SPA contains general commitments relating to financial management, human resources deployment and dispute resolution. Whilst these do not commit the Council to any substantive legal obligations, they will contribute to a framework within which the Council will be expected by its partners to act in any particular situation, and this will impose informal restrictions on its freedom of action.
- 6.7 The issues for the Executive are whether these restrictions:
- i. are balanced by similar restrictions being imposed upon the other partners, and
 - ii. will, in fact, facilitate shared and integrated service provision, and
 - iii. will yield benefits that outweigh the disadvantage represented by the loss of the council's autonomy.
- 6.8 Although these are not legal issues, they do have a legal dimension, since certain financial resources of the council have integration obligations attached to them, and its Health and Wellbeing Board is also specifically required to promote integration of services.
- 6.9 Protection of the council's legal and democratic autonomy in relation to its operation of the in-scope services will depend upon its willingness to engage with its partners and assert its rights under the SPA. It will also require the council to negotiate a suitable Section 75 agreement with the service commissioners; and to

ensure that the new agreement contains clear and binding protections; since the Section 75 agreement, unlike the SPA, is legally enforceable. Decision-making procedures will need to be subject to regular scrutiny by the Councils committees; and financial implications will need to be scoped and quantified before any commitment to action is given by the council.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

7.1.2 Bradford Council's current equality objectives include improving community relations, promoting inclusive economic growth through developing employment skills, encouraging the development of an organisational equalities culture and compiling equality data to enable it to make well informed decisions.

7.1.3 The SPA will deliver an immediate and significant benefit in the provision of equality data through the collective use of population health data and a shared awareness of the wider determinants of health and wellbeing.

7.1.4 It will also indirectly contribute to improving community relations through the developing Community Partnerships, where all the local partners come together to improve health and wellbeing in that location. By seeking to co-produce approaches that are focussed on the needs of a specific place, the SPA will also provide an opportunity for reducing inequalities and improving outcomes.

7.2 SUSTAINABILITY IMPLICATIONS

7.2.1 The practice of sustainability involves taking measures that enhance the quality of life for present and future generations while taking account of the impact that such measures will or may have during the same period on society and on the environment in which we all live. Successful sustainability practice seeks to strike the right balance between both the short and long term effects of such measures.

7.2.2 In this context, although the purpose of the SPA is wider than sustainability alone, it does seek to encourage the partners to improve the quality of the health and wellbeing of the local population by promoting more joined-up approaches to delivering improved health and wellbeing in the population. These approaches appear to have no obvious potential for adverse effect upon either society or the environment, and so there is no need to consider the need to strike a balance between their short and long-term effects.

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

7.3.1 There are no direct impacts upon such emissions.

7.4 COMMUNITY SAFETY IMPLICATIONS

7.4.1 The Crime and Disorder Act 1998 requires Bradford Council to exercise its various functions with due regard to the need to do all that it reasonably can to prevent

crime and disorder in its area (including anti-social behaviour) and the misuse of drugs, alcohol and other substances in its area.

- 7.4.2 The SPA has no specific implications for community safety, although there are obvious correlations between overall health and wellbeing and living in a safe community. The work of the Community Partnerships is likely to provide potential opportunities to enhance the council's locality/place based community safety initiatives by operating them in partnership with other providers and broadening the information base upon which they operate.

7.5 HUMAN RIGHTS ACT

- 7.5.1 The approval of the SPA does not involve individual rights and obligations such as those provided for under the Human Rights Act 1998. The SPA proposes a general approach to service integration to be implemented incrementally and after due consultation. Such consultation will include equality and human rights issues in order to ensure that they are taken into consideration.

7.6 TRADE UNION

- 7.6.1 The SPA will not require the involvement of trade unions, as it does not propose any specific arrangements that will involve changes in working conditions, working practices or terms of employment contracts; and it is not a workforce or collective agreement that may lead to redundancies or the termination of employment contracts.
- 7.6.2 The implementation of integrated services through the SPA provisions and principles is likely to eventually result in changes in the way that services are delivered, and, in particular, how services can be successfully integrated with those of other providers.
- 7.6.3 Schedule 7 to the SPA sets out 10 workforce principles intended to maximise the collective resources of the Parties to achieve this, and these are likely to represent a common approach. To that extent Schedule 7 will have implications for Bradford Council when consulting with its trade unions, although such consultation will only be required when specific changes are in contemplation.

7.7 WARD IMPLICATIONS

- 7.7.1 Primary care is a key function for co-ordinating the provision of health and wellbeing services within the population, and the integration of such services proposed within the SPA will be achieved at local level through the working of Community Partnerships. The geographical footprints of the local Community Partnerships are currently based on each having a served population of 30-50,000 persons. Although the local Community Partnerships are not currently entirely coterminous with the footprints of Bradford Council's wards and constituencies, they do map to the areas of its natural communities; and this allows appropriate levels of engagement between Community Partnerships and the council's ward officers and elected members.

7.9 IMPLICATIONS FOR CORPORATE PARENTING

7.9.1 The recommendation for adoption of the SPA and initial implementation through services including Bradford Council's children's services would have positive implications for corporate parenting. The Council's ability to fulfil its legal and moral duty to safeguard and promote outcomes for its Looked after Children will be strengthened by the adoption of integrated working practices and shared operation of the local safeguarding system. The SPA also provides opportunities for it to gain an improved understanding of the needs of such children through its partner's activities.

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESSMENT

7.10.1 A privacy impact assessment is required if the SPA agreement and the approval of the recommendations set out in this report will:

- i. Start a new project involving the collection of personal data;
- ii. Participate in a new data sharing initiative with other organisations; or
- iii. Use current data for a "new and unexpected or more intrusive purpose".

7.10.2 Under Clause 12 the Parties to the SPA agree to share all information relevant to the provision of services in an honest, open and timely manner, and to disclose to each other the full particulars of any real or apparent conflict of interest which arises or may arise in connection with the SPA or the performance of the Services.

7.10.3 The practical implementation of Clause 12 is likely to involve a new data sharing initiative in relation to users of the services to be integrated under the SPA provisions. In that event the relevant Department will ensure that a privacy assessment is undertaken as a pre-condition for the new initiative being adopted.

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

9.1.1 The terms of the SPA have evolved through a number of drafts, each of which has been amended and tested by reference to the needs of Bradford Council and its status as an autonomous and democratic authority with specific governance requirements. The provisions in the final document have been considered and endorsed by specialist lawyers selected and retained by Bradford Council after careful consideration of their experience and ability to provide independent advice due to having no other local client connection.

9.1.2 If the Executive is unwilling to accept the SPA as drafted then, unless there are specific issues that can be resolved through negotiations with the other parties, the only viable option for Executive would be to decline to agree it. In such a

situation Bradford Council could continue with the current ad hoc integration arrangements, with no overall strategy.

10. RECOMMENDATIONS

i. That the Strategic Partnership Agreement be signed by the Chief Executive Officer of Bradford Council in order to evidence its agreement to its terms,

ii. The scope of the involvement of Bradford Council in the SPA arrangements initially be limited to Children's Social Care, Adult Social Care, and Public Health, including both the provision and commissioning of those services,

iii. The Executive review the scope of Bradford Council's initial involvement in the SPA arrangements after a period of one year from the date of signing of the SPA (The SPA Review), and

iv. The Assistant Director, Commissioning & Integration, Department of Health and Wellbeing prepare and submit a progress report to the Executive on the initial implementation of the SPA to be considered during the SPA review.

11. APPENDICES

Appendix A

Strategic Partnering Agreement document copy

12. BACKGROUND DOCUMENTS

SPA slide pack describes the key features of the SPA and this agreed version has been shared with each of the partner organisations' boards.

Bradford Provider Alliance Memorandum of Understanding 2017

Alliance Agreement for the Transformation and Better Integration of Health, Care, Support and Community Services for the Population of Bradford (2017)