



CABINET –10 OCTOBER 2017

**DELAYED TRANSFERS OF CARE AND ASSURANCE OF THE
LEICESTERSHIRE BETTER CARE FUND PLAN**

**REPORT OF THE CHIEF EXECUTIVE,
DIRECTOR OF ADULTS AND COMMUNITIES AND
DIRECTOR OF HEALTH AND CARE INTEGRATION**

PART A

Purpose of the Report

1. The purpose of this report is to update the Cabinet on the progress with the assurance of the Leicestershire Better Care Fund (BCF) Plan 2017/18 – 2018/19 and the target for improving delayed transfers of care (DTOC) set by NHS England.

Recommendations

2. It is recommended that the Cabinet:
 - a. Notes the current status of the assurance of the Leicestershire BCF Plan as “not approved”, the reason for this position, and the placing of Leicestershire’s BCF plan in formal escalation with NHS England as a result of this;
 - b. Notes the additional risks on the BCF pooled budget and the Council’s Medium Term Financial Strategy (MTFS) should any BCF funds be withheld/removed during 2017/18 or 2018/19, the impact this could have on core service provision for citizens, and the associated reputational risk for the Council and NHS partners;
 - c. Reluctantly accepts the DTOC target imposed by NHS England but with the following caveats:
 - i. The County Council continues to object to the imposition of this target by NHS England, with the significant risks that have been placed on BCF assurance, and the associated financial penalties if a compliant target is not submitted.
 - ii. In accepting this change to the submitted DTOC trajectory, the County Council expects the Health and Wellbeing Board’s BCF plan assurance rating to be reviewed and adjusted with immediate effect.

- iii. As the County Council and partners still bear a clear risk of financial penalties during 2017/18 (if the Leicestershire, Leicester and Rutland (LLR) area does not reach the required level of improvement by November 2017) information is immediately provided to the three Councils and the three CCGs about:
 - a) The process, scale and timing for imposing any DTOC performance penalties per the November milestone, so that partners can plan effectively for the remainder of this financial year; and
 - b) Implications for local areas in relation to DTOC performance beyond November 2017 so that financial risks for 2018/19 can be assessed as soon as possible.
- d. Draws the attention of the Local Government Association and the County Councils' Network to its serious concerns about the actions and attitude of NHS England in this regard and requests them to continue to challenge Ministers so that partnership working on health and care integration is not further damaged;
- e. Notes that a further report on this matter will be made to the Health and Wellbeing Board at its meeting on 16 November 2017.

Reasons for Recommendation

- 3. In July 2017, after a lengthy national delay, technical guidance was published by NHS England for the preparation and submission of BCF Plans for the period 2017/18 – 2018/19. This technical guidance included new requirements for improving DTOC with challenging expectations placed on each health and wellbeing board area in terms of the rate of improvement to be achieved during 2017/18.
- 4. The guidance also highlighted that areas with poor performance on DTOC could be subject to escalation with NHS England, external review by the Care Quality Commission and financial penalties.
- 5. The national conditions for the BCF Plan include a requirement that it is jointly agreed by the County Council and CCGs, including through the Health and Wellbeing Board.

Timetable for Decisions (including Scrutiny)

- 6. Adults and Communities Overview and Scrutiny Committee will receive an update on the DTOC position based on this report at its meeting on 14 November 2017.

Policy Framework and Previous Decisions

- 7. The BCF Policy Framework was introduced by the Government in 2014, with the first year of BCF Plan delivery being 2015/16. In February 2014 the

Cabinet authorised the Health and Wellbeing Board to approve the BCF Plan and plans arising from its use.

8. The refresh of the Better Care Fund Plan for 2017/18 – 18/19 was approved by the Health and Wellbeing Board on 16 March 2017, following its consideration by the CCG Boards on 14 March 2017. The Health and Wellbeing Board also authorised the Chief Executive to make amendments to the Plan in the light of the national guidance, which had not been published at the time of that meeting, prior to it being submitted to NHS England.
9. Progress reports on the refresh of the BCF Plan have been submitted to the following meetings:-
 - The Health Overview and Scrutiny Committee on 1 March 2017;
 - The Health and Wellbeing Board on 22 June and 20 July 2017, taking into account the new technical guidance;
 - The Cabinet on 23 June 2017 where approval was also given to updating the County Council's MTFS 2017/18-2020/21 to reflect the additional adult social care grant allocation of £19.7 million over two years;
 - The respective County CCG Boards on 8 August 2017.
10. Noting that the Health and Wellbeing Board had authorised the Chief Executive to finalise the BCF Plan and submit it to NHS England, members of the Leicestershire Integration Executive, a subgroup of the Health and Wellbeing Board responsible for delivery of the BCF Plan, gave their agreement to the final submission to NHS England, at a meeting on 7 September 2017.
11. At its meeting on 15 September 2017, the Cabinet received a report on the implications of the new DTOC target being imposed by NHS England and the associated delivery risks for the LLR area

Resource Implications

12. The BCF Plan has a pooled budget totalling £52m for 2017/18 and £56m for 2018/19. This includes the additional non-recurrent adult social care grant (IBCF) funding allocated by the Government in the March budget. This funding has specific grant conditions, one of which concerns improving DTOC from hospital.
13. The BCF expenditure plan, attached as Appendix B to this report, was prepared by the County Council jointly with NHS partners. The draft expenditure plan was submitted to the Cabinet on 23 June 2017 and the final expenditure plan was submitted to NHS England on 7 September, 2017.
14. The expenditure plan demonstrates how the local fund has been prioritised. Investments must be made according to the national BCF Policy Framework and supporting technical guidance, and directed to joint local priorities for transforming health and care.

15. The expenditure plan includes £16.4m of investment which has been allocated to transfers of care from hospital and improving DTOC. The BCF Plan, local action plan to improve DTOC and levels of investment have been agreed with, and are fully supported by, NHS partners.
16. If a BCF Plan is graded by NHS England as not approved, and is not adjusted to become compliant, NHS England could remove elements of funding within the BCF pooled budget. In our case this would be due to the local area submitting a DTOC target which does not meet NHS England's required improvement trajectory by November 2017.
17. The stance of NHS England, in placing the Leicestershire BCF plan in escalation, now poses a significant financial risk to the County Council. There is a lack of clarity on the specific implications of this, so it is very difficult to quantify as yet. However, it appears that at least part of the £22m that the County Council receives to protect and sustain adult social care services within the BCF Plan is placed at risk this year.
18. If any BCF funding is withdrawn at this stage in the year this is likely to have a major impact on the revenue budget and will probably move the County Council into an overspend position. If the financial impact extends into next year the position is even more serious, given the County Council already needs to find extra resources to meet the overspend on children's social care.
19. The Director of Corporate Resources has been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

None.

Officers to Contact

John Sinnott	Chief Executive Tel: 0116 305 6000 E-mail: john.sinnott@leics.gov.uk
Cheryl Davenport,	Director of Health and Care Integration (Joint Appointment) Tel: 0116 305 4212 Email: cheryl.davenport@leics.gov.uk
Jon Wilson,	Director of Adults and Communities Leicestershire County Council Tel: 0116 305 7454 Email: jon.wilson@leics.gov.uk

PART B

Background

20. The requirement to deliver improvements in managing transfers of care is one of the national conditions for the BCF, as set out in the *Integration and Better Care Fund Policy Framework 2017/18 – 2018/19*, which applies to BCF Plans with effect from April 2017.
(<https://www.gov.uk/government/publications/integration-and-better-care-fund-policy-framework-2017-to-2019>).
21. In terms of the national condition targeted to managing transfers of care, each local BCF Plan must provide evidence of how the Department of Health's '*high impact changes for improving hospital discharge*' are being implemented locally. The High Impact Changes Framework [https://www.local.gov.uk/sites/default/files/documents/Impact%20change%20model%20managing%20transfers%20of%20care%20\(1\).pdf](https://www.local.gov.uk/sites/default/files/documents/Impact%20change%20model%20managing%20transfers%20of%20care%20(1).pdf) provides a basis for each health and care system to assess their local position and identify where further changes are needed so that all the evidence-based and recommended interventions are made.
22. There is also a requirement that a proportion of the new adult social care allocation will be spent on reducing DTOC. In Leicestershire, the total amount of funding being spent on this priority across the entire BCF Plan during 2017/18 is £16.4 million. This includes both a proportion of funding from the adult social care allocation and a proportion of funding from the core BCF pooled budget.
23. The impact of these investments is measured through the monitoring of LLR's performance on DTOC, including performance in each of the three health and wellbeing board areas within LLR.

Assurance Rating of the Leicestershire BCF Plan and Correspondence in relation to NHS England's Target for Improving DTOC

24. BCF plans are each year assured by regional and national panels, which include representation from local government, with these panel recommendations subject to final approval by NHS England.
25. The assurance criteria cover compliance with 4 key national conditions and 4 metrics, as well as assessing how the financial contributions within the BCF pooled budget are prioritised according to the national policy requirements.
26. The regional panel for the East Midlands assessed the Leicestershire BCF Plan in September and categorised it as "approved with conditions".
27. This rating was applied in recognition of the fact that the Plan met all national requirements except that our delayed transfer of care improvement trajectory was not compliant with the NHSE requirement to make a specific level of improvement by November 2017.

28. As stated in the previous report to Cabinet on this matter on 15 September 2017, the Leicestershire BCF Plan sets out how this improvement will be made, and commits partners to doing so as soon as possible, and no later than March 2018.
29. It has been confirmed by the regional assessor that in all other respects our Plan fully meets the BCF assurance criteria.
30. On 20 September NHSE asked that the submitted DTOC trajectory be reconsidered. That request was challenged.
31. On 4 October it was communicated to County Council officers by the LGA, with confirmation in writing expected this week, that the BCF national assurance panel, led by NHS England, will automatically rate any BCF plan that does not comply with the NHS DTOC target as “not approved” and all areas affected by this rating will be placed in escalation.
32. It was believed by the LGA that as many as 19 councils will be rated as “not approved” due to not complying with the NHSE DTOC target.
33. The position for Leicestershire needs to be understood in the context of current DTOC performance locally.
34. As reported to Cabinet in September:-
 - a. The Leicestershire BCF Plan, LLR DTOC action plan and the specific priorities and investments for improving DTOC are fully supported by our NHS partners.
 - b. Adult social care attributable delays remain low, with good performance at the acute trust. Leicestershire’s performance benchmarked with other authorities (data currently available is for Q1 2017/18) is shown at Appendix A.
 - c. The majority of the improvement needed within LLR in order to meet the NHS England target now relates to delays at non – acute sites (community hospitals, mental health sites and learning disability facilities).
 - d. The Leicestershire BCF Plan already includes a significant investment in core services supporting the transfer of care of patients from hospitals to community settings. The total amount invested within the BCF Plan on supporting hospital transfers and improving DTOC is £16.4m.
 - e. This includes additional investments, using the new I(improved)BCF grant, specifically targeted to improve DTOC further, in order to meet the target and deliver the action plan in place across the whole of LLR.
35. Examples of the services, and improvements already made, which rely on these investments are:

- a. Core NHS and adult social care reablement services (including the County Council's HART service, and a wide range of intermediate care services provided by Leicestershire Partnership Trust).
 - b. Core 7 day hospital discharge support from the County Council's adult social care team.
 - c. Targeted resources for additional nursing, residential care and domiciliary care packages, in support of the growing demand, due to the age profile of Leicestershire's population.
 - d. A new integrated discharge team based at the Leicester Royal Infirmary.
 - e. The new hospital housing discharge support service based at Leicester Royal Infirmary and the Bradgate Unit.
 - f. Resourcing the Home First programme, one of the largest workstreams in the LLR Sustainability and Transformation Partnership, which is overseeing the transformation of hospital discharge and reablement, and is hosted by the County Council on behalf of the Partnership.
36. It is not yet clear if, or how, the potential removal of BCF funds would be enacted in relation to the Leicestershire BCF Plan, but this clearly now poses a major risk to the Council, its NHS partners and most importantly our citizens in receipt of core health and care services, many of which been funded recurrently via our BCF Plan since its inception in 2015.
37. Should a reduction in funds be enacted, these services would require a significant lead time for any decommissioning decisions to be made and any associated contractual changes. This may require transitional support, and/or public consultation. There is no indication these matters have been recognised by NHS England.
38. An initial risk assessment is being undertaken by the County Council. Although it is not yet clear how much BCF funding would be being placed at risk, the analysis will consider the IBCF and the overall CCG contribution into the BCF pooled budget, and what mitigation could be applied in the short term.

Conclusion

39. A reasonable summary of the position in which the County Council now finds itself and brief background is as follows. The BCF was introduced by the Government (Department of Health and Department of Communities and Local Government) in 2014 to encourage the integration and transformation of health and care services. It was well known from the start that NHS England were not wholly supportive of the BCF due to their inability to control directly NHS funds put into local BCF pots alongside local authority funding. As a consequence, various metrics have been applied to BCF performance with transfers of care always featuring highly.
40. It is apparent there is a state of considerable anxiety in NHS England about the forthcoming winter and undoubtedly that is behind the current threat to

withdraw BCF funding if a theoretical target for DTOC is not agreed. As the report shows, whilst there is uncertainty about exactly what funds could be withdrawn, a wide range of key services (examples listed at paragraph 35) stand to be affected. If funding were withdrawn it is assumed NHS England will instruct these funds be allocated to NHS partners to secure alternative provision. Doing this at short notice, in an already complex and fragile social care market, would not be conducive to sustaining local health and care systems in the medium term.

41. The choice for the County Council is:
 - a) to sign up to a theoretical target of a rate of DTOC performance to be achieved by this November (performance outcome data cannot be fully measured and validated until January 2018), thereby mitigating the immediate threat to BCF Plan assurance and the imminent risk of the withdrawal of BCF funding on the basis of a non-compliant target; or
 - b) to refuse to accept the theoretical target, which entails having a non-approved BCF Plan, ongoing NHS England escalation, and the imminent risk of BCF funding withdrawal.
42. Reluctantly the recommendation is for option (a), whilst noting that there is as yet no indication if NHS England would seek to penalise financially or otherwise those health and wellbeing board areas where the theoretical DTOC target is not met, but that financial penalties would make little sense in any event.
43. It is also recommended that the County Council supports the ongoing action of the Local Government Association and the County Councils' Network challenging Ministers on the actions of NHS England seeking to impose a management culture on local government which is undermining partnership working.
44. As reflected in the recommendations, for the County Council to accept the DTOC target comes with significant caveats:
 - (i) The County Council continues to object to the imposition of this target by NHS England, with the significant risks that have been placed on BCF assurance, and the associated financial penalties if a compliant target is not submitted.
 - (ii) In accepting this change to our submitted DTOC trajectory, the County Council expects the Health and Wellbeing Board's BCF Plan assurance rating to be reviewed and adjusted with immediate effect.
 - (iii) As the County Council and partners still bear a clear risk of financial penalties during 2017/18 (if the LLR area is found not to have reached the required level of improvement by November 2017) information is immediately provided to all three Councils and the three CCGs about:

- a) The process, scale and timing for imposing any DTOC performance penalties per the November milestone, so that partners can plan effectively for the remainder of this financial year; and
- b) Implications, financial or otherwise, for local areas in relation to DTOC performance beyond November 2017, so that financial and other risks for 2018/19 can be assessed as soon as possible.

Background Papers

Report to Health Overview and Scrutiny on 1 March 2017

<http://politics.leics.gov.uk/documents/s126760/FEB%202017%20HOSC%20BCF%20REFRESH%20REPORT.pdf>

Leicester, Leicestershire and Rutland Sustainability and Transformation Plan -

<http://www.bettercareleicester.nhs.uk/Easysiteweb/getresource.axd?AssetID=47665>

Report to the Health and Wellbeing Board on March 16, 2017

<http://politics.leics.gov.uk/documents/s127292/BCF%20Refresh.pdf>

Report to Cabinet on 23 June 2017 (refer to item 10 on agenda)

<http://politics.leics.gov.uk/ieListDocuments.aspx?MId=5120&x=1>

Report to Health and Wellbeing Board 22 June (refer to item 9 on agenda) and 20 July 2017 (refer to Chairman's position statement)

<http://politics.leics.gov.uk/ieListDocuments.aspx?MId=5124&x=1>

<http://politics.leics.gov.uk/ieListDocuments.aspx?MId=5075&x=1>

Report to Cabinet on 15 September 2017 (refer to item 14 on the agenda)

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=4863&Ver=4>

Appendices

- Appendix A - DTOC Benchmarking
- Appendix B – BCF Expenditure Plan

Relevant Impact Assessments

Equality and Human Rights Implications

31. Developments within the BCF Plan are subject to an equality impact assessment and the evidence base supporting the BCF Plan has been tested with respect to Leicestershire Joint Strategic Needs Assessment. An equalities and human rights impact assessment has been undertaken which is provided at -

<https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2017/1/11/better->

[care-fund-overview-ehria.pdf](#) . The assessment concluded that the impact of the BCF is neutral and therefore a full assessment was not required.

32. The document underwent an annual review by Leicestershire County Council's (Adults and Communities Department) Equalities Group on 14 March 2017.

Partnership Working

33. The delivery of the BCF Plan and the governance of the associated pooled budget are managed in partnership through the collaboration of local authority and NHS commissioners and providers in Leicestershire.
34. Oversight of delivery is undertaken by the Integration Executive, an officer subgroup of the Health and Wellbeing Board. This group includes representation from District Councils and Leicestershire Healthwatch.
35. The delivery of the Leicestershire BCF ensures that a number of key integrated services are in place which contributes to the system wide transformation being implemented through the LLR Sustainability and Transformation Partnership, "Better Care Together". The partnership has published a five-year plan to transform health and care across Leicester, Leicestershire and Rutland.

Risk Assessment

36. The risk register for the BCF Plan has been fully updated in light of the new two year planning requirement, and the impact of the updated national conditions, metrics, and the context of the financial framework/financial pressures affecting the Leicestershire BCF plan.
37. The updated risk register has been reviewed in detail by partners including at the Integration Finance and Performance Group on 12 May 2017 and 18 August 2017, and the Integration Executive on 23 May, 1 August and 7 September 2017
38. The BCF risk register was updated in August 2017 to reflect the analysis undertaken on the delayed transfers of care target, the challenge of making improvements across the LLR area before March 2018, and the potential impact on the overall assurance of the BCF Plan.