Agenda Item No: **7**

CITY OF WOLVERHAMPTON COUNCIL

Cabinet Meeting

23 March 2016

Report title	Better Care Fund Section 75 Agreement (Pooled Budget 2016/17)
Decision designation	AMBER
Cabinet member with lead responsibility	Councillor Sandra Samuels, Public Health and Wellbeing Councillor Elias Mattu, Adults
Key decision	Yes
In forward plan	No
Wards affected	All
Accountable director	Linda Sanders, People
Originating service	Disabilities and Mental Health
Accountable employee(s)	Viv Griffin — Service Director, Disabilities and Mental Health Tel — 01902 555370 Email — Vivienne.griffin@wolverhampton.gov.uk
Report to be/has been considered by	People Leadership Team — 22 February 2016 Strategic Executive Board — 1 March 2016 Integrated Commissioning and Partnership Board — 10 March 2016 Better Care Fund Programme Board — 10 March 2016

Recommendation(s) for action or decision:

The Cabinet is recommended to:

1. Agree to continue the Section 75 Agreement (Pooled Fund) with NHS Wolverhampton Clinical Commissioning Group (“WCCG”) for 2016/17, on the terms and conditions outlined in this report along with any other ancillary legal agreements necessary for the joint administration of the Better Care Fund, including setting up a pooled fund to be managed by the Council.

2. Delegate authority to approve the final terms of the proposed section 75 agreement to Cabinet Members for Adults, Public Health and Well Being and Resources, (Cllrs Elias Mattu, Sandra Samuels, and Andrew Johnson) in consultation with the Strategic Director for People and Director of Finance.

1.0 Executive Summary

1.1 In the last spending review Government confirmed the intention to move Health and Social Care into a more integrated state by the business year 2019/20, in recognition of the fact that health services cannot operate effectively without good social care. To support Local Authorities to meet growing social care needs government also confirmed an option for local authorities who are responsible for social care to levy a new social care precept of up to 2% on council tax. The additional money raised will have to be spent exclusively on adult social care.

1.2 The Government also reconfirmed the Better Care Fund ("BCF") as a key national policy directive for the rest of the current parliament and that the Better Care Fund would be the vehicle used to support that integration. The principle aims of the BCF continue to be the reduction of accident and emergency admissions, improvement to the level of delayed transfers and reduction in the number of care home admissions by investing in joined up health and social care services focused on prevention.

1.3 In December 2015 NHS also published the guidance "Delivering the Forward View: NHS planning guidance 2016/17 – 2020/21"

Which in summary mandates:

- A five year Sustainability and Transformation Plan ("STP"), place-based and driving the Five Year Forward View; and a one year Operational Plan for 2016/17, organisation-based but consistent with the emerging STP

- Place based planning - Planning by individual institutions will increasingly be supplemented with planning by place for local populations, and the agreement of transformation footprints' and the programming of clear deliverables across the STP

1.4 Work across both the Black Country and West Midlands regional areas is underway to jointly agree regional footprints and the Wolverhampton STP.

1.5 On 11 January Department of Health/Department for Communities and Local Government released the BCF policy framework for 2016/17. From this guidance the key points relating to the operation of the BCF in 2016/17 are:

- The National £1 billion payment for the performance element of the Better Care Fund and mandated local targets for the reduction of delayed transfers of care have been removed from BCF arrangements replaced by two new national conditions:

- Local areas to fund NHS commissioned out-of-hospital services (to ensure continued investment in NHS commissioned out-of-hospital services, which may include a wide range of services including social care).

- To develop a clear, focused action plan for managing delayed transfers of care (DTOC), including locally agreed targets. The conditions are designed to tackle the high levels of DTOC across the health and care system. Councils, CCGs and NHS providers will have to agree a local target for cutting delayed transfers of care.

- The policy framework provides for more flexibility for Councils and CCGs to put more money into the pool funding arrangement with more flexibility to agree local risk sharing agreements.

- The framework also suggests that a more "streamlined" assurance process for better care fund plans will be in place for the 2016/17 period. Assurance plans will not be subject to a national assurance process. Instead, local plans will be assessed by regional teams including NHS England and local government officials. Plans will only be approved centrally where areas are designated "high risk".

1.6 The detailed technical guidance was due to be published by DCLG/DH in mid-December; however this was not received until March which has led to challenges around the production of the detailed BCF submission.

1.7 The proposed revenue value of the pooled fund to be managed via the S. 75 agreement is £53.9 million (absolute values to be confirmed) and consists of £32.3 million (60%) of CCG funded services alongside, £21.6 million council funded services (40%). The council contribution includes £6.4 million representing the NHS transfer to social care ('Section 256 funding). The pooled budget also include a capital grant (Disabled Facility Grant) amounting to £2.4 million which are managed by the council.

1.8 This paper explains the basis for the S. 75 agreement, and the requirement to set up a pooled fund using the hosting arrangements already in place. It also outlines the risk share arrangements that will operate once the pool is in place. The requirement for a S.75 agreement considered in this paper is for the financial year 2016/17.

2.0 Purpose

2.1 The purpose of the report is:

- To brief Cabinet members on the function of the Section 75 agreement proposal for the management of the Better Care Fund and to obtain Cabinet approval to the continuation of the Section 75 pooled fund for 2016/17;
- To appraise Cabinet members regarding the approach to risk share and performance management within the agreement;
- To appraise Cabinet members of the proposed governance arrangements for the Section 75 Agreement

3.0 Background

3.1 A Section 75 (S.75) Agreement is an agreement made under section 75 of the National Health Services Act 2006 between a local authority and an NHS body in England (in this case Wolverhampton CCG). S. 75 agreements can include arrangements for pooling resources and delegating certain NHS and local authority health-related functions to the other partner(s) if it would lead to an improvement in the way those functions are exercised.

3.2 The Better Care Fund arrangements require a pooled fund, and the Care Act 2014, Section 121 provides for this.

3.3 A S.75 agreement is already in place for 2015/16, this paper outlines the amendments to this existing agreement for 2016/17. The S.75 agreement governing the creation and management of the pooled fund must be in place before the beginning of the 2016/17 financial year (the year to which it applies).

4.0 Progress, options, discussion, etc.

4.1 City of Wolverhampton Council and Wolverhampton Clinical Commissioning Group have been working collaboratively to explore the details of a proposed S. 75 agreement in order that Cabinet may be presented with a proposal which is effective, sustainable, and mitigates risk where identified and possible. This has been done taking into account lessons learned from the current Section 75 agreement. The draft proposal considers the following and in summary below is the recommended approach;

4.2 Commissioning

4.2.1 There is not a formal requirement to make commissioning arrangements as part of the S.75 agreement, though in practice, having shared strategic vision and commissioning plan which maximises opportunities for effective commissioning approaches will be advantageous.

4.2.2 The proposal for supporting the management of the S. 75 pooled fund and its planning therefore is the adoption of an integrated commissioning approach which provides the Council and the CCG with the flexibility and focus to continue to take their own decisions with the arrangements supporting effective co-ordination and shared planning and development. This arrangement will ensure that both the Council and CCG board are sighted on the overarching commissioning intentions and the integrated plans to deliver them.

4.2.3 The 2016/17 Better Care Fund Policy Framework emphasises the need for integration, as did the Government's Autumn Statement 2015 in saying "the Spending Review sets out an ambitious plan so that by 2020 health and social care are integrated across the country. Every part of the country must have a plan for this in 2017, implemented by 2020."

4.3 Governance

4.3.1 The governance arrangements for the fund have been designed to be as streamlined as possible, bearing in mind the scale of the financial commitment involved and the scope of the overall project. Day to day operational management and oversight of the fund will be the responsibility of the Integrated Commissioning and Partnership Board whose members will have delegated responsibility from both partner organisations to hold the Executive work stream leads to account and to make necessary decisions from a planning, and performance management perspective.

4.3.2 The scope of these powers will be within the existing limits set by both organisations schemes of delegation, particularly from a financial and procurement perspective. Beyond these limits, decision making will remain within the responsible bodies in the individual organisations (Cabinet and the CCG's Governing Body), to whom the members of the Integrated Commissioning and Partnership Board will be accountable for the operation of the fund. Beyond this, the Health and Wellbeing Board will continue to oversee both organisations for the performance of the fund against the objectives set out in the BCF plan and the Health and Wellbeing strategy.

4.3.3 The governance arrangements ensure that there is sufficient authority to take appropriate decisions and scrutiny of those decisions and the operation of the arrangements generally. The Governance arrangements have been developed over the last 12 months, and clearly articulate the reporting requirements. They will be set out in full in Schedule 2 of the S.75 agreement. Existing contracts between the CCG and providers and the Council and their respective providers will not be affected by the continuation of a single host for the pooled fund.

4.3.4 To reflect the high number of partners and stakeholders and to ensure effective programme delivery a governance structure has been agreed by the programme's Senior Responsible Owners (attached at appendix 10.2)

4.4 Pooled fund management

4.4.1 Each individual work stream where there is a pooled fund has designated pooled fund management from both a health and social care perspective (commissioner). This role is undertaken by existing commissioners within each of the statutory partners, with the following duties and responsibilities:

- The day to day operation and management of the pooled fund;
- Ensuring that all expenditure from the pooled fund is in accordance with the provisions of the S.75 agreement and the relevant scheme specification;
- Maintaining an overview of all joint financial issues affecting the Council and the CCG in relation to the services and the pooled fund;
- Ensuring that full and proper records for accounting purposes are kept in respect of the pooled fund;
- Reporting to the Integrated Commissioning and Partnership Board (ICPB) as required (this would be through Executive work stream lead);

- Ensuring action is taken to manage any projected under or overspends relating to the pooled fund in accordance with the S.75 agreement;

- In conjunction with the overall pooled fund manager preparing and submitting to the Health and Wellbeing board/Integrated Commissioning and Partnership Board quarterly reports (or more frequent reports if required) and an annual return about the income and expenditure from the pooled fund together with such other information as may be required by the HWB to monitor the effectiveness of the BCF and to enable the CCG and the Council to complete their own financial accounts and returns;

- In conjunction with the overall pooled fund manager, preparing and submitting performance reports to the Health and Wellbeing Board on a quarterly basis.

4.5 Risks, Risk Share Arrangements and Management of Risk

4.5.1 The proposed risk share arrangements are detailed in this section. This is based on the risk assessment attached at appendix 10.1

4.6 Risk Share – Underperformance

4.6.1 The proposed revenue value of the pooled fund to be managed via the S. 75 agreement is £53.9 million (absolute values to be confirmed) and consists of £32.3 million (60%) of CCG funded services alongside, £21.6 million council funded services (40%). The council contribution includes £6.4 million representing the NHS transfer to social care (‘Section 256 funding). The pooled budget also includes a capital grant amounting to £2.4 million which are managed by the council.

4.6.2 The council’s contribution to the pool includes £3 million (which is relates to demographic pressures applied in the year 2015/16 of £2 million , and £964,000 of funding relating to the Care Act) that must be abated in order to retain funds for the burden of demographic growth and the new costs associated with the implementation of the Care Bill. This also creates a cost pressure within the pool and this risk is being shared across each work stream according to its size. Each work stream will be responsible for delivering efficiencies to meet this cost pressure and failure to do so will be dealt with in line for the arrangements for overspends below.

4.6.3 The risk sharing arrangement will be based on the proportion of each partner contribution (currently CCG 60% and CWC 40%). Please refer to table in section 4.5

4.7 Risk Share – Overspend

4.7.1 The host organisation shall produce monthly financial reports and share these with the other party. The first reconciliation to recoup any overspend shall take place at quarter two (month six), and quarter three (month nine). Month 11 reporting will incorporate year end estimates on the pool fund.

4.7.2 The Integrated Commissioning and Partnership Board shall consider what action to take in respect of any actual or potential overspends. The Board will take into consideration all relevant factors including, where appropriate the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints and agree appropriate action in relation to overspends which may include the following:

- Whether there is any action that can be taken in order to contain expenditure;
- Whether there are any underspends that can be vired from any other fund maintained under this Agreement;
- How any overspend shall be apportioned between the Partners, such apportionment to be determined on the basis of the individual partner's contribution to the individual work stream as detailed in the section 4 of this report.

4.8 Approach to Risk Management

4.8.1 The two main bodies at the heart of the risk management process, and oversight of the S.75 agreement are;

- The Integrated Commissioning and Partnership Board (ICPB):
- The Integrated Commissioning and Partnership Board will be the governing body for integrated commissioning and also the pooled fund arrangements for the S.75 agreement. The ICPB operates at a strategic planning and approval level for all commissioning plans and associated delivery plans which form the body of the partnership.

4.8.2 The ICPB membership includes executive level, senior managerial decision makers from the Council (Strategic Director-People, Service Director Older People and Service Director Disabilities and Mental Health) and CCG Executive Commissioning and Finance Leads. It aims to develop stronger and deeper integration of health and social care and enhance joint working, including the pooling of budgets where appropriate. The ICPB will hold the system to account and performance manage against key performance indicators on a monthly basis. They will include mandated reporting against a dashboard for:

- Metrics
  - Admissions to residential and care homes
  - Effectiveness of reablement
  - Delayed transfers of care
  - Patient / service user experience
  - A locally – proposed metric
  - NHS Commissioned out of hospital services
  - Development of a clear, focused action plan for managing delayed transfers of care

- Finance
  - Budget Allocation
  - Actual Spend
  - Mitigation against overspend

4.8.3 This forum is not a statutory body and therefore needs to work in accordance with its delegated responsibility and also the accountability arrangements of the Council and CCG when it comes to, for example, considering the allocation of resources, undertaking mitigating actions or making policy commitments. It is the ICPB that will monitor the implementation of the integrated commissioning plans, the BCF work programme, and undertake a performance management role. It will report its findings to:

4.8.4 The Health and Wellbeing Board will operate as the governing body for natural oversight and facilitated discussions between NHS England, Wolverhampton CCG and Wolverhampton City Councils on how the funding should be spent, as part of their wider discussions on the use of their total health and care resource. The HWB provides the following in support of the S. 75 agreement :

- Leadership – providing strategic support to the developing relationship between the CCG and council, developing a shared vision of future services, holding a helicopter view of resources across the whole system, oversight of the impact of transformational change and risk management;

- Public, patient/user and community engagement;

- Professional and administrative support – engagement of public health in assessing need, deriving evidence, and harnessing opportunities for fuller approaches to integrated commissioning, support to the integrated commissioning process and its fit with existing programmes of integrated care, agreement and use of performance metrics for BCF, oversight of organisational capacity;

- Plan delivery – oversight and exception reporting via the Integrated Commissioning and Partnership Board

4.8.5 In addition individual organisational systems of governance will remain intact, and the approach to delivering the ongoing programme of work for the Better Care Fund will continue to deliver in accordance with the governance requirements of both Governing Body (CCG), and City Council Cabinet requirements, as per the current Better Care Fund approach.

4.8.6 The Better Care Fund Programme Board consists of Commissioners and Provider representatives and oversees the delivery of the programme and its associated work streams.

4.9 Risk Analysis - management of the proposed section 75 agreement

4.9.1 A detailed risk assessment has been undertaken to understand document, and mitigate the risks that could occur in relation to the operation of the pooled fund in 2016/17. This is attached at appendix 10.1

5.0 Financial implications

5.1 The value of the pooled fund for 2015/16 was £70.7 million revenue; of which £22.8 million related to council funded services and £47.9 million related to CCG funded services. The fund also includes £2.1 million capital grant which is managed by the council.

5.2 The draft BCF revenue pooled fund for 2016/17 is £53.9 million, of which, £21.6 million is made up of services that are managed by the council and £32.3 million for the CCG. This includes £6.4 million representing the NHS transfer to social care (‘Section 256 funding). In addition to the revenue services the bid includes capital grants amounting to £2.4 million (Dedicated Facilities Grant).

5.3 The pooled fund requires efficiencies to be realized to fund the council’s demographic growth of £2 million and care act implementation funding of £964,000. (Plus inflation to be confirmed). The risk sharing agreement sets out how these costs will be shared between the partners if the efficiencies are not found (see section 5.5 below).

5.4 The pooled budget is broken down into the following work streams:

Work streams	CCG Funded services (£000)	Council Funded services (£000)	Total Services (£000)
Adult Community Services	24,015	18,639	42,654
Dementia	2,586	321	2,907
Mental Health	5,705	2,645	8,350
Total Contribution to Pooled Fund	**32,306**	**21,605**	**53,911**
(Ring Fenced Capital Grants)		2,440	2,440

5.5 The risk sharing arrangements for any over/underspends with the pooled fund and the non-delivery of efficiencies as detailed in section 5.3 will be shared as follows:

	CCG Risk %	Council Risk %
Adults Community Services	56	44
Dementia	89	11
Mental Health	68	32
Ring Fenced Capital Grant	0	100
Demographic Growth	60	40
Care Act Monies	60	40

[AS/14032016/I]

5.0 Legal implications

5.1 The section 75 agreement must be in place for the start of the 2016/17 financial year.

5.2 Section 75 of the NHS Act 2006 (the "Act") allows local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised. Section 75 of the Act permits the formation of a pooled budget made up of contributions by both the Council and the CCG out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body and prescribed health-related functions of the local authority. The Act precludes CCGs from delegating any functions relating to family health services, the commissioning of surgery, radiotherapy, termination of pregnancies, endoscopy, the use of certain laser treatments and other invasive treatments and emergency ambulance services.

For local authorities, the services that can be included within section 75 arrangements are broad in scope and a detailed exclusions list is contained within Regulations of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

5.3 The agreement has been drawn up using a template produced for the programme based on pilot projects and has been developed following advice from the Clinical Commissioning Group and Council's Legal Services and external solicitors. It will contain detailed provisions concerning a number of key issues, including performance, governance, fund management and risk sharing as outlined above.

5.4 The agreement describes the detailed arrangements that will be covered by the individual BCF projects and work streams, outlines the financial commitment of both organisations and outlines the governance structures and hosting arrangements for the pooled fund.

5.5 The governance arrangements will ensure that there is sufficient authority to take appropriate decisions and scrutiny of those decisions and the operation of the arrangements generally. This is outlined in Section 3 above, and will be included in detail within Schedule 2 of the agreement.

5.6 A Section 75 agreement with the CCG in relation to the BCF is required to be in place before the beginning of the financial year 2016/17

5.7 Work is underway to ensure that the S.75 schedules, which form a critical part of the agreement, are completed and agreed. The Council's legal department has been leading on the provision of legal advice to the process alongside the CCGs legal representation in support of the partners through the development stage.

5.8 Prior to signing both partners will secure independent legal review of the final agreement.

5.9 The S.75 agreement is a vehicle for the delivery of the BCF plan. This plan was developed jointly across the CCG, City Council and involving other lay partners and providers and aims to support the delivery of the Councils and CCGs strategic vision, supporting the achievement of effective, efficient and integrated community and neighbourhood facing services.

5.10 The notice period for ending the Section 75 agreement, by negotiation, is 3 months. (RB/09032016/X)

6.0 Equalities implications

6.1 Individual schemes and initiatives funded by the Better Care Fund will be subject to robust Equality Impact Assessments. This is to ensure compliance with the Equality Act 2010 and to pay due regard to the Public Sector Equality Duty.

6.2 All identified opportunities for integrated delivery of care and effective integrated commissioning in Wolverhampton will be informed by the local population needs identified in the Joint Strategic Needs Assessment, in detailed analysis of local neighbourhoods, and set out in the City Council's Corporate Plan and CCG's Strategic Vision.

7.0 Environmental implications

7.1 No apparent environmental impact.

8.0 Human resources implications

8.1 No apparent HR impact.

9.0 Corporate landlord implications

9.1 None identified

10.0 Schedule of background papers

Appendices

10.1 Risk Assessment
10.2 Programme governance

Appendices
10.1 Risk Assessment

Financial Risk	Mitigation	Maximum Negative Pooled Financial
Overspends across work streams within the pool fund. Budgets are net of efficiencies required by both organisations (savings programmes (CWC Medium Term Financial Savings ("MTFS") and CCG QIPP)).	• CCG set budgets based on previous years out-turn, mitigating against the carry forward of any overspend. • Monthly financial monitoring reports Development of a Transformation • Programme Board and PMO approach • within the City Council • Existing performance management	Unable to quantify
The proposed 2016/17 BCF allocation includes funding of £2.0 million for the forecast financial impact of demographic growth on social care, and £964,000 for Care Act implementation costs. Efficiencies will need to be realised within the pooled budget to fund these costs. The ongoing demographic growth pressure for 2016/17 and beyond is forecast to increase by £2.0 million per year: it is essential that the pooled fund is of sufficient scale to enable these efficiencies to be realised. The council's medium-term financial strategy (MTFS) currently assumes that these pressures will be funded in full from the BCF.	• Ongoing financial and redesign modeling in progress • Care Act costs are incremental • Redesign and development enables further efficiencies to be achieved • NHS England has not yet identified how non recurrent contingency funds will fit in with the broader requirements for contingency and transformational funding.	£3.0 million (Withheld from the pool by the Local Authority at pooled budget commencement to cover local authority risk. Pooled budget risk apportioned based on the total revenue contribution of both parties to the pool.

Operational Risk	Mitigation
Better Care Fund schemes will not succeed in reducing A&E attendances and as a result the 4-hour target will be missed.	• Provider engagement with planning and development has been significant and plans were agreed across the commissioning and provider landscape. • A dedicated resource (senior nurse) is now in place within the acute provider specifically working on implementation plan development and support, in order to build capacity into the system
	• Monitoring monthly against identified HRG codes Performance reporting via TCB and HWB • Ongoing leadership from the local acute and community providers • Further urgent development of primary care models (completion 13.03.2015) to harness this resource in delivering alternatives to A&E attendance through design •
Better Care Fund schemes will increase demand for community services, resulting in higher waiting times for community care assessment.	• Plans for redesign to minimise this impact are in place. Fully integrated health and social care teams are planned to reduce duplication (identified through mapping), and increase capacity • Further urgent development of primary care models (completion 13.03.2015) in place to harness this resource in delivering alternatives to A&E • Capacity demand modeling in progress
Better Care Fund schemes shift staff to community services, resulting in deteriorating performance against the 18-week referral-to-treatment target.	• No immediate plans to shift staff into community but through redesign, capacity is being developed, and through capacity modeling, capacity in current structure has been identified

Quality Risks.	
The disruption associated with Better Care Fund schemes reduces social care related quality of life for service users.	All plans are designed to improve social care related quality of life for service users Quality and Risk group established
The disruption associated with Better Care Fund schemes impacts on patient experience of NHS services as measured through the Friends and Family Test.	Implementation plans in development will take the potential for disruption into account and mitigation plans Communication and engagement with the public regarding the plans, rationale, and impact – plan in development Establishment of a communication group has commenced linked to the national communication network

Appendix 10.2 – Programme Governance

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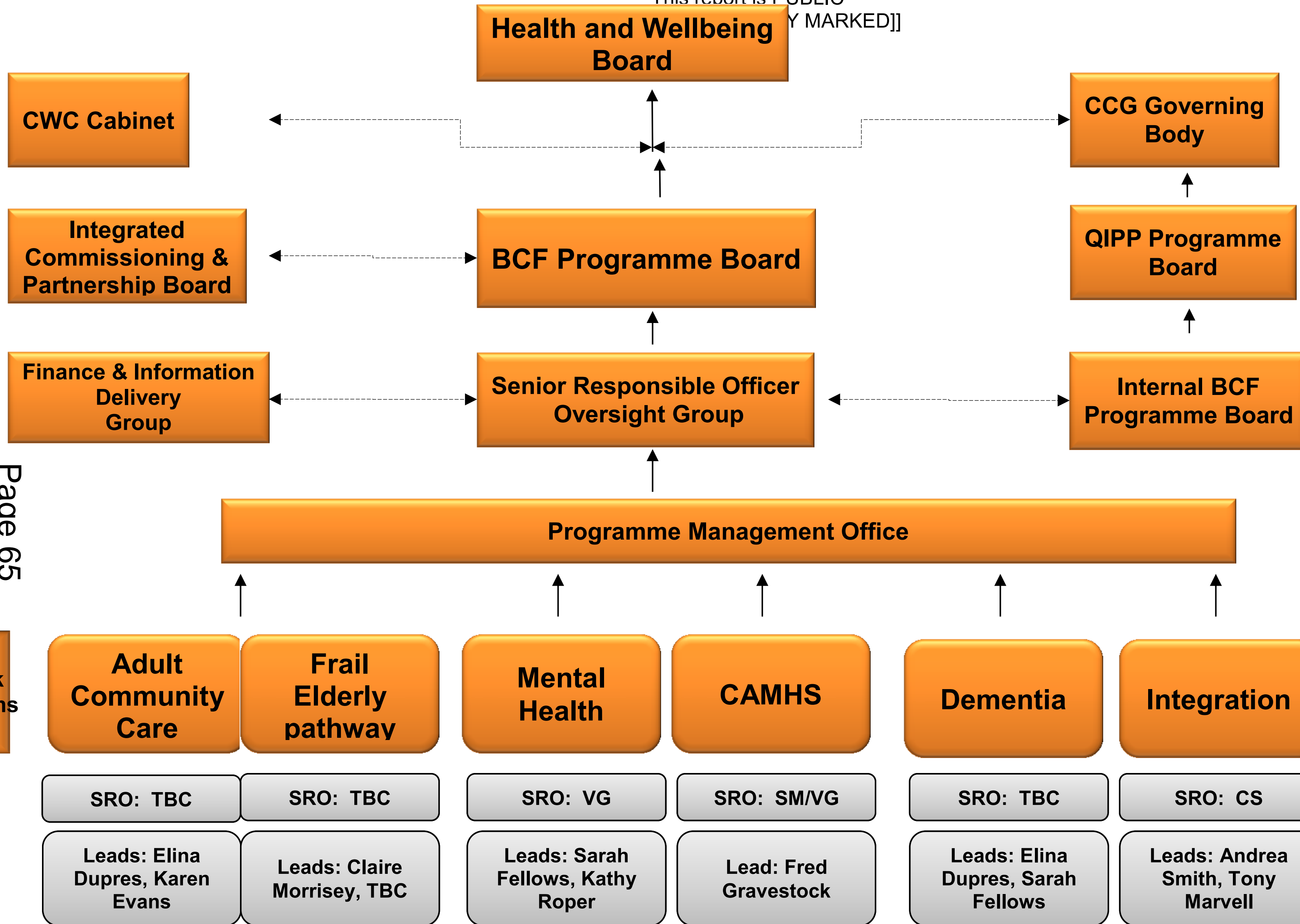

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