Written evidence submitted by NHS Providers to the Department of Health and Social Care's review of section 75 arrangements

To what extent do s.75 arrangements support effective commissioning of local NHS and local authority health related functions?

- The role of section 75 agreements (s.75) in supporting the effective commissioning of local NHS and local authority health related functions can vary depending on a variety of factors, including local relationships, the scope of the agreement, risk appetite and the financial health of the partners entering into the agreement. Trust leaders tell us that s.75 can be a helpful and effective tool to enable integration of local services, but that its use is not without challenges and considerations.
- Trust leaders tell us that s.75 works best when agreements are simple, and focused on joint funding for agreed services – examples have included dementia care, adult reablement or children's services. Where there is manageable risk on either side and a clear knowledge of the ongoing costs required on a year-on-year basis, pooled budgets can enable a more effective use of local authority prevention spending, and allow NHS organisations to support people to live well in their communities, managing health and preventing escalation in care needs.
- Pooling budgets can be a helpful mechanism to enable aligned or joint decision-making across the NHS and social care, although our engagement with trust leaders has shown that this will not be appropriate for all areas. The integration of funding streams into a pooled budget in itself does not guarantee the greater integration of services or improved patient care. The successful integration of services depends on relationships, behaviours, and joint working rather than who holds the funding.
- Indeed, the experience from more mature ICSs shows that pooled budgets are a tool/mechanism that can support the delivery of specific local objectives but are not a means to facilitating integration in themselves and do not guarantee health outcomes will be improved. In our response to the 2022 integration white paper, we gave place based working in Croydon, Calderdale, Northumberland and the ten localities in the Greater Manchester ICS as examples of increasingly mature arrangements.

Are there any barriers that hinder further use of section 75 partnership arrangements? How might they be addressed?

- Trust leaders have told us about a number of barriers to effective working through s.75 arrangements. While some of them may be addressed through the recommendations this review may make, others are dependent on local behaviours, working relationships and system maturity.
- Trusts leaders have highlighted the significant role that factors outside guidance and legislation have played in laying the foundations for success, including relationships between NHS and local authority partners, sufficient knowledge and expertise in the drafting and operation of s.75 contracts and positive behaviours, especially in times of service pressure or financial stress.
- However, we also heard about a number of challenges that can be resolved through the review's recommendations. The flexibility of s.75 in relation to expanding the scope of the agreement was raised as a barrier to effective working by some of our members. For example, one trust which held a s.75 agreement with its local authority regarding children's services wanted to expand the scope of the arrangement to include more intensive home visiting support. Rather than being able to add the service to the existing agreement with the backing on both parties, the process had to be reopened, adding administrative burden and increasing complexity. In order to simplify the s.75 process, this review should consider how flexibilities to add additional services that align with the existing agreement criteria (in this case, local authority commissioned children's services) can be incorporated to standing agreements with the backing of both NHS and local authority partners.
- The ability for parties to decrease contributions to a pooled budget has also been highlighted as a concern. Some trusts noted instances of implementing s.75 arrangements where significant budget reductions in local authority funding resulted in reduced provision of NHS services. For example, we have heard of examples where budgets agreed between local authority partners and trusts were adequate, but where the councils have later reduced their contributions in line with government cuts to local authority funding. This has had a material impact on the quality of services provided. In order to resolve this kind of issue in Oxfordshire, the trust(s) and local authority have supported the development of an Integrated Commissiong Team hosted by the trust, which has allowed for joint management of the s.75 arrangements.
- Trusts require confidence that there are assurance frameworks and robust contractual arrangements in place to ensure contributions to pooled budgets are proportional, and that there is a clear process for flexing the level of these contributions. As financial pressures on both sides continue to grow, having this confidence will be increasingly important to future agreements.
- Trusts also raised issues around duplication and alignment. The NHS and local government have different financial reporting standards. Some trust leaders believe that streamlined and targeted

guidance may help system partners overcome the frictions between accounting systems, building on the government's recognition in its response to the Hewitt review that effort should be made to establish standardised reporting across ICS organisations and local authorities to support public spending on key policy areas.

- It may also help with the development of s.75 arrangements to consider the disparities between pay, terms and conditions between the NHS and social care and other partners, and explore the potential to reduce or 'smooth' those disparities. For example, could it be possible for an NHS staff member's length of service not to be 'reset' when they transfer between NHS and local authority partners to help deliver an integrated service. We have heard that individuals have been reluctant to take on jointly-funded roles hosted by the opposite partner for this reason, as it would impact on their pension and potential severance pay if they were to be made redundant. In aligning this recognition, the review could help to ensure expertise and knowledge is better transferred through s.75 agreements.
- We have also heard from a range of providers that s.75 agreements have not necessarily been helpful in enabling meaningful risk share arrangements, as councillors have in the past assumed there is an ability for NHS partners to absorb a greater proportion of costs than initially agreed upon particularly as local government finance has come under such significant pressure. Unexpected costs are however no longer sustainable for NHS organisations either. In addition, different standards of regulation across local authorities and NHS can hinder the efficacy of unified health and social care arrangements.
- Finally, the review could take meaningful steps to ensuring providers are consistent in the prices they charge when commissioned via s.75 agreements. For example, when patients are deemed eligible for NHS continuing healthcare (CHC), and their social care starts being funded by the NHS, we have been told that independent providers can increase the mark up for services – even when they are still being commissioned via the same pooled budget. For example, there have been cases where the Competition and Markets Authority has intervened where care homes have increased the fees for residents funded via CHC. There may be value in exploring how pooling budgets can prevent providers from charging the NHS a higher price than local authorities for the equivalent service.

Do you think we should widen the range of organisations that can enter into section 75 arrangements beyond NHS bodies and local authorities?

- As system working and the integration of health and care services continues to develop, some trusts have indicated that broadening the range of organisations that can enter into s.75 arrangements could be beneficial to joint working approaches. In particular, the use of s.75

arrangements within place-based partnerships could be encouraged through this kind of mechanism.

- However, before eligibility is widened, thought needs to be given to how each partner organisation would manage financial risk, and to how the different financial risks associated with non-statutory organisations should be managed. Our sense is that the criteria should only be expanded by local agreement and where trust leaders are confident that this can be managed through existing risk assessment approaches, building on local relationships and knowledge.
- The types of organisation suggested as being most suitable for inclusion by trust leaders included limited liability partnerships of GPs that were set up to support primary care networks, housing providers to support agreements relating to adult reablement services, and voluntary and community sector organisations to support health and social care activity within place partnerships.
- The view from our members at the moment therefore seems to be that such arrangements will be most appropriate, where the majority of services are overwhelmingly publicly funded.

Do you think any additional safeguards would be needed if we widened the scope of health-related functions/additional organisations?

- The inclusion of additional functions or organisations will inevitably bring different opportunities and risks to the table. It is vital that risks are identified, understood and appropriately managed, supported by strong local relationships, system maturity and robust governance, accountability frameworks and processes. We would expect lines of accountability, including to trust boards and to partner organisations, to be clear and transparent.
- In particular, feedback to date from our membership suggests a strong view that the levels of risk that come with widening the scope to statutory organisations are likely to be lower compared to non-statutory organisations.
- Any additional safeguards, guidance and national support around risk management should reflect the different levels of risk inherent in different types of organisation included in s.75 arrangements, with decisions around safeguards and risk appetite taken at a local level.
- DHSC may also wish to consider over time how integrated services supported by pooled budgets might be regulated.