



HFMA's response to the DHSC's review of section 75 arrangements

09 November 2023



Summary

The HFMA is generally supportive of using section 75 arrangements as a mechanism for integrated working. However, there are some practical issues that need to be addressed before the powers are extended further.

Background

On 19 September, the Department of Health and Social Care (DHSC) published an open call for evidence to support the *Review of section 75 arrangements*¹. The scope of the review is to determine whether there are any changes that can be made to the existing legislation in relation to pooled budgets. The review specifically covers section 75 of the NHS Act 2006 which relates to arrangements between NHS bodies and local authorities.

The background document provides a comparison between section 75 and sections 65Z5 and 65Z6 of the NHS Act as these sections also relate to the use of pooled budgets. However, the review relates only to section 75.

Response

Question 1

In your experience, to what extent do you agree or disagree that the current section 75 partnership arrangements allow effective commissioning of NHS functions and local authority health related functions?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your answer and provide specific examples.

Response

Neither agree nor disagree

As noted in the background papers, section 75 is the route through which the better care fund is delivered. As this is mandated, it is difficult to say that it is the most effective commissioning route as other alternatives have not been explored. However, the fact that section 75 arrangements have been used in other situations indicates that it can be the appropriate commissioning route.

When the better care fund was introduced in 2013, the HFMA produced several briefings intended to support our members:

- *The better care fund - managing the pooled budget*²
- *The better care fund - realising the benefits*³
- *Pooled budgets and the better care fund*⁴.

It is notable that the primary aim of the better care fund was 'to deliver better services to older and disabled people, keeping them out of hospital and avoiding long hospital stays'. The fund was intended to enable NHS bodies and local authorities to work together to provide integrated care to local populations and the use of section 75 pooled funds was central to the initiative. It is notable that these ambitions are very similar to those in both the *NHS long term plan* published in 2019 and the Health and Care Act 2022 suggesting that the primary aim of the better care fund has yet to be achieved.

While we are very supportive of integrated working, it is not clear that changing the statutory mechanisms for working together will on its own, impact on the effectiveness of commissioning arrangements.

There are practical issues relating to the use of pooled budgets when working with local authorities – *including different VAT regimes and financial reporting timetables*⁵. The current review of section 41 of the VAT Act should address the complications of differing VAT regimes and we support the on-going work in this area. However, the difficulties in the local audit market mean that the delays in local authority audit opinions are affecting the timeliness of NHS audits where there are material transactions between local authorities and NHS bodies. We are not aware that delays with information relating to pooled funds have resulted in delays to the completion of NHS accounts, but our members have reported in year-end surveys that waiting for section 75 information from their local authority colleagues has caused them difficulties at the year-end.

The requirements of the regulations supporting section 75 (SI 2000/617) require that the host of a pooled fund arrangement should prepare the accounts of the pooled fund and arrange for their audit. This requirement dates from a time when auditors appointed by the Audit Commission undertook the audit of grants and other arrangements (such as pooled funds) as a matter of course. This practice has long since ceased and the regulations should be updated accordingly. Any extension of the section 75 arrangements should include updating the associated regulations, so they reflect current best practice.

Integrated working always requires a level of trust between parties to work effectively. Our members report concerns that some arrangements have a lack of transparency. However, this is not something that can be addressed by changing the statutory arrangements.

Question 2

In your experience, to what extent do you agree or disagree that the use of section 75 arrangements supports closer integration and personalisation of health and care services?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your answer and provide specific examples

Response

Neither agree nor disagree

Question 3

In your experience, to what extent do you agree or disagree that section 75 arrangements have led to demonstrable improvements to the health and care services delivered to local communities?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your answer and provide specific examples of section 75 arrangements that have led to improvements.

Response

Neither agree or disagree

Question 4

In your experience, are there any barriers that hinder further use of section 75 partnership arrangements for adult and children's health and social care services in

your area?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples.

Response

Yes, please see our response to question 1.

Question 5

Can you suggest any changes to section 75 partnership arrangements that would strengthen joint delivery of health and social care services in your area?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples.

Response

Not sure. We have made suggestions in question 1 to changes to the regulations surrounding section 75 but these would help with practical implementation rather than strengthen joint delivery.

Questions 6 to 12

Do you think the scope of section 75 arrangements should be expanded to include:

- emergency ambulance services? Please note, patient transport services are currently within the scope of section 75 arrangements.
- general surgery?
- radiotherapy?
- termination of pregnancies?
- endoscopy?
- class 4 laser treatments?
- use of any other invasive treatments?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples.

What are the benefits and risks of your suggested approach?

Response

No.

We understand that the directors of finance of the ten English ambulance trusts do not support the extension of section 75 arrangements to emergency ambulance services.

In relation to the other services, it is not clear how the involvement of local authorities in the provision of acute medical services would 'lead to an improvement in the way in which those functions are exercised' as required by s75(1).

Questions 13 to 15

Do you think the scope of section 75 arrangements should be expanded to include:

- primary ophthalmic services?
- primary dental care and complex dental surgeries under invasive surgery (NHS dentistry)?
- pharmaceutical services?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples.

What are the benefits and risks of your suggested approach?

Response

No.

Our response to the previous question stands here as well. We are not clear how the involvement of local authorities in the provision of primary care services would 'lead to

an improvement in the way in which those functions are exercised' as required by s75(1).

Question 16

From the following functions which, if any, do you think should be included in the section 75 arrangements? Select all that apply.

- The conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding
- Providing microbiological or other technical services (whether in laboratories or otherwise)
- Providing vaccination, immunisation or screening services
- Providing other services or facilities for the prevention, diagnosis or treatment of illness
- Providing training
- Providing information and advice
- Making available the services of any person or any facility
- None

Please explain your response with specific examples of how this could lead to improved care.

Please explain the risks and/or benefits of any changes and any mitigation that may reduce risks.

Response

In line with our response to previous questions, it is not clear how the involvement of local authorities in the provision of acute medical services would 'lead to an improvement in the way in which those functions are exercised' as required by s75(1). We have therefore selected the following services as they are not the provision of healthcare:

- Providing other services or facilities for the prevention, diagnosis or treatment of illness
- Providing training
- Providing information and advice
- Making available the services of any person or any facility.

Question 17

From the following functions, which, if any, do you think should be included in the section 75 arrangements?

- Providing information and advice
- Providing services or healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way)
- Providing services or facilities for the prevention, diagnosis or treatment of illness
- Providing financial incentives to encourage individuals to adopt healthier lifestyles
- Providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment
- Providing or participating in the provision of training for persons working or seeking to work in the field of health improvement
- Making available the services of any person or any facilities
- None

Please explain your response with specific examples of how this could lead to improved care.

Please explain the risks and/or benefits of any changes and any mitigation that may reduce risks.

Response

Health improvement initiatives are critical to improving population health, we would therefore support expanding the scope of section 75 to such initiatives. It would be for local bodies to determine whether using section 75 is the most appropriate mechanism for them to use.

Question 18

Are there any other local authority health-related or NHS functions that you think should be included in section 75 arrangements?

- Yes
- No
- Not sure

Please provide examples of why or how this would improve care provided.

What are the risks or benefits of any suggested changes?

Response

No

Question 19

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

- Yes
- No
- Not sure

Please specify which, if any, additional organisations you think should be included for adult and children's services and explain why.

For example, housing, justice, education, voluntary, community and social enterprise (VCSE), and care providers.

Please provide examples of why or how this would improve care provided.

What are the risks or benefits of any suggested changes?

Response

Yes.

This may help with integrated care boards' objectives in relation to ensuring that their populations get integrated care. However, the practical issues that currently exist with pooled budgets would apply to any s75 arrangement. Organisations will have different reporting requirements and deadlines and will operate under different VAT regimes.

It may be more difficult to come to a risk share arrangement with non-statutory bodies and this is a key part of any section 75 agreement. Given the financial position of the NHS at the moment, other entities may not want to enter into agreements that may expose them to financial risk if there is an overspend.

Question 20

Do you think that combined authorities should be included as bodies that can enter into section 75 arrangements for both local authority health-related functions and NHS functions?

- Yes
- No
- Not sure

Please explain your answer and give examples with consideration of the risks or benefits.

Response

Yes

As combined authorities are statutory bodies that allow local authorities to collaborate, this seems to be a logical extension of the current arrangements. It may be more efficient to have an agreement with a combined authority rather than separate agreements with the individual local authorities that form the combined authority.

As long as the inclusion of combined authorities in the legislation would not preclude local organisations deciding to enter into an arrangement with the individual members of the combined authority, then this additional flexibility could be helpful.

Question 21

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

- Yes
- No
- Not sure

Please explain your answer with examples and consideration of the risks, mitigation and benefits

Response

Yes.

The practical issues that currently exist with pooled budgets would apply to any s75 arrangement. Organisations will have different reporting requirements and deadlines and will operate under different VAT regimes.

It may be more difficult to come to a risk share arrangement with non-statutory bodies and this is a key part of any section 75 agreement. Given the financial position of the NHS at the moment, other entities may not want to enter into agreements that may expose them to financial risk if there is an overspend.

These issues would need to be taken into account if the scope of health-related functions was extended.

Question 22

Do you think any additional safeguards would be needed if we widened the range of additional organisations?

- Yes

- No
- Not sure

Please explain your answer with examples and consideration of the risks, mitigation and benefits

Response

Yes. See our response to question 21.

Question 23

Do you think any additional safeguards would be needed if combined authorities could enter into section 75 arrangements for both local authority health-related functions and NHS functions?

- Yes
- No
- Not sure

Please explain your answer with examples and consideration of the risks, mitigation and benefits

Response

Yes. See our response to question 21.

Question 24

Are there any changes we could make that would simplify the use of section 75 of the NHS Act 2006?

- Yes
- No
- Not sure

Please explain your answer and provide examples to support your response.

Response

Yes.

As we have referred to in our response to question 1, the regulations supporting section 75 should be reviewed and updated to reflect current best practice.

Questions 25 to 27

Do you think we should introduce an explicit requirement for a section 75 partnership agreement to set out how it will:

- lead to an improvement in the way the function is exercised?
 - help to deliver the integrated care system's plans and strategies for the area in which it is situated?
 - help to deliver the integrated care system's plans and strategies for the area in which it is situated?
-
- Yes
 - No
 - Not sure

Please explain your answer and provide some specific examples.

Response

Not sure.

As we have noted, there are practical issues with the current requirements for section 75 agreements so we are not sure that additional requirements will improve the way that the function is exercised.

Question 28

Do you think we should give clearer direction on the minimum outcomes, monitoring and reporting requirements that must be agreed, upon creation of a section 75 arrangement?

- Yes
- No
- Not sure

Please explain your answer and provide some examples.

Response

Not sure.

As we have noted, there are practical issues with the current requirements for section 75 agreements so we are not sure that additional requirements will improve the way that the function is exercised.

Question 29

Do you think current arrangements for section 75 offer sufficient transparency and accountability?

- Yes
- No
- Not sure

Can you suggest ways we can strengthen these?

Please explain your answer and provide some examples and a consideration of the risks or benefits.

Response

No. As set out in our response to question 1, our members are concerned that there is sometimes lack of transparency in section 75 arrangements.

Question 30

Are there any equalities impacts that you are aware of (including positive impacts) that we need to consider with any changes to section 75 arrangements?

Please explain your answer and where possible provide some specific examples.

Response

No.

Footnotes

1 DHSC, Review of section 75 arrangements: supporting document, September 2023

2 HFMA, The better care fund - managing the pooled budget, April 2014

3 HFMA, The better care fund - realising the benefits, July 2014

4 HFMA, Pooled budgets and the better care fund, October 2014

5 HFMA, Pooled budgets and the integration agenda, November 2016



The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance.

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