



Briefing Report No: **285/2010**

Public Agenda Item: **Yes**

Title: **Transforming Community Services – Torbay Care Trust merger with Southern Devon Integrated Adult Community Services**

Wards Affected: **All Wards in Torbay**

To: **Health Scrutiny Board** On: **2 December 2010**

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## **1. The Requirements of the Transforming Community Services (TCS) Programme**

The Transforming Community Services Programme was established by the Department of Health to support the transformation of community services with a clear focus on improving quality and safety of care as the organising principle.

The critical priority for the NHS over the next period of time is to deliver the Quality, Innovation, Productivity, Prevention (QIPP) agenda, using service improvements and transformational change to generate efficiency savings of £15-20 billion by 2013/14 across England. It is essential therefore that future arrangements for delivery of community services both align to, and accelerate, implementation of local programmes of change required to support QIPP.

The NHS Operating framework 2010/11 set a requirement that by 31 March 2010, Primary Care Trusts had to agree in principle with Strategic Health Authorities proposals for the future organisational structure of all current Primary Care Trust-provided community services.

On 21 June 2010 a revision to the Operating Framework for the NHS in England 2010/11 was published setting out a number of areas subject to immediate changes.

The revision to the NHS Operating framework includes provisions regarding the future direction and next steps on transforming community services.

Primary Care Trusts have been tasked to continue to develop and review proposals for the complete separation of their directly-provided community services, but in

doing so ensure that:

- § They have been tested with GP Commissioners and Local Authorities
- § Final proposals are consistent with the aims of the recent White Paper “Excellence and Equity- Liberating the NHS” in strengthening the delivery of public health services and health services for children.
- § Proposals deliver local plans for quality improvement and efficiency savings.
- § They consider the implications for choice and competition
- § They consider a wide range of options, including the development and early delivery of Community Foundation Trusts and Social Enterprises, providing employee leadership and ownership
- § There has been effective engagement of staff and their representatives when considering options
- § Proposals should be capable of being implemented, or substantial progress made towards implementation, by April 2011.

## **2. Torbay’s response to the TCS Requirements**

In March 2010, Torbay Care Trust agreed with the South West Strategic Health Authority a proposal for the future of health and social care provision **and** commissioning as follows:

- § Torbay Care Trust proposed to retain its status as a Care Trust building upon the success of the multi disciplinary zone teams and reviewing its community based facilities and learning disability services.
- § Torbay Care Trust proposed that it continued with its journey of system redevelopment through the integrated care pilot with South Devon Healthcare Foundation Trust, Torbay Council and Devon Partnership Trust.
- § Torbay Care Trust proposed to work on a peninsula basis to undertake joint/collaborative commissioning. This would provide opportunities to minimise or eliminate avoidable duplication of commissioning functions and enhance commissioning effectiveness at the same time.

Under the revised Operating Framework, Torbay Care Trust has had to review the proposed organisational solution that received “approval in principle” as at 31 March 2010. The Care Trust has once again received approval to retain its status as a Care Trust however it could not continue to be both a provider **and** commissioner of services.

The Trust made the decision to retain the integrated health and adult social care provision as the ethos and benefits from being an integrated organisation provide both qualitative and quantitative benefits for patients/service users in all parts of the health and social care community. The decision regarding the future of commissioning pending the formal transfer to the GP Consortia is still being developed at this stage.

### **3. Summary of the Options considered following the revision of the Operating Framework**

**DO Nothing Option** –retain Care Trust status provider **and** commissioning integrated health and social care with the development as described in the March 2010 submission.

Whilst this is presented as an option, the Trust is aware that this does not comply with the latest requirements in the NHS Operating Framework. This was discounted therefore from the fuller option appraisal process

**Torbay Provider Care Trust** – retain integrated health and social care provided services and divest ourselves of our commissioning functions to the GP Consortia as an early implementer of “shadow” arrangements.

There is a risk that the Provider Care Trust would not be sufficiently large enough to absorb the target QIPP and management cost saving over the next 3 years as well as the reduced levels of council funding without commissioner support.

Indicative health budget for 2011/12 is £20,346m

Indicative adult social care budget for 2011/12 is £42,253m

The announcement of the £2bn social care funding will impact on the Provider Trust in differing ways and has not yet been reflected in the above figures. The local authority £1bn is not ring fenced, and will need to be negotiated with Torbay Council as part of the overall Provider Budget.

**Southern Devon Provider Care Trust** – This option combines the resources of the Torbay Care Trust provider function with the community integrated health services of the rest of the Southern Devon.

It is acknowledged that by extending the integrated health and social care arrangements into arrangements with health service provision in Southern Devon, the rationale and benefits of social care integration need to be explored with Devon County Council on behalf of their residents. Devon County Council Adult Social Care services, without prejudice on conclusion, accept that there is sufficient logic in this to warrant detailed exploration as part of the next steps.

As a significantly larger organisation the benefits of economies of scale would be more apparent in terms of corporate overheads.

The populations, defined by the registered primary care populations, which would be served by the Integrated Southern Devon Provider would be

225,000 in the Southern Devon Area and

139,000 in Torbay

Indicative health budget for 2011/12 for the Southern Devon part of the service is £33,629m

The Devon County Council adult social care responsibility indicative budget is £32,725m

Both the Provider Care Trust options were considered on a wider basis to incorporate the services of South Devon Healthcare Foundation Trust. The lack of support however from GP Commissioners and the Local Authority prevented these options being progressed more widely at this stage.

Following a series of engagement exercises the Trust and NHS Devon have agreed in principle that NHS DEVON will transfer its adult community services for southern Devon and its emergency and community dental service currently supplied by its provider arm Devon Provider Services (DPS) to Torbay Care Trust, together with all related business, services obligations, contracts, staff and other relevant assets.

This transfer, if successful, will be on an interim basis for up to 2 years . The interim basis is expected to come to an end once a full procurement process has been run by NHS Devon to determine the long term future of these services.

Should this transfer be successful there will not be any changes to the clinical services provided arising from this transaction; as this is simply a matter of contractual arrangements. The Trust has been advised therefore that there is no obligation on either party to conduct any patient or public involvement or consultation under section 242 NHS Act 2006.

Both organisations however have ongoing patient and service user involvement in service improvements as are required.

#### **4. Transforming Community Services and the Right to Request Scheme**

The Right to Request enables frontline NHS staff employed by primary care trusts to set up a social enterprise to deliver healthcare services to NHS patients.

The scheme entitles clinical staff to request to deliver their services through a social enterprise. Staff have the right to put forward a social enterprise proposal to their PCT board, and to have this proposal considered. PCTs are obliged to consider these applications and, if a proposal is approved, to support the development of that social enterprise. This includes awarding a contract for the provision of services for an initial period of up to five years. Innovation and the improvement of health outcomes must be central to all Right to Request applications.

Any member or group of frontline PCT staff can exercise their Right to Request. Once proposals are approved and the new provider organisation is set up, staff transfer to this organisation under the Transfer of Undertakings (Protection of Employment) Regulations, or TUPE. This means that the existing terms and conditions of employment, including access to the NHS Pension scheme, are legally protected at the point of transfer.

This latest “wave” of right to request application windows expired at the end of September 2010 with no indication to date of any further “waves”.

There are three key milestones within the Right to Request process. These are:

1. Submission to the PCT board of an expression of interest by the frontline staff member or group
2. Formal authorisation by the PCT Board; this authorisation is based on a proposed business plan which sets out how the social enterprise will get started; how services will transfer to it; and how it will operate in the medium term
3. Launch of the social enterprise.

Each application is tested via a robust assurance process led by strategic health authorities with support from a national social enterprise panel. This assurance process includes due diligence to check that social enterprises established under the Right to Request are financial viable and sustainable, and that staff have been engaged in the process.

Three proposals under the Right to Request scheme have been considered by the Torbay Care Trust Board, these are:

- Community Dentistry
- Podiatry
- Learning Disability Services

At this stage, the expression of interest does not have to include a large amount of detail. The purpose of the expression of interest is to demonstrate to the Board that each staff group has thought through the key issues around setting up a social enterprise and have some appreciation of how this will operate.

The Expression of interest should express the added value a social enterprise will bring to the delivery of the service.

In approving the Expression of Interest, the Board has

- Authorised relevant staff to move to milestone 2 and to develop a business plan

If the organisation or a staff group decide to withdraw their expression of interest, the Trust would advise the Strategic Health Authority accordingly.

## **5. Process of Stakeholder and Staff Engagement**

Due to the limited timescales with implementing the requirements of the revised Operating framework, described above, the Trust has embarked on a series of engagement and involvement events to maximise stakeholder and staff availability.

### **Staff engagement**

The Associate Director of Communications for both Torbay Care Trust and South Devon Healthcare Foundation Trust has developed a communications plan entitled "Making Change Count". The plan uses a range of communications methods for use

with staff from both organisations.

As well as the communication methods described above the Programme Director has to date undertaken four briefings and interactive sessions with Senior Managers across both the Commissioning and Provision functions of the Trust. These were undertaken on the 28 July 2010, 25 August 2010, 29 September 2010 and 27 October 2010. A staff seminar was also held on the 17 September 2010 which involved a wide range of staff from all parts of the organisation.

### **Trade Union and Staff Side Involvement**

The Joint Consultative Negotiation Committee (JCNC) was briefed by the Programme Director on 17 August 2010 and by the Assistant Director of Workforce on the 16 November 2010. The briefing consisted of an update on the revised NHS Operating requirements; the timeframes involved and the options likely to be explored. The briefing also included the number of Right to Requests for Social Enterprises currently being explored.

### **GP Commissioners Involvement**

The Practice Based Commissioning (PBC) Consortia Chair is a member of the Programme Executive for Transforming Community Services. The Medical Director and PEC Chair also work closely with the PBC Chair.

### **Local Authority Involvement**

The Programme Director and the Operational Support Commissioner from Torbay Council have been working together to ensure that there is a unified approach to the TCS programme. The Trust recognises that whilst this is a health programme for change, the partnership with the local authority means that their support and approval of any proposal is crucial. The Operational Support Commissioner ensures that the interface between the Trust and the Council is maintained and updates are provided in the weekly Chief Officers Group Meetings. The Council has also undertaken a desk top appraisal option exercise on the options outlined earlier facilitated by the Operational Support Commissioner.

The Operational Support Commissioner has also sought wider member involvement through the Joint Executive Team Meetings.

### **Wider Stakeholder Involvement**

The Trust held a wider stakeholder event on the 23 September 2010. Invitations were extended to:

PBC Consortia Chairs; GP representatives; Staff Professional Group representatives; Representatives from the Local Authority Executive; the elected Mayor; the Cabinet Member for Adult Social Care; the Leader of the Conservative Group; the leader of the opposition; the leader from Brixham Town Council; a representative from LMC,LPC, LOC and LDC; JCNC representation; Overview and Scrutiny representation; Non Executive Board Members; Links; SWAST; Devon

Partnership Trust; Devon County Council; SDHCFT; NHS Devon and the voluntary sector leads.

The event included the context in which the transformational programme is being undertaken within. Specific emphasis was given to providing the background to the criteria for selection of the options; the timeframes involved; views on the assessment criteria and agreement on the preferred option.

A special briefing was also undertaken with the Joint Executive team and the Overview Scrutiny Committee on 09 November 2010.

## **6. Key Milestones**

The Trust has to present a full integrated business plan for providing integrated adult services across Torbay and Southern Devon to its Board on the 15 December 2010 and submit this to the Strategic Health Authority by the 24 December 2010.

The Right to Request applications have to submit a full integrated business plan to the Care Trust Board in January 2011 in preparation for approval by the Strategic Health Authority.

The final legal entity of the Care Trust has to be debated and decided by the 31<sup>st</sup> March 2011. To this end the Trust is planning a series of Options Appraisal exercises to determine the appropriate organisation solution beginning with the Board in January 2011 and incorporating a wider range of stakeholders, staff, patients and service users thereafter. The establishment order of the Care Trust runs until 2013 which gives sufficient time for transitional processes to take place.