



Briefing Report **52/2011**
No:

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: **10 March 2011**

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1. Progress on Decision Making Process

The last formal update to the Health Scrutiny Board was on the **02 December 2010** at which time the Trust had agreed in principle with NHS Devon to transfer its adult community services for Southern Devon to Torbay Care Trust together with all related business, service obligations, contracts, staff and other relevant assets.

Following this update the Cabinet on the **14 December 2010** met and approved the following recommendation:

- 2.1 that, if possible, the existing arrangements for integrated health and social care be continued for another year;
- 2.2 that, if 2.1 above cannot be implemented and subject to :
 - (a) approval by the Torbay Care Trust Board; and
 - (b) satisfactory conclusion regarding funding for the next twelve months,the Integrated Business Plan for the establishment of a Southern Devon Provider Care Trust set out in Appendix 1 to this report be approved as an interim position for up to two years whilst the Council, Torbay Care Trust and other partners continue to work on a longer term solution.

Furthermore Torbay Care Trust Board approved the Integrated Business Plan on the **15 December 2010** and this was formally submitted to the Strategic Health Authority on the **24 December 2010**.

2. Progress following the decision making process

2.1 Right to Request Schemes

The Care Trust had originally received three proposals under the Right to Request scheme these being:

- Community Dentistry
- Podiatry
- Learning Disability Services

Since the approval of the expressions of interest (EOI) for each of these schemes in October 2010, Learning Disability Services have decided to withdraw from this process sighting the lack of a consistent shared view of staff to progress this.

The community dentistry and podiatry teams are now progressing a joint venture following the decision that NHS Devon community Dental teams did not want to be part of this process at this time.

Torbay Care Trust Board will review the integrated business plan for the Right to Request Schemes at the Board on **16 March 2011** and confirm whether or not they wish to support this and therefore develop a new social enterprise.

2.2 Due Dilligence Exercise

Torbay Care Trust and NHS Devon have been undertaking a due diligence exercise for some months now to determine that the services being transferred in Southern Devon are “fit” to transfer and Torbay as the new provider is “fit” to deliver these services. Internal Auditors have been overseeing this process for both organisations by undertaking a series of due diligence checks and evidence reviews. Both organisations solicitors have been involved in this process as well.

Both NHS Devon and Torbay Care Trust have been undertaking business continuity exercises to ensure that the services being transferred will be unaffected as from the 01 April 2011.

2.3 Business Transfer Agreement

The Business Transfer Agreement is the legal framework for the transfer and is currently being developed with the involvement of both organisations legal teams.

The Business Transfer Agreement confirms that responsibility for the provision of the services from Southern Devon will transfer to Torbay Care Trust in accordance with the terms of the Community Services Contract. To facilitate this, the various staff, rights and liabilities described in the agreement will be transferred from Devon to Torbay.

Devon and Torbay will both sign this agreement ahead of the 31 March 2011

deadline.

2.4 Final legal entity of the Care Trust

The final legal entity of the Care Trust is still to be determined. The Trust is keen not to progress too quickly on this without involving key stakeholders although initial work has begun with the Board in order to develop some themes which they would like to include in any option appraisal exercise such as:

- Future commissioner expectations (GP acceptability)
- Preservation of the partnership with the Council
- Ensuring that any decision did not exclude closer alignment with SDHCFT in the future
- Keen not to fall foul of other factors such as Co-operation and Competition Panel rules

The timescale and programme for determining the final legal form is currently being developed.

3. The Future of Commissioning

Under the transforming community services programme, NHS organisations are no longer able to deliver both provision and health commissioning from 01.04.11 or at the very least have to demonstrate that they have made significant progress towards achieving this separation.

For most organisations this has led to the divestment of their provision to other organisations however as Torbay is to remain as a provider organisation this means that the health commissioning aspect of the Trust's work has to be transferred elsewhere.

This raises particular challenges for Torbay who will still have the accountability for the funding until this is transferred to the GP Consortia in 2013 or earlier if possible.

The plan in Torbay therefore is for the commissioning function to transfer in the interim period to NHS Devon. The transfer will be managed by a memorandum of understanding which will detail the specific commissioning activities to be transferred, how these will be performance managed, how line management reporting will take place, how the financial regime will be managed and which staff will transfer. The memorandum of understanding is designed to ensure that Torbay funding is "ring fenced" from the rest of NHS Devon's allocations and to this end the Clinical Director of Transition and Commissioning and the Managing Director of Transition and Commissioning from Torbay will transfer into these arrangements to support this.

The recent guidance from the Department of Health on PCT clustering further complicates the arrangements in Torbay as the timing for clustering is June 2011. The Trust is working closely with the Strategic Health Authority to form a commonsense approach to delivering on these national directives.