

1. What this briefing is about

This paper explains why we are attending the Overview and Scrutiny Committee (OSC) to discuss the Section 75 Agreement between us and Torbay Council for adult social care.

It sets out:

- what the agreement is
- why we are reviewing it
- what we have already shared with the Council
- why we are now attending the OSC
- what happens next
- our commitment to work together whatever the outcome

2. What the Section 75 Agreement is

The Section 75 Agreement is a legal arrangement that lets us and the Council work together so adult social care can be delivered as one joined-up service.

Adult social care is legally a Council responsibility, but we deliver it for them under this agreement.

3. Why we are reviewing the agreement

Our Board is looking at whether the current arrangement is right for the future. We are doing this because demand for adult social care in Torbay is rising, especially because the area has a larger older population than many places. Costs have increased by about 48% over the past three years.

Our work so far shows a funding gap of around £35 million every year between the cost of providing adult social care and the money available to pay for it. We will continue to test this figure as the review progresses.

There is no longer any risk-sharing in the agreement. This means we carry all of the financial risk. As an NHS Foundation Trust, we have a statutory duty to break even and we cannot do that with such a significant shortfall in adult social care funding. Covering that gap puts real pressure on our ability to invest in other NHS services — in our hospitals, our community teams and in the services that support people to stay well at home.

A significant amount of review work — both internal and external — has been undertaken. Together, this evidence shows that the current Section 75 model has run its course. It has delivered real value in the past, but it is no longer the most effective or sustainable framework for the needs of our local population.

This review is not about stepping back from partnership working. It is about finding a fair, long-term solution, resetting the partnership and working with Torbay Council to design a new, more effective agreement that can deliver better outcomes for residents.

4. Our understanding of the “duty to consult”

Torbay Council has asked whether a public consultation is required.

Our position is:

The duty to consult on major service changes comes from the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, amended in 2024. These regulations sit under the NHS Act 2006, and they apply when there is a *substantial development or variation to an NHS health service*. Adult social care is not an NHS health service. It is a local authority responsibility under the Care Act 2014.

The Section 75 Agreement allows us and the Council to work together, but it does **not** change the legal status of adult social care or convert it into an NHS-commissioned health service.

We have shared examples with Torbay Council where:

- Surrey County Council ended its Section 75 arrangement with Surrey and Borders Partnership NHS Foundation Trust (2019), and
- Merton Council ended its Section 75 arrangement with South West London and St George’s Mental Health Trust (2024).

In both cases, it was the council that ended the agreement, not the NHS. These examples do not directly determine the position when the NHS considers serving notice.

However, they do show that ending a Section 75 arrangement for adult social care has not historically triggered a statutory duty to consult, because the legal test relates specifically to changes in NHS health services, not council-delivered adult social care.

Our position is therefore based on the legislation itself, not just precedent: because adult social care is a Council service under the Care Act 2014, decisions about the Section 75 arrangement do **not** fall within the statutory duty to consult under NHS legislation.

We will explain this position clearly at the OSC.

5. Why we are attending the OSC meeting

Although a final decision has **not** yet been made, we recognise the level of public interest and the Committee’s wish to understand our position.

We are attending because:

- it is important to support democratic oversight
- we want to explain clearly where we are in our process
- we want to give assurance that continuity of care is our top priority
- we want to maintain open and respectful partnership working

We will be honest where we cannot provide a definite answer until the Board meets on 05 March 2026.

By being here today, we are engaging fully and in good faith with the Committee's scrutiny role. We recognise that attendance signals our willingness to support your oversight function. However, this does not alter the legal position we have set out: that the statutory duty to consult relates only to changes in NHS health services, and adult social care remains a Council service under the Care Act.

6. What we can say now

- No decision has been taken on whether to give notice.
- We will continue to work in partnership with the Council throughout the review.
- We will develop a joint communication plan once the Board has made its decision.
- If changes are agreed, we will work together to manage the transition carefully, ensuring continuity of care for residents, carers and staff.

7. What happens next

- The Board will make a decision on 05 March 2026.
- We will share the outcome with Torbay Council swiftly.
- We will work with Torbay Council to manage any transition, if required.
- Our shared focus will always be the people of Torbay.

8. Our commitment

Whether or not notice is given:

- we will work with Torbay Council to make sure people continue to get the support they need
- we are keen to work with the Council on what a new, fair and sustainable partnership model could look like for the future
- we will support staff and partners through any changes
- we will communicate openly and responsibly.