

Section 75 Agreement for the Integrated Care Model – Report of the Adult Social Care and Health Overview and Scrutiny Sub-Board

Report to the Chief Executive of Torbay and South Devon NHS Foundation Trust and Statutory Scrutiny Officer, Torbay Council

Background

1. The Adult Social Care and Health Overview and Scrutiny Sub-Board (“the Sub-Board”) met on 4 February 2026 to consider whether there is a substantial change to service delivery in both health and social care which may result in a ‘duty to consult’ should the Torbay and South Devon NHS Foundation Trust (“the Trust”) decide to serve notice, bringing an end to the Section 75 Agreement for the integrated care model for delivery of community health and adult social care services with Torbay Council and the Integrated Care Board (“ICB”).
2. Whilst no decision had yet been made by the Trust to end the Section 75 Agreement, the Trust had publicly stated that its Board shall be meeting in February 2026 to consider this, and that it intended to take a decision regarding this at its public Board meeting on 5 March 2026. The Trust is required to serve formal notice to the Council and the Integrated Care Board by 31 March 2026, which then leaves 12 months of transitional work with all three parties to move to a different operating model for delivery of community health and adult social care services. It was due to this tight timescale, and a resolution, passed by the Sub-Board at its meeting of the 18 of December 2025, to require the Trust’s attendance at a meeting of the Sub-Board in the new year prior to any formal decision being taken by the Trust Board to explain their reasons why they do not believe the ending of the Section 75 Agreement was a significant change, that Members of the Sub-Board were seeking assurance that there would not be a negative impact to individual’s health and social care support and in turn safety, should this change occur, which would result in a ‘duty to consult’ under health legislation.
3. The Members of the Sub-Board were Councillors Bryant, Douglas-Dunbar, Foster, Johns and Spacagna (Chaired by Councillor Johns).
4. The background papers can be found at [Agenda for Adult Social Care and Health Overview and Scrutiny Sub-Board on Wednesday, 4 February 2026, 3.00 pm](#) and [Minutes of Adult Social Care and Health Overview and Scrutiny Sub-Board 18 December 2025](#).

5. Key evidence considered by the Panel included:
 - Briefing Note: Statutory Requirements and Consequences of Non-Engagement in Health Scrutiny;
 - Written submission from Torbay Council's Director of Adults and Community Services;
 - Background Documents relating to the Section 75 Agreement;
 - Written submission from Torbay and South Devon NHS Foundation Trust; and
 - Written submission from NHS Devon (the Integrated Care Board - ICB).

6. The following people attended the meeting and provided responses to questions:
 - Joe Teape, Chief Executive, the Trust;
 - Simon Tapley, Chief Strategy and Planning Officer, the Trust;
 - Penny Smith, Chief Nursing Officer, ICB;
 - Anna Coles, Director of Adults and Communities, Torbay Council; and
 - Councillor Hayley Tranter, Cabinet Member for Adult and Community Services, Public Health and Inequalities.

7. Key Findings

- 7.1 The Section 75 Agreement ("the Agreement") for the integrated care model for delivery of health and adult social care services has been in place for over 20 years. This involves the complete delegation for the delivery of Torbay Council's adult social care services to the Trust, with its Director of Adults and Community Services retaining overall statutory responsibility for those services, as well as the Trust providing community health services for the Torbay area. The Agreement was originally between the Trust, Torbay Council and the Clinical Commissioning Group (which has been superseded by the ICB) with a risk sharing agreement in place between the three parties to maintain financial oversight. The risk sharing agreement ceased in 2021, resultant in the Trust holding sole responsibility for the financial risk arising out of the arrangement. A new 5-year Section 75 Agreement was signed by all parties in March 2024 which set out a clear strategic direction for the continued delivery of integrated health and adult social care for the residents of Torbay.
- 7.2 The Agreement in Torbay is different from other examples provided (e.g. Surrey and Merton Councils) in that it completely delegates and integrates all adult social care provision to be delivered jointly alongside community health services by the Trust, resulting in a single access point staffed by Health and Social Care co-ordinators for individuals where their health and social care needs are understood. All care providers in Torbay are contracted by the Trust, with terms and conditions being different from those contracts issued by local authorities in other areas.
- 7.3 The unique arrangements for delivery of adult social care in Torbay have been nationally recognised and are in-line with the NHS 10-year plan encouraging integrated services at a local community level.

7.4 The Council pays the Trust around £68m a year to deliver adult social care on its behalf. This funding benchmarks above CIPFA comparator authorities who have the same demographics and deprivation. The Trust also collects around £23m a year in income from recipients of adult social care in line with charging authorities. The Trust advised that there was an annual funding gap of around £35m every year for providing adult social care and that costs have increased by around 48% over the past three years.

Views of the Trust:

7.5 In addition to the written statement provided, the Trust does not believe that, should they decide to end the Agreement, there will be any changes to the delivery of health services and therefore, there was not a substantial change to delivery of health services that would result in a 'duty to consult' under the Health Regulations. They provided examples of Surrey and Merton Councils who had both ended their Section 75 Agreements with NHS Trusts and had not fallen under the 'duty to consult' for health services as this was a change to social care delivery which falls under separate legislation. They agreed that Torbay's model was unique.

7.6 The Trust believe if the Council feels there is a change to adult social care because of any change in the Agreement, it will be up to the Council to consult. The Trust intends to develop a joint communication plan once their Board has made a public decision regarding the Agreement on 5 March 2026.

7.7 The Trust is committed to a shared priority of ensuring continuity of care and do not expect anyone to experience change in community health services, with transition being carefully planned, working alongside the Council and ICB. The Trust runs other models of integrated health and social care across Devon and would look at what works well and use that to inform future delivery in Torbay. They will need to review the joint roles and how they will be funded and supported moving forward. They believe that this is an opportunity to redesign the model of integration to be more fit for purpose for the community.

7.8 The Trust is committed to working together with the Council and ICB to keep people safe, enabling people to get the best care package with social care staff continuing to work with hospital staff to ensure they have a safe discharge. They are also committed to ensuring that no one experiences delays and people will receive the right support when they need it.

7.9 The Trust believe that the decision is about adjusting the financial framework that sits behind the Agreement between partners and that ending the Agreement could result in savings of between £20m and £25m from the current overspend of around £35m per year. They do not believe that these savings will result in changes to delivery of health services but will mean that any overspend in adult social care will not have to be taken from acute health services. It is anticipated that the savings will come at the end of the 12 months' notice period working with Torbay Council.

Views of Director of Adults and Community Services:

7.10 In addition to the written statement provided, the Director advised that the Council is committed to working closely with the Trust and ICB on any transitional work, should the notice be served. However, the Council would only be able to take on social care responsibility and not any health responsibility. At this time the Director is not able to provide a level of assurance that there will be no significant changes to health or adult social care as a blended approach has been in place for over 20 years. Consideration will need to be given on how the services are delivered in the future and what can be done to keep the front door system where individuals get assessed for both health and adult social care support.

7.11 The Local Government Association (LGA) Peer Review and Care Quality Commission (CQC) had both been provided with significant data and analysis of the current model to show the benefits and disadvantages. The CQC inspection report noted the benefits of joined up care on expediting hospital discharges and reflected the alignment of health and social care support to best achieve positive outcomes for individuals.

7.12 The Director recognises the models operated in other areas with joint roles and joint ways of working but highlighted the difference in Torbay with adult social care delegated to the NHS (Trust) for over 20 years, and therefore believes that there will be a significant change in service delivery for health and social care should the Agreement end.

7.13 The Council transfers £68m to the Trust for delivery of adult social care, with approximately £23m a year income received through client contributions. This is in line with our benchmarking authorities, with the Council providing 1.45% over that paid by other local authorities. It is acknowledged that the current model is costly, but the Council is not aware of the split between health and social care of the overspend of £35m quoted by the Trust. The Council and Trust are both required to balance their budgets.

7.14 The Cabinet Member for Adult and Community Services, Public Health and Inequalities highlighted that health services save lives and could not see how ending the Agreement could not impact on health services to the residents of Torbay.

Views of ICB:

7.15 In addition to the written statement provided, the ICB advised that they would require more information including an impact assessment which they say is key to determining if there is a substantial change to delivery of health services. They are working closely with the Trust on the next steps and the decisions that need to be made. The ICB fully supports working with the Trust and Council on transitional arrangements, should the notice be served.

7.16 Any transition plan would set out all the principles of safe practice ensuring flow is maintained and that national best practice continues to be adopted. There needs to be a look at strength-based work, as discharge from hospital is one matrix but consideration needs to be given to where a patient is

discharged to, for example, if they stay in hospital slightly longer, they can be discharged to their home rather than a care home.

7.17 The ICB does not contribute towards the Agreement and therefore no savings would be made to the ICB if the Agreement ends.

8. Conclusion

8.1 Members thanked the Trust, ICB, Director of Adult and Community Services and Cabinet Member for attending the meeting to provide evidence and help them understand the views from the three interested parties on this important topic for Torbay's communities. Whilst Members acknowledged that no decision has been made by the Trust Board to end the Section 75 Agreement, they were unanimously concerned that there was no provision by the Trust of detailed information which their Board will be considering when making their public decision on the 5 March 2026. This significantly affected Members' scrutiny function, and their ability to seek assurance that there would be no significant change or reconfiguration of health services within its area.

8.2 The Members of the Sub-Board reflected and debated the information provided to them, both verbal and written. It was clear that the Trust, Council and ICB were all committed to working together for the benefit of the people of Torbay for the delivery of community health and adult social care services, but noted that there is a difference in opinion as to whether ending the Agreement will constitute as substantial change to the delivery of health and/or adult social care services that will result in a 'duty to consult' by the Trust.

8.3 Members resolved that there was insufficient evidence and assurance before them to demonstrate that there would not be a significant change in delivery of both health and adult social care services should the Agreement end, and were gravely concerned about the impact on individuals health, and the absence of any assurances of likely changes as a result of the suggested savings highlighted by the Trust of £20 to £25m.

8.4 Members noted the Council's position for the continuation of the Agreement and a commitment by all parties to work together. However, Members unanimously resolved that the proposed decision by the Trust Board at its public meeting on 5 March 2026 was being rushed through, without public consultation and engagement with key partners and the voluntary and community sector, and without an impact assessment which they agreed was key before any decision should be made to end the Agreement, recognising the need for transformation of the services to further challenge the costs and provision to ensure that the health and social care needs of individuals are met in the most appropriate and cost effective way, whilst primarily protecting the health and safety of those persons in its area.

8.5 The Sub-Board formed the following recommendations, which were approved unanimously.

9. Recommendations

Recommendation to the Chief Executive of the Trust:

9.1 That, having carefully considered all the written and oral representations before them, the Adult Social Care and Health Overview and Scrutiny Sub-Board unanimously resolved that the proposal to end the Agreement will amount to a substantial change in both health and adult social care service delivery in the area of Torbay. In coming to this decision, Members also unanimously determined that an impact assessment should be undertaken and consultation should be carried out by the Trust before a decision is taken by their Board to give notice. Noting that it is the Trust who is proposing to end the Agreement. In the absence of evidence to the contrary, Members unanimously held the honest belief that a significant change and reconfiguration to health services in its area will arise, should the Agreement end. Members noted that there was a difference of opinion between the three parties on the duty to consult, and resolved in their honest held belief, that there were strong grounds to demonstrate that a 'duty to consult' arose of the Trust, on the grounds of significant change to health, should they give notice to end the Section 75 Agreement for the integrated care model for delivery of community health and adult social care services between the Trust, Torbay Council and the ICB for the following reasons:

- a. it would result in the disaggregation of health and adult social care and community health services which have been in place for around 20 years and has wider implications for NHS services, noting that health services are expected to be designed in an integrated way with adult social care services and with population healthcare outcomes as the core focus; the Care Quality Commission had rated the service as good and noted the benefits of the integrated approach for residents and staff to best achieve positive outcomes for individuals; the arrangement saw the reduction of 60 acute beds and the risk and costs associated in these being reintroduced at a safe level;
- b. it would have significant financial implications for both the Trust and Torbay Council in respect of the approximately £35m deficit, with no evidence to inform what was health and what was adult social care costs and the action required to be taken by either body to manage the deficit and the consequential impact on future services, as well as the need to terminate and renegotiate with care providers to ensure effective, high-quality provision of separate health and social care support within the financial constraints, which could result in a change of care provider for those currently in receipt of support;
- c. it would impact on outcomes for residents and the services they currently receive, for example as decisions would be made separately regarding their health and social care needs, this could lead to delays in receiving care to meet their needs or result in delayed discharges from hospital etc. as the funding would be held separately and decisions made by separate organisations. There are currently over 2,700 individuals in receipt of adult social care from the Trust (Integrated Care Organisation) with around 20 people a week being assessed as requiring support from adult social care, many of whom

will be in receipt of both health and social care and are likely to be significantly affected by the proposed changes, with Torbay having a much higher aging population than other parts of the Country; and

- d. a new Section 75 Agreement was signed by the Trust, ICB and Torbay Council in March 2024, this is a 5-year agreement and sets out clear strategic direction for the continued delivery of integrated health and adult social care for residents in Torbay;

9.2 that the Sub-Board recommends that the Chief Executive of the Trust and its Board defer taking a decision to end the Agreement until such time that an impact assessment of the proposed change has been completed and consultation by the Trust has been carried, noting their unanimous honest held belief that the ending of the Agreement will result in substantial service change/reconfiguration to health services for the Torbay area; and

9.3 that the Trust is required to make a formal public response to this recommendation within 28 days of receipt of this report; and

Recommendation to the Statutory Scrutiny Officer:

9.4 that, due to the timing of the proposed private Trust Board meeting taking place in February 2026 and the subsequent public meeting of the Trust Board on 5 March 2026, where the giving of a notice to end the Section 75 Agreement for the integrated care model for delivery of health and adult social care services between the Trust, Torbay Council and ICB will be discussed and determined, the Adult Social Care and Health Scrutiny Sub-Board requests that the Statutory Scrutiny Officer submits a request for call-in of the proposed decision of the Trust to end the Agreement for the integrated care model for delivery of health and adult social care services between the Trust, ICB and Torbay Council to the Secretary of State for Health and Social Care on the grounds that it is their honest held belief that the proposal constitutes a substantial service change/reconfiguration to health services for the Torbay area, resultant in their belief that the Trust has a 'duty to consult' before taking a decision to end the Agreement and the requirement for an impact assessment to inform the same. In coming to their decision, Members had regard to all the written and oral evidence before them and the ongoing discussions between the Trust, ICB and Torbay Council and that there had been a difference of opinion on whether or not there was a 'duty to consult' which could not be agreed upon and therefore believed there was a need for intervention from the Secretary of State to resolve this matter.