



Torbay and South Devon
NHS Foundation Trust

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Teresa Buckley
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Dear Councillor Johns & Ms Buckley,

We write in response to the Adult Social Care and Health Overview and Scrutiny Sub-Committee's (**OSC**) report dated 4 February 2026.

Public Consultation Requirements

As we have previously stated, having taken advice from King's Counsel on the issue, the Trust does not have a legal duty to carry out a *public consultation* in relation to the proposed termination of the existing section 75 partnership agreement with Torbay Council (**s.75 Agreement**). Section 242 of the National Health Service Act 2006 is clear that the Trust's obligation to involve service users in decisions made by the Trust is limited to "*health services for which it is responsible*".

The adult social care services delivered under the s.75 Agreement do not fall within the scope of this obligation. Statutory responsibility for providing adult social care services to the local population sits with Torbay Council, under the Care Act 2014. Public consultation on any matter relating to adult social care is therefore solely the responsibility of Torbay Council.

Consultation of the OSC

The OSC has also asserted that the Trust is required to consult the OSC before making a decision as to whether or not to terminate the s.75 Agreement. This is incorrect as termination of the s.75 Agreement would not, in and of itself, give rise to any substantial variation in the provision of social care services.

We do not believe that termination of the s.75 Agreement would lead to a disaggregation of health and adult social care services. If the Trust does decide to terminate the s.75

Agreement, we would remain committed to working openly, constructively and in partnership with Torbay Council in respect of social care delivery. The Trust values the long-standing partnership between our organisations and would continue to support effective joint working.

Neither would termination automatically result in service change for recipients of adult social care services. Any service changes made by Torbay Council post-termination would be a decision for Torbay Council to make, as the body responsible for commissioning adult social care services. The s.75 Agreement has a 12 month notice period, which would be a sufficient period of time to prepare for service delivery to be handed over to Torbay Council and minimise disruption from the perspective of service users. We are prepared to commit to working closely with Torbay Council during the 12 months' notice period to ensure a smooth transition and continuity for service users.

In the Scrutiny Committee note you state that serving notice on the S75 agreement 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"*.

Under the current s75 agreement, 100% of the financial risk for the provision of adult social care costs and demand growth sits with the Trust. Termination of the agreement would result in realignment of financial responsibility to the relevant statutory body meaning that going forward, the full cost of the health aspects of an individual's care would be funded by the NHS with the full cost of social care being funded by the Local Authority. This would bring the arrangements for Torbay residents in line with the rest of Devon. The 12 month notice period would allow for review of all cases to enable the new funding arrangements to be put in place.

The outcome will most likely be that the cost to the NHS reduces and the cost to the local authority increases in accordance with statutory accountabilities. I fully recognise that this presents a potential conflict of interest for members of the OSC and am sure that this is something that Councillors are objectively considering in line with the Nolan principles.

Kind regards,

A black rectangular redaction box covering the signature of Joe Teape.

Joe Teape

Chief Executive

For and on behalf of Torbay and South Devon NHS Foundation Trust