

**Meeting:**

**Date: 4 February 2019**

**Wards Affected: All**

**Report Title: Torbay Adult Mental Health Memorandum of Understanding**

**Is the decision a key decision? Yes/No** (delete as appropriate)

**When does the decision need to be implemented?**

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**Supporting Officer Contact Details:** Justin Wiggin, Strategic Commissioning Officer, 01803 208792, justin.wiggin@torbay.gov.uk

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## **1. Proposal and Introduction**

- 1.1 Delivery of Torbay under 65's Adult Mental Health (Adult Social Care) is undertaken by Devon Partnership Trust. Torbay and South Devon NHS Foundation Trust contract with Devon Partnership Trust via the section 75 agreement between Torbay Council and Torbay and South Devon NHS Foundation Trust.
- 1.2 The Adult Mental Health Memorandum of Understanding (MOU) has been developed by the three parties to update the existing contract between TSDFT and DPT. The MOU defines roles and responsibilities of:
  - Torbay Council
  - Torbay and South Devon NHS Foundation Trust
  - Devon Partnership Trust.

## **2. Reason for Proposal and associated financial commitments**

- 2.1 The services commissioned are delivered by a range of Social Care staff including, Social Workers, Approved Mental Health Professional's (AMHP's) and administrative staff who are employed by Torbay Council or Torbay and South Devon NHS Foundation Trust. Employees are "assigned" to Devon Partnership Trust.
- 2.2 The Adult Mental Health Memorandum of Understanding (appendix 1) clarifies responsibilities of the three partner organisations involved in the delivery and / or governance arrangements. The areas covered by this Memorandum of Understanding are:

- Introduction, including statutory responsibilities and delegation of functions.
- Provision of Legal Advice
- Governance Arrangements
- Finance, including budget setting
- Contract Performance
- Assigned staff, including HR responsibilities, staff training and recruitment.
- Staff structure

2.2 The proposals contained in this report do not commit the Council to any additional financial cost. The 2018/19 contract value in respect of £2,535 million forms part of the agreed s.75 financial arrangements between Torbay Council and Torbay and South Devon NHS Foundation Trust.

### **3. Recommendation(s) / Proposed Decision**

3.1 PDDG is to note and agree the proposed arrangements set out in the Adult Mental Health Memorandum of Understanding.

## **Appendices**

### **Appendix 1 Adult Mental Health Memorandum of Understanding**

### **Appendix 2 Proposed Staffing Structure**

## Adult Mental Health Memorandum of Understanding

### 1. Introduction

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- 1.1 The commissioning arrangements for Adult Mental Health Services in Torbay are complex. This memorandum of understanding (MOU) sets out the agreed expectations of each partner involved in the delivery of the Torbay Adult Social Care under 65 mental health agreement. The partners included in the MOU are:
- Torbay Council
  - Torbay and South Devon NHS Foundation Trust
  - Devon Partnership NHS Trust
- 1.2 Torbay Council (“the Council”) has statutory responsibilities for providing services to eligible people with poor mental health and social care needs under the Mental Health Act 1983, the Care Act 2014 and other relevant legislation, which are delegated to the Torbay and South Devon NHS Foundation Trust (“TSDFT”) via s.75 National Health Services Act 2006 (as amended). Notwithstanding these integrated commissioning arrangements, residual responsibility is retained by the Council. In respect of mental health services these include:
- approval and provision of ‘sufficient’ numbers of Approved Mental Health Professionals (‘AMHP’s);
  - guardianship under section 7 and
  - financial and budgetary responsibilities for the whole mental health budget, including activity below assigned to DPT.
- 1.3 Devon Partnership NHS Trust (“DPT”) is directly commissioned under a Service Level Agreement by TSDFT as part of the section 75 agreement between TSDFT and the Council. Devon Partnership NHS Trust is commissioned to operationally deliver these under 65 social care mental health services in Torbay. This is in compliance with Torbay Council’s statutory duties including:
- aftercare under section 117;
  - care management services, including operational brokerage of social care packages duties under the Care Act and S117 responsibilities
- 1.4 The agreement of Devon Partnership NHS Trust is undertaken by Torbay Council, strategic commissioning support for this arrangement is provided by Torbay Council’s Joint Commissioning Team. This memorandum of understanding is intended to clarify the roles and responsibilities of the Council, TSDFT and DPT and to set out expectations around early joint working, support for practitioners across organisations, the provision of legal advice and support.
- 1.5 Devon Partnership NHS Trust, currently receive no remuneration for the work that they undertake as part of this agreement. DPT will for the remainder of 2018/19 use best

endeavours to fulfil the functions set out below. During the remainder of 2018/19 DPT, Torbay Council and Torbay and South Devon NHS Foundation Trust will work collaboratively to identify appropriate resources required to fund this function going forward.

- 1.6 This MOU will commence on 1 April 2018 and will terminate on 31 March 2019 unless extended by mutual consent of the partners listed in section 1.1.

## 2. Legal Advice

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- 2.1 In the event that legal advice is required in respect of an area which remains the residual responsibility of Torbay Council initial contact should be made to the Senior Solicitor, Social Care, Torbay Council legal services. Legal Services will review the information provided and confirm any approach / response required to the contacting practitioner.

## 3 Governance

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- 3.1 Governance of the Adult Mental Health contract will be undertaken via the following meetings:
- Performance and Review meeting (monthly)
  - Torbay Strategic Partnership meeting (every 6 weeks)
  - Torbay Social Care Programme Board (SCPb - bi-monthly)

Performance and Review meeting Terms of Reference



Performance and Review Meeting TOR.

Torbay Strategic Partnership Meeting Terms of Reference



Torbay Strategic Partnership Meeting 1

- 3.2 Torbay Council and Torbay, South Devon NHS Foundation Trust and Devon Partnership Trust will make every effort to ensure appropriate attendance at all meetings. DPT will be invited to attend Social Care Programme Board with prior agreement when papers relating to adult mental health are presented. Torbay Council and TSDFT attend all SCPb meetings. All parties will make every effort to ensure appropriate attendance at all meetings.
- 3.3 In addition to the above governance structure it is to be expected that attendance will be required at Torbay Council governance structures which includes Locally Elected Members.

Examples of these are; Overview and Scrutiny Committee, Mayor’s Executive Group, Adult Commissioning Policy and Decision Group.

## 4 Finance

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- 4.1 The total finance package associated with the adult mental health contract 2018/19 is £2.54million. A breakdown of finances is included in the table below.

By Service	Budget 2018/19
	£000
Residential Long Stay	1,182
Residential Short Stay	69
Supported Living	177
Day Care	8
Voluntary Block Contracts	48
Domiciliary Care	227
Direct Payments	208
Staffing	615
Total	2,535

### 4.2 Setting future budgets

- 4.3 The setting of budgets for the provision of Adult Mental health will include TSDFT, DPT and Torbay Council.

### 4.4 Budget management responsibility

- 4.5 Within the arrangements for 2018/19 no monies for packages of care or for assigned staff will be transferred to DPT (i.e. the assigned budget). DPT identify expenditure based on assessed need within individual care packages. DPT will arrange and manage panel processes to ensure that the options presented meet both mental health and social care needs and to determine (if there is more than one option that meets needs) which option is best value and will be pursued along with the associated financial packages. DPT will form part of the Torbay High Cost Panel for adult mental health packages over £1000 per week. DPT will monitor the quality of services which adult mental health clients access following

their assessment of need and related support planning. All clients with whom the adult mental health contract, engage must be assessed being eligible pursuant to Care Act 2014/Mental Health Act 1983 (as amended) eligibility. Torbay Council expects its staff, TSDFT and DPT practitioners to work across all relevant eligibility criteria and to seek supervision support and legal advice as required.

- 4.6 TSDFT is responsible for holding the budget, paying providers, managing and maintaining financial systems to ensure staff, providers and direct payments are made in a timely manner. TSDFT will provide monthly finance reports at DPT performance and contract review meetings.
- 4.7 For the avoidance of doubt the funding for this service is given by Torbay Council to TSDFT via a formal Section 75 Agreement which has been in operation since 2006 when this was previously Torbay Care Trust. It is recognised that DPT's execution of delegated statutory duties is dependent upon the provision of sufficient suitable qualified and trained staff from the Council and Torbay and South Devon NHS Foundation Trust.
- 4.8 DPT is expected to make best endeavours to manage the Service within the budgetary value.
- 4.9 £0 to be transferred by Torbay and South Devon NHS Foundation Trust to Devon Partnership NHS Trust in 2018/19.

## 5 Contract Performance

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- 5.1 Performance of the adult mental health contract will be monitored via the above mentioned governance arrangements. Performance relating to agreed key performance indicators will be reported by DPT on a monthly basis.
- 5.2 DPT and TSDFT will work in partnership to ensure KPI's are reported accurately on a monthly basis, without exception. Minimum data requirements will be linked to Adult Social Care Outcomes Framework (ASCOF). Demand management data and service access data will also form part of performance monitoring arrangements.

Key Performance Indicators to be monitored are embedded below.



Adult Mental Health  
Performance Metrics :

- 5.3 Torbay Delayed Transfers of Care (DToC) will be monitored weekly. Weekly data will be submitted by DPT to Torbay Council and TSDFT. Monitoring calls will be held between DPT Managing Partner for Social Care and Torbay Council, Head of Partnerships, People and Housing where required.
- 5.4 DPT, Torbay Council and TSDFT will over the course of the 2018/19 financial year work together to develop a single, robust mechanism for performance monitoring purposes.

## 6 Assigned staff

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- 6.1 Torbay Council and TSDFT recognise the benefits that the assignment of staff within a host organisation can provide, both to the originating authority, the assigned organisation, but also to individual employees.
- 6.2 Assignment applies to all Torbay Council and TSDFT employees assigned to DPT to support the delivery of the Adult Mental Health contract. These roles include:
- AMHP's
  - social workers and
  - administrative staff
- 6.3 The assigning of staff provides departments and organisations the opportunity to acquire specialist skills and knowledge for short term project from a wider pool of talent, including permanently established employees, who otherwise may not transfer to a temporary, short term contract.

### 6.4 Employment Checks

- 6.4.1 The Employing Organisation and recruiting manager is responsible for ensuring satisfactory checks are in place and for providing Human Resources with the following:
- Evidence of eligibility to work in the UK
  - Evidence of criminal record check (if appropriate)
  - Interview questions
  - Application form/expression of interest
  - Health and Care Professions Council registration (if appropriate) HCPC
  - Evidence of qualifications
  - References
  - Driving licence/insurance/MOT (where applicable).
- 6.4.2 The Employing Organisation must verify that a criminal record check is current. Where it is not, a check must be carried out and the cost borne by the employing organisation - Torbay Council or TSDFT.
- 6.4.3 Staff should not commence their assigned role until all these checks have been verified.
- 6.4.4 An external assignment agreement must be completed and authorised by Human Resources and held on file.
- 6.4.5 External assigned staff must sign and return a Confidentiality Agreement and Privacy Notice to Human Resources.
- 6.4.6 Host Managers should advise assigned staff that they will be expected to adhere to their employing organisations policies relating to:
- health & Safety
  - IT Usage
  - Code of Conduct

- Equalities
- Safeguarding

## **6.5 Recruitment of assigned staff**

- 6.5.1 In circumstances where an assigned position becomes vacant, responsibility for the recruitment of staff is the responsibility of the employing organisation.
- 6.5.2 The Host Manager must notify the employing organisation immediately upon staff tendering their resignation. The Host Manager and Employing Organisation will agree the recruitment of replacement staff. Replacement staff will be employed on the terms and conditions of the employing organisation. Any recruitment of staff to be assigned in to Devon Partnership NHS Trust will as a minimum include Devon Partnership NHS Trust and the employing organisation in the recruitment and selection process.
- 6.5.3 In cases where a staff position becomes available, all three partners (Torbay Council, TSDFT and DPT) shall be engaged in redesigning and agreeing vacant posts to ensure newly created posts meet the strategic direction of adult mental health in Torbay.
- 6.5.4 In cases where an exiting member of staff is employed by Torbay Council. Torbay Council shall discuss with TSDFT the option of new staff being employed by TSDFT in line with all operational Adult Social Care staff being employed directly by TSDFT.

## **6.6 Assigned staff conditions of employment**

- 6.6.1 Pay, including pay reviews and other terms and conditions of employment, would normally remain unchanged, except where the assigned opportunity is for a position on a different salary scale (where there is an increase in responsibility or accountability for instance), or other arrangements such as car allowances, have been agreed. In which case, pay, terms and conditions will need to be negotiated, and form part of the agreement. Any pay for a newly created opportunity should be properly assessed and in line with other grades for equivalent posts. The Host Business Unit/Organisation would be responsible for the payment of any additional sums as a result of enhanced terms and conditions.

## **6.7 Staff Performance Management**

- 6.7.1 Performance management processes should continue in the normal manner taking account of performance in meeting the objectives of the assigned role. The Host (line) Manager within DPT is responsible for co-ordinating performance management reviews also known as appraisals. DPT will engage the employing organisation in the process for HR purposes.
- 6.7.2 The employee will continue to be eligible for any promotion opportunities or salary reviews that they would normally be entitled to, where appropriate.
- 6.7.3 A Host Manager should be identified for the duration of the assigned period. The Host Manager, for the duration of the assignment, will be responsible for giving instruction and for the day-to-day management of the assigned employee and procedures and rules of the Host Organisation/Business Unit must be adhered to. However, in the case of addressing



attendance, disciplinary, grievance and performance issues, the employing organisation retains responsibility and will be advised/informed by the Host Manager.

6.7.4 The Host Manager will be required to authorise sickness, absence, annual leave and timesheets using the employing organisations online portals. For Torbay Council employees Host Manager's will be provided access to My View. For TSDFT employees Host Manager's will be provided access to Employee Staff Record (ESR)

6.7.5 Qualified social workers assigned to Devon Partnership NHS Trust shall benefit from the professional leadership of the Managing Partner for Social Care and Social Work, Devon Partnership NHS Trust for their profession.

6.7.6 Qualified AMHP's shall benefit from the professional leadership of the Lead AMHP, Torbay.

## **6.8 Terms and Conditions of employment specific to externally assigned staff**

6.8.1 The employee, whilst assigned, remains an employee of the originating employer and retains his/her conditions of service. The Host Organisation must be briefed on the originating organisations policies and procedures as they will continue to apply. e.g. grievance and disciplinary procedures. The Host Organisation should also be informed of the employee's terms and conditions of employment, including salary and allowances, and should be notified of any changes as appropriate.

## **6.9 Training**

6.9.1 The Seconding Organisation/Business Unit may require the employee to attend training courses during the period of assignment. If this occurs, the Host Organisation/Business Unit should reasonably allow the employee to attend appropriate training courses.

6.9.2 Torbay Council externally assigned staff are expected to undertake mandatory iLearn training and if assigned to a Manager's position attend a Manager's HR Induction. For further advice contact Torbay Council Human Resources.

6.9.3 TSDFT externally assigned staff are expected to undertake mandatory training and if assigned to a Manager's position attend a Manager's HR Induction. For further advice contact TSDFT Human Resources.

6.9.4 TSDFT will provide funding and access to training and development opportunities including any statutory professional training/qualification requirements for all staff assigned to DPT relating to their professional roles as Social Worker and / or Approved Mental Health Professional in order to ensure a sufficient and competent assigned workforce. An annual overview of training planned and attendance will be provided by TSDFT.

6.9.5 DPT will provide opportunities to access training and development opportunities for assigned staff which is relevant to the roles undertaken but in addition to mandatory training or professional training as outlined above. The aim of which is to ensure assigned staff have a sufficient and competent knowledge and understanding of mental ill health and related services to operate well in their role.

- 6.9.6 Learning and development needs may be met in a variety of ways and Host Organisation Managers will wish to consult with Parent Organisation Managers to discuss the options for meeting learning needs. Where this results in the need to provide a training course, consideration will need to be given to the appropriate agency or combination of agencies to deliver the training.
- 6.9.7 For audit purposes, requests for training and development opportunities will in the first instance be presented at the monthly Performance and Contract monitoring meetings. Where appropriate and required these requests will be escalated to the Torbay Strategic Partnership meeting.

## Signatures

### Torbay Council

Signed:

Date:

Print Name

### Torbay and South Devon NHS Foundation Trust

Signed:

Date:

Print Name:

### Devon Partnership NHS Trust

Signed:


Date:

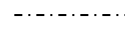
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## Appendix 2

### Proposed Torbay Social Care Staff Structure

Key:

 = assigned staff

 = dotted line working arrangements

