

Torbay Council Scrutiny Committee

Status Update on the LGA Review of ASC Contracting (Appended)

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Version 1 (August.2023)

	Recommendation	Status
1	Undertake a programme of work to review all contracts to ensure they are robust and set out clear expectations for providers and that the contracts are made available to all relevant teams.	In Progress. The Contracts Register details which contracts we currently have in place. TSDFT are fully aware of the necessity of robust contracts and clear expectations for Providers. Revisiting specifications and contracts is underway, with the goal contracts and specifications in place as a matter of urgency. The TSDFT Delivery, Markets, Contracts & Quality Team (DMCQ Team) required two contract management posts to support undertaking contract management in TSDFT and we have recruited to one post with the second, more senior post, still vacant. TSDFT Provider contracts fall within market segments (VCS, Supported Living, Domiciliary Care, Care Homes, Enabling, Business) within the Market Management Function of the Team. The contracts are currently being subdivided into those market segments and the respective Lead. This ensures that there is ownership across the full contracts register and a named person as lead contact in TSDFT.
2	Develop a master contract register by Autumn 2022 which can be used for forward planning of procurements. Regularly review and update the contracts register.	Completed as agreed end Q1 2023. The contracts register forms part of the regular reporting as at July 2023.

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3	Ensure that every contract has clear ownership with a named person as the lead contact.	In progress as described in Recommendation (1).
4	Further develop, consult on and test the draft contract monitoring and quality assurance policy including the '3 tier pyramid of care' and implement this, ensuring it sets out clear roles and responsibilities for all key team member.	<p>Final draft status and completion in October 2023. The Provider Quality Support Policy (PQSP) has been developed to establish a formal and coordinated response to concerns about standards of care within regulated and unregulated care provider services in Torbay. The policy covers all adult care provider services and encompasses:</p> <p style="padding-left: 40px;">Regulated residential and nursing care homes, regulated domiciliary care services, outreach services (including unregulated domiciliary care), regulated and unregulated Supported Living services, day care services, Extra Care services, Live-in care services.</p> <p>The PQSP establishes a formal means of responding to concerns about care provider services where there is reason to believe that there are a number of people whose well-being needs, as defined within Chapter 1 of Care Act 2014 Statutory Guidance, are not being met. This applies to all persons living within a care provider service regardless of whether the host authority or other placing authorities are carrying out a care and support function. The Care Act 2014 statutory guidance defines wellbeing as a broad concept that describes:</p> <ol style="list-style-type: none"> 1. Personal dignity (including treatment of the individual with respect) 2. Physical and mental health and emotional wellbeing 3. Protection from abuse and neglect 4. Control by the individual over day-to-day life (including over care and support provided and the way it is provided) 5. Participation in work, education, training or recreation 6. Social and economic wellbeing 7. Domestic, family and personal 8. Suitability of living accommodation

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	<p>The draft Provider Quality Support Policy provides the underpinning method to dealing with concerns about providers which is routinely a matter for the Torbay Quality Assurance and Improvement Team (QAIT) with support from relevant local Health and Social Professionals Care Community Staff and Manager. In terms of Quality Support Thresholds this is represented by Business as Usual and Low Risk Tier 1, and should make up the bulk of the work done to support providers. The guiding principles for monitoring the quality of care in the local provider market are:</p> <ul style="list-style-type: none"> • The gathering of real-time provider information such as Incidents, complaints, Care Quality Commission Reports and KPI data in order to create a picture of quality. • This information is analysed to aid the understanding of the performance of care providers and assist in the determination of the care provider Quality Threshold/Tier. • Effective interventions to ensure that standards of care meet regulatory, statutory and contractual requirements. <p>Business as Usual and Tier 1 work is mainly preventative, aimed at avoiding concerns from escalating further with constructive advice and support offered. This will include regular reviews between the Provider and QAIT and including any proactive work undertaken such as a Service Improvement Plan (SIP), clinical and practical support, sign posting and /or quality audit, in addition to the support of contract management.</p> <p>If concerns should escalate to the extent as indicated by Tier 2 a PQSP Planning Meeting should be considered. Any care quality concerns that meet the Tier 3 description must be considered by QAIT Lead professionals with Community Service Management and the Safeguarding Adults Team. The purpose of this will be to review all relevant information and agree if a large-scale safeguarding initial enquiry meeting is required or otherwise.</p> <p>It should be noted that the PQSP does not replace responses to individual safeguarding adult's s.42 Care Act safeguarding enquiries. Any concern where there is reason to believe an adult with care and support needs is at risk or experiencing abuse or neglect should be reported to the Torbay</p>

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		Safeguarding Adult Single Point of Contact. The Torbay Safeguarding Single Point of Contact will as a matter of normal business liaise with the QAIT team to support Care Act s.42 decision making.
5	Develop a Contracts Operations Manual and Policy which includes proportionate contract monitoring processes which that can be used by everyone involved in the contract management, contract monitoring and quality assurance process and dovetails with joint safeguarding processes.	<p>Completed. The policy sets out the appropriate processes and procedures for the procurement of services by Torbay and South Devon NHS Foundation Trust (TSDFT) and the contract management relating to these services. The policy aims to ensure compliance with legal and regulatory requirements, promote transparency, accountability, and efficiency and support quality services to meet the needs of our service users. The scope of the policy applies to all contracts entered into by Torbay and South Devon NHS Foundation Trust for the provision of Adult Social Care services and Community Health services provided by Independent Sector and Community and Voluntary Sector organisations, including contracts with external providers, partnerships, collaborations, charities and community interest companies. The policy covers the entire contract lifecycle from pre-contracting, contracting, implementation, monitoring, evaluation, and closure as well as variations, novation and extensions.</p> <p>Torbay and South Devon NHS Foundation Trust is committed to delivering high-quality services to meet the needs of service users. Contract management plays a crucial role in ensuring the delivery of quality services, maintaining productive relationships with providers, and mitigating legal and financial risks.</p> <p>In terms of legal considerations, as a public body, Torbay and South Devon NHS Foundation Trust is subject to the Public Contracts Regulations 2015 for our procurement activity. All TSDFT procurements should also comply with the principles of the EU Public Contracts Directive 2014 which includes equal treatment of bidders, fair competition, proportionality and transparency. Procurement should not discriminate against suppliers or bidders on the grounds of nationality. These principles shall apply to all procurements regardless of the contract value.</p> <p>We must also comply with the following:</p> <ol style="list-style-type: none"> 1. Procurement Policy Notes (PPNs) issued by the Cabinet Office’s Crown Commercial Service. 2. Managing Public Money May 2012, updated May 2023

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	<ol style="list-style-type: none"> 3. Equality Act 2010 4. Public Services (Social Value) Act 2012 5. The Local Government (Transparency Requirements) (England) Regulations 2015 6. The Local Government Transparency Code 2015 7. The NHS Act 2006 8. Care Act 2014 9. The NHS (Procurement, Patient Choice and Competition) (No.2) Regulations 2013 10. Bribery Act 2010 11. Money Laundering Regulations 2019 (Proceeds of Crime Act 2002) <p>In the event of a conflict, the legislation and controls take precedence over TSDFT internal policies.</p> <p>In order to achieve value for money, the Trust will apply the principles of Lean Methodology during the procurement cycle in order to procure the right services for our population. We need to ensure we procure the correct quantity of services which are good quality in the right location and at the right price through a process of continuous improvement and respect for people. The principles of lean management and continuous improvement should be applied at every stage of the contract management process and we will seek to ensure this is applied through assurance and governance.</p> <p>A robust Contract Management Policy and set of procedures facilitates monitoring of providers and gathering information. The intelligence from our monitoring supports our safeguarding work and dovetails with the PQSP.</p>
6	<p>Undertake work across the Procurement Team and the voluntary sector partnership development in the Market Development section of TSDFT to develop appropriate contracts for the voluntary sector.</p> <p>Initial stages. TSDFT, through its Markets and Contracts Function of DMCQ Team, aims to establish effective and transparent processes for involving the Voluntary and Community Sector (VCS) in the planning, commissioning and delivery of public services through contracts and grants. The commissioning approach needs to be clear, transparent and accountable in its processes and which take into consideration existing and evolving partnership structures and both TSDFT and Torbay Council's governance arrangements. Furthermore, the commissioning approach needs to be compatible with the transformation agenda across Torbay.</p>

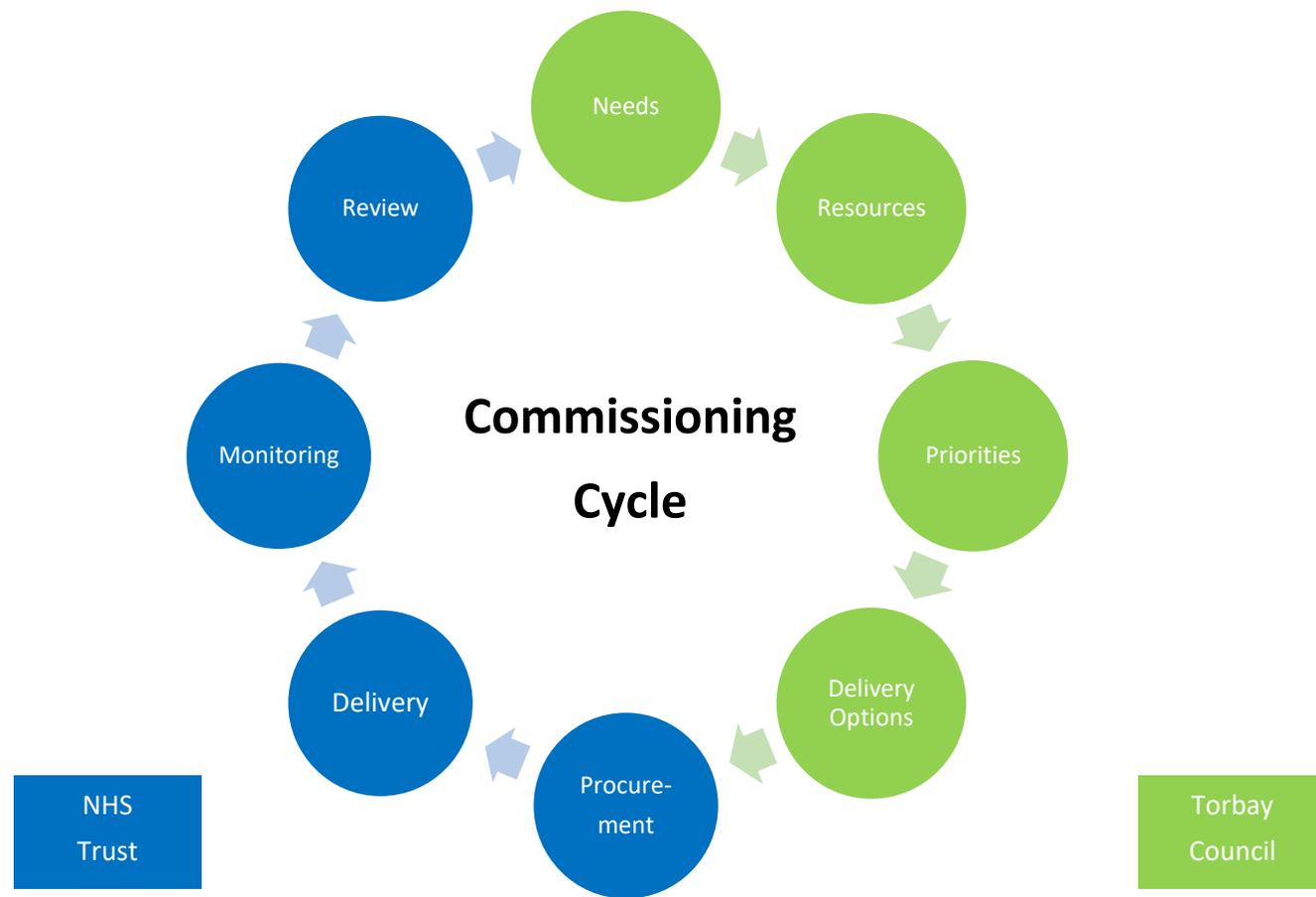
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		<p>Whilst TSDFT has contract arrangements with the VCS they are not currently aligned with the strategic and transformational aims of Torbay Adult Social Care, nor are they aligned with Torbay Council’s contractual arrangements with VCS. Whilst not all VCS contracts can or should be aligned, it is necessary to ensure we understand their use and value across the Torbay system.</p> <p>VCS organisations are typically created as a result of a recognised need and are often led and further developed by people directly concerned or affected by a particular issue. It is vital that the Torbay approach taken continues to be one of inclusion of VCS.</p> <p>Going forward and working alongside TC Strategic Commissioners, the fundamental part of the initial stages of voluntary sector commissioning and partnership is to understand what most appropriately address the wishes of the individual service user, meets our adult social care service needs and makes use of market intelligence and research to plan accordingly. In doing all future procurement and contracting processes, as part of the commissioning work, will be undertaken transparently and with consideration to the specific nature and ecology of the VCS.</p>
7	<p>Review the capacity and demand on Procurement to ensure the right resource is in place to deliver on these in line with the new legislation and guidance that is coming out over the next 2 years.</p>	<p>In progress. By having a clear set of policies and procedures within TSDFT Adult Social Care, we have set out the expectations of Procurement for our colleagues in TSDFT and respectively of our local Authority Procurement Team too. Without such and previously, unplanned procurement activity created pressure in both TSDFT and the LA and their respective Procurement functions and staffing.</p> <p>The Contracts Policy determines what procurement activity is undertaken and by whom; the Contracts register determines when the activity should be undertaken and by which lead giving way to improvements in planning. With plenty of time before a contract is due to expire, and bearing in mind any notice periods built into the contract, due consideration is required as to whether the service is still required in its current format, whether any changes are needed or whether the contract can be ended altogether. An Options Appraisal may be used if significant changes to the service may be beneficial, undertaken by the contract lead. Procurement will be able to offer advice regarding the timeframe of any possible re-procurement and this timeframe will need to be used as an integral part of the project plan for the new contract. Procurement will offer advice regarding the appropriateness</p>

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		of a contract extension waiver. In most cases a re-tender will be required (dependent on the contract value).
8	Consider where the Procurement function, currently located in TSDFT, would be best placed whilst continuing to strengthen the relationship between the Council's procurement and Trust Procurement.	The Procurement function within the TSDFT remains supporting ASC in TSDFT under the newly developed TSDFT Contract Management Policy, Procedures and DMCQ resourcing. As part of integration, we will continue to work on joint projects with the LA Procurement Team as is appropriate to meet the needs of an integrated system.
9	Review whether there is sufficient capacity in the QAIT to contract manage and monitor contracts with the new contract monitoring process.	<p>Currently, there is sufficient identified capacity to manage the provision in Torbay, but should be noted that at the time of writing there are two vacant posts. Capacity to manage the market is supported by a lean approach, good information systems and expert knowledge. TSDFT is enabled significantly by the expertise of its contract Quality Assurance & Improvement Team (QAIT). Further work to ensure the QAIT interfaces are support by good systems is in progress with two key deliverables: 1) Provider Assessment & Market Management System* (PAMMS), a quality management IT tool, and 2) the management of information flows between stakeholders through by Torbay Council's Torbay Finance Modules database and Standard Operating Procedures. Both systems re currently being rolled out supported by QAIT and its use will transform the way TSDFT carry out quality monitoring of services in Torbay, particularly supporting efficiencies within current resourcing.</p> <p>*PAMMS was originally developed by the Eastern Region Association of Directors of Adult Social Services (ADASS) and CM2000. PAMMS will allow broad oversight of services within Torbay, within the South West region, and across different ADASS regions. It enables a fully auditable approach to quality monitoring through its framework and infrastructure which is based on two-way communication with providers, the submission of quality information and quality returns, and responses to quality monitoring activity.</p>
10	Agree clear process indicators for the Procurement Team and QAIT team setting out the requirements for procurement, contract	The Contract Management Policy & Procedures has 12 monitoring indicators which can be linked to both TSDFT and LA strategies and our statutory duties:

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<p>monitoring and reporting as appendix to the Strategic Agreement.</p>	<p>Number of active provider contracts; Number of new contracts issued within the previous month; Number of contracts ended in the previous month; Number of procurements/ contracts currently in progress; Number of contract changes made within the previous month; Number of change requests currently in progress; Number of applications to Uplift panel within the previous month and the decisions associated with these; Number of contracts under an informal stage of review process due to quality issues; Number of Contract Performance Rectification Notices issued during the previous month; Number of Suspension of Placement Notices issued during the previous month; Number of Default Notices issued during the previous month; Additionally, the Contracts Risk Register in an active document which will be reviewed as part of the assurance cycle for Adult Social Care.</p> <p>The Three Year (Annual) Strategic Agreement will be updated with the new requirements for procurement, contract monitoring and reporting as an appendix for 2024/25.</p>

<p>11</p>	<p>Develop a clear schedule as an appendix to the Strategic Agreement setting out key roles and responsibilities in relation to the agreement and a more detailed working document with named officers and their respective responsibilities.</p>	<p>The current Three Year (Annual) Strategic Agreement sets out the main role of Delivery, Markets and Contracts and Quality Team which includes the QAIT function. The Team has been brought together over nine months and whilst broadly complete, still to recruit to vacant positions and complete transformation projects and various improvement tasks associated with developing robust operations to complement social work operations.</p> <p>A more detailed working document with named officers and their respective responsibilities, and the separated and joint functions between the TC Strategic Commissioners and TSDFT Delivery, Markets, Contracts & Quality Team will be prepared for the Three Year (Annual) Strategic Agreement as an appendix for 2024/25.</p> <p>In Torbay, the responsibility for Strategic Commissioning remains with Torbay Council. The other functions, Procurement, Contracting, Contract Management and Individual (client level) Commissioning are delegated to Torbay and South Devon NHS Foundation Trust. The Local Government Association (LGA) defines Commissioning as “the strategic activity of identifying need, allocating resources and procuring a provider to best meet that need, within available means.”</p> <p>The LGA also states that “It is an on-going process that applies to all services, whether they are provided by the local authority, NHS, other public agencies, or by the private sector or civil society. Most definitions of commissioning paint a picture of a cycle of activities at a strategic level.</p> <p>The logical process of commissioning is concerned with whole groups of people, including: assessing the needs of a population, now and in the future; setting priorities and developing commissioning strategies to meet those needs in line with local and national targets; securing services from providers to meet those needs and targets; monitoring and evaluating outcomes; consulting and involving a range of stakeholders, service users and communities in the whole process.</p> <p>Put simply, strategic commissioning enables councils and their partners to procure services that will deliver the priority outcomes set out in their strategic plans.”</p>
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The following diagram indicates the roles Torbay Council and TSDFT play in commissioning for adult social care:



12 Arrange cross partner workshops to develop and agree joint protocols and documents related to the commissioning and contracting of externally commissioned services.

Completed. Agreement to continue with the functions in their current organisations and locations with an improvement plan.

13	Consider whether there is any appetite and potential for more co-location of teams or joint roles.	TSDFT DMCQ Team and ASC Strategic Commissioners are currently co-located at Tor Hill House. Torbay Council and TSDFT can directly communicate through a range of mediums, for example, both have access to and use routinely, MS Teams. Currently no appetite for joint roles, but it should be noted that the Head of Strategic Delivery for TSDFT and TC Strategic Partnerships Manager work together on joint programmes as required.
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	Other considerations as a consequence of activity in Contracts and Commissioning.	<p>In terms of Supplier Sustainability/Resilience, which was not included in the original LGA Review but should be noted as a key activity of the TSDFT DMCQ Team and Torbay Council ASC Strategic Commissioners jointly:</p> <ul style="list-style-type: none"> • Enhancing our financial scrutiny of suppliers • Assessing market sustainability • Contingency planning for provider failure <p>The output of the work of Supplier Sustainability/Resilience is currently a deliverable of the ASC Transformation & Sustainability Plan which is a system wide endeavour lead jointly by Torbay Council & TSDFT.</p>
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Appendix 1

Review of Torbay's Commissioning and Contracting of Externally Commissioned Adult Social Care Services

And

Terms of Reference for the Steering Group

Context

In Autumn 2021, the Council, working jointly with TSDFT sought support from the Local Government Association (LGA) to help them:

- Fully understand the current commissioning and contracting arrangements in place for adult social care (ASC) services procured by TSDFT on behalf of the Council
- Evaluate how appropriate and effective these arrangements are
- Make recommendations about how these arrangements could be improved.

Purpose of the Group

- To review the recommendations of the LGA review report on Externally Commissioned Adult Social Care Services in Torbay
- To oversee the development of an options appraisal/action plan to a joint officer group and agree key recommendations
- To oversee delivery of the action plan via the Torbay Adult Social Care Improvement Plan and governance

Membership

- TSDFT Chief Officer for Finance
- TSDFT Chief Nurse
- Director Adult and Community Services Torbay Council (JOINT CHAIR)
- Director of Finance (S151) Torbay Council
- System Director for Torbay TSDFT
- Associate Director for Torquay TSDFT
- Head of Adult Commissioning Torbay Council

Meetings and Delivery Timeframe

Monthly meetings, administered by the Integrated Project Management Office

Delivery of an Action Plan and Options Appraisal if necessary for the August Adult Social Care Continuous Improvement Board

Context of the National Policy and Legislative Framework

Health and Care Bill 2021

The Health and Care Bill was introduced into the House of Commons in July 2021. Many of the proposals in the Bill are intended to reinforce the ambitions of the NHS Long Term Plan.

The Bill establishes a [legislative framework](#) that supports collaboration rather than competition and places integrated care systems (ICSs) on a statutory footing to make them accountable for commissioning and delivering services for residents in their footprint. It introduces two-part statutory ICSs, comprised of an integrated care board (ICB), responsible for NHS strategic planning and allocation decisions, and an integrated care partnership (ICP), responsible for bringing together a wider set of system partners to develop a plan to address the broader health, public health and social care needs of the local population. The Bill includes a new duty on NHS England and local authorities to collaborate on the delivery of care and is intended to make it simpler for health and care organisations to work together to deliver more joined-up care to people who rely on support from multiple services.

The Bill will also introduce a new ambition for the Care Quality Commission (CQC) to use its powers to improve outcomes for people receiving adult social care support, and an enhanced assurance framework for adult social care. There will be a new duty to review and make an enhanced assessment of local authorities' delivery of their Care Act 2014 adult social care functions.

The White Paper 'People at the Heart of Care 2021

The White Paper 'People at the Heart of Care' sets out a 10-year vision to improve adult social care. The reforms proposed in the White Paper build on the Mental Capacity Act 2005, the Care Act 2014, and the Health & Care Bill currently going through Parliament.

The White Paper has three objectives:

- Services should provide choice control and support to live independent lives
- People can access outstanding quality and tailored care and support
- People find adult social care fair and accessible.

The first and second objectives, in particular, are pertinent to this review. Providing quality and tailored service and choice and control can only be achieved where there is where there is a vibrant, responsive market of service providers and robust procurement, quality assurance and contract monitoring of externally commissioned service in place. This also includes the need for effective market management

- Analysis of any gaps in procurement and contract management processes and documents
- Understanding of the culture and ways of working both within individual organisations and across organisations
- Analysis of how the partnership operates in relation to best practice across the public sector.

Key Findings, Conclusions and Recommendations

Findings: Procurement and contract management processes

Contracts should be used as the cornerstone for developing positive relationships with providers and ensuring quality service provision for residents. There is an urgent need to undertake a programme of work to review and refine all contracts to ensure they are 'fit for purpose' and of high quality. All contracts should have a named contract manager with lead responsibility for managing and supporting the contract. This team member should be the first point of contact for both the provider and stakeholders in the Council and Trust.

It is critical that the Procurement Team ensures that all contracts are made available to the QAIT team, the Market Management Team, the Council's Strategic Commissioning team and that contracts are used as the basis for discussions with providers.

Contract management processes for the ASC contracts held by TSDFT are underdeveloped and not documented or shared. This needs to be urgently addressed. Work is underway on this and will be restarted following the recommendations from this Review. Contract monitoring processes that are clear and proportionate need to be developed and implemented.

The contracts register need to be updated urgently so it can be used to understand the status of individual contracts and used for forward planning of procurements.

As set out in the Care Act 2014 and other legislation, Torbay Council retains responsibility for the delivery of adult social care although in Torbay these functions are delivered through a partnership arrangement with TSDFT. It is therefore imperative that the council is able to assure itself that the external contracts that TSDFT procures and manages on behalf of the Council are providing high quality, appropriate support that allow individuals to exercise choice and control.¹

The procurement team in TSDFT is responsible for the procurement of circa 125 contracts with a value of more than £50 million whilst the QAIT is responsible for contract management and quality assurance of providers. These contracts are for the provision of care to vulnerable adults and therefore need to be procured and managed by people with appropriate levels of experience and understanding of adult social care and sufficient capacity. The findings suggest that the current Procurement team do not have the right level of adult social care expertise to enable them to fulfil their functions effectively. It also raises the question about whether the Procurement function should continue to be located in TSDFT or might be better placed in the council's procurement team, through a variation with the Section 75 partnership agreement. It has also been suggested that there may not be sufficient resource in the QAIT to ensure that providers are fulfilling the requirements of the contract and ensuring quality provision

A review of TSDFT's draft contract monitoring and quality assurance policy (put on hold until the outcome of this review), appears comprehensive and represents a robust and proportionate contract monitoring approach. It is therefore concluded that this policy should be further developed and trialled.

Recommendations

The recommendations in this report are consolidated below:

1. Undertake a programme of work to review all contracts to ensure they are robust and set out clear expectations for providers and that the contracts are made available to all relevant teams.
2. Develop a master contract register by Autumn 2022 which can be used for forward planning of procurements. Regularly review and update the contracts register.
3. Ensure that every contract has clear ownership with a named person as the lead contact.
4. Further develop, consult on and test the draft contract monitoring and quality assurance policy including the '3 tier pyramid of care' and implement this, ensuring it sets out clear roles and responsibilities for all key team member.
5. Develop a Contracts Operations Manual and Policy which includes proportionate contract monitoring processes which that can be used by everyone involved in the contract management, contract monitoring and quality assurance process and dovetails with joint safeguarding processes.
6. Undertake work across the Procurement Team and the voluntary sector partnership development in the Market Development section of TSDFT to develop appropriate contracts for the voluntary sector.
7. Review the capacity and demand on Procurement to ensure the right resource is in place to deliver on these in line with the new legislation and guidance that is coming out over the next 2 years.
8. Consider where the Procurement function, currently located in TSDFT, would be best placed whilst continuing to strengthen the relationship between the Council's procurement and Trust Procurement.
9. Review whether there is sufficient capacity in the QAIT to contract manage and monitor contracts with the new contract monitoring process.
10. Agree clear process indicators for the Procurement Team and QAIT team setting out the requirements for procurement, contract monitoring and reporting as appendix to the Strategic Agreement.
11. Develop a clear schedule as an appendix to the Strategic Agreement setting out key roles and responsibilities in relation to the agreement and a more detailed working document with named officers and their respective responsibilities.
12. Arrange cross partner workshops to develop and agree joint protocols and documents related to the commissioning and contracting of externally commissioned services.
13. Consider whether there is any appetite and potential for more co-location of teams or joint roles.