



Torbay and South Devon
NHS Foundation Trust

Public Board of Directors

Date: Thursday 26 March 2026

Time: 5.00 pm -6.00 pm

**The Boardroom, Hengrave House,
Torbay Hospital**

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TSDFT Public Board of Directors

The Board Room - Hengrave House

26/03/2026 17:00 - 18:00



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Board of Directors

Future arrangements for delivery of Adult Social Care Services for Torbay Council residents

Date of meeting	Date report produced
26 March 2026	19 March 2026

Author(s)		Report approved by	
Name and title:	Simon Tapley, Chief Strategy & Planning Officer	Name and title:	Joe Teape, Chief Executive
		Date:	19 March 2026

If this paper needs to be presented at a private meeting, please state why and mark as CONFIDENTIAL:

Executive summary

Torbay and South Devon NHS Foundation Trust is wholly committed to delivering high quality, affordable, joined-up health and care services that best meet the needs of local people.

This is achieved through a range of partnership and contractual arrangements with other healthcare providers, local authorities and VCSE organisations that are regularly reviewed to ensure that they remain fit for purpose as demand grows and service models evolve in response to changing need, innovation and technology.

It is in this context that Adult Social Care services for residents of the Torbay Council area have been provided by the local NHS, through a Section 75 agreement, since 2005.

The original agreement was between Torbay Council and Torbay Care Trust with the aim of ensuring *“care is provided and co-ordinated as part of a seamless, faster and more effective service which provides better value and enables better communication”*. That aim remains relevant today. However, it is acknowledged that the agreement reflected the service demand and fiscal circumstances at the time with successive renewals being predominantly based on updated funding arrangements as opposed to any reset of the service and financial model itself.

In developing the 2025/26 service and financial plan, concerns were raised regarding the ongoing suitability and viability of the **current** Section 75 agreement, particularly in relation to the financial arrangements with the totality of the risk for demand and cost growth residing solely with the Trust.

A Board Development session was held in June 2025, with updates provided to the Board in July, September, November and December. Considerations have focused on whether the current contractual arrangements should continue, or notice should be served by 31st March 2026 to terminate the current contract from 1st April 2027 with a view to negotiating a revised partnership agreement that better reflects current demand, modern practice and statutory responsibilities.

In November 2025, a detailed paper was presented to the Board which highlighted the need to complete the second phase of the financial analysis (being undertaken by Partners in Care and Health) and the sample case-file audit to better understand the potential extent of the changes in attribution of costs should notice be served on the current agreement.

A further update was provided to the Board in December, and a presentation was made to the January Board Development session providing updates against the actions agreed in the November Board.

This paper brings together all the work that has been done in 2025/26 to assess the risks and opportunities of continuing with the current Section 75 agreement and makes a recommendation for the reset of future contractual arrangements.

It is important to note that if the Trust Board decides to serve notice on the current Section 75 agreement, this in no way signals any intention to end partnership working with Torbay Council. The Trust remains fully committed to integrated working as a key component of supporting people to live well in the community.

However, the Trust Board needs to be assured that the future service model reflects best practice and that the underpinning contractual and financial framework provides value for money in line with relevant statutory accountabilities.

Section	Assurance (Limited/Satisfactory/ Significant)	Trend from previous report
All	Satisfactory	N/A

Appendices

- Annex 1 – Scrutiny Report Section 75 Agreement
- Annex 2 – Letter in Response to Adult Social Care and Health Overview and Scrutiny Sub-Committee’s Report dated 4 February 2026
- Annex 3 – Quality and Equality Impact Assessment Tool

Committees that have previously discussed/agreed the report, and outcomes of that discussion

N/A – matter reserved for the Board

Key recommendations and actions requested

The Board is asked to:

1. **Reaffirm** its commitment to ongoing partnership working with Torbay Council and Devon ICB to deliver high quality, affordable, joined-up care for local people
2. **Consider** the assessment against the previously agreed options for addressing the challenges within the current S75 agreement
3. **Discuss** and **agree** that all efforts have been made to find a financial solution that would allow the current arrangements to continue without ongoing and further detriment to the Trust
4. **Note** that the timing and detail of the final decision needs to be aligned to the requirement to submit a 3-year financial plan to NHSE for approval before the end of March that demonstrates a clear route to financial sustainability for the Trust
5. **Agree** that in the context of the above, the Trust has no viable alternative than to take the decision, to serve notice on the **current** S75 agreement
6. **Agree** that the Trust will urgently work with Torbay Council and Devon ICB to establish a Transition Programme, reporting to the S75 Partnership Board, to plan and manage the change process through to April 2027
7. **Agree** that through the transition programme, the opportunity to establish new and strengthened partnership and accountability arrangements with Torbay Council and Devon ICB should be maximised
8. **Agree** that the Trust will continue to work with Torbay Council and Devon ICB to ensure that the current EQIA is updated to reflect the revised service model that will be developed during the transition period and that this will be brought back to the Board for assurance on appropriate mitigations before the end of March 2027
9. **Agree** that irrespective of the nature of future partnership arrangements, the Trust will commit to delivering continuity of health input to joint packages of care in the community
10. **Note** that as a minimum, future provision of integrated out-of-hospital care to residents of Torbay Council will be aligned to that currently provided by the Trust to residents of South Devon.

How does this report further our purpose to 'support the people of Torbay and South Devon to live well'?

This paper sets out recommendations for the future arrangements for adult social care and includes an equality impact assessment.

How does the report support the Triple Aim	
Aim	Impact
Population Health and Wellbeing	Included within equality impact assessment and will be further assessed during the transitional year.
Quality of services provided	Included within equality impact assessment and will be further assessed during the transitional year.
Sustainable and efficient use of resources	The current arrangements are no longer financially sustainable, and this report supports the medium-term financial plan.

Impact on BAF Objectives	
BAF Objective	Impact
Quality, Safety and Patient Experience	Impacts are included within the Equality Impact Assessment. The BAF for 2026/27 will be revised to reflect the decision contained within this report.
Leadership and Governance	
Performance	
People and Culture	
Strategy and Business Intelligence	
Finance	

Risk
The future of adult social care in Torbay is a key strategic risk to the Trust contained within the Board Assurance Framework in terms of reputation, financial and quality of care.

Risks lodged on Datix:

External Standards affected by this report and associated risks
NHS England Care Quality Commission National policy, guidance (ability to submit a compliant annual plan and medium term financial plan) Key national metrics such as ASC wait times

Future arrangements for delivery of Adult Social Care Services for Torbay Council residents

Introduction

In developing the 2025/26 financial plan for Torbay and South Devon NHS Foundation Trust (TSD), significant concerns were raised regarding the level of overspend in adult social care services. This resulted in the Board deciding to commence a process of active consideration as to whether the **current** Section 75 (S75) agreement, for provision of adult social care for Torbay Council residents, should continue in its current form.

The most recent S75 agreement covers the period from 1st April 2025 to 31st March 2030. The agreement allows for a period of 12-months-notice to be served at the end of each financial year.

A Board development session was held in June 2025 where the process to establish the baseline financial position was agreed, and the information required for the Board to make an informed decision about the future contractual arrangements was determined.

A detailed paper was presented to the private session of the Board in July 2025 with progress updates in September, November and December 2025. A further Board development session was also held in January 2026.

In line with the contractual terms, should the Board decide to terminate the current S75 agreement, the decision would need to be made, and notice served, before the end of March 2026.

Should the Trust Board decide to serve notice on the current Section 75 agreement, this would in no way signal any intention to end partnership working with Torbay Council and Devon ICB. Serving notice would trigger a 12-month transition period during which partners would need to work together to develop a new model of strengths-based care via a reset of the partnership arrangements that places delivery responsibility with the most competent partner and financial responsibility with the relevant statutory body.

This paper brings together all the analysis undertaken and summarises the advice and feedback that the Board has considered to date. It deliberately focuses on the financial implications of the current contract as that is the primary driver for consideration of the future of the S75 agreement.

Background to the current S75 agreement

Adult Social Care services for residents of the Torbay Council area have been provided by the local NHS through partnership agreements since 2005.

The original agreement was between Torbay Council and Torbay Care Trust in accordance with the **Health Act (1999)** and the **Health and Social Care Act (2001)** with the aim of ensuring “*care is provided and co-ordinated as part of a seamless, faster and more effective service which provides better value and enables better communication*”.

The agreement outlined the requirement for a jointly prepared Annual Strategic Agreement that would be prepared by the Council, setting out the financial contributions of each partner, negotiated and signed off before the commencement of each financial year.

The agreement also outlined the baseline funding and a process for agreeing how:

- inflation would be reflected in contributions
- any future growth in demand would be managed through a negotiation of either adjusted service provision or additional funding
- any disputes would be resolved

The agreement was explicit that any overspends notified to the Council by the Trust would be “*apportioned between the partners in a just and equitable manner taking into account the circumstances of and reasons for the overspend and the council shall pay their contribution to the overspend to the Trust*”.

With the passage of time and various changes in personnel and organisational structures, it has not been possible to track whether the annual strategic agreements and sharing of financial risk were completed year on year.

It appears that this agreement remained in place until April 2016 when Torbay Care Trust merged with Torbay and South Devon NHS Foundation Trust and an updated Framework Partnership Agreement was entered into by Torbay Council, NHS South Devon and Torbay Clinical Commissioning Group and Torbay and South Devon NHS Foundation Trust – effective 1st July 2016.

The 2016 agreement outlined:

- the baseline financial contributions to the pooled fund by each partner
- the obligation on the host to ensure that any overspend is strictly restricted to permitted expenditure and notified to the Partnership Board at the earliest opportunity
- that any overspend or underspend in any of the revenue expenditure pools would be subject to the Risk share agreement

The relevant schedule in the agreement does not definitively articulate the risk share percentages. It details in section 3 the funding arrangements for the Better Care Fund of £11m and goes on to state that *“if there is an overspend or underspend in any of the revenue expenditure pools, the ICO Risk share agreement will apply”*.

This is assumed to be the whole contract, but the actual risk share was not appended.

A Strategic Agreement for the delivery of adult social care (April 2020 to March 2023) was signed in 2021. This included an updated risk-share agreement which articulated the *“share of the financial risk going forward as a function of the wider performance of the Trust rather than in relation to adult social care”*. It is unclear what this means in practical terms or indeed therefore how any overspend would be calculated and risks apportioned to partners.

However, the agreement specifies:

- a capped commitment from Torbay Council of £45million per annum for core spend plus an additional £2million *“to acknowledge the spend is unacceptably over this level for the period of the agreement”*
- a non-recurrent additional payment of £1million in 2020/21
- an acknowledgement that all parties need to work together to deliver savings of £2million per annum in respect of costs of Adult Social Care

In addition to the core funding, allocations are received each year from Torbay Council in the form of grant funding relating to:

- Market sustainability and improvement fund
- Delayed Discharges (Better Care Grant)
- Social Care Grant

Some of this grant funding is a direct full pass-through to the ICO; for others the full adult services component is passed through; and in terms of the Social Care Grant, it appears that some is retained by the Council. Given the changing nature of the grant funding year on year, this is not included as part of the core funding but makes a regular contribution to the total annual income for ASC services.

Whilst not clearly specified in the agreement, the position is understood to have been as outlined in **Table 1**.

Table 1: ASC funding from Torbay Council from 2020-2023

Year	Baseline	Additional non-recurring funding	Additional one-off payment	Total core funding	Grant funding
2020-21	£45m	£2m	£1m	£48m	£6.926m
2021-22	£45m	£2m	-	£47m	£6.106m
2022-23	£45m	£2m	-	£47m	£6.436m

In March 2022, an extension of the Funding agreement was signed by Torbay Council, NHS Devon Clinical Commissioning Group and the Trust to run until 31st March 2025. This aimed to “*move from a historic negotiated contract based on an initial assessment of likely future demand and income under tariff to a longer term, planned level of income in line with commissioner funding, which seeks to better enable the ICO to shift setting of care away from acute settings*”.

The agreement stated that this arrangement gave rise to a **health premium** which would be kept under review. The **health premium** is understood to be a financial benefit that is accrued to the Trust as a direct consequence of the integrated model. There is a value placed on it in the financial schedule (**Table 2**), but it is not known how this is calculated, whether it is assumed to be cost avoidance or cash releasing savings, and if it is recurrent or a historical one-off benefit.

The income from Torbay Council to TSD was specified in the agreement as follows:

2023/24	£55.4m
2024/25	£56.5m (including inflationary uplift)

This funding was allocated on the assumptions outlined in **Table 2**.

Table 2: ASC Income and expenditure (2023/4 and 2024/5) as included within the contract documentation

	2023/24 £m	2024/25 £m
Trust costs	74.7	80.0
Trust savings plan	(6.7)	(7.1)
Forecast cost	68	72.9
Contribution from Torbay Council	(55.4)	(56.5)
Health Premium	(5.0)	(6.5)
CC/Council s256	(5.0)	(5.0)
Collaborative target savings actions	(2.6)	(4.9)
Net position	0	0

On the basis that the Trust CEO signed the contract, it must be assumed that:

- The Trust costs in the contract schedule reflected the planned expenditure
- The Trust savings plans were backed by CIP schemes and were delivered
- The **health premium** was an agreed cash-releasing benefit to the Trust
- The collaborative savings actions were agreed and delivered

If any of these assumptions were not correct, then they would have contributed to the recurring deficit.

The agreement made clear that this arrangement superseded all previous agreements and specified that no further revenue funding would be made by the Council to the ICO.

By default, therefore, the 2022 agreement negates the opportunity to apply any risk-share on future demand growth. However, it does note that should the Council receive further funding specifically for adult social care, it would be spent in accordance with the grant purpose and conditions.

For the two years covered by this agreement, additional grant income was received as follows:

2023/24	£6.749m
2024/25	£9.116m

This is non-recurring money and as such it is not included in the core funding allocation.

A further extension of the funding agreement, dated March 2024, took effect from 1st April 2025 for the period to 31st March 2030, the terms of which mirrored the 2022 agreement except for the updated financial schedule which identified:

- Annual core funding from the Council as follows:
 - 2025/26 £59.05m
 - 2026/27 £61.6m
 - 2027/28 £63.3m
 - 2028/29 £65m
 - 2029/30 £66.7m
- Non-recurring funding for IT, transformation partner and associated transformation activity, and capital funding for two extra-care / supported housing sites.

Again, it was specified in the agreement, signed by all parties, that no further revenue funding would be made by the Council to the ICO. The agreement makes no provision for growth and contains no risk-share commitment. It is silent on grant funding which has been assumed to continue to be passed through as in previous years.

Impact of the s75 agreement in 2025/26

For adult social care, there are 3 principal sources of income:

- Torbay Council
- Client Contributions
- DPT recharge (mental health)

The 2025/26 position, summarised in **Table 3**, identifies the gap between income and expenditure of £26.3m.

Table 3: ASC Planned Expenditure 2025/26

Source	£m
2025/26 Planned Expenditure Before CIP	110.8
Planned CIP	(2.6)
Planned Expenditure	108.2
2025/26 Planned Income (Budget)	
Client contributions & DPT recharge	(22.8)
Torbay Council	(59.1*)
Planned Income	81.9
Residual gap (Budget Deficit)	26.3

**The income identified in Table 3 does not include grant funding*

This compares with the forecast in the 2022 agreement that expenditure for 2024/25 would be £80m (net of client contributions and DPT recharge) and that the agreed savings and mitigations (**Table 2**) would enable the budget to be balanced.

What is not clear from the 2024/25 financial reporting is whether the target savings and mitigations were realised and the overspend attributable to further unexpected growth, whether the savings and mitigations were not delivered or a combination of both. This has been a complicating factor when trying to determine the root cause of the overspend and options to address the service cost pressures.

Analysis by the TSD finance team in June 2025 calculated the actual gap between income and expenditure in 2025/26 as £33.7m and not the £26.3m stated above. This is because the expenditure detailed in the table above does not account for the full staff costs and that the ICO contribution to Trust overheads is not included in the service budget.

Financial assessment

The financial and performance analysis has been significantly constrained by the quality of the information available and, given the unique nature of the integrated service model in Torbay, the lack of comparative data.

Independent subject matter expertise was commissioned to support the financial analysis, focusing on 3 specific areas:

- Agreeing the operational cost base for adult social care services for Torbay Council residents
- High-level independent review of Torbay Council's financial position to inform discussions about the potential for further support to adult social care services
- Independent review of financial position, benchmarking and improvement plans

The overall aim of the reviews has been to establish an agreed position on the scale of the deficit, opportunities for further transformation savings, the potential for sharing the risk on expenditure growth and the likely apportionment of costs if notice were to be served on the current S75 agreement.

Jointly commissioned by Torbay Council and the Trust, the review undertaken by Partners in Care and Health (PCH) assessed the drivers of increases in demand and costs and the potential for benefits realisation from the existing transformation programme. The outcome of the first phase of this review was presented to the Board in November 2025.

The review identified that high spending is largely driven by the volume of patients in the care system as opposed to high unit cost. However, it is acknowledged that this analysis may be *“skewed by large numbers of individuals receiving minimal care packages, many of whom may not typically be allocated a formal care package in other systems”*.

A snapshot of adult social care costs in the same week in January, in each year from 2023-2026 (**Table 4**), has been taken to identify trends in activity and expenditure.

Table 4: ASC activity and spend trend (Sample week - 2023-2026)

	15/01/23	14/01/24	12/01/25	11/01/26	% Change over 3 years
Clients	2400	2618	2751	2778	15.8%
Gross weekly spend	£1,357,174	£1,727,619	£1,926,514	£2,015,373	48.5%
Average spend per client	£565	£660	£700	£726	28.3%

This clearly demonstrates that the drivers of the deficit are both volume and cost. Over the 3-year period, there has been a 15.8% increase in the numbers of Torbay residents receiving adult social care costs with an associated 28.3% increase in average spend per client. The collective impact on gross spend over this period is 48.5%.

Demand overall is attributed to Torbay’s older population, high prevalence of learning disabilities and other complex needs, and high levels of deprivation. The fee uplift in April 2023, linked to market sustainability, was a significant factor in the scale of increase in average client spend between 2023 and 2024.

The independent PCH report identifies that the numbers of individuals entering the care system, particularly the level of residential care home placements, appears higher than would be expected for the population and suggests that hospital discharge pressures may be driving avoidable long-term dependency on adult social care services.

The PCH Review confirmed that the “**estimated £31m gap between what is allocated by Torbay Council and what is spent on delivery by the Trust appears accurate**”. The report goes on to say that this represents 44% additional spend above the contract income of £68m with likely contributing factors including:

- Different methods of budget setting
- Potential conflation of health costs with social care costs
- Potential over-provision of care which is not Care Act compliant

However, it also argues that Torbay Council’s spend on ASC, at £761/head adult population compares favourably with the average for the SW Region (£657/head adult population) and ranks 11th out of 153 councils in England. The review also reports that ‘**all grants and funding relating to ASC have been accounted for in full in terms of contract price for the S75 agreement**’.

The current service model is described as “*inefficient and expensive*” with the benefits of integration having been lost over time.

The review states that if Torbay were to reduce to average spend, savings of circa £12.286m could be realised.

High use of residential and nursing home placements is identified as a key driver of costs with a national ranking of 149/153 for 18–64-year-olds and 135/153 for over 65’s. This in turn suggests the need for a more strengths-based approach to service delivery is required together with more effective market management and focus on local solutions (including housing and use of the voluntary sector) which appear to be significantly under-developed in Torbay.

What has become increasingly clear from the analysis to date is that within an integrated delivery model, there is no single mechanism for segregating costs that by traditional definitions would be attributable to either social care or health care. This means that a proxy measure would need to be generated from a sample of cases and applied to the total spend to give an indication of the financial consequences for both the Trust and Torbay Council if the S75 agreement were to come to an end.

Therefore, as part of Phase 2 of the PCH review, it was agreed that a sample of cases would be assessed by a small team of experienced social care professionals in an attempt to identify correct attribution of costs. In preparing for this review, it was acknowledged that this could raise issues regarding the appropriate assessment of need and attribution of costs between adult social care (ASC) and funded nursing care (FNC).

It was also noted that whilst this would be unlikely to reduce the overall cost of care, it could result in changes in the allocation of costs against budget. It might also result in less client contributions or even increased eligibility for continuing

healthcare funding (CHC) which would increase overall costs to the NHS.

This work was approached from the perspective of the responsibilities and duties of Adult Social Care under The Care Act 2014 which seeks to ensure that individuals are given adequate advice and signposting to meet their needs in a strength-based manner using community assets to meet their outcomes.

Concern was raised regarding the variability of detail within the assessment documentation, which, coupled with a relatively small sample, makes it difficult to draw definitive conclusions. However, it is reasonable to conclude that from a strictly adult social care perspective, opportunities for better outcomes and cost avoidance may be possible due to:

- use of assistive technology and/or enablement approaches to reduce dependency
- the potential for tapering community interventions through setting to set clear, time-bound enabling goals
- the potential to reduce frequency of visits in community packages
- removal of non-eligible tasks from packages of care (e.g. companionship, cleaning)
- better use of Direct Payments and Personal Assistants to increase flexibility and cost-effectiveness of support
- a more consistent and less risk-averse approach to decisions about 1:1 care in care homes
- better use of voluntary sector services with reduced reliance on intensive support

The outcome of the case review suggested that for the 119 cases there is the potential for savings of between £1.3m and £4.6m per annum to the ASC budget through reattribution and the detail was presented to the Trust Board in January 2026.

The Trust Nurse assessors have subsequently reviewed the health component of the care packages in same sample group, and their findings are summarised in **Table 5**.

Table 5: Outcome of Nurse assessor case review of the PCH sample

Category	Number of cases sampled	PCH Review suggested findings	CHC Nurse Assessor review findings		
			Potential Health	Out of Area	Not Health
<£500	30	7	0	0	7
£500 - £2,000	49	10	0	0	10
>£2000	40	25	6	6	13
	119	42	6	6	30

It is therefore agreed that extrapolating the sample cases reviewed cannot give a true reflection of the cost-base and therefore all cases would need to be jointly

reviewed and signed off by the Trust and Torbay Council as part of any transition plan.

Performance overview

An assessment undertaken by Torbay Council and presented to the Trust Board in January 2026 suggested that the current “*integrated model of health and social care covered by the S75 agreement has focussed increasingly on frailty and older people*” and that “*this has supported admission avoidance and timely discharges from hospital*”.

It is extremely difficult to directly attribute admission avoidance to the integrated health and social care model, especially given more recent developments in virtual wards, Same Day Emergency Care (SDEC), the implementation of a new frailty service and changes in medical and surgical admissions services (all of which are health funded and health delivered initiatives).

There are multiple metrics that help assess overall admission avoidance and timely discharges including:

- Trends in ED attendances (by age group)
- Numbers of patients attending ED who are treated and discharged without admission
- Zero lengths of stay
- Numbers of patients who have an inpatient hospital stay (measured by deaths and discharges)
- Average length of stay
- Numbers of patients meeting the ‘no criteria to reside’ (NCTR) definition
- Numbers and types of patients receiving ambulatory care through SDEC, Frailty services etc.

Given that patients can be admitted to hospital through a variety of routes, one of the most reliable measures of demand for acute hospital beds from a population is the discharge data. When weighted for population demographics this allows for a fair comparison across different groups.

A high-level summary of the Torbay Hospital discharges (April to November 2025) is outlined in **Table 6**.

Table 6: Torbay Hospital Discharges by LA area (01/04/25 to 30/11/25)

	South Devon catchment population	Torbay catchment population
Actual population		
Rate of discharges per 1000	79.21	105.99
Weighted population		
Rate of discharges per 1000	71.46	86.38

The weighted population data demonstrates that the numbers of people being discharged from Torbay Hospital (per 1000 population), even when adjusted for deprivation, are higher for Torbay than for South Devon.

On the basis that access to health-delivered admission avoidance schemes are provided in the same way to both populations, this data suggests that there is no apparent additional benefit in hospital admissions avoidance attributable to the integrated health and care model in Torbay.

However, it is not disputed that the Trust performs well in terms of hospital discharge compared to the Regional and National average. The PCH Phase 1 report, based on September 2025 data, identifies that 89.8% of patients were discharged from TSD with no delay compared with 86.3% across the region.

However, this 3.5% benefit comes at a very high cost and initial internal comparisons with the TSD South Devon population suggests that this could equate to less than 10 beds (or bed equivalents).

Further information presented by the Torbay Council CEO to the Board confirmed:

- The most significant cost and volume pressures are in 18-64 working age adults
- Torbay continues to benchmark high against CIPFA comparators for volume in older persons and volume in working age adults
- There are overly large provider markets driven by purchasing of support rather than focussed shaping of the market
- There are pockets of very high-cost (>5K) support arrangements, evidenced through a loss of outcome focussed social care delivery (12 people, circa £4.6m pa)
- There are a large number of low value support packages that might be able to be delivered differently in line with other Adult Social Care models in other areas (695 people circa £6.8m pa)

In the same presentation, Torbay Council acknowledged that *“despite support provided by external delivery partners, historically the partnership has been unable to drive the necessary transformation to address the escalating cost base and deteriorating outcomes for people”*.

The PCH review suggests that culture, leadership, commissioning, operational practice and poor use of information to inform management decision-making are contributing to the financial challenges. Torbay Council reinforces the need for transformational change over a period of 3-5 years to reduce costs and improve outcomes.

None of these views represent any criticism of the staff providing the integrated service. However, they do suggest opportunities exist to strengthen the

arrangements that would enable delivery of more efficient and effective adult social care services, particularly for adults of working age.

Trust position on engagement and/or consultation

The Trust is fully committed to engagement with service users, staff and partners and to openness and transparency in its decision-making.

Whilst robust and ongoing engagement is critical to success in the delivery of any change, this responsibility is distinct from the defined requirement for formal public consultation in line with the National Health Services Act 2006.

Should the decision be made to serve notice on the Section 75 agreement, the Trust has taken advice on the requirement for public consultation.

In this context, it should be noted that there was no requirement for public consultation, or any challenge raised, when the original decision was made for the Trust to deliver services on behalf of the Council under the Section 75 agreement. Also, the Trust has continued to provide joined-up services with Devon County Council for the South Devon catchment population in parallel with the Torbay arrangements.

Torbay Council has advised the Trust of their interpretation of the legal and regulatory provisions (under the Local Authority (Public Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 as amended), with regard to the Committee, NHS commissioners and providers, as they pertain to the review of Adult Social Care, which is provided under the s75 legislative framework (Section 75, NHS Act 2006).

Torbay Council has highlighted a number of specific sections, within the aforementioned regulations, namely Regulations 23, 26 and 27 in relation to a “responsible persons” duty to consult local authorities on “substantial developments” or “substantial variations” as pertaining to “health services”.

The advice received by the Trust is that the Section 75 agreement itself serves as a framework under which 2 public bodies contract with the requirement for any consultation attributable to the body which has statutory accountability for the service.

The NHS requirements for consultation relate to ‘healthcare’ and specifically those services which the ICB has a statutory responsibility to commission, of which adult social care is not one.

Health services are defined as being those services commissioned by NHS England in the exercise of its functions (Section, 13Q, National Health Service Act 2006 as amended). As the statutory responsibilities of Adult Social Care vest with the Council

(Section 9, Care Act 2014) this would not fall within that scope. That being the case, the aforementioned consultation requirements as relate to “health services” within the NHS Act 2006 are not, in the view of the Trust, applicable.

Therefore, whilst the Trust remains committed to ongoing full engagement of stakeholders, the advice received by the Trust identifies that public consultation under NHS legislation would not be required should the decision be made to serve notice on the current S75 agreement. This is consistent with experience elsewhere in England as communicated with Torbay Council.

Torbay Council feedback to the Trust on the need for public consultation

Throughout 2025/26, there have been several discussions with officers and the leader of Torbay Council, keeping them up to date with the considerations being made by the Trust. Progress has also been formally reported through the Section 75 Partnership Board where all parties to the agreement are in attendance. Briefings have been provided for the Devon ICB Board, and the Torbay Council Leader, CEO and Director of Adult Social Services made a presentation to the Trust Board in February 2026 directly outlining the Council’s position in detail.

In December 2025, Torbay Council Leader advised members that the Trust was reviewing the current arrangements for the delivery of adult social care with a view to consideration as to whether notice should be served on the existing S75 agreement as per the terms of the contract.

This was discussed further at the meeting of the Torbay Council Adult Social Care and Health Overview and Scrutiny Sub-Board on 18 December 2025 resulting in a request for the Trust to attend a meeting, prior to making their decision, to discuss the position.

The Overview and Scrutiny Sub-Board met on 4th February 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 decide to serve notice, bringing an end to the Section 75 agreement for the integrated care model for the delivery of community health and adult social care services with Torbay Council and the ICB*”. The Trust CEO and Chief Strategy and Planning Officer attended the meeting as requested.

The stated aim of the discussion was to “*seek 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*”.

The meeting acknowledged that the serving of notice on the current S75 agreement would trigger a 12-month transitional period during which all parties would be expected to work together to *“move to a different operating model for delivery of health and adult social care services”*.

The Trust explained that this is about *“adjusting the financial framework that sits behind the agreement between partners”* and that they do not believe this will result in any substantial changes to health services that would result in a duty to formally consult under the health regulations.

At the end of the discussion, the Sub-Board unanimously resolved that *“the proposal to end the agreement will amount to substantial change in both health and social care service delivery.....and.....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 S75 agreement”*.

The Sub-Board made a recommendation that the Councils 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”*.

Following receipt of the Sub-Board report (**Annex 1**), the Trust CEO responded (**Annex 2**) reinforcing the position that adult social care services do not fall within the scope of Section 242 of the National Health Service Act (2006) whilst restating the commitment to open and ongoing stakeholder engagement in the decision and future model for service delivery.

Recent discussions with Torbay Council and Devon ICB

Having planned to take the decision about the future arrangements for the S75 agreement at the Trust Board meeting held in public on 5 March 2026, a request was made by Devon ICB for further tripartite meetings with the aim of finding a solution that would negate the need for the Trust to consider serving notice on the current S75 agreement.

The Trust Board agreed to withdraw the item from the agenda and arrange for an extraordinary Board meeting to be held in public before the end of March 2026 to ensure continued alignment with the contractual notice deadline.

Two meetings have been held within the past 3 weeks with all parties committed to identifying a constructive way forward. Discussions have centred around a request made by Torbay Council to delay the decision for 6 months.

In response, Devon ICB has suggested implementing a risk-share agreement on baseline and growth costs for the first 6 months of 2027/28. Torbay Council has advised that it is not in a position to support any financial risk-sharing although it maintains its offer to provide support for service transformation.

No detailed transformation plan with associated route-to-cash savings has been generated to date, and, even if the risk-share were to be agreed, there is no ongoing commitment beyond the ICB proposed 6 months.

What has become clear in these discussions is that there is an apparent conflation between serving notice on a current contractual agreement and an assumption of withdrawal from joint working. This is absolutely not the intention of the Trust.

The 12-month notice period provides the opportunity and incentive for all partners to develop and deliver a transformation programme that reduces overall cost through designing a new service model and contractual framework.

In undertaking this work, it is highly likely that there will be a shift of costs between health and social care, as appropriate to their statutory responsibilities. However, this does not preclude the establishment of new partnership arrangements and agreements that continue to provide an integrated offer for service users as appropriate to need.

Equality Impact Assessment

Any changes or developments in services within the Trust are subject to an assessment of the impact on quality and equality. The use of a standard tool (EQIA) ensures that key issues have been considered and any emergent risks mitigated.

Annex 3 contains the initial EQIA as it relates to the Trust Boards decision on the serving of notice on the current S75 agreement. It summarises the potential impact on different client groups and summarises theoretical risks and mitigations as they relate to the potential for:

- Service instability
- Future hospital discharge delays
- Workforce attrition
- Reputational risks and challenge

Significant to this EQIA is the priority to develop the revised service model and contractual framework during the 12-month transition period. This should enable any potential service instability to be fully mitigated.

A further detailed EQIA will need to be developed for the revised service model, with robust mitigations if required, prior to any changes in delivery mechanisms being made. This will need to be agreed through the S75 Partnership Board and made public as part of regular progress updates on the transition plan made to the Board during 2027/27.

Key considerations for the Board

In the private meeting of the Board on 31st July 2025, the following considerations were confirmed:

- The original ambitions as stated when the ICO was established remain relevant. However, questions have been raised about the organisational capacity and capability to optimally manage adult social care services.
- The continued scale of deficit in adult social care services, as part of the ICO, cannot adversely impact on resources available to support the acute and community services provided by the Trust. If this were to happen it would create further inequity across Devon.
- Board members are committed to taking a balanced approach to determining the future of the ICO, however, any decision must mitigate ongoing financial risk to the Trust.
- The future delivery model must take into consideration the potential for Local Government reorganisation and the need to ensure equity of adult social care provision going forward.

At the same meeting, the decision was taken to explore all opportunities to mitigate the financial risk to the organisation arising from the adult social care deficit. Three options were agreed for further consideration as follows:

Option 1

Continue with the current contractual arrangements, maximising the opportunity for service transformation and demand management initiatives to deliver a balanced position:

- a. **EITHER** within the adult social care budget
- b. **OR** as much as possible within the adult social care budget with any shortfall cross subsidised by savings from elsewhere within the Trust

The increased adult social care demand projections coupled with the scale of the savings requirement to balance the budget meant that very early in the process it became clear that achieving break-even within the adult social care budget was not going to be possible.

This was further supported by the PCH report and the presentation from Torbay Council to the Board in January 2026, both of which acknowledged previous failures to deliver savings and confirmed the need for significant transformational change

over a minimum period of 3-5 years in the context of known capacity and capability constraints.

In the context of the totality of the Trust deficit (over and above that attributable to adult social care services) and the wider requirement for financial recovery across NHS Devon, the option for cross-subsidisation of the adult social care budget from other Trust services has also been ruled out.

Option 2

Work with Devon ICB and Torbay Council to renegotiate the terms of the contract and reintroduce a risk-share agreement whilst maximising the opportunity for service transformation and demand management initiatives to reduce costs.

Numerous discussions have taken place with both Devon ICB and Torbay Council, individually and through the S75 Partnership Board over the past 6 months to explore this option.

Whilst there has been full commitment to working in partnership to maximise the opportunities for service transformation to reduce costs, both organisations have previously formally confirmed to the Trust that they cannot consider any form of risk-share agreement going forward.

Torbay Council has offered some non-recurring support for transformation and has produced an estimate of potential cost savings but has not been able to identify a route to cash or commit any recurrent revenue funding to assist in bridging the deficit.

More recent discussions have resulted in a proposal from Devon ICB to “share overspends and risks for the first 6 months of 2027/28” in such a way that “incentivises Torbay Council to deliver maximum benefits from the transformation programme and incentivises TSD to actively participate in the transformation programme to ensure success, while the ICB offsets some of TSD’s risk”.

This offer to share risk has been made in the context of the Trust deferring any decision on serving notice on the contract for 6 months. Even if agreed, this proposal does not give the Trust any certainty about future risk-share on funding for baseline activity or growth after the proposed 6-month extension period.

In response to the ICB proposal, Torbay Council has indicated that they are not able to agree any risk share arrangements on the deficit but, as stated above, will consider non-recurring transformation funding.

It is clearly in the best interest of all partners to work constructively together to transform the service model and eliminate the financial deficit. It could be argued that if there were detailed plans to significantly reduce costs that all partners had

confidence in delivery, then agreeing to a full risk-sharing agreement from 2027/28 should be straightforward.

Without such a risk-sharing agreement going forward, full financial responsibility would be retained by the Trust, and the position would remain unsustainable

Option 3

Serve the 12-month contractual notice on the current S75 agreement before 31st March 2026 with transfer of the provision of adult social care services back to Torbay Council from 1 April 2027.

It is important to note that ending the current agreement does not mean cessation of partnership working.

Serving notice on the S75 agreement would trigger a 12-month transition period during which the Trust would seek to work with Torbay Council and Devon ICB to establish new partnership arrangements that would realise the national and local ambition for neighbourhood health whilst ensuring full alignment with statutory service and financial accountabilities.

Summary and Conclusion

The Trust remains fully committed to integrated working as a key component of supporting people to live well in the community.

In the context of the 10-year NHS plan and the recently published Neighbourhood Health Framework¹, the timing of this decision provides a key opportunity to redesign the partnership arrangements to deliver more accessible, integrated and preventative care going forward.

There is a clear expectation that new systems of joined-up care will be developed across the NHS, local authorities and the voluntary, community and social enterprise sector to accelerate the delivery of neighbourhood health – improving outcomes; reducing health inequalities; delivering personalised and joined-up care; reducing avoidable demand on acute services; cutting waste and duplication; and helping the NHS deliver on core targets.

Should the Trust Board decide to serve notice on the current Section 75 agreement, this would in no way signal any intention to end partnership working with Torbay Council and Devon ICB. Rather, it would aim to prompt a reset of the partnership arrangements to better align with statutory accountabilities and new ambitions.

Since the extent of the financial deficit associated with the delivery of adult social care services was fully identified in April 2025, the Trust has been working, with partners, to identify the key drivers of the deficit and opportunities to close the gap.

The Board has identified a number of options to mitigate the ongoing and future financial risk to the Trust of continuing with the current S75 agreement. Outlined in this paper, these include reinstating the risk-share agreement that underpinned the original partnership model which, unfortunately, other signatories to the agreement (Torbay Council and Devon ICB) have been unable to commit to.

It has already been determined by the Board that the current position is unsustainable. The current model is not affordable and, as confirmed by both the PCH independent review and Torbay Council, is not delivering optimal outcomes for clients. This is no reflection on the staff providing the service who, as acknowledged by the recent CQC inspection, are providing good services to local people.

Despite unequivocal commitment from the Trust, Torbay Council and Devon ICB to play their full part in service transformation, no solutions have been identified that would address the financial deficit.

As work has progressed, it has become increasingly clear that not only are there financial challenges with this service, but with the very best of intentions, the arrangements are failing to deliver best practice in terms of a strengths-based approach to care, particularly for adults of working age. This in turn risks delivering sub-optimal outcomes for clients.

It is in this context that the Board has needed to consider whether the Trust is best placed to continue to provide adult social care services on behalf of Torbay Council under the **current** S75 agreement.

The comparative data for the Torbay Hospital catchment population in terms of admissions avoidance does not indicate any benefit from the current S75 agreement and any impact of changes to the model on delayed discharges can be mitigated by additional beds or community services at a significantly lower cost than the current deficit.

Whatever the future model, there will be a requirement for ongoing partnership arrangements with Torbay Council. It is therefore not unreasonable to expect that all parties will act in the best interest of the local population to ensure that the benefits of any future model would be maximised. However, it is very clear that a decision to serve notice on the current S75 agreement would not be supported by a number of local stakeholders including Torbay Council.

The Board started this journey with a commitment to doing everything possible to work with partners to find a solution to the financial deficit associated with the adult social care contract. In the absence of an agreed solution, the Board is left with no viable alternative other than to serve notice on the current S75 agreement.

Whilst this would mean that the Trust will cease to provide adult social care services on behalf of Torbay Council from 1 April 2027, this does not preclude any future partnership agreement that aims to provide a more agile and responsive strengths-based integrated model of care that is in line with the national **Neighbourhood Health Framework**, is based on national best-practice, supports continued joint working between partners, strengthens incentives to deliver best value services, and fairly attributes financial responsibility and risk to the relevant statutory bodies.

This will be an important consideration for the Transition Programme that will need to be established to deliver the requisite changes during the notice period.

Recommendation

The Board is asked to:

- **Reaffirm** its commitment to ongoing partnership working with Torbay Council and Devon ICB to deliver high quality, affordable, joined-up care for local people
- **Consider** the assessment against the previously agreed options for addressing the challenges within the current S75 agreement
- **Discuss** and **agree** that all efforts have been made to find a financial solution that would allow the current arrangements to continue without ongoing and further detriment to the Trust
- **Note** that the timing and detail of the final decision needs to be aligned to the requirement to submit a 3-year financial plan to NHSE for approval before the end of March that demonstrates a clear route to financial sustainability for the Trust
- **Agree** that in the context of the above, the Trust has no viable alternative than to take the decision, to serve notice on the **current** S75 agreement
- **Agree** that the Trust will urgently work with Torbay Council and Devon ICB to establish a Transition Programme, reporting to the S75 Partnership Board, to plan and manage the change process through to April 2027
- **Agree** that through the transition programme, the opportunity to establish new and strengthened partnership and accountability arrangements with Torbay Council and Devon ICB should be maximised
- **Agree** that the Trust will continue to work with Torbay Council and Devon ICB to ensure that the current EQIA is updated to reflect the revised service model that will be developed during the transition period and that this will be brought back to the Board for assurance on appropriate mitigations before the end of March 2027
- **Agree** that irrespective of the nature of future partnership arrangements, the Trust will commit to delivering continuity of health input to joint packages of care in the community
- **Note** that as a minimum, future provision of integrated out-of-hospital care to residents of Torbay Council will be aligned to that currently provided by the Trust to residents of South Devon.

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 spilt 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.



Torbay and South Devon
NHS Foundation Trust

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Date: 2nd March 2026

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,



Joe Teape
Chief Executive

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

Quality and Equality Impact Assessment Tool

The Quality and Equality Impact Assessment (EQIA) tool reviews the project, function or change as a whole and considers how it will impact specific areas (patient and staff safety, clinical effectiveness, and patient and staff experience). Some impacts identified could be negative, positive, or neutral.

If you think there will be a negative impact, then an impact assessment must be completed. To check this please answer the questions within **Part 1**.



Scheme Number:	
Scheme Name:	Proposed Service of Notice on Section 75 Agreement – Adult Social Care (Torbay)

Part 1: Does a quality and equality impact assessment need to be completed?

Impact Assessment checker:

If one or more option is selected, please complete the EQIA tool, (part 2)

Negatively affects patient safety or clinical effectiveness	No
Negatively affects because of variations or deviations from national guidance e.g., NICE requirements, CQC, Equality Act, Care Act etc.	No
Negatively affects patient, carers, or service user experience	Yes
Negatively affects staff experience	Yes
Negatively affects access to services	No
Negatively affects people with protected characteristics	No

Part 2: Quality impact assessment			
Lead name:	Simon Tapley	Executive Lead:	Chief Executive
Version:	1.0		
Has a previous EQIA tool been completed:	No (Stage 1 – decision to serve notice)		
Has this change been presented within other meetings/committees within NHS Devon:	EQIA panel (next week)		
Has this change been communicated and or engaged with the population of Devon:	Not yet (will form part of transition plan if notice served)		
Summary of proposed change:			
<p>The Trust Board is considering serving 12 months' notice on the Section 75 Agreement under which Torbay and South Devon NHS Foundation Trust deliver Adult Social Care (ASC) services on behalf of Torbay Council.</p> <p>The rationale is that the current agreement places full financial growth risk for ASC with the Trust, with a recurrent deficit of approximately £35m per annum relating to ASC services, representing circa 40% of the Trust's underlying deficit.</p> <p>Serving notice would:</p> <ul style="list-style-type: none"> • Terminate the contractual arrangement placing full risk with the Trust • Trigger a 12-month transition period • Not prevent a replacement partnership arrangement • Result in ASC operational and financial responsibility reverting to Torbay Council if no alternative arrangement agreed <p>The Trust remains committed to integrated working but cannot continue to carry unsustainable financial risk. Scrutiny has expressed concern that ending the Agreement may constitute substantial change and has called for impact assessment and consultation prior to decision-making.</p> <p>This EQIA assesses the equality and quality impact of the decision to serve notice, not the final future model (which will require Stage 2 EQIA).</p>			
Supporting evidence and documents:			
Please detail the impact the change will have on the health and care system and organisations within in:	Potential system impacts include:		

[Impact could be local, peninsular or regionally]

- Disaggregation of a 20-year fully integrated model
- Financial shift of ASC deficit from Trust to Council
- Risk of fragmentation at “front door” health and social care interface
- Potential impact on discharge pathways
- Workforce TUPE implications
- Reputational and regulatory scrutiny risk

Part 2: Impact on Safety, effectiveness, and experience [Please use the support and guidance section for help]				
Groups affected:	Impact type: [Negative, Neutral, or Positive]	Impact description:	Action required:	Measurements to monitor effectiveness of actions:
Patients (ASC users)	Neutral	No change to pathways proposed by the Trust	Joint transition governance board; 12-month managed transition; risk stratified review programme; no immediate service cessation	Safeguarding volume & timeliness; package stability; delayed discharges; complaints; CQC notifications
Patients (community health)	Neutral	No change to pathways proposed by the Trust	Joint discharge protocol; joint quality oversight; escalation routes. Retain Jack Sears contract, Consider investment in increased home based reablement services	DTOC data; discharge destination mix; readmissions
Staff (ASC workforce)	Negative	Uncertainty, morale impact, retention risk	Early TUPE clarity; pensions advice; staff engagement forums; HR transition plan	Staff turnover; sickness rates; staff survey pulse
Carers	Potential negative	Anxiety regarding package stability and assessment processes. The Trust is not proposing any changes to pathways or services	Carer engagement sessions; clear communication; carer assessment prioritisation	Carer feedback; complaints; review backlog
VCSE partners	Neutral	Commissioning model uncertainty	Early dialogue; continuity agreements; co-design of future commissioning	Contract stability; provider failure rates

Part 2: Quality impact assessment Impact on groups of people [Please use the support and guidance section for help]							
C O R E 2 0 +	Groups		Impact			Who and how will this group be affected by the proposal? (Consider access, experience, and outcomes)	What actions are being taken to reduce the impact
			Negative	Neutral	positive		
	Core20	[Most deprived]		x		Risk of delayed access if transition poorly managed	Protect access pathways; maintain single access point during transition
	Plus [Target populations]	[Rural or coastal deprivation]		x		Access communication risk	Accessible communications; VCSE engagement
		[Mental illness]		x		Interface between MH and ASC may fragment	Maintain joint pathway protocols
		[Learning disability]		x		Stability of supported living package	Prioritised review programme
		[Neurodiversity]		x		Assessment continuity risk	Named worker continuity
	[Adversely affected by wider determinants]	x			Increased crisis presentation if instability occurs	Preventative monitoring	
E Q U A L I T Y G R O U P	Age	[<5] [5-18] [18-65] [65-85] [>85]	x			High ASC dependency; hospital discharge risk	Priority safeguarding & discharge monitoring
	Gender	[Male] [Female] [non-binary]		x		No impact	No action
	Sexual orientation	[Heterosexual] [Gay] [Lesbian]		x		No impact	No action
	Religion	[Christian] [Muslim] [Sikh] [Buddhist] [Other]		x		No impact	No action
	Ethnicity	[Asian] [Asian British] [Black] [Black British] [Chinese] [Gypsy/Roma] [Irish] [Mixed Heritage] [White] [White British] [Other]		x		Need for accessible comms	Translated materials
	Disability	[Physical] [Sensory] [speech] [mental]	x			Care package instability risk	No reduction in services during transition period
	Maternity & Pregnancy	[Mother] [Father]		x		Minimal direct ASC impact	Monitor if relevant
Service families			x		No impact	Monitor if relevant	

Tab 3.1 Future Arrangements for Delivery of Adult Social Care Services for Torbay Council Residents

P S	Marriage & Civil Partnerships			x			
	Carers	[Adult] [Young]		x			Increased unpaid burden Carer review prioritisation
	Prisoners			X			No impact No action
	Criminal justice			X			No impact No action
	Veterans			X			No impact No action
	Professions	[Farmers] [Seafarers] [sex workers]			x		

Population Health and Outcomes	
How will the proposal improve population health outcomes?	Indirectly positive if it protects NHS patient care from the consequences of an unsustainable financial model.
How will the proposal support a shift from prevention to treatment?	Stage 1: Neutral. Stage 2 (future model): Opportunity to redesign towards strength-based, preventative care if co-produced.

Part 3: Quality impact assessment Identified risks and mitigation actions						
Risk:	Domain:	Risk score:	Mitigating action:	Timescales:	Action owner:	Describe how the action will be monitored:
Fragmentation of integrated model leading to discharge delays	Safety	L3 I3 = 9	Joint discharge protocol; maintain integrated front door during transition. P2 rehab beds improved usage, frailty service bedding less people	12-month notice		DTOC rates; readmissions
Service instability for 2,700+ ASC recipients	Experience	L3 I3 =9	Phased review; high-risk prioritisation; no sudden contract termination	12 months		Package continuity; safeguarding alerts
Workforce attrition during TUPE	Workforce	L3 / I2 = 6	HR engagement plan; TUPE clarity; pension advice	Immediate		Turnover; sickness
Reputational risk / regulatory escalation	Reputational	L3 / I3 = 9	Transparent engagement; Stage 2 EQIA; consultation if required	Immediate		Scrutiny feedback; NHSE engagement
Legal challenge re: consultation	Reputational/Legal	L2 / I4 = 8	Legal advice; comply with PSED; document EQIA evidence	Pre decision		Legal review
[*Please add rows as needed]						



		Likelihood				
		1 Rare	2 Unlikely	3 Possible	4 Likely	5 Almost Certain
I M P A C T	1 Low	1	2	3	4	5
	2 Slight	2	4	6	8	10
	3 Moderate	3	6	9	12	15
	4 Major	4	8	12	16	20
	5 Catastrophic	5	10	15	20	25

One Devon Support and guidance

Safety domain considerations:
 Avoidable harm to patients
 Waiting leading to harm
 Impact on safeguarding
 Suitably qualified and experienced staff
 Safe staffing levels
 Infrastructure
 Clean and safe environment
 Treatment procedures
 Communication
 Administration

Effectiveness domain considerations:
 NICE guidance and evidence
 Effect on health outcomes
 Promotion of self-care
 Leadership and competence
 Reliability and responsiveness

Useful links and documents:

Diseases and different ethnic groups



Making Access More Inclusive.docx

Experience domain considerations:
 Waiting times
 Patient autonomy
 Dignity, respect, and compassion
 Travel to place of care
 Informed choice
 Empathy & caring,
 Experience measures and feedback

System domain considerations:
 Shared risk with partner agencies
 Accountability and clinical leadership
 Cost effectiveness
 Location
 Design and implementation
 Environmental
 Welfare
 Reputation

Equality domain considerations:
Age: Consider across age ranges on younger and older people, this can include safeguarding, consent, and child welfare.

Religion: Consider impact to different religions and faiths. Services and appointments consider religious beliefs allowing time for praying and fasting periods. NICE guidance changes that impact medication decisions based on religious beliefs.

Gender: To consider transgender and transsexual people, which may include impacts to privacy. NICE guidance changes may impact specific genders.

Ethnicity: To consider ethnicity pay gap, diseases, and different ethnicity groups.

Disability: Consider all disabilities and impacts for example a change in location you would need to consider wheelchair access, accessible to those with visual or hearing impairment. How will you engage the project change to be inclusive. If public transport is needed can everyone access it with ease?

Adversely affected by wider determinants: Consider those people who sleep rough, or whose accommodation is insecure e.g., those living in temporary accommodation, squatting or reliant on temporary accommodation through family and friends (often referred to as "sofa surfing"). Can they access appointment and services.