

## DEVON IMPACT OF TCS ON FOUNDATION TRUST AMBITIONS



HSJ Local Briefing is our new in-depth analysis of the key issues facing the NHS's major health economies

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### In brief

**Issue** As integrated providers serving largely rural populations Northern Devon Healthcare Trust and Torbay and Southern Devon Health and Care Trust face some distinct challenges in ensuring their future sustainability. Earlier this month Northern Devon put back the submission of its foundation trust application to the Department of Health by three months. Meanwhile, Torbay announced it was abandoning its plans to pursue foundation trust status just last week.

**Context** Under the Transforming Community Service programme both Torbay and Northern Devon have taken on services which are due to be recommissioned by 2014. This is expected to be an issue in demonstrating ongoing sustainability to Monitor. In addition both face challenges with the financial viability of their services.

**Outcome** Torbay is likely to look to South Devon Healthcare Foundation trust as a natural merger partner while Northern Devon will continue to press ahead with plans to become a foundation trust in its current form, for now at least.

### The national context

Government policy is that all NHS trusts must become foundation trusts. The original Health and Social Care Bill set a deadline of 2014 but this was extended following the "pause" in the bill's passage through Parliament. The current position is that NHS trusts must become FTs as soon as is "clinically feasible" with a cut off date of 2016. In reality most trusts are still working towards being authorised by 2014. If at any point during the process it is decided the organisation is not viable in its current form it must seek a merger or franchise arrangement or in some cases work can be split between other organisations.

### The local context

Devon has a population of about 1.1m of which about half live in the urban areas of Exeter, Plymouth and Torbay. Outside of these areas the population is considerably more dispersed and it is more than 100 miles and a 2.5 hour drive from its southernmost to its northernmost point. Torbay and Southern Devon provides community services and social care to a population of around 375,000 in the

south of the county while Northern Devon delivers acute community services to 484,000 everywhere else in the county except Plymouth and acute services to around 160,000 residents in the north.

Under the market forces factor adjustments calculated by the Department of Health, Torbay primary care trust receives the second lowest adjustment for local costs of PCTs in England. In 2011-12 NHS Devon was the fifteenth lowest but has been lower in the past. Many people locally feel this is unfair and does not take into account the additional costs associated with providing services in such a rural area. NHS Devon has a longstanding underlying deficit on its acute contracts which is proving stubborn. A significant proportion of this deficit is at Northern Devon. Meanwhile, a paper presented to the board of Torbay and Southern Devon last week revealed a detailed financial analysis had discovered most of the trust's services had not been paying for themselves.

### Torbay and Southern Devon Health and Care Trust

The trust was formed under the transforming community services programme from Torbay Care Trust's provider arm and community services in the south of the county previously provided by NHS Devon. It became an NHS trust on 1 April 2012 and runs 11 community hospitals. The tripartite formal agreement signed by the trust and its commissioners last August committed the trust to being ready to submit its FT application to the DH in April 2013, after one full year operating as an NHS trust. However, at a meeting last week the board agreed to abandon its foundation trust plans and seek a merger following concerns Monitor would find it unviable.

The trust has an income of around £107m of which around £66m is for NHS services, the remainder coming from Torbay Council for social care services. However, the contract for NHS services in southern Devon will be recommissioned by 2014 while Torbay Council will be reviewing its funding in 2013. Chief executive Anthony Farnsworth told the board even though it was not anticipated the contracts for any services would be lost it was unlikely Monitor would view the trust as sustainable with so much of its income "subject to review".

In addition, a detailed financial analysis carried out as part of the development of the trust's integrated business plan discovered the costs of delivering adult social care in Torbay and NHS services in western Devon were not covered by the trust's income while most of the provider arm's corporate costs were being borne by the commissioner. The feeling was that this may have mattered less when the services were part of the PCT, which could shift costs around the system. However, as a provider Torbay and Southern Devon cannot do this and the

additional costs could mean it does not pass Monitor's viability tests which require the organization to be financially sustainable.

As Mr Farnsworth told the board: "A business model whose success is defined in terms of the success of other parties and/or the beneficial impact of its actions upon other parties, will not pass the test of viability when that test is framed in terms of the freestanding provider business as it operates, and as it is commissioned and contracted for today."

The trust faces what Mr Farnsworth describes as a "challenging" 5.6 per cent efficiency requirement in 2012-13. He warned the board that continuing with the FT application ran the risk of the trust and its partners losing local autonomy if the application failed further down the line and the NHS Trust Development Authority stepped in. The authority will manage trusts against the milestones set out in their tripartite formal agreements when strategic health authorities are abolished next year. If deadlines are missed it can and remove the leadership team and impose a solution on the organization for its future form.

In a paper to the board he wrote: "If this situation were to arise the delicate set of local relationships and confidence needed, for example, to secure the commitment of the two local authorities to a locally determined solution may become attenuated."

HSJ understands the local authorities are particularly keen not to have to go through an open tender process to find a partner for Torbay. Officially the transaction will be a takeover rather than a merger and an open process could see bids from private sector providers such as Virgin Care and Serco which have both successfully bid to run

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community services elsewhere in the country. It is anticipated expressions of interest will be invited from local NHS trusts and foundation trusts although more detail about the exact process is expected to emerge following a meeting of NHS South of England on 31 May.

Locally, South Devon Healthcare Foundation Trust, the acute provider, is viewed as the most likely partner. A vertical integration between the trust and Torbay Care Trust's provider arm was considered during the TCS process. However, there was nervousness from GPs about the hospital sucking all the money out of the system. One senior local source said it was decided "the time right". Senior people at both organisations are clear that organisational form has "never been the priority" and had in the past been viewed as a likely distraction to developing closer and more integrated ways of working.

A large well-performing district general hospital, South Devon turned over £211m in 2010-11, according to its annual report. It has a Monitor financial risk rating of 4, where 5 is the best, and an amber/red rating for governance although this is entirely due to exceeding its limit of *Clostridium difficile* cases by three during 2011-12. The trust and Torbay and Southern Devon already have 22 clinical pathway groups bringing together GPs and hospital clinicians as well as joint discharge teams, a joint human resources department, joint director of estates and a joint communications team.

The plan is for Torbay and Southern Devon to have identified a partner by the autumn with the aim of the new organisation being formed by mid 2013. It is likely the criteria set by the board will seek an acute organisation in order to further ambitions for integration. This will rule out Devon Partnership Trust which is set to be authorised by

Monitor later this year. Plymouth Hospitals Trust and Royal Devon and Exeter are neighbouring acutes and both serve the south Devon population as tertiary centres. However it is difficult to see the advantage of delivering community services outside of their core areas. Plymouth, which is currently without a permanent chief executive and has vacancies on the board after three non-executives resigned in protest at the appointment of a new chair, is unlikely to consider it.

### Northern Devon Healthcare Trust

Northern Devon Healthcare Trust provides acute services to a population of around 160,000 from North Devon District Hospital in Barnstaple, increasing to around 250,000 during the summer months. Responsible for a further 17 community hospitals, it also delivers community services to around 484,000 residents in the north and east of the county and specialist services such as sexual health, community podiatry and community dental services on a pan-Devon basis. It is forecasting clinical income of £193m in 2012-13 of which around £93m is for acute services and £84m is for community services.

When it took on community services in the north of the county back in 2006 it was hoped the additional income of around £22m would help increase the trust's viability. When transforming community services came round in 2010-11 it took on community services in the east as well from – one of only two acute trusts in the NHS South West region to do so. Although it is increasingly looking to ensure clinical viability and safety of acute services by developing networks with Royal Devon and Exeter and Taunton and Somerset foundation trusts, being around 50

miles from each commissioners are clear acute services on the site are safe.

However, the trust has recently put back the submission date of its foundation trust application bid from May to August due to a delay in reaching "commissioner convergence". Disagreement over activity levels going forward appears to be at the heart of this.

NHS Devon's underlying deficit on provider services has reduced from £13.8m in 2007-08 to £9m in 2011-12. Last year about a third of this was at Northern Devon, despite only accounting for around 14 per cent of the PCT's spend on secondary care. The trust criticised the PCT's plans for activity reduction as "not sufficiently robust". For their part commissioners are also concerned about rising emergency admissions. NHS Devon attributes last year's overspend on the contract to a combination of non-achievement of quality, innovation, productivity and prevention savings and a "significant increase in unscheduled care admissions at a level not seen elsewhere in Devon where unscheduled care activity is broadly flat or reducing".

Between September 2009 and August 2011, the latest date for which quarterly DH figures are available, emergency admissions through the trust's accident and emergency department at North Devon District Hospital increased by 10 per cent. In the first six weeks of 2012-13 emergency admissions through A&E were up 4.4 per cent year on year, while other emergency admissions, for example to a community hospital by a GP, were up 6.4 per cent. Over the same period attendances were down 3.1 per cent year on year.

Local sources say longstanding issues of viability relating to geography are coming to a head. The

trust has the fourth lowest tariff adjustment for market forces in the country despite its rural setting. One leading GP with more than 20 year working in the community described the area as an "island 50 miles off shore".

He said: "[Every year] either the commissioners or the provider are in deficit and one then lends the money to the other – a process which is not entirely transparent.

"We have all been doing whatever we need to do pragmatically to keep the unit going... If that involves finance directors agreeing to lend each other a bit of money then so be it. The financial allocations don't take account of the situation we have got in North Devon.

"The real worry now is in the brave new world that kind of collaboration is not going to wash. They're going to have to stand on their own two feet."

The north, east and west clinical commissioning groups recently merged into a single North, East and West Devon CCG in order to be able to do most of their commissioning in house. There are no significant concerns about quality at the trust but there is a recognition not all services are clinically viable. This is reflected in the development of a vascular network in partnership with Taunton and Somerset, a neonatal network with Plymouth Hospitals Trust and a cancer network with Royal Devon and Exeter.

The CCG is committed to working with the trust to enable it to achieve foundation status in its current form. However, on top of disagreements around activity levels the tripartite formal agreement also highlighted concern about the £62m contract for community services in east Devon that was transferred by NHS Devon and must be recommissioned by 2014. The contract represents a significant portion of the trust's

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income and there is concern, as in Torbay, about how Monitor will view the uncertainty. Discussions are taking place on a re-commissioning strategy. The trust was also relying on taking on the assets associated with the services to boost its balance sheet but this no longer looks likely due to a change in DH policy which will see most PCT estate transfer to the newly established NHS Property Services Ltd.

If it is decided at any point the trust cannot go it alone merger plans are likely to run into noisy local opposition, as was the case when a merger with Royal Devon and Exeter FT was seriously discussed in 2006-07. No doubt this option would be explored again but the trust also has increasingly close relationships with Taunton and Somerset FT. As Taunton and Somerset has a turnover of £240m, rather than Royal Devon and Exeter's £350m, the case could perhaps be made to the population of north Devon that this was a partnership rather than a takeover.

the trust remain an independent organisation and a commitment to do everything possible to make that happen. However, few locally would bet their house on it.

### Predictions

The march towards increasingly integrated care will continue in Devon. Torbay and Southern Devon and South Devon appear natural bedfellows having already demonstrated a commitment to working more closely together to improve patient pathways. However, even assuming South Devon is the chosen partner there is a long journey to a full merger which will have to pass the tests of patient choice set out by the Cooperation and Competition Panel as well as satisfying Monitor the new organisation is viable.

Despite the challenges faced by Northern Devon and the current difficulty reaching commissioner convergence relationships between commissioner and provider are still good. There is a strong desire to see