

## PLYMOUTH CITY COUNCIL

**Subject:** Torbay Children's Services – Contractual Arrangement  
**Committee:** Cabinet  
**Date:** 16 January 2018  
**Cabinet Member:** Leader, Councillor Ian Bowyer  
**CMT Member:** Tracey Lee – Chief Executive  
**Author:** David Northey - Head of Integrated Finance  
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**Ref:**

**Key Decision:** No

**Part:** I

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### **Purpose of the report:**

In March 2017, Plymouth City Council was invited to submit an expression of interest to work with Torbay Council to jointly deliver its Children's Services. Torbay Council's Children's Services have been judged inadequate for several years and in May 2016, the Department for Education (DfE) appointed a Commissioner, John Coughlan, Chief Executive of Hampshire County Council, to oversee improvement.

The Commissioner's role also involves ensuring that improved performance can be sustained over the longer term by exploring alternative delivery models, including partnering with nearby councils. In April 2017, the Commissioner advised that having evaluated expressions of interest from Plymouth City Council and Devon County Council, his preferred option as a partner for Torbay Council was Plymouth. In June 2017, the DfE Minister endorsed his recommendation.

Full details were set out in the report to Cabinet for the meeting 27 August 2017 which set out the recommendation to Full Council for an 'in principle' agreement to proceed to develop a delivery model and detailed contractual agreement with Torbay Council to manage its Children's Services. At that stage a Prospectus had been jointly developed by officers from both councils; it is a high-level framework document setting out the general terms and principles for the arrangement.

This report builds on the unanimous "In principle" decision at Full Council 25 September 2017.

The Commissioner and the Minister have both been very clear that improvements to Children's Services in Torbay must happen at pace, and that a contractual arrangement with Plymouth City Council is the preferred option for delivery of that service.

This report sets out the due diligence and assurance work undertaken to allow a further debate at Full Council 29 January 2018 and recommends that Cabinet endorse the Council entering a contractual arrangement with Torbay Council, with effect from 1<sup>st</sup> April 2018, for the joint delivery of Torbay Council's Children's Services

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## **The Corporate Plan 2016/19:**

One of the central themes of the Corporate Plan is that Plymouth City Council is pioneering; finding new ways to deliver services that are innovative and more efficient. A contractual arrangement with Torbay Council would enable us to explore new and more cost effective service delivery models based on greater economies of scale and the sharing of best practice, which will benefit both councils.

The arrangement also supports our ambition to be a confident city, demonstrating strong sub-regional leadership and enhancing our reputation within the sector and with Government. The Council has a strong track record of working in partnership which has been recognised regionally and nationally. This proposal is a further opportunity to demonstrate that strength.

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## **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:**

The establishment and running of this contractual arrangement will be at no cost to Plymouth City Council, and there will be no pooling or cross subsidy with Torbay Council budgets. This report details the set-up costs, covered by a one-off payment from the Department for Education. In the longer term, Torbay Council will pay Plymouth City Council the extra costs incurred in providing the agreed leadership and support. Any savings generated from shared working or more efficient delivery structures will be apportioned between the two councils in accordance with a pre-agreed ratio.

The contractual arrangement will involve the Director of Children's Services from Plymouth taking responsibility for Torbay Children's Services as the statutory Director for Children's Services for Torbay as well. This will necessitate a review of the capacity in the senior management arrangements in Plymouth City Council's People Directorate. The remainder of the staffing structures within Children's Services should remain largely unaffected, although the necessity may arise for a minor reappportioning across middle management to take on additional responsibility for supervision and guidance, and a greater degree of deputising across senior management to accommodate the shared Director role.

There should also be opportunities for secondments and career development across the larger workforce of the two councils. The arrangement should provide greater critical mass for recruitment and retention of social workers, and better opportunities for training and development based on economies of scale.

There will also be an opportunity to harmonise working practices and IT systems across the joint workforce and this could lead to the standardisation of case management software. All associated costs have been factored into the business case for transition funding from the DfE.

From the Go-live date of 1<sup>st</sup> April 2018 Torbay Council will be required to make a proportionate on going contribution to senior management costs, including any additional capacity created to ensure a robust joint DCS function.

There are no direct implications for land or buildings as each council would retain their current facilities.

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## **Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:**

The proposal presents a number of risks that need to be managed, but also a range of potential benefits that can be exploited, including financial efficiencies, workforce stability and the testing of new delivery models. A Risk Log has been created based on inputs from the cross-party working group, the Overview and Wellbeing Scrutiny Committee and group meetings. The risks have been grouped to cover strategic risks; leadership, capacity and maintaining focus; funding; roles and responsibilities; political and governance; and confidence and reputation.

Some key risk management principles are set out below:

1. The safety and wellbeing of Plymouth's children and young people is paramount. Any new arrangements must not detract from this. This work must not disrupt Plymouth's own Children's Services improvement journey.
2. The contractual arrangement must not impact on Plymouth's finances or create issues in terms of staffing. All set up costs will be recorded and contained, and funded by the Department for Education.
3. The precise terms of the contractual arrangement will be set out in a detailed agreement including the roles and accountabilities of Members and officers in both councils.
4. Torbay Council will retain full political accountability, as well as the statutory responsibilities associated with the Director of Children's Services and the Lead Member for Children's Services. There will need to be absolute clarity to ensure that Plymouth's City Council's reputation is not harmed as a result of entering into the agreement.
5. Given the long term and binding nature of the contract it is crucial to secure a strong commitment from Members and senior managers before embarking on the arrangement.
6. There will be a built-in review point and other termination conditions set out in the full agreement.

## **Equality and Diversity:**

A full Equalities Impact Assessment is attached as Appendix 3

## **Recommendations and Reasons for recommended action:**

That Cabinet:

- a) Agrees to progress the development of a contractual arrangement with Torbay Council to manage its Children's Services, working with Torbay Council and the Commissioner for Children's Services and under the guidance of the Department for Education to develop a detailed contract agreement.
- b) Delegates to the Chief Executive in consultation with the Leader and the Leader of the Opposition the development of the detailed contractual agreement.
- c) Recognises this opportunity to demonstrate strong sector-led leadership in the management of Children's Services in Torbay.
- d) Recommends that Full Council endorse the Cabinet's decision to enter into a formal contractual arrangement for Plymouth City Council to manage Torbay Council's Children's Services with effect from 1 April 2018.

**Alternative options considered and rejected:**

Torbay Council are required to act in accordance with the recommendations of the Commissioner and the Directive from the Department for Education. This sets out that a contractual arrangement with Plymouth City Council provides the best solution for Torbay Council to improve its Children’s Services at pace and Torbay Members voted overwhelmingly to support this route in July 2017.

Plymouth City Council is under no obligation to adopt the recommendation for the Commissioner and the Department for Education. Full Council could therefore vote against the creation of the contractual arrangement.

If the Council decides not to proceed, the Commissioner will have to find an alternative way forward, as the responsibility for the delivery of Children’s Services cannot remain with Torbay Council alone.

If the Council decides not to proceed at this stage, it would lose the opportunity to demonstrate strong sector-led leadership in this area, and would not be able to explore the more innovative delivery models or secure the efficiency savings that the arrangement could deliver. In addition there are additional risks for Plymouth on our recruitment and retention of social workers in a challenging national and local context; impact on our regional influence with a particular risk in relation to placement sufficiency for children in care. The Council would also lose the opportunity to align more closely with other commisioning and governance arrangements such as those emerging in the Health and Care Sustainability and Transformation Plans and the changing public sector landscape.

**Published work / information:**

**Background papers:**

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	
Cabinet Report 27 August 2017 <a href="#">Establishing a strategic partnership with Torbay Council to deliver Children's Services"</a>										

**Sign off:**

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Originating SMT Member Tracey Lee													
Has the Cabinet Member(s) agreed the content of the report? Yes													

## **I. Introduction**

- 1.1 In 2010, Torbay's Children's Services were judged inadequate and a Statutory Direction issued by the Department for Education (DfE) in 2011. Although the child protection service were judged 'adequate' in 2013, the latest Ofsted report in January 2016 judged services 'inadequate', identifying significant weaknesses in leadership and management.
- 1.2 In May 2016, the Department for Education (DfE) appointed a Commissioner, John Coughlan, Chief Executive of Hampshire County Council, to oversee improvement. Since his appointment, the Commissioner has been working with Torbay Council and partner agencies, across the South West, to explore the potential for an alternative delivery model.
- 1.3 This culminated in a recommendation by the Commissioner, in October 2017, that sustained improvement in Children's Services in Torbay would be achieved via a contractual arrangement with Plymouth City Council.
- 1.4 At the Full Council meeting in September 2017 Plymouth City Council unanimously endorsed Cabinet's 'in principle' decision to progress the development of a delivery contract with Torbay Council to manage its Children's Services.
- 1.5 Both Plymouth City Council and Torbay Council believe the contractual arrangement will contribute to improved service delivery, better outcomes for children and young people and the opportunity to realise efficiencies through shared or merged service elements.
- 1.6 The larger practitioner resource within the arrangement will improve and support workforce development, recruitment and retention and provide greater opportunity for service innovation.
- 1.7 The statutory direction will also establish an ongoing dialogue with the DfE around service improvement and a stronger voice for Plymouth and Torbay within the sector led improvement agenda.
- 1.8 It is worth noting that Torbay's Education services have been performing well, with outcomes for children and young people generally at or above comparators.
- 1.9 The Council's in-principle decision was predicated on a 'due diligence' exercise and stated this exercise must cover the issues listed in the schedule presented at the meeting and must provide sufficient assurance to Council that all aspects have been explored, and that appropriate monitoring and controls are in place.
- 1.10 The due diligence areas listed were:
  - a) Resources, covering leadership, capacity and maintaining focus plus roles and responsibilities;
  - b) Finance; and
  - c) Political, legal and governance.
- 1.11 This report will cover each area and update on the assurance work undertaken. It will also consider the important areas of communications and ICT, plus Risk.

## 2. Update of work undertaken on the overall programme and assurance

### 2.1 There are three phases to the Programme.

Phase 1: Pre-Agreement; the main objectives of this phase were to:

- Establish transitional Governance
- Agree high Level principles
- Develop a shared vision and blueprint
- Develop contract to support the Contractual Arrangement
- Undertake Due Diligence process
- Obtain political approval to progress

Phase 2: Post-Agreement; the main objectives of this phase are to:

- Continue to implement improvements to Children's Services.
- Continue to fine tune the collaborative arrangements, where required as identified in Phase 1
- Commence implementation planning for key improvements.
- Develop options appraisals for operational delivery
- Develop phased delivery plan.
- End the transitional governance arrangements and move to the business as usual model.

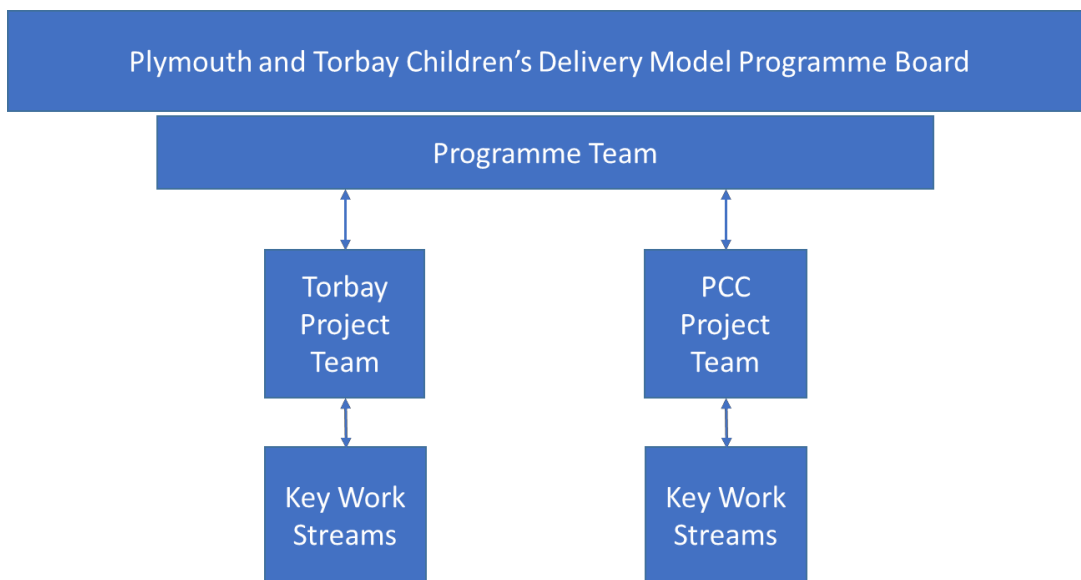
Phase 3: Move to Business as Usual.

### 2.2 The Programme consists of a series of work streams (or projects). These have been identified as follows;

- Legal
- Finance
- Human Resources
- Social Care Operations
- Education Services Operations
- Performance Management
- Communications
- IT

### 2.3 The Programme consists of two Project Teams (one for each Council) working on combined work streams and reporting to a joint Children's Delivery Model Programme Board. The Plymouth & Torbay Children's Delivery Model Programme Board reports to the existing organisation governing arrangements.

2.4



2.5 The due diligence exercise has been running in parallel with the overall Programme, with the same work stream leads with the overall responsibility resting with the Head of Integrated Finance, Plymouth City Council. This report sets out the due diligence work undertaken.

2.6 The approach taken has been to answer each of the areas listed in the minutes of the Full Council in September 2017. Full details are contained in the following sections of this report.

2.7 At all relevant meetings including the cross-party working group, group meetings and the Wellbeing and Overview Scrutiny Committee, as well as the Board itself, it has been made clear that a full due diligence exercise, in the true meaning of such work in the commercial arena, is neither applicable nor useful.

2.8 Due diligence in this context has been defined to mean giving all stakeholders the level of assurance required that both Plymouth City Council and Torbay Council are aware of the areas of strength, areas of concern and fully compliant with the financial and operational arrangements for Torbay's Children's Services.

2.9 The financial analysis has needed to be broader than concentrating solely on children's services, as the overall financial sustainability of the Council will impact on available resources and savings targets.

2.10 The assurance leads are:

<b>Overall</b>	<b>David Northey</b>
HR	Bernadette Smith
Finance	David Northey
Legal & Governance	Linda Torney
Communication	Mandy Pearce
ICT	Andy Crawford
Risks	Mike Hocking

### 3. Resources – Leadership, Capacity and Maintaining Focus

3.1 ***Council require assurance that the contractual arrangement ensures that Plymouth’s senior management have sufficient capacity to deliver, given the breadth of their current remit.***

3.2 There is a review in progress, led by the Chief Executive in conjunction with the Strategic Director for People and the Leader to address this concern. A proposed revised senior management structure has been developed under the banner of “Organisational Design” to incorporate a new post of Director of Children’s Services for Plymouth which will also be the Director for Children’s Services in Torbay. This proposal has been shared with relevant staff and will be presented to Full Council for approval in February.

3.3 ***Council require assurance and clarity on staffing structures, including describing the controls that will be put in place to ensure that any staffing shortfalls will be addressed within the respective councils.***

3.4 The Organisational Design will reflect the appointment of a new Director of Children’s Services post in Plymouth. Work is being undertaken by HR, finance and the operational team which will be triaged to give a complete overview of the requirements of the role and the funding.

3.5 ***The due diligence work needs to provide reassurance that there will be no impact on service delivery for, or detriment to children and young people in Plymouth, nor any detriment to frontline social care staff.***

3.6 The programme has been clear in stating there is no intention to move away from Plymouth’s agreed MTFS and budget plans. There is clarity that the impact on staff changes will be at the senior management team (SMT) level only. It will be business as usual for all of Plymouth’s frontline staff and middle management. From a budget point of view, the contract will categorically state that the contractual arrangement will be at no cost to Plymouth.

3.7 ***Officers need to describe how Plymouth’s capacity and reputation will be managed in the event of a major investigation or high profile case in either authority, setting out the details of how the Council would respond to potential scenarios.***

3.8 Following the go-live date of 1 April 2018, nothing changes operationally for either Plymouth or Torbay Children’s Services. Both councils will continue with the same approach and current arrangements for child protection and safeguarding as are in place now. It must be emphasised that the contractual arrangement will mean that the Plymouth Director of Children’s Services will also be the Director in Torbay, but otherwise all governance arrangements and statutory responsibilities remain in place. Both authorities will maintain the integrity of their current arrangements, which are in place on briefing on high-risk cases to children and young people. These arrangements will ensure the reputation of both councils is maintained.

3.9 ***Officers need to demonstrate how the Council will continue to maintain its own improvement journey and performance levels.***

3.10 Operationally nothing changes at the go-live date. We will continue to maintain our existing Business Improvement and Corporate Safeguarding Improvement Plan.



3.11 ***Officers need to give assurance of how the arrangement will improve the recruitment and retention of social workers in both councils.***

3.12 The benefits in this area can be summarised as:

- Joint working by both HR and Children's Services across both councils
- Contractual Arrangement in place for minimum 3 years provides stability of senior management
- Good communication strategy in both councils
- Expect to build on Plymouth's current strong retention position given the national context

3.13 ***The due diligence needs to include a comprehensive risk register that can be actively monitored and widely shared.***

3.14 A risk register for the programme has been developed with input from the cross-party working group and the Wellbeing and Overview Scrutiny Committee as well as the Board. It has been reviewed by the Head of Assurance Services and is reviewed and updated as required.

#### **4. Resources – Roles and Responsibilities**

4.1 ***Council require assurance that under the contractual arrangement Plymouth City Council's accountabilities for children and young people are distinct, including around safeguarding.***

4.2 There has never been any intention to blur the lines of responsibility between the elected members for Plymouth and Torbay, nor for the senior officers. This is clearly set out in the engagement document and this position is confirmed and in line with the Statutory Guidance on the roles and responsibilities of the Director of Children's Services (DCS) and Lead Members for Children (2013). It is also compliant with the requirements as laid out in the Children's and Young Peoples Act 2014.

4.3 ***Officers provide clarity around contract termination, monitoring of contractual arrangement and cost liabilities for early termination.***

4.4 Arrangements for the termination of the contract were discussed in detail at one of the cross-party working group meetings. Working closely with our colleagues in Torbay it was resolved that:

- if during the contract term Torbay Council determines that there is an overwhelming business case for it to enter into a single strategic arrangement with another Council, Plymouth City Council reserves the right to review its position in relation to delivery of Children's Services and if Plymouth City Council withdraws as a result, Torbay Council will cover all costs relating to the termination of the arrangement;
- should Plymouth City Council decide to unilaterally end the contract before the end of the contract term under circumstances other than those set out in the contractual agreement then Plymouth City Council will cover all costs relating to the termination of the agreement;

- should Torbay Council and Plymouth City Council decide, with permission of the Secretary of State, to end the contract before the end of the contract term then Torbay Council and Plymouth City Council will share equally all costs relating to the termination of the agreement; and
    - The notice period for early termination under all the above circumstances would be 6 months to allow reasonable time to disengage, unless there was agreement that it could be achieved within a shorter period.
- 4.5 These termination arrangements will now be incorporated into the final Contract, which is being drawn up by Plymouth City Council's in-house legal team, working in conjunction with their opposite numbers in Torbay.
- 4.6 The legal contract will be subject to a final review by an external legal firm prior to being signed by both parties.
- 4.7 ***The due diligence needs to provide assurance that any reputational impacts of serious incidents or negative judgements are contained within the relevant authority.***
- 4.8 This has been discussed and agreed at a cross-party working group; appropriate wording will now be incorporated into the final contract.
- 4.9 ***Council asked how the effectiveness of the contractual arrangement will be reported, including the impact on the improvement of Torbay's Children's Services.***
- 4.10 The cross-party working group has agreed with the relevant senior officers that progress reports will be presented to the Wellbeing and Overview Scrutiny Committee, the Corporate Management Team, and the People Directorate departmental management team meetings.
- 4.11 ***Council asked for clarification on the future relationship with the Department for Education (DfE) and future arrangements under Ofsted.***
- 4.12 The Commissioner and two representatives from the Department for Education joined the cross-party working group meeting 13 November. This question was addressed and reassurance was provided by the DfE that under an inspection, Ofsted would only look at services for children in Plymouth (or for Torbay if they were being inspected), and the rate of improvement of children's services in Torbay would not form part of their judgement of Plymouth.
- 4.13 It was stated that under no circumstances would Ofsted be directed as to what they will or will not include in their inspection.
- 4.14 ***Council further sought reassurance by stating the senior staffing structure for the management of the contract should be set out in the body of the contract itself.***
- 4.15 This is agreed and the new structure reflecting a new DCS role in Plymouth that will also be DCS in Torbay will be included.

## 5. Finance

- 5.1 ***Council required absolute assurance that both the set up and operation of the delivery contract will be at no cost to Plymouth City Council and there will be no cross-subsidy or pooling of budgets between the two authorities.***
- 5.2 The Prospectus (Heads of Terms) for a Strategic Partnership (now Contractual Arrangement) between Plymouth City Council and Torbay Council: Children's Services was drawn up at the start of discussions. It contained a clear "key principle" that: "The development and operation of the contract will be cost neutral to Plymouth City Council, with all costs recorded and recovered in accordance with an agreed cost recovery model."
- 5.3 This "at no cost" clause is included in the current agreement, has been confirmed and will now form part of the final contract when it is agreed. Finance from both Plymouth and Torbay have commenced negotiations around on-going Torbay funding for shared resources from the go-live date.
- 5.4 ***Council wanted assurance that sufficient funding will be made available from the DfE and/or other sources to enable both Councils to undertake effective due diligence and cover the transition phase.***
- 5.5 It was clearly set out to the Commissioner and the DfE from the start that Plymouth City Council would incur costs, in the form of senior officers' time, travel and general administration to commence work on the feasibility of a project such as this.
- 5.6 Negotiation between Plymouth and the DfE led to an early commitment to ensure all phases of the project were at no cost to the authority, including the initial feasibility stage.
- 5.7 Negotiation with Torbay and the DfE are now complete and the funding bid has been approved. The first half of the funding has been received in December; the second half will be transferred in early February.
- 5.8 Details of the funding are set out in more detail in **Appendix I**.
- 5.9 Plymouth City Council will monitor and control all drawdown from the grant, under the final sign off and return to DfE of the Section 151 Officer. The Head of Integrated Finance, Plymouth City Council is the responsible officer reporting to the Strategic Director for People in the role of Programme SRO (Senior Responsible Officer), the Programme Board and Torbay Council's Director of Children's Services.
- 5.10 ***Council required assurance that Torbay's Medium Term Financial Planning (MTFP) makes sufficient provision for the delivery of Children's Services in Torbay for the duration of the agreement.***
- 5.11 ***It also sought assurance there is sufficient ongoing visibility of Torbay Council's overall budget and financial planning process, and that decisions made in the medium term are assessed for any inadvertent impacts on Children's Services.***
- 5.12 Finance have undertaken due diligence reviews of the overall MTFP and 2018/19 budget allocations and assumptions.

5.13 Torbay's Chief Finance Officer and S151 Officer will present an overview of the current in-year and 2018/19 budget position at the January Programme Board. It has also been confirmed that Plymouth City Council's Director for Children, Assistant Director for Children, Young People and Families and S151 Officer will have open invitations to budget discussions with an open book policy.

## **6. Political, Legal and Governance**

### **6.1 Council required officers to provide clarity about the political accountabilities within both Plymouth and Torbay councils.**

6.2 The contract will set out the clear lines of accountability and responsibilities for officers and Members of both authorities.

6.3 In terms of statutory accountabilities, nothing will change as a result of entering into this contractual arrangement.

6.4 Plymouth City Council will continue to be responsible for the provision and improvement of children's services in Plymouth; Torbay Council will continue to be responsible for the provision and improvement of children's services in Torbay.

6.5 The change will be the appointment of a new Director of Children's Services for Plymouth who will also be the DCS in Torbay and Torbay will retain the full statutory responsibility for delivery of children's services.

### **6.6 Plymouth City Council required the due diligence exercise to ascertain the level of cross-party support in Torbay for the arrangement.**

6.7 Torbay's Full Council meeting 19 October 2017 included a debate on the contractual proposal. The Elected Mayor, Mayor Oliver proposed and Councillor Tyerman seconded a motion, which was agreed (unanimously) by the Council as set out in **Appendix 2** to commit to the contractual arrangement for a minimum of three years.

6.8 As a further show of commitment, Torbay Council has set up its own cross-party working group to ensure the contractual arrangement is in place for the go-live date. There has also been a request from the Elected Mayor and Portfolio Holder for Children's Services to meet Members from Plymouth. This meeting is being arranged for January, ahead of Plymouth's January Full Council.

### **6.9 Council is seeking clarity around Plymouth's response if Torbay Council were to cut the provision of non-statutory services which could have an impact on Children's Services.**

6.10 Under the terms of the contractual arrangement, the DCS post holder will have full control of the budget allocated to children's services. This DCS is a statutory post and as such will have full responsibility and a duty of care to ensure the correct level of funding is allocated to allow the provision of the service.

6.11 Under statute, the DCS role will have direct reporting lines and access to the Chief Executive of Plymouth and the Chief Executive of Torbay. If at any time the DCS feels the funding for Torbay children's services is not sufficient, they will have direct access in the initial phase to the Commissioner and immediate and continuing access to report to Full Council.

- 6.12 Plymouth City Council's Finance will continue to work closely with Torbay Council's Finance to monitor and review budgets throughout the year.
- 6.13 **Council requested clarity about future governance and scrutiny approaches.**
- 6.14 As stated in 6.4 above, the already distinct responsibilities for Elected Members of both authorities will remain in place. At a Plymouth Wellbeing and Overview Scrutiny Committee meeting it was agreed there was no requirement to set up joint scrutiny meetings. There will be no impact on the governance arrangements for either authority as a result of this contract.
- 6.15 The DCS will work within the Torbay political and management governance for Torbay, and within the Plymouth political and management governance for Plymouth.
- 6.16 At the December Programme Board the legal work stream leads were able to report good progress on the development of the contractual arrangement. In particular:
- Non-disclosure agreement signed between authorities to allow for disclosure of confidential material:
  - First draft contractual arrangement agreement issued:
  - No further political decision is required to take forward the contractual arrangement agreement in Torbay
  - Agreement in principle that Torbay information governance arrangements will apply to any work done for Torbay by the DCS and staff under the contractual agreement.

## **7. Communications**

- 7.1 **Council required clarity about the communications approach to the people of Plymouth, and requested a comprehensive communication and engagement plan.**
- 7.2 A detailed communications plan is in place. It has been agreed that Plymouth will lead on all communication material, working in conjunction with the Board, with joint staff and press statements as required. Joint statements will ensure the consistency of the messages across both authorities.
- 7.3 **Council required officers to provide reassurance to Plymouth residents that children's services will not suffer because of the arrangement.**
- 7.4 The approach from officers has been to answer each of the assurance questions asked by Council, providing assurance to enable Members to make an informed decision at Full Council in January. Through the development of key messages and responses, Members will have sufficient information to reassure the residents of Plymouth.
- 7.5 The cross-party working group has proved to be a very useful forum to explore the issues and concerns in more detail. A visit from key representatives from the Department for Education and the Children's Commissioner to join a working group meeting proved invaluable. The group was able to put questions directly to the key personnel and gain assurance against the major questions such as funding and Ofsted inspections.

## 8. Information and Communications Technology (ICT)

- 8.1 Assurance was not requested for ICT however this is a key area to ensure a smooth running of the contractual arrangement. As such, a work stream is in place.
- 8.2 The initial ICT requirement is to design and deliver solutions to aid communication and collaboration for the senior leadership and programme teams during the contract initiation period and beyond.
- 8.3 A key lesson from the Hampshire / Isle of Wight partnership arrangement is the requirement for a single email address for the Director of Children's Services.
- 8.4 The Director will receive both a Plymouth.gov.uk and a Torbay.gov.uk email address. They will be able to view both Torbay & Plymouth mailboxes and have the ability to send emails from either email address.
- 8.5 The agreed deliverables for the go-live date from the ICT work stream are:
- Shared drives
  - Shared calendar functionality
  - Video conferencing facilities
  - To review and map existing ICT systems across Plymouth City Council / Torbay Council and capability around supporting arrangement.
  - Identification of ICT requirements and compatibility.
- 8.6 The proposed solutions to date are:
- Shared drives – Torbay and Plymouth users will be able to share files easily within the arrangement. A shared drive will be created and a drive will be automatically provided to users identified from each organisation.
  - Shared calendar functionality – To simplify the creation of meetings the proposed solution will enable Torbay and Plymouth users to view each other's Outlook Calendars. It will be possible to view a user's location and meetings that they are attending, although this could be restricted on a user-by-user basis.
  - Video conferencing facilities – To reduce the travel requirement audio conference facilities will be available to service users. Plymouth users already have the ability to initiate Lync meetings, and Torbay users can join these by dialling in. Screen sharing is to be enabled for Torbay users to view screens shared by Plymouth users.
- 8.7 In addition,
- Look up Contact Details – To allow contact details of each organisation to be shared with the partner organisation, the proposed solution will enable Torbay and Plymouth users to access each other's Global Address Lists.
  - Documentation – User guides will be provided by the IT Workstream to assist users before support is requested via normal Plymouth & Torbay Service Desks.
  - Timescales
- 8.8 The ICT work stream will aim to provide these solutions by 19th February.

## 9. Next Steps and Recommendations

- 9.1 The Wellbeing Overview and Scrutiny Committee met in December and reviewed the assurance work undertaken. The recommendation was to complete the work and update Cabinet, and to set up a more forensic finance review with the Cabinet Member for Finance and ICT, together with the Shadow Cabinet Member ahead of Full Council 29 January.
- 9.2 The cross-party working group will continue to meet as scheduled through to the go-live date. The Plymouth and Torbay Children's Delivery Model Programme Board will also meet up to and beyond April 2018.
- 9.3 The recommendations are that Cabinet:
- a) Agrees to progress the development of a contractual arrangement with Torbay Council to manage its Children's Services, working with Torbay Council and the Commissioner for Children's Services and under the guidance of the Department for Education to develop a detailed contract agreement.
  - b) Delegates to the Chief Executive in consultation with the Leader and the Leader of the Opposition the development of the detailed contractual agreement.
  - c) Recognises this opportunity to demonstrate strong sector-led leadership in the management of Children's Services in Torbay.
  - d) Recommends that Full Council endorse the Cabinet's decision to enter into a formal contractual arrangement for Plymouth City Council to manage Torbay Council's Children's Services with effect from 1 April 2018.
- 9.4 At the December Board, it was agreed to endorse Hampshire's offer to provide finance support for an independent review of the financial position of Torbay Council Children Services Budget. This work will be in addition to the financial assurance (due diligence) undertaken to date. The remit will be to look at the medium to longer-term financial position of the Children Services budget in the context of the MTFs and report back to the Board and the Joint DCS. This work is not intended to be concluded as part of the decision making process, but to provide further clarity for the Joint DCS.
- 9.5 A 1<sup>st</sup> draft of the "Contractual Arrangement" is attached as **Appendix 4**. This is the legal contract and there is still work to be completed. However the main elements of the contract drawn up by the in-house legal team in Plymouth City Council has been reviewed and agreed by Torbay legal colleagues. The contract includes in Schedule 2 the Statutory Directive to Torbay in relation to children's services.
- 9.6 The contract will be completed in line with recommendation b) above.

## Appendix I Transitional Bid Funding

- The Funding Bid submitted to the Department for Education totalled £1.518m
- This was made up of £1.418m plus a further £0.100m contingency
- The full amount has been approved; tranche one £0.709m has been received by Plymouth City Council;
- Tranche two will be paid early February, with the £0.100m contingency to follow “if required”
- The funding covers three phases of the project:
  1. Initial discussion phase, before any commitment
  2. Programme costs up to the go-live date 1<sup>st</sup> April 2018
  3. Programme costs during the initial contract period to 30<sup>th</sup> June 2018
- The funding includes “exit fees”
- The funding bid has been divided into work streams covering Feasibility Phase, Project Management, Legal and Contracts, Finance, Senior Management, HR & OD plus Communications, Data and ICT, Support Services and Board Meetings. The funding allocated to each phase is:
  - Feasibility £0.052m
  - Set up £1.190m
  - Implementation £0.176m
- This gives a total funding award of £1.418m In addition a further £0.100m has been set aside as a contingency split equally between the set up and implementation phase.



## Appendix 2 Torbay Council Approved Motion

**The Elected Mayor, Mayor Oliver proposed and Councillor Tyerman seconded a motion, which was agreed (unanimously) by the Council as set out below:**

That Full Council confirms the following so as to inform Plymouth City Council's due diligence in respect of arrangements for Children's Services:

- (a) The current operating model of Torbay Council is flexible, evolving and based upon the most appropriate fit for each service. The model is not designed or anticipated to lead to a single strategic partnership;
- (b) Torbay Council will use all reasonable endeavours to commit to its current operating model for a period not less than 3 years;
- (c) If during the contract term Torbay Council determines that there is an overwhelming business case for it to enter into a single strategic partnership with another Council, Plymouth City Council reserves the right to review its position in relation to delivery of Children's Services and if Plymouth City Council withdraws as a result, Torbay Council will cover all costs relating to the termination of the arrangement;
- (d) Should Plymouth City Council decide to unilaterally end the contract before the end of the contract term under circumstances other than those set out in the contractual agreement then Plymouth City Council will cover all costs relating to the termination of the agreement;
- (e) Should Torbay Council and Plymouth City Council decide, with permission of the Secretary of State, to end the contract before the end of the contract term then Torbay Council and Plymouth City Council will share equally all costs relating to the termination of the agreement; and
- (f) The notice period for early termination under all the above circumstances would be 6 months to allow reasonable time to disengage, unless there was agreement that it could be achieved within a shorter period.

# APPENDIX 3

## EQUALITY IMPACT ASSESSMENT

<b>STAGE 1: What is being assessed and by whom?</b>	
What is being assessed - including a brief description of aims and objectives?	This assessment considers the potential impact of a decision by the Cabinet to proceed to develop a delivery contract with Torbay Council to deliver their Children's Services.
Responsible Officer	Carole Burgoyne
Department and Service	Strategic Director for People
Date of Assessment	02 January 2018

<b>STAGE 2: Evidence and Impact</b>				
<b>Protected Characteristics (Equality Act)</b>	<b>Evidence and information (e.g. data and feedback)</b>	<b>Any adverse impact?</b>	<b>Actions</b>	<b>Timescale and who is responsible?</b>
Age Disability Faith, Religion or Belief Gender - including marriage, pregnancy and maternity Gender Reassignment	<p>The decision relates to Children's Services, potentially affecting all children and young people across the City, particularly those receiving services under the following functions:</p> <ul style="list-style-type: none"> <li>Safeguarding</li> </ul>	<p>Services to Children and Young people in Plymouth are not expected to be impacted by this decision. The Council's Children's Services staffing structures will remain unaffected, with the</p>	<p>A range of safeguards have been identified through the initial exploratory phase to prevent any negative impacts on services for children and young people in Plymouth.</p> <p>These measures, together</p>	<p>If agreed, the delivery contract will commence from 1 April 2018 for a period of 3-5 years.</p> <p>The SRO for the programme is Carole Burgoyne.</p>

**STAGE 2: Evidence and Impact**

**Protected Characteristics  
(Equality Act)**

Race  
Sexual Orientation -including Civil Partnership

**Evidence and information (e.g. data and feedback)**

- Fostering and Adoption
- Children in care – (including the Council’s corporate parenting responsibility)
- Early help and targeted help
- Youth offending
- Schools improvement
- Schools admissions
- Special Educational Needs and Disability services
- Early years

**Any adverse impact?**

exception of the senior management team where an adjustment will be required to accommodate a shared Director of Children’s Services role to manage Torbay Council’s services.

**Actions**

with robust monitoring and governance structures will be locked into the final contract and delivery arrangements.

**Timescale and who is responsible?**

**STAGE 3: Are there any implications for the following? If so, please record 'Actions' to be taken**

<b>Local Priorities</b>	<b>Implications</b>	<b>Timescale and who is responsible?</b>
Reduce the inequality gap, particularly in health between communities.	The Council's Children's Services contribute to reducing the inequality gap in the City and this will remain the case should this decision proceed.	The current measures and monitoring arrangements for reducing inequality across the City will remain in place should this programme proceed.
Good relations between different communities (community cohesion).	None	The responsible officer is Carole Burgoyne
Human Rights	None	

**STAGE 4: Publication**

Director, Assistant Director/Head of Service approving EIA.	Alison Botham, Assistant Director Children, Young People and Families	Date	02 January 2018
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# **Appendix 4 Draft Contractual Arrangement**

**DATED**

**2018**

**(1) TORBAY COUNCIL**  
**(2) PLYMOUTH CITY COUNCIL**

**CONTRACTUAL ARRANGEMENT**  
**relating to Children's Services in Torbay**

**Contents**

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**Clause**

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- 2. AGREED PRINCIPLES.....
- 3. COMMENCEMENT AND DURATION.....
- 4. EXTENDING THE INTITAL TERM.....
- 5. SERVICES.....
- 6. INTERIM SERVICES.....
- 7. FINANCIAL ARRANGEMENT.....
- 8. INTELLECTUAL PROPERTY.....
- 9. PLANS FOR IMPROVEMENT AND MONITORING.....
- 10. PREMISES.....
- 11. ASSETS.....
- 12. STAFFING (TUPE, SECONDMENT AND PENSIONS).....
- 13. GOVERNANCE STRUCTURE.....
- 14. REVIEW AND REPORTING.....
- 15. VARIATIONS.....
- 16. WORKING TOGETHER.....
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- 18. EQUALITY DUTIES.....
- 19. FREEDOM OF INFORMATION.....
- 20. DATA PROTECTION AND INFORMATION SHARING.....
- 21. CONFIDENTIALITY.....
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- 23. LIABILITIES.....
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- 26. COOPERATION.....
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- 28. TERMINATION.....
- 29. EXIT COSTS AND CONSEQUENCES OF  
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- 30. PUBLICITY.....
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## **Schedule**

- Schedule 1 AIMS AND OUTCOMES
- Schedule 2 THE DIRECTION
- Schedule 3 SERVICES AND SCOPE
- Schedule 4 PAYMENT SCHEDULE
- Schedule 5 GOVERNANCE STRUCTURE
- Schedule 6 STAFFING
- Schedule 7 INFORMATION DATA SHARING AGREEMENT
- Schedule 8 WARRANTIES

**THIS DEED** is dated

2018

## **PARTIES**

- (1) PLYMOUTH CITY COUNCIL of Ballard House, West Hoe Road, Plymouth, PL1 3BJ (“**PCC**”)
- (2) TORBAY COUNCIL of Town Hall Torquay TQ1 3DR (“**Torbay**”)

## **BACKGROUND**

- (A) The purpose of the Agreement is to put in place an effective delivery contract between PCC and Torbay, whereby PCC will deliver the Services to Torbay in relation to the Functions. The aim of the Agreement will be to ensure improvements across Children’s Services in Torbay and in particular to improve safeguarding standards for vulnerable children and to work with Torbay to improve educational standards for all.
- (B) An Ofsted inspection report (dated 5 January 2016) of Torbay’s arrangements relating to its responsibilities for the protection of children found those arrangements to be inadequate, where inadequate is defined as failing to meet minimum required standards.
- (C) As a consequence, the Secretary of State concluded that Torbay was failing to perform to an adequate standard in some, or all of its Children Services Functions to which section 497A of the Education Act 1996 as amended by section 50 of the Children Act 2004 apply. The Secretary of State, pursuant to his powers under section 497A(4B) of the Education Act 1996 has sought to secure that Torbay’s Children Services Function are performed to an adequate level.
- (D) The Secretary of State, in accordance with section 18 of the Children Act 2004, has directed Torbay appoint Mr John Coughlan, Deputy Chief Executive and Director for Children’s Services for Hampshire County Council, as Children Services Commissioner at Torbay and has further directed Torbay establish and enter into a delivery contract with PCC. PCC’s delivery of the Services is wholly predicated on its commitment to ensure that improved outcomes are secured for Torbay children in such a way that improvement can be sustained beyond the Term of these Services.
- (E) The Parties are committed to the improvement of Torbay’s Functions and therefore wish to enter into this Agreement.



## AGREED TERMS

### 1. DEFINITION AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Agreement:** this contract between PCC and Torbay comprising these terms and conditions together with all schedules attached to it

**Aims and Outcomes:** the objectives setting out how the Services are likely to lead to an improvement in the way the Functions are exercised as described in Schedule 1

**Assets:** means Torbay's assets which are used by its employees in the discharge of the Functions

**Bi-monthly:** shall mean every 2 months

**Business As Usual:** means those elements of the Services identified in Schedule 3 to commence on the completion of the Interim Services

**Change in Law:** a change in Law that impacts on the Services which shall come into force after the Commencement Date

**Children's Improvement Board:** shall refer to the partnership between the LGA, the Association of Directors of Children's Services (ADCS) and the Society of Local Authority Chief Executives (SOLACE), supported by funding from the Department for Education (DfE). All partners on the Board are committed to supporting local government to take charge of its own performance and improvement in the interests of children and young people.

**Commencement Date:** 1<sup>st</sup> April 2018

**Data Protection Legislation:** this includes:

- i. the Data Protection Act 1998 (**DPA 1998**);
- ii. Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- iii. the Regulation of Investigatory Powers Act 2000;
- iv. the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI2000/2699*);
- v. Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector;

- vi. the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426);
- vii. General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and
- viii. all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable.

**Disclosed:** means fairly disclosed by Torbay (with sufficient details to understand the nature and scope of the matter disclosed) prior to the Commencement Date in or under the Disclosure Letter;

**Disclosure Letter:** a letter from Torbay to PCC with the same date as this Agreement together with the bundle of documents attached to it (**Disclosure Bundle**), each in the agreed form;

**Dispute Resolution Procedure:** the procedure set out in clause 26

**Director for Children Services:** [insert name and title] and any successor to that role

**Direction:** means the written direction provided by the Secretary of State for the Department for Education to Torbay under section 497(4B) of the Education Act 1996 as set out in Schedule 2

**Financial Year:** 1 April to 31 March

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation

**Functions:** Torbay's children social care functions which shall have the same meaning as set out in the Direction or, in the case of legislative amendments, the successor provisions to those set out in the Direction

**Improvement Board:** shall mean the Board established by Torbay in order to deliver an improvement plan

**Information:** has the meaning given under section 84 of FOIA

**Information Sharing Agreement:** the agreement relating to the responsibilities of the Parties in relation to sharing information contained in Schedule 7

**Initial Term:** the period commencing on the Commencement Date and ending on the 5<sup>th</sup> anniversary of the Commencement Date

**Intellectual Property Rights (IPR):** means all patents, trademarks, registered designs, copyright, database rights, unregistered design rights, rights in and to trade names, business names, domain names and addresses, product names and logos, databases, inventions, trade secrets, moral rights and other similar rights and obligations

**Interim Services:** means those elements of the Services identified in Schedule 3 to commence on the Commencement Date

**Know How:** means all ideas, concepts, schemes, information, knowledge, techniques, methodology relating to the Services and Functions

**Law:** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body

**Party:** either PCC or Torbay, and “**Parties**” shall be construed accordingly

**Material Information:** All relevant and necessary information as supplied by Torbay to PCC prior to commencement of this Agreement in relation to the proposed Services

**Personal Data:** shall have the same meaning as set out in the DPA 1998

**Quarter:** one of the following periods in each Financial Year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March.

**Regulatory Body:** those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of Torbay

**Relevant Transfer:** a relevant transfer under TUPE

**Representative:** a Party’s employee, agent or subcontractor and any employee of the other Party

**Request for Information:** a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (SI2004/3391) (**EIR**)

**Schools:** shall be given the same meaning as set out in Section 4 Education Act 1996

**Services:** the services to be delivered by PCC to Torbay under this Agreement set out in Schedule 3 which comprises the Interim Services and Business As Usual

**Term:** the period of the Initial Term together with any extensions to this Agreement that are agreed under clause 4.1;

**Torbay Assets:** the assets used by Torbay employees in the discharge of the Functions

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI2006/246)

**Warranties:** means the warranties given by Torbay to PCC set out in Schedule 8 and "Warranty" shall be construed accordingly

**Working Day:** any day other than Saturday, Sunday, a public or bank holiday in England

- 1.1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement
- 1.1.2 The Schedules form part of this Agreement and shall have effect as set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the Schedules shall take precedence.
- 1.1.3 Words in the singular include the plural and vice versa
- 1.1.4 The words includes, or including are to be construed without limitation
- 1.1.5 A reference to one gender includes a reference to the other genders
- 1.1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it
- 1.1.7 A reference to **writing** or **written** includes e-mail
- 1.1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done
- 1.1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time

1.1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule

## **2. AGREED PRINCIPLES**

2.1 The Parties agree that this Agreement shall be governed by the following principles:

2.1.1 The safety and wellbeing of children and young people within the administrative areas of Torbay and PCC will be paramount at all times throughout the development and operation of the Agreement.

2.1.2. The primary objective will be the sustained improvement of Children's Services in Torbay and Plymouth.

2.1.3 There will be a commitment to openness and transparency at all stages and by all Parties.

2.1.4 Lines of accountability for politicians and officers will be clearly articulated and agreed at each stage to avoid ambiguity.

2.1.5 Any issues will be resolved as quickly as possible by working together in a spirit of partnership, cooperation, equality and mutual respect.

2.1.6 The development and operation of the Services will be cost neutral to PCC, with all costs recorded and recovered in accordance with the agreed cost recovery model set out in Schedule 4.

2.1.7 All external communications relating to the Services will be agreed by both Parties before being issued, including the content and timing of messages, and the channels and audiences.

## **3. COMMENCEMENT AND DURATION**

3.1 This Agreement shall take effect on the date of this Agreement and shall continue for the Initial Term, unless terminated in accordance with the terms of this Agreement.

#### 4. EXTENDING THE INITIAL TERM

4.1 The Parties may extend this Agreement for a period beyond the Initial Term, by agreement in writing and signed by the Parties.

#### 5. SERVICES

5.1 The Parties enter into this Agreement to improve the Functions from its current score of inadequate as judged by Ofsted in its report dated 5 January 2016 and to deliver the necessary long term improvements to its Functions. Furthermore the Parties aim to improve the standards achieved by Schools so that educational outcomes of children and young people are also improved.

5.2 The specific Aims and Outcomes of the Services are described in Schedule 1.

5.3 The Services shall comprise:

- i. **Interim Services** – which shall be delivered from the Commencement Date up to the date when PCC considers that all aspects of the Functions may move to Business As Usual . It is intended that all of the Functions should be moved to Business as Usual by [ ], and in any event as soon as practicable, although both Parties recognise that some flexibility may be required. Some elements of the Functions may move to Business As Usual before others at the discretion of PCC. PCC will initially need to utilise Torbay’s existing models of service provision so as to effectively prioritise safeguarding. The Interim Services will allow PCC to re-model service provision in order to achieve the sustained improvement in outcomes for children as required by the Direction;
- ii. **Business as Usual** – shall refer to the period from the conclusion of the Interim Services (either for all of the Functions or part(s) of the Functions as the case may be) to the end of the Term. It is acknowledged by the Parties that parts of the Functions may be deemed to be suitable to be moved to Business As Usual

before other parts for reasons such as, but not limited to, maintaining staff stability.

- 5.4 Nothing in this Agreement shall prejudice or affect the rights and powers, duties and obligations of the Parties in the exercise of their functions as public bodies or in any other capacity.

## **6. INTERIM SERVICES**

- 6.1 In order to facilitate the delivery by PCC and the Director for Children Services of the Interim Services, Torbay shall comply with its obligations under clause 6.2.
- 6.2 Torbay shall share with and co-operate with all reasonable requests in relation to the Functions and Services made by PCC in each case from the Commencement Date in relation to:
- (a) all activities and operations associated with the exercise of the Functions;
  - (b) all information and assets associated with the conduct of those activities and operations including without prejudice to that generality;
    - (i) any claims, or pending claims relating to the Functions;
    - (ii) accommodation to be occupied and used by PCC in connection with the exercise of the Functions;
    - (iii) the right of use of ICT equipment and infrastructure for the purpose of improving the Functions;
    - (iv) access to all relevant databases;
    - (v) the fact that during the period of the Interim Services PCC may require the realignment of resources under its control in relation to the Functions;
    - (vi) the fact that during the Interim Services period PCC may consider, in discussion with Torbay, that other services or resources relating to the Functions should be re-aligned and brought under PCC control as part of the Services. In doing so, PCC will have regard to the agreed and approved budget for Torbay. This provision does not apply to back-office or support functions or services.

## **7. FINANCIAL ARRANGEMENT**

- 7.1 Torbay shall be financially accountable and responsible for all relevant costs, within the agreed costs and Torbay overall budget, relating to this Agreement throughout the Term. The Director for Children's Services will operate, when engaged solely in relation to matters relating to Torbay, in accordance with the Constitution for Torbay.
- 7.2 Torbay shall pay PCC all of its costs relating to the provision of the Services and any other management and support costs associated with the provision of the Services in accordance with Schedule 4. The Parties agree to review these costs annually and if necessary to amend them to ensure that at all times PCC is fully recompensed for the costs it incurs in providing the Services.
- 7.3 Torbay will comply with all reasonable requests for assistance from PCC, in addition to its duty to provide information set out in Schedule 8 of this Agreement, to assist in the performance of its financial reporting requirements, both to Torbay in relation to this Agreement, and to PCC by way of monitoring any impact on PCC of the Services.
- 7.4 The Director for Children Services shall have overall control of the Torbay Budget , irrespective of any arrangements made by Torbay for the delivery of those Services prior to the Commencement Date. This will include the power to determine the cessation, renewal or redeployment of resources associated with any third party agreements which may subsist on the Commencement Date in relation to the Services.

## **8. INTELLECTUAL PROPERTY**

- 8.1 Nothing in this agreement affects either Party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either Party contained in or relating to Confidential Information).
- 8.2 Torbay shall own and retain all rights, title and interest in and to Torbay's IPR. PCC shall have rights to access, use or modify Torbay's IPR for the purpose of improving the Services.



8.3 PCC shall own and retain all rights, title and interest in and to all reports, documents materials, techniques, ideas, concepts, trade marks, Know-How, software, computer code, designs, pictures, text, audio visual works, inventions, data, information and other items, expressions, works of authorship or work product of any kind developed, modified (in accordance with clause 8.2) or provided as part of the Services.

8.4 PCC hereby grants to Torbay for duration of the Term a revocable, non-transferrable, non-exclusive, royalty-free, limited licence to its IPR referred to in clause 8.3 and at no charge to Torbay to use solely for the purpose of this Agreement. It is hereby agreed that any use of PCC's IPR beyond the Term of this Agreement shall, if agreed by PCC, be incorporated in a separate document.

## **9. PLANS FOR IMPROVEMENT AND MONITORING**

9.1 In relation to children's social care, the document containing the plans and monitoring arrangements to improve performance as set out in the Direction shall inform the work of the Parties in setting priorities, and will be monitored by the Children's Improvement Board.

9.2 In relation to the education functions of Torbay, the monitoring of the effectiveness of these elements of the Services shall take place in accordance with the Direction.

## **10. PREMISES**

10.1 Torbay shall, to the reasonable satisfaction of the Director for Children's Services, make available its premises in order for PCC to provide the Services for the duration of the Term, ensuring that there is suitable space adequately equipped for the number and seniority of PCC staff on Working Days where PCC staff are on Torbay premises.

## **11. ASSETS**

11.1 Torbay shall make its Assets available to PCC in order for it to deliver the Services.

## **12. STAFFING (TUPE and SECONDMENT)**

- 12.1 In pursuance of the powers made available to the Parties under section 113 of the Local Government Act 1972, PCC shall place at the disposal of Torbay its Director for Children's Services for the purpose of delivering the Services.
- 12.2 In consequence of the above, the Director for Children's Services shall be treated as falling within the statutory immunity provided by Section 265 of the Public Health Act 1875, as amended, in respect of their actions or omissions in respect of the Project.
- 12.3 No Party shall have any liability to the other Party in respect of any loss which that other Party may suffer as a consequence of any action or omission by any officer, whilst performing the Services.
- 12.4 The Parties have acknowledged that this Agreement does not invoke TUPE but that during the Term TUPE may apply.
- 12.5 The Parties agree that the provisions of Schedule 6 shall apply to any:
- (a) Relevant Transfer of staff under this Agreement (if any); and
  - (b) Secondments of PCC staff to Torbay (if any).

### **13. GOVERNANCE STRUCTURE**

- 13.1 The governance structure set out in Schedule 5 shall apply in respect of the Services and throughout the Term unless varied or terminated in accordance with the terms of the Agreement.
- 13.2 Full responsibility for the line management of Torbay staff engaged directly in the Functions shall transfer from the Commencement Date to PCC managers who shall have the full rights and responsibilities provided to Torbay's managers in accordance with Torbay's scheme of delegation and employment policies and procedures. Torbay shall undertake all measures necessary to give full effect to such transfer.

- 13.3 PCC shall, from the Commencement Date, implement clear line management reporting and ensure that all Torbay's employees within the scope of clause 13.2 above have a named individual to whom they are directly accountable to in their role.

#### **14. REVIEW AND REPORTING**

- 14.1 Director for Children's Services will work together with Torbay to agree appropriate and relevant reporting structure to the Executive Lead Member for Children's Services for Torbay as to the effectiveness of the Services, and in particular insofar as Torbay is concerned the progress against the Improvement Plan.
- 14.2 The provision as to reporting on the Services is in addition and without prejudice to the requirement on the Director for Children's Services to report as to operational and policy matters to Torbay in accordance with its Constitution and the Statutory Guidance for Directors of Children's Services.
- 14.3 The Director for Children's Services will meet bi-monthly with representatives of the Department of Education as set out in the Direction for the purpose of monitoring the Services.

#### **15. VARIATIONS**

- 15.1 Except as otherwise expressly provided in the Agreement, no amendment of or supplement to any of the provisions of the Agreement shall be effective unless recorded in a document specifically referring to the Agreement and duly executed by the Parties.

#### **16. WORKING TOGETHER**

- 16.1 Whilst there will be many challenges and risks to both Councils which will require careful consideration and development of agreeable solutions, it is recognised by both PCC and Torbay that this will be a collaborative approach and that certain elements will

necessarily develop during the Term and be concluded in accordance with the Agreement.

## **17. HEALTH AND SAFETY**

- 17.1 Torbay shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Services and persons working on the Services.
- 17.2 Torbay shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to PCC on request prior to the Commencement Date and during the Term.
- 17.3 PCC, in carrying out the Functions shall not act in a way which would cause Torbay to be in breach of its obligations in relation to the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Services.

## **18. EQUALITY DUTIES**

- 18.1 The Parties acknowledge and will at all times have regard to their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.
- 18.2 Where, in relation to a change affecting Torbay staff, service users, or both, PCC will have regard to any relevant Torbay policies and processes, and in any event will comply with all legal requirements for equality impact assessment of such changes.

## **19. FREEDOM OF INFORMATION**

19.1 The Parties acknowledge that each is subject to the requirements of FOIA and the EIR, and shall assist and co-operate with one another to enable each Partner to comply with these information disclosure requirements, where necessary and in compliance with any protocol which may be developed for this purpose.

## **20. DATA PROTECTION AND INFORMATION SHARING**

20.1 Each Partner shall comply with any notification requirements under Data Protection Legislation. Both Parties shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.

20.2 The Parties shall adhere to the Information Sharing Agreement when sharing information in accordance with Schedule 7.

## **21. CONFIDENTIALITY**

21.1 The Parties agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.

21.2 Where a Partner receives a request to disclose information that the other Partner has designated as confidential, the receiving Partner shall consult with the other Partner before deciding whether the Information is subject to disclosure.

## **22. INSURANCE**

22.1 The Parties shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.

22.2 The Parties shall maintain in force throughout the Term the following insurance policies:

- (i) Employer's Liability Insurance Policy of not less than £20 million for each and every claim, act or occurrence or series of claims, acts or occurrences;

- (ii) Public Liability Insurance Policy of not less than £20 million for each and every claim, act or occurrence or series of claims, acts or occurrences;
- (iii) Professional Indemnity Insurance Policy of not less than £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences.

## **23. LIABILITIES**

23.1 Neither Party to this Agreement limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Contractors; or
- (b) fraud by it or its employees; or
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under Legislation.

23.2 PCC shall not be liable, except as provided in clause 23.1 to Torbay or any person for any matter arising in connection with this Agreement including any liability to employees of Torbay before the Commencement Date and during the Term, save as such matter is, during the Term, caused by the gross misconduct of PCC.

## **24. INDEMNITIES**

24.1 Torbay agrees to indemnify PCC and its employees against all liabilities, costs, claims and against all demands (including legal and other professional fees and expenses) it may incur in the performance of and in connection with the Services whether or not such liability arises before or after the Commencement Date.

## **25. WARRANTIES**

25.1 In consideration of PCC entering into this Agreement Torbay warrants to PCC:

- 25.1.1 that each Warranty is true, accurate and complete on the Commencement Date; and

- 25.1.2 that any Warranty which is qualified as being made "so far as Torbay is aware" or "to the best of the knowledge, information and belief of Torbay" or any similar expression has been given with the actual knowledge only of Torbay after such due diligent and careful enquiries as could reasonably be expected by Torbay (including enquiry of the relevant general managers, financial director, personnel manager and other relevant senior officers of Torbay and its Children's Services Department).
- 25.2 The Warranties are qualified to the extent, but only to the extent, of any matters which have been Disclosed.

## **26. COOPERATION**

- 26.1 Torbay undertakes to provide all such information, execute any documents and take all such other steps as PCC may reasonably request to give effect to the provisions of this Agreement.
- 26.2 Without prejudice to the provisions of clause 26.1 to provide all such information and exhibit all such records and documentation relating to the exercise of the Functions as PCC may request from time to time whether before or after the Commencement Date.

## **27. DISPUTE RESOLUTION**

- 27.1 The Parties will seek at all times to resolve any dispute informally, in a spirit of co- operation.
- 27.2 Should informal resolution not prove to be possible in the first instance, with relevant line management involvement as appropriate, the matter shall be referred to the Chief Executive or equivalent of each Party. The Parties shall give notice to each other in writing of such a referral.
- 27.3 The Chief Executive or equivalent of each Party may, at their discretion, propose that the Executive Lead Members for Children's Services (or their equivalent) of each of the

Parties should participate in the dispute resolution process. Any such participation must be by mutual consent, and be subject to mutually agreed timeframes.

27.4 If any dispute is not resolved within 21 days of any referral made in accordance with clause 27.2 then the Parties may agree, depending on the relevant circumstances relating to the dispute, to refer the matter to the DfE who may be able to assist in resolving the dispute.

27.5 If the DfE is unable to achieve a resolution of the dispute within 14 days of a referral, the Dispute Resolution Procedure shall be deemed exhausted.

27.6 The Parties may at any time mutually agree to a variation of the time limits in the Dispute Resolution Procedure.

## **28. TERMINATION**

28.1 Torbay may terminate this Agreement at any time by giving PCC 6 months' notice in writing. Should this occur, Torbay shall have sole responsibility for resolving with the Secretary of State the consequences of such termination upon the terms of the Direction.

28.2 PCC may terminate this Agreement at any time by giving Torbay 6 months' notice in writing.

28.3 Without prejudice to other rights and remedies at law, PCC may immediately terminate this Agreement at any time where:

28.3.1 Torbay fails to observe or perform any of its material obligations contained in this Agreement where such failure is not remediable;

28.3.2 Torbay fails to observe or perform any of its material obligations contained in the Agreement, where such failure was capable of being remedied within the specified time requested to do so by PCC; or

28.3.3 Torbay fails to comply with or is in breach of a Warranty or Warranties.



28.4 PCC may terminate this Agreement at any time by giving 2 months' written notice to Torbay, if in the reasonable opinion of PCC, Torbay's budget is not sufficient to enable PCC to exercise its obligations related to the Services in accordance with this Agreement or otherwise contribute sufficient resources to the Services.

28.5 PCC may terminate this Agreement immediately in the following circumstances:

- (a) There is a Change in Law that prevents either Party from complying with its obligations under this Agreement; or
- (b) Following a failure to resolve a dispute under clause 27.2;
- (c) Torbay makes a decision on a matter or matters which fall within the scope of this Agreement and whose purpose is deemed by PCC to frustrate the fundamental aims and objectives of this Agreement.

28.6 The provisions of clause 21 shall apply on termination of this Agreement.

## **29. EXIT COSTS AND CONSEQUENCES OF TERMINATION**

29.1 In the event that PCC terminates this Agreement otherwise than in accordance with clause 28 above, it shall be responsible for all exit costs relating to the termination of the Agreement.

29.2 Where the Parties mutually agree to terminate this Agreement, with permission of the Secretary of State, then Torbay and PCC will share equally all exit costs relating to the termination of the Agreement

29.3 In the event that PCC terminates this Agreement in accordance with clauses 28.3 to 28.5, Torbay will indemnify PCC and cover all exit costs relating to the termination of the Agreement

29.4 The provisions of the following clauses shall survive termination or expiry of this Agreement:

- (a) Clause: 8

- (b) Clause: 19
- (c) Clause: 20
- (d) Clause: 21
- (e) Clause: 23
- (f) Clause: 24
- (g) Clause: 25
- (h) Clause: 26
- (i) Clause: 29
- (j) Clause: 32
- (k) Clause: 35

### **30. PUBLICITY**

30.1 Communications officers from Torbay and PCC shall liaise with each other on all proactive and reactive media and/or other communications to ensure consistency and the consistent communication of key messages. A process for signing off communications shall be established, acknowledging that there should be a number of officers and members involved depending on the urgency and profile in each individual case, in order to enable the flexible and responsive approach.

### **31. NO PARTNERSHIP**

31.1 Nothing in this Agreement shall be construed as constituting a legal partnership between the Parties or as constituting either Party as the agent of the other for any purpose whatsoever, except as may be specified by the terms of this Agreement.

### **32. THIRD PARTY RIGHTS**

32.1 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.

### **33. NOTICES**

33.1 Notices shall be in writing and shall be sent to the other Council marked for the attention of the Chief Executive (or equivalent) or another person duly notified by the Council for the purposes of serving notices on that Partner, at the address set out for the Council in this Agreement.

33.2 Notices may be sent by first class mail or email, provided that emails are confirmed by the serving party within 24 hours by first class mailed confirmation of a copy. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed email transmissions shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.

### **34. SEVERANCE**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, Torbay and PCC shall immediately commence good faith negotiations to remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.

### **35. WAIVER**

35.1 The rights and remedies provided by this agreement may be waived only in writing by the relevant Representative in a manner that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

35.2 Unless a right or remedy of PCC is expressed to be an exclusive right or remedy, the exercise of it by PCC is without prejudice to PCC's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either party shall not constitute a waiver of that right or remedy, or of any other rights or remedies.

35.3 The rights and remedies provided by this agreement are cumulative and, unless otherwise provided in this agreement, are not exclusive of any right or remedies provided at law, in equity or otherwise under this agreement

### **36. ENTIRE AGREEMENT**

36.1 This agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

36.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (Representation) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement or those documents.

36.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this agreement.

36.4 Nothing in this clause shall limit or exclude any liability for fraud.

### **37. GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with English law. Each party agrees to submit to the exclusive jurisdiction of the English courts.

### **38. COUNTERPARTS**

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this deed, but all the counterparts shall together constitute the same deed. No counterpart shall be effective until each party has executed at least one counterpart.

This deed has been entered into on the date stated at the beginning of it.

Executed by affixing the common seal of )  
**TORBAY COUNCIL** )  
in the presence of )  
 )  
..... )  
**Authorised Signatory** )  
 )  
 )  
 )

Executed by affixing the common seal of )  
**PLYMOUTH CITY COUNCIL** )  
in the presence of )  
 )  
..... )  
**Authorised Signatory** )  
 )  
 )  
 )

## SCHEDULE 1 AIMS AND OUTCOMES

1. The purpose of this Agreement is to put in place a delivery contract between Torbay and PCC whereby PCC will provide support and assistance for the delivery of the Functions.
2. The aim of the Services will be to ensure improvements across the Functions and in particular to improve safeguarding standards for vulnerable children and to work with Schools Torbay to improve educational standards for all.
3. Torbay will retain political and financial authority and statutory accountability. PCC will take no direct political accountability but both parties will readily explore political partnership opportunities over time, such as joint scrutiny arrangements. The Executive Member for Torbay will play a key role in on-going political responsibility.
4. The Director for Children's Services will be a full member of the Senior Leadership Team in Torbay and engage in place setting and wider strategy development where this involves activity related to the Services. This includes engagement with Torbay's corporate support and governance services as appropriate. There may also be a requirement for a nominated senior officer from Torbay Children's Services to engage with the senior leadership teams of both Parties when deputising for the Director for Children's Services. The Director for Children's Services shall ensure that there is sufficient leadership visibility in Torbay.
5. Torbay will retain financial accountability and provide an appropriate budget for the delivery of Children's Services, as informed by its Medium Term Financial Strategy (MTFS) which will be subject to regular review and close monitoring and reporting by both partners. The Children's Services' budgets for Torbay and Plymouth will not be pooled or subject to cross subsidy as part of this agreement. The respective Section 151 Officers will continue in their statutory roles providing budgetary oversight and working together to ensure that Torbay is making sufficient budgetary provision for the Functions.

6. Hampshire's role as improvement partner to Torbay shall continue until removed or revoked by ministerial direction, whilst also engaging with PCC in order to secure the progress made to date and ensure there is a shared and agreed pathway to improvement. This acknowledges a desire on Torbay's part to have continuity of leadership and improvement focus during the transitional period.
7. The Director for Children Services will join the Children's Improvement Board (CIB) and Torbay's Safeguarding Children's Board (TSCB) at the earliest opportunity to further support a smooth transition.
8. PCC will lead on the appointment and development of managers and staff including redesign where appropriate, in consultation with Torbay. Similarly any redeployment of PCC managers or staff to Torbay posts and vice versa will be a joint decision. Both Councils' view this as an opportunity to second and develop talented staff.
9. A particular consideration for both Parties and their elected members will be to maintain the strong, existing local relationships and high visibility with local partners, communities and schools relating to the Functions.
10. The Services are an opportunity for both Parties to explore the development of shared functions and merged teams. Whilst both Parties remain open to all options, it is vital that any such changes contribute to improvements and services for children and do not destabilise services, including the loss of staff or lower morale. No significant organisational changes shall be made affecting the Functions without the express endorsement of PCC, as supported by the Direction.
11. Torbay's operational support arrangements, policies and procedures shall remain in place, particularly where these have developed through the work with Hampshire or are deemed to be important to Torbay's wider financial position, but with PCC having discretion to amend or develop in consultation with Torbay and Hampshire. The same principle would apply to 'back office' functions and services, which should remain in situ but may be subject to review.



## **SCHEDULE 2 – THE DIRECTION**

### **STATUTORY DIRECTION TO TORBAY COUNCIL IN RELATION TO CHILDREN'S SERVICES UNDER SECTION 497A(4B) OF THE EDUCATION ACT 1996**

WHEREAS:

1. The Secretary of State for Education (“the Secretary of State”) has noted in respect of Torbay Council (“the Council”) that, performance in respect of children who need help and protection has declined from ‘adequate’ in April 2013 to ‘inadequate’ as detailed in Ofsted’s inspection report of 5 January 2016 (“the 2016 Ofsted report”).
2. An improvement notice was issued to the Council on 31 January 2011 following the findings of poor performance in safeguarding services for children and young people contained in the inspection report carried out by Ofsted and the Care Quality Commission (published October 2010). A further improvement notice was issued on 19 April 2012 to revise the targets contained in the first improvement notice; clarify the focus of the targets set out in the first improvement notice going into the second year of improvement; and to reflect progress made under the first improvement notice. The second notice was lifted on 4 February 2014 as a result of progress.
3. A Direction was issued to the Council on 11 May 2016 (the first direction) requiring the Council to comply with the instructions of a Commissioner appointed by the Secretary of State; and to co-operate with the Commissioner-led review of services, including the Council’s intention to transfer children’s services into an ‘Integrated Care Organisation’.
4. The Secretary of State appointed John Coughlan CBE, Chief Executive of Hampshire County Council, as Commissioner for Children’s Services in Torbay (“the Children’s Services Commissioner”); and Hampshire County Council as expert advisers.
5. The Children’s Services Commissioner carried out a comprehensive review and concluded that the Council should not retain control of its services. Following a thorough options appraisal of alternative delivery models, the Children’s Services Commissioner recommended in April 2017 that the Council should enter into a contractual arrangement with Plymouth City Council, which will deliver children’s services on the Council’s behalf.
6. The Secretary of State has carefully considered:
  - a. The 2016 Ofsted report, which found the Council’s delivery of children’s social care services, particularly in relation to children who need help and protection, to be ‘inadequate’. Leadership, management and governance in the Council were also judged to be ‘inadequate’;
  - b. The Children’s Services Commissioner’s report of April 2017 (“the 2017 report”), which concluded that in order to provide sustainable improvements

to children's social care services the council should form enter into a contractual arrangement with Plymouth City Council; and

- c. Ofsted's feedback as part of its quarterly monitoring visits to the Council, which acknowledge some progress made by senior leadership in children's services from a low starting point.
7. The Secretary of State remains satisfied that the Council is not yet performing to an adequate standard, or at all, some or all of the functions to which section 497A of the Education Act 1996 ("the 1996 Act") is applied by section 50 of the Children Act 2004 ("children's social care functions"), namely:
    - a) social services functions, as defined in the Local Authority Social Services Act 1970, so far as those functions relate to children;
    - b) the functions conferred on the Council under sections 23C to 240 of the Children Act 1989 (so far as not falling within paragraph a. above); and
    - c) the functions conferred on the Council under sections 10, 12, 12C, 120 and 17A of the Children Act 2004.
  8. The Secretary of State has re-appointed John Coughlan CBE as the Children's Services Commissioner and Hampshire County Council as expert advisers in accordance with, and for the purposes of, the terms of reference ("the Terms of Reference") set out in the Annex to this direction.
  9. The Secretary of State, having considered representations made by the Council, considers it expedient, in accordance with her powers under section 497A(4B) of the Education Act 1996, to direct the Council as set out below in order to ensure that all of the Council's children's social care functions are performed to an adequate standard.

**NOW THEREFORE:**

10. Pursuant to section 497A(4B) of the Education Act 1996, the Secretary of State directs the Council as follows:
  - a. Comply with any instructions of the Secretary of State or the Children's Services Commissioner in relation to the improvement of the Council's exercise of its children's social care functions and to provide such assistance as may be required;
  - b. Co-operate with the Children's Services Commissioner, including on request allowing the Commissioner at all reasonable times access:
    - i. to any premises of the Council;
    - ii. to any document of or relating to the Council; and
    - iii. to any employee or member of the Council.

which appears to the Commissioner to be necessary for achieving the purposes of, and carrying out the responsibilities set out in the Terms of Reference;

- c. Provide the Children's Services Commissioner with such amenities, services and administrative support as they may reasonably require from time to time for carrying out their responsibilities in accordance with the Terms of Reference, including:
    - i. providing officers' time or support; and
    - ii. providing office space, meeting rooms or computer facilities;
  - d. To co-operate with the development of a contractual arrangement with Plymouth City Council, which will deliver children's services on the Council's behalf.
11. In consequence of this direction, the Secretary of State for Education revokes the first direction.
  12. This direction will remain in force until it is revoked by the Secretary of State.

Signed on behalf of the Secretary of State for Education  
SUZANNE LUNN  
A Senior Civil Servant in the Department for Education  
Dated this day of

## ANNEX

### Relevant functions

#### Commissioner for Children's Services and expert advisers

##### Terms of Reference

1. Torbay Council has persistently failed in its delivery of children's social care services. Ofsted's inspection report, published in January 2016, found the service to be 'inadequate' overall. The Council was previously found 'inadequate' in 2010 and remained so until April 2013 when the Council was judged 'adequate'. In all cases where a council has persistently or systematically failed to discharge its children's social care functions there is a presumption that service control will be removed from the council unless there are good reasons not to do so.
2. The Commissioner carried out a comprehensive review and concluded that Torbay cannot retain unilateral control of its services. Following a thorough options appraisal of alternative delivery models, the Commissioner recommended in April 2017 that Torbay should enter a contractual arrangement with Plymouth City Council, which will deliver children's services on Torbay's behalf.
3. The Commissioner is expected to provide independent strategic oversight of Torbay Council's progress towards a contract with Plymouth City Council, with support from Hampshire County Council as expert advisers, under the updated Direction issued to Torbay Council by the Secretary of State under section 497A of the Education Act 1996 in October 2017. The Commissioner and expert advisers shall:
  - a. Jointly chair Torbay's Children's Services Improvement Board;
  - b. Ensure the improvement plan, which spans children's services, continues to be delivered and robustly monitored. Progress will be reported by the Council to each meeting of Torbay Children's Services Improvement Board;
  - c. Ensure that the improvement plan continues to include clear and specific actions which reflect the journey of the child and which are designed to improve the quality of services for children in need of help and protection;
  - d. Oversee the implementation of a robust monitoring and audit framework, which supports practice improvement and the effective delivery of the service;
  - e. Strengthen leadership capacity within children's social care services ensuring that there are dedicated mentoring arrangements for the Head of Children's Social Services; and matching up key personnel throughout the organisation for peer to peer mentoring and support;
  - f. Support the improvement of partnership working;
  - g. Support practice improvement through the re-design of systems and processes;
  - h. Steer the development of a contractual arrangement between Torbay Council and Plymouth City Council; and
  - i. Deliver quarterly written updates on the Council's progress to the Minister for Children and Families, and more frequently if the pace of progress is not sufficient or if the Minister requires it.

### **SCHEDULE 3 SERVICES AND SCOPE**

*[Describe Services that PCC will be providing for Interim Period, and Business As Usual Period]*

## **SCHEDULE 4 – PAYMENT SCHEDULE**

## **SCHEDULE 5 – GOVERNANCE STRUCTURE**

## **SCHEDULE 6 STAFFING**

### **TUPE**

1. The transfer of management and service delivery responsibilities does not in itself create a transfer under TUPE Regulations. There is no transfer of an entity or employees and accordingly TUPE does not apply and Torbay employees will remain in employment with Torbay.
2. It is possible that during the Term and in accordance with the Agreement aspects of Torbay Children's Services may be brought within PCC operations and delivered directly by PCC. These circumstances may create a transfer within the definition and operation of TUPE Regulations.
3. In the event that employment transfers in accordance with TUPE provisions during the Term, the Parties' liabilities in relation to the operation of TUPE Regulations will be agreed between the Parties at the time of such operation. Any costs incurred by PCC as a result of any operation of TUPE (including pensions) associated with the transfer of staff shall be borne by Torbay.

### **Workforce Staff and Management Provisions**

1. The following provisions describe how the staff management arrangements for Children's Services on Torbay will operate during the Term of and in accordance with the Agreement. These provisions apply particularly to Torbay Children's Services staff who are not employed in Schools. Torbay School based employees will continue to be subject to local management under delegated powers by the governing body of the Schools. Although the provisions of this Schedule do not apply in full to Schools based staff, PCC will have such powers of intervention in relation to Torbay School based employees that are available to the Local Authority under relevant statutory provisions.
2. Staff currently employed by Torbay shall remain employees of Torbay from the Commencement Date and will continue to be subject to the pay and conditions framework determined by Torbay.
3. From the Commencement Date Torbay employment policies and procedures will continue to apply to Children's Services staff employed by Torbay.
4. Full responsibility for the line management of staff within Children's Services on Torbay will be assigned to PCC from the Commencement Date and PCC managers will have the full rights and responsibilities allowed to Torbay managers under Torbay Constitution, scheme of delegation and employment procedures and policies.
5. PCC will ensure clarity in line management reporting arrangements so that all Torbay employees in Children's Services have a named individual to whom they are directly accountable in their role.



6. PCC managers will have full management rights with regard to Torbay staff including the power to:
  - Direct, instruct and manage performance of Torbay staff in the course of their employment
  - determine and amend staffing structures and arrangements for the deployment of Torbay Children's Services staff including the creation of new roles
  - recruit and appoint staff to employment with Torbay within Children's Services
  - vary the pay and contractual terms of individual members of Torbay staff within the overall framework for pay and conditions determined by Torbay
  - hear and make determinations regarding grievances under Torbay procedures
  - suspend and discipline staff in accordance with Torbay procedures
  - access Torbay arrangements for occupational health and employee assistance including the right to make a referral and seek advice from these services with regard to Torbay Children's Services staff
  - dismiss Torbay Children's Services staff in accordance with Torbay procedures
  - determine termination arrangements including compromise agreement with an Torbay member of staff for their exit from employment
  - provide employment references for Torbay Children's Services staff when requested to do so
7. Torbay will retain full financial liability for all costs arising in connection with the recruitment, appointment, employment and termination of Torbay staff within Children's Services including any costs in connection with Employment Tribunals or other legal proceedings brought by Torbay employees.
8. PCC will also have the right to deploy (by secondment or other arrangement) its own managers and/or staff within Children's Services on Torbay during the Term of the Agreement.
9. Torbay agrees to fund costs arising from the termination of employment of PCC staff where such costs arise and the member of PCC staff was employed by PCC after the Commencement Date solely for the purpose of supporting or delivering services to Torbay.
10. The Parties will develop a Protocol, to be agreed and amended as appropriate, to assist with the management of Torbay staff whose roles are encompassed by these Services.

## **SCHEDULE 7- INFORMATION DATA SHARING AGREEMENT**

### **Agreement for access by Plymouth City Council staff to Torbay Children's Services' information**

The Secretary of State for Education has made a direction pursuant to section 497A(4B) of the Education Act 1996 including the direction that Torbay establish a delivery contract with Plymouth City Council providing that Plymouth City Council will deliver on behalf of Torbay all of its children's services functions.

#### **1. Agreement**

This agreement is between Torbay (Torbay) and Plymouth City Council (PCC) and relates specifically to and only to the role of PCC employees delivering children's services on behalf of Torbay under the delivery contract established in accordance with the direction of the Secretary of State for Education under s497A(4B) of the Education Act 1996.

#### **Definitions:**

In this agreement:-

- 1.1 'Torbay' means Torbay Council
- 1.2 'PCC' means Plymouth City Council
- 1.3 'PCC Employee' means a Plymouth City Council Employee who is delivering children's services to Torbay under the delivery contract and who requires access to Torbay information and systems.
- 1.4 'the Parties' means PCC and Torbay.
- 1.5 'Service User' means user of children's services at Torbay.
- 1.6 Data Protection Officer means the dedicated officer within each authority who has been allocated the tasks set out with the General Data Protection Regulation (GDPR).

#### **2. Purpose**

- 2.1 In accordance with the direction of the Secretary of State for Education under s497A(4B) of Education Act a delivery contract has been agreed between Torbay and PCC for PCC to deliver on behalf of Torbay all of its children's services functions for the term of this Agreement.
- 2.2 This agreement for access to information has been developed in order to set out the basis on which Torbay Council will provide access to Torbay records and systems to specific authorised PCC employees.

#### **3. Access to Council Systems and Information**

- 3.1 PCC staff that access Torbay Council systems will sign a confidentiality statement supplied by Torbay Council.
- 3.2 PCC will provide Torbay with the details of authorised PCC employees who PCC will require to access Torbay offices and IT systems, including children's services' systems, in order to perform their role under the delivery contract.
- 3.3 Torbay will provide access to all such authorised PCC employees to all data (to include personal and sensitive personal data / Special categories of data as defined by Data Protection Legislation) that they request access to in order to fulfil their roles under the delivery contract.
- 3.4 Employees from PCC will only access those records that they consider necessary in order to properly perform their role with Torbay.
- 3.5 Access will be given to all systems including Social Care system(s), Education systems, Outlook, network folders and all other electronic and paper files as deemed necessary by Torbay to enable PCC Employees to carry out their work under the delivery contract.
- 3.6 PCC staff will be provided with a Torbay email address, and will use those email accounts in accordance with such guidance as may be issued from time to time by Torbay.
- 3.7 PCC staff working under the delivery contract will not remove Torbay information from Torbay Council systems.
- 3.8 PCC confirm that all authorised PCC staff have had the necessary background checks eg DBS (CRB), ISA etc commensurate with the level of information they are required to access.

#### **4. Purposes for which information may be accessed and used**

- 4.1 Access to the appropriate Torbay systems and information will be granted to authorised PCC employees for the purpose of carrying out their role under the delivery contract. Information obtained by PCC staff from Torbay's computer systems and manual records will not be used for any other purpose(s).

#### **5. Data Controllers**

- 5.1 Torbay will remain as the data controller for all data that is accessed and used by employees of both authorities.
- 5.2 PCC and Torbay will be joint data controllers for any data that is accessed and used regarding joint clients of both authorities.

#### **6 Special categories of data and Sensitive personal data**

- 6.1 All PCC staff will process Special Categories of Data and Sensitive personal data in line with Data Protection legislation.

## **7 Applicable policies**

- 7.1 PCC employees will be provided by Torbay with details of Torbay policies and procedures in relation to data and document security including emailing, removing documents from the office, faxing, etc.
- 7.2 PCC employees will be provided with copies of Torbay's corporate policies and Codes of Practice relating to use of Torbay computer systems, records and information. Copies of all relevant documents and policies will be made available to them by Torbay.

## **8 Accuracy, relevance and adequacy of information**

- 8.1 Each of the Parties will be responsible for ensuring that information their respective employees record on Torbay Children's Services' systems is adequate, relevant and accurate.

## **9 Confidentiality**

- 9.1 Both PCC employees and Torbay employees shall at all times comply with the duty of confidentiality towards individuals whose personal data is supplied or made available under this Agreement. For the avoidance of doubt this requirement shall survive termination of this Agreement and PCC employees will continue to be bound by confidentiality after their role at Torbay under the delivery contract has ended.
- 9.2 The Caldicott principles must be upheld in relation to all personal information. The Data Protection Act and forthcoming General Data Protection Regulation (GDPR) and other relevant legislation must be complied with.

## **10 Fair Processing Notices**

- 10.1 Torbay confirm that they will include in the privacy notice that is provided to members of the public on their website and also on paper, details reflecting the role of PCC employees in the provision of Torbay Children's Services department under the delivery contract.

## **11 Consent forms**

- 11.1 Torbay confirm that they will amend the Children's Services' consent form that service users are required to sign to reflect the role of PCC employees in the provision of Torbay's Children's Services department under the delivery contract.

## **12 Security**

- 12.1 PCC staff will be subject to the technical and organisational controls that are defined by Torbay.
- 12.2 PCC and Torbay staff (to include but not limited to temporary and agency staff) will take all reasonable steps to ensure that they comply with all appropriate technical and organisational measures which are in place, to protect any personal data accessed or processed by their employees against:-

- Unauthorised or unlawful processing of personal data
- Its accidental loss
- Destruction or damage

12.3 This includes paper files and electronic files.

12.4 All PCC staff will undertake the Torbay information governance and security training.

### **13 Data Breaches**

13.1 If PCC staff are responsible for a personal data breach of Torbay data, this will be reported to the Data Protection Officer for Torbay, within 24hrs of becoming aware and reported.

13.2 PCC will cooperate fully with the Torbay Data Protection Officer, and if necessary, the ICO in any data breach investigation.

### **14 Subject Access Request**

14.1 Should any Subject Access Requests be received for information held by Torbay, including information inputted by PCC staff in their role with Torbay or Torbay data hosted by PCC then these will be dealt with by Torbay staff in accordance with their existing policies and procedures.

14.2 PCC will provide a contact within the Information Access team in order to facilitate Subject Access Requests, should information be required from PCC systems.

14.3 Any PCC involvement in a Subject Access Request processed by Torbay will be provided in order for Torbay to meet any timescales as defined in Data Protection legislation.

14.4 For the avoidance of doubt PCC staff acting in their capacity as service providers to Torbay will not be third parties.

14.5 Where information has been provided by PCC under any other arrangement PCC will be regarded as a third party.

### **15 Passwords**

15.1 Passwords must be kept secure and must not be shared with any third parties or any other PCC or Torbay staff at any time or in any circumstances including holidays or unplanned leave.

### **16 Changes in role/leavers**

16.1 On leaving their employment or changing their job to a non-council role, PCC employees will not take with them any information obtained from Torbay records.

### **17 Protocol**

17.1 The Parties will develop a Protocol, to be agreed and amended as appropriate and in particular to reflect any changes in the law, to assist with the effective and timely reporting of information security breaches to the appropriate Torbay officer, consistent information retention, and the interface with the Torbay's complaints procedure.

## **18 Indemnity**

18.1 Torbay shall indemnify PCC against any liability it incurs in connection with the Service and Function arising under the DPA 1998, unless caused during the Term by the gross negligence of PCC.

## **SCHEDULE 8 – WARRANTIES**

### **Information and Commitment**

1. In consideration of PCC entering into this Agreement Torbay warrants to provide such information as PCC may reasonably request in connection with the provision of the Services provided that Torbay (acting reasonably) considers such information necessary for the purpose of providing the Services.
2. Torbay will use all reasonable endeavours to commit to its current operating model for a period not less than 3 years
3. As at the Commencement Date the Material Information are complete and accurate in all respects.

### **Contracts**

4. Save as Disclosed there are no contracts with third parties affecting the Services or used by Torbay in the provision of the Services.

### **Capacity to enter into Agreement**

5. Torbay has all requisite power and authority, and has taken all necessary action, to enable it to enter into and perform this Agreement and any other agreements and documents referred to in this Agreement, and this Agreement and such other agreements and documents constitute (or shall when executed constitute) valid, legal and binding obligations on Torbay enforceable in accordance with their respective terms.

### **Adequacy of Employees**

6. Torbay warrants that to the best of its knowledge, information and belief, that as at the Commencement Date its employees in the Children Service's Department are suitably qualified and sufficient in number to ensure that the PCC can fulfil all its obligations under this Agreement.

### **Compliance**

7. Torbay has at all times performed the Services in accordance with, and has acted in compliance with all applicable laws and regulations and directions of any applicable authority.
8. There are no third parties with which Torbay itself is required or chooses to register in relation to the Services, or with which it is required to register any of its assets and no action has been taken by any regulator in the last 5 years either to refuse registration or to take regulatory enforcement action in relation to the Services.

9. To its knowledge, there are no matters concerning any person engaged by Torbay in relation to the Services which would render or might render that person unsuitable to work with children.
10. Torbay is not aware of any breach of safeguarding legislation in relation to the Services.
11. Torbay warrants that it shall do nothing to, nor act in a manner that will or is reasonably likely to, bring PCC into disrepute

## **Disputes**

12. Torbay is not engaged in or subject to any:
  - (a) litigation, administrative, mediation or arbitration proceedings in relation to the Services;
  - (b) outstanding negligence claims, ombudsman complaints, safeguarding investigations into abuse by foster carers or staff, High court cases, judicial reviews, ombudsman decisions in respect of complaints in relation to the Services; or
  - (c) claim, dispute or complaint in connection with the Services; or
  - (d) investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body,

and no such proceedings, investigations or inquiries, claims, complaints or disputes have been threatened or are pending by or against Torbay or against any such person and there are no facts or circumstances likely to give rise to any such proceedings.

## **Insurance**

13. Torbay it has notified PCC by the date of this Agreement of all existing insurances covering the Services and of all claims experienced and of any outstanding, anticipated or prospective claims and the name and address of Torbay's insurance brokers/providers in respect of the Services