

Decision maker:	Cabinet member: health and wellbeing
Decision date:	27 March 2017
Title of report:	Direct award of the Herefordshire Healthwatch contract
Report by:	Integration and better care fund commissioning manager

Classification

Open

Key decision

This is not a key decision.

Wards affected

Countywide

Purpose

To approve the decision to directly award a 14 month contract to a newly-established company, to be called Healthwatch Herefordshire, to deliver the Healthwatch service in Herefordshire.

Recommendations

THAT:

- (a) The contract award for the delivery of the legal Healthwatch function for Herefordshire to a newly-established company, to be called Healthwatch Herefordshire, which will receive back office functions and support provided by Healthwatch Worcestershire to enable synergies and reduce duplications, is approved;**
- (b) The negotiated funding level of £163,000 for 14 months is approved;**
- (c) In the event of recommendation (a) not being practical, approval for delegated authority to the director for adults and wellbeing, in consultation with the cabinet member health and wellbeing, to award an interim contract**

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arrangement to another provider within the funding set out in recommendation (b);

- (d) By virtue of this decision report an exemption to paragraph 4.6.13.7 of the council's contract procedure rules shall be granted to enable the extensions for the reasons as set out in the paragraphs identified below and referred to throughout this document.**

Alternative options

- 1 Terminate the contract at the end of the current extension period of 31 March 2017 with no continuation of service provision. The council has a legal duty to commission a Healthwatch service therefore a service must be in place and this is not recommended.
- 2 To undertake a competitive tender exercise for the service prior to termination of the current contract. Due to the current provider, Herefordshire Voluntary Organisations Support Service (HVOSS), issuing a late termination notice to the council, a competitive tender process cannot be undertaken within the available timescale.
- 3 To directly award the Healthwatch service to Herefordshire Carers Support (HCS) which currently delivers the operational service function as a sub-contractor to HVOSS. This is not recommended as the credibility of the Healthwatch function is based upon it being independent from other organisations within the health and social care sector. As HCS is a provider of health and social care services within Herefordshire, having the contract explicitly held by them as opposed to a sub-contractor, would therefore risk undermining the reputation for impartiality, which is essential for the Healthwatch function.
- 4 To directly award to another provider. This is not recommended as soft market testing earlier in the year was unable to identify any other existing organisation that would be able / willing to take on the Healthwatch Herefordshire function within the funding and timing constraints and deliver this to an acceptable standard, without potential conflicts of interest.

Reasons for recommendations

- 5 HVOSS currently host the Herefordshire Healthwatch service and consideration was being given to a 12 month contract extension to 31 March 2018, to allow for a service review and to undertake a competitive tender process. However, on 1 February 2017 HVOSS informed the council that it would not be accepting the contract extension. This has not allowed time for a competitive tender, and due to the legal nature of the service, a direct award is required.
- 6 The previous decision to extend the contract to 31 March 2017 allowed sufficient time to undertake a service review. However, given a change in the council's adults and wellbeing commissioning structure and reduction in resources, it has not been possible to complete this. The necessary resource is now available and the timescales within the report show the steps required.
- 7 Healthwatch Worcestershire are an established provider who will provide support in developing the service and back office functions to allow for any synergies of service, this is also aligned to the national wider health and social care footprint of the Sustainability and Transformation Plans (STP) and possible economies of scale. Like all Healthwatch providers, however, they are not able to provide the Healthwatch

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service out of their own county.

- 8 The 14 month contract will allow appropriate time for the Healthwatch service to be subjected to a full review, service re-design and a competitive procurement exercise.
- 9 The intention is to encourage a new company to be formed called Healthwatch Herefordshire. To enable a limited company to be established a board of directors will need to be appointed to deliver the Healthwatch Herefordshire service. Given the limited time available within which this is required to be implemented, if this solution is found not to be practical authorisation is being sought to allow the director for adults and wellbeing, in consultation with the cabinet member health and wellbeing, to award an interim contract if required to ensure the legal duties are discharged for a period of 14 months whilst a full procurement exercise is undertaken.
- 10 The award will enable the continued provision of the service as required under the Health and Social Care Act 2012.

Key considerations

- 11 The provision of a local Healthwatch service is a requirement of the Health and Social Care Act 2012. The council is required to ensure the provision of a local service, which is also represented on the local Health and Wellbeing Board. Councils are required to procure a Healthwatch service from a voluntary sector organisation, utilising funding from the Department of Health together with additional council funding.
- 12 The service acts as an independent consumer champion, giving the public, patients and users of health and social care services in Herefordshire a voice.
- 13 The current contract has been in place since 2013 and is a sub-contractual relationship, with HVOSS as the host provider and HCS operating the delivery function. An option would be to directly award the contract to HCS, however this would require an explicit separation between the role of HCS as a support service for carers and the delivery of Healthwatch as a voice for all residents. This would be difficult in practice and would mean there was minimal benefit in the Healthwatch service being directly hosted by HCS.
- 14 After a four year period of operation, the council now needs to consider the most cost effective way of delivering the service in future, whilst maintaining a current provision and undertaking a competitive tender exercise.
- 15 The contract will be awarded and the service provided through a limited company called Healthwatch Herefordshire with a nominated chair and board of directors. This company is not yet in existence, but is expected to be in place by 1 April 2017. The chair and the directors will be elected onto the board through a steering group. The steering group will have membership from key stakeholders including the HCCG, voluntary organisations, HOSC and cabinet members.
- 16 The three current employees within HCS will be TUPE transferred to the limited company with operational management and support provided by Healthwatch Worcestershire.
- 17 Healthwatch Worcestershire and Healthwatch Herefordshire have a history of working together and are currently doing so as members of the STP programme board.
- 18 Robust key performance measures will be monitored on a quarterly basis to ensure the service is meeting the desired outcomes. In addition, a change management programme will also be developed with the board and Healthwatch Worcestershire

over the period of the contract.

- 19 An outline timetable for the re-design and tender exercise of a new Healthwatch service would include:

Activity	Timescales
Re-design, engagement, scoping and recommissioning	May – September 2017
Commence competitive tender process	October 2017
Tender evaluation	January 2018
Award contract	February 2018
Mobilisation	February – April 2018
Service commencement	May 2018

As the company is not yet in existence, it may not be possible to award a contract to this company. The director for adults and wellbeing therefore needs to be able to make alternative provision if this preferred route is not practicable and directly award the healthwatch activities to another provider.

Community impact

- 20 Healthwatch provides Herefordshire residents an opportunity to voice any concerns, issues or challenges experienced within health and social care and it also offers representation on appropriate boards and processes. Without Healthwatch, residents may not feel supported to raise issues and appropriate representation would not be available.

Equality duty

- 21 The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
- 22 The equality duty covers the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 23 The decision does not have any specific impacts for those that will use the service. Healthwatch Herefordshire is a service available to all residents within the county to enable them to have a voice about local health and social care services. As part of the recommissioning process allowed by this award, a full Equality Impact Assessment will be undertaken.

Financial implications

- 24 The contract value for this award will be a maximum of £163k for the 14 months to 30 June 2018. This is equivalent to a value of £140k per annum. This is the same value as for the current 2016/17 Healthwatch Herefordshire contract. This will include the delivery of the service and all set up costs.
- 25 The council receives funding of £49k per annum from the Department of Health which contributes towards the overall contract cost. Confirmation of the grant funding for 2017/18 is still pending, but has been assumed to be maintained at the same level as 2016/17.

- 26 It is recognised that the current amount of council funding contribution will not be sustainable in the longer term and therefore the service from 2018 onwards will be re-designed to meet lower funding levels.

Legal implications

- 27 As detailed above there is a requirement in the Health and Social Care Act 2012 for the council to have a local Healthwatch to provide activities set out in s221 of the Local Government and Public Involvement in Health Act 2007 as amended.
- 28 Given the value of the contract, the council is required to conduct a procurement exercise. This is in accordance with our own contract procedure rules. This has not been possible due to our preference that the HVOSS contract be extended which was unfortunately not their intention. The inability to procure this contract creates a risk of legal challenge in the high court. It is considered that the risk of such action is low given the duration of this contract and the intention to reprocure the activities in the timescales listed above.
- 29 The recommendation detailed at the outset of this report will constitute a “relevant transfer” for the purpose of Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) and, in particular, Regulation 3(1)(b)(ii). This provision applies where the “contractor” (in this case HVOSS) ceases to carry out the “activities” (in this case the delivery of Healthwatch) on behalf of the “client” (in this case the Council) and that service is subsequently delivered by “another contractor” (in this case Healthwatch Worcestershire). The service to be delivered will, in essence, be the same, or similar, to that provided by HVOSS; this means that TUPE will apply.
- 30 The existing contractual arrangements between the Council and HVOSS further complicate the issue as to whether TUPE applies. This is because, as detailed within the body of the Report, the employees who deliver the function are not employed by HVOSS, but by the sub-contractor, HCS. Although the Regulations are complex were sub-contractors are concerned, it is clear, in view of the contractual arrangements that currently exist between the Council and HVOSS, that TUPE applies and those employees employed by HCS shall transfer to the new provider, unless they personally object, on their existing terms and conditions on the date the contract is let. The Council will need to assist the contractors in complying with their obligations for providing TUPE information but are not liable under TUPE for any failures to comply with the regulations.
- 31 The council is unable to award a contract to a company that is not in existence. As it may not be possible to award a contract to this company; the director for adults and wellbeing therefore needs to be able to make alternative provision if this preferred route is not practicable and directly award the healthwatch activites to another provider.

Risk management

- 32 The risk associated with implementing the service with the new company, Healthwatch Herefordshire, is through the lack of nominations for board of directors. This will be mitigated through the approach of the stakeholder steering group providing oversight and nominations for the board.
- 33 Provision will be made to ensure that residents continue to receive a service with no disruption for the next 14 months by transiting the employees to be located within

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Council buildings and with back office functions provided by Healthwatch Worcestershire.

- 34 There is a risk associated with not offering and allowing HCS to deliver the service. HCS is currently subject to a review of its main contracted service with the council and experiencing a reduction in funding, therefore there is a risk that the loss of the Healthwatch function could have a knock on effect on HCS's ability to deliver its wider carer support role. In addition, there are indications that at least some of the current Healthwatch Herefordshire board members will not wish to transfer to the new arrangement, which could lead to a loss of corporate memory and goodwill. Ongoing efforts will be made to ensure positive relations and smooth transfer of functions and personnel.
- 35 Agreement of the recommendation would allow for a Healthwatch provision in Herefordshire reducing the risk of legal challenge and delivering of a legal function.

Consultees

- 36 Herefordshire Clinical Commissioning Group has been advised on the proposed decision and has requested that we ensure the Herefordshire voice is strongly represented within the new arrangement provision. This will be implemented through a majority of the elected board members being Herefordshire residents.

Appendices

None.

Background papers

- None identified.