

<p align="center"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p align="center"><b>CABINET</b></p> <p align="center"><b>4 FEBRUARY 2019</b></p>	
<p align="center"><b>HEALTHWATCH – EXTENSION AND PROCUREMENT STRATEGY FOR FUTURE PROVISION</b></p>	
<p><b>Report of the Cabinet Member for Health &amp; Adult Social Care: Councillor Ben Coleman</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For Decision</b></p> <p><b>Key Decision: Yes</b></p>	
<p><b>Consultation</b></p> <p><b>Departments</b></p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Director:</b> Lisa Redfern, Strategic Director Social Care And Public Services Reform</p>	
<p><b>Report Author:</b> Joanna McCormick, Strategic lead</p>	<p><b>Contact Details:</b>  Tel: 020 8753 2486  E-mail: joanna.mccormick@lbhf.gov.uk</p>

## **1. EXECUTIVE SUMMARY**

- 1.1. This report seeks approval of a procurement strategy for Healthwatch and the extension of the existing provider to ensure service continuity.
- 1.2. Local authorities are required to commission a local Healthwatch organisation under the Health and Social Care Act 2012. Healthwatch acts as a consumer champion for users of health and care services, their families, carers and the public. Healthwatch has a statutory place on the Health and Wellbeing Board. Healthwatch's activities includes: sharing evidence, championing local views, formally entering and viewing services to observe what is happening and reporting back to commissioners, and recommending that the Care Quality Commission (CQC) acts where appropriate.
- 1.3. The present provider of the service is Healthwatch Central West London (HCWL) and the existing contract ends in March 2019. It is proposed that the

council undertake an open tender procurement to select a provider to deliver a two-year contract for the Council, with the possibility of extension each year for a further two years (2 + 1 + 1). The proposed procurement evaluation approach is 80% technical and 20% commercial. The provider will have to demonstrate that they can successfully act as a consumer champion for local recipients of health and social care services, carers and residents.

- 1.4 The outcome of the tender is expected to be known in September 2019 and the service will need a few months to mobilise. As the current contract ends on 31<sup>st</sup> March 2019 it is recommended that a short-term direct award of the service is awarded to the incumbent contractor for a period of nine months to ensure service continuity during the procurement and mobilisation periods. This short-term contract would run until 31<sup>st</sup> December 2019 at a cost of £105,000 and will be funded from the existing Public Service Reform (PSR) General Fund budget for this service.
- 1.5 The proposed approach will provide value for money and enhance the focus on high quality health and social care in Hammersmith and Fulham. The present contracted service costs the council £140,000 a year in line with the agreed budget for this service. The recommended approach set out in this report would result in a 12.5% saving beginning at the start of the new contract in January 2020. The annual cost for the new contract is fixed at £122,500.

## **2 RECOMMENDATIONS**

- 2.1 That Cabinet approves a waiver of Contract Stranding Order 3.1 to allow the direct award of a nine-month contract to Healthwatch Central West London on the basis that this is in the Council's overall interest. This will commence on 1st April 2019 and end on 31<sup>st</sup> December 2019 at a cost of £105,000.
- 2.2 That Cabinet approves the Procurement Strategy and Business Case for the procurement of a new contract for the provision of Healthwatch services. The new contract will commence on 1st January 2020 for a period of two years with the option to extend for two further periods of one year. The maximum estimated annual value is £122,500 with a maximum lifetime value of £490,000.

## **3 REASONS FOR DECISION**

- 3.1 The proposed procurement strategy supports the Council's compliance with the Health and Social Care Act 2012 statutory duty to commission a Healthwatch body and offers the best opportunity to secure a value for money Hammersmith and Fulham focussed service.
- 3.2 The present Healthwatch contract ends in March 2019. The procurement and mobilisation period for the Healthwatch tender is likely to run beyond the end of the current contract. Sufficient time is required to work with residents and partners on the specification, resolve TUPE matters and mobilise a new

service. A direct award of a contract to the incumbent provider is therefore recommended to ensure service continuity during the mobilization period.

## **4 PROPOSAL AND ISSUES**

### **Background – Healthwatch**

- 4.1 Healthwatch England and local Healthwatch bodies were created in April 2013, following the enactment of the Health and Social Care Act 2012, to provide a “consumer voice” for users of the NHS. Healthwatch is the latest reorganisation of arrangements to involve patients and the public in the running of the Health and Social Care. Local Healthwatch bodies:
- represent the views of people who use services, carers and the public on Health and Wellbeing boards
  - provide a complaints advocacy service or refer to one
  - report concerns about the quality of health care to Healthwatch England, which can then recommend that the Care Quality Commission acts.
- 4.2 National guidance specifies the key functions that Healthwatch must deliver. The Health and Social Care Act 2012 states Healthwatch must be an independently constituted corporate body, which is a social enterprise, not for profit, able to carry out corporate functions, employ people and sub-contract where it chooses. In addition, the Care Act 2014 placed a new duty on local authorities in relation to the provision of care and support from 1st April 2015. As part of this an effective local Healthwatch will appropriately challenge and engage.

### **Present contract**

- 4.3 In 2016, the shared services authorities procured Healthwatch through a competitive tender. The contract was awarded to Hestia Housing & Support in association with HWCL for two years with the option of an extension for a further year. HCWL became an independent organisation and the contract was novated to them on 11<sup>th</sup> April 2018. The combined annual cost of the contract for all three boroughs is £450,000.
- 4.4 The Royal Borough of Kensington and Chelsea is the lead authority for managing the contract with HWCL on behalf of the London boroughs of Kensington and Chelsea, Hammersmith and Fulham and Westminster.
- 4.5 The work programme for each borough is developed with the borough’s local healthwatch committee drawing on key statistics and insight about the borough. The priority areas being considered in Hammersmith and Fulham by Healthwatch in 2018/2019 are: changes to primary care, young people and NHS system changes at the North-West London area. The project work in Hammersmith and Fulham is focussing on what young people in the borough want from healthcare in a digital environment.

## **Procurement strategy**

- 4.6 If the strategy is approved, the procurement will begin in March 2019. The new service is expected to commence from January 2020 as set out in detail in Appendix 1.

## **5 OPTIONS AND ANALYSIS OF OPTIONS**

### **5.1 Option 1: Allow the current contract to expire on 31<sup>st</sup> March 2019**

The current contract expires on 31st March 2019 and there is the option to choose not to procure a new service. Service users, carers and residents would lose access to a consumer champion body able to access local provision and champion for improvement. This option would result in the council's failure to deliver on a statutory duty to ensure Healthwatch provision in the borough. This option is not recommended.

### **5.2 Option 2: Commission a new service with a larger group of London boroughs. Agree a waiver pursuant to CSO 3.1 of the requirement for competition pursuant to CSO 10.2 to directly award a contract to the incumbent provider for at least a year to enable joint procurement.**

There is an option to seek to procure a new service with a wider set of interested London boroughs, which would require time for alignment of existing contracts and result in the need for an annual direct award of a contract to the incumbent provider at a cost to H&F of £140,000 during 2019/2020. At this stage it is unclear which boroughs would sign up to this approach. Whilst there could be scope for more efficient ways of working in a cross-borough contract, this approach does not allow H&F to secure a strong locally focussed service for recipients of services, carers and residents, championed by local people. This option is not recommended.

### **5.3 Option 3: Commission locally focussed Healthwatch. Agree a waiver pursuant to CSO 3.1 requirement of competition in accordance with CSO 10.2 to directly award a contract to the incumbent provider to enable sufficient time for procurement and mobilisation.**

Moving to a sovereign service would enable better opportunity for engaging and championing high quality health and care with people in receipt of services, carers and residents within one borough. The proposed procurement option offers the best balance of risk and ensures compliance with our statutory duty and time to effectively procure and mobilise a new service. The proposed annual contract value for the newly procured service with this option is £122,500, which is informed by an assessment of present spend per head for Healthwatch in London boroughs as detailed in appendix 1. This option is recommended.

## **6 CONSULTATION**

- 6.1 Commissioning Healthwatch provides an independent body who consult with and secure feedback from users of health and social care services in H&F.

The commissioning of this service has been informed by the consultation undertaken to date through the function. Our organisation will benefit from the insight secured by the recommissioned provision.

- 6.2 Healthwatch have been alerted to the intension to extend for nine months.

## **7 EQUALITY IMPLICATIONS**

- 7.1 Initial equality impact analysis has been undertaken. The provision of a Healthwatch service as a champion for local people, already works to highlight where there needs to be an improvement in quality of health and social care services.
- 7.2 It is anticipated the provision of a new locally focussed service will result in either a neutral or positive impact on groups of people with protected characteristics as a Healthwatch operates as a consumer champion and builds work plans that emphasise highlighting quality gaps in health and social care for all and particularly where impact is found to be disproportionate for any particular group of people with a protected characteristic.
- 7.3 *Implications verified by: Peter Smith, Head of Policy and Strategy, tel. 020 8753 2206.*

## **8 LEGAL IMPLICATIONS**

- 8.1 Approval of a Procurement Strategy and Business Case as set out at Appendix 1, is a requirement for all contracts in excess of £100,000 (CSO 8.12). This Strategy is proposed to cover the interim service period until the end of December 2019 and the new service provision from 1st January 2019 until 31<sup>st</sup> December 2021. It should be noted that for all Medium Value Social and Other Specific Services contracts (£25,000 - £615,278 in value), the requirements of CSO 10.2 (table 10.2b) is to use in the first instance, call-off from existing framework agreements, otherwise to seek public quotations using the e-tendering system and the Government's Contracts Finder Portal. In the absence of a suitable framework agreement for Healthwatch Services, the Strategy proposes to undertake a procurement exercise through which value for money can be assessed.
- 8.2 Approval is also sought for Cabinet member to award the contract that is procured in accordance with the appended Strategy. The decision to award pursuant to CSO 17.3 shall be taken by the relevant Cabinet member, provided that the contract does not exceed £5m in value, and the actual contract value is within a 10% tolerance of the estimated value set out in the Procurement Strategy.
- 8.3 The services come under the category of social and other specific services, Schedule 3 of the Public Contracts Regulations 2015 (PCR). The threshold for such services is currently £615,278. The Cumulative Value of the proposed new contract for a four period is £490,000 and is therefore below the Current EU

Procurement threshold and therefore the Public Contract Regulations 2015 ('PCR 2015') do not apply in full.

- 8.4 This report also proposes a direct award to the existing provider, HWCL, for a period of nine months where the value is £105,000. As this is a contract with a value of greater than £100,000 but less than the EU Threshold, but there is a requirement to seek quotations (CSO 10.2). An exemption to these requirements can be granted under CSO 3.1 where one of five specified grounds for doing so is made out. Here the ground being relied on is that the waiver is justified because "it is in the Council's overall interest". The decision-maker needs to be satisfied based on the information set out in the report that a direct award would be justified when compared with opening the service up to competition.
- 8.5 In accordance with CSO 3.1, a record of the waiver needs to be kept within the relevant department.
- 8.6 *Implications provided by: Hannah Ismail, Solicitor, Sharpe Pritchard LLP, external legal advisers seconded to the Council, tel. 0207 405 4600.*

## 9 FINANCIAL IMPLICATIONS

- 9.1 The current contract with Healthwatch Central West London is for £140,000 a year and ends in March 2019.
- 9.2 The direct award proposal to extend the current contract for a period of nine months will match the present contract cost pro rata. This will cost £105,000 and be met from existing revenue budgets for Healthwatch provision.
- 9.3 The new proposal to commence from January 2020 is expected to cost £490,000 over the period of the proposed contract plus extension, and be met from existing revenue budgets for Healthwatch provision.
- 9.4 This new proposal will lead to an annual cost saving of £17,500 compared to the existing contract once in place. Over the period of the proposed contract award plus extension, this will lead to cost savings of £70,000 compared to the existing contract.
- 9.5 The below table sets out the financial position of the proposals in the above:

	18/19 (£)	19/20 (£)	20/21 (£)	21/22 (£)	22/23 (£)	23/24 (£)	Total
Current contract	140,000						140,000
Direct award to extend existing contract		105,000					105,500
Proposed new contract		30,625	122,500	122,500	122,500	91,875	490,000
<b>Cost saving against current contract</b>		<b>(4,375)</b>	<b>(17,500)</b>	<b>(17,500)</b>	<b>(17,500)</b>	<b>(13,125)</b>	<b>(70,000)</b>

9.6 A separate report, relating to the contract award will be presented to the Strategic Director of Social Care and Public Service Reform in consultation with the Cabinet Member for Health & Adult Social Care and the Cabinet Member for Finance and Commercial Services.

9.7 *Implications completed by: Andre Mark, Finance Manager, tel. 020 8753 6729. Implications verified by: Emily Hill, Assistant Director, Corporate Finance, tel. 020 8753 3145.*

## 10. IMPLICATIONS FOR BUSINESS

10.1 The provider of the service must be a social enterprise in line with the statutory requirements for Healthwatch. Other Implications for local businesses are limited as Healthwatch focuses on engaging residents to gather views on changes needed in public services provided by the NHS and local government. Local businesses may be involved indirectly where they provide a service on behalf of the NHS or local government about which Healthwatch highlight areas for improvement.

10.2 *Implications completed by Albena Karameros, Economic Development Team, Tel. 07739 316 957.*

## 11 COMMERCIAL IMPLICATIONS

11.1 The author of the report is seeking Cabinet approval for the following two recommendations:

- i) A waiver of Hammersmith & Fulham Contract Stranding Orders (“CSO’s”) to allow for the direct award of a nine-month contract to Healthwatch Central West London. The proposed contract would commence on 1st April 2019 at a cost of £105,000.

- ii) Adoption of the Procurement Strategy and Business Case attached at Appendix 1 to allow to the procurement of a contract to commence on 1st January 2020. The proposed contract would have an initial duration of two years with the option to extend for two further periods each of one year. The proposed contract would have an annual value of £122,500 and a maximum lifetime value of £490,000.
- 11.2 In February 2016 Cabinet agreed the award of a contract for the provision of Local Healthwatch Services to Hestia Housing and Support in association with Local Healthwatch Central West London for the fixed period of 1 April 2016 to 31 March 2018 with the option to extend the contract until 31 March 2019.
- 11.3 The contract was extended in March 2018 using the 12 months extension provision. Consequently, there is no option available to extend the contract for a further 9 months. The total estimated value of the contract (including the 12 months extensions) is £420,000.
- 11.4 The service to be provided under the proposed direct award of contract fall under the category of Social and other specific services as defined by the PCR. CSO 10.2 classifies a contract with a value of £105,000 as “Medium Value” (£25,000 to below £615,278) and requires that if it is not possible to “call off” the service from an existing framework agreement, then a tendering exercise shall take place.
- 11.5 A waiver from the CSO’s requirements can be approved by the Appropriate Persons (in this case the Cabinet Member and the Leader) if they are satisfied that it is in the Council’s overall interest. It is considered the author of the report has justified a waiver of the CSO’s on this ground.
- 11.6 A direct award at cost of £105,000 will keep the total value of the contract under the regulated statutory threshold for the Light Touch Regime (£615,278). As a result, the risk of legal challenge is relatively low.
- 11.7 In the event the contract is awarded a contract notice shall be published in Contracts Finder and a contract entry for the direct award shall be place on the Council’s Contracts Register.
- 11.8 CSO 8.12.1 provides that “all Procurement Strategies and Business Cases where the estimated value is £100,000 or greater must be approved by the Cabinet prior to the commencement of any tendering exercise and agreed as a Key Decision”.
- 11.9 A contract notice shall be placed in Contracts Finder to advertise the open procedure contained in the strategy and the tender shall be run through the Council’s e-sourcing. The maximum lifetime value of the contract is below the statutory threshold of £615,278 for social and other specific services.



11.10 *Implications completed by: Tim Lothian, Procurement Officer, tel. 020 8753 5377 and verified by Andra Ulianov, Procurement Consultant, tel. 020 8753 2284.*

## **12 IT IMPLICATIONS**

12.1 There are no IT implications arising from this proposal.

12.2 IM Implications: As the contractors will be processing sensitive personal data on behalf of H&F, Privacy Impact Assessments will need to be completed to ensure all potential data protection risks in relation to this proposal are properly assessed with mitigating actions agreed and implemented. For example, a contract data protection and processing schedule or an information sharing agreement template and a Supplier Security Checklist to ensure the systems used by the service providers comply with H&F's regulatory requirements.

12.3 The contracts with Healthwatch Central West London and the new service provider will need to include H&F's new data protection and processing schedule. This is compliant with the General Data Protection Regulation (GDPR) enacted from 25 May 2018.

12.4 *Implications verified/completed by: Karen Barry, Strategic Relationship Manager, tel. 020 8753 3481.*

## **13 RISK MANAGEMENT**

13.1 Healthwatch provides the Council and residents with some assurance on the quality of health care delivery to Healthwatch England, which can then recommend that the Care Quality Commission acts.

13.2 The procurement strategy contributes positively to the council's vision by securing savings with a 12.5% reduction to the overall contract value whilst continuing to meet resident need and expectation by retaining the spend for London well above the average for this service. There are additional criteria within the procurement strategy contributing to delivery of social value.

13.3 The recommended procurement option in this paper reduces the risk of provider resources being stretched in too many directions at once by looking to secure a locally focussed Healthwatch.

13.4 Continuity of the service, a corporate and legal risk, is mitigated by requesting an extension to the existing provider's contract. This will ensure that any difficulties in procuring or mobilising the service will not negatively impact on service users, who will continue to be able to access a consumer champion in the incumbent provider.

13.5 *Implications verified by: Michael Sloniowski Risk Manager, tel. 020 8753 2587, mobile 07768 252703.*

## **14. STAFFING IMPLICATIONS**

- 14.1 TUPE regulations will apply to one, part time post currently within the present staffing structure for Healthwatch. All other posts are shared between the three boroughs party to the present contract with no other post with more than 50% of its time allocated to H&F activities. The terms and conditions of this post will be made available to tenderers.
- 14.2 TUPE applies where there is a service provision change (when work is outsourced, re-tendered or in sourced). TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 and exists to protect employees' rights when the organisation or service they work for transfers to a new employer.
- 14.3 TUPE is a complex piece of legislation and has impacts for the employer who is making the transfer (also known as the outgoing employer or the transferor) and the employer who is taking on the transfer (also known as the incoming employer, the 'new employer' or the transferee) as well as significant financial costs where an organisation gets it wrong.
- 14.4 For TUPE to apply to a service provision change there must also be an 'organised grouping' of employees. The organised grouping in this regard may only apply to one employee for the principle purpose of carrying out the relevant activities on behalf of the client. Therefore, a rationale of 50% of time allocated to the other posts, shared between the three boroughs, may not be appropriate.
- 14.5 *Implications completed by: Carol Yorrick, Head of HR Operations.*

## **15. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

**None**

### **LIST OF APPENDICES:**

**Appendix 1 – Procurement Strategy Detail**

**Appendix 2 – Initial Equality Impact Analysis**