

Meeting:	Executive
Meeting date:	14 March 2024
Report of:	Director of Customer and Communities
Portfolio of:	Cllr Coles – Executive Member for Health, Wellbeing and Adult Social Care

Procurement of Healthwatch York

Subject of Report

1. This paper seeks permission to reprocure the City of York Council’s (“the Council”) Healthwatch York contract for a maximum 4 year value of £462,440 (subject to adjustments as specified in paragraph 9).
2. This will enable the officers to implement the tendering process to align with the expiry of the existing contract and ensure there is a continuous service to the residents of York.

Benefits and Challenges

3. The key benefits of making the decisions outlined in this report are:
 - a) This provides a voice to the residents of York that receive health or care services.
 - b) There is a requirement for the service to be commissioned as independent of the Council. This enables any consultation to be impartial and provides a skilled, connected resource that can be commissioned for additional bespoke work.

Policy Basis for Decision

4. The Health and Social Care Act 2012 established Healthwatch, nationally as Healthwatch England and locally through the requirement to have a local Healthwatch in each local authority area.

5. Healthwatch York are a required member of the Health and Wellbeing Board and therefore support and inform the Health and Wellbeing Strategy and its delivery.
6. Healthwatch York supports all 4 of the key council plan priorities:
 - a) **Affordability** – by providing a voice where services affecting the health and wellbeing of York residents are impacted – for example lack of access to NHS dentistry.
 - b) **Equalities and Human Rights** – Healthwatch England and the local Healthwatch has a role in promoting and protecting equality and human rights for everyone who uses health and social care services. The service will therefore be commissioned accordingly.
 - c) **Health Inequalities** – Where health inequalities are identified through resident views, Public Health data or other means then the provider will respond accordingly.
 - d) **Environment** – there will be a requirement within the tender process to define what processes the provider would have in place to minimise environmental impact.
7. Local Healthwatch are funded by and accountable to local authorities, reflecting central government funding, through the Local Reform and Community Voices Grant and Local Government Financial Settlement. Their main statutory functions under Section 2 of the Health and Social Care Act 2012 are to:
 - a) Obtain the views of people about their needs and experience of local health and social care services. Local Healthwatch make these views known to those involved in the commissioning and scrutiny of care services.
 - b) Make reports and make recommendations about how those services could or should be improved.
 - c) Promote and support the involvement of people in the monitoring, commissioning and provision of local health and social care services.
 - d) Provide information and advice to the public about accessing health and social care services and the options available to them.
 - e) Make the views and experiences of people known to Healthwatch England, helping them to carry out our role as national champion.

- f) Make recommendations to Healthwatch England to advise the Integrated Care System (“ICS”) to carry out special reviews or investigations into areas of concern.

8. The vision of the service requires:

- a) Healthwatch York to be the independent consumer champion for adult and children’s health and social care in the City of York.
- b) Healthwatch York to be representative of the diverse communities that exist within the City of York. It will provide intelligence, including evidence from people's views and experiences, to influence the policy, planning, commissioning and delivery of publicly funded health, social care and public health services. It will also provide information and advice to help people access and make choices about health, social care and public health services.
- c) Healthwatch York will be a robust and credible player in the local health, social care and public health economy by demonstrating that it has the appropriate level of skills and competencies required to deliver its statutory functions to the highest possible level. It will gain the trust of the general public as well as other health, social care and public health stakeholder groups by being responsive and acting on concerns when things go wrong.
- d) Healthwatch will operate effectively and efficiently so that the Council can demonstrate value for money against an agreed set of outcomes.

Financial Strategy Implications

- 9. The current contract value is £115,610 funded through an element of the Local Reform and Community Voices Grant (£41,750) and base budget (£73,860). There will therefore be required uplift/decrease to this value to align with the grant awards which will affect the total lifetime of contract commissioned value, as specified in paragraph 1 of this report. We are still awaiting the 24/25 grant value.
- 10. There is no specific efficiency identified against this contract value as this exercise was carried out in full, prior to commissioning the existing service 2-years ago.
- 11. To ensure there is sufficient funding in place through the lifetime of the contract, the annual funding award will align with any increase or decrease in funding from the Government.

12. The funding announcements through the government grant awards stated in paragraph 9, take a long period to be announced and allocated to the Local Authorities. This requires the Council to commission on trust and that the Government will continue to award this funding. The risk is reduced by commissioning values being aligned with the government grant award but will be challenging if there is a change in provider due to the delays in understanding the level of funding.
13. Considering the Council's current financial challenge, funding any growth in this area of work outside any grant increases will require compensatory savings to be identified elsewhere across the Council.

Recommendations and Reasons

14. Recommendations:

That Executive is asked to:

- a) approve the decision to go out to tender for Healthwatch York for 4-years under Option 1 within this report.
 - b) to delegate authority to the Director of Customers and Communities in consultation with the Head of Procurement (or their delegated officers) to seek Providers from the market for provision of a total 4-year Healthwatch York contract in compliance with the Council's Contract Procedure Rules and the Public Contract Regulations 2015;
 - c) to delegate authority to the Director of Customers and Communities in consultation with the Director of Governance (or their delegated officers) to determine and conclude the terms of the resulting contract with the chosen provider; and
 - d) to delegate authority to the Director of Customers and Communities in consultation with the head of Procurement and Director of Governance (or their delegated officers) to determine and conclude the terms of any amendments, extensions, and/or modifications to the contract post award in compliance with the Council's Contract Procedure Rules and the Public Contracts Regulations 2015.
15. **Reason:** To meet the council's statutory duty to commission an independent Healthwatch York service.

Background

16. York CVS have been the successful provider for the Healthwatch York service. There are no known additional providers in York that could provide this service in York. A minimum term of 4-years under the new contract would be required to create a marketplace for other organisations in the region to consider the tender.

Consultation Analysis

17. The commissioned provider consults with residents regarding the quality of the service on a periodic basis and reports on the results through annual contract reviews. Healthwatch York are also required to check the levels of knowledge regarding awareness of a Healthwatch service and its function and tries to improve resident awareness of this service.
18. As with the previous contract with York CVS, residents will have the opportunity to engage with the service throughout the lifetime of the new contract. Residents will provide comments regarding the services they receive but can also be trained as volunteers to consult with residents regarding the care they receive.

Options Analysis and Evidential Basis

Options

19. The three options the Executive could consider in respect of this report are below:
 - a) **Option 1** – To agree the recommendation at paragraph 14, to go out to tender for Healthwatch York for 4-years.
 - b) **Option 2** – To provide a reduced contract period of 2-years.
 - c) **Option 3** – To provide a contract until November 2032 (8 years and 3 month) to align with the Health & Wellbeing Strategy. This would be issued on a 4 year 3 months + 2 year + 2 year basis.
 - d) **Option 4** – There is no option 4 not to reprocure as this would place the Council in contravention of its statutory obligations under the Health and Social Care Act 2012.

Analysis

20. It is recommended that the Executive approves Option 1 and the recommendation outlined in paragraph 14.
21. Option 2, would provide a lower contract period resulting in the successful provider having less opportunity to identify, consult and recommend actions on emerging needs.
22. A short contract period requires more resources for the successful and unsuccessful providers as well as the Council.
23. If the lifetime of the contract is reduced to 2-years, then there may not be interest from organisations outside of York bidding in a tender opportunity. Under these circumstances it would be usual practice to carry out a market testing exercise. This would require approval to waive the Council's CPRs and extend the existing contract for two to three months to allow this process to take place. If it is demonstrated that there is not a marketplace to tender the service, then a waiver will be sought in accordance with clause 26.2 of the Council's CPRs.
24. Under the current financial climate, an 8 year contract may create a financial risk and is unlikely to create any efficiencies, although it is recognised it will create more stability for the successful provider. If option 1 was approved the initial consideration for the next procurement process could be to align with the Heath & Wellbeing Strategy by commissioning a 4 year 3 month contract.
25. Option 4, not to reprocure the service, is not used as to let the contract lapse would place the Council in contravention of its statutory obligations under the Health and Social Care Act 2012.

Organisational Impact and Implications

26.

- **Financial**

Inflation relating to the element of the contract funding through the Local Reform and Community Voices Grant will match any future grant funding increases. The element funded from base budget will be cash limited. The lifetime of the contract of the full 4 years would therefore be £462,440 adjusted to each years Government funding awards.

It is assumed that the review two years ago stripped out any non-statutory elements to this contract and it is being provided at the minimum level as required by statute.

- **Human Resources (HR)**

There are no internal HR implications contained within this report. However please note TUPE considerations between the outgoing and incoming provider may apply as stated in the Procurement and Legal sections below.

- **Legal**

The Local Government and Public Involvement in Health Act 2007, which was amended by the Health and Social Care Act 2012, outlines the main legal requirements of Healthwatch. This is underpinned by many other regulations which give more detail about how activities should be undertaken.

Under Sections 221(2) and 227 of the 2007 Act (as amended), local authorities must make provision for the statutory activities in paragraph 7.

Further to the above, every English local authority therefore has a duty to make provision for the delivery of Healthwatch statutory activity under the 2007 and 2012 Acts in their local area. This means establishing a contractual arrangement with a partner that delivers Healthwatch activity. For these reasons, the Council cannot proceed with Option 4, not to procure the service, unless it is prepared to set up its own Local Healthwatch organisation via a new company which would be subject to separate approval(s).

Any contract commissioned under Options 1, 2 or 3 must be procured under a compliant, open, transparent, and fair procedure in accordance with the Procurement Regs and the CYC CPRs.

With regards to the current contract with York CVS, any procurement strategy must also factor in the relevant exit provisions under the current contracts, including (but not limited to) any TUPE and Pension related provisions if there is a change of provider, and any exit management requirements. This will play an important part during the transition and mobilisation period up to the commencement of the new contract.

Finally, under sections 222(2) and 222(8) of the 2007 Act (as amended by section 184 of the 2012 Act) any partner selected to provide Local Healthwatch for the City of York must be a Social Enterprise. They would be considered to be a social enterprise if their organisation is set up as either:

- a. a company limited by guarantee registered as a charity;
- b. a community interest company; or
- c. a charitable incorporated organisation;
- d. an organisation whose constitution states that that over 50% of its distributable profits in each financial year will be used for Healthwatch activities and that said activities are being carried out for the benefit of the community in England,

and they satisfy the relevant criteria under the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012, including that lay people and volunteers are involved in their governance.

- **Procurement**

The contract value for the Healthwatch York service over the proposed maximum of 4-years contract term is an estimated total value of £462,440 (subject to adjustments as specified in paragraph 9 of this report). The requirements to ensure the council fully assesses the market of suitable providers and also ensures Value for Money is obtained must be through an open, fair and transparent competitive procurement process and evaluation criteria in compliance with the Council's Contract Procedure Rules under clause 11.4 of the Council's CPRs and the Public Contract Regs. 2015 soon to be superseded by the Procurement Act 2023.

The Healthwatch York service estimated total contract value for the recommended option is below the current Light Touch Regime threshold of £663,540 therefore there isn't a requirement to publish a Contract Notice but in order to generate sufficient interest from suitable providers there will need to be a strategy established of how this tender will be as widely advertised as possible to ensure the council receives

competitive tenders to be evaluated for the award of the Healthwatch York contract.

Option 3 is above the Light Touch Regime threshold as defined within the Procurement Regs, £663,540, and therefore a Contract Notice and tender documents must be published in the Find a Tender website and on an accessible E-tendering website portal i.e. Yortender respectively in order to openly advertise this tender opportunity and invite competitive tenders to be submitted by interested providers to the Council. There is in the consideration of option 3 if awarding an eight year contract will deliver Value for Money to the council and could represent a financial risk for the council with a committed budget that we may be unable to sustain for the duration of an eight year contract period.

This report confirms within the Legal comments that both the commissioning service and the Commercial Procurement have concluded that this would not be classed as a “Routine Procurement” as defined within the current council Contract Procedure Rules (Nov 2023) Appendix C – Routine Procurements.

The provider of the current contract, York CVS Healthwatch York may have staff that are significantly employed in the delivery of this service and they have been contacted to determine which members of staff might be applicable to the provisions of TUPE. This determination will influence the Procurement Timetable and also collating of the relevant TUPE information so this can be incorporated, if applicable, into the tender documentation. This will ensure that any TUPE transfer provisions are conducted in accordance with The Transfer of Undertakings (Protection of Employment) Regulations 2006 and as amended in 2014 to the successful bidder for the new contract.

- **Health and Wellbeing**

The work of Healthwatch York is vital in challenging practice that impacts on the wellbeing of York citizens. Healthwatch York supports the delivery ten-year Health and Wellbeing Strategy, as well as the core priorities for the city. Healthwatch York also sit on the Health and Wellbeing Board and provide independent reports and peer challenge to the health and social care system in York.

In light of this valuable and statutory role, public health feel there may be added value to issuing a tender for a longer period than four years. A longer contract period provides the opportunity for greater organisational and system stability. Public health would support an eight year tender period, to bring the end date in line with the end of the current ten year health and wellbeing strategy. Public health would also support four year tender period (option 1), with a stated intention to follow with a subsequent four year tender period.

- **Environment and Climate action**

As part of the procurement process, providers should be assessed on their understanding of the carbon emissions associated with delivering this contract and the measures they will take to minimise environmental impact.

- **Affordability**

Healthwatch York provides a free service to the citizens of York. Where residents are concerned about access to services that create challenges regarding affordability. Healthwatch York can raise the awareness of these challenges. An example of this through the lifetime of the existing contract was their report on access to NHS dentistry and regular surveys and reports on the impact of the Cost of living Crisis.

- **Equalities and Human Rights**

The Council recognises, and needs to take into account its Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate Page 26 of 31 discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions).

At the time of writing there are no equalities implications identified in respect of the matters discussed in this report. That is in respect to the proposal to provide a continuous service by recommissioning Healthwatch York

However, there are a number of equality and human right issues to identify and consider with respect to the provision of Adult Social Care and Health services. The Council will therefore comply with its equality duties by incorporating a requirement for the successful provider to carry out an independent Equality Impact Assessment as part of the Healthwatch York Service Specification.

Healthwatch York will gather information regarding access to services and will consider whether there are any disadvantages in accessing provision by people or groups with protected characteristics.

- **Data Protection and Privacy**

Data protection impact assessments (DPIAs) are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK GDPR. Failure to carry out a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines. DPIAs helps us to assess and demonstrate how we comply with all of our data protection obligations. It does not have to eradicate all risks but should help to minimise and determine whether the level of risk is acceptable in the circumstances, considering the benefits of what the council wants to achieve. As there is no personal data, special categories of personal data or criminal offence data being processed to inform this decision report for the procurement of the City of York's ("the Council") Healthwatch York contract for a maximum of 4-years, there is no requirement to complete a DPIA. This is evidenced by completion of DPIA screening questions. However, there will need to be consideration and completion of DPIAs where required, within delivery of the procurement and commissioned services if approved.

- **Communications** contact: Head of Communications

The Council will work with the successful provider regarding implementing a communication plan for the lifetime of the contract.

- **Economy**

N/A

Risks and Mitigations

26. The main risks that have been identified is the delay in grant allocations to the Local Authorities by the Government.
27. The Government has not awarded an uplift over the last two years through the Local Reform and Community Voices Grant to the City of York Council. It therefore needs to be noted that the specified value of the proposed 4 year contract reflects a reduction in true terms. However, this does follow the national picture with 143 of the 151 Healthwatch services receiving a real term reduction in funding when taking inflation into account.
29. As there is a small marketplace with one known suitable provider in the city there is a risk that we do not successfully tender the service. Under such circumstances an interim arrangement would be arranged from a neighbouring Local Authority.

Wards Impacted

All

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Background papers

None

Annexes

None

Abbreviations

GDPR – General Data Protection Regulations

York CVS – York Council of Voluntary Services

ICS – Integrated Care Systems