

Report to: EXECUTIVE CABINET

Date: 24 January 2024

Executive Member: Councillor John Taylor – Executive Member for Adult Social Care Homelessness & Inclusivity

Reporting Officer: Stephanie Butterworth - Director of Adult Services

Subject: CONTRACT AWARD FOR THE PROVISION OF HEALTHWATCH

Report Summary: Core legislation for Healthwatch is the Local Government and Public Involvement in Health Act (2007) and Health and Social Care Act (2012). The Council has a duty to make provisions for the delivery of Local Healthwatch statutory activity in Tameside.

NHS complaints is included in the Health and Social Care Act 2012. The Council are required to make arrangements, as it considers appropriate, for the provision of services in relation to its area, providing assistance to individuals in connection with complaints relating to the provision of services as part of the Health Service.

The Council is provided with Central Government funding to provide both services.

On 24 August 2022, Executive Cabinet approved a tender process for a contract commencement date of 1 April 2024 for a Healthwatch Service for a contract period of six years to 31 March 2030.

This report seeks to gain permission to award the provision of Healthwatch contract to commence 1 April 2024 to 31 March 2030 and to modify the current Independent Advocacy contract dated 1 September 2022 to 6 July 2027 to include NHS complaints Levels 1 to 4 from 1 April 2024 to 6 July 2027.

Recommendations: That the Executive Cabinet be recommended to agree:

- (i) To approve the recommended Option 4 for the delivery of the Healthwatch and NHS Levels 1 to 4 complaints contract from 1 April 2024.
- (ii) To direct award the provision of Healthwatch contract to Action Together to commence 1 April 2024 to 31 March 2030.
- (iii) To modify the existing Independent Advocacy contract dated 1 September 2022 to 6 July 2027 to include NHS Level 1 to 4 complaints to commence 1 April 2024 to 6 July 2027.

Corporate Plan: The procurement of the provision of a Healthwatch contract to deliver Healthwatch and NHS Level 1 to 4 complaints in Tameside will allow the Council to show it is taking positive and clear actions within a number of themes of the Corporate Plan:

- Aspiration and hope through learning;
- Resilient families and supportive networks;
- Nurturing Communities;
- Longer and healthier lives with good mental health;
- Independence and activity in older age, and dignity and

choice

Policy Implications:

The proposal aligns with the Living Well, Working Well and Ageing Well programmes for action.

Financial Implications:

**(Authorised by the
statutory Section 151
Officer & Chief Finance
Officer)**

The Healthwatch Provision contract has a budget allocation of £0.136m in 2023/24 and is financed by the Council's general fund. The provider for this contract is Action Together.

The Independent Advocacy Provision has a budget of £0.234m in 2023/24 and is financed by Local Reform and Community Voices Grant of £0.160m and the Council's general fund of £0.074m. The provider for this contract is VoiceAbility Advocacy.

The Directorate are requesting approval for the direct award of the Healthwatch provision to Action Together for the 6 year period 1 April 2024 to 31 March 2030.

The service has requested an uplift of £0.005m for the Healthwatch contract from 1 April 2024. This increase will be funded by the Local Reform and Community Voices Grant that is expected to continue in 2024/25.

The total Local Reform and Community Voices Grant allocation in 2022/23 was £0.165m and is a grant received by the Council from the Department of Health and Social Care for a number of years. £0.160m of this grant finances the current Independent Advocacy Provision contract.

The confirmed funding announcement for 2023/24 is expected in February 2024 at the 2022/23 value of £0.165m. The grant is allocated to Local Authorities for the following statutory duties:

- funding for deprivation of liberty safeguards (DoLS) in hospitals
- funding local Healthwatch services
- funding for independent NHS complaints advisory services

The Directorate are also requesting approval for the modification of the Independent Advocacy contract to include NHS Level 1 to 4 complaints. The modification is for a 3 year and 3 month period from 1 April 2024 to 6 July 2027 to VoiceAbility Advocacy.

The service has requested an uplift of £0.020m for the contract modification. This will be funded by the existing Independent Advocacy Provision budget (£0.234m) which has a forecast underspend of £0.019m in 2023/24. It is envisaged that this will be an equivalent annual underspend based on the existing contract value.

Although the contract award and modifications are proposed for periods of 6 & 3 years respectively, appropriate break clauses have been included within the contract arrangements to ensure that the commissioned service can be amended, should it be required to mitigate any adverse financial impact on the Council.

Any uplift in commissioned contract values due to inflation, demand or service configuration will need to be taken into account within the service specification to ensure that it is affordable within the available annual budget allocation for the contract duration.

It is essential that value for money is evaluated as part of the direct award and contract amendment process and that this is clearly

evidenced and retained for section 151 officer assurance.

**Legal Implications:
(Authorised by the
Borough Solicitor)**


The report correctly identifies the legislative framework governing the Council's duties in connection with the provision of Healthwatch Services. The report also confirms that Star Procurement have been engaged to ensure that a lawful procurement process has been undertaken in connection with the proposed contractual arrangements. The report identifies that there is no other genuine competition for the services procured in relation to the services proposed to be provided by Action Together, pursuant to the exemptions at CPR 9.3g. Further, the proposed modification to the Independent Advocacy contract with VoiceAbility amounts to a change in provision of the existing contract as it is within the nature and scope of that current contract and justifiable on "economical, technical or inoperability" grounds. Also, the proposed increase is below 50% of the value of the original contract in accordance with CPR 9.8b.

Risk Management:

The service is required by the Council in order to meet its statutory responsibilities. Risks will be identified and managed by appropriate officers.

Access to Information:

The background papers relating to this report can be inspected by contacting Victoria Heyes, Commissioning and Contracts Officer.

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1. INTRODUCTION

- 1.1 On 24 August 2022, Executive Cabinet approved a tender process for a contract commencement date of 1 April 2024 for a Healthwatch Service for a contract period of six years to 30 September 2030.

2. BACKGROUND

- 2.1 The Health and Social Care Act 2012 established Healthwatch, nationally as Healthwatch England and locally in Tameside as Healthwatch Tameside. Healthwatch Tameside became operational in April 2013 when it replaced its predecessor Local Involvement Networks (known as LINKs). Arrangements were made to support the pre-existing Tameside Local Involvement Network (LINK) to become Tameside Healthwatch. Action Together has hosted the borough's Healthwatch contract throughout its duration.
- 2.2 In 2014 Action Together agreed to deliver, at no additional cost, NHS complaints advocacy – Levels 1 to 4 (L1-4), with the specialist Level 5 (L5) complaints being provided under the Independent Advocacy contract.
- 2.3 Action Together have delivered both Healthwatch and NHS complaints L1-4 since 2014 and the current contract which commenced 1 April 2018 is due to end 31 March 2024.

3 CORE LEGISLATION - HEALTHWATCH

- 3.1 The two key pieces of legislation relevant to Healthwatch are the Local Government and Public Involvement in Health Act (2007) - Part 14 - clauses 222, 224, 225, and 227 and Health and Social Care Act (2012)- Chapter 1 - clauses 181 (Healthwatch England) 182 to 184 and 186 to 189 (Healthwatch Locally).

The law refers to the roles of:

- Local authorities who are required to make provisions for Healthwatch statutory duties to be effectively fulfilled;
 - Providers of Healthwatch services;
 - Healthwatch England, whose main role is to provide advice and support to every local Healthwatch and to provide general recommendations to local authorities on making contractual arrangements for the delivery of Healthwatch duties.
- 3.2 Legislative frameworks advise local Healthwatch, Local authorities and Healthwatch England what they should do (duties), may do (powers), and what is prohibited.

4. ADDITIONAL KEY LEGISLATION - HEALTHWATCH

Health and Care Act (2022) - The Act does not change the statutory functions of Healthwatch Tameside, but does amend the Local Government and Public Involvement Act 2007 to replace the Clinical Commissioning Group (CCG) with the Integrated Care Board regarding the duty to respond to Healthwatch Tameside reports. Statutory guidance places a requirement on the Integrated Care System (ICS) to collaborate with Healthwatch Tameside.

Safeguarding Vulnerable Groups Act 2006 - As amended by the Protection of Freedoms Act 2012, the Act sets out regulated activity and Schedule 2 of the Care Act (2014) sets out how Healthwatch Tameside is involved in local safeguarding arrangements. Healthwatch Tameside should consider how local health and care organisations deal with safeguarding as part of their

service provision. Healthwatch Tameside should also have appropriate policies and procedures to ensure safeguarding.

Data Protection Act (2018) - Healthwatch Tameside collect, store and use individuals sensitive data. For GDPR purposes, this includes special category data.

Freedom of Information Act (2000) - Healthwatch Tameside is considered a 'public authority' and is specifically included in this Act, although only in respect of information held in connection with arrangements made under section 221(1) or arrangements made in pursuance of those arrangements. The Act provides the public a right to access information held by public bodies unless certain exemptions apply.

5. CORE LEGISLATION - NHS COMPLAINTS

5.1 The Health and Social Care Act (2012) requires all local authorities with adult social care responsibilities to *“make such arrangements as it considers appropriate for the provision of independent advocacy in relation to its area”* in the provision of assistance for individuals making or intending to make an NHS complaint. This covers all NHS services, including:

- NHS trusts, including NHS foundation trusts;
- Primary health care services provided for the NHS by GPs, dentists, opticians and community pharmacies;
- Clinical commissioning groups;
- Private health care organisations if the treatment has been paid for by the NHS
- All other health services commissioned by the NHS.

6. THE CURRENT HEALTHWATCH SERVICE

6.1 The aim of Healthwatch Tameside is to give citizens and communities a stronger voice to influence and challenge how health and social care services are provided within their locality. Local Healthwatch are funded by and accountable to local authorities.

6.2 Healthwatch Tameside’s core purpose of making sure the views of the public shape the health and care services they need, requires them to be:

- Independent in purpose - amplifying the voice and experiences of the most pressing and difficult issues in health and social care;
- Independent in voice - speaking up on behalf of sometimes unpopular causes or groups who are marginalised and/or face disadvantages or discrimination;
- Independent in action - designing and delivering activities that best meet the needs of the people they service.

6.3 The Government has put in place legislation that places duties or obligations on Local Healthwatch. This means that there is a requirement for Healthwatch Tameside to undertake certain actions or activities. The Council are accountable for commissioning the eight core statutory activities:

- Promoting and supporting the involvement of people in the commissioning, the provision, and scrutiny of local care services;
- Enabling people to monitor the standard of provision of local care services and whether and how local care services could and ought to be improved;
- Obtaining the views of people regarding their need for, and experiences of, local care services and importantly to make these views known to those responsible for

commissioning, providing, managing or scrutinising local care services and to Healthwatch England;

- Making reports and recommendations about how local care services could or ought to be improved. These are usually directed to commissioners and providers of care services and people responsible for managing or scrutinising local care services and shared with Healthwatch England;
- Providing advice and information about access to local care services so people can make choices about local care services;
- Formulating views on the standard of provision and whether and how the local care services could and ought to be improved and sharing these views with Healthwatch England;
- Making recommendations to Healthwatch England to advise the Care Quality Commission (CQC) to conduct special reviews or investigations (or, where the circumstances justify doing so, making recommendations direct to CQC); and to make recommendations to Healthwatch England to publish reports about issues;
- Providing Healthwatch England with the intelligence and insight it needs to enable it to perform effectively.

6.4 In 2014 the incumbent provider of Healthwatch, Action Together, agreed to also deliver, at no additional cost, the NHS complaints advocacy L1-4, with the specialist L5 complaints being provided under the Independent Advocacy contract.

6.5 As part of the commissioning process, before any new tender is completed, a review of the existing service takes place. This has now been completed and the following key points have been identified:

- The current budget of £0.136m has not been increased in line with inflation since 2018 and has remained the same for the delivery of both elements of the contract since this date.
- The incumbent provider has confirmed that they cannot continue to deliver the contract for this amount.
- Research has shown that no other Local Authority in Greater Manchester separate the delivery of the different levels of NHS complaints advocacy and in discussion with Healthwatch England it was confirmed that they were unaware of any other LAs nationally separating the different levels of NHS complaints advocacy.
- The current arrangements are confusing for individuals to navigate the system across two providers.
- It is difficult to monitor performance of the different NHS complaint levels across the two providers.

7. OPTIONS CONSIDERED

7.1 Following the above review and in discussion with the incumbent provider of Healthwatch Tameside, namely Action Together, it was deemed that the continuation of the contract with the current service specification and at the current value was not an option for them going forward and it was indicated that the provider would not be in a position financially to bid for the new contract in its current state. As a result a number of options were considered.

Option 1 - Do Nothing

The Council could tender as planned for £0.136m p.a. and risk no submissions to the Healthwatch and NHS L1-4 Contract. Current research suggests that there would be none/very little interest from the market. This is not an option as the Council would be at risk of not delivering its statutory responsibilities.

Option 2 – Increase the funding envelope to levels suggested by Action Together

Action Together have indicated for them to provide all aspects of the current contract i.e. Healthwatch and NHS L1-4 complaints the required budget would be £0.171m p.a. This would mean a contract value increase of £0.035m p.a. and would mean the continuation of the L1-5 NHS complaints being delivered separately by two different providers which feedback has suggested is confusing for individuals going through the process (see section 6.5 of the report).

Option 3 – Separate the Healthwatch and NHS L1-4 complaints to two separate contracts with the loss of general advocacy.

Following discussions with Action Together, it has been confirmed that the cost of continuing to deliver the Healthwatch element of the contract would be £0.141m p.a. for 2024/25 plus the agreed inflationary uplift as approved by the Council. The incumbent provider of the Independent Advocacy contract, VoiceAbility, suggested that by ceasing the non-statutory general advocacy element of the Independent Advocacy contract, VoiceAbility would be able to deliver the NHS L1-4 complaints as part of their current contract at no additional cost. This would mean an increase in budget of £0.005m p.a. but would result in the loss of general advocacy provision for the people of Tameside.

Option 4 - Separate the Healthwatch and NHS L1-4 complaints to two separate contracts with no loss of general advocacy

As detailed above, Action Together are able to continue to deliver the Healthwatch only element of the contract for £0.141m p.a. and VoiceAbility have agreed that they would be able to deliver the NHS L1-4 complaints element of the contract at a cost of £0.020m p.a. This would result in an increased budget of £0.025m p.a. but would mean there would be no loss of general advocacy and the NHS L1-5 complaints would be delivered by the one provider, resulting in an improved experience for people involved in the NHS complaints process.

8. RECOMMENDED OPTION

- 8.1 The preferred and recommended option is option 4 to separate the Healthwatch and NHS L1-4 complaints to two separate contracts with no loss of general advocacy.
- 8.2 Action Together has agreed that they would be able to deliver the Health watch element of the contract for £0.141m p.a. for 2024/25 plus the agreed inflationary uplift as approved by the Council.
- 8.3 This is in line with the funding from central government funding sources to deliver the Healthwatch contract and the value would meet government funding expectations as given in the Healthwatch England Annual report to government. This also allows Healthwatch to focus on Healthwatch activity only.
- 8.4 VoiceAbility, the incumbent Independent Advocacy provider, has agreed to deliver the additional NHS L1-4 complaints with an additional £0.020m p.a. budget for 2024/2025 plus the agreed inflationary uplift as approved by the Council.
- 8.5 This would improve the current provision to individuals as all elements of the NHS complaints process would be delivered by the same provider. VoiceAbility also currently deliver NHS complaints advocacy in other parts of Greater Manchester and across the UK and have an established delivery model for this.

9. THE PROCUREMENT APPROACH USED

9.1 Following advice from STAR Procurement a Soft Market Test has been conducted and has identified that there is no other genuine competition within the current market. The tendering process has been completed fully in accordance with Tameside Metropolitan Borough Council Procurement Standing Orders and in conjunction with public procurement requirements as advised by STAR Procurement.

9.2 The approach used to evaluate the responses include:

- Soft Market Test – To assess whether there is any interest in the market to tender for this service. Each provider is required to complete a supplier questionnaire with pass/fail questions to allow checks to be completed that will assess its viability to provide the service in the borough and that it is able to meet all aspects of the specification. With no other providers completing the market engagement, the decision is taken to direct award to the current provider.
- Cyber Security Questionnaire – Each provider is required to complete a questionnaire to demonstrate the level of security in place to receive and store information safely. In conjunction with colleagues in Central IT and Information Governance teams, the successful provider will have a Data Protection Impact Assessment (DPIA) in place to ensure any improvements needed to its cyber security are achieved within an agreed timescale prior to contract commencement.

10. DETAILS OF PROPOSED CONTRACTUAL ARRANGEMENTS

10.1 Tameside Adult Services in its role as lead commissioner has established the need for:

- A six year contract with Action Together to deliver Healthwatch Tameside, commencing on 1 April 2024 and expiring on 31 March 2030 with no scope to extend.
- A modification to the existing Independent Advocacy contract with VoiceAbility to deliver NHS L1-4 complaints, commencing on 1 April 2024 and expiring on 6 July 2027 in line with their current contract, with no scope to extend. This would be completed under the change in provision as it is within the nature and scope of the current contract and on “economical, technical or inoperability” grounds. The increase is also less than 50% of the value of the original contract.

11. CHECKS ON PROVIDERS

11.1 STAR Procurement undertake a full financial check via Company Watch. The check measures the overall financial health of a company. It is based on a statistical evaluation of a company’s publicly available financial results in order to determine the level of financial risk associated with the company. VoiceAbility is classified as a low risk and as Action Together is a Charitable Incorporated Organisation this check does not apply.

11.2 Both current providers have indicated they have the appropriate levels of insurance on commencement of the service. Insurance documents will be obtained from the successful organisations on award of the contract.

12. RECOMMENDATION

12.1 As set out at the front of the report.