

# Local Healthwatch

Contingency planning: 'Plan B'



## Risk mitigation plan

Despite extensive engagement and market development activities, it is possible that procurement processes for local Healthwatch may not produce bids of sufficient quality to move to the awarding of a contract, or may identify key risks in the awarding of a contract that makes it inadvisable.

The purpose of this document is to list possible options available either to individual authorities, or on a shared basis, to meet their statutory duty to have a local Healthwatch contract in place by April 2013 should these risks be realised. It identifies the pros and cons of each alternative and some high level steps towards putting each option into practice. This should provide authorities with sufficient information to assess which options would be viable or appropriate to its individual circumstances. However, this document should not be seen as statutory or non-statutory guidance. Neither is the list of pros and cons under each option exhaustive and applicable to all local authorities.

It is likely authorities will have between a maximum of 10 and possibly a minimum of 4 weeks to implement a 'Plan B' once their procurement process has concluded. The first step for any authority who identifies they may potentially need a 'Plan B' is to clarify the internal approval mechanisms for any proposal and to ensure they can be put in place within the available timescale. Although authorities cannot pre-judge the outcome of the procurement process they have in progress, by implementing a 'Plan B' before the process concludes, risk mitigation planning can begin, so that implementation is achievable within the required timescale.

In tendering for contracts, public organisations reserve the right to cancel the tendering process and not award a contract, or decide not to re-tender. Cancelling the procurement process owing to lack of bids meeting minimum evaluation criteria, may involve referring to the Local Authority's Procurement/ Contract Standing Orders and gaining the necessary permissions at the appropriate level. Work done by the LGA Healthwatch national implementation team in this area identified four routes, which may be practical.

Some of these routes contain further sub-options, which could be combined.

The four routes identified are:

1. Choose from contract bidders, which may not have demonstrated the minimum quality level during evaluation.
2. Split local Healthwatch functions into lots and vary contracts with existing local authority providers to provide the functions.
3. Work with a new, or established, organisation(s)/consortium, which was not part of the original tender process.
4. Accept a Right to Challenge: at least two local authority employees express a wish to tender for a local authority delivered service or contracted service.

Whichever route is considered it should be in the context of working towards a thriving, independent organisation supporting the public voice in local services and be in accordance with the relevant legislation and secondary regulations.

## Route 1

**Choose from contract bidders, which may not have made the minimum quality level during evaluation.** Work with one or more of the organisations who engaged in the tender process without going to full award as originally intended. Within this route there are two options.

**1a. Award a contract to the organisation(s) showing most potential to succeed and nurture it/them. This may be appropriate where there is an immature organisation(s) which has bid that shows potential, but did not reach the required expectations during evaluation.**

### Pros

- The procurement process has not delayed the awarding of a contract.
- The local authority has an opportunity to shape the growth of local Healthwatch.
- There is an opportunity to develop the organisation in line with new local health and local government architecture as that develops.

### Cons

- Due to the size of some local Healthwatch budgets, the timescales and internal capacity to provide support and 'hand-holding' may not be viable on an individual local authority basis.
- The immature organisation(s) may not mature enough to deliver functions within the contract life and may require ongoing support beyond the short-term.
- Some compromise on quality might be required
- Additional support from the local authority will be required
- A second level evaluation process will be needed if choosing from more than one bidder.

### Approach

- Identify the skillset gap and development needs of the identified organisation(s) and if they are bridgeable within a reasonable timescale.
- Agree priorities for delivery over the short-term and a longer term work plan
- Agree development milestones.
- Provide additional dedicated development support.
- Review early and often.
- Use local/regional/national supports where appropriate.

**1b. Issue a short term contract (c. six months). This may be appropriate in the case of an established organisation, whose approach needed some reshaping**

**Pros**

- It gives the organisation an opportunity to clear initial teething problems and begin to prove it can deliver whilst allowing a clear break point should they fail to meet required standards.
- It provides a reasonable timescale to identify and target replacement options, whilst meeting statutory requirements.

**Cons**

- Community engagement takes time to build so it may set up the organisation to fail
- It may not be attractive to the identified organisation.
- A change after six months may be disruptive to the delivery of local Healthwatch functions and time consuming for the local authority.

**Approach**

- Agree the best option from initial bidders.
- Identify skillset gap and development needs and if they are bridgeable within six months, or a reasonable timescale beyond.
- Agree priorities for delivery over six months.
- Agree development milestones.
- Review early and often.
- Extend or give notice as necessary.
- Use local/regional/national supports where appropriate.

## Route 2

**Split the functions into two or more lots and vary contracts with existing providers to supply the functions.** For example, the local authority may have existing providers supplying advice and engagement functions. The local authority could add one or more of the local Healthwatch functions to an existing contract. Commissioners would need to be aware of contract variation limits. Contracts must not be divided to avoid exceeding any threshold contained in local authority procurement/contract standing orders, or under the Public Contracts (Amendment) Regulations 2009.

### Pros

- Existing organisations will have already been through a commissioning process and therefore deemed fit and proper to take on public contracts.
- Local Healthwatch functions could be in place quickly if suitable providers are already in place.
- Existing contract monitoring processes means a good use of resources.
- It provides an opportunity to focus on existing providers' areas of expertise.

### Cons

- There may be a risk of challenge if there is more than one existing contracted provider supplying a similar service.
- Work will need to be done with the commissioners within the local authority currently monitoring those contracts, who may not understand local Healthwatch.
- It will make developing a local Healthwatch profile challenging.
- It may be difficult to value each individual function within the original local Healthwatch contract.
- It may take time to separate out functions of local Healthwatch and create specific specifications.
- It will need ongoing specific local authority input to manage the wider contract monitoring process and ensure fragmentation of the local Healthwatch does not happen.
- It will require the local authority to create/identify a structure which can be recognised as 'local Healthwatch' and fulfil the health and wellbeing board function.

### Approach

- Map existing contract provider supplying similar functions.
- Agree appropriate contract variation and funding.
- Agree how local Healthwatch brand will be carried by diverse providers – this may involve the local authority setting up and initially supporting the brand.
- Specify ongoing local authority input to hold the ring.
- Use local/regional/national supports where appropriate.

## Route 3

**Work with new, or established, organisation(s)/consortium, which was not part of the original tender process.** Cancelling the procurement process owing to lack of bids meeting minimum evaluation criteria may involve referring to the local authority's Procurement/Contract Standing Orders and gaining the necessary permissions at the appropriate level. If any of the potential organisations are not existing contract holders for the local authority, a proper process to deem them viable, fit and proper must be undertaken. Within this route there are three options.

### **3a. Look to a neighbouring local Healthwatch to make arrangements for the temporary or permanent management and/or delivery of the functions**

#### **Pros**

- The local authority is awarding the contract to an organisation, which has been through a formal process to gain a contract in a neighbouring local authority thus reducing the risk of challenge or failure to deliver.
- There may be some commonality in health systems that lends itself to close working in local Healthwatch across local authority boundaries.

#### **Cons**

- Organisations which have been evolved may not have the maturity, structure or the capacity to take on another local Healthwatch.
- The neighbouring local Healthwatch may not have the corporate governance enabling it to take on additional work.
- It may reduce quality of delivery in both local authority areas and there would need to be an assurance that the 'piggy-backed' local Healthwatch delivers an acceptable quality.
- Given the limited number of providers/bidders the neighbouring local Healthwatch may be an organisation which were part of the 'at risk' authority's initial tender process and rejected in the procurement process.
- There may be a difference in commissioning quality assurance processes.
- This option may be unacceptable politically.

#### **Approach**

- Identify neighbouring authorities where there may be some joint arrangements/commissioning already in place.
- Identify successful local Healthwatch contract awards in neighbouring local authorities.
- Establish with the relevant neighbouring commissioner if there is an opportunity to build on their local Healthwatch contract.
- Seek high level (political) agreement.
- Negotiate with the relevant neighbouring commissioner to vary their contract with their local Healthwatch.
- Use local/regional/national supports where appropriate.

**3b. Establish a social enterprise which can act as an umbrella organisation holding multiple contracts and providing core services and support to develop individual local Healthwatch (particularly relevant if neighbouring local authorities are experiencing similar procurement difficulties)**

**Pros**

- The local authority has an opportunity to shape the growth of local Healthwatch.
- It develops a social enterprise which can support more than one local Healthwatch with the flexibility to mitigate the risks across a number of local authorities of failure to award.
- Each authority would enter into individual arrangements with the organisation so no delay to develop shared commissioning protocols.
- It would be locally inclusive so reduce the risk of challenge.
- It could become a cost-effective long-term solution.
- It would be governed by the participating local Healthwatch, not an external organisation (eg current hosts).
- It could expand to include more than one local Healthwatch should contract holders not deliver or evolved organisations struggle financially. This would be a longer term safety net for initial participants and more than one local Healthwatch.

**Cons**

- It may be unacceptable politically.
- It requires start up investment in both time and money.
- It could meet the contract award requirement, within a minimum three week period, but is unlikely to deliver a fully functioning service from April 2013.

**Approach**

- Set up a not for profit (NFP) company limited by guarantee. This is the quickest and simplest social enterprise vehicle to establish and could be evolved into, for example a charity or mutual at a later stage should the participants choose.
- Establish a governance structure.
- Use an interim team to establish the hub and oversee the development of, the core functions, the participating local Healthwatch and LINK legacy transfer prior to the appointment/TUPE of permanent staff.
- Use local/regional/national supports where appropriate.
- On an on-going basis the hub would be funded through the local Healthwatch contracts with the potential for further income generation as directed by the board. This model is used by other NFP organisations eg Citizens Advice.

### 3c. Award the contract to a suitable local organisation(s)/consortium which did not originally bid and nurture it to develop the functions

#### Pros

- The organisation's approach and track record is known.
- The local authority has an opportunity to shape the growth of local Healthwatch.
- An established organisation may already have infrastructure to support its development.
- Ensures voluntary sector engagement.
- Ensures voluntary sector partnership working.

#### Cons

- Due to the size of some local Healthwatch budgets, the timescales and internal capacity to provide support and 'hand-holding' may not be viable on an individual authority basis.
- The organisation may not be keen if it does not see local Healthwatch functions as core to its mission.
- Some local organisations may not wish to work together.
- Resources within provider may not support a consortium.
- This requires a process for selecting providers to be involved to ensure excluded providers do not challenge and to distinguish between organisations providing similar services
- The use of grant funding may not be the local authority's preferred method of funding providers.

#### Approach

- Identify a suitable local organisation.
- Identify the skillset gap and development needs of the identified organisation and if they are bridgeable within a reasonable timescale.
- Agree priorities for delivery over the short-term and a longer term work plan.
- Agree development milestones.
- Provide additional dedicated development support.
- Review early and often.
- Use local/regional/national supports where appropriate.

## Route 4

**Right to Challenge:** Statutory guidance, provides clarification of the Localism Act 2011, Part 5, Chapter 2 and The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 (<http://tinyurl.com/7jhkloz>). The Community Right to Challenge applies to all relevant services:

‘Those provided by, or on behalf of, a relevant authority, in the exercise of its functions in relation to England, except services, which are excluded from the right in secondary legislation.’

Two or more employees of the relevant local authority are eligible to use the Right. Employees would need to form an employee-led structure to take on running services under the Right. Employees using the Right are not expected to have finalised all of their arrangements before submitting an expression of interest, but will need to form a separate legal entity in order to bid in a procurement exercise, so that management and contractual relationships are clear.

This route may need to be used in conjunction with a temporary option, since it is possible that a procurement process would need to be followed to avoid a conflict of interest. However, it is also worth noting that David Behan’s letter of 2 March 2012 (Gateway 17330) refers to the local decision making processes:

‘It is up to local authorities to decide how they commission and fund local Healthwatch; this may include grant in aid funding. There is no automatic requirement to use the EU tender process but each case should be considered on the merits.’

### Pros

- Formation of local Healthwatch includes knowledgeable and committed people.
- Right to Challenge can include a partnership with other organisations and may build on the part strength of initial contract bidders.

### Cons

- There may be a conflict of interest depending on who applies.
- There may be a delay in employees setting up a legal entity in time to tender.

### Approach

- At least two existing local authority colleagues have to present their challenge.
- Process follows normal procurement rules.
- Right to Challenge can include a partnership with other organisations and may build on the part strength of contract bidders.

More information at <http://tinyurl.com/cy54cfz> and <http://tinyurl.com/bojqngc>



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