

FORM OF HEALTHWATCH ESSEX

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Introduction

1. On 1 April 2013, Healthwatch Essex will formally be created. The Health & Social Care Act 2012 requires the County Council to make contractual arrangements with a social enterprise in order to carry out Healthwatch functions in Essex. Ministers have been clear that this need not entail competitive procurement. The Council can choose to grant fund a body if it wishes.

2. It is now time to start developing those contractual arrangements. The Pathfinder Executive's views are sought on two key issues:

- the form that the social enterprise should take; and
- the time at which the Pathfinder should take over all LINK roles.

Form of Local Healthwatch

3. Local Healthwatch has to be a social enterprise. The Department of Health is consulting on what the term should be taken to include. It will issue Ministerial Regulations on the topic. However, the most common forms are well known and are listed in Annex A.

Competitive procurement or grant funding?

4. The first choice the Council has to make is this:

- Option A - procure an existing social enterprise to provide Local Healthwatch functions; or
- Option B - create a social enterprise that will be dedicated purely to being Healthwatch Essex and nothing else.

5. The design of Local Healthwatch so far in Essex has been based on Option B and Council officers strongly advise that Elected Members and the Pathfinder should confirm this position. This is for these reasons:

- Elected Members have already decided that Healthwatch should be as representative as possible of different Essex communities. Indeed, the Council decided to appoint members of the Pathfinder Executive in order to ensure that this group would be broadly representative. This principle is hard to reconcile with

competitive procurement. It could require the transfer of a representative body from one contractor to another every few years.

- Such a division between a 'host organisation' and the membership body of the LINK has not been successful in Essex and has discredited this model. It has generated tensions and conflicts of interest. Officer advice is that Essex needs a body that is dedicated purely to being Local Healthwatch, which is controlled by its members.
- Judging from the Council's experience in letting contracts for the LINK since 2007, the market for this kind of service is not particularly strong in terms of the number of high calibre organisations willing to submit bids.

6. Do Pathfinder Members agree that the Council should grant fund a body that will be set up purely to be Healthwatch Essex and have no other functions?

What kind of social enterprise?

7. Assuming that the Council, having consulted the Pathfinder Executive, opts to create a social enterprise to be Healthwatch Essex, the issues then becomes what legal form it should have?

8. Key things the Council should achieve in setting up Healthwatch Essex are that it should be representative, accountable and effective. In line with the logic of the design for Essex's Pathfinder, this entails that Healthwatch should have a core of appointed members. A process of appointing this core ensures that these key members would be:

- Diverse, and therefore an engine for outreach, which will be essential to the success of Local Healthwatch in presenting the views and experiences of a wide range of Essex communities
- Removable in the event that Healthwatch Essex significantly fails to meet its contractual obligations. This accountability mechanism is essential if the Council is not going to rely on market competition to rectify serious under-performance.
- Chosen on the basis of having the skills, knowledge and experience to give an effective strategic lead to the organisation and its managers.

9. Initial legal advice is that the most flexible form would be a company limited by shares. The main reason for this is that the Articles of Association would allow for several classes of shareholder; and this would enable the Council, the core members, and a wider set of members to have a role in the company. The ability to involve a wider group of non-accountable members, who nevertheless would have real influence over the company, is important in making Healthwatch inclusive.

10. This would enable the Council and the Healthwatch Pathfinder, in designing the voting powers within the company, to distinguish the following roles:

- Essex County Council would hold a share giving it the power to remove the Strategic Body of the company's core members in the event of significant failure to meet their contractual obligations. New core members would then be appointed on the advice of an independent panel. The Council would also have the power to remove just the Board of Directors.
- The Strategic Body of core members would be accountable for the strategic direction of the company. They would hold office for a defined period. Their class of shares would give them the power to vote on strategy and budget and on resolutions binding on the Board of Directors. They would be able to elect a majority of the Board of Directors from their own number.
- Anyone who lives or works in the Essex County Council area or uses health or social care services in it could join the company by buying a share of nominal value. This would give them the power to raise issues at general meetings and vote on resolutions non-binding on the Board of Directors. They would also be able to elect a substantial minority of the Board of Directors from their own number. Such non-accountable members would also be able to take part in committees and working groups and vote on them where terms of reference allow this.

11. Do Pathfinder Members support this general approach to the design of Healthwatch Essex as a way of balancing accountability and inclusion?

Other issues

12. The Pathfinder's views are also sought on other topics raised in discussion with the Healthwatch Pathfinder's leadership:

- Should the power to dissolve the company rest with Essex County Council alone or jointly between ECC and the Strategic Body or the whole membership?
- Should membership be open to other bodies corporate or associations as well as people? The simpler option for this would be to allow institutions to buy shares like any member of the public, each share having the same voting strength. More complicated – but potentially workable – would be to have a different class of shares for institutions with voting rights allocated in proportion to the size of each buying institution's own membership.
- Should the Board of Directors include one or two independent non-executive directors as well as directors elected from the Strategic Body and wider membership?