

Bath & North East Somerset Council

MEETING:	Wellbeing Policy Development & Scrutiny Panel
MEETING DATE:	29th July 2011
TITLE:	Progress in Establishing a Community Health & Social Care Services Community Interest Company
WARD:	ALL
AN OPEN PUBLIC ITEM	
List of attachments to this report:	
Please list the appendices here, clearly indicating any which are exempt and the reasons for exemption	

1 THE ISSUE

1.1 To provide an update on the progress towards establishment of the Community Interest Company (CIC) for the provision of community health and social care services.

2 RECOMMENDATION

The Wellbeing PDS Panel is asked to:

2.1 note this update report; and

2.2 note the summary of conditions set by the Council and/or the NHS B&NES Board in approving the transfer of services to a social enterprise as set out in Appendix 1.

3 FINANCIAL IMPLICATIONS

- 3.1 The Integrated Business Plan produced by the prospective CIC in February 2011 showed a position of financial sustainability within the income envelopes set by the PCT and Council. This was reliant on the delivery of a very challenging programme of savings, and recognised a level of unquantified risk to all three bodies in respect of support services costs and savings.
- 3.2 There has been no subsequent formal revision of the plan produced in February. The level of savings required over the four and a half year period of the business plan to meet PCT, Council and CIC targets is £8.9m, of which £2.9m have been assessed as resulting directly from the integrated approach.
- 3.3 Both the Council and NHS B&NES have concluded the first stage of the exercise to determine the correct split of support service costs and resources between the commissioning organisations and the CIC.

4 THE REPORT

Chronology to Date

4.1 The chronology of events to date is as follows:

- The project started in earnest August/September 2010.
- The direction of travel towards a social enterprise was agreed by Council and NHS B&NES in November 2010.
- The approval to proceed subject to certain conditions was given by the Council and NHS B&NES in February 2011.
- The Council and NHS B&NES agreed their view of the proposed Community Interest Statement, Board composition and membership of the CIC in March 2011 and these were discussed and agreed with the Chair Designate of the prospective CIC.
- Registration of the CIC limited by guarantee was achieved on 30th March 2011 in the working name of "Community Health and Care Services CIC".
- The appointment of Chair Designate (Simon Knighton) and Chief Executive Designate (Janet Rowse) was completed in March and April 2011, and they started their roles on 1 June 2011.
- Strategic Health Authority approval was granted at the beginning of June 2011.
- The appointment of the Director of Finance (Interim), Richard Tarring, and the appointment of Dusty Walker and David Purdon as Non-Executive Directors took place in late June 2011.

Current Position

4.2 The current position may be summarised as follows:

- One of the key risks associated with the progress towards implementation of the CIC was the potential for a challenge to the procurement process for the award of this 5-year contract. The key mitigation of this risk was the publication of a VEAT (Voluntary Ex Ante Transparency Notice) in the European Journal. The notice was issued on 30th June 2011. The notice announced the intention to award the contract to B&NES Community Health & Care Services CIC and provides a period of 10 days following publication during which a challenge can be made from dissatisfied potential bidders. If no challenge is made during this period the contract can be awarded with no possibility of the contract being set-aside in any future challenge to the process. Whilst there is always the risk of future challenge the remedies available would be far less onerous.
- The consultation document on the transfer of staff to the CIC in accordance with Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) was sent to affected staff during the week commencing 4th July 2011, with a closing date for responses of Friday 12th August. Consultation meetings are planned from 11th July, through to 2nd August. The outcome of the consultation will be communicated to all staff by 31st August 2011.
- As anticipated in the previous report to Board, separate advisers for the CIC (legal and business) have been appointed to ensure the CIC has independent legal and business advice.
- The CIC has achieved Admitted Body Status in relation to Local Government Pensions.

Key Milestones Going Forward

4.3 Key milestones for the CIC are shown in the table below.

Support Services/Estates to be agreed (including banking, insurance, pensions)	April – July 2011
CIC Due Diligence	May – July 2011
Review of Business Plan and Business Strategy	June – August 2011
Contract Negotiations	June – August 2011
Organisational Development	May onwards
CQC Registration	June – August 2011
Council & PCT Due Diligence of the CIC	August – Sept 2011
Final Sign Off	Sept 2011
Transfer and Launch	1 October 2011

4.4 At the same time it will be vital to ensure that the Provider continues to provide safe services while making changes required to meet financial targets as a result of the budgets of the Council and NHS B&NES (regardless of the transfer).

4.5 The key milestones for the Council and NHS B&NES commissioning team are shown in the table below.

Draft Business Transfer Agreement and Services Contract based on agreed Heads of Terms	May 2011
Service Specifications complete and Agreed	July 2011
Due Diligence information to the CIC	May – June 2011
Retained statutory functions and staffing resources agreed	May – June 2011
Contract Negotiations	June – August 2011
Council & PCT Due Diligence of the CIC	August – Sept 2011
TUPE Consultation	July –Sept 2011
Final Sign Off	Sept 2011
Transfer and Launch	1 October 2011

Conditions Attached to the Approval to Proceed

4.6 In approving the set up of the Community Interest Company the Council and NHS B&NES has made this conditional upon a number of issues being agreed between the parties. This is a normal part of the process. In effect the Council and the NHS Board is making the transfer subject to contracts being agreed, proper due diligence on the part of all parties, and the outcomes of issuing the appropriate contract award notices.

4.7 For ease of monitoring the various issues identified during the process have been brought together in Appendix 1. Between reports where some of these issues have been repeated they have been consolidated into one action in Appendix 1.

4.8 Where necessary there will be further reports to the Council’s Chief Executive (under the delegated arrangements) and the NHS B&NES Board. In any event a report will be brought to both decision making forums bringing together all the issues and the due diligence/assurance framework to allow the Council and NHS B&NES to finally approve the terms of the transaction prior to the transfer of the services to the CIC. This will also include the outcomes of issuing the appropriate contract award notices

- 4.9 In addition all these and other issues raised in previous reports (for example through the assurance process prior to approval) have been incorporated into a due diligence/assurance framework for the Council and NHS B&NES to seek the necessary assurances from the CIC at the appropriate stage in the process. This is planned for August to September 2011.
- 4.10 There are also demanding due diligence requirements from the CIC to the Council and NHS B&NES in order for the CIC to firm up its business plan and business strategy which needs to be completed first which is planned for May to July 2011.
- 4.11 Once these processes have been completed (included the substantive work to give these assurances) the final reports to the Council and NHS B&NES are scheduled for September 2011.

5 RISK MANAGEMENT

- 5.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.
- 5.2 Both the CIC and the commissioning team are continuously developing their risk registers and risk management arrangements.

6 EQUALITIES

- 6.1 An Equalities Impact Assessment on the CIC Integrated Business Plan has been carried out using corporate guidelines.

7 CONSULTATION

- 7.1 *Ward Councillors; Cabinet Member; Trades Unions; Overview & Scrutiny Panel; Staff; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Stakeholders/Partners; Other Public Sector Bodies; Section 151 Finance Officer; Chief Executive; Monitoring Officer*
- 7.2 The consultation and engagement arrangements of the proposed option to transfer services to a social enterprise were reported in detail in the reports to the Council and NHS B&NES Board in November 2010 and 17th February 2011.
- 7.3 A key milestone in the transaction is the start the statutory TUPE consultation, which started on 11th July and will close on 14th August.

8 ISSUES TO CONSIDER IN REACHING THE DECISION

- 8.1 *Social Inclusion; Customer Focus; Sustainability; Human Resources; Property; Young People; Human Rights; Corporate; Health & Safety; Impact on Staff; Other Legal Considerations*

9 ADVICE SOUGHT

9.1 Advice has not been sought from either the Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) or Section 151 Officer (Divisional Director - Finance) on this brief update report.

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Background papers	Reports to the Council's Chief Executive and NHS B&NES Board, November 2010, February 2011 and March 2011.
Please contact the report author if you need to access this report in an alternative format	

Summary of Conditions for the Transfer of Community Health and Social Care Services to a Social Enterprise arising from Decisions of B&NES Council and NHS B&NES Board

Condition	Date of Meeting	
	B&NES Council	NHS B&NES Board
Agrees that the proposed option is subject to proportionate due diligence prior to any transfer of services.	16 th November 2010; 17 th February 2011.	18 th November 2010; 17 th February 2011.
To agree, subject to appropriate specification and drafting, the award of a five year contract for the relevant services of the Council (and PCT) to a Social Enterprise Company.	Chief Executive's Decision under Authority Delegated by Council (16 th November 2010) Made on 17 February 2011	17 th February 2011
The above decision was also subject to:		
<ul style="list-style-type: none"> • The approval of NHS South West (the Strategic Health Authority) 	17 February 2011	17 th February 2011
<ul style="list-style-type: none"> • A similar five-year contract being awarded by NHS B&NES which will be novated to the GP Commissioning Consortium (with the exception of services indicated in the Commissioning intentions as being put to tender in that period). 	17 February 2011	–
<ul style="list-style-type: none"> • Satisfactory agreement with the Council of the governance arrangements for the social enterprise. 	March 2012	–
<ul style="list-style-type: none"> • To instruct the relevant officers to report back on the development of the Memorandum and Articles of Association of the social enterprise company. 	17 February 2011	
<ul style="list-style-type: none"> • Publication of an appropriate notice in the OJEU prior to the award of the contract by the Council and NHS B&NES. 	17 February 2011	17 February 2011

Condition	Date of Meeting	
	B&NES Council	NHS B&NES Board
<p>To note the areas of improvement in the Community Health and Social Care Integrated Business Plan identified during the internal assurance process as set out in the 17 February 2011 Report as follows:</p> <ul style="list-style-type: none"> • Development of detailed plans for delivering efficiency and productivity savings from support services taking into account existing commissioner savings targets to ensure that savings are correctly attributed. • Detailed delivery plans for all savings proposals. • Service line understanding of costs against income in order to identify higher value and loss-making areas of business for the social enterprise. • Detailed workforce development plans. • Project Plans to ensure compliance with relevant registration requirements. • Business Continuity Plans. • Application to the Social Enterprise Investment Fund for set-up costs. • Further consideration of VAT mitigations, including the potential for the SE to act as agent for the Council and reduce VAT liability further. • Negotiation and agreement contractual safeguards. • Agreement of those set-up costs that can appropriately be funded by the commissioner and the mechanism for doing so. • Confirmation of payment terms and completion of any appropriate waivers in respect of Financial Standing Orders. • Detailed plans for corporate governance. • A detailed implementation plan for establishing the social enterprise, including banking facilities (including any credit facility), • Clarification of Commissioner provision of guarantees in respect of commercial funder/banker and Avon Pension Fund. 	17 February 2011	17 February 2011

Condition	Date of Meeting	
	B&NES Council	NHS B&NES Board
<p>To note the Conditions Precedent within the Heads of Terms attached to the 17 February 2011 Report, which must be met in order for the transfer to occur.</p> <p>These conditions include for the Provider:</p> <ol style="list-style-type: none"> 1. The terms of the transfer being approved by the board of the Provider; 2. The relevant registration or any other regulatory requirements at the time of transfer being obtained or agreed with CQC 3. The entry by the Provider into a pension scheme for transferring staff which is certified by the Government Actuary Department as being broadly equivalent to the Local Government Pension Scheme or entry by the Provider into an Admission Agreement for the council staff with the Avon Local Government Pension Scheme 4. The entry into satisfactory insurance and risk management arrangements. 5. The entry or significant progress to setting up a pension scheme for new staff 6. Agreement of the governance arrangements of the Provider with the Council and the PCT. 7. The completion of the Provider's process of due diligence. <p>These conditions include for the PCT:</p> <ol style="list-style-type: none"> 1. Approval by the PCT board being obtained 2. Any necessary approval from the SHA and Department of Health being obtained. 3. The completion of the PCT's process of due diligence. <p>These conditions include for the Council:</p> <ol style="list-style-type: none"> 1. The approval of the transaction by the Council's Chief Executive in accordance with the arrangements for delegation made by the Council 2. The completion of the Council's process of due diligence. <p>These conditions include for the PCT and the Provider:</p> <ol style="list-style-type: none"> 1. Each and every condition precedent contained in the Community Services Contract having been satisfied or formally waived in order that performance of the Provider's obligations under that agreement is unconditional with effect from the Transfer Date; 2. The written agreement to or the obtaining of a Directions Order in respect of the PCT staff transferring under the Transfer agreement. 	17 February 2011	17 February 2011