

# Legal structure of Healthwatch Newcastle (paper 6)

## Introduction

As Board members are aware, Healthwatch was created by the Health and Social Care Act 2012. This Act amends the Local Government and Public Health Act 2007 so that the body contracted to be the local Healthwatch must be an independent 'body corporate' i.e. a legal entity. The Act describes this body corporate as a social enterprise. However, 'social enterprise' does not have a single legal definition, rather it is a collective description of social-purpose organisations and there are several legal forms for it. A general description would be 'businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community'.

## Healthwatch Newcastle

The delivery partners who support Healthwatch Newcastle (Newcastle CVS and Involve NE) are both social enterprises as defined in the Newcastle City Council tender specification.

The current Healthwatch governance model devised by the delivery partners meets the requirements of the local Healthwatch regulations. However a company limited by guarantee with standard not for profit clauses has been set up with the name 'Healthwatch Newcastle'. This entity has not been 'activated' yet and its use will have to be considered by the Healthwatch Newcastle Board with appropriate advice and information from the delivery partners (Programme Management Board).

The Healthwatch Newcastle Board will have to decide on a number of details, but fundamentally will need to consider whether the organisation is a charity or a social enterprise: Community Interest Company (CIC) or a company limited by guarantee with not for profit clauses or a different entity. These decisions will be for the Healthwatch Newcastle Board and it may even choose not to become a separate organisation.

## Advice and guidance

There is no specific advice or guidance on this issue, however, other local Healthwatches are currently considering their legal status and below is a snapshot of what has been recently discussed on Healthwatch England's Hub.

### Healthwatch Oxfordshire

Has adopted a CIC structure and is currently working this through. It was an expectation of the commissioning process so that has guided its approach.

### Healthwatch East Sussex

Is a CIC too and was part of the original set up.

### Healthwatch North Somerset

Became a CIC, but is now seeking to become a charity before the end of the financial year as there are tax issues for CICs if there is an underspend.

### **Healthwatch Camden**

Is a Charitable Incorporated Organisation (Foundation Model). The decision to take this form was made by the steering group and it means its trustees are its only members in the constitutional sense (lots of its participants think of themselves as 'members' but although they play a big role in shaping its work they don't get a formal vote). Being a CIO means it only has one regulatory body to account to. It can income generate within its charitable purposes and it would not campaign politically anyway, so the campaign rules do not restrict it. It is grant funded by the council, so charitable status works well for it. It allows the monitoring it does to be outcome focused, rather than standard contract management.

### **Healthwatch Bolton**

Is going down the CIO route and chose the 'by association' model because its Board was keen on broad options for maximising public involvement. It will end with twelve trustees and a voting membership (who will ultimately elect the trustees).

As can be seen from these comments the decisions about legal entity is complicated and advice from appropriate sources, including Newcastle CVS's Supporting and Developing Team (who set up the company limited by guarantee) will be important.

### **Recommendations**

It is recommended that the Board of Healthwatch Newcastle considers legal entity status and works closely with the delivery partners. The Board may wish to establish a subgroup to consider the implications of each separate legal entity and make recommendations back to the Board.