

**Forward Plan reference number:** Not applicable

<b>Report title: Essex Cares Limited – West Sussex County Council's Community Reablement Contract New 16 Month Contract</b>	
<b>Report to:</b> Councillor Kevin Bentley, Leader of the Council	
<b>Report author:</b> Peter Fairley, ECL Managing Director <b>Email:</b> peter.fairley@essex.gov.uk	
<b>Date:</b> 15 <sup>th</sup> January 2024	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

### **Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1. Context**

- 1.1 ECL is a local authority trading company (LATC) owned by Essex County Council. It provides a range of care and wellbeing services in Essex and can also trade and operate outside of Essex.
- 1.2 Since 2012 ECL have provided community reablement services in West Sussex when it was awarded following competitive tender.
- 1.3 ECL retained the contract when it was retendered in 2017 for a period of three plus two years (subsequently extended for another year).
- 1.4 West Sussex County Council now want to issue a new 16 month direct awarded contract to ECL from 1<sup>st</sup> December 2023 and ECL wish to accept this contract. The value of this decision means it requires ECL to seek approval from ECC as Shareholder.
- 1.5 As ECL is owned by Essex County Council the benefit to Essex is the reduction in costs to ECC for services that ECL provides to them (by sharing the fixed overheads across more income streams). This improves value for money for ECC.

## **2 Recommendations**

- 2.1 Agree as shareholder of ECL that ECL to enter into a 16 month reablement contract from West Sussex County Council to continue to provide community reablement services for adults in West Sussex until 31<sup>st</sup> March 2025.

## **3 Background and Proposal**

- 3.1 ECL's Articles of Association provide under Article 3A(a) that, where ECL is proposing to enter into a contract under which the total consideration is greater than £500,000, approval by ordinary resolution is required.
- 3.2 ECL is the incumbent provider for reablement services to adults in West Sussex under a contract which involves ECL implementing reablement plans for service users under contract with West Sussex County Council. The Contract integrates the assessment of service users to develop a reablement plan, with the implementation of the reablement plan.
- 3.3 While the Contract was originally for a term of three years plus two years' extension running from 1 December 2017, West Sussex County Council has extended this for a further year to November 2023. WSCC now wish to issue a new 16 months contract on similar terms to ECL (as they are not permitted to extend the existing contract again according to procurement advice). Any liability for issuing a direct award contract to ECL would remain with West Sussex County Council.
- 3.4 If ECL did not accept the contract it would have an immediate financial impact for ECL and would reduce the profitability of the company (triggering exit costs and removing any future contribution to fixed overheads). The value of the contract is included in the Confidential Appendix.
- 3.5 ECL would like to continue this service provision. If ECL is to continue with the Contract, West Sussex County Council requires that ECC also extend the guarantee arrangements.
- 3.6 For ECL to continue the Contract with West Sussex County Council, the level of activities provided by ECL to third parties that are not its controlling authority is 19.3% of ECL's activities. Activities provided by ECL to ECC as its controlling authority is 80.7%. The proposed contract between ECL and West Sussex County Council means that ECL remains a company controlled by ECC as it provides at least 80% of its activities to it and is compliant with Regulation 12 of the Public Contracts Regulations 2015.
- 3.7 ECL has demonstrated good performance for the period of the current contract maintaining consistent staffing levels and very good KPIs which led to West Sussex County Council seeking to direct this new contract. West Sussex is a strategically important location for ECL as it provides an opportunity for shared learning on reablement and spreading overheads across more income streams to improve value for money for ECC.

#### **4 Links to ECC's Strategic Ambitions**

- 4.1 This report links to the following aims in the Essex Vision
  - Enjoy life into old age.

4.2 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- Health wellbeing and independence for all ages

## **5 Options**

5.1 Option 1 – Approve the recommendations as set out in this report (recommended). ECL has the resources and capability to continue to provide community reablement services for adults in West Sussex via this new contract. Adoption of the recommendations would allow ECL to continue to trade these services with West Sussex County Council, which will provide continued benefits to ECL and ECC as set out in this report.

5.2 Option 2 – do nothing (not recommended). If ECL does not continue with the Contract ECL will not have the benefit of additional revenues/sharing of overheads and this will have a financial impact (triggering exit costs including redundancy costs).

## **6 Issues for consideration**

### **6.1 Financial implications**

The 16 month contract will make a positive contribution to ECL's overheads (see confidential section). Not accepting the contract would trigger one off exit costs.

### **6.2 Legal implications**

6.2.1 Pursuant to Regulation 12 of the Public Contracts Regulations 2015 ("the Regulations"), ECL is a company that is controlled by ECC; ECL provides at least 80% of its activities for and on behalf of ECC; and there is no private participation in ECL. In accordance with the Regulations, ECL can provide up to 20% of its activities for and on behalf of third parties that are not its controlling authority. The proposed contract forms less than 20% of ECL's activities, so ECL would still be compliant with Regulation 12.

6.2.2 The decision of the shareholder is required prior to ECL entering into a contract with a value over £500,000, pursuant to Article 3A(i). The decision by the Leader on behalf of the shareholder will be received in this report and is as effective as an ordinary resolution taken at a shareholder meeting of ECL.

## **7 Equality and Diversity Considerations**

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## 8 List of Appendices

- 1. Confidential Appendix
- 2. Equality Impact Assessment

## 9 List of Background papers

None.

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor Kevin Bentley, Leader of the Council</b>	24.01.24

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Executive Director, Corporate Services (S151 Officer)</b>	15.12.2023
<b>Stephanie Mitchener on behalf of Nicole Wood</b>	
<b>Director, Legal and Assurance (Monitoring Officer)</b>	08.01.24
<b>Laura Edwards on behalf of Paul Turner</b>	