

**Forward Plan reference number:** Not Applicable

<b>Report title:</b> The Annual Re-opening of the Framework for the Provision of External Foster Care Services	
<b>Report to:</b> Councillor Beverley Egan, Cabinet Member for Children's Services and Early Years	
<b>Report author:</b> Helen Lincoln, Executive Director, Children, Families and Education	
<b>Date:</b> 2 November 2023	<b>For:</b> Decision
<b>Enquiries to:</b> Clare Burrell, Head of Strategic Commissioning and Policy email Clare.Burrell@essex.gov.uk	
<b>County Divisions affected:</b> All Essex	

## **1. Everyone's Essex**

- 1.1 Everyone's Essex sets out four strategic aims and 20 commitments to residents with specific commitments to improve outcomes for the most vulnerable and disadvantaged groups including Children in Care, Care Leavers, and Children with SEND working with partners (including organisations both commercial, public sector and voluntary sector; children, young people and their families, schools and communities and others who support young people to achieve their full potential) across the county. This is fundamental to the work of the Council as Corporate Parents.
- 1.2 ECC is responsible for securing accommodation for children in their care, who cannot be placed with connected persons or within their natural network, in the most appropriate placement available. Fostering is one method of doing this.
- 1.3 The Essex Children in Care Commissioning Strategy sets out the Council's intentions to increase internal foster carers, that is those people who work directly with the Council to provide care. However, there is not sufficient capacity to be able to meet the demand for foster placements and so 'external' fostering placements are sourced through foster placement agencies to enable the Council to increase capacity.
- 1.4 This decision is important to delivering the Council's Everyone's Essex commitments and is integral to the priority that is Families; specifically, to improve educational outcomes, improve family resilience and stability, maintain safety, and deliver good outcomes for vulnerable children which includes Children in Care, Care Leavers, Children with SEND and children from BAME communities.

## **2 Recommendations**

- 2.1 Agree to re-open the Framework for the Provision of External Foster Care Services under the annual refresh process to enable existing providers to review their pricing that will apply to any new placements made on or after the 21<sup>st</sup> of November 2023 and permit new providers to join the framework. The second year of the framework is to end on the 20<sup>th</sup> November 2024.
- 2.2 Agree that the Executive Director for Children and Families, and Education is authorised to award framework agreements to any new providers who join the Framework for the Provision of External Foster Care Services following the re-opening of the framework and to agree the terms of the variation to the Framework for the Provision of External Foster Care Services following the pricing review referred to in paragraph 6.1.
- 2.3 To authorise the cap on fee uplifts for existing providers for any new placements made on or after the 21<sup>st</sup> November 2023 at 3.3% as set out in paragraph 6.1.4.

## **3 Background and Proposal**

- 3.1 The Children Act 1989 requires the Council to secure accommodation for children in their care. Accommodation needs to be appropriate, and it is recognised that placement within 20 miles of home and within local authority boundaries is best if possible and appropriate. This is known as the Sufficiency Duty
- 3.2 As of September 2023, there were 1134 children in care (CiC) in Essex. The Sufficiency Strategy forecasts shows number of CiC may rise to 1,250 within the next two years, considering pressures from increased separated migrant children, post Covid court delays, the potential impact of the cost-of-living crisis and increased referrals into social care. If that materialised, it is anticipated there could be a need for a further 76 foster placements.
- 3.3 The Council has an in-house fostering service which provides a range of fostering placements. Despite having a high number of in-house foster carers, the Council needs to supplement these by using external foster care agencies via the existing Framework for the Provision of External Foster Care Services (the Framework). This need arises due to a child needing specialist support that can't be met through the in-house specialisms or because there is insufficient capacity in the in-house service at the point in which a placement is required.
- 3.4 In September 2023, there were 477 CiC placed in inhouse fostering placements, this represented 42.1% of total CiC placements. In comparison there were 169 external fostering placements, which represented 14.9% of total CiC placements.
- 3.5 Whilst there are a greater number of placements made inhouse, external fostering placements still account for a significant proportion of total placements when considering all placement types such as semi-independent living and residential, therefore this contract is of significance to the Council.

3.6 In June 2022 (FP/308/02/22) Cabinet authorised the procurement of the Framework with the following 4 Lots:

- **Lot One** - Standard Support where the child or young person has a low to medium level of need with no ongoing challenging behaviours.
- **Lot Two** – Enhanced Support where the child or young person has a medium to high level of need such as a history of placement breakdowns, mental health needs or mild to moderate disabilities.
- **Lot Three** - Intensive Support where the child or young person has significant levels of need such as complex health needs or disabilities, exclusion from school or significant substance misuse.
- **Lot Four** - Parent and Child Placements where the placement is for an under 18 parent and their children including cases where there is a need for continuing assessment and on-going support.

3.7 The Framework commenced on 21<sup>st</sup> November 2022 and is for a duration of 4 years. There are currently 26 external foster care providers operating under the Framework. It includes an annual reopening process to enable existing providers on the Framework to review their pricing and permit new providers to join the Framework increasing sufficiency and providing the Council's placement team access to more available placements. It will also enable existing framework providers to ensure their costings remain competitive and therefore increase the attractiveness for providers in bidding for call-off placements.

3.8 From the 21<sup>st</sup> of November 2022 until September 2023 77% of external fostering placements were made via the Framework. The remaining 23% were spot purchased because needs could not be met under the Framework either in terms of the specialisms of those off of the framework or the urgency of the placement.

3.9 The Framework Agreement states that the Council will open the Framework to new providers on the anniversary of the Commencement Date which is the 21<sup>st</sup> of November 2023. This enables the Council to on-board new providers onto the Framework annually, enabling the Council to benefit from new entrants to the market.

3.10 The Framework agreement states all requests for annual fee uplifts by providers successfully admitted to the framework will be capped at Consumer Price Index and challenged where appropriate. This will only apply to new placements on the framework with existing "legacy" placements to remain at current prices for the duration of the placement.

3.11 The process to reopen the Framework includes existing Framework providers confirming either that there has been no change to their tender response or confirm what changes have occurred including any changes to pricing, in line with the provisions of the agreement. The Council has a discretion to place a

maximum cap on any annual re-pricing which may be linked to the Consumer Price Index (CPI). Any changes will be subject to evaluation in accordance with the published criteria.

3.12 It is proposed to place a maximum cap on annual re-pricing at 3.3% as set out in paragraph 6.1.4

#### 4. Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision

- Provide an equal foundation for every child.
- Connect us to each other and the world.

4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030: No impact expected.

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

- A good place for children and families to grow.

#### 5. Options

<p>5.1 <b>Option 1 – Re-Open the Framework, award framework agreements to new successful bidders, and agree a cap of 3.3% on all fee uplift requests from existing framework providers. (Recommended)</b></p>
<p>Benefits</p> <ul style="list-style-type: none"> <li>• In keeping with the commitment, the Council made to framework providers when the Framework was launched – i.e. to reopen it annually.</li> <li>• Supports the Council meeting its Sufficiency Duty as it gives additional Providers the opportunity to join the Framework.</li> <li>• Supports anticipated growth in demand as it gives additional Providers the opportunity to join the Framework.</li> <li>• Supports positive working relationships with providers by giving them the opportunity to join the Framework or request a fee uplift.</li> <li>• Supports financially viable and sustainable services.</li> </ul> <p>Disadvantages</p> <ul style="list-style-type: none"> <li>• The cost to the Council considering providers are likely to request fee uplifts due to the cost of living.</li> </ul>
<p><b>Option 2 – Do Not Re-Open the Framework (Not recommended).</b></p>
<p>Benefits</p>

- Providers won't be able to request a fee uplift which will lead to short term cost avoidance; however, this is likely to lead to providers leaving the framework and reduced sufficiency and placements.

#### Disadvantages

- This is not recommended as this is not in line with the contractual provisions.
- This option places a limitation on sufficiency when it is anticipated CiC numbers will rise as will the number of CiC requiring a foster placement.

## 6. Issues for consideration

### 6.1 Financial Implications

- 6.1.1 The External Fostering budget is £5.4m in 2023/24 for 91 places with the volume of places reducing in future years to 89 in line with the overarching Fostering Strategy. The strategy focusses on a continued shift towards internal fostering provision from external foster placements. The draft budget in the Medium-Term Resources Strategy (MTRS) for 2024/25 is £5.4m.
- 6.1.2 Through the annual re-opening of the framework, it allows both the Council and provider to forecast and price placement costs over the following 12 months. The benefit to the Council and Provider is there is no requirement to forecast a fixed placement fee over the course of the four-year framework period but for the following 12 months only. The uplifts will only apply to new placements made since the commencement of the framework with existing "legacy" placements made prior to November 2022 to remain at current prices for the duration of the placement.
- 6.1.3 This supports the efficacy of the framework in contracting with high quality providers to meet demand and limiting the need to spot purchase foster care placements.
- 6.1.4 For year 2 of the framework which commenced November 2023, requests that fee uplifts from providers be capped at 3.3%. This is in line with the Bank of England forecast CPI rate for Quarter 3 of financial year 2024/25. The re-opening of the framework allows providers the opportunity to consider the impact of inflation on their fostering fees in Year 2 of the framework contract.
- 6.1.5 The potential impact of the increase in external fostering fees for Year 2 of the framework is set out below:

Year	Placement Volume	Ave. Placement Fee / week £	Forecast £000	CPI rate forecast (12 months to Nov 2024)	Ave. Placement Fee / week £	Revised Forecast (incl. 3.3%) £000	Forecast Increase £000
2023/24 (Nov - March)	146	1,029	2,790	3.30%	1,063	2,882	92
2024/25 (April - Oct)	146	1,029	5,044	3.30%	1,063	5,210	166
<b>Total</b>			<b>7,834</b>			<b>8,092</b>	<b>258</b>

- 6.1.6 Due to the current volume of children in care and challenges in finding internal fostering placements the forecast outturn for External Fostering in 2023/24 is £7.8m which is a pressure of £2.4m compared to the budget of £5.4m. An increase in the fostering fees by 3.3% will add a further £92,000 to this over spend in the current year and is forecast to increase costs by £166,000 between April 2024 and the end of year 2 of the Framework in November 2024.
- 6.1.7 The target within the Fostering Business Case is for 88% of fostering placements to be placed with internal foster carers. The current percentage of total fostering placements with internal carers is 83%, 5% short of the target to be achieved by March 2024. Although work to recruit internal foster carers is on-going, the current shortfall in meeting targets in the Business Case is causing budget pressures in 2023/24 and into 2024/25.
- 6.1.8 The draft budget for 2024/25 is £5.4m and reflects the Fostering Business Case volume of 89 children placed in external fostering placements and the 3.3% inflationary fee increases.
- 6.1.9 There is a risk that meeting the targets in the Business Case will remain challenging in 2024/25. Therefore, a provision for growth in costs in the overall Children and Families draft budget of £2.25m for 2024/25 has been included to mitigate the risk in the delay in the recruitment of internal foster carers. This creates the capacity to fund up to a further 74 places in the year at an additional marginal cost of £582 per week when a placement is made with an external provider instead of an internal foster carer.
- 6.2.0 Furthermore, when an internal placement is not available and an external fostering placement is required the budget for that internal foster placement will remain unused. The budgeted weekly rate for an internal foster care placement is £481.
- 6.1.9 The third year of the framework will open at the end of November 2024 when providers will be able to review their prices for the following 12 months. The CPI rate for that period is yet to be determined.

## 6.2 Legal implications

- 6.2.1 The Council has a statutory duty to secure accommodation for children in their care.
- 6.2.2 Fostering care services are considered to be Light Touch for the purposes of the Public Contracts Regulations 2015 ('the Regulations') and are therefore not subject to the full rigour of the Regulations. The Council is therefore not required to procure these services using one of the procedures defined in the Regulations, provided that the procedure adopted complies with the treaty principles of transparency, equal treatment and fairness.
- 6.2.3 As set out in this report the provisions in the framework agreement require the Council to re-open the Framework to new entrants and grant the Council a discretion to cap any price uplift for existing framework providers. The Council is therefore lawfully permitted to undertake these processes and amend the Framework Agreements following a pricing refresh provided the likely financial consequences of such variation are within the budget available and the Council comply with the re-opening process set out in the Framework.

## **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, sex, 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 Equalities Comprehensive 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**

ECIA544662706

## **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 Beverley Egan, Cabinet Member for Children's Services and Early Years</b>	11/12/2023

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Executive Director, Children and Families</b> <b>Helen Lincoln</b>	11/12/2023
<b>Executive Director, Corporate Services (S151 Officer)</b> <b>Stephanie Mitchener on behalf of Nicole Wood</b>	1/12/2023
<b>Director, Legal and Assurance (Monitoring Officer)</b> <b>Susan Moussa on behalf of Paul Turner</b>	02/11/2023