

Forward Plan reference number: FP/001/03/21

Report title: Provider of Last Resort Arrangements 2021/22	
Report to: Councillor John Spence, Cabinet Member Health and Adult Social Care	
Report author: Moira McGrath, Commissioning Director, Adult Social Care	
Date: 17 th September 2021	For: Decision
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County Divisions affected: 'All Essex'	

1. Purpose of report

- 1.1 Thousands of Essex residents rely on the care and support that the county's social care workers are able to provide. Whether they are in their own home, or in a residential or nursing setting, at Essex County Council we have a profound duty to ensure that the availability of these care workers continues around the clock and throughout the year.
- 1.2 Sometimes, care providers suffer staff shortages, on a short-term basis, for a number of reasons. The council needs to have effective arrangements in place, what we call 'Provider of Last Resort' (POLR) arrangements, so we can deploy additional workforce capacity from the market as needed, to ensure that these shortages are covered, and residents continue to get the care they are entitled to.
- 1.3 The purpose of this report is to seek agreement for the Council to enter into contracts with a number of domiciliary care agencies to support POLR arrangements in response to the pandemic and subsequent care market workforce pressures.

2. Recommendations

- 2.1 Agree to run a mini-competition under the Live at Home framework for the provision of Provider of Last Resort (POLR) services from 1st November until 18th April 2022
- 2.2 Agree that the contract value will be for a maximum of £2.112m for 96,000 hours of cover.
- 2.3 Agree that the tender will be evaluated on an evaluation split of 40% price and 60% quality.
- 2.4 Agree to delegate to the Director of Commissioning for Adult Social Care:
 - 2.4.1 To agree the tender documentation and detailed evaluation model.

- 2.4.2 Following completion of the mini competition, to approve the winning bidder(s) to award contract(s)
- 2.4.3 To agree ramping up or down of volumes under the awarded contract(s) (up to the maximum value of £2.112m)
- 2.5 To agree to extend the current arrangements for POLR services with Essex Cares Limited (ECL) from 1st October 2021 to 18th April 2022 at a total value of £116,000.

3. Summary of issue

Context

- 3.1 The health and social care system continues to be under immense pressure as a result of the pandemic. In particular, the care sector continues to experience high levels of staff unable to work due to infection and self-isolation requirements, workforce supply issues due to mandatory vaccination requirements and inability to recruit and retain staff. This applies across the care sector for residential and nursing homes, home care and supported living.
- 3.2 Projections are that the pressure across the system will increase in the weeks ahead, driven by high infection levels, staff leaving care to work in other sectors and an absence of any agency staff. Agencies who would normally support care organisations with temporary staff have limited or no capacity to support providers. We have evidence that some providers are at risk of being unable to fulfil shifts and are potentially unable to support their residents safely.
- 3.3 Essex County Council (ECC) Adult Social Care has put in place a number of arrangements to support the care market in line with the unprecedented nature of the Covid-19 pandemic. These are to ensure that providers can continue to deliver safe and effective care and to minimise the spread of the virus.

Strategic Context

- 3.4 The proposed decision accords closely with the council's key strategic themes of 'Equality' and 'Levelling Up', by re-enforcing our capacity to ensure continuity and quality of care in the market for vulnerable residents who depend on our support.
- 3.5 The Council's priorities include:
 - *Enable more vulnerable adults to live independent of social care*
 - *Improve the health of people in Essex*

This decision will contribute towards these priorities, by improving our capacity to step in and ensure continued care and support to some of the county's most vulnerable residents; enabling them to live the best-quality life they can.

- 3.6 This decision is carbon neutral and will therefore have no adverse impact on the county's focus on tackling climate change.

Background to POLR

- 3.7 POLR arrangements were established in January 2021 primarily as an emergency response during the second wave of Coronavirus to support care homes experiencing significant staff shortages as staff tested positive for Covid or were told to self-isolate. leaving care homes unable to safely care for their residents.
- 3.8 POLR has more recently and during the third wave of the coronavirus, been utilised to support the most vulnerable adults in their homes, due to care staff shortages, care package hand-backs for various reasons, including care staff or family members needing to self-isolate, burnout of care staff and care staff leaving the industry for higher salaries.
- 3.9 To date, POLR arrangements have supported 16 care homes unable to safely staff their home and 52 of our most vulnerable adults without domiciliary care, delivering over 5,000 hours of direct support.
- 3.10 There continues to be pressures regarding domiciliary care workforce capacity as a result of the pandemic and this is projected to continue over the winter of 2021/2; this is reflected nationally. There is also concern that there is a potential lack of staff to safely support residential and nursing homes due to the mandatory requirement for vaccinations, which comes into force from 11th November 2021. In a recent business continuity questionnaire issued to care homes, there are reports of difficulty recruiting to the sector and of escalating agency care staff costs. It is proposed to continue to provide POLR services to care homes, where appropriate, in order to ensure adequate care provision is available.

POLR support for providers facing temporary staffing shortages

- 3.11 Since January 2021, ECC has an established process to work with providers who experience difficulties in staffing and capacity. The Quality Improvement Team work with the provider to assess their position, the gaps in staffing, together with any other support or advice required. This is further supplemented by work with NHS colleagues through the Care Provider hubs that have been established over the pandemic. A recommendation is made to a director in ECC's Adult Social Care (ASC) Service, who then takes a decision to approve the use of a Provider of Last Resort service. It is proposed that this process be continued to assess whether this additional capacity should be deployed.
- 3.12 ECC seek to recover the cost of the POLR support from each individual provider, where it is provided. A process was also established in the first wave of Covid-19 in order to do so. It is proposed that this process is continued. Providers receive funding support via Covid funding from ECC. The current process is that the POLR support provided by ECC to individual providers is recorded as if it were a reimbursement of costs and would count towards the cost as part of their overall support package. POLR will count towards 10% cap on support and if the 10% is breached, escalation to the DASS and S151 will occur and a decision will be taken based on circumstances regarding ongoing funding

- 3.13 Where support is given to individual providers, as outlined above, there will be an agreement between ECC and the receiving provider, which will set out the terms of the arrangement, ensure they follow the terms of the contract between ECC and its care provider and indemnify ECC against anything that may arise as a result of the provision of the capacity. This would include an indemnity for the actions of the supporting staff.

POLR support where there is no incumbent provider

- 3.14 There will also be instances where there is no incumbent provider to charge, but POLR is required. For example, where a new critical package of care cannot be sourced due to lack of supply or a hand-back of a package as a result of system pressures caused by the pandemic. In these instances, the cost will be met from the Care and Support budget, as this is an alternative way of sourcing the package on an interim basis

POLR requirements for 2021/2

- 3.15 It is proposed to secure POLR block capacity by running a mini-competition under the Live at Home Framework. This framework is a compliant framework procured by ECC and allows for ECC to run a mini-competition for the services. The contract explicitly covers the ability to issue further procurement documentation, including alternative and/or additional terms and conditions, including a block payment mechanism.
- 3.16 ECC will use learning from the proposed POLR contract to inform any future potential POLR contractual arrangements in 2022/23 and beyond.
- 3.17 It is proposed that the price/quality split for the call off is 60/40 quality/price in line with the quality/price split laid out in the Live at Home Framework.
- 3.18 The providers awarded contracts following the mini-competition will be asked to supply hours of care and will be paid on a block 'on-call' basis for making that care available, to be mobilised across Essex upon request.
- 3.19 Whilst it is difficult to predict the proportion of capacity that will be required to secure sufficient staff capacity for existing providers, which can therefore be offset against the Covid resilience fund, versus support required where there is no incumbent provider, it is estimated that the split for the duration of the contract will be 80% for the former and 20% for the latter
- 3.20 The proposed contract value is based on an estimated average hourly fee of £22, which covers provision for staff to be on call and for staff to be fully mobilised and providing care support. However, the actual average hourly rate will depend on the outcome of the tender exercise.
- 3.21 The proposed contract hours are based on a maximum of 96,000 contracted hours based on an average service requirement of 4,000 hours per week, to flex both up and down (up to the maximum) depending on market and system

pressures as a result of the pandemic. However, it is more likely, based on utilisation during previous waves, that contracted hours will be around an average of 1,600 hours per week over the life of the contract or 38,400 hours in total.

- 3.22 These recommendations cover the expected duration of the current wave of infection, through to the 18th of April 2022.

ECL contract

- 3.23 ECL currently provides support to ECC to manage the POLR services. This contract covers the provision of one manager to undertake the duties of a register manager and to be on call from 7am to 7pm 7 days a week, to be mobilised upon request.

- 3.24 It is proposed that ECC extend the arrangements with ECL to continue to provide the current management support. This will be from 1st October until 18th April and at a cost of £116,000. ECC are able to request services from ECL and do not have to undertake a procurement exercise to do so, as ECL is ECC's wholly owned trading company.

- 3.25 ECC do not have the ability to deliver the management of POLR in house and need to engage specialist assistance to do so. ECL are able to provide this service. An assessment of ECL rates has been undertaken to ensure that ECC is receiving Value for Money.

4. Links to Essex Vision

- 4.1 This report links to the following aim in the Essex Vision

- Enjoy life into old age

For more information visit www.essexfuture.org.uk

- 4.2 This links to the following strategic aims in the Organisational Plan:

- Help people get the best start and age well

Options

- 5.1 Option 1 (recommended):** To enter into block contracts with the care providers, including ECL, to provide additional Provider of Last Resort support.

This option is recommended, as it will allow the following benefits for ECC, in response to the pandemic:

- To continue to be able to fulfil its responsibilities under the Care Act to assess for and provide care

- To continue to be able to ensure safe and effective support is maintained for adults both directly funded by ECC and self-funders, in line with our responsibilities under the Care Act;
- To maintain capacity and flow across the health and care system during the pandemic;

There are risks with this option:

- That the service could deliver more than the system needs, which ECC will have to pay for even if not used. ECC will review if there are alternative uses for the capacity if available;
- That providers will not seek other forms of support. The existing review from the ASC quality team will proactively check what other support the provider has sought and confirm there are not other options;
- That providers are not using their own contingency resources to secure support. This will be mitigated by the cap of 10%, by providers promising that they will not do this, and further review and potentially by future audit.

5.2 Option 2 (not recommended): Not to enter into the block contracts. This option is not recommended as it has the following risks:

- There is very limited capacity to support providers and the situation could worsen over the coming weeks
- We may find that providers are unable to fulfil hours and care cannot be provided
- The provision of safe care to vulnerable residents, and those who use our services, increases the risk of safeguarding.

6 Issues for consideration

6.1 Financial implications

6.1.1 The cost of these contracts at the maximum value is estimated to be £2.112m plus the contract with ECL for £116,000. It is estimated that £1.81m of this cost will be set against the Covid Resilience Fund as these are costs a provider would have been able to claim for under the fund if they had been able to source them direct.

6.1.2 The remaining 20% of the cost (equal to £422,400) will be met from the Care and Support budget within Adult Social Care as this is an alternative way of sourcing the package on an interim basis. Based on the current full year forecast this spend can be contained within the available budget.

6.2 Legal implications

6.2.1 ECC is a Contracting Authority for the purposes of the Public Contracts Regulations 2015 (PCR).

- 6.2.2 ECC intends to run a mini-competition under the new Live at Home Framework to secure the domiciliary care POLR contract. The Framework was awarded in compliance with the Public Contracts Regulations and permits the running of a mini-competition for this purpose.
- 6.2.3 ECC intends to request an extension of services from ECL. ECC is able to do so without running an OJEU procurement exercise under regulation 12 of the PCR, as ECL is a wholly owned trading company of ECC.
- 6.2.3 ECC is entering into a contract with domiciliary care providers to secure the staffing capacity. If applicable, the terms of this will be passed through to the recipient care home and an indemnity sought in relation to the service provision and the actions of the home and the staff.
- 6.2.4 There is a risk that, as ECC is providing the staff liability for their actions or actions of the care provider in relation to the staff, including any losses associated with them, these will be passed back to ECC. The contract with the recipient care home will contain provisions to mitigate this risk, including a requirement to provide adequate management and supervision of staff.
- 6.2.5 ECC will be meeting the cost of the staffing under the contract with the domiciliary care provider. This could be seen as a subsidy to the recipient care providers, as they have a budget to pay for the staffing through the fact that there is a vacancy. This will be mitigated in the agreement with the recipient care homes by confirming that the cost of the support will be offset by the COVID Resilience Funding available to them.

7 Equality and Diversity implications

- 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.
- 7.4 The overall impact is positive as the decision to put in place Provider of Last Resort capacity ensures continuity of care for vulnerable people in the event of supplier issues in domiciliary care.

8 List of appendices

EQIA Reference: EQIA362358034

9 List of background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor John Spence, Cabinet Member for Health and Social Care	14.10.21

In consultation with:

Role	Date
Councillor Kevin Bentley, Leader for Essex County Council	14.10.21
Nick Presmeg, Executive Director for Adult Social Care	16.09.21
Executive Director, Corporate Services (S151 Officer) Stephanie Mitchener	01/10/2021
Director, Legal and Assurance (Monitoring Officer) Laura Edwardson behalf of Paul Turner	22.09.2021