

**Forward Plan reference number:** FP/291/11/18  
(Urgent Key Decision)

<b>Report title:</b> Transfer of contracts from Allied Healthcare	
<b>Report to:</b> Councillor David Finch, Leader of the Council in consultation with Councillor John Spence, Cabinet Member for Health and Adult Social Care	
<b>Report author:</b> Nick Presmeg, Executive Director for Adult Social Care	
<b>Date:</b> 28 November 2018	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## 1. Purpose of Report

- 1.1 The Council has a number of contracts with Allied Healthcare for the provision of reablement and domiciliary care services. The Council has been notified that Allied Healthcare is likely to cease to trade in December. This report asks the Leader to agree to take action to transfer these contracts to other providers in order to ensure continuity of care.
- 1.2 References to “Allied Healthcare” in this report include contracts with Allied Healthcare Limited and those with Nestor Primecare Services Ltd, trading as Allied Homecare.

## 2. Recommendations

- 2.1 Agree to terminate the four Reablement at Home contracts with Allied Healthcare Ltd (for Mid Essex, West Essex, North East Essex and South West Essex).
- 2.2 Agree to vary the existing Short Term Support in the Community Services contract (STSC Contract) between the Council and Essex Cares Limited to include the reablement services currently provided by Allied Healthcare up to the value of £7.5m per annum until 3 May 2021.
- 2.3 Agree that the Executive Director for Adult Social Care may award a contract for the delivery of domiciliary care services up to the value of £3.9m for up to 12 months to Essex Cares Limited without competition, if the Council cannot use its existing contractual frameworks to find alternative provision for those people currently receiving ECC commissioned services from Allied Healthcare.
- 2.4 Agree that the Executive Director for Adult Social Care may terminate the Live at Home Framework Agreement with Allied Healthcare once alternative provision has been made for all current service users by the Council.

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- 2.5 To exercise its powers as shareholder of Essex Cares Limited to enter into the contracts referred to above.
- 2.6 Agree that the Executive Director for Adult Social Care may make arrangements with ECL or other providers to ensure the continuity of care for people residing in Essex who are receiving care from Allied which has not been arranged via ECC. Subject to a requirement that they will continue to fund the full cost of their own care or, if they so wish and are eligible, transition to care in accordance with the specification that ECC would provide to eligible persons.

### 3. Summary of issue

- 3.1 The Care Quality Commission (CQC) informed all local authorities on 5 November 2018 that Allied Healthcare were at risk of financial collapse, requesting local authorities to take immediate steps to plan for the protection of people receiving care in line with the process set out in the Care and Support Statutory Guidance (October 2018). The CQC will contact authorities if it believes the whole of the regulated activity in respect of which the provider is registered is likely to fail, not simply parts of it.
- 3.2 On 16 November 2018, Allied Healthcare announced that they were looking to transfer or sell the part of its business which provides care and support services. Such sales or transitions will involve the transfer of staff. It appears very likely that Allied Healthcare will cease to trade from 21 December 2018.
- 3.3 Allied Healthcare is a significant provider of health and care services in Essex. In particular, it provides:
  - i. **Reablement at home services** in all parts of Essex, except South East Essex (Castle Point and Rochford). There are currently 380 people in this service. Reablement is a short and intensive service for up to 6 weeks delivered to people in their own home. It is offered to people who are frail or recovering from an illness or injury and supports them to maintain and improve independence with daily living tasks. The value of this contract is £7.5 million per annum.
  - ii. **Homecare services (domiciliary care)** in all parts of Essex. There are currently 261 people receiving this care from Allied Healthcare. These services include help in the home for personal care and taking medication. The value of these services is c. £3.9 million per annum at present.
- 3.4 Essex County Council has clear duties under the Care Act 2014 section 18 to ensure that care is provided to people whom it has assessed as requiring it. The Council also has a legal duty in the event of provider failure to ensure continuity of care pursuant to sections 19, 48 and 57 of the Care Act 2014 and further detailed in the Care and Support Statutory Guidance (October 2018) This duty applies temporarily, until the local authority is satisfied that each person's needs will be met by a new provider or in a different way. The

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Council's proposed actions will be in line with these duties and extend to service users whose care is funded by the Council and those who are not.

- 3.5 The Council has been actively contingency planning since the CQC's notice to local authorities on 5 November 2018 and has been in regular dialogue with Allied Healthcare and the Care Quality Commission. The Council has also been in regular discussions with NHS clinical commissioning groups across Essex; with neighbouring local authorities; and with relevant organisations and bodies such as the Local Government Association (LGA), the Association of Directors of Adult Social Services (ADASS) and the Department for Health and Social Care (DHSC)
- 3.6 The most important immediate concern of the Council is to ensure continuity of care for people receiving reablement and homecare services from Allied Healthcare.
- 3.7 A key consideration is retention of as many Allied Healthcare staff as possible since many of them will naturally be concerned about their employer's financial difficulties and may be looking for alternative employment.
- 3.8 Whilst the Council cannot guarantee employment to everyone, it is important that we act quickly to reassure the staff that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) are likely to apply to a transfer of significant areas of business from Allied Healthcare to another provider. Where TUPE applies, employees would automatically transfer unless they object, in which case their employment would automatically terminate. Even if TUPE does not apply, both ECC and providers will wish to retain people as valued workers in the care market. The Council is acting quickly and liaising openly with both Allied Healthcare and ECL to minimise the risk of staff leaving.
- 3.9 Another issue is the need to understand how the capacity in the market which will be lost when Allied Healthcare withdraw will be replaced, particularly as the failure will come at the most pressured time of year. Again, retention of as many Allied staff as possible in the social care sector is a key way of addressing this.
- 3.10 In formulating its response to the situation, the Council will therefore prioritise actions that:
  - i. Ensure the safety of affected adults
  - ii. Uphold or improve the quality of care
  - iii. Promote continuity of care worker wherever possible by the retention of staff
  - iv. Are feasible and realistic to be delivered within short timeframes and can access the necessary capacity at the most pressured time of year with hospitals under significant strain,
  - v. Promote a coherent sustainable care market that promotes diversity and choice.

- 3.11 This is in line with the Council's Strategic Priority to ensure vulnerable adults can live safely and as independently as possible. As a result we have been looking urgently at options for the Council's response to the proposed withdrawal. Officers have worked with CQC Market Oversight, the Association of Directors of Adult Social Services and with neighbouring authorities to coordinate the safe, timely and appropriate transfer of Allied Healthcare's contracts and care packages.
- 3.12 Where people have arranged their own care from Allied, the Council will support them in making alternative arrangements, if necessary. Such persons will need to continue to meet the full cost of their care or, if they are eligible for ECC funded care, then the Council will, if they so wish and are eligible, allow them to transition to ECC funded care on the ECC specification and subject to a financial assessment.

#### **4. Options**

- 4.1 Options for reablement and domiciliary care are considered separately.

##### **Reablement**

##### **Option 1: Terminate contract with Allied and directly award Reablement services to Essex Cares Ltd (ECL)**

- 4.2 ECL is a company wholly owned by the Council. The Council is able to directly award a contract to ECL pursuant to regulation 12 of the Public Contracts Regulations 2015. The reablement contract is worth £7.5 million per annum. There are currently 380 people receiving this service. Awarding the contract to ECL would allow the Council to have greater control over the contract and work with ECL to ensure that there is capacity to deliver. ECL is a provider of Reablement in Essex and West Sussex, both contracts were won through competitive tender. ECL has Good CQC ratings and a good track record of working with the Council. ECL is the county-wide provider for Short Term Care in the Community services and therefore has the skills to provide these services. ECL therefore already has all the systems, resources and processes in place and has indicated that it can provide the services within the financial envelope. This option is recommended as it is the safest, simplest and quickest option to ensure continuity of care for people.

##### **Option 2: Terminate contract with Allied and competitively tender the Reablement contract to the market.**

- 4.3 This would ensure that the provider who was able to submit the best tender was given the work. However, the procurement will take time. Although the law allows us to shorten the tender periods where there is urgency, we still need to allow providers enough time to understand the services and submit a competitive quote. If we do not allow enough time there is a high risk that contractors either will not bid or will build large contingencies into their bids. There is a higher risk of disruption of continuity of care for individuals. On that basis option 2 is not recommended.

**Option 3: Terminate contract with Allied and seek to establish new strategic partnerships with providers in the health and care system**

- 4.4 This could have the advantage of helping to achieve greater integration between health and social care. However, it would pose major challenges in terms of the timescales and we can give no assurance as to cost within the timescales. This is something that can be explored in future.

**Option 4: Allow Allied Healthcare to attempt to find another provider to take on the reablement contract.**

- 4.5 Allied is trying to sell on its business. It is presently uncertain whether it will be able to find a buyer acceptable to CQC or ECC. This reduces ECC control and oversight over the identity of the service provider. It is also uncertain whether Allied will be able to achieve a sale in time, which could mean that the Council ends up having to make alternative provision with even less notice.

**Domiciliary Care (Homecare) contracts**

**Option 1: Terminate contract with Allied and offer the homecare packages to providers on the ECC Live at Home Framework whilst at the same time entering into a contract with ECL to take on care where we cannot find providers.**

- 4.6 The Council normally awards homecare packages using its Live at Home framework. We can use this framework to create packages of work done by Allied and offer them to the providers on the Framework. Providers are offered work under the framework at pre-agreed competitive prices but they are not required to accept all or any work offered. It is likely that many packages of care can be reallocated using the framework. It is possible that not all the homecare packages can be placed in this way. The Council can enter into a contract with ECL to take over the care for any people who currently receive care from Allied where we cannot find an alternative under the framework. This would ensure that the Council can deliver continuity of service. In taking this approach we would be doing all we can to maintain coherence in the market. The disadvantages of this option are that it could increase the cost of these services to the Council even more as ECL will be taking over responsibility for care where the framework providers cannot or will not act.
- 4.7 This approach enables the Council to respond to the urgency of the situation but makes allowance for the restricted capacity of the market at this time of year. It should also maximise potential for staff retention which would assist in maintaining continuity of service for people receiving services from Allied. There is the risk of uncertainty and anxiety among service users. The Council would be mitigating this by acting quickly and decisively and by guaranteeing that any homecare package that is not be picked up by the market will be picked up by ECL for a period of up to 12 months. During the 12 month period we would continue to liaise with the providers on the Live at Home Framework

with the view to offer care packages to them once capacity in the market has been increased. This is the recommended option.

**Option 2: Terminate contract with Allied and transfer all the homecare packages to Essex Cares Ltd (ECL).**

- 4.8 This would be relatively straightforward to achieve in principle and would support the objectives of the Council to maintain continuity of service and staff retention. However this is not in line with the Council's usual approach to re-providing care packages. It would also divert ECL's management capacity away from reablement and could only be a temporary measure. This option could also significantly increase the cost of these services to ECC and it is not therefore recommended.

**Option 3: Allow Allied Healthcare to attempt to find another provider to take on the reablement contract.**

- 4.9 The same considerations apply to this as for option 4 on the reablement contract (paragraph 4.5) and it is not recommended for the same reasons.

**5. Next steps**

- 5.1 The situation is urgent and therefore officers are already in discussion with Allied Healthcare, Essex Cares Ltd and homecare providers on the options for coordinating continuity of service and safe care for all those receiving services from Allied Healthcare.
- 5.2 If the recommendations in this report are agreed, arrangements will be made to:
- A. Terminate the four Allied Healthcare contracts with immediate effect by serving written notice on Allied Healthcare
  - B. Award the new reablement contract to ECL with effect from the date of termination of the reablement contract with Allied Healthcare (in the form of a deed of variation of the STSC Contract)
  - C. Offer the domiciliary care packages to other domiciliary care providers via mini-competitions using the Live at Home Framework
  - D. Award to Essex Cares Ltd any domiciliary care packages that cannot be placed in the market before Allied Healthcare ceases its operations.

**6. Issues for consideration**

**6.1 Financial implications**

**Reablement Contract**

- 6.1.1 The value of the Allied Healthcare contract for reablement is £7.5m in the current financial year, with additional payments possible based on bonus performance payments, or payments for packages that cannot be moved onto

the domiciliary care market. These are not significant in financial terms. The Reablement contracts are funded by the 4 pooled funds within the Better Care Fund (BCF) and the terms of the BCF agreement allow for this type of variation.

The value of the existing STSC contract is £6m for countywide services. The addition of reablement to this contract is significant but may present opportunity for improved value. It is further proposed that there is a review of the efficacy and value for money of the new arrangements by the 3<sup>rd</sup> May 2019.

6.1.2 The basis of the variation to the STSC contract with ECL is under development at this stage but the value of the proposed changes will be contained within the financial envelope of the current reablement contract. The risk to productivity in the transfer of services will be appraised and ECL and ECC will seek to mitigate within current resource envelopes.

6.1.3 ECL will incur additional costs as a result of this change. These could include but are not limited to:

- Pension Liability
- Contract management costs
- Mobilisation costs
- Redundancy costs
- IT Infrastructure

Some of the above costs are one off in nature for ECL which they would not unreasonably expect ECC to cover in addition to any contract costs. However, ECC would require full transparent open book accounting to agree these costs. ECC would look to fund any one off costs, from uncommitted BCF monies or Winter Pressures funding and this would be agreed under officer delegations.

### **Domiciliary Care Contracts**

6.1.4 The current cost of domiciliary care contracts with Allied Healthcare is approximately £3.9m, for 261 people, at an average hourly rate of £14.52. It is reasonable to assume that the cost of alternative provision will be higher when these packages are put back out to the market. An estimate of the increased costs is around £500,000 per annum. The additional costs arising from this are proposed to be met from Winter Pressures funding and will be agreed under officer delegation. The Winter Pressures funding is available for 2019/20 and then after that the package increases will need to be met within the MTRS, packages would have a review during this period.

## **6.2 Contract Management**

6.2.1 A multi-disciplinary team is being established to ensure a smooth transition to the new provider(s). There are already robust performance systems in place

for all framework domiciliary providers under the Live at Home framework terms and conditions. For the reablement services, the team will work with Allied Healthcare and ECL to ensure the performance metrics remain robust which may include parallel running of systems and performance data for a period.

### **6.3 Legal implications**

- 6.3.1 Section 48 of the Care Act 2014 means that the Council has a temporary duty to ensure continuity of care in the event of a business failure pursuant to s48 of the Care Act 2014. This duty is triggered by a “Business Failure” as defined in the Care and Support (Business Failure) Regulations 2015. The Council must discharge this duty in line with sections 18, 19, 48 and 57 of the Care Act 2014.
- 6.3.2 The collapse of Allied Healthcare constitutes a Business Failure and, due to it being one of the major national providers, it also falls under the CQC Oversight Regime as defined in the Care and Support (Market Oversight Criteria) Regulations 2015.
- 6.3.3 The actions recommended in this report would enable the Council to meet its legal duties.
- 6.3.4 Under ECL’s articles of association, any contract with a value of over £500,000 must be approved by the shareholder. Therefore the Leader is asked to formally approve this on behalf of the shareholder.

## **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



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characteristic. Reablement and domiciliary services are provided to adults over 18 who meet service criteria or are eligible for support under the Care Act 2014. Older people and disabled adults are the main groups that receive this service. The primary consideration underpinning our approach to transferring services from Allied Healthcare is to minimise the impact on those people receiving services from Allied Healthcare, particularly by retaining the existing employees.

### 8. List of appendices

- A. Equality Impact Assessment

### 9. List of background papers

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b> 28 November 2018
<b>Councillor David Finch, Leader of the Council</b>	

In consultation with:

<b>Role</b>	<b>Date</b>
<b>Councillor John Spence, Cabinet Member for Health and Adult Social Care</b>	28 November 2018
<b>Executive Director for Corporate and Customer Services (S151 Officer)</b> <i>Please send to your Head of Finance/Finance Business Partner who will arrange S151 sign off.</i>  <b>Margaret Lee</b>	27 November 2018
<b>Director, Legal and Assurance (Monitoring Officer)</b>  <b>Paul Turner</b>	26 November 2018