

Forward Plan reference number: FP/340/03/22

Report title: New Provider Framework for Residential Care for Adults with Complex Learning Disabilities and/or Autism	
Report to: Cabinet	
Report author: Councillor John Spence, Cabinet Member for Adult Social Care and Health	
Date: 24 May 2022	For: Decision
Enquiries to: Robert Sier, Commissioning Manager: Strategic Policy and Commissioning (ASC) robert.sier@essex.gov.uk or Nick Green, Procurement Specialist, Procurement Services, nick.green@essex.gov.uk	
County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1. Everyone's Essex seeks to achieve renewal, equality, and ambition across all cohorts of our population, and this must include reaching out to the most difficult and complex parts of our society. The care of those with the most complex needs gives us the opportunity to make a significant difference to the lives of these particularly vulnerable people by enhancing the consistency of care quality and ensuring much more of it takes place within the county, in easier travelling distance of the families of those we are supporting. One of the Everyone's Essex commitments is to help vulnerable people to live independently and live a life which is meaningful to them. The proposal in this paper supports this goal through the introduction of the Complex Residential Framework for residential providers in Essex (the Framework) who provide support for adults with complex needs.
- 1.2. Up until now residential care in Essex has been purchased on a spot contract basis. The Framework will support the Council's levelling up agenda by introducing standardised contractual agreements to make services more accessible across Essex, a new modern person-centred service specification, key performance indicators and quality measures.
- 1.3. The Framework represents a drive towards equality by enabling people to live in good quality accommodation and receive the right support. The proposals in this paper will have a neutral impact on the environment, however the service specification for the Framework will encourage care providers to take climate-conscious choices, such as renewable energy and energy efficiency in care homes.
- 1.4. The total estimated budget per annum required for all placements into complex settings is £28.1m, which equates to £112.4m over the 4-year period. Within this, the budget for new placements for adults with disabilities with complex needs who will be placed in residential care using this Framework is £3.95m. Over the 4-year period this equates to £15.8m.

2. Recommendations

- 2.1. Agree to procure a four-year multi-supplier Complex Residential Care Framework (with an option to extend by up to two years) for providers of residential care services for adults with complex learning disabilities and/or autism using a single stage open process compliant with the light-touch regime.
- 2.2. Agree that the Framework will have an expected expenditure of up to £112.4m over the four-year initial period for all complex residential placements of which £15.8m relates to new placements, based on forecast spend at current activity levels. This figure does not include any uplifts in future years as these will be considered on a discretionary basis in line with the existing approach taken across the market
- 2.3. Agree that the procurement will use an evaluation model based on 30% price and 70% quality, where 10% of the quality score will relate to social value.
- 2.4. Agree that the Executive Director for Adult Social Care is authorised to agree the detailed evaluation model for the procurement.
- 2.5. Agree that the Cabinet Member for Health and Adult Social Care is authorised to award the contracts to the successful providers, following completion of the procurement.
- 2.6. Agree that the Framework can be re-opened to enable new providers to bid for inclusion on the Framework up to three times a year to increase the availability of good-quality residential services for adults within Essex.
- 2.7. Agree that the Director of Commissioning, Adult Social Care is authorised to agree to the re-opening of the Framework where this is proposed without any changes.
- 2.8. Agree that the Director of Commissioning, Adult Social Care is authorised to permit new homes from providers already on the Framework to be added at any time during the Framework, provided such homes meet the Council's requirements for complex residential care set out in the original tender documents.
- 2.9. Agree that the Director of Commissioning, Adult Social Care is authorised to approve the award of call-off contracts following completion of a mini-competition, subject to the on-going annual reviews and approval of the spend for such contracts.

3. Summary of Issue

Background

- 3.1. The Council has a responsibility under the Care Act 2014 to commission residential care services for adults with learning disabilities and/or autism (LDA)

who have eligible support needs. The Council's strategy remains to move away from residential services for the majority of the adults who are eligible for support, but there is strong need for residential services for adults with LDA who have complex support needs. These services provide a robust, safe environment and person-centred support that will help these individuals live lives meaningful to them and potentially enable them to develop new skills and potentially transition into more independent accommodation in the future.

- 3.2. Residential services are well suited for those whose support needs are too great to live independently and who are not ready for a tenancy or tenancy-based support - for example in Supported Living. Additionally, the infrastructure of buildings is more robust and can support adults with destructive behaviours - this is less often the case with tenancy-based support such as Supported Living. Staff are also available 24/7, which reduces the need for external agencies to be called upon.
- 3.3. The Council currently spends £82m per annum on all LDA residential services for adults, with a total of 753 adults being supported. Of this total, an estimated £28.1m is spent on placements for adults whom the Council would define as having complex needs (£112.4m over 4 years). These packages are both within Essex and in other areas of the UK. Out-of-county placements are spread over a total of 285 individual homes.
- 3.4. Based on data from 2017 to 2020, on average, total spend on new placements breaks down as follows:
 - adults with complex needs - 60%
 - adults aged over 55 without complex needs (for whom residential services are viewed as the most appropriate option) - 15%
 - adults aged under 55 without complex needs - 25%
- 3.5. Adults with LDA who are aged over 55 are sometimes best suited to long-term residential care, and there is work ongoing within the Meaningful Lives Matter (MLM) Programme to re-shape large parts of the residential market to provide the right capacity for these adults. It is anticipated that a separate procurement will be undertaken in the future for services for such adults, which would differ significantly from the approach required for adults with complex needs. Currently, some adults with learning disabilities who are aged over 55 move into older people residential homes as their care needs change later in life and can be supported well in those settings.
- 3.6. Twenty five percent of new residential placements are being made for adults who are not defined as complex, and more work is being undertaken to understand why these placements have been made, and how to reduce them in future as we would normally expect that the needs of such persons would normally best be met in another setting. Analysis of residential placements in the last two years shows that other reasons for non-complex admissions outside of ages 55+ were:
 - Emergency temporary placements that became longer term due to delays in reviews, where many adults could move into supported living,

- Lack of other suitable placement options at the time,
- Health conditions that require intense management,
- Educational needs.

This cohort is out of scope for this proposed framework. Providers able to support people without complex needs would not be guaranteed to be able to adequately support the adults that are the focus of this framework proposal. Work will be undertaken to shape the sections of the market with adults that are outside the strategic direction, to ensure stability for existing placements but also suitable succession planning where adults' needs can be better met in more independent settings. Nevertheless it cannot be guaranteed that an adult without complex needs would not be placed under this framework, for example in an emergency.

- 3.7. Adults with complex needs require provision which differs in terms of physical facilities and staff requirements from the generality of all residential placements for adults with disabilities. Given that there are a significant number of placements for people with complex needs, it is proposed that there should be a specific framework to meet this need. This aligns with the Council's strategic approach to prioritise placements into independent care settings such as shared lives and supported living, with only those adults with complex behaviours and who cannot be placed into these other settings being eligible for residential care.
- 3.8. The anticipated annual number of residential placements (both new and when an adult moves from another residential home) for adults with complex needs is 26 based on a three-year average. New placements are defined as people not moving from other residential care, i.e., they come from domiciliary care, supported living, or hospital settings. The figure for residential placements made for adults without complex needs and under the age of 55 is 18 by comparison, and it is anticipated this figure will continue to drop.

Engagement

- 3.9. Market engagement has taken place in the last year with existing providers of complex residential care within Essex. This engagement introduced the strategic direction for the Council, and the proposals for the Framework. Overall feedback was positive to the proposal to formalise a placement process in Essex and on the strategic direction being followed.
- 3.10. Engagement and consultation on the proposals, and in particular on the new service specification, has been undertaken with adults with lived experiences and their families. This has been supported by the Essex Carers Network. The views of adults and families have been reflected in the service specification where appropriate.

Proposed Procurement Approach

- 3.11. It is proposed to procure a framework agreement to source a pool of providers that have suitable accommodation and staff to ensure good quality, modern and appropriate provision for adults with complex care needs and/or behaviours that challenge. This will establish an open and transparent referral process which can

be used when needed to call off a placement for an adult. The aim is to encourage providers to develop new complex residential care services throughout the life of the Framework to meet the cohort's needs.

- 3.12. Providers will be required to hold a CQC rating of 'Good' or 'Outstanding' or have been audited and approved where they received a 'Requires Improvement' or 'Poor' grade to the satisfaction of the Council. This will help the Council to improve the quality of providers by having consistent quality selection.
- 3.13. A Framework will also improve quality and outcomes for adults by having a standard service specification which includes a requirement to meet the needs of adults and support them to lead as independent lives as possible. There will be an increased focus on building the skills of the adult, therefore reducing episodes of challenging behaviour and reliance on services and improving quality of life outcomes.
- 3.14. A Framework will also assist the Council to better predict future care costs, help keep costs more stable and improve the Council's understanding of the complex residential care market.
- 3.15. A single-stage open tender process compliant with the light-touch regime under the Public Contracts Regulations 2015 is proposed to procure a four year Framework with an option to extend by up to two years. The lead times on services being developed and residential homes becoming available are longer and the ability to flex extend the Framework so that it may last for six years in total may incentivise providers to engage with the Framework and develop such services.
- 3.16. The price/quality split is proposed to be 30% price, 70% quality, of which 10% of the quality score will assess social value. This is recommended because of the approach to pricing which is outlined at paragraph 3.18. This ensures that any risk of exceptionally high costs is mitigated at the time of tender, and as a result allows us to increase the weighting for quality to ensure sustainable and high-quality providers are brought on to our framework.
- 3.17. The tender opportunity will be open to the entire market and will set out service requirements through the new service specification, supplemented by a number of technical questions designed to assess the bidder's capability to deliver the services as well as confirm that the accommodation proposed is robust and can support adults with complex needs. The target is that 80% of Essex residential homes which can meet the needs of people with complex needs residential homes, although this is not something we can control.
- 3.18. To get onto the Framework, bidders will be required to submit costings for each complex residential home they propose to be included. During evaluation, the providers' costs will be benchmarked through Care Cubed which is our existing external benchmarking tool for residential placements. Where any bidder's rates exceed the benchmark and tolerance of 30% built in, the provider will be excluded.

3.19. Successful providers' services will be ranked in order of overall tender score (combined cost and quality (including social value)). The intention is to use the ranked list to produce a list of three homes and then the placement will be made at the listed home which is the best match for the needs of the adult

3.20. The call-off process for the Framework will operate on a mini-competition basis for each placement:

- The weighting for each mini-competition is proposed to be 30% cost and 70% quality, which does not include social value at this stage.
- The call off process will be as set out in below.

3.20.1 Standard call-off (mini-competition)

- A high-level matching process against the ranked list will be undertaken and a maximum of three providers who have available suitable services will be identified based on the adult's needs. This means services that bid at higher costs are more likely to be excluded at this stage as higher costs will impact their overall score. Where fewer than three providers are identified, the mini competition will still proceed with those providers.
- The identified providers will be asked to submit a proposal on how their homes will best meet the needs of the adult. The only costs permitted to be bid for standard call-offs will be the costs bid by the provider at tender stage (or as adjusted on a re-opening of the framework).

3.20.2 Bespoke call-off (further competition)

- Where the mini-competition process described above for a standard call-off does not identify any suitable providers, we may request that all providers on the Framework will be invited to submit a tender for a bespoke service.
- This is called a further competition and seeks to identify a new service that does not currently exist on the framework.
- The published evaluation criteria may need to be refined dependent on the bespoke services.
- Costs will be assessed against the benchmark to the extent possible but may need to be adjusted depending on whether it's an entirely new service and the number of adults who could be placed within such new service.
- Offering this opportunity to providers on the Framework would allow bespoke developments for adults whose needs cannot be met by existing services and will help stimulate new development of suitable services in-county.
- The further competition approach can also be used to identify a provider if a service being developed or operated by Essex County Council requires a provider of care services.

3.21. Where use of a call-off is not suitable or is unsuccessful, the Council may still need to enter into spot purchase arrangements – such placements will be subject to separate governance.

- 3.22. It is proposed that providers already on the Framework are permitted to submit new homes to be added at any time during the Framework, provided such homes meet the Council's requirements for complex residential care set out in the original tender documents. This will increase the number of homes and services for the cohort and encourage providers to continue to engage with the Framework. All new homes submitted would be subject to the same Care Cubed benchmarking process to ensure fair pricing through the Framework.
- 3.23. It is proposed that the Framework be re-opened at the Council's sole discretion up to three times within a contract year to allow new entrants to bid to join the Framework. Any re-opening of the Framework will be on the same requirements as the original procurement process, subject to any legislative changes or changes to comply with any relevant guidance. Existing providers will also be permitted to adjust their costs for new placements but not re-price any existing placements. Where any bidder's or existing provider's rates exceed the benchmark and tolerance of 30% built in, the bidder or provider will be excluded. Following a re-opening, the provider list will be re-ranked on overall score.
- 3.24 The proposed timeline to procure the Framework is anticipated to be: publication of the tender in June 2022; evaluation completed in August 2022; approval to award in September 2022; and with the Framework mobilised and ready to commence in November 2022.
- 3.25 Any existing placements at any complex residential home which is accepted on the Framework will be moved to the new specification and contract. The rates will not be changed at the point of transition and packages will continue at their current rate until a review of the adult, at which point fees may be reviewed.
- 3.26 The approach to inflationary uplifts on any call-off contracts will be aligned with the Council's overarching uplift process each year, whereby the Council assesses financial pressures within the market and calculates appropriate increases to existing packages. There will be no contractual guaranteed increases or increases linked to inflationary measures included in these call-off contracts. For those reasons the financial envelope of this decision does not include any inflation over the 4-year period however, inflation is allowed for within the overall Medium Term Resource Strategy (MTRS).

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
- Enjoy life into old age
 - Strengthen communities through participation
- 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:
- Neutral impact. The service specification encourages residential care providers to consider energy efficiency and sustainability of the home.

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

- Health wellbeing and independence for all ages

5. Options

5.1. Option 1: Do nothing and continue to spot purchase (not recommended)

If no action is taken complex residential placements will continue to be purchased on a spot basis with a range of rates negotiated at the point of commissioning. This does not offer best value for the Council or visibility of the range of available placements in the market and is not sustainable as a long-term solution. The quality of services will also remain unquantifiable. Visibility of the complex residential market would remain low.

5.2. Option 2: Dynamic Purchasing System/Mini Competition (not recommended)

This option is not recommended as it does not sufficiently promote adult choice and the cost and feasibility of a system to manage such a process is uncertain.

5.3. Option 3: Complex Residential Framework (recommended option)

This option is recommended because establishing a Complex Residential Framework will enable the Council to have better oversight of cost and quality standards and control of escalating care costs. The aim is to build stronger sustainable links with Framework providers to help support the most vulnerable adults. Adults with complex needs will have access to robust quality accommodation and care compliant with the Council's quality standards, with the potential for bespoke provision where necessary thus improving outcomes for adults.

A four-year initial period with an option to extend for up to a further two years will incentivise providers to develop these residential services and homes which have a long lead in time before the Council can call-off such services. Permitting existing providers to submit new homes for inclusion on the Framework and re-opening the Framework up to three times a year will allow new providers to join the Framework, therefore keeping the market engaged.

6. Issues for Consideration

6.1. Financial implications

6.1.1 In 2022/23 the Council has budgeted to spend £82m on LDA Residential Care placements. The budget was based on care packages in September 2021 and assumptions around growth at that time.

- 6.1.2 The total estimated budget per annum required for all placements into complex settings is £28.1m, which equates to £112.4m over the 4-year period. Within this, the budget for new placements for adults with disabilities with complex needs who will be placed in residential care using this Framework is £3.95m. Over the 4-year period this equates to £15.8m. The term of this Framework is expected to be 4yrs + 2yrs. Existing placements will be transitioned to the terms and conditions of the framework through the procurement process.
- 6.1.3 The total estimated budget has been calculated based on the number of current placements with providers who are approved for complex placements, as complex settings are not separately budgeted for some assumptions have had to be made. The estimated budget for the framework is calculated using the average number of new placements made into complex residential settings over the past five years, and the 'churn' placements (i.e. when an adult moves from one residential setting to another). The average package was calculated across the same period, based on actual placements made.
- 6.1.4 There are no uplifts built into the contracts with providers on the Framework, and uplifts will be considered on a discretionary basis in line with the existing approach taken across the market. This takes place on a no more than annual basis and goes through separate governance at the time, appropriate to the level of expenditure being requested. Inflation is provided for within the MTRS but is not included within the figures of this decision.
- 6.1.5 Given current inflationary pressures, and in common with all other contracts, close surveillance will be undertaken in case there is need to adjust the MTRS.
- 6.1.6 Individual packages are reviewed regularly as part of the Council's duty under the Care Act 2014. Any changes required are agreed through the appropriate process and the spend approved until the next review.

6.2. Legal implications

- 6.2.1 The Council has a duty under the Care Act 2014 to commission residential care services for adults with learning disabilities and/or autism who have complex support needs. By procuring the services set out in this report, the Council will be taking steps to discharge its statutory duty under the Care Act 2014.
- 6.2.2 The proposed services are 'health, social and other specific services' set out in Schedule 3 of the Public Contracts Regulations 2015 (the Regulations). The procurement of these services is subject to the 'light touch' regime, as the value of the services exceeds the current financial threshold of £663,540. The proposed procurement approach set out in section 3 of this report would be compliant with the light touch regime under the Regulations.

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.

8. List of Appendices

8.1. Appendix A – Equality Impact Assessment

9. List of Background Papers

None declared.