

**Forward Plan reference number:** FP/288/02/22

<b>Report title:</b> Registered emergency provision for looked after children	
<b>Report to:</b> Cllr Kevin Bentley, Leader of the Council	
<b>Report author:</b> Helen Lincoln, Executive Director, Children, Families and Education	
<b>Date:</b> 31 May 2022	<b>For:</b> Decision
<b>Enquiries to:</b> Dale Evans, Head of Strategic Commissioning and Policy, <a href="mailto:dale.evans@essex.gov.uk">dale.evans@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## 1 Everyone's Essex

- 1.1 Everyone's Essex sets out the strategic aims of health, wellbeing and independence for all ages; and to make Essex a good place for children and families to grow. This includes commitments to continue to improve the safety of Essex residents, including children and young people, by sustaining our nationally recognised approach to early intervention, safeguarding and neglect; and to work to improve outcomes for the most vulnerable and disadvantaged groups including Children in Care, Care Leavers, Children with SEND and children from BAME communities, by working with children, young people and partners across the system.
- 1.2 This proposal helps to meet these commitments by enabling ECC to secure the provision of registered placements for vulnerable and looked after children under the age of 16 so that they have the accommodation, care and support they need.

## 2 Recommendations

- 2.1. Agree to undertake a single stage open procurement to seek a provider to deliver Ofsted registered emergency care and accommodation for vulnerable, looked-after Children and Young People under the age of 16 years, in an Essex County Council owned property.
- 2.2. Agree that the high-level evaluation criteria for the procurement will be 80% quality and 20% price with 10% of the quality score assessing social value.
- 2.3. Agree that the Executive Director, Children, Families and Education is authorised to agree the detailed award criteria for the procurement.
- 2.4. Agree to award a three year contract to the successful bidder, with provision to extend for up to two further years.
- 2.5. Agree that the Executive Director, Children, Families and Education is authorised to award a contract to the successful bidder.

- 2.6. Agree to use and draw down up to £600,000 capital funding (agreed within the Capital Programme) to appropriate and carry out works to a 3 bedroom detached house, a former school caretaker's cottage, in Roach Vale (Colchester) to be used for the provision of these services.
- 2.7. Agree that the Director of Performance, Investment & Delivery is authorised to agree the terms of appropriation and improvement works for the property, when he is content that costs are within agreed budget and represent value for money and planning permission for change in use has been obtained.
- 2.8. Agree to lease the property, for a term of five years (with an option to terminate after three years), at peppercorn rents to the successful provider, for use in the exclusive provision of the services.
- 2.9. Agree that the Director of Performance, Investment & Delivery is authorised to agree the terms for the lease to the provider.
- 2.10 Agree to re-allocate £650,000 from the temporary accommodation budget line in the Education portfolio to the solo placements budget line in the Education portfolio to ensure funding is in the correct portfolio should funding be required for two properties in the current financial year, this will bring the total to £1.2m.

### **3. Background and Proposal**

- 3.1. The Department for Education has, as part of a series of reforms to improve the standards in children's social care, placed restrictions on Local Authorities placing looked-after Children and Young People under the age of 16 years ("Looked After Children") in unregulated accommodation from 9 September 2021.
- 3.2. ECC have previously, when sourcing regulated placements for Looked After Children with highly complex and challenging needs, used short-term unregistered settings as a temporary alternative, when registered provision is unavailable.
- 3.3. Predicting how much registered emergency provision ECC will need at any given point is difficult; we cannot predict when emergency provision will be required and how long it will take to source longer term placements using this provision. To determine how much provision would be needed, officers have looked at placement trends over the past five years and placement information from the financial year 2021/22.
- 3.4. Trends over the past five years suggest that a maximum of four emergency placements have been required at any point in time. Trends also show that more Looked After Children with Social, Emotional and Mental Health needs require this provision than Looked After Children with Disabilities (CWD).

- 3.5. In the financial year 2021/22 (up to January 2022), ECC made nine emergency unregulated placements for Looked After Children, at an average cost of £8,000 per week. Five of those placements were for CWD.
- 3.6. Based on this information, officers have determined that up to four emergency placements would be needed to meet future needs: three for Looked After Children with Social, Emotional and Mental Health needs and one for CWD.
- 3.7. To meet current needs for this type of provision and whilst longer term solutions have been explored, ECC took a decision in September 2021 to secure access to two blocked beds in emergency registered provision for Looked After Children with Social, Emotional and Mental Health needs for an eight month period. ECC also took a decision in November 2021 to use The Hollies Flat (formerly known as the Chestnuts) at Lavender House to deliver emergency care and accommodation for CWD, as a temporary solution whilst a longer term solution is put in place. The provision for CWD at the Hollies Flat is being delivered in house by ECC and 13 permanent staff have been recruited for this purpose.
- 3.8. A review of the market in Essex has shown that there is no more Ofsted registered emergency care and accommodation for Looked After Children with Social, Emotional and Mental Health needs available at this time. The market has indicated that it struggles to find appropriate buildings, to secure the capital to acquire the buildings, to negotiate the planning and Ofsted registration process, and to make the delivery of these services viable financially. They have however indicated that they would be interested in delivering care and support services if ECC could provide the buildings and provide financial security via longer term contracts. In order to be compliant with the new Regulations, the Council needs a solution as soon as possible to ensure that a long term plan for registered provision is available, should it be needed.
- 3.9. The strategic approach is for ECC to acquire, appropriate or build up to four buildings and procure market provider(s) to deliver Ofsted registered emergency care and accommodation for Looked After Children with Social, Emotional and Mental Health needs within three of these buildings. A fourth building will be used as longer term and alternative site to The Hollies Flat, at Lavender House, for the in-house delivery of Ofsted registered emergency care and accommodation for CWD by ECC. Discussions with other Local Authorities have indicated that this model has been successful in securing this type of provision and ensuring compliance with the new regulations. This option is also recommended as The Hollies Flat is only a temporary solution and a longer term alternative site is required for ECC to deliver its Ofsted registered emergency care and accommodation for CWD.
- 3.10. The ideal premises would be detached three bedroomed houses where one room would be used by the child or young person, one by the carer and one room could be used for office accommodation, with the remainder of the house providing a homely setting where the child or young person can feel at ease whilst a longer term placement can be found.

- 3.11. A Strategic Business Case was approved by the Recovery Advisory Board, in November 2021, to make a £2.4m capital funding provision within the Council's Capital Programme for the acquisition, appropriation and undertaking of necessary improvements of up to four properties for this purpose.
- 3.12. Officers have explored suitable sites and have potentially found four suitable sites enabling between 4-7 placements however only one property is in a position to proceed at this time. This property is a 3 bedroom detached house, a former school caretaker's cottage, in Roach Vale, Colchester.
- 3.13. This building will need improvements to ensure it is fit for purpose as well as planning consent for change of use from residential use (use class C3) to institutional residential use (C2). The caretaker's cottage at Roach Vale is owned by ECC and currently vacant. There is no lease or service occupancy on it.
- 3.14. It is recommended that officers draw down the capital money for the appropriation and improvement works to this site and that the Director of Performance, Investment & Delivery is authorised to approve the terms of appropriation and necessary improvement works required to bring this building into use.
- 3.15. It is recommended that a five year lease, with a break at year three, and payment of a peppercorn rent, will be entered into with the successful provider for the services contract. The length and terms of the lease will align with the services contract. The provider will be expected to maintain the building to an agreed standard over the duration of the lease and on hand back. The individual terms for the lease have not yet been finalised and it is proposed that the Director of Performance, Investment & Delivery will finalise these before placing the contract notice for the procurement. The provision of buildings at peppercorn rents acts as an incentive for providers and encourages bids and market engagement in the procurement. Feedback from soft market testing and other authorities is that charging a rent for the property to the service provider acts as disincentive to bid and the rental costs would be priced into their bids. The rental costs would therefore passed back to ECC through higher costs of providing the service.
- 3.16. It is recommended that officers undertake a single stage open procurement to seek a provider to deliver services within the property at Roach Vale. It is recommended that the term for this contract is three years with the provision to extend for up to a further two years.
- 3.17. It is proposed that the high level criteria of 80% quality and 20% price are used in the procurement with 10% of the quality score assessing social value. This allocation has been used since we know that outcomes are poor for Children in these settings so we want the best quality to ensure outcomes are better. We also know that the staff required for these settings need to be highly skilled and competent given the nature of the children's needs going into these settings. The authority therefore needs providers to demonstrate this and we need to be able to distinguish the difference between providers.

- 3.18. The detailed award criteria for price, quality and social value have not yet been finalised and it is proposed that the Executive Director, Children, Families and Education will finalise these before placing the contract notice.

#### **4. Links to our Strategic Ambitions**

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

- Provide an equal foundation for every child

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

- Health wellbeing and independence for all ages
- A good place for children and families to grow

#### **5. Options**

- 5.1. **Option 1 – ECC appropriate and carry out works to one building and procure a provider to deliver Ofsted registered emergency care and accommodation for Looked After Children with Social, Emotional and Mental Health needs in an emergency situation within the building. This is the recommended option.**

This option is recommended as ECC has only been able to block two emergency beds from the market for 8 months; but three Ofsted registered emergency care and accommodation services for Looked After Children with Social, Emotional and Mental Health needs are required to meet need.

The market has indicated that it struggles to find appropriate buildings, to secure the capital, negotiate the planning and Ofsted registration process, and make the delivery of these service viable financially. They have however indicated that they would be interested in delivering the care and support services if ECC could provide the buildings and provide financially security via longer term contracts. Discussions with other Local Authorities have indicated that this model has been successful in securing this type of provision and it will ensure compliance with the new regulations.

The provision of buildings at peppercorn rents also acts as an incentive for providers and encourages bids and market engagement in the procurement. Feedback from soft market testing and other authorities is that charging a rent for the property to the service provider acts as disincentive to bid and the rental costs would be priced into their bids. The rental costs would therefore passed back to ECC through higher costs of providing the service.

This option enables ECC to comply with new government restrictions on unregulated placements.

**5.2. Option 2 – Procure emergency care and accommodation services for Looked After Children with Social, Emotional and Mental Health needs with providers being required to deliver services from their own buildings (not recommended).**

This option is not recommended as when ECC recently approached the market, the market could only supply one blocked emergency provision. Discussions with the market have identified that they find it difficult to source appropriate buildings. The recommended option of acquiring properties and leasing them will be more attractive to the market and is more likely to result in a successful procurement.

**5.3. Option 3 – ECC acquire a building and deliver all care and accommodation services in-house (not recommended).**

This option is not recommended. ECC has not delivered mainstream residential homes for many years and do not have staff with the appropriate skills set to lead, deliver and manage this service.

Discussions with other local authorities have indicated that recruitment of staff for these settings has been difficult and they are now seeking to procure market providers.

**5.4. Option 4 - do nothing (not recommended)**

This option would be to do nothing and continue making spot placements in regulated placements where Ofsted registered provision can be sourced. This gives no certainty as to placements and registered provision may not be available at the time it is needed. This could result in the Council committing an offence by not complying with the new government restrictions on unregulated placements if no regulated provision is available and therefore is not recommended.

**6. Issues for consideration**

**6.1. Financial implications**

6.1.1. The recommended option (option 1) involves undertaking a competitive procurement process to appoint a provider to deliver the care and support on behalf of ECC at the property. At the current time, there is no certainty on the breadth of services that the provider will be asked to undertake, therefore it is not possible to place a certain value on the contract. A contract for three years would be expected to be at a value of at least £1.56m (£520,000 per financial year) based on the rate currently being paid to an external provider for the block booking of a solo placement. A two-year extension of the contract per 2.4 would increase the contract value to a figure in the region of £2.6m over five financial years.

6.1.2. Option 2 is not currently recommended due to the difficulty in sourcing the provision from the market. ECC currently has in place a block booking of a single

bed unit in Clacton from a provider at a cost of £9,888 per week. Using this as an indication of the likely cost, the option, if available, could be in the region of £0.52m per financial year.

- 6.1.3. Operating the property using in-house provision (Option 3) would cost in the region of £550,000 per financial year. This option is based on initial staffing outlines from the service used for The Hollies, and information from running internal respite units and conversations with other Local Authorities. It is estimated that 17.0 FTE (full-time equivalents) would be required to provide 2:1 staffing for 24 hours per day.
- 6.1.4. Option 4 is to do nothing and rely on being able to make spot placements in regulated provision where necessary. Whilst this could financially be the best option due to periods where we don't require placements, there is a big risk that we could be failing to comply with the new regulations should we not be able to source a regulated placement. The risks significantly exceed any opportunity associated with not incurring the cost in future years.
- 6.1.5. Currently, the plan is to purchase up to four properties. This Key Decision is requesting approval to procure a provider for one of those properties. An existing ECC property is currently also being used for CWD on a temporary basis, with the plan to continue in-house provision at another property in due course. The potential third and fourth properties will be subject to separate, future decisions. For the purposes of the financial implications, we have assumed that these two properties would be run by a provider too, for the reasons outlined in Section 5.
- 6.1.6. The Medium Term Resource Strategy (MTRS) includes a budget for unregulated placements, which will be used in 2022/23 onwards for the provision of regulated solo placements.

	2022/23 Provisional £'000s	2023/24 Provisional £'000s	2024/25 Provisional £'000s
<b>Budget (previously for Unregulated)</b>	<b>1,479</b>	<b>1,479</b>	<b>1,479</b>
<b>Forecast costs</b>			
CFSS Contract*	386	0	0
<i>The Hollies</i> operating cost	570	540	540
Provider run Home 1 (operational Jan 23)**	130	520	520
Provider run Home 2 (operational Apr 23)	0	520	520
Provider run Home 3 (operational Aug 23)	0	390	520
Refurbishment/mobilisation costs	150	50	0
<b>Total costs</b>	<b>1,236</b>	<b>2,020</b>	<b>2,100</b>
<b>(Under)/overspend</b>	<b>(243)</b>	<b>541</b>	<b>621</b>
<b>Budget to be transferred from Residential budgets</b>	<b>0</b>	<b>541</b>	<b>621</b>

\*A block contract is currently in place with CFSS for an eight-month period at a cost of £9,888 per week, for one registered bed. CFSS are currently trying to register a second bed at the same premises which could result in an increase to the current price to £17,800 per week. The current 8-month term is in the process of being extended to 12 months. The cost included here is for 12 months from January 2022 at £9,888pw.

\*\*The cost of the commissioned provider has been included at an estimate of £520,000 per year, per property, in line with the current cost of the CFSS contract.

- 6.1.7. It is currently forecast that we will be able to open and operate two homes in 2022/23, and the associated costs can be contained within the current MTRS. If demand does exceed the forecast capacity, then we will look to contain the pressure within existing C&F placement budgets. If this cannot be successfully done, then we would look to make a drawdown from the Children's Risk Reserve.
- 6.1.8. Should there be an underspend within this budget for 2022/23 a request would be made later in the year to ask for this to be transferred to the Childrens Risk Reserve for use in the outer years should any pressure materialise.
- 6.1.9. There is a pressure in the outer years, and we propose to transfer budget from Mainstream/CWD Residential budgets to fund the unmet cost in 2023/24 onwards, or to fund the pressure through the Childrens Risk Reserve should this not be possible.
- 6.1.10. The capital allocation for this project is £2.4m which has been agreed within the capital programme. The former school caretaker's cottage, in Roach Vale (Colchester) has been agreed at £245,000 and the purchase of this property is the subject of this Key Decision.
- 6.1.11. Only £550,000 of the total £2.4m approved in the capital programme is currently allocated to the solo placements budget line, as the remainder is currently in the temporary accommodation budget line in the Education portfolio. As part of this decision, we would look to re-allocate £650,000 to solo placements as per the decision to fully fund this programme, to ensure the funding is in the correct portfolio should the full amount need to be utilised for purchase and refurbishment of two properties in 2022/23.

## **6.2. Legal implications**

- 6.2.1. Regulation 4 of the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 adds a new Regulation 27A(a) to the 2010 Regulations in relation to placements in England with effect from 9 September 2021. A responsible authority may only place a child under 16 in accommodation in accordance with other arrangements under section 22C(6)(d), where the accommodation is—
  - (a) in relation to placements in England, in—
    - (i) a care home
    - (ii) a hospital as defined in section 275(1) of the National Health Service Act 2006



- (iii) a residential family centre as defined in section 4(2) of the Care Standards Act
- (iv) a school within the meaning of section 4 of the Education Act 1996 providing accommodation that is not registered as a children's home
- (v) an establishment that provides care and accommodation for children as a holiday scheme for disabled children as defined in regulation 2(1) of the Residential Holiday Schemes for Disabled Children (England) Regulations 2013.

- 6.2.2. ECC should continue to ensure that placement decisions consider the individual needs of children.
- 6.2.3. All procurement processes and contract awards must comply with the Public Contracts Regulations 2015 and ECC policies and procedures. Use of the open procedure is not mandated for these services but can be used.
- 6.2.4. Section 120 of the Local Government Act 1972 gives ECC power to acquire by agreement any land/property: (i) for the purposes of any of its functions under that Act or any other Act or (ii) for the purposes of the benefit, improvement or development of the Council's area or (iii) for any purpose for which the Council is authorised by that Act or any other Act to acquire land.
- 6.2.5. Consideration should be given to all appropriate planning and title issues relating to the proposed appropriation to ensure that the properties can be used for their intended purpose. Indemnity insurance may be required to manage risks.

## **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. After evaluating the impact of the proposal against all groups that could be potentially impacted, we assessed that these proposals would in fact

have a medium positive impact as this additional emergency regulated provision for children and young people in care would be available to support a under 16s who required an emergency regulated placement. Under 16s who are eligible for the emergency regulated provision would be eligible for this support based on need. Therefore, this provision does not exclude any group of children or young people based on their protected characteristics.

## 8. List of Appendices

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>
Cllr Kevin Bentley, Leader of the Council	<b>08.08.22</b>

In consultation with:

<b>Role</b>	<b>Date</b>
<b>Executive Director, Children and Families</b>	
<b>Helen Lincoln</b>	
<b>Executive Director, Corporate Services (S151 Officer)</b>	16.06.22
<b>Stephanie Mitchener on behalf of Nicole Wood</b>	
<b>Director, Legal and Assurance (Monitoring Officer)</b>	31.5.22
<b>Katie Bray on behalf of Paul Turner</b>	