

Forward Plan reference number: FP/989/02/21

Report title: Residential and Nursing Care Home Funding 2021	
Report to: Councillor David Finch, Leader of the Council	
Report author: Nick Presmeg, Executive Director for Adult Social Care	
Date: 15 April 2021	For: Decision
Enquiries to: Steve Ede, Head of Procurement, steve.ede@essex.gov.uk ; Zoe Harriss, Category and Supplier Relationship Lead - Older People, zoe.harriss@essex.gov.uk	
County Divisions affected: All Essex	

1 Purpose of report

- 1.1 To agree to secure residential and nursing care capacity for older people, to replace the 12-month arrangements that were put in place at the beginning of the coronavirus pandemic. The replacement arrangements will be delivered in two phases as set out below whilst a longer-term review of required market capacity and market-shaping approaches is completed. This work will help to ensure timely access to high quality, resilient care home provision across Essex that can effectively meet the changing needs of adults requiring residential and nursing care.

2 Recommendations

- 2.1 Agree to draw down £7.1m from the Covid Equalisation Reserve to fund residential and nursing care beds until 31 March 2022.
- 2.2 For phase one of this approach, agree to call off from the Integrated Residential Nursing Framework (IRN Framework) and nomination contracts, for block contracts for care homes that:
 - are rated 'Good' or 'Outstanding' by the Care Quality Commission, **and**
 - have a void threshold of greater than 25% on 18 March 2021
 from the date of this decision until 31 July 2021, at a cost of up to £1.1m.
- 2.3 For phase two, agree to carry out a mini-competition as part of the annual IRN Framework review process for block contracts for up to 8 months from 1 August 2021 to 31 March 2022, at a value of up to £5.8m for up to 250 beds in care homes across Essex.
- 2.4 Agree that only the marginal cost incurred under phase one and phase two will be supported by the funds drawn down. Any unused funds will be returned to the Covid Equalisation Reserve.
- 2.5 Agree that up to £200,000 of funds drawn down be deployed to support care homes at risk of immediate closure, as well as the retention and support of the care workforce.
- 2.6 Agree to delegate the Director of Commissioning, Adult Social Care to:
 - Agree the successful providers appointed, following the procurement processes set out in 2.2 and 2.3 above, and enter into call-off contracts with residential and nursing care providers.

- Apportion the number of beds in each locality up to a maximum of 250 in total for phase two.
- Set the criteria to determine eligibility for the funding in 2.5 and to agree the terms of, and enter into, funding agreements with care home providers who meet the eligibility criteria.

3 Summary of issue

Context

- 3.1 The global outbreak of coronavirus (COVID-19) has significantly affected the health and care sector generally. The older people's residential and nursing care home market specifically has been impacted by loss of residents, fewer placements, staff shortages and financial fragility.
- 3.2 Urgent work has been undertaken across the Council and local NHS partners to ensure an effective response to COVID-19. The main objectives of this have been to ensure the safety and wellbeing of Essex residents and to ensure the sustainability of providers of social care, in line with our duties under section 5 of the Care Act 2014. The pandemic continues and it remains vitally important to sustain good quality providers of social care, to make sure that they can continue in business whilst demand and workforce pressures continue.
- 3.3 At the onset of the first wave of COVID-19, the Council took action to protect the residential and nursing care home market via the following approach, secured through an urgent decision in March 2020:
- 3.3.1 Block purchase of residential beds occupied on 18 March 2020 by an ECC-funded adult until 31 March 2021
 - 3.3.2 Purchase of additional beds over the initial 6 months of the pandemic in order to meet increased demand, either on an 'as needed' basis or on a 'block' basis, based on the judgement of Directors in Adult Social Care.
- 3.4 These arrangements ensured that care homes remained financially sustainable in spite of the growing number of vacant beds, caused either by the loss of residents and/or by the decrease in new placements experienced during 2020. The arrangements also allowed the Council to support the NHS by freeing up inpatient and critical care capacity, through the use of alternative care settings for people who were medically fit for urgent discharge.
- 3.5 The Council has undertaken work to assess demand for care home places in 2021/22, particularly given the impact of the pandemic on the sustainability and closure of some care homes. This assessment has determined that the trends pre-COVID-19 of fewer overall placements into care homes, in line with the Council's 'home first' approach, is likely to continue. This trend has been further exacerbated by COVID-19. It is possible that demand that has been held back or delayed due to COVID-19 may appear and need to be met from a market of fewer homes and we therefore need to take action to secure good quality provision. The Council's 'home first' approach also means that the care home market needs to have the capability to be able to support adults entering residential care later in life and with increasing levels of complexity and frailty. This may require adjustment to buildings and workforce skills to be able to support needs, including dementia and nursing needs.

- 3.6 A reporting tool has been developed by officers to help understand which care homes may be at greatest risk of exiting the market, and to proactively manage that risk as necessary. Alongside other measures, a vacancy threshold of 35% was arrived at as an indicator for homes that may be at imminent risk of financial failure. The current average occupancy level in Essex care homes is below 80%, according to the capacity tracker updated by residential care providers. This is compared with a pre-pandemic estimate of over 90%, with 85-90% considered a commercially sustainable occupancy.
- 3.7 The Council primarily purchases its residential and nursing care beds through its Integrated Residential and Nursing Framework (IRN Framework). The IRN Framework was established in June 2019 to source care in a residential setting for older people and adults with non-complex mental health needs, with or without nursing care. The commencement of the 2021 annual review process was approved on 29 March 2021 through a separate decision paper (FP/040/03/21). The refreshed IRN Framework will go live 1 August 2021. The annual review process allows new providers to join, and existing homes on the IRN Framework to submit revised prices for new placements, should they so wish.
- 3.8 The Council also has nomination agreements in place with two care homes. The nomination agreements provide the Council with first refusal on a vacant bed at agreed rates before the bed is offered to others. The Council pays the first two weeks of a vacant bed to secure the opportunity of first refusal.

The proposed approach

- 3.9 It is proposed that the previous arrangements be replaced in two phases to align with the timescales for the annual IRN Framework review process, and while the completion of a longer-term review of required market capacity and creation of market-shaping approaches takes place.
- 3.10 Phase one and phase two will run completely independently of each other. Care homes will need to apply separately for each of the two phases as appropriate and care homes will be assessed against the award criteria for the phase for which they have applied.
- 3.11 For both phase one and phase two, the usual approach to sourcing placements will continue. As currently, the choice of home of the adult and their family members will take priority. Otherwise, the following order for sourcing will be followed:
1. Block/Nomination Contract bed
 2. IRN Framework bed
 3. Spot Contract bed
- 3.12 For both phase one and phase two, the care homes' IRN Framework rate at the point of placement will apply, as will the IRN Framework terms and conditions. For both phases at the point that the block contract expires, any placements in situ will convert to an IRN long-term placement at the same rate as purchased under the block contract.

3.13 The two phases are:

Phase one (until 31 July 2021):

3.14 To secure residential and nursing care capacity by purchasing block contracts for residential and nursing care beds through a call-off process from the IRN Framework as well as homes with a nomination agreement, which are:

- rated 'Good' or 'Outstanding' by the Care Quality Commission (CQC), and
- have a void threshold of greater than 25%, on 18 March 2021.

3.15 The block contracts will be for up to 20% of beds in CQC-rated 'Good' or 'Outstanding' homes with greater than 35% vacancies, and up to 10% in 'Good' or 'Outstanding' homes with between 25% and 35% vacancies. This interim approach, ahead of the annual IRN Framework refresh, will provide block funding for care homes with the highest quality and that are experiencing high levels of voids and may be at risk of financial failure without any intervention. The rationale for this interim approach is to:

- Ensure sustainability and resilience in these homes and help meet the Councils demand for places.
- Enable the Council to continue to offer placements in homes that are good and outstanding, as well as maintaining a choice of homes in line with our duties under section 5 of the Care Act 2014.
- Ensure that good and outstanding homes remain in the market and can therefore choose to participate in phase two of the approach, post IRN Framework refresh, which supports shaping the care home provision needed for the future (for example, more support for dementia and other complex nursing needs; rapid discharge support from hospital).

3.16 This interim approach will support up to 19 homes that meet the criteria set out in 3.14, through block purchasing up to 103 beds. The exact number of beds block purchased will be dependent on the number of care homes that take up the offer of the block contract. The level of block funding will support an equivalent of 'occupancy' levels up to 85%, which is deemed to be a sustainable level for most homes to operate at.

3.17 Whilst every effort will be made to utilise the block purchased beds as appropriate in line with need and the choice of the adult, there is the possibility that not all of the block purchased beds will be fully utilised for this interim period. However, this is a temporary measure to allow for COVID-19 recovery ahead of phase two and a step toward longer-term commissioning intentions.

Phase two (1 August 2021 to 31 March 2022)

3.18 The IRN Framework sets out that the Council can run a mini-competition process under the Framework to procure a number of block beds, either on a short term or long-term basis. For phase two, it is therefore proposed that a mini-competition be carried out as part of the annual IRN Framework review process for an 8-month block contract, with a break clause at the end of the initial 4-month period.

- 3.19 Phase two will commence once the refreshed IRN Framework is in place. At this point, the 'Good' and 'Outstanding' care homes that have joined the IRN Framework following the refresh will be able to take part in the mini-competition for phase two, alongside care homes that remain on the IRN framework following the refresh process.
- 3.20 The mini-competition for phase two will therefore be open to care homes that:
- are on the IRN Framework, or have requested to join the IRN Framework, meet the IRN Framework criteria and subsequently join the IRN Framework,
 - have a CQC rating of 'Good' or 'Outstanding' and
 - have vacant beds available to block purchase on 1 June 2021 (or the date the mini-competition commences).
- 3.21 The award criteria for phase two will be based 100% on quality. They will include a requirement to support when system pressures arise, including supporting timely discharge from hospital, accepting short- and long-term placements, including referrals with increasing complexity, seven days a week and same day/next day placements, as well as a requirement that care home staff undertake the necessary training and upskilling to effectively meet complex needs. They will also include a requirement to provide and evidence social value.
- 3.22 In the event of a tie on the quality score, the care homes price on the IRN Framework ranked list will apply.
- 3.23 It is anticipated that up to 250 beds, across a number of homes, will be block purchased in order to support the Council's ambition to achieve good quality, stable supply consistently across the county and to begin to develop the care home market in order to meet future need. This will also enable the Council to offer a choice of homes and respond to emergent needs in the system.
- 3.24 The block arrangements are proposed as the best way to ensure care homes have the certainty of business to begin to shape their offer to meet future need. For example, to effectively support increasingly elderly, complex and frail cases, buildings may need to be adapted and workforce skills enhanced.
- 3.25 The upper limit of 250 beds to be block purchased has been determined through the analysis of a number of different data sources available to the Council, including:
- Data on placement rates, including recent hospital discharge demand and current length of stay in short-term care home beds.
 - Estimated movement of residents triggered by home closures.
 - Existing levels of available capacity in CQC-rated 'Good' and 'Outstanding homes', and
 - The need to ensure sufficient supply in all areas of the county.
- 3.26 The actual number of beds block purchased will be dependent on the number of care homes that are successful in the mini-competition. The block purchasing of beds for phase two will be allocated on a locality basis considering, among other factors, the expected demand and the optimum market occupancy in all areas of Essex. It is proposed that the number of beds to be purchased in each locality be

delegated to the Director of Commissioning, Adult Social Care, up to a maximum of 250.

- 3.27 Based on current occupancy levels in CQC-rated 'Good' or 'Outstanding' care homes, the block funding will increase 'occupancy' rates to between 80 and 90%, depending on how many 'Good' or 'Outstanding' homes join/remain on the IRN Framework and are successful in the mini-competition.
- 3.28 Utilisation of the phase two block contract beds is expected to increase over time. Current projections are based on 50% of placements being made into a block contract bed; based on the anticipated 37 placements per week, this would mean reaching optimum occupancy levels within 16 weeks. Once the optimum occupancy levels have been reached, then any further placements will be made in the usual way until the block contracts have available capacity again after placements end.
- 3.29 The block contracts will be reviewed in month 3 in order to establish whether to trigger the break clause at the end of month 4 for each block contract, or whether to vary the number of block placements by decreasing the number of beds purchased. The total number of beds purchased will not exceed 250. Adherence to the terms of the call-off arrangement and the occupancy levels of the block contracts will be taken into account when deciding whether to trigger the break clauses.

Additional costs

- 3.30 It is recognised by the Council that there may be additional costs required to support care homes excluded from the criteria set out above and which may be at immediate risk of closure. This could also include the retention and support of the care workforce. It is anticipated that a Market Support and Development Fund will be established (decision expected summer 2021 (FP/999/03/21)) partly for this purpose. In the meantime, up to £200,000 is requested to be drawn down from the Covid Equalisation Reserve as part of this decision. This funding will allow the Council in the short term to respond as necessary to operational pressures related to home closures, such as continuity of care and facility management, and to effectively manage associated risks to minimise disruption for residents and the care workforce. As set out in recommendation 2.6, it will be the responsibility of the Director of Commissioning, Adult Social Care to set the criteria and to agree the funding arrangements with care homes for the use of this funding.

4. Options

- 4.1 **Option 1 (recommended): Phase 1: Block fund 'Good' and 'Outstanding' care homes on the IRN Framework with more than 25% vacancies up until 31 July 2021, followed by Phase 2: a mini-competition as part of the IRN Framework refresh for up to 8 months to secure block capacity, with the highest quality care homes supporting when system pressures arise. As well as, securing funding to manage unplanned market exits as needed.**

This option focuses the funding towards care home providers that are of a higher quality, which supports the aspiration that where residential or nursing care is required it should be 'Good' or 'Outstanding' provision. The opportunity for a block contract is an incentive for high-quality care home providers to join or remain on the IRN Framework and work closely with the Council to support when system

pressures arise. This option also secures funding to manage fragility in the market, to help manage any unplanned market exits and to support the retention of care home staff.

4.2 Option 2 (not recommended): Continue the 12-month guarantee underwrite scheme.

This option would ensure all homes who have received block funding support continue to do so. However, it is a more costly option that does not support the direction the Council wishes to take in terms of quality of provision. It also perpetuates oversupply in the care home market, which is at odds with the 'home first' strategic direction, and it is not in line with the Council's long-term market shaping strategic intentions.

4.3 Option 3 (not recommended): Do nothing

This option risks the viability of 'Good' and 'Outstanding' CQC-rated care homes currently with a high number of vacancies. It could also impact on our ability to meet our duty under section 5 of the Care Act 2014 to promote a sustainable care home market, to promote choice and control for individuals and their families and to promote consistent quality with a focus on good and outstanding provision. There could also be a substantial resource implication for Adult Social Care in supporting multiple unplanned care home closures and movement of residents simultaneously.

5. Links to Essex Vision

5.1 This report links to the following aim in the Essex Vision

- Enjoy life into old age

5.2 This links to the following strategic aim in the Organisational Plan:

- Help people get the best start and age well

6. Issues for consideration

6.1 Financial implications

6.1.1 The demand for residential care capacity in Essex has been in decline in recent years, while support to older adults at home has seen an increase, a trend which has been accelerated by the COVID-19 pandemic. This reduction in demand for residential care is predicted to continue, which will ultimately affect occupancy levels and the commercial viability of some care home providers in the future.

6.1.2 The maximum cost of the recommendations in this report is £7.1m, to be funded through the COVID Equalisation Reserve and incurred in the financial year 2021/22. This breaks down as £1.1m for phase one, £5.8m for phase two, and £200,000 for support to care homes at immediate risk of failure.

6.1.3 The purchase of provision in eligible homes through the IRN framework for the initial period (until 31 July, phase one) will be at a maximum cost of £1.1m and will support

up to 19 homes through funding up to 103 beds. These homes provide high quality care (CQC rating 'Good' or 'Outstanding') and are assumed to be at a greater risk of financial failure due to their current occupancy.

- 6.1.4 The maximum cost of the recommendation to block purchase 250 beds through the refreshed IRN framework for 8 months (1 August 2021 to 31 March 2022, phase two) is £5.8m. The actual cost will vary depending on the specific IRN rate for each qualifying home, the number of beds that are allocated in each area, and whether this includes nursing care. This also assumes the break clause at 4 months will not be utilised, which may not be the case.
- 6.1.5 The marginal cost of the purchase of these beds in phases one and two is expected to be lower than the £6.9m calculated, as the demand for beds that are utilised has been built into the ASC care and support budget (assuming demand is in line with demographic predictions). The marginal cost is therefore the void capacity in the block over the contract period. For example, if the average utilisation is 60% (and total volumes are in line with budget assumptions), then the net additional cost will be £2.8m, as it is expected that service users would have been placed in a residential care setting at IRN rates.
- 6.1.6 The use of the Covid Equalisation Reserve is recommended as these are exceptional, non-recurrent costs to support and work with a care home market that has been destabilised as a direct result of the COVID-19 pandemic.
- 6.1.7 The opportunity for block provision is an incentive for high-quality care home providers to join the IRN Framework and work more closely with the Council, including accepting IRN Framework rates for new placements.
- 6.1.8 The purchase of block provision has an inherent risk of paying for void capacity. While 100% utilisation is not expected, the actual occupancy of beds within these proposed arrangements is unpredictable. This is expected to be a higher risk in phase one, as the criteria are weighted towards homes with lower occupancy only. The procurement of beds post-IRN Framework refresh will be allocated on a locality basis considering, among other factors, the expected demand and the optimum market occupancy in all areas of Essex. Utilisation is expected to increase over time, and so occupancy levels will be a consideration in exercising the break clause in phase two.
- 6.1.9 The cessation of the previous guaranteed payment arrangement (based on 18 March 2020 levels, and worth over £8m to providers in 2020/21) may have implications for the revenue of homes excluded from the criteria in the recommendations, i.e. homes not on the IRN framework and all those with a CQC rating of 'Requires Improvement' or lower. This may increase the risk of unplanned exits by care home providers, resulting in operational pressures for ASC staff and for the care home workforce. Based on the number of homes whose vacancy levels exceed 35%, that were previously in receipt of a guaranteed payment, but do not meet the conditions for support under the phase one criteria, it is recommended that £200,000 be available to commit to additional temporary support and to ensure continuity of care should multiple unplanned closures arise simultaneously. The value has been arrived at as the estimated cost of supporting one average-sized care home (with reduced occupancy) at a time for a period of 3 months, though the

reality is that it is likely this resource will need to be flexibly applied, based on urgent need.

- 6.1.10 Care home closures due to financial difficulties or otherwise will result in the movement of the Council supported residents to new homes at the prevailing rate, which is likely to be higher than the rate currently paid. There is a risk that this will create an additional inflationary pressure that is not assumed in the budget, also impacting the baseline expenditure assumed in future years in the Council's MTRS (Medium Term Resource Strategy). This risk is mitigated by the recommendations in this report through the improved financial stability of the homes entering into the proposed block arrangements with the Council. The materiality of any remaining risk will depend on the success over the next 12 months of developing the care home market to meet future needs.

6.2 Legal Implications

- 6.2.1 The IRN Framework was procured in accordance with the Public Contracts Regulations 2015 and is a compliant route to market for the Council. ECC is able to call off services from the IRN Framework provided it follows the processes and procedures set out in the IRN Framework for call off.
- 6.2.2 Where the Council wishes to fund care homes using the Market Support and Development Fund, it will need to enter a funding agreement to set out the terms of the funding.

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 There will be a positive impact to older people, as the care home provision that is rated 'Good' or 'Outstanding' will be supported to remain resilient, ensuring that the older people of Essex continue to have a choice of placements, with the aspiration that these are in good or outstanding homes.

8. List of appendices

Appendix A – Equality Impact Assessment

9. List of background papers

Decision paper, FP/658/03/20: Funding for Adult Social Care: Covid 19 Funding Response

Decision paper, FP/040/03/21: Review of the Integrated Residential Nursing (IRN) Framework for 2021

I approve the above recommendations set out above for the reasons set out in the report.	Date
Cllr K Bentley, Cabinet Member for Infrastructure and Deputy Leader (Acting Leader)	13.05.21

In consultation with:

Role	Date
Councillor Christopher Whitbread, Cabinet Member for Finance	11.05.21
Councillor John Spence, Cabinet Member for Health and Adult Social Care	10.05.21
Nick Presmeg, Director for Adult Social Care	06/05/2021
Nicole Wood, Executive Director for Finance and Technology (S151 Officer)	04/05/2021
Director, Legal and Assurance (Monitoring Officer)	15/04/2021
Susan Moussa on behalf of Paul Turner	