

Forward Plan reference number: FP/029/03/21

Report title: North East Essex Community Integrated Services – Strength and Balance Service	
Report to: Councillor John Spence - Cabinet Member for Adult Social Care and Health	
Report author: Moira McGrath, Director of Commissioning	
Date: 27 July 2021	For: Decision
Enquiries to: Matthew Barnett, Head of Commissioning - Email: matthew.barnett@essex.gov.uk	
County Divisions affected: All Divisions in Colchester and Tendring districts	

1. Purpose of report

- 1.1 This report asks for permission to enter into the necessary contractual arrangements in respect of the commissioning of the Strength and Balance Service ('the Service'). The Service supports ECC's renewal, equalities and ambition objectives through better coordination of provision, delivered alongside members of the North East Essex Health and Wellbeing Alliance. There is a neutral impact on climate change.

2. Recommendations

- 2.1. Subject to 2.3, agree to enter into a deed of variation of the Better Care Fund (BCF) county-wide s75 agreement, to include an undertaking from ECC to continue providing £150,812 per annum for the Service even if BCF funding ceases to be available at any time during the next 10 years.
- 2.2. Subject to 2.3, agree to enter into a 10-year Alliance Agreement with the CCG and the Providers (as defined below).
- 2.3. Agree that the Executive Director, Adult Social Care has authority to approve the final terms of the deed of variation and Alliance Agreement, provided that they are compatible with the position set out in the report.

3. Summary

- 3.1. Commissioners have been considering how the strength and balance service can support ECC's renewal, equalities and ambition objectives. One way to do this is via the closer collaboration of services, aligning partners to common objectives and ensuring that the support people need is co-ordinated and delivered with consistency with the organisations that are members of the North East Essex Health and Wellbeing Alliance (as listed below) ("the Alliance").

- 3.2. Health and social care has faced increasing service pressures and funding challenges. These challenges have been compounded by growing demographic-led demand - an ageing population, an increase in people with mental health problems and more people with complex health and care needs. This demand was set to increase significantly over the next 20 years and the impact of the COVID-19 pandemic heightens the risk of this demand increasing even further.
- 3.3. A population health focus, preventing poor health and reducing health inequalities by mobilising all the assets of partners across a place to help people lead healthier, happier lives with less need to access health and care services, will create a sustainable health and social care operating model.
- 3.4. The future of NHS integrated care systems is likely to lead to partners integrating commissioning, budgets and services around a place.

The Service

- 3.5. ECC has been procuring the Service in North East Essex via the CCG under the BCF county-wide section 75 agreement since 2015. Therefore, for the purpose of the Service, the CCG has delegated authority to commission the Service on behalf of itself and ECC. No change to this model is proposed in this report. This Service is funded via the Improved BCF grant paid directly to ECC every financial year and no change to this funding arrangement is proposed in this report.
- 3.6. In June 2020, the CCG gave 12 months' notice of intention to end the NHS contract with the then provider ACE, through a no-fault termination clause in the contract. The contract expired on 30 June 2021.
- 3.7. ECC was invited to join the CCG's tender process in June 2020 to co-commission and procure the Service as an integrated strength and balance service within the wider integrated community services and to enter into a 10-year Alliance Agreement between the CCG, ECC and selected providers identified through the tender process.

Procurement

- 3.8. ECC agreed to join the procurement process.
- 3.9. The Service falls under the light touch regime under the Public Contracts Regulations 2015 and the Procurement, Patient Choice and Competition (No. 2) Regulations 2013. A prior information notification (PIN) and tender documents were published to enter into a structured dialogue (negotiation) with potential Alliance members, to develop suitable solutions for the CCG's and ECC's requirements. Structured dialogue is not one of the usual tender processes, but there is flexibility to design an alternative process under the light touch regime. The tender process was not run as a competitive process and did not exclude new entrants to the proposed alliance, via either partnering, associate or sub-contracting arrangements.

3.10. Following stage one of the tender process, a grouping made up of several provider participants was taken forward as potential participants in the Alliance. In the first quarter of 2021, proposals from these participants were developed to meet the objectives set by ECC and the CCG. A final proposal from the proposed provider participants was submitted in March 2021 and was evaluated by a panel of representatives across the CCG and ECC.

3.11. On 9 March 2021, the commissioning contract for the Integrated Community Services (which includes the Service) with a total value of £440,183,304 was awarded through Award Notice 2021/S 000-004765 ("NICS Contract") to the following contractors:

- East Suffolk and North Essex NHS Foundation Trust (ESNEFT)
- GP Primary Choice Ltd
- Virgin Care Services Limited
- Essex Partnership University NHS Foundation Trust
- Age Concern Colchester
- Citizens Advice Essex
- Citizens Advice Tendring
- Colchester Borough Council
- Citizens Advice Colchester
- Community 360
- Essex Carers Support
- St Helena Hospice
- Tendring Community Voluntary Services

("the Providers")

3.12. For the initial 18-24 months of the contract period for NICS, ESNEFT will function as lead delivery partner, in order to ensure a smooth transition from legacy services for both staff and patients.

3.13. ECC is a co-commissioner only for the Services which are included as one of the schemes in the NICS Contract. The vires for this are represented by the BCF county wide s75 agreement delegation and the decision to join the procurement was made by the Executive Director, Adult Social Care.

3.14. The Service is funded from the iBCF grant as part of the overall Better Care Fund, which is agreed annually. Therefore, if the BCF funding stream stops or reduces for any reason, ECC's Adult Social Care budget will need to continue to fund such services for the duration of the NICS Contract.

3.15. The annual funding of the Strength and Balance Service is fixed for the 10-year duration of contract. However, levels of need and demographic growth will be kept under review and should adjustments be required to funding then mechanisms exist to do so subject to a decision from the Council in line with its constitution.

- 3.16. The PIN and tender documents include a statement that the scope of Integrated Community Services will potentially change during the 10-year contract in order to allow the alliance to deliver further improvements to service provision and population outcomes in North East Essex. Therefore, ECC has the potential, subject to the necessary governance and due diligence, to expand or alter the range of its commissioned services included within the Alliance Agreement.

The Alliance Agreement

- 3.17. It is being proposed that ECC enter into the Alliance Agreement so as to further the integration agenda in North East Essex. The Alliance Agreement does not enforce long-term exclusivity or restrict ECC in its market-shaping duty under the Care Act 2014, although the NICS Contract does commit ECC to commission the Service from these Providers for a period of 10 (ten) years.
- 3.18. The NICS Contract will be the only contract, delivery of which will be underpinned by the terms of an Alliance Agreement. Over time, other service contracts could then be entered into between the commissioners (including ECC) and these or other Providers, underpinned by the principles and terms set out in the Alliance Agreement. Any decision in this respect will have to be taken separately and in line with ECC's constitution.
- 3.19. The Alliance Agreement sets out the commitment of members to one another, including how members will interact and make decisions, as well as shared Alliance goals, which bind members to common objectives from which members and the population in North Essex will benefit.
- 3.20. The principles underpinning the Alliance Agreement will include:
- working towards a shared vision of integrated service provision.
 - working toward the strategies agreed in North Essex, which include local delivery pilots and use of digital technology.
 - commitment to delivery of outcomes in terms of clinical matters, service user experience and financial matters.
 - commitment to common processes, protocols and other system inputs.

- commitment to work together and to make system decisions on a Best for Service basis.
- the possibility of risk and reward share, where some or all participants share in efficiencies generated by reduction in acute activity. It is not, however, proposed that ECC will participate in risk and reward at all.
- alliance members all taking responsibility to make unanimous decisions on a Best for Service basis, but without losing their sovereign rights as commissioners and subject to any reserved matters.
- the alliance always seeking to demonstrate that the Service Users' best interests are at the heart of its activities.
- alliance members adopting an uncompromising commitment to trust, honesty, collaboration, innovation and mutual support.
- the alliance establishing an integrated collaborative team environment to encourage open, honest and efficient sharing of information, subject to competition law.
- the alliance adopting collective ownership of risk and reward, including identifying, managing and mitigating all risks in performing our respective obligations in this Agreement, although ECC will not participate in financial risk/reward share; and
- alliance members co-producing with others, especially service users, families and carers, in designing and delivering the services, including the Service.

3.21. These principles, and the aims of the Alliance, align to the ECC's objectives around living and ageing well, the obligations and strategic direction around closer integration with the NHS, Adult Social Care business plan aims around maximising the independence of people requiring support, and good practice around co-production and collaborative working across the system, including with people themselves. Given the overarching principle of unity among Alliance members, mechanisms have been built into the system to ensure performance of the contract can be effectively managed within the Alliance, and any falling below the standards expected within the contract can be rectified by means of performance review, action plans and escalation through to exit. This is a recognised and effective way of managing such issues within an Alliance arrangement.

3.22. Risk from entering the Alliance is mitigated because:

- each member organisation remains sovereign;
- the alliance formed is not a separate legal entity and thus is unable to take decisions separately from the member organisations;
- no member organisation will be required to take any action pursuant to any provision of the Agreement that causes that organisation to be in breach of legislation or any regulatory obligation, its interests or policies; and
- in respect of the Service, ECC will not be party to the risk and reward provisions, if any, included in the Alliance Agreement.

3.23. Completion of the NICS Contract is conditional on completion of the Alliance Agreement in line with the Award Notice. Commissioners and Providers have not yet entered into the Alliance Agreement due to a delay in reaching full agreement

on all of its terms. However, the Providers have commenced delivery of the NICS Contract, including the Service on 1 July. To remedy this delay, commissioners and Providers must execute the Alliance Agreement urgently and the same will have a commencement date of 1 July.

- 3.24. The Alliance Agreement is not a replacement for individual commissioning contracts between commissioners and Providers; rather, it aims to complement existing commissioning contracts, binding together a set of commissioners and Providers, and their respective commissioning contracts, so that they work collaboratively to deliver shared objectives, with joint decision-making processes and shared risk and reward mechanisms, although ECC will not be participating in risk and reward sharing. It is anticipated that this Alliance Agreement will facilitate the objectives of the Alliance, of which ECC is a member, and enable its participants to work together positively and in good faith to achieve better integration of health and social care at place level.
- 3.25. The Alliance Agreement supplements and operates in conjunction with the NICS Contract between one or more of the commissioners (ECC and the CCG via the CCG) and Providers, as well as any joint commissioning arrangements under section 75 agreements between the commissioners. In relation to the Service, this is the BCF county-wide s75 agreement.
- 3.26. The Alliance Agreement places no obligations on ECC to contribute any additional funding at the outset and any request for additional funding will have to be approved by the Cabinet Member.
- 3.27. Structuring the arrangements in this way gives ECC the great benefit of being part of the Alliance as a partner with very limited liability exposure, whilst being able to influence the future direction of the whole of the Integrated Community Services.

4. Options

- 4.1. **Option 1 – Do not continue with the commissioning of the Service via the BCF arrangements and Alliance Agreement (to develop an Integrated Community Services offer for the Service). Not recommended.**

This option is not recommended as it would limit ECC's ability to help shape provision jointly, alongside Alliance partners. It might also have a longer-term consequence of creating a less efficient, more segmented service landscape and thereby a more complex environment for front line professionals and service users to navigate.

- 4.2. **Option 2– Continue with the commissioning of the Service via the BCF arrangements and Alliance Agreement (to develop an Integrated Community Services offer for the Service). Recommended**

This option gives the best available opportunity to work with other Alliance participants, building on long-established existing relationships, to develop

integrated place-based systems of care and to use North East Essex and the North Essex Integrated Community Services as a test bed for fuller integration and use of Alliance contracting approaches. It ensures ECC will be present and fully involved as North Essex system solutions are developed and embedded. Council commissioners acknowledge that health and care systems are subject to continual change and therefore the Alliance provides a strong basis from which we can influence the whole system, in a co-ordinated and joined-up way, toward better population outcomes. By joining up in this way, we ensure more co-ordinated support and better outcomes for residents of North Essex.

5. Issues for consideration

5.1. Financial implications

- 5.1.1. The recommendations in this report commit the Council to funding £150,812 per year in line with the existing commitment for Strength and Balance services in North East Essex through the countywide element of the iBCF grant, as part of the overall Better Care Fund.
- 5.1.2. The total commitment is therefore worth £1.5m over the 10-year life of the agreement. If BCF funds reduce or cease during this period, the cost of the Strength and Balance service only would need to be borne by the Council, through the Adult Social Care budget in the first instance.
- 5.1.3. Under the conditions set out in this report, the Council is not required to make any payments by purely entering the Alliance Agreement. The exposure to financial risk is limited to the value of the Strength and Balance service element, and not to any risk or reward structure. The Council has the potential to alter or expand the scope of commissioned services included within the Alliance Agreement in future, subject to further governance and investment as necessary.
- 5.1.4. The long-term nature of the service contract risks commitment to a service model that may not continue to deliver best value for money compared with market competitors. However, it also allows time to develop and hone an integrated approach with partners, where a focus on longer-term goals can lead to better outcomes and efficiency. There is also some flexibility to change the service delivery model as necessary, in agreement with partners.

5.2. Legal implications

Procurement

- 5.2.1. ECC is a contracting authority for the purposes of the Public Contracts Regulations 2015 (PCR 2015). The CCG is also a contracting authority for health services within the Procurement, Patient Choice and Competition (No. 2) Regulations 2013. The required services fall within Schedule 3 of PCR 2015 and the value of the services are above the current financial threshold and therefore subject to the light touch regime.

- 5.2.2. However it is noted that a prior information notice (PIN) was published, but not as a call for competition, and a “Structured Dialogue” process has been undertaken as a non-competitive procedure that did not preclude any Providers from participating. As the PIN was used, the market would have been made aware of the opportunity and no challenges have been raised to date.
- 5.2.3. The NICS Contract was awarded on 9 March 2021 via award notice 2021/S 000-004765.

Delegation of function and funding

- 5.2.4. The joint procurement is underpinned by the general delegation of functions in respect of the commissioning of the Service (which is one of the BCF schemes) pursuant to the BCF county-wide section 75 agreement. A variation of the same, to include the funding undertaking from ECC for the duration of the NICS Contract, will need to be made.
- 5.2.5. ECC is not a party to the NICS Contract. The CCG is the commissioner signatory to the NICS Contract with delegated authority under the BCF county-wide s75 agreement to commission the Service on behalf of itself and ECC (through the NICS Contract).
- 5.2.6. ECC will not participate in any sharing of risk and rewards in relation to the Service. Should this change in future, then a formal decision by the relevant Cabinet Member would be required. In addition, ECC’s BCF contribution will not vary during the life of the NICS Contract, to reflect either inflation or performance incentives for the Providers. This is a further risk management measure to ensure that the liability to ECC remains capped to the agreed BCF contribution of up to £1.508m for the entire period of the NICS Contract. This is expressly included in the deed of variation to the BCF county-wide s75 agreement.

Alliance Agreement

- 5.2.7. ECC does not have to enter into the Alliance Agreement as part of these proposed arrangements, but it is being asked to do so.
- 5.2.8. This will be following a template provided by NHS England, although this is not mandated by NHS England.
- 5.2.9. The template Alliance Agreement is designed to sit alongside and work with a range of health and social care service contracts including the NHS Standard Contract, which is the form of the NICS Contract under which the Service is delivered on behalf of ECC and the CCG. The template will require a significant degree of local discussion and negotiation to reflect specific service requirements, desired outcomes and agreed risk/reward sharing principles, although the Council will not be participating in the latter. Once the commissioners and Providers finalise the same, the Executive Director, Adult Social Care will need to formally approve these terms.

6. Equality and Diversity implications

- 6.1. 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.
- 6.2. 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).
- 6.3. 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. This is because it will have a positive impact on the health and wellbeing of older people and help maintain their independence.

7. List of appendices

- 7.1. Equality Impact Assessment

8. List of background papers

Not applicable.

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor John Spence, Cabinet Member for Adult Social Care	27/07/21

In consultation with:

Executive Director, Adult Social Care	23/07/21
Nick Presmeg	
Executive Director for Finance and Technology (S151 Officer)	16/07/21

Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	07/07/21
Paul Turner	