

**Forward Plan reference number: FP/046/02/24**

<b>Report title: Procurement of Contracts for Reablement Services</b>	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor John Spence, Cabinet Member for Health, Adult Social Care and ICS Integration	
<b>Date:</b> 23 April 2024	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

## 1. Everyone's Essex

- 1.1 Intermediate care services provide help for people either to avoid hospital admission, or to recover after spending time in hospital (often called reablement). These services are delivered in the person's home or within the community and, as well as delivering care, they support regaining independence and confidence and work towards achieving individually-tailored goals.
- 1.2 In doing so, these services are central to achieving some of the council's key strategic goals, as set out in Everyone's Essex, notably around helping people with care needs to live as independently and safely in their own homes for as long as they can, and ensuring they have the support they need to promote their wellbeing and quality of life. By doing this, it is also contributing to the council's work around levelling up the county.
- 1.3 Providing this care and support also enables the county council to fulfil its statutory duties under the Care Act 2014.
- 1.4 The council's reablement service, a key part of intermediate care, is currently provided mainly via a contract with ECL, the council's wholly-owned company, and supplemented by Additional Reablement Capacity (ARC), provided by a range of other providers, and some spot purchasing where required.
- 1.5 The purpose of this report is to seek agreement to secure reablement capacity post-May 2024, when the current ECL contract expires, and additional reablement post-September 2024, when our current ARC contracts come to an end. It is proposed that a contract is awarded to Essex Cares Limited (ECL) for reablement and that single-stage open tender process is conducted for Additional Reablement Capacity.
- 1.6 These recommendations will ensure a stable core to the council's reablement offer via ECL, our Local Authority Trading Company, who sit at one of the main gateways into social care in Essex. At the same time, securing ARC providers ensures the continued supply of necessary system capacity, with enough

flexibility in the contract to take advantage of future opportunities that may arise through the development of collaborative models with the NHS and long-term care suppliers.

- 1.7 The proposal is for a contract with ECL lasting 10 years. In agreeing this duration, the council commits to working with ECL to identify and implement ways in which intermediate care can be enhanced through a combination of human expertise and technology. In addition to the regular performance reviews, there will be the development of the longer-term change agenda, which will then be taken forward and reviewed in tandem with that of performance.

## **2 Recommendations**

- 2.1 Agree to enter into an agreement with Essex Cares Ltd (ECL) to deliver a block contract of 9,350 hours per week of Reablement and associated services for a 10 year period with effect from 4 May 2024, subject to annual reviews, which may adjust the unit, volume, and price required on terms that allow either party to terminate with 12 months' notice, with a total contract value of up to £224.3m.
- 2.2 Agree to authorise Essex Cares Limited to undertake Care Act Assessments on behalf of ECC as part of the agreement outlined in 2.1, including authority for suitably qualified and experienced employees of Essex Cares Limited to undertake these assessments.
- 2.3 Agree to the draw down of £520,000 in 2024/25 and £50,000 in 2025/26 from the Adults Investment Reserve to fund the expansion of ECL Trusted Assessor capacity to deliver delegated Care Act Assessments described in 2.2 in the first year of the contract.
- 2.4 Agree to undertake a single-stage, open procurement in five geographical lots to secure additional reablement capacity for a period of three years, with annual reviews and break clauses.
- 2.5 Agree that the evaluation criteria for additional reablement capacity will be based on 30% price and 70% quality, including environment and social value weighting.
- 2.6 Agree that the Executive Director, Adult Social Care is authorised to award the contracts for additional reablement capacity to the successful Bidder(s) following completion of the procurement process.
- 2.7 Agree, as shareholder of ECL, that ECL may enter into the contract referred to in paragraph 2.1 above.

## **3 Background and Proposal**

- 3.1 Intermediate Care services provide help to people to recover after spending time in hospital or to avoid hospital admission in the first place.

- 3.2 The ambition for Intermediate Care in Essex has been developed via the Future of Intermediate Care programme, in collaboration with system partners, and informed by people accessing support. It aims for people to experience: *'a truly integrated and collaborative model that provides improved outcomes and better value for the individual to promote independence'*. This means delivering improved and more seamless pathways, inclusivity and coordination between suppliers, to ensure that the best possible outcomes are achieved for each individual.
- 3.3 There are a number of component services within Intermediate Care in Essex. As part of the Council's commitment to helping people either avoid going into hospital or have a smooth journey out of hospital and back into independence, the Council provides a Reablement Service. This forms part of the Council's statutory responsibility to provide Intermediate Care services and it is therefore for these reasons – to ensure compliance as well as deliver on our Everyone's Essex ambitions for health, wellbeing and independence – that the Council must have in place a reablement offer. Currently, ECL delivers this service and is contracted to do so until May 2024, with Additional Reablement Capacity (ARC) provided by five other suppliers who are contracted until September 2024.
- 3.4 The current capacity of the ECL Reablement Service together with ARC is approaching 15,000 hours per week. In addition to this, spot purchasing is used where necessary to meet excess demand, delivering a further 5,000 hours of capacity per week. The longer-term plan for these contracts is that partners will better coordinate with one another and flex total capacity to best meet demand and the needs of adults and help them to achieve their outcomes, while reducing the need to purchase Reablement services on a spot basis.
- 3.5 In the last 12 months, 11,214 people have received Reablement through ECL or ARC providers; 68.0% of them have been 'reabled' to a reduced ongoing care package size and of those, 55.3% no longer needed care as they were able to look after themselves. In terms of national comparison, the Adult Social Care Outcomes Framework (ASCOF) measure calculating the percentage of people at home 91 days after completing reablement shows that Essex has a figure of 86.3% for 2022/23 vs national average of 82.3%. This reflects positively on ECL as the core contract holder for reablement.

### **Reablement by ECL**

- 3.6 The Council has been working with ECL to negotiate the specification for the service to commence in May 2024, following a full review and agreement to a future plan for Essex Cares Limited (ECL) (Cabinet decision FP/298/11/23), we wish to continue to strengthen and embed the partnership.
- 3.7 ECL has been delivering the Reablement contract since December 2018 and during that time they have worked closely with the Council to implement changes and improvements to the services, including the Connect ways of working. ECL's reablement service is rated by the Care Quality Commission as 'Outstanding'. In February 2024 ECL and the Council agreed to a new way of working which means that all contracts for the delivery of Adult Social Care

services for Essex will operate on an 'open book accounting' basis with any surplus generated being made available for Adult Social Care. This gives confidence that ECL can provide good value for money.

- 3.8 By moving to the proposed ten-year service-level agreement, we aim to:
- Have the basis to create a still stronger working relationship with ECL, giving it the confidence to invest in the physical, human and technological resource we need.
  - Be able to engage them as key partners in market shaping.
  - Put in place a stable core to the Council's intermediate care offer, enabling partnerships and collaboration with the NHS to thrive.
  - Broaden the work and drive greater emphasis on the hospital avoidance and preventative aspect of intermediate care.
  - Be able to engage ECL as a 'force for good' in providing training etc to the rest of the market, focusing on collaboration rather than competition, consistent with duties under competition law.
- 3.9 A long agreement period enables these changes and developments, and with ECL's position as the Council's Trading Company, ECC will have the assurance of direct ownership and input into how ECL deliver and evolve over this period, enabling close working to develop relationships and collaborative approaches with wider system partners and providers. It also embeds ECL, an ECC owned body, at one of the main gateways into social care and therefore in as strong a position as possible to ensure people have maximum independence before ongoing services are put in place.
- 3.10 It is critical that the contract is objectively and thoroughly managed, and in a way which provides confidence to all parties. Primary responsibility for this lies with the ECL board, and the ECC commissioning and commercial teams. It is proposed that their oversight is complemented by an annual contract review session which involves members of the ECL board, the ASC commissioning and commercial teams, and those representing ECC shareholders. Contract changes can be recommended through the annual contract review process, and the decision will be taken in accordance with the constitution.
- 3.11 ECL currently delivers 9,350 hours per week of Reablement across Essex. This is broken down into locality areas whereby a guaranteed minimum provision is available across each area. The new contract will start on the same basis. Using the annual review process set out as part of this contract, in the first year we will consider alternative objectives for future years, with a focus on high quality outcomes for people.
- 3.12 ECL will be required to cover 100% of the county, including our harder to reach and more rural areas, in order to ensure that all adults have access to high-quality Reablement. This may be done using subcontractors or working with the ARC providers to organise capacity in a collaborative approach.
- 3.13 The ECL contract will be measured using a suite of Key Performance Indicators (KPIs) and Management Information (MIs). These will be used within the monthly contract management meetings and form part of the annual review

progress and will focus on the delivery of maximum capacity across the whole geographical area, the reduction of care hours required at the end of reablement and securing independent outcomes for adults.

- 3.14 The annual review process will be used to confirm KPIs (indicators and associated performance targets), targets and the resource envelope for the coming 12 months. The annual review must also consider changes to processes, NHS procedure, legislation, and data/reporting requirements as well as making sure that adjustments are reasonable and give ECL enough consistency to make long term plans.
- 3.15 Break clauses will be exercised in the event of on-going failures of performance, should recovery plan and processes not have yielded necessary improvements, or if there are significant changes in ECC requirements.

### **Delegated Assessments**

- 3.16 Consistent with the national picture, the Council's Adult Social Care service is experiencing increased pressure to assess and arrange support for adults with care and support needs. Assessments are currently undertaken in-house and Adults are waiting longer than is desirable for Care Act Assessments and adults exiting the Reablement service who require on-going care are impacting on this pressure. The delay in completing Care Act Assessments for adults in Reablement is also impacting on the flow of adults leaving hospitals, reducing the efficiency of the Reablement service and resulting in an increase in adults entering spot-purchased home care as an alternative to Reablement.
- 3.17 The proposals in the report will enable delegating Care Act Assessments (for adults who leave Reablement with ongoing care needs) to ECL, which will support a reduction in the pressure on ASC teams, freeing up social work resource to focus on other areas. It will also help achieve better flow within Reablement and minimise delays, in turn enabling more people to benefit from the service.
- 3.18 This will begin as a pilot and will free up ECC social work capacity to be used in backlog recovery work. If the pilot shows improved volumes through the ECL reablement provision without further recurrent investment being required from ECC it will be considered a success. TA resource is also critical in the pathways to reablement, in ensuring the right people get the right support at the right time. Further delegation and additional ongoing funding options will be subject to separate future governance.

### **Additional Reablement Capacity (ARC)**

- 3.19 ECL does not have enough capacity to meet the full need for reablement across Essex. We currently have contracts for ARC with five providers.
- 3.20 To complement the services contracted to ECL it is proposed that ECC should procure three-year contracts for additional capacity across Essex to a total minimum capacity of 5,250 hours per week, in geographical lots of, Mid Essex,

South West Essex, South East Essex, West Essex and North East Essex (volumes shown in the table below). Providers will be able to bid for more than one lot. The specification will be based on the initial specification used for ECL.

<b>Locality</b>	<b>Initial hours</b>
Mid	1,350
North	1,300
SE	900
SW	700
West	1,000
<b>Total</b>	<b>5,250</b>

3.21 The evaluation criteria for this ARC tender will contain the following price / quality split:

- Quality 70% - To demonstrate that this is a person-centred service, and the need for suitable supporting infrastructure (e.g. IT, Workforce, etc.). Of this Social Value and Climate/Environmental will each account for 10% of the overall score. This will help achieve our net zero ambitions and deliver social value.
- Price 30% - To reflect the importance of working within the available financial envelope, building on our previous experience of limited price differences in this market and driving high quality provision.
- The Quality responses will be partly evaluated on the bidder's ability to demonstrate how they will mobilise and deliver the service to the specification, how they will cover the full geography, how they will ensure a that they have access to enough workforce and how they will work with the wider system to deliver high-quality person-centred care.

3.22 Given that most of the likely suppliers are also suppliers of domiciliary care, it is important to manage the contracts to ensure that they are working effectively. On one view, domiciliary care providers who also provide reablement have a financial incentive not to enable people to become self-caring as this reduces the council's requirements for domiciliary care. Performance of the ARC contracts will be managed using a suite of KPIs and management information as ECL currently use, with regular contract management meetings and annual reviews, with a focus on

- delivery of capacity,
- reduction of care hours and improving adults' independence; and
- value for money

### **Collaboration**

3.23 A key determinant of the success of Reablement services is the way that providers work as part of the wider health and social care landscape. Integrated neighbourhood teams, as they develop from Primary Care Networks (PCNs),

will be important in embedding a holistic care approach for Essex adults. These teams should promote a culture of collaboration, and creating time and space to problem solve together, as well as building trust with all system partners and their communities. A vital way of delivering this approach will be leadership, continuous improvement and a safe environment for people to learn.

- 3.24 During the life of the ARC contracts, it is anticipated that ECC and partners will be trialling and developing a more collaborative and alliance-based model, to better align the workforce and to reach the ambition for a truly integrated model of Intermediate Care.
- 3.25 The Council will also need to decide what it is going to do on the expiry of the current Live at Home domiciliary care framework. Many of the current ARC contracts are with providers who are also on the framework. It's proposed that the reprocured ARC contracts will have annual reviews so that there are regular opportunities to consider alignment and interfaces with Live at Home and other system provision.
- 3.26 In the longer term there may be some benefit in seeking to make intermediate care services simpler and even more joined up.

## **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
  - Develop our County sustainably
  - Connect us to each other and the world
  - Share prosperity with everyone
- 4.2 Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030.
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- Health wellbeing and independence for all ages

## **5 Options**

### **5.1 Option 1 – Do nothing.**

- Allow the ECL contract to end in May 2024 and the ARC contract to end in September 2024. This is not a viable option, as without these services the Council would not be able to fulfil its statutory obligations for Intermediate Care as detailed in the Care Act.

## 5.2 Option 2 – Direct award to ECL and undertake a competitive process to procure contracts for ARC (preferred)

- This would allow an ongoing relationship between the Council and ECL while continuing to develop and innovate the service, in addition to securing the capacity and workforce that is currently in place, and the longevity of this contract would enable ongoing collaboration and improvement. By publishing the open market tender for additional ARC capacity, we can secure further capacity needed to meet the demand, while testing the market and ensuring best value for money. These providers will then work together in a collaborative approach to deliver services on a locality footprint.

## 5.3 Option 3 – Competitive process to procure both Reablement and ARC

- This option is not preferred, as there is a significant risk that there are no other providers in the market that can deliver the scale of the service currently delivered by ECL. There is also no longer sufficient time to undertake a new procurement before the current ECL contract finishes, although it would be possible to give ECL a short term extension whilst we procure a new service.

## 6 Issues for Consideration

### 6.1 Financial implications

6.1.1 The total cost of the recommendations in this decision is £245.8m.

Contract Values	£'m
Reablement (ECL)	224.3
ARC	21.5
<b>Total</b>	<b>245.8</b>

6.1.2 The Council is forecast to spend £33m on Reablement in the 2023/24 financial year when including services delivered by ECL, through ARC contracts and spot-purchased provision. Since the current Reablement at Home contract with ECL was put in place (May 2021), total weekly Reablement activity has increased by 22% and, within that, the activity delivered by spot purchasing (with domiciliary care providers outside of ECL and ARC contracts) has increased by 52%.

6.1.3 The recommended option proposes a new contract with ECL to provide a guaranteed level of service activity of 9,350 hours per week from the outset at an annual value of £19.8m at the 2023/24 price. This represents a £1.8m budget saving compared to inflationary assumptions. It also sees an additional £570,000 paid to increase the ECL Trusted Assessor (TA) workforce to deliver delegated Care Act Assessments, of which up to £520,000 will fall within the 2024/25 financial year. This will fund 15 TAs enabling the capacity to deliver delegated Care Act assessment activity; this is expected to deliver 40 assessments per week, although final volumes will be determined as part of the

pilot and review period.

6.1.4 It is expected, as part of the evolution of the Intermediate Care model, that there will be a future requirement to increase capacity in the service to reduce the reliance on spot purchasing, as described in paragraph 3.4. This will be achieved through improving the efficiency (reduced length of stay) and effectiveness (reduced ongoing care needs) through the contract with ECL.

6.1.5 It is therefore anticipated that the contract value be increased over time by an additional £3m per annum to increase reablement capacity based on 40% of the budgeted activity for spot-purchased Reablement converting to ECL provision; an indicative timeline is set out in the table below.

Reablement (£m)	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
Initial contract activity	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8	19.8	198.0
TA capacity pilot	0.6	-	-	-	-	-	-	-	-	-	0.6
Indicative growth	0.2	1.8	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	25.7
<b>Total</b>	<b>20.5</b>	<b>21.7</b>	<b>22.8</b>	<b>22.8</b>	<b>22.8</b>	<b>22.8</b>	<b>22.8</b>	<b>22.8</b>	<b>22.8</b>	<b>22.8</b>	<b>224.3</b>

*N.B. Due to rounding, numbers presented do not add up precisely to the totals indicated.*

6.1.6 The proposed cost of the initial contract activity can be contained within the Council's budget for 2024/25 and is in line with the assumptions in the Medium-Term Resource Strategy (MTRS) which includes the period up to 2027/28 (contract year 4). The expansion of the TA workforce is at an additional cost, to be funded from the Adults Investment Reserve in year 1 of the contract; this funding will be drawn down as it is spent throughout the year and any unutilised funds will stay within the reserve. Continuation of TA workforce capacity and any other subsequent investment will be subject to further decision and should demonstrate a return of at least the equivalent cost reduction in spot purchasing to be contained in the overall financial envelope for Reablement services, if not offset by savings to wider Adult Social Care budgets. This may include absorption of costs by ECL as part of service development and productivity gains.

6.1.7 The maximum estimated cost of the recommendation to tender a new ARC service is £21.5m over the 3-year period. This is based on delivering 5,250 weekly contracted ARC hours across Essex. The actual unit rates paid will depend on the outcome of the competitive tender process, which is expected to vary across the 5 lots, as is the case with the current arrangements.

6.1.8 The purchase of block provision has an inherent risk of paying for void capacity, emphasising the importance of close contract management in delivering value for money. A defined notice period will be included in the contracts to allow the volume purchased to be adjusted if contracted capacity is not being delivered. This flexibility will assist in the control of reablement expenditure.

6.1.9 Reablement and ARC services form part of the Better Care Fund (BCF) plan, a pooled budget with health partners. Continuity of the income streams from the NHS and the iBCF grant at current levels is assumed over the MTRS period, based on historic precedent. There is however a risk that the value of the Discharge Fund grant, a new element of the BCF that has only existed since

2022, will reduce, or its conditions change after the current plan period ends in March 2025. This equates to a risk across reablement services in 2025/26 and recurrently of £2.4m per annum. If external funding is withdrawn or reduced in future, the shortfall would need to be managed within the overall BCF and the Adult Social Care budget, and if necessary, through use of the Adults' Investment Reserve, which would be subject to a separate decision.

6.1.10 The current Reablement service has delivered a measurable reduction in the ongoing care requirements of adults, including the number who discharge from the service as self-caring. Improving the effectiveness of Reablement has been a success of 'Connect', one of the Council's major savings programmes, and there is further opportunity to deliver improved outcomes to more people who may benefit from access to Reablement through ECL or ARC providers.

6.1.11 The contract values stated above do not assume inflationary uplifts, as these will be addressed through the wider periodic review of ASC contracts and subject to further governance and will be in line with MTRS planning. In the specific case of ECL, the strategic relationship set out in the Cabinet decision referenced in 3.6 means that, under the nascent Memorandum of Understanding (MoU), inflationary pressures will first need to be absorbed within the contract value, after allowing a margin of up to 3%. Any surplus above the 3% margin will be returned to the Council, either to be reinvested in ECL services for ASC benefit (for example, maintaining the growth in TA capacity) or to address ASC budget pressures. The MoU commits ECC and ECL to transparency of costs (direct and overheads) and performance data, through open book arrangements.

## **6.2 Legal implications**

6.2.1 It is lawful to award a contract directly to ECL using exemptions under Regulation 12 of The Public Contracts Regulation 2015, which allow the Council to directly award a contract to a wholly owned company of the Council provided it meets certain criteria. Essex Cares Limited meets these requirements.

6.2.2 Reablement services are 'Light Touch' for the purposes of the Public Contract Regulations 2015. Although not a requirement of the Regulations, it is proposed that the standard open procurement procedure be used to tender these services, which is permitted by the Regulations.

6.2.3 Section 79 of the Care Act 2014 permits the proposed delegation of statutory reviews by the Council to ECL to allow them to undertake statutory reviews of adults. Section 79(6) requires that the local authority retain ultimate responsibility for ensuring this function is carried out properly and in accordance with statutory obligations. The Adult Social Care Team will need to retain responsibility for quality assurance and compliance of reviews undertaken by ECL in order to meet the requirements of the Care Act 2014.

6.2.4 Although it is helpful to take a collaborative approach to the provision of care services, the Council, ECL and ARC providers must take care to avoid entering any agreement, including non-binding agreements, which have the effect of preventing, restricting or distorting competition or under which an undertaking

with a dominant position in the market abuses its position. These can be enforced by the Competition and Markets Authority as well as by the Court.

## **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, sex, 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 Equalities Comprehensive 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**

Equalities Comprehensive Impact Assessment

## **9 List of Background Papers**

None