

---

# Practice papers

## Essex Cares: The birth of a groundbreaking local authority trading company

*Received: 5th October, 2009*

### Mike Walsh

is Interim Managing Director of Essex Cares. He is also a Director of Care and Health Solutions Ltd, a company specialising in adult social care consultant support for county councils and local authorities engaged in the transformation of services to meet the personalisation agenda, the introduction of re-ablement and delivery of new models of service delivery including local authority trading companies. Mike has extensive senior management, consultancy and interim management experience in the adult social care and health sectors. He trained as a social worker at the London School of Economics and initially worked with the Probation Service before moving into community care, where he held senior management positions in assessment, provider services and health and social care development. He moved into consultancy and interim management in 2006, helping Essex County Council to modernise its provider services, develop new services and manage the scheme to transfer the authority's services into the local authority trading company it is today. A qualified and registered programme manager, he has a postgraduate degree in social policy and administration.

### Abstract

Innovation will play a crucial role in shaping the future of England's care and support system. The eyes of the local government world are on the launch of a pioneering organisation, created by Essex County Council, which offers support to thousands of people across the county. This paper describes the 'birth' of the project and the challenges facing the new social care services model as it evolves. It describes how the process leading to the transfer of in-house social care provider services appears to have elicited a greater level of motivation and morale, and helped to change long-standing cultures, especially within management throughout the business.

### Keywords:

local authority trading company, personalisation, personal budgets, programme, project management, TUPE, contract and governance, assets, outcomes

Mike Walsh  
Care and Health Solutions Ltd.  
Priory Cottage  
The Street  
Wilmington  
Polegate  
East Sussex, BN26 5SL, UK  
E-mail: [mike@walsh.scc.co.uk](mailto:mike@walsh.scc.co.uk)

### INTRODUCTION

History was made on 1st July, 2009 when the first local authority trading company (LATC) in the UK was created by Essex County Council to accept the transfer of in-house social care provider

services (with the transfer of 850 former local authority staff under TUPE<sup>1</sup>). The creation of this groundbreaking new organisation, Essex Cares, was borne primarily out of the need to respond to the introduction of personalisation. Through personalisation, all new service users in Essex are to be given personal budgets, making them the commissioners of their own services. The growth of self-directed support and personal budgets was seen as a threat to the survival of expensive in-house provider services which were facing the prospect of being unable to trade and being priced out of business. Indirectly, the launch of Essex Cares also provided the impetus for Essex County Council (ECC) Adults Health and Community Wellbeing Directorate to satisfy a policy objective to become a commissioning-led organisation.

**In-house services retain a small part of the market with a disproportionate share of the budget**

Despite the development of a large and extensive independent market following the implementation of the Community Care Act 1993,<sup>2</sup> most local authorities and county councils still retain a rump of in-house provision. This is because it is either in the ‘too hard to do’ or politically sensitive categories of potential service transfer — or is retained as a perceived security against market failure and ultimate services of last resort. Many of these services are still ‘old style’, unmodernised, expensive and, anecdotally, perceived as higher quality than counterparts in the marketplace. They may also be satisfying a niche not taken up or commissioned in the marketplace. These services may represent a small percentage of the overall social care provider market but take up a disproportionate amount of the overall available budget.

**LATC — providing the power to trade**

### **THE LEGAL BASIS OF AN LATC**

A local authority is able to establish an LATC through powers in section 95 of the Local Government Act 2003.<sup>3</sup> The Act makes a number of stipulations regarding the power to trade:

- it does not override the statutory service obligations of a local authority;
- it does not supersede other trading powers a local authority may have;
- the power can only be exercised through a company;
- the Secretary of State has the right to impose conditions on the exercise of the trading power and can remove statutory barriers to the exercise of the trading power.

The statutory instrument makes only a small number of stipulations:

- the power to trade is granted only to local authorities with a Comprehensive Performance Assessment rating of ‘excellent’, ‘good’ or ‘fair’;
- that a local authority is permitted to trade in anything that it is authorised to do under its ordinary functions;
- a local authority must recover the costs of any accommodation,

goods, services, staff or any other thing that it supplies to a company to exploit the power to trade;

- that a business case must be prepared before the power to trade is exercised and in the case of the council, approved by the executive.

The council has to have at least a 51 per cent stake in the LATC, although it is independent of the council with a board of directors who are duty bound to act in the best interests of the company.

## **PROGRAMME PROCESS**

The process of achieving the transfer of these services to Essex Cares was undertaken in three distinct phases following programme and project management principles.

### **Modernisation and redesign is essential**

#### **Initial scoping, service redesign and modernisation**

There was extensive work undertaken to pull together the management information on all of the services to understand the financial envelope, whole time equivalent staffing complement, volumes of service and asset register of these services as they were brought together under county-wide functional management. At the same time, a consultant was brought in to work with the individual service managers to develop business plans. This information then formed the basis to redesign services in line with the principles of empowerment and enabling, efficiency etc. For example, this resulted in the halving of the domiciliary care service with a subsequent service redesign to create a re-ablement service; and the learning disability day and employment service was integrated and redesigned to create a progression service based on community inclusion and progression towards employment.

#### **Option appraisal and permission to consult, leading to final Cabinet paper**

Three options were initially considered for the transfer of services into the marketplace — social enterprise, trade sale and tender — with the LATC being introduced as a fourth option (devised as a creative solution to unblocking a perceived impasse regarding the initial three options). Its introduction as a potential solution had the desired effect and allowed the process to move forward. There seemed to be an understandable nervousness to losing control of this final rump of important services for which the prospect of ownership of the LATC seemed to provide comfort; despite the fact that the Board of the LATC are completely independent of the council, being legally required to act in the best interests of the company rather than the council.

### **Transfer to an LATC does not preclude other options in the future**

A move to an LATC does not preclude any of the other three options being implemented at a later stage. If anything, it allows an opportunity to test the value of these services in a post-transferred, potentially more efficient and competitive state. An LATC can also

**An LATC was a popular choice for most stakeholders**

behave and replicate a social enterprise in that profits and therefore dividend can continue to be recycled into the provision of more care, better quality services or the development of new services. But, more importantly, as was recognised within the consultation exercise, resources are not lost to external shareholders or owners.

Following agreement from the ECC Cabinet, in March 2008 an option appraisal was undertaken with a wide-ranging public and stakeholder consultation and Scrutiny Review. This involved the use of the ECC Citizen's Panel, direct consultation with all current service users, their carers and staff as well as stakeholder groups and organisations. There was also a cross-party scrutiny review that, among other things, undertook a two-day field exercise, touring existing social enterprises, 'interviews' with independent organisations and a final challenge session. The results unanimously concluded that the LATC option was the preferred solution by all stakeholder groups including council staff, service users, trade unions and service user groups. The Scrutiny Review Group recommendation was for the Cabinet to proceed with a decision to transfer these services to an LATC. A transfer to a social enterprise was seen as the next best option.

At the same time, soft market testing was undertaken to test interest in the market for these services; the conclusion of which determined that there was no interest in the marketplace for a contract for these services that was limited to three years.

In October 2008, the ECC Cabinet agreed to the transfer of the in-house services to a newly formed LATC which then led to the implementation phase.

### **Implementation**

The implementation of the Cabinet decision was undertaken as a programme with a number of work-stream projects, the main ones being outlined below:

- contract, service specification, key performance indicator regime and payment mechanism;
- TUPE;
- finance;
- back-office services (IT, finance, HR, facilities management, audit etc);
- asset management;
- quality multi-media communications, change management and staff communication.

**Corporate sign-up was essential to achieve the outcome**

The aim was to complete this programme within a very tight timescale of five months, by April 2009. This date was eventually pushed back to July 2009. Two important factors that led to the success of this programme were the quality of the high-level sponsorship by a member of the Adults, Health and Community Wellbeing Directorate and, ultimately, the programme becoming one

of the county council's top ten corporate programmes, providing the final momentum that helped to drive the eventual outcome.

Essex Cares Ltd (ECL) was set up as a group holding company providing business support and leadership for the three specific service companies as set out in Figure 1. This structure allows for future additions of new services/companies to the family with a ready-made support function provided by the group company.

A proportion of the corporate overheads attributed to the services when they were within the council was used to pay for the back-office services utilised by Essex Cares. Some of these were bought back from the council under a service level agreement (SLA). Importantly, the amount of the overhead utilised by ECL was around 60 per cent, which means that the council now has an opportunity to achieve a significant saving from some or all of the unutilised overheads.

While the culture of the relationship between Essex Cares and the council functions providing services within the SLA has begun to change, to become more customer focused, it still has a way to go; although, in some instances, it has already led to a more timely and responsive service to the benefit of the company.

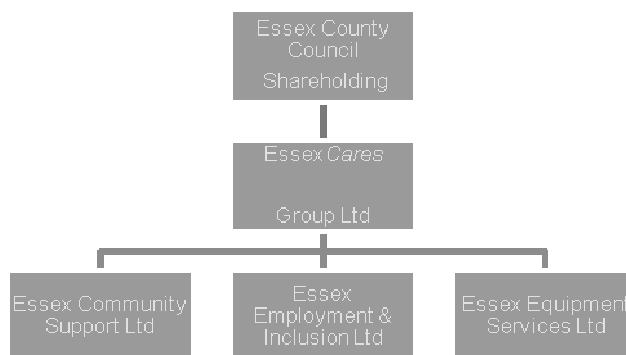
Essex Cares has been set up with the principle of 'enablement' and empowerment running through the whole organisation — from the board through to ultimate service delivery — under the premise that if such a culture is modelled at senior management level it will help to ensure that it pervades the whole organisation to the ultimate benefit of the service user. The Essex Cares board is looking to remove the barriers that hinder staff from performing their duties in the most efficient and effective way. The relationship with staff from the beginning of the transformation process has been more inclusive, with more and improved communication, including the use of multimedia such as DVDs, staff roadshows and high-quality newsletters.

### *Contract and governance*

ECL has a three-year tapering 'block contract' with the council, with a 2.5 per cent reduction year on year. This was designed to

**Additional savings can be achieved from the corporate overhead**

**Enablement is a key value running through Essex Cares**



**Figure 1** Essex Cares Ltd company structure

## **KPI's a first for an Essex social care contract**

ensure that the council benefited from the efficiencies that ECL had to make to become more competitive in the marketplace; not to mention acting as a driver. Over the life of the three-year contract, the council is expecting to save 10 per cent of the overall contract sum. Forecast profit should achieve a 6 per cent per annum return once the cost of the transformation and transfer has been recovered, a proportion of which can be returned to the council as shareholder as a dividend. The contract has 39 'golden' key performance indicators with a sliding scale of payment depending on performance. These are monitored by the council's contract unit as well as the Shareholder Liaison Group (made up of four Cabinet members and one opposition member). The ECL board meets with the Shareholder Liaison Group on a quarterly basis. The purpose of this meeting is to review performance against budget, receive advice and support and to inform and seek views on potential new business ventures or, where necessary, seek investment.

The council also now undertakes the same quality monitoring processes with ECL that it has with the rest of the external market where previously it did not. The benefits of this contract from a provider perspective have been notable in that what used to be a relationship without boundaries now is much clearer. Locality commissioning staff now have a clear understanding that the services they have always commissioned from ECL are not 'free'. This makes their commissioning decisions more informed and ultimately less wasteful. The contract has allowed the council to have a true understanding of the costs of the services that it had previously provided where costs were seemingly confused within other budget areas, within the large corporate organisation.

### **Assets**

ECL continues to utilise the buildings that it previously inhabited under a combination of lease agreements: sole occupancy, sublets and tenancies-at-will, depending on the ownership of the building or whether they were shared buildings. There is a market rental agreement with service charges that covers 'external' facilities management, although in most buildings the internal facilities management is provided by Essex Cares, with Employment and Inclusion service users benefiting from training and employment opportunities.

### **Outcomes**

The positive outcomes of the transfer of these services to ECL have been profound in many ways. While staff, on the whole, have always had a positive attitude to service provision, the process leading to transfer seems to have elicited a greater level of motivation and morale, and helped to change long-standing cultures, especially within management throughout the business. Sickness figures are already improving significantly, which inevitably will facilitate improved profits.

## **Change in culture already profound**

The contractual and therefore ‘boundaried’ relationship with Essex County Council seems to have had the effect of giving the services more credibility and sense of self. The transfer inevitably has led to the company having a complete understanding of its business, finance, required efficiencies and performance expectations. Managers are engaged in the future direction and marketing of their services and are keen to learn about what it means to be in a commercial environment and develop a new skill set. These are early days but the initial results are encouraging and a ‘breath of fresh air’ from where this journey began three years ago. Service users have already reported improved responsiveness and communication and there has also been a developing interest from other market providers where previously there had been no relationship.

**The future will be challenging ... not least being competitive with a TUPE'd workforce**

### THE FUTURE

There remain a number of challenges, not least being able to be competitive with a TUPE workforce who enjoy the more favourable conditions afforded by their ex-council status. The relationship with the transport services over which Essex Cares has no control will also be a challenge that could limit and at times threaten the business.

It is now the task for this organisation to create truly service user focused services that provide a market lead in implementing the ‘Putting People First’<sup>4</sup> agenda. Diversification and growth into other areas, previously not available to these services, are required including private funders, trading in goods and services with individuals and other local authorities and the possibility of taking on community health services as part of the shake-up of primary care trust (PCT) provider services. At the time of writing (October 2009), ECL is partnering with a local foundation trust in the tender of a local PCT provider service.

As previously stated, the choice of the LATC option has not precluded any of the other three options explored during the option appraisal being utilised in the future, although it is hoped that the benefits of this model will mean that it is here to stay as an available and long-term solution as to ‘what to do’ with in-house services. Only time will tell. There is scope to determine if other social care services could also be transferred utilising the LATC model.

### CONCLUSION

The LATC model works well in conjunction with the personalisation agenda but can be used on its own as a sensitive solution to market transfer. In conjunction with an LATC transfer, a programme of modernisation and service redesign is important, preferably before transfer, if these services are going to be given the best opportunity to develop and the local authority is to benefit from the efficiencies made.

The following provides a summary of some of the main advantages of an LATC to the council in Essex:

- It maintains a link to council influence and branding.
- With a tapering contract it forces the services to become commercially competitive in the marketplace, while preparing for self-directed support, and thereby produces savings.
- Depending on the size of the services there are significant opportunities for further back-office and corporate savings.
- The total financial saving in Essex will be around 10 per cent per annum of contract value.
- A dividend can be returned to the council for further investment in wider service provision or retained for investment in new services within Essex Cares.
- Services are free from council constraints to become more adaptable and responsive in meeting the personalisation agenda.
- It provides an opportunity to test the value of services while improving their competitiveness.
- It provides the potential to generate a capital receipt from sale, of all or part, in the future.
- It allows councils to become commissioning-led organisations.

### References

1. TUPE: The Transfer of Undertakings (Protection of Employment) Regulations (2009)  
They are designed to preserve employees' terms and conditions when a business, or part of one, is transferred to a new employer.
2. HM Government (1990) *National Health Service and Community Care Act*, Stationery Office, London.
3. HM Government (2003) *Local Government Act*, Stationery Office, London.
4. Department of Health (2007) 'Putting people first: a shared vision and commitment to the transformation of adult social care', DH, 10th December, available at: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationPolicyAndguidance/DH\\_081118](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationPolicyAndguidance/DH_081118) (accessed 30th November, 2009).