

ADULT SOCIAL CARE SCRUTINY COMMISSION REPORT

Update - LEICESTERSHIRE COUNTY CARE
LIMITED (LCCL)

Cllr Sarah Russell – Deputy City Mayor – Lead for Adult
Social Care

Martin Samuels – Strategic Director – Social Care &
Education

8th September 2020

Wards Affected: Thurnby Lodge, Eyres Monsell, Abbey, North Evington

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1. Purpose

- 1.1 To provide the Adult Social Care Scrutiny Commission with an update on the proposal made by Leicestershire County Care Limited (LCCL) to change the Terms and Conditions of staff that transferred from the Council's employment in 2015.
- 1.2 The Council sold 2 residential care homes to LCCL in February 2015 (Abbey & Cooper House) and a further 2 in October 2015 (Arbor House & Thurn Court).

2. Summary

- 2.1 LCCL began formal consultation on 16.4.2020 with 97 former Council staff who were subject to TUPE (53 Leicester City and 44 from Leicestershire County who sold 9 homes to LCCL in 2013).
- 2.2 The rationale for LCCL changing Terms & Conditions (T&C's) was based on economic reasons relating to Covid19.
- 2.3 As the TUPE Regulations provide legal protection to the transferring employee's terms and conditions, the sale agreement did not stipulate that staff transferring to LCCL would always remain on their Council T&C's.
- 2.4 Despite requests from the City Council to defer the proposals for a 12-month period, the consultation was concluded at the end of June 2020. Staff were advised to sign a new contract by 4.7.2020 or their employment would be terminated. It is unclear how many employees have signed the new T&C's, although Unison state that it is likely to be the majority.
- 2.5 Unison have confirmed that possible legal action against LCCL is under consideration.
- 2.6 All 4 city homes are rated as 'Good' by the Care Quality Commission (CQC) and recent monitoring visits undertaken by the City Council have not highlighted any staffing or quality issues.
- 2.7 An overview of LCCL's financial position is detailed at paragraph 4.4 to 4.9.

3. Recommendations

3.1 The Adult Social Care Scrutiny Commission is recommended to:

- a) note the content of the report and to provide comment/feedback

4. Report

4.1 In April 2020, the City Council became aware that LCCL had commenced a formal consultation process with all ex local authority TUPE staff to remove their enhancements as a means of reducing costs to the organisation.

4.2 Contact was made with LCCL, who explained that due to reduced occupancy levels and additional costs, such as agency staff to cover employees who were sick or self-isolating, additional Personal Protection Equipment costs etc, they were having to look at all expenditure, including reducing staff enhancements.

4.3 Funding has been made available to all local authorities by Government to support the care sector with Covid-19 associated costs and the grant monies has been passported to all residential care homes. To date LCCL has received £256,453 of Covid-19 funding support. The funding provided is in line with the monies paid to the other care homes in the City in terms of how funding has been calculated and distributed.

LCCL Financial Position

4.4 LCCL stated that they were incurring in the region of £400k pa in additional costs associated with Covid-19. The following information provides an overview of their financial position as detailed in accounts lodged with Companies House.

4.5 There are two operating companies in the group – Leicestershire County Care Ltd (LCCL - £15m turnover) and Essex County Care (ECCL - £2.2m turnover) together providing the vast majority of operating turnover of the group. The overarching holding company is Johnson Care Ltd (£17.5m consolidated group turnover), which owns the two subsidiaries for LCCL & ECCL.

4.6 ECCL has 2 CQC registered care homes (originally 7 but 5 no longer registered). December 2018 accounts of the holding company acknowledge continuing difficulties for ECCL, with the company making losses and a breakdown of the company's relationship with its principal customer, Essex County Council, particularly around fee rates. That led to ECCL closing some homes on the back of regulatory problems and homes not being financially sustainable. These home closures, associated costs and costs of redundancy payments were cited as contributory factors to the losses recorded in the 2018 financial statements.

4.7 This appears to be why ECCL were having cash flow difficulties, even though LCCL is doing well. The extent of the impact the home closures will have on the on-going results for ECCL (and the Group) for year end December 2019 will not be seen until the 2019 accounts are filed (due by 31.12. 2020).

4.8 As a 'group' the holding company holds the bank loan's, but they are cross guaranteed by the subsidiary companies. The loans will have covenants which depend on operating performance of the companies and they will likely need to demonstrate to lenders that they are taking appropriate measures to maintain compliance with those covenants such that they do not breach them.

4.9 Two key performance measures they use is to monitor bed occupancy rates and the proportion of turnover spent on wage costs. Occupancy rates will be exhibiting some levels of stress as occupancy at a national level is affected by the pandemic, is a key driver of turnover and with that potentially reducing over a sustained period, the proportion being consumed on paying wages will again be adversely affecting that measure.

4.10 In conclusion, LCCL is an independent provider and therefore the City Council has no legal powers over how they run their business. The authority's powers are limited to provision of care services and safeguarding of residents. There is a duty to deliver compliant services in line with the core contract and the quality of those services, which LCCL are delivering at this time.

4.11 It is also important to note that individuals who require residential care funded by the City Council can choose where they would like to live. Therefore, it is not possible to cease using LCCL homes, especially as they are situated predominately on council estates, where many existing residents and tenants wish to remain.

5 Scrutiny Overview

5.1 A detailed report was presented to the ASC Scrutiny Commission on 30.6.2020.

6 Financial

6.1 There are no financial implications arising from this report.
Martin Judson, Head of Finance

7 Legal

7.1 The report summarises the position and there are no direct legal

implications arising out of the report.

Julia Slipper, Principal Lawyer, ext 6855

8 Equalities

8.1 Under the Equality Act 2010, public authorities have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

There are no direct equalities implications arising from the report recommendations as the report provides information and is for noting. LCCL also have their own responsibilities under the Equality Act in terms of both employment and service provision (as a provider of public services).

Sukhi Biring, Equalities Officer, 454 4174

9. Climate Change

9.1 There are no climate change related implications associated with this report.

Aidan Davis, Sustainability Officer, Ext 37 2284

10. Appendices

None

11. Background Papers

Previous report to the ASC Scrutiny 30.6.2020