



Essex County Council Branch

# Does Excelcare really?

An investigation into the transfer of 10 residential care homes by Essex County Council to Excelcare Holdings PLC



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The **European Services Strategy Unit** is committed to social justice, through the provision of good quality public services by democratically accountable public bodies, implementing best practice management, employment, equal opportunity and sustainable development policies. The Unit continues the work of the Centre for Public Services which began in 1973.

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# Executive Summary

Essex County Council decided to sell its remaining ten care homes in 2003 despite opposition. The homes were transferred to Excelcare Holdings Plc in March 2005. Staff were assured that TUPE would protect terms and conditions and would last “indefinitely”. The County Council would carry out a rigorous evaluation process with “stringent financial checks” of the bidders.

Less than two months later, Excelcare informed staff that current operating practices had been reviewed and they ‘wished to explore’ an alternative rota system (6-6-12 hour rota) and ‘restructure some positions’ in each home. Consultation meetings followed and despite staff opposition a new rota system was imposed in August 2005 together with changes in contracted hours.

Excelcare commenced consultation on radical changes to terms and conditions which included a reduction in pay rates and earnings – many staff would lose between 30% - 40% of their income, a reduction in holidays and loss of sickness benefit (only Statutory Sick Pay) and the loss of night shift rates because Excelcare proposed a 24 hour rate. Excelcare proposed a Voluntary Release Compensation this was less than three years loss of wages, let alone the loss of pension rights, fewer holidays and the financial loss of the sick pay scheme.

A few staff accepted the offer but most did not, even after Excelcare extended the consultation period. It introduced a second, higher, compensation scheme later in 2006. A majority of staff still refused to accept the drastic cut in terms and conditions. In November 2006 it imposed the new terms and conditions in five homes by terminating the contracts of all staff who had not accepted the offer. Those who continued working were paid at Excelcare rates and not the Essex County Council pay rates transferred under TUPE. There are now 40 tribunal unfair dismissal cases pending.

## **Separate companies and parent company in tax haven**

UNISON and staff became aware that Excelcare was operating the homes using ten separate companies in March 2006. The County Council later admitted that it was aware that Excelcare was intending to register each home as an individual company.

Excelcare Holdings PLC is registered in England and Wales, which in turn is owned by the ultimate parent company, Excelcare Group Ltd, which is registered in Jersey, Channel Islands. The ultimate owner is Mr R.O.Ertosun who resides permanently overseas. Excelcare Holdings has about 40 subsidiary companies, including ten in Essex.

The County Council claims to be saving £3.5m per annum by transferring the 10 Older People’s homes to the private sector. In Staff Briefings in October 2003 staff asked the obvious question – How is it possible for the new provider to run the home on less money? The County Council’s response revealed the real economics – “The new provider will have less overheads than ECC and so is able to provide the service for less money, but expenditure still exceeds income. The longer term solution is to build additional beds, thereby increasing income.”

## **TUPE transfers**

Employees transfer to a new employer with their statutory employment rights such as continuity of employment and contractual entitlements intact. Terms and conditions cannot be changed except for a reason wholly unconnected with the transfer or for an Economic, Technical or Organisational reason entailing a change in the workforce. Changes can only be made by agreement and after consultation with the relevant staff and trade unions. Any dismissal by reason of the TUPE transfer will be automatically unfair unless it is for an ETO reason.

The Code of Practice on Workforce Matters and Local Authority Service Contracts (ODPM Circular 03/2003) requires that new staff must be engaged on terms and conditions no less favourable to the transferred staff. This is intended to prevent a two-tier workforce.

### **Important questions**

The sale of the homes raises very important questions:

- 1) How can Essex County Council be confident that the tendering process and evaluation was rigorous and stringent?
- 2) Essex County Council planned to make a substantial savings by paying a weekly fee per resident significantly lower than its own costs. Their knowledge of Excelcare's plans to operate the homes through ten separate companies and other subsidiaries, the delay in increasing income by extending some of the homes would have indicated that these initiatives would not bridge the financial gap and therefore there was a significant risk that terms and conditions would be changed. What did the County Council know about these plans?
- 3) To what extent did the County Council understand Excelcare's corporate structure and how it intended to use different companies for different functions?
- 4) What risk did the County Council attribute to Excelcare changing terms and conditions shortly after the contract commenced – or was this risk ignored because it would be the staff that bore the financial and social consequences and not the County Council?
- 5) Did Excelcare get their bid fundamentally wrong, and if they did, why was this not revealed in the evaluation? If this is not the case and the evaluation did not reveal any financial flaws, then Excelcare must be operating to achieve even larger profits.
- 6) Were there any internal reservations about the transfer or did the County Council proceed with the transfer of the homes because they did not want to face the political consequences of reversing their decision?

Essex County Council must have been aware during the procurement process that Excelcare were going to operate the contract through 10 separate companies. This should have been identified before the shortlisting stage when companies expressing an interest would have been investigated and assessed.

There is no evidence that the County Council:

- Examined the economic and employment implications of operating residential care homes through 10 separate companies during the contract evaluation process.
- Considered the long-term implications for residents and staff;
- Specifically informed staff and/or the trade unions that the County Council would be transferring the operation of the homes to 10 separate companies.
- Informed the staff or trade unions that the land and buildings would be transferred to a separate company of Excelcare Holdings.

### **Why separate companies?**

Firstly, it enables Excelcare Holdings to use the exemption clause (Part 7) in the Companies Act 1985, which exempts small companies from having to provide full accounts.

Secondly, having individual companies facilitates Excelcare's claim that there is a financial crisis, which is the basis of their attempt to change terms and conditions of transferred staff.

Thirdly, it enables Excelcare to conceal the level of expenditure on different aspects of care.

Finally, it also enables them to claim, as they have done on several occasions, that there are insufficient funds to fund pay increases.

However, these figures were transformed by 'administrative expenses' totalling £4.8m being imposed on each home. The individual amounts of 'administrative expenses' ranged from £399,450 for Saffron up to £534,933 for Dovercourt. These expenses meant that the gross operating profit of £516,605 for the 10 homes in 2005/06 was turned into an operating loss of nearly £4.3m. The company accounts do not provide any information about the composition of the 'administrative expenses' and this is legally acceptable under the exemptions for small companies claimed by Excelcare under the Companies Act 1985.

The trading outlook forecast a 15.3% reduction in staff costs between the ten month period ending January 2006 and the 2006/07 financial year. In contrast, Excelcare expected their income per bed per week in the ten homes to increase by 22.8% in the same period. Operating profit/loss is forecast to change from a loss of £71 per bed per week to a £17 profit in the same period.

### **Impact of Excelcare changes to terms and conditions**

A Health Care Assistant working 30 hours a week would suffer a cut in the hourly rate from £7.45 to between £5.54 and £6.09, a loss of £218.87 per week or £2,626.44 per annum (see Table 10). Furthermore, they would lose 9% of their holidays and lose all but Statutory Sick Pay.

Excelcare's strategy has led to significant change in staff. A profile of one care home shows that 19 of the original staff transferred by Essex remain employed in the home but they have steadfastly refused to sign the Excelcare agreement and accept significant cuts in terms and conditions. Fifteen of the original staff who did sign the agreement remain employed in the home. However, 19 staff have left and seven new staff have been employed.

It is important to state that the 19 staff who have refused to sign the Excelcare agreement cover all categories of staff including shift leaders, senior night care staff, care assistants, night care assistants, cooks, domestics and administrators.

### **Other issues raised by staff**

Staff who took part in the semi-structured interviews and discussions raised a number of issues:

- Staff shortages often meant too few staff were available to get 40 residents, many with dementia, ready for bed.
- Residents who have to go to hospital are not always escorted by a member of the care staff because of insufficient staffing levels.
- Inadequate staffing levels also mean that residents cannot be taken for a walk.
- Some activities coordinators had left because they often had to spend 50% of their time on care duties.
- None of the staff could remember there ever being an inspection during the night shift.
- English language difficulties of many agency and Polish workers (who were respected by the permanent staff) did raise care and communication and health and safety issues for residents and staff.
- Excelcare reduced spending food from over £23 per person per week by Essex County Council (2004/05) to £14.22 (excluding green grocery). This figure has recently risen to just over £17 per person per week. Excelcare reduced the allowance to residents to buy a Xmas present from £10.00 to £2.00. The purchase of an Easter egg for residents was stopped.
- Visitors to homes such as spouses and relatives spending time at the home were charged £1.08 per meal but this has been increased to £3.00.

- There are constant mistakes and non-payment of wages. Staff rarely get a response about payroll queries from Excelcare Holdings Bromley regional office.
- The 12 hour shift (a 20% increase on those operated by the County Council) was imposed by Excelcare with limited consultation although the company refers to them being 'voluntary negotiated'.
- The 2.95% pay rise due from the 1 April 2006 had still not been paid 13 months later.
- Excelcare changed the supply of cleaning materials, which are now of an inferior quality compared to those previously used.

### **CSCI inspection of the Essex Homes**

The ten homes were inspected by the Commission for Social Care Inspection (CSCI) between October 2005 and December 2006 with eight homes inspected between one year and 19 months after the homes were sold to Excelcare.

The CSCI inspections cover only a narrow aspect of the quality of employment. The inspection is essentially concerned about the number of staff, recruitment policy and procedure and the level of training. In three cases the inspection did not even cover all four standards and in another case the inspection report omitted to identify which standards had been inspected.

Each of the ten inspection reports were examined to assess the degree to which they met the four CSCI standards and the extent to which the inspectors identified other employment issues. Only one inspector referred to employment contracts. There is little evidence that any of the other inspectors were either aware of Excelcare's employment strategy or thought it relevant to their inspection. This makes a mockery of the inspection process.

- 80% of homes did not meet the National Minimum Standard requirement to have 50% of staff with NVQ Level 2 or above qualification. The Sweyne care home had no NVQ trained staff and at the Saffron home 75% of the staff team were required to be placed on the NVQ Level 2 training course.
- Nine out of ten homes, except Greenways, were judged to have sufficient staffing levels (see below for further details).

**Goldenley** (Inspected 27 October 2006) *"Staff morale is still low in some staff due to uncertainty in their future employment within the home."*

**Greenways** (Inspected 10 and 17 May, 2006) *"A consistent view of staff, residents and some relatives is that there are insufficient care staff on duty."*

**Longfield** *"Residents may be placed at risk when left unsupervised unless a more coordinated approach is taken when staff take breaks."*

**Okeley** *"Domestic staff or hours may need increasing due to lack of cleanliness of the home."*

**Sweyne** *"Staff spoken to during the Inspection stated that they did not feel there were enough staff upstairs as the dependency levels were very high and they were also in two lounges.....The home does not at present have any NVQ 2 staff."*

The Adult Social Care Approvals and Monitoring Units report of Excelcare's performance focused on the quality of food and the quality and quantity of nutritional intake. Excelcare refused to attend the Adult Social Care Policy Development Group public meeting on 29 November 2006. Instead, the company attended a private meeting with Essex County Council on 16<sup>th</sup> October 2006. Excelcare had nine representatives, present compared to three Councillors and one officer. No criticism was made except by the Leader of the Labour Group.

Following the ASCPDG meeting in November the Cabinet agreed three recommendations at its January 2007 meeting. It agreed to encourage Elected Members to take up their

'Community Leadership role' and visit homes to review the quality of services, carry out an annual review to include visits review reports and service user and carer views on the establishments and complaints procedures should be made more visible.

Essex County Council and Excelcare are aware of, and exploit, the professionalism and dedication of staff who will not allow their personal and employment circumstance to affect the quality of care to service users.

The government and the CSCI inspection regime similarly know about and exploit this dedication by constructing standards and inspection processes, which deliberately exclude the quality of employment. The focus is only on whether staff have the relevant training and qualifications. This means that the conditions under which staff have to work are treated as irrelevant. The only consideration is the quality of care. This is a major abrogation of employment responsibilities by the employer, the County Council and the government. Because the quality of employment is directly linked to the quality of service, it ultimately means that they are responsible for reductions in the quality of care and the well being of elderly persons.

These regimes are designed not to address the quality of employment and how staff are treated except where this impacts on residents. The Monitoring Unit's approach was to express concern that a trade union dispute might affect the quality of care. There was no concern for the staff or the legitimacy of their grievances. This is further proof of the extent to which neoliberal ideology is established in public management.

### **Policy and procurement lessons**

A number of questions are raised about the extent and depth of the research into Excelcare's suitability, the evaluation of bids, negotiations with Excelcare, whether the company produced a Business Plan, the lack of consultation with trade unions and failure to disclose vital information.

There are also several observations to make about the 'Essex Approach'/Corporate Plan and the 'Procurement Principles':

**Firstly**, there is no reference to staff and employment in the Procurement Principles although the Essex Approach does refer to "*develop and support its staff and recognise their achievements*" and a commitment "*to fairness and enable equal access to opportunities for all.*" In the light of the Excelcare contract, this is a rather vacuous statement.

**Secondly**, "the principles of fairness, openness and transparency" (1.1) and the highest standards of honesty, integrity, impartiality and objectivity (1.7) appear to be selectively and narrowly applied in the sale of the 10 care homes to Excelcare.

**Thirdly**, mission statements, corporate policies and priorities and procurement principles are virtually meaningless unless they are translated into practice.

**Fourthly**, the County Council's procurement practice falls well short of the National Procurement Strategy for Local Government launched by ODPM and the Local Government Association in 2003.

The local authority's **Procurement Strategy** should also contain Protocols setting out how staff and trade unions will be involved in the different stages of the procurement process. They should cover in-house bids and public sector consortia, options appraisal, staff and trade union involvement, user and community involvement, social and community needs, equalities, sustainable procurement and community benefits.

The standard TUPE transfer does not provide adequate security and protection of terms and conditions for staff. Essex County Council should require TUPE Plus as a standard for future procurement.

### **Future scrutiny**



The scrutiny of the care homes by Essex County Council in November-December 2006 was regarded by staff, UNISON and the Essex County Council Labour Group very unsatisfactory – the latter described the recommendations as “*a cheap emulsion, the sole purpose of which is to cover over the real features and the failures of this whole sorry episode*” (Labour Group Minority Report, 2007).

In future, scrutiny should be rigorous and comprehensive which means that the operation of the care homes should be regularly reviewed with the quality of care, standards, quality of employment and operation and management of the contract all within scope.

### **The longer-term future quality of care**

The Essex/Excelcare partnership raises a number of important issues about the future quality of residential care. How can dignity, respect and quality of care be achieved and maintained if the workforce is constantly subjected to cuts in terms and conditions and low quality employment conditions. Care workers are committed but they are unlikely to remain in this sector when they can earn higher wages with better conditions in other jobs.

### **New Labour’s marketisation of care**

The Essex care contract is part of a wider marketisation and privatisation of public services. Although the care sector remains fragmented, corporate consolidation is continuing with the US private equity group Blackstock overtaking BUPA as the largest care home operator in Britain. Excelcare is a relatively small company in comparison. However, it is a New Labour ‘model’ company to the extent in which it is competing to be a ‘partner’ in the privatisation of local authority care homes, participate in Private Finance Initiative projects and enforce the implementation of ‘flexible’ labour market practices.

### **Recommendations**

The recommendations are divided into those pertaining to Excelcare Holdings PLC, Essex County Council and the Commission for Social Care Inspection.

#### **Excelcare Holdings PLC**

- Withdraw the changes to terms and conditions and revert to the TUPE transferred conditions, which includes holiday entitlement, sick pay and pensions.
- The 2.95% pay rise, which was due on 1 April 2006, must be paid immediately including all back pay due.
- Increase staffing levels to provide good quality care for residents.
- Reduce the 12-hour shifts to 10 hours.
- Compensate staff for the loss of earnings and stress caused since the transfer of homes in 2005.
- Increase expenditure on food and the paltry Christmas present allowance for residents and reinstate Easter eggs.
- Agree to improve transparency and disclosure of costs (Excelcare receive over £8m of public money annually, which will increase further when some of the homes are extended).

#### **Essex County Council**

The lessons learnt from the Excelcare contract must be implemented by amendments to the Council’s options appraisal and procurement processes, employment strategies and performance assessment.

- TUPE Plus must be adopted as the basic standard for all future transfers of staff.

- Revise the Procurement Strategy to ensure that the procurement principles and practices are fully implemented.
- Staff and trade unions should participate in the procurement process as recommended by the National Procurement Strategy for Local Government and best practice.
- Consider more comprehensive and regular monitoring of standards and practices in the Excelcare care homes.
- Inspections must be unannounced and ensure that care homes and companies are not tipped off about inspection dates and times.
- Scrutiny procedures should be revised to ensure a rigorous process which involves all stakeholders.

**Commission for Social Care Inspection**

- The CSCI inspection standards should be amended to include new employment standards.
- Inspectors should be required to talk with a staff/trade union representative during the inspection.
- Inspections must be unannounced and ensure that care homes and companies are not tipped off about inspection dates.

## Part 1

# Introduction and scope of research

UNISON Essex County Branch commissioned the European Services Strategy Unit, Northumbria University, to investigate the circumstances of the transfer of 10 residential care homes to Excelcare Holdings Plc in 2005. The research project included assessing the impact on staff of the subsequent changes in terms and conditions and operational changes in the homes.

### Methodology

The research had three main parts:

- Analysis of Essex County Council reports and minutes.
- Company research of Excelcare Holdings Plc, the 10 care home companies and other Excelcare companies.
- A series of structured interviews of UNISON members and discussion groups of staff from some of the care homes.

The ESSU would like to sincerely thank all the UNISON members who took part in the structured interviews and discussion groups for their contribution to this report.

### Essex care homes

The company names, location and number of beds in the 10 residential care homes is summarised in Table 1. All the companies were registered with Companies House on 9<sup>th</sup> September 2004. All are private limited companies which commenced trading on 16 March 2005. Each company has a share capital of 10,000 £1 shares with Excelcare Holdings PLC owning 9,900 Ordinary shares and Osman Ertosun, the sole director, with 100 Ordinary shares. The company secretary is Zarif Ertosun - see Part 3.

At no stage were staff or UNISON informed by Essex County Council or Excelcare that ten separate companies would operate the homes and/or employ staff (see Part 2).

Table 1: **The 10 residential care homes**

Home (Company name)	Location	No. of Essex CC Contract Beds
Ashlyn (Ashlyn Healthcare Ltd)	Harlow	42
Goldenleys (Goldenley Healthcare Ltd)	South Benfleet	38
Greenways (Greenways Healthcare Ltd)	Colchester	36
Lime Court (Dovercourt Healthcare Ltd)	Dovercourt	38
Longfield (Longfield Healthcare Ltd)	Maldon	40
Okeley (Okeley Healthcare Ltd)	Chelmsford	43
Sherrell House (Sherrell Healthcare Ltd)	Chigwell	42
Stanley Wilson Lodge (Saffron Healthcare Ltd)	Saffron Walden	37
Sweyne Court (Sweyen Healthcare Ltd)	Rayleigh	38
Winifred Dell House (Winifred Healthcare Ltd)	Brentwood	40
<b>Total</b>		<b>394</b>

Source: Report to Adult Social Care Policy Development Group, 29 November 2006

## Decision to outsource or transfer the homes

The Community Care Policy Development Group meeting on the 25 June 2003 recommended to Cabinet *“that the remaining 10 homes are outsourced to interested parties. That these parties should demonstrate the possibilities for increasing the overall bed capacity within Essex”* (Essex CC, 2003). Members were assured that *“contractual arrangements would be sought should any homes be outsourced, on issues such as the type of provision to be made; expansion/extensions; nomination rights; and Members visiting”* (ibid). Although there was a reference to maintaining staffing levels and training for staff dealing with residents suffering from dementia, the minutes contained no reference to concerns about the impact of transfer on staff.

The chairperson of the Community Care Policy Development Group (Councillor Dick) reported that three issues should underpin any proposal:

- No homes should close;
- It should not be finance-driven;
- It should lead to an increase in capacity, if at all possible.

The proposal to outsource was clearly finance-driven from the outset and to claim otherwise is being economical with the truth.

The proposal to outsource the homes through leasehold disposal or sale of the freehold of the 10 homes was part of the Service and Financial Planning for 2004/2005 report at the following months Cabinet meeting. Cabinet approved a two month consultation process prior to the sale.

The County Council claims to be saving £3.5m per annum by transferring the 10 Older People’s homes to the private sector. In Staff Briefings in October 2003 staff asked the obvious question – How is it possible for the new provider to run the home on less money? The County Council’s response revealed the real economics – *“The new provider will have less overheads than ECC and so is able to provide the service for less money, but expenditure still exceeds income. The longer term solution is to build additional beds, thereby increasing income.”* The County Council is reported to have cut its contributions to care homes from an average £650 per person per week to about £400 per person per week.

## Consultation

The County Council’s consultation process included separate meetings with relatives and staff at the homes and with Primary Care Trusts, District and Borough Councils and community organisations. A report to Cabinet in September 2003 summarised the a range of concerns such as the quality of care and staffing levels decreasing after transfer, increasing fee levels dictated by the independent sector, ensuring access to all the beds transferred and to new beds once they are built, control over the future use of land and possible resale of homes.

The report to Cabinet also included the following statement in relation to staff:

### ***“What protection exists for staff under TUPE?”***

*A pre-condition for care home proprietors to be short listed for any homes or day care centres in the past, is their acknowledgement that TUPE applies and their willingness to provide comparable pension schemes to those staff currently in the County Council scheme.*

*Staff will receive regular briefings on TUPE. TUPE would protect their existing terms and conditions when they transfer. TUPE liability would also be transferred to any subsequent owner.”* (Essex CC CAB/081/03).

Some staff interviewed stated that they never had regular TUPE briefings.

## Opposition to the sale of homes

The Summary of Findings in the County Council report concluded that:

*“It is clear that any proposed change in relation to the future management of older persons homes and day care centres, is not broadly welcomed by service users, relatives and staff. This was the response to two previous consultation processes, which preceded earlier transfers. In the event, these transfers have proceeded satisfactorily, and have yielded additional capacity in relation to access to services” (ibid).*

*“There has been a strong request that if any transfer proceeds, stringent legal conditions should be placed upon contractual arrangements to protect, both the position of service users and that of the County Council.”*

*“A preference was expressed on transfer by way of leasehold instead of freehold, as there is a popularly held belief that this retains more control for the County Council.”*

The report also stated that:

*“Staff are protected by TUPE. This includes the requirement that any contractor needs to provide comparable alternative pension arrangements” (ibid).*

The County Council estimated the cost of the sale to be £90,000 and Cabinet approved a project plan for building surveys, appointment of selling agents and to commence the procurement process. Labour and Liberal Democrat Groups expressed opposition to the proposal.

A 3,000 named Petition presented to County Council on 14 October 2003 opposing the recommended action but this was carried 45 for: 29 against (Minutes of Meeting).

In April 2004 Cabinet agreed to transfer the 10 homes to Excelcare on a freehold basis, that all staff transfer to Excelcare by way of a TUPE transfer and parallel investigations be undertaken with Excelcare on a greater redevelopment option to secure maximum new beds. A “fall back” option was set out in the report. We have not been able to obtain a copy of this report (CAB/036/04).

Council decisions between September 2003 and April 2004 effectively meant:

- The consultation findings were ignored.
- The strong views about leasehold rather than sale of freehold had been ignored.
- Misinformation had been used to give a false sense of security to staff and all those concerned about their future and that of the residents.

## TUPE protection

Employees transfer to a new employer with their statutory employment rights such as continuity of employment and contractual entitlements intact. Terms and conditions cannot be changed except for a reason wholly unconnected with the transfer or for an Economic, Technical or Organisational (ETO) reason entailing a change in the workforce. Changes can only be made by agreement and after consultation with the relevant staff and trade unions. Any dismissal by reason of the TUPE transfer will be automatically unfair unless it is for an ETO reason.

The Code of Practice on Workforce Matters and Local Authority Service Contracts (ODPM Circular 03/2003) requires that new staff must be engaged on terms and conditions no less favourable to the transferred staff. This is intended to prevent a two-tier workforce.

The Code of Practice also provides protection over and above the provisions of TUPE with regard to pension. Transferring staff must have ongoing access to the Local Government Pension Scheme (LGPS) or (where staff are being transferred to a new provider which does

not have Admitted Body status in the LGPS) be offered an alternative broadly comparable occupational pension scheme, as evidenced by a certificate issued by the Government Actuary's Department. New staff must have access to a pension scheme providing at least a 6% matched contribution.

## Part 2

# Procurement process and transfer

The decision to proceed with the sale and transfer of the Older People's homes was made by Cabinet on 30 September 2003 and confirmed by the full Council two weeks later.

The County Council wrote to all staff to 'reassure' them about the future and that staff meetings with HR and trade union representatives had been arranged. *"Any prospective new owner will need to go through a rigorous process of evaluation before the stage of tendering"* and demonstrate that they have the financial resources, experience, policies and standards and organisation and commitment to TUPE and pension provision, maintaining a quality service and other matters (Letter from Roger Sinden, Head of Community Care, 14 October 2003).

A Questions and Answers briefing was compiled following the staff briefings in October 2003 which included a section on employees. This section contained the following questions and answers by Essex CC:

Will there be any redundancies?

***"No. The home is not being closed and therefore nobody will lose their job."***

How long does protection under TUPE last?

***"Indefinitely. If any changes are required, consultation and negotiation will be necessary. There must also be a good reason to change terms and conditions"***  
(Essex County Council).

### Evaluation

In reply to questions at staff briefings in October 2003, the County Council said that the evaluation process would be a two-stage process. A financial team would consider financial viability and a professional quality team would assess the quality of care, previous experience and ability to provide more capacity. However, we have been unable to identify the detailed criteria which were used to assess the bids.

Q. What criteria will the new provider have to meet?

A. ....Stringent financial checks will also be carried out, together with ensuring the suitability of their proposed pension scheme and their commitment to TUPE.....

Q. What if the new provider goes bankrupt?

A. This is unlikely, as the new provider will be required to show that they will be able to absorb losses in the first few years of running the home and references will be sought, as part of the selection process.....

Another question and answer from the same briefing suggested that the County Council and Excelcare knew more than they were revealing.

Q. How is it possible for the new provider to run the home on less money?

A. The new provider will have lower overheads than ECC and so is able to provide the service for less money, but expenditure still exceeds income. The longer-term solution is to build additional beds, thereby increasing income.

The evaluation process should have included a detailed financial assessment of each bidder

provision to meet their TUPE and Code of Practice obligations over the contract period. This should include comparing current staffing costs with the financial resources in Excelcare's bid. If discrepancies or uncertainties arose the County Council should have required Excelcare to provide evidence in response to the questions and clarifications sought by the County Council. This is normal procurement practice. A reasonably proficient assessment would almost certainly identify any gaps or shortfalls, which would indicate that the bidder intended to significantly reduce staffing levels and/or change terms and conditions of employment.

### **Transfer plans**

Staff were informed by letter from the County Manager that the County Council had exchanged contracts with Excelcare Holdings Plc on 12 November 2005 and that the transfer of the homes was legally binding. The Council could not give a final completion date because the Commission for Social Care Inspection were dealing with Excelcare's application for registration. The County Manager hoped the transfer would be completed by the end of January 2005.

Staff received a letter headed 'Transfer to Excelcare Holdings' from the County Council's Human Resource Service on 11 February 2005 notifying them that, following the award of the contract to Excelcare Holdings, that it is the Council's view that TUPE applies and their contract of employment will therefore transfer to Excelcare on 1<sup>st</sup> March 2005. Another letter dated 15 March 2005 confirmed the transfer of homes to Excelcare Holdings on that date.

The 10 homes were transferred to Excelcare on 15 March 2005. Less than two months later, on the 9 May 2005, staff received a letter informing them that current operating practices had been under review and that they 'wished to explore' an alternative rota system (6-6-12 hour rota) and 'restructure some positions' in each home. The aim was to maximise quality and continuity of care and efficiency and cost-effectiveness of the operation of the homes. A meeting with UNISON was held on 11 May immediately followed by consultation meetings in each home with a formal 30-day consultation period commencing on 16 May. Staff were informed by letter on 1 July 2005 that the new rota system would commence on 1 August 2005 and staff were also notified on changes in the number of contracted hours.

Another period of consultation commenced in September 2006 when staff received a letter from Excelcare stating that "some changes have been made to improve efficiency of the service" and reassuring staff that they had no plans to close any home.

### **TUPE**

The policy to persuade staff to accept changes to their terms and conditions was initiated and orchestrated by Excelcare Holdings PLC. Staff notices informing them of the date and time of staff meetings in all the homes and letters giving notice of operational changes in the care homes came from Excelcare's Essex Regional Office. The timing and scale of the changes indicate that:

- They were planned during the procurement process.
- Excelcare's bid was based on these changes and therefore the notice to staff for changes in rotas and harmonisation had been planned for implementation almost immediately the contract commenced.
- The County Council must have known about (or should have anticipated) this situation prior to transfer as a result of their assessment of the bid and/or during contract negotiations with Excelcare.

The evidence indicates that changes to terms and conditions were planned and that the 'financial losses' were not a surprise to the company. The plan was to try to achieve substantial changes to terms and conditions in five homes and then mainstream this strategy to the remaining homes.



So called 'voluntary harmonisation' means cuts in terms and conditions for transferred staff which usually leads to some staff leaving. They are replaced by staff on lower terms and conditions – no pension, no sick pay, fewer holidays and reduced pay thus significantly reducing staff earnings and Excelcare's employment costs. Excelcare have known that the staff standards in the CSCI inspection of homes is one dimensional and could not be used to challenge changes to terms and conditions and the quality of employment (see Part 5).

**Awareness that each home was a separate company**

Staff and UNISON became aware that each home was a separate company in March 2006. UNISON demanded to know:

- Was the County Council aware that Excelcare were intending to register each home as a private company?
- Which company did the staff transfer to?
- Did the County Council know that Excelcare was intending to transfer staff on again to a company owning each home?
- Did Excelcare's tender and subsequent contract negotiations with the County Council contain any reference to the transfer of assets and staff to individual companies?
- Did Excelcare's tender contain any reference to changing the terms and conditions of staff?
- Who owns the property for each residential home?

(UNISON letter to County Manager, March 2006)

Excelcare claimed that "all the payslips from the time we commenced paying them clearly states the name of the company" (letter from Osman Ertosun, Chief Executive, Excelcare Holdings Plc to UNISON, 30 March 2006). But the previous Essex County Council payslips also included the name of the home and since all participants referred to 'Excelcare' as the employer, and because neither the County Council nor Excelcare had informed them about the ten separate companies, it is not surprising that staff did not query until March 2006.

In fact, it was a statement made by an Excelcare HR manager at a consultation meeting, which alerted staff to the fact that Excelcare were operating through separate companies.

The County Manager for Older Peoples Services South admitted in April 2006 that:

The County Council was aware that Excelcare was intending to register each home as an individual company.

Staff were transferred to the relevant company for each home.

*"I can assure you that after looking at the tender again, Excelcare made no reference to the removal of the transferred staff terms and conditions."*

Had the County Council "had any awareness in their bid details or otherwise, of their intention to reduce the pay of staff, once they had transferred, it is quite likely that ECC would have excluded Excelcare from the shortlist of possible providers"

*"the homes were sold by ECC in good faith and we took the usual stringent measures to ensure that the business integrity, financial stability and assets to be able to continue to run the homes to the high standards that our residents and staff were used to and in accordance with quality standards"*

The buildings and land for each home is owned by Excelcare Equities Ltd.

(letter from Howard Tomlin, 16 April 2006)

### **Corporate confusion**

The County Council refers to the following different Excelcare companies:

- Excelcare Holdings Plc.
- Excelcare Homes Ltd (letter to staff informing them of Cabinet decision on 27 April 2004 that transfer had been agreed, from Howard Tomlin).
- Excelcare Acquisitions Limited (Agreement between Essex County Council and Excelcare relating to the sale of Homes, 12 November 2004).
- Excelcare Equities Ltd - letter from Howard Tomlin, 16 April 2006, states that this company owns the buildings and land.

Companies House has no record of Excelcare Acquisitions Ltd, Excelcare Homes Ltd or Excelcare Equities Ltd.

The Excelcare Holdings PLC annual report refers to related party transactions as the company owed Excelcare Equities Ltd and Excelcare Investments Ltd £200,000 and £250,000 respectively in the 2005 and 2006 accounts. It states that the companies are “part of a larger group which makes them related parties.” A search of directorships of E. Ertosun, O. Ertosun and Z. Ertosun did not reveal them being a director of any the latter companies.

It seems clear that Essex County Council knew that Excelcare had set up separate companies in September 2004 and planned to use these companies to operate each of the homes. This information was never passed on to the trade unions at any stage of the procurement process. The final Agreement for the sale of the homes, signed on 15 March 2005, was between Essex County Council and each of the 10 separate care companies.

The sale of the homes raises very important questions:

- 1) How can Essex County Council be confident that the tendering process and evaluation was rigorous and stringent?
- 2) Essex County Council planned to make a substantial savings by paying a weekly fee per resident significantly lower than it's own costs. Their knowledge of Excelcare's plans to operate the homes through ten separate companies and other subsidiaries, the delay in increasing income by extending some of the homes would have indicated that these initiatives would not bridge the financial gap and therefore there was a significant risk that terms and conditions would be changed. What did the County Council know about these plans?
- 3) To what extent did the County Council understand Excelcare's corporate structure and how it intended to use different companies for different functions? There appears to have been a merging of corporate interests to the extent that the County Council was committed to transferring the homes and Excelcare was committed to acquiring them. However, this situation also raises questions about Elected Members fiduciary duty and the public interest.
- 4) What risk did the County Council attribute to Excelcare changing terms and conditions shortly after the contract commenced – or was this risk ignored because it would be the staff that bore the financial and social consequences and not the County Council?
- 5) Did Excelcare get their bid fundamentally wrong, and if they did, why was this not revealed in the evaluation? If this is not the case and the evaluation did not reveal any financial flaws, then Excelcare must be operating to achieve even larger profits.
- 6) Were there any internal reservations about the transfer or did the County Council proceed with the transfer of the homes because they did not want to face the political consequences of reversing their decision?

## The sequence of events

**June 2003:** Community Care Policy Development Group meeting approves a report (CC/22/03) to outsource the ten care homes.

**July 2003:** Cabinet meeting on 8 July agrees proposal to commence consultation on plan to transfer the homes either through leasehold disposal or sale of the freehold of the ten residential homes for Older People.

**September 2003:** The Cabinet on 30 September re-confirms the plan to transfer the homes to the private sector

**April 2004:** The Cabinet approves a new contract for the residential homes on 27 April.

**September 2004:** 10 new companies, one for each home, were registered by Excelcare Holdings Ltd with Companies House on 9 September 2004.

**November 2004:** A 'Disposal Agreement' was signed on 12 November between Essex County Council, Excelcare Acquisitions Ltd and the Contractor for each individual home. Staff receive a letter from Essex County Council's Community Care Manager stating that the County Council has exchanged contracts with Excelcare Holdings Plc and the proposal to transfer each named home to Excelcare was now legally binding.

**February 2005:** Staff receive a letter from Essex County Council Human Resource Service, 'Transfer to Excelcare Holdings', informing them that their contract of employment will transfer to Excelcare on 1<sup>st</sup> March 2005 and notifying them that in the Council's view the Transfer of Undertakings (Protection of Employment) Regulations 1981 will apply.

**March 2005:** Essex County Council and each of the 10 companies signed An Agreement on 15 March 2005 regarding the transfer of staff, pensions arrangements and indemnities.

**May 2005:** Consultation commenced with trade unions following Excelcare review of operations. The company demanded the introduction of a new rota system with 6,6 and 12-hour shift pattern system, a review of ancillary (domestic and laundry) rota of the gardener/general hand role. 30 day consultation period started 16 May 2005. The 10 individual companies were each registered with the Data Protection Register on 6th May 2005.

**January-February 2006:** Consultation on changes to term and conditions. 30-day consultation period extended to 28 February 2006.

**March 2006:** Staff and UNISON become aware of the existence of the 10 separate companies.

**April 2006:** Essex County Council Adult Social Care Manager states "Essex County Council was aware that Excelcare were intending to register each home as an individual company" (Letter to UNISON, 19 April 2006).

**September - November 2006:** Consultation meetings on a voluntary offer to change terms and conditions which was followed by a formal notice of termination of employment issued "for compelling business reasons" to those staff who did not accept the voluntary offer.

**November 2006:** Letter from Excelcare informing staff who had refused to sign the agreement for new terms and conditions that their contract of employment had been terminated. Excelcare stop paying Essex County Council terms and conditions to staff still in employment but refusing to sign the agreement.

**November 2006:** Essex County Council hold Scrutiny meetings into operation of the care homes. Excelcare refuse to attend and the County Council holds a private meeting with the company.

**January 2007:** Essex County Council Cabinet agrees three weak recommendations following the Scrutiny meeting. The Labour Group issued a minority statement strongly criticising the process.

The procurement process started following the consultation process and after a report to Cabinet in September 2003. At the same time, the National Procurement Strategy for Local Government was launched following the Byatt Review of Local Government Procurement for the ODPM and Local Government Association published in 2001 (*Delivering Better Services for Citizens*). There is no evidence that the improvements in procurement policies and procedures had any impact on the sale of the care homes and transfer of staff.

**Conclusion**

Essex County Council must have been aware during the procurement process that Excelcare were going to operate the contract through 10 separate companies. This should have been identified before the shortlisting stage when companies expressing an interest would have been investigated and assessed. Since the procurement process was conducted behind closed doors with little or no consultation with Elected Members and no consultation with the trade unions

There is no evidence that the County Council:

- Examined the economic and employment implications of operating residential care homes through 10 separate companies during the contract evaluation process.
- Considered the long-term implications for residents and staff;
- Specifically informed staff and/or the trade unions that the County Council would be transferring the operation of the homes to 10 separate companies.
- Informed the staff or trade unions that the land and buildings would be transferred to a separate company of Excelcare Holdings.

## Part 3

# Economics of the Essex contract and the Excelcare company strategy

### Introduction

This chapter examines the structure of the Excelcare group of companies, how different functions and responsibilities are organised in different subsidiaries with the ultimate company registered in the Jersey tax haven.

### Excelcare company structure

Excelcare Holdings PLC is registered in England and Wales which in turn is owned by the ultimate parent company, Excelcare Group Ltd, which is registered in Jersey, Channel Islands. The ultimate owner is Mr R.O.Ertosun who resides permanently overseas. Excelcare Holdings has about 40 subsidiary companies, including ten in Essex. The accounts for the year ending 31 March 2005 included a statement:

*“The dividend of £524,700 paid to Latchley Ltd, which owns 100% of the shares of the company, during the year was in contravention of the Companies Act 1985 to the extent of the accumulated costs of £275,116. Under section 277 of the Companies Act 1985 this is repayable by Latchley Ltd on demand. The company as a consequence has a contingent asset amounting to £275,116 at the end of year date.”*

The accounts show that the £524,700 was a ‘dividend received from subsidiary companies in this period. The Excelcare Holdings accounts also show that no payments were made for Director’s Emoluments, for services as Chairman and Director, or for salaries. The accounts for Excelcare Developments, also owned by Latchley Ltd, show that the Director was paid £69,887 in the same financial year. Assuming that the administrative costs of Latchley Ltd are merely legal/administrative in Jersey, then the £524,700 dividend plus the £69,887 paid in fees to the Director of Excelcare Developments Ltd, approximately £595,000, is the income earned by the three Ertosun directors in the financial year 2004/05.

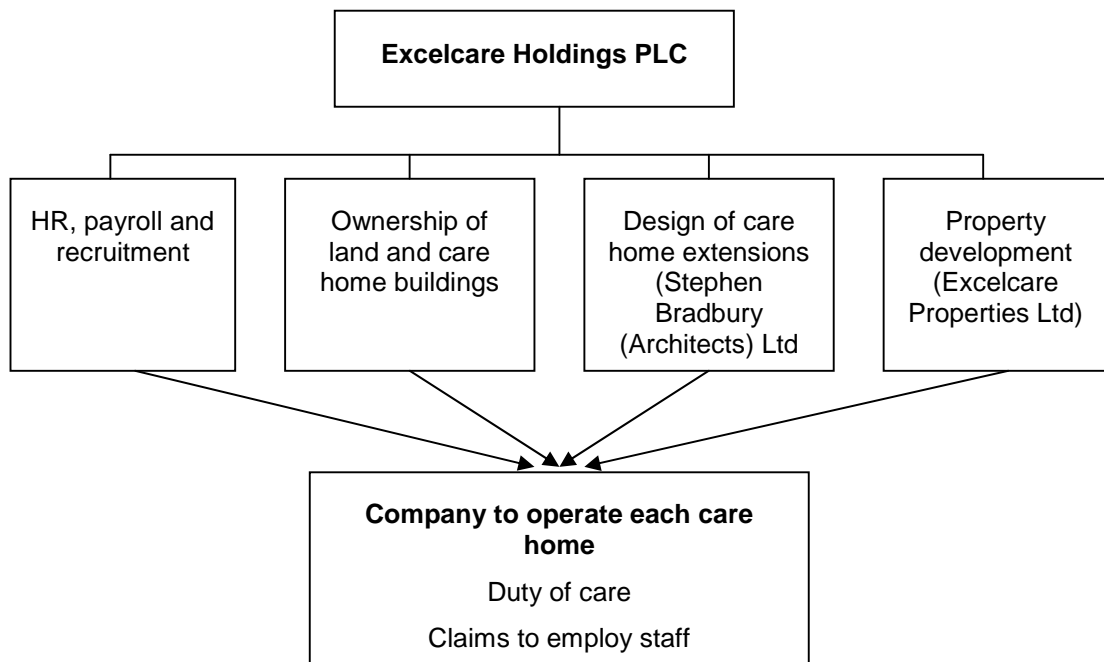
Excelcare Holdings PLC operates with a two-tier structure. The first tier consists of subsidiaries which carry out specific activities across the company. For example, Excelcare Properties Ltd, Excelcare Developments Ltd and Stephen Bradbury (Architects) Ltd and carry out work for the company as a whole and for all the care homes in Excelcare management and/or ownership. The second tier consists of separate companies established for each care home in Essex and other local authorities – see Figure 1.

### Why separate companies?

There are four advantages to Excelcare in operating through separate companies:

Firstly, it enables Excelcare Holdings to use the exemption clause (Part 7) in the Companies Act 1985, which exempts small companies from having to provide full accounts. This saves accounting fees (and offsets the additional cost of having individual companies for each home). If all of the homes operated by Excelcare were operated through one company the company could not claim exemption as a small company. It would therefore have to publish more detailed accounts.

Figure 1: How Excelcare divides responsibility between companies



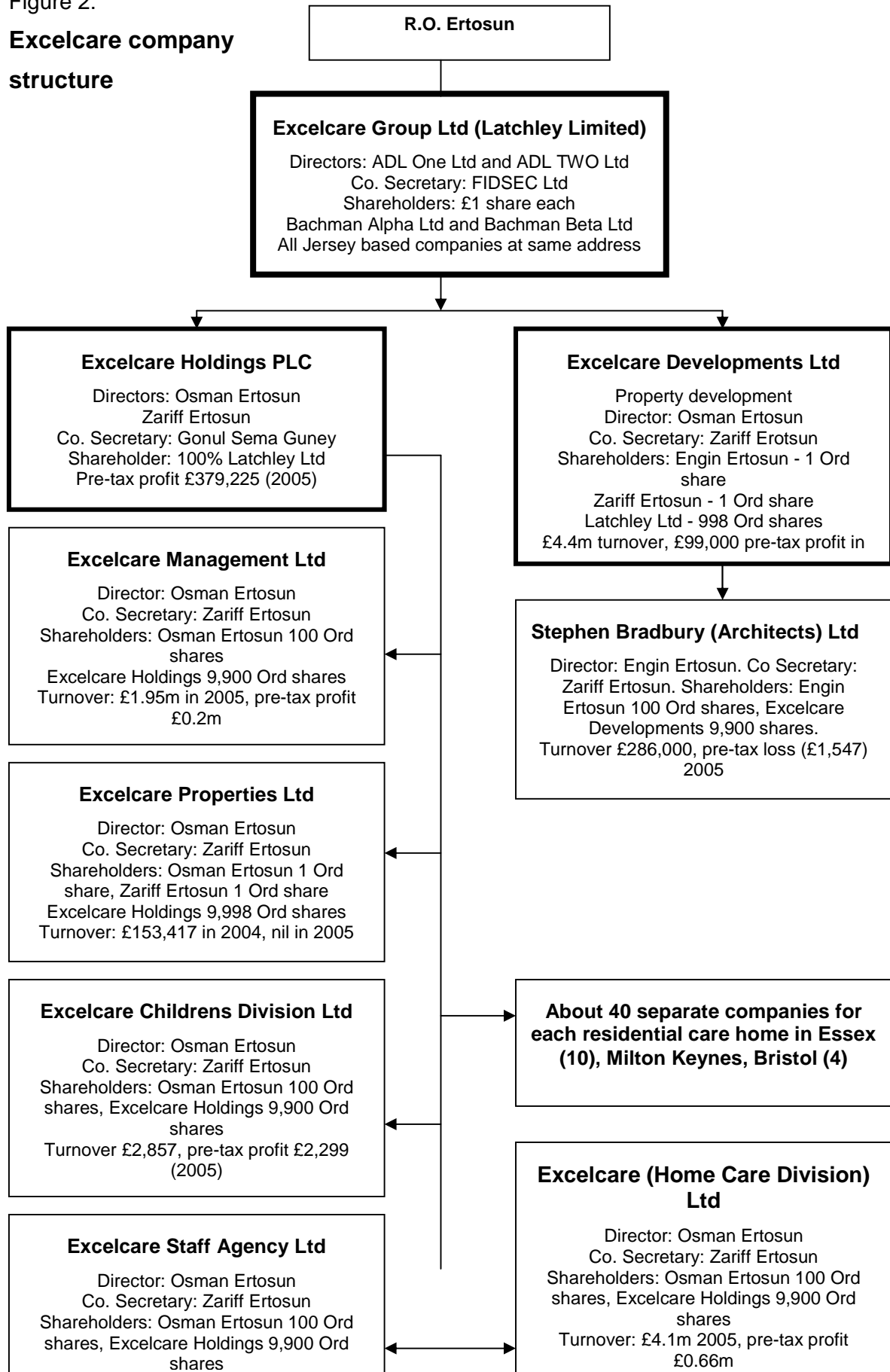
Secondly, having individual companies facilitates Excelcare's claim that there is a financial crisis, which is the basis of the strategy to change terms and conditions of transferred staff. This financial crisis is often referred to a "cash flow crisis". The company strategy is to require each company to operate independently whilst having access to the resources of a company with about £35m annual turnover. Establishing individual companies is deliberately designed to facilitate the removal of TUPE transferred terms and conditions.

Thirdly, it enables Excelcare to conceal the level of expenditure on different aspects of care. For example it is not possible to identify the level of expenditure on food, maintenance, activities or other aspects of care because the accounts do not breakdown the type of expenditure and provide only an overall figure. This means that it is impossible to carry out a forensic analysis of Excelcare's operating costs in all ten companies.

Finally, it also enables the company to claim, as they have done on several occasions, that "the Homes have a very serious financial problem and consequently this pay award (2.95% due in April 2006) and back pay will have to be delayed as there is insufficient cash flow to pay now" (Letter from Excelcare, Essex Regional Office to Michelle Bradley, UNISON, 10 August 2006). Twelve months later, the pay award had still been paid by Excelcare whose standard response is that they "cannot afford it."

It is clear that Excelcare micro-manages from the centre. The managers of homes do not have any autonomy because the pay scales, staffing model, suppliers, maintenance regime are all set by Excelcare Holdings. For example, managers have no power to change a catering supplier.

Figure 2:  
Excelcare company structure



The performance of the 10 care companies in 2005/06, the first full operating year, is summarised in Table 2. The turnover of each home ranged from £789,956 in Longfield to £1,020,133 in Saffron. Six of the homes (Ashlyn, Greenways, Okeley, Sherrell, Saffron and Winifred) had a gross operating profit of between £2,830 (Greenways) and £187,069 (Okeley).

However, these figures were transformed by 'administrative expenses' totalling £4.8m being imposed on each home. The individual amounts of 'administrative expenses' ranged from £399,450 for Saffron up to £534,933 for Dovercourt. These expenses meant that the gross operating profit of £516,605 for the 10 homes in 2005/06 was turned into an operating loss of nearly £4.3m. The company accounts do not provide any information about the composition of the 'administrative expenses'. This is legally permissible under the exemptions for small companies claimed by Excelcare under the Companies Act 1985.

The 'administrative expenses' on a cost per bed per week basis varied between a high of £270.71 (Dovercourt) to a low of £201.51 (Winifred). Basically there were three homes clustered between £201 - £207 (including Saffron and Okeley), Sherrell at £218 followed the remainder between £235 and £270. The average administrative expenses cost per bed per week was £232.

Table 2: Ten Care company performance in 2005/06

Home (Company name)	Turnover	Cost of sales	Gross profit/loss	Administrative expenses	Operating loss*
Ashlyn Healthcare Ltd	972,263	(806,625)	165,638	(533,602)	(372,757)
Goldenley Healthcare Ltd	830,163	(975,609)	(145,446)	(467,186)	(615,790)
Greenways Healthcare Ltd	790,638	(787,808)	2,830	(440,955)	(440,757)
Dovercourt Healthcare Ltd	861,348	(878,628)	(17,280)	(534,933)	(556,966)
Longfield Healthcare Ltd	789,956	(831,564)	(41,608)	(516,466)	(561,907)
Okeley Healthcare Ltd	972,705	(785,636)	187,069	(456,203)	(273,252)
Sherrell Healthcare Ltd	972,004	(897,158)	74,846	(476,887)	(407,205)
Saffron Healthcare Ltd	1,020,133	(872,879)	147,254	(399,450)	(256,517)
Sweyne Healthcare Ltd	813,896	(842,143)	(28,247)	(512,832)	(545,495)
Winifred Healthcare Ltd	894,077	(722,528)	171,549	(419,143)	(251,807)
<b>Total</b>	<b>8,917,183</b>	<b>(8,400,578)</b>	<b>516,605</b>	<b>(4,757,657)</b>	<b>(4,282,589)</b>

Source: Annual Accounts, Companies House, 31 March 2005 and 2006. \* Includes Distribution costs

A company's annual pre-tax profit/loss is a key indicator of its financial performance. Table 3 shows that the 10 Excelcare homes made a small operating loss for the brief period they operated in the 2004/05 financial year but this soared to nearly £4.3m in the following financial year.

Table 3: Pre-tax profit/loss of the 10 care companies

Home (Company name)	Pre-tax profit/loss March 2005	Pre-tax profit/loss March 2006
Ashlyn Healthcare Ltd	(39)	(372,772)
Goldenley Healthcare Ltd	(8,570)	(615,801)
Greenways Healthcare Ltd	(6,588)	(440,757)
Dovercourt Healthcare Ltd	(8,231)	(556,978)
Longfield Healthcare Ltd	(8,362)	(561,915)
Okeley Healthcare Ltd	(1,721)	(273,282)
Sherrell Healthcare Ltd	(5,713)	(407,233)
Saffron Healthcare Ltd	1,269	(256,528)
Sweyne Healthcare Ltd	(10,368)	(545,504)
Winifred Healthcare Ltd	(11,133)	(251,819)
<b>Total</b>	<b>(59,456)</b>	<b>(4,282,589)</b>

Source: Annual Accounts, Companies House, 31 March 2005 and 2006.



## Operating leases

Each company has an operating lease for land and building which expires between two and five years. The operating leases payable to 31 March 2007 for each company are shown in Table 4. A proportionate payment was made in 2005 but since this was for only a two week period payments to the end of the financial year 31 March 2005 have been excluded. It should be noted that the £1.7m cost of the operating leases is entirely separate from the £4.8m 'administrative expenses' claimed by the Excelcare Holding company. Presumably, the £1.7m was paid to Excelcare Equities Ltd which owns the land and buildings.

Table 4: **Cost of operating leases 2005/06**

Home (Company name)	Cost of operating leases to 31 March 2007 (£)
Ashlyn Healthcare Ltd	187,904
Goldenley Healthcare Ltd	167,025
Greenways Healthcare Ltd	156,586
Dovercourt Healthcare Ltd	167,025
Longfield Healthcare Ltd	177,464
Okeley Healthcare Ltd	187,904
Sherrell Healthcare Ltd	177,500
Saffron Healthcare Ltd	151,368
Sweyne Healthcare Ltd	167,025
Winifred Healthcare Ltd	170,000
<b>Total</b>	<b>1,709,801</b>

Source: Annual Accounts, Companies House, 31 March 2005 and 2006.

## Taxation

Only the Saffron care company showed a small profit (in the two week) period in financial year to 31 March 2005. It paid UK Corporation Tax (@19% rate) of £253. The Ashlyn company made a small pre-tax loss of £39 and paid UK Corporation Tax (@19% rate) of £37 after allowances and adjustments were taken into account.

Although six companies made a gross operating profit to 31 March 2006, once administrative expenses had been taken into account, all ten companies made a pre-tax loss. This means that none of the ten companies paid corporation tax. Thus the companies have accumulated losses which virtually guarantees they will not pay corporation tax in the 2006/7 financial year and probably for many years in the future.

## Registration of care companies

There has been some confusion over the process by which care companies are approved and registered with some claiming a preferred bidder list is operated but this being denied by the Department of Health. The GMB met with Ivan Lewis, Social Services Minister in December 2006 regarding Excelcare's practices. He told the GMB that he was powerless to do anything about Excelcare's track record of low quality care and placed responsibility squarely with Essex County Council. He confirmed that the CSCI is responsible for registering companies and inspecting individual care homes.

A question in the House of Lords asked: "What guidance is given by the Department of Health in relation to the suitability of companies tendering for contracts for the provision of residential care. (HL7821). The Minister of State, Lord Warner replied:

"Before services can begin to operate, all providers of residential care are required to meet the requirements set down in the National Care Standards Commission (Registration) Regulations 2001. The Commission for Social Care Inspection, which replaced the National Care Standards commission in April 2004, assesses whether applications for registration with the

Commission are from people of integrity and good character and the service will be run in line with the regulations and standards set by the Government.”

Table 5: Excelcare Holdings Plc, Essex Region, Trading Outlook

Item	Actual 10 months ending Jan 06	Forecast 2005/2006	Current Forecast 2006/2007
No of beds	394	394	394
% TUPE take-up	-	-	44%
Sales/turnover	7,466,781	8,915,353	9,180,156
Purchases	(308,795)	(368,570)	(368,784)
Staff costs	(5,876,172)	(6,930,372)	(6,483,330)
Agency staff	(884,957)	(958,457)	(338,500)
Gross profit	396,857	657,954	1,989,542
Overheads	(1,614,779)	(1,880,448)	(1,639,040)
Operating profit	(1,217,922)	(1,222,494)	350,502
Rent	(1,550,109)	(1,848,986)	(1,843,920)
Profit before interest and taxation	(2,768,031)	(3,071,480)	(1,493,418)
Gross Profit/loss	5%	7%	22%
Operating profit/loss	(16%)	(14%)	4%
Profit/loss before interest and taxation	(37%)	(34%)	(16%)

Source: Excelcare Holdings, 2006

Staff costs reduced by £447,042 between 2005/06 and 2006/07 which is even larger when the April 2006 increase and the planned reduction in agency staff costs are taken into account.

Excelcare produced a trading forecast in 2006. It predicted a 15.3% reduction in staff costs between the ten-month period ending January 2006 and the 2006/07 financial year. In contrast, Excelcare expected their income per bed per week in the ten homes to increase by 22.8% in the same period. Operating profit/loss is forecast to change from a loss of £71 per bed per week to a £17 profit in the same period – see Table 6.

Table 6: Excelcare Holdings Plc, Essex Region, Trading Outlook ratios

Per Bed/Week	Actual 10 months ending Jan 06 (£)	Forecast 2005/2006 (£)	Current Forecast 2006/2007 (£)
Sales/turnover	434	518	533
Purchases	18	18	18
Staff costs	393	385	333
Overheads	94	92	80
Operating profit/loss	(71)	(60)	17
Profit/loss before interest and taxation	(161)	(150)	(73)

Source: Excelcare Holdings, 2006.

### Excelcare property development since transfer

The contract required Excelcare to increase the capacity of the homes. Excelcare Equities Ltd subsequently made a number of planning applications using its subsidiary company, Stephen Bradbury, Architects. These applications are summarised below:

**Goldenley** (Castle Point BC, application CPT/438/05/FUL). Proposed refurbishment and lounge extensions. Approved 28 September 2005.

**Sherrell House** (Epping Forest DC, application EPF/1295/2005) Proposed 53 bedroom extension and refurbishment works to existing nursing home. Application refused.

New application in August 2006 for replacement of existing 43 bed nursing home with new build 92 bed nursing home.

**Stanley Wilson Lodge** (Uttlesford BC, application UTT/1247/2005) Proposed 27 bedroom extension and refurbishment works to existing nursing home. Conditional approval in September 2005 requiring approval of external materials, hard and soft landscaping and car parking provision.

**Sweyne Court** (Rochford DC, application 05/01048). Two Storey Extension on Southern Boundary (adjacent to the rear of properties in Highfield Close) and Changes to the Internal Layout of the Existing Property to Create a Further 29 Bedrooms. Application refused – *“The proposed extension, by reason of its position in relation to the boundary of the site, its design, size and bulk would be an intrusive and unneighbourly development, out of scale and character with the prevailing pattern of development in the area as well as having a serious and adverse effect on the amenities enjoyed by the occupiers of properties in Highfield Crescent.”*

Application 05/00650. Proposed Two Storey "L" Shaped Extension on South/West Corner of Existing Building with Internal Alterations to Existing Building to Create an Additional 27 Bedrooms; Remodelled Day Centre, Courtyard Garden and Car Parking. Application Permitted, March 2006.

**Winifred Dell House** (Brentwood DC, Application BRW/690/2005) Proposed demolition of part of existing building and erection of single and two-storey extension containing 38 bedrooms together with formation of vehicular access and car parking facilities.

Since the economies of scale in many of the homes will change with the addition of new beds it begs the question about Excelcare's rush to cut terms and conditions in 2005/06. It is obviously intent on trying to lower the cost of labour in addition to creating bigger care homes to reduce unit costs.

### **Excelcare care contracts in other local authorities**

#### **Milton Keynes**

Four homes were transferred from the Freemantle Trust (previously privatised by Buckinghamshire County Council) to Excelcare. Staff were transferred under TUPE with each home a separate company. The first staff knew was when they received their pay slips. Excelcare began a process of changing terms and conditions nearly a year after the transfer. The rationale for change was that each area – Milton Keynes, Cambridgeshire and Essex – had to be profitable which is different from the home-by-home profit argument in Essex.

Changes in terms and conditions included reduced rates, longer shifts, reduced holidays, only statutory sick pay and paying for uniforms. Staff were offered a compensation package. Staff were opposed to the changes but were not prepared to take any industrial action and the terms were eventually accepted. No action has been taken to date on pensions and the other concession was that if night staff were in the building for 12 hours they were entitled to an hours paid break if this is taken in the building.

Excelcare changed catering and cleaning materials suppliers with the loss of local suppliers. The company has also brought in workers from Poland, Romania and Africa.

#### **Cambridgeshire**

A similar pattern occurred in Cambridgeshire when the County Council transferred seven care homes to Excelcare in 2003/04. Wage cuts, longer shifts, reduced staffing levels were imposed on staff whilst the company increased the number of beds to achieve economies of scale. A similar 'harmonisation' proposal was eventually accepted by most staff although many accepted the 'compensation' and left.

### Bristol

A jury decided that “inadequacies” care in a Excelcare care home in Bristol resulted in Brian Surrridge, 58, dying from “starvation, fluid depletion and neglect” at the Shirehampton Nursing Home in June 2003 (BBC News, 4 November 2005).

### Lambeth

Six staff were suspended in March 2006 from the Limetree Care Centre in Lambeth run by Excelcare following allegations of assaults on residents. Lambeth Council Social Services Department, the police and the CSCI were carrying an investigation (South London Press, 3 March 2006).

Table 7: **Excelcare contracts in other local authorities**

Local Authority	Number of homes
Essex County Council	10
Milton Keynes	4
Cambridgeshire	7
Bristol	4
Tower Hamlets	3
Lambeth	1
Southwark	5
<b>Total</b>	<b>34</b>

Source: ESSU 2007.

### Other Excelcare activities

Excelcare is a partner in the Southern Derbyshire LIFT project which is building seven schemes including two primary care centres, a health centre and a surgery extension plus three centre in Derby. The project has a capital cost of £24.6m plus £2m revenue costs and assumes significant transfers of outpatient, impatient and diagnostic activity from acute trusts to the new facilities. The legal agreements between Excelcare and the PCTs includes an exclusivity clause, which commits PCTs to offer all capital developments over £100,000 to the LIFTCo. In effect this means any significant capital development within the LIFTCo catchment area will be delivered via LIFT as long as it can be demonstrated it is a value for money solution. The scheme places Excelcare in an advantageous position to widen the scope of its operations from residential and home care.

### Health and Safety Notices

Excelcare Developments Ltd, a subsidiary of Excelcare Holdings Plc, was issued with four Enforcement Notices by the Health and Safety Executive between 2002-06. All related to projects in London – three in Bromley and one in Lambeth (Health and Safety Executive, 2006). All the Notices related to the risk of injury due to falls or risk of collapse of part of the structure.

## Part 4

# Changes to terms and conditions

Excelcare targeted the changes to terms and conditions in five homes – Goldenley, Greenways, Dovercourt, Longfield and Sweyne with the intention of mainstreaming the changes to all the remaining homes as soon as possible. These five homes had the highest level of gross losses in the 2005/06 company accounts but not the highest average employment costs and only two were in the programme for extensions to increase bed capacity.

This is a practice they implemented in Cambridgeshire and Milton Keynes and succeeded to the extent that staff and trade union opposition was unable to be sustained. But Essex is a different story.

Excelcare's strategy from the outset, predetermined for the contract was signed, was to create a situation in which TUPE transferred staff would accept a harmonisation package and move to Excelcare's standard terms and conditions or leave their jobs so that Excelcare could hire new staff at lower pay rates..

This is a blatant disregard for the Transfer of Undertakings (Protection of Employment) Regulations 1981 and the Best Value Code of Practice on Workforce Matters (2003). Excelcare attempted to do this legally by establishing a separate company to operate each home and then claim that each one has a financial crisis and thus changes to terms and conditions are required for 'economic' reasons using the ETO clause in the regulations. If staff did not accept the changes Excelcare told staff that the home would close:

*"A serious financial loss that if not corrected would result in the closure of the home you are employed at, the loss of all jobs and considerable disruption and distress to the service users and relatives"* (Letter to staff who had not signed the voluntary offer from Excelcare, 9 November 2006).

### Impact of Excelcare changes to terms and conditions

- Reduction in pay rates and earnings – many staff lost between 30% - 40% of their income.
- Reduction in holidays.
- Loss of sickness benefit (only Statutory Sick Pay).
- Loss of night shift rates because Excelcare imposed a 24-hour rate.

A Health Care Assistant working 30 hours a week would suffer a cut in the hourly rate from £7.45 to between £5.54 and £6.09, a loss of £218.87 per week or £2,626.44 per annum (see Table 10). Furthermore, they would lose 9% of their holidays, lose pension entitlements because they no longer are in the Local Government Pension Scheme and lose all but Statutory Sick Pay.

*"Staff morale is low – they feel 'used and abused'.  
Some staff are working extra shifts to make up their  
money and thus become tired and unwell."*

Essex Excelcare care worker

Table 8: **Changes to terms and conditions** (March 2006)

<b>Health Care Assistant Contracted 30 hours</b>			
	<b>Essex CC and TUPE protected</b>	<b>Excelcare proposal</b>	<b>Reduction in terms and conditions</b>
<b>Hourly rates and annual earnings</b>	£7.45	£5.54/£6.09	£101.02 per rota (£218.87 per month or £2,626.44 per annum)
<b>Pension</b>	Local Government Pension scheme	NIL or may qualify for company stakeholder scheme	Some staff may have pension pegged at lower rate for pension calculation
<b>Holiday entitlement</b>	132 hours	120 hours	12 hours
<b>Sickness benefit</b>	Council terms	NIL	Substantial loss of sickness benefit – entitled only to Statutory Sick Pay.

Source: Excelcare Holdings, 2006.

Excelcare proposed a Voluntary Release Compensation in which the member of staff in Table 10 would have received harmonisation compensation of £4,327.18, pension compensation of £2,000 and a severance payment of £1,000, a total tax-free package of £7,327.18. In perspective, this is less than three years loss of wages, let alone the loss of pension rights, fewer holidays and the financial loss of the sick pay scheme.

The impact of Excelcare’s changes in terms and conditions has been dramatic. Two examples are shown in Table 9 comparing gross earnings under Essex County Council terms in late 2006 with Excelcare’s terms and conditions in early 2007. They show a reduction of 45% for a night shift care worker and 24% for a cook working 40 hours.

Table 9: **Impact on wages**

	<b>Essex CC</b>		<b>Excelcare Holdings</b>		<b>Average % loss of income</b>
	Sample 1	Sample 2 December 2006	Sample 1	Sample 2 March 2007	
Worker 1		£884.64		£487.54	<b>-£397.10 a 45% loss</b>
	November 2006	December 2006	February 2007	March 2007	
Worker 2	£1,800.27	£1,863.88	£1,365.48	£1,423.10	<b>-£437.80 a 24% loss</b>

Source: Staff pay slips issued to care workers by Essex County Council and Excelcare Holdings.

One care worker described the impact of Excelcare’s terms:

- I would be earning less than I was 10 years ago.
- I would be granted less Annual Leave in a year than I was 23 years ago.
- I have more responsibility now than I had 2 years ago.
- I would have no sick pay, only statutory sick pay. For the last 23 years I have had the protection of sick pay should I be unfortunate enough to become ill.
- My salary pension will not be worth as much to me as I had anticipated it would be, even with a pension protection certificate in place.
- I was transferred from Essex County Council under TUPE terms and conditions in March 2005.

- At the meetings we attended with Excelcare prior to the takeover we were told things would not change.

<b>Cost of living increases since March 2005</b>	
Inflation	
Consumer Price Index April 2006 (change over 12 months)	2.0%
Consumer Price Index April 2007 (change over 12 months)	3.1%
(Source: National Statistics, 2007)	
House Price Inflation (Essex) March 2005 – Feb 2007	6.5%
(Source: Land Registry, 2007)	

Excelcare’s strategy has led to significant change in staff. A profile of one care home is illustrated in Table 10 which shows that 19 of the original staff transferred by Essex remain employed in the home but they have steadfastly refused to sign the Excelcare agreement and accept significant cuts in terms and conditions. Fifteen of the original staff who did sign the agreement remain employed in the home. However, 19 staff have left and seven new staff have been employed.

It is important to state that the 19 staff who have refused to sign the Excelcare agreement cover all categories of staff including shift leaders, senior night care staff, care assistants, night care assistants, cooks, domestics and administrators.

Table 10: **Response to Excelcare terms and conditions in one care home since transfer**

<b>Staff response</b>	<b>No. of staff</b>	<b>%</b>
Staff redundancies	5	7
Original staff remaining in March 2007 who refused to sign the Excelcare agreement and still on Essex CC terms and conditions	19	25
Staff taking voluntary harmonisation and left employment (10 at first offer and 2 at second offer)	12	16
Staff taking voluntary harmonisation and remaining in employment in 2007 (9 at first offer and 3 at second offer)	12	16
Original staff remaining but who signed the Excelcare agreement	15	20
New staff employed on Excelcare terms and conditions (some left)	12	16
<b>Total</b>	<b>75</b>	<b>100</b>

Source: Essex County UNISON

In another care home 22 staff refused to sign the Excelcare agreement with 16 staff remaining in employment. Fifteen staff have left or retired and 18 staff accepted the harmonisation deal (11 at first offer and 7 at second offer).

**Pressure on staff to accept the reduced terms and conditions**

Staff were put under a variety of pressures to sign the Excelcare agreement. These included:

- The threat of homes closures – “result in the closure of the home you are employed at, the loss of all jobs and considerable disruption and distress to the services users and relatives” (Excelcare letter to staff who had refused to sign the agreement, 9 November 2006).

- Verbal warnings for petty things and sometime threatened with disciplinary action which staff regarded as a form of bullying.
- Delays and disputes over payment to staff acting up or working agreed extra hours.
- One to one meetings with care home managers.
- Instructed not to talk to Elected Members and media before the Essex County Council scrutiny meeting in November 2006.
- Notices put in at least one home telling staff “not to miss the boat”.

Several staff referred to Excelcare’s strategy as “coercion and attrition.”

**Failure to make the annual pay award**

Several members employed at the Sherrell residential care home took out a collective grievance on the basis that “an unlawful deduction of wages has been made in failing to pay the NJC pay award of 2.95% to staff with effect from April 2006”. The reply from Sherrell Healthcare Ltd to the Excelcare Essex regional office was consistent with Excelcare’s strategy of maintaining a financial crisis:

*“It is recognised that the Essex pay award of 2.9% is due for payment to all staff on Essex terms as of April 2006. However as you are aware through the ongoing consultation meetings the Homes have a very serious financial problem and consequently this pay award and back pay will have to be delayed as there is insufficient cash flow to pay now”* (Letter from Excelcare Essex Regional Office to Michelle Bradley, UNISON, 10 August 2006).

Table 11: **Excelcare pay rates 2006-2007 (October)**

		Mon-Fri 24 hour rate	Week end	Weekend Enhance ment
Laundry/Domestic/Kitchen Assistant	No experience	£5.35	£5.89	£0.54
Laundry/Domestic/Kitchen Assistant	After 1 yrs experience	£5.40	£5.94	£0.54
Laundry/Domestic/Kitchen Assistant	After 2 yrs experience	£5.45	£6.00	£0.55
HCA	No NVQ no experience	£5.35	£5.89	£0.54
HCA	No NVQ min 1 yrs experience	£5.40	£5.94	£0.54
HCA	No NVQ min 2 yrs experience	£5.44	£5.98	£0.54
HCA	NVQ 2 or a min 3 yrs experience	£5.54	£6.09	£0.55
HCA Senior	With NVQ min 2 yrs experience	£5.64	£6.20	£0.56
Senior Care Assistant	No NVQ. min 3 years experience	£6.18	£6.80	£0.62
Senior Care Assistant	NVQ Level 2 min 2 years experience	£6.69	£7.36	£0.67
Senior Care Assistant	NVQ Level 3 min 2 years experience	£6.93	£7.62	£0.69
Housekeeper	In charge of cleaning	£6.00	£6.60	£0.60
Senior Housekeeper	Home-kitchen-laundry	£6.50	£7.15	£0.65
Activity Coordinator		£5.40	£5.94	£0.54
Activity Coordinator		£6.00	£6.60	£0.60
Cook		£7.00	£7.70	£0.70
Senior Cook		£8.00	£8.80	£0.80
Night Senior Team Leader		£8.00	£8.80	£0.80
Team Leader		£9.00	£9.90	£0.90
Administrator	£14,280 based on a 40 hour week, pro-rata			
Senior Team Leader/Deputy	£20,400 depending on service provision			

Source: Excelcare Holdings PLC, Longfield Healthcare Ltd, to operate for 12 months from 1 October 2006.



It is important to take into account that a large number of staff in each home are on hourly wage rates varying between £5.35 and £6.69. For example, in one care home ten of the nineteen care assistants had less than two years service and only one of the 19 staff had an NVQ3 with another five staff having NVQ2. Similarly, six of the nine housekeepers had less than two years service. The Activity Coordinator had pay rates in the £5.40 to £6.00 per hour range.

**In total, about 75% of the staff in an Excelcare home earn less than £6.69 per hour (an Monday to Friday 24 hour rate) using Excelcare's 2007 pay rates.**

The national minimum wage (main rate for workers aged 22 and over) is currently £5.35 per hour and will rise to £5.52 from the 1 October 2007.

*"It is like a factory line of changing, feeding and putting to bed. No individual treatment despite many clients needing this."*

Essex Excelcare care worker

### **Loss of local government pension**

The Local Government Pension Scheme (LGPS) provides a comprehensive guaranteed benefits package to which the County Council or employer makes a significant contribution.

The contract for the sale of the homes and transfer of staff required Excelcare to allow staff already members of the LGPS to continue to remain members. New recruits would have the option of access to Excelcare's company stakeholder pension scheme.

#### **Pensions Regulator**

The Pensions Regulator has issued guidance to employers offering financial inducements to quit their final salary pension schemes following complaints that employees were being encouraged to leave pensions schemes without a full explanation of the financial effects on their retirement income.

*"In deciding whether to transfer out, the regulator's guidance makes it clear that members will need to carefully consider the value of the inducement offer and the financial risks involved. Trustees must ensure that members are given all the information they might reasonably need in order to make an informed choice."*  
(Pensions Regulator, 2007)

The Pensions Regulator chief executive Tony Hobman said:

*"While we recognise that employers may not break any laws when they offer an inducement, whether it is cash payments or an increased transfer value, we are concerned that some transfers are being proposed to avoid an employer's full pension liability (ibid).*

Excelcare will make a financial saving because companies spend an average 50% more on final salary pension schemes than on defined benefit or money purchase schemes. Furthermore, companies often impose longer qualifying periods to discourage pension scheme membership and thus make even bigger savings.

### **Staff reductions**

The company accounts show that total employment in the 10 care homes declined from 473 in 2005/06 to 453 in 2005/06, a loss of 20 jobs (4.2%). There was a loss of 22 care worker jobs compared to a increase in 3 administrative jobs and a decrease of one management job. The accounts do not provide any information about the number of hours worked by staff, simply

the number of people employed. Care worker jobs increased in four homes (Dovercourt, Okeley, Sweyne and Winifred).

The reduction in staffing levels will have reduced Excelcare’s payroll costs by about £425,000.

*“I believe that a judicial review would show that the transfer was unlawful. Excelcare did not meet the criteria and the financial checks were unlawful in probity and voracity.”*

Essex Excelcare care worker

Table 12: **Changes in staffing levels between 2005 and 2006**

Home (Company name)	No of employees 2005				No of employees 2006			
	Production	Admin	Manage	Total	Production	Admin	Manage	Total
Ashlyn Healthcare Ltd	47	2	2	51	41	3	2	46
Goldenley Healthcare Ltd	62	1	3	66	51	1	2	54
Greenways Healthcare Ltd	41	3	3	47	39	3	3	45
Dovercourt Healthcare Ltd	40	2	1	43	43	3	2	48
Longfield Healthcare Ltd	42	2	1	45	37	2	1	40
Okeley Healthcare Ltd	39	1	2	42	40	1	1	42
Sherrell Heathcare Ltd	50	1	2	53	46	1	2	49
Saffron Healthcare Ltd	47	2	2	51	41	3	2	46
Sweyne Healthcare Ltd	39	1	2	42	43	1	2	46
Winifred Healthcare Ltd	31	1	1	33	35	1	1	37
<b>Total</b>	<b>438</b>	<b>16</b>	<b>19</b>	<b>473</b>	<b>416</b>	<b>19</b>	<b>18</b>	<b>453</b>

Source: Annual Accounts, Companies House, 31 March 2005 and 2006.

**Differences in wage costs between care homes**

The average employment costs varied from an average of £19,415 in Greenways to £25,091 in Longfield, a difference of £5,676 per annum between these two homes – see Table 13. The employer’s employment costs includes the employers contribution to National Insurance, pension and related employment costs.

Table 13: **Average cost of staff in 2005/06**

Home (Company name)	Average employment cost 2006 (£)
Ashlyn Healthcare Ltd	21,419.89
Goldenley Healthcare Ltd	19,857.96
Greenways Healthcare Ltd	19,415.39
Dovercourt Healthcare Ltd	22,461.08
Longfield Healthcare Ltd	25,091.48
Okeley Healthcare Ltd	20,873.83
Sherrell Heathcare Ltd	20,804.59
Saffron Healthcare Ltd	22,045.35
Sweyne Healthcare Ltd	19,739.52
Winifred Healthcare Ltd	22,365.16

Source: Annual Accounts, Companies House, 31 March 2005 and 2006.

**Operational changes**

Shortly after the transfer Excelcare produced a brief paper setting out the findings of their examination of operational practices in the 10 care homes and five day services. Excelcare’s management model is based on a home manager, team leader, shift leaders and care

assistants. They identified five care manager posts with a job description, which “identifies an overlap with the manager and shift leaders roles fudging lines of communication and accountability.”

A number of homes were claimed to “have a significant over provision” of domestics, catering and laundry staff. A review of current shifts was undertaken. Every home had a Gardener/General Handyman (9 FTE) since Essex practice was to outsource maintenance work. Excelcare operates with a skilled mobile service in which 5 staff will be appointed and allocated two homes each. Care staffing shift patterns were found to be “inconsistent” with a “rigidity” of shift patterns and will be replaced with a 6-6-12 hour shift system.

Within two months of taking over, Excelcare were seeking ‘voluntary redundancies’.

**Other issues raised by staff**

Staff who took part in the semi-structured interviews and discussions also raised a number of other issues:

- There are constant mistakes and non-payment of wages. Staff rarely get a response about payroll queries from Excelcare Holdings Bromley regional office.
- The 12 hour shift (a 20% increase on those operated by the County Council) was imposed by Excelcare with limited consultation although the company refers to them being ‘voluntary negotiated’. Excelcare informed staff at meetings on the 2nd and 16 June 2005 that the nightshift had to be extended to 12 hours and issued a 90 day formal notice on 27 June 2005 imposing the new shift pattern and claiming “if we continue the existing arrangements.....(name of home)...would trade at a loss and have to close” (letter from Excelcare Essex Regional Office, 27 June 2005).
- The 2.95% pay rise due from the 1 April 2006 had still not been paid 13 months later.
- Excelcare changed the supply of cleaning materials which are now of an inferior quality compared to those previously used.

## Part 5

# Impact of the transfer on residential care

### Introduction

This part of the report contains comments from care home staff from the meetings and discussions organised by UNISON and ESSU. These comments are from staff with many years, in some cases over two decades, experience working in Essex County Council, and more recently Excelcare, care homes. The comments were made in small group discussion in the interests of the quality of care.

*“Basic care work is done and little else.”*

Essex Excelcare care worker

### CSCI inspection of the Essex Homes

The ten homes were inspected by the Commission for Social Care Inspection (CSCI) between October 2005 and December 2006 with eight homes inspected between one year and 19 months after the homes were sold to Excelcare. Four inspectors were involved with one doing four homes, one inspector did three homes, another did two homes and the fourth inspector did one home.

The CSCI inspection covers a number of standards which include four, Standards 27 – 30, on staffing with the following outcomes:

- “No 27. Service users’ needs are met by the numbers and skill mix of staff.
- No 28. Service users are in safe hands at all times.
- No 29. Service users are supported and protected by the home’s recruitment policy and practices.
- No 30. Staff are trained and competent to do their jobs.”

The Commission considers all the above are key standards to be inspected at least once during a 12-month period. Inspections are limited to the above ‘outcomes’ hence the terms and conditions of staff, how staff are treated is not relevant unless the inspector finds that it has an impact, for example, on recruitment and hence staffing levels.

*“Some new starters work months with no manual handling training because they are supervised. But there is so much work and being short-staffed means that they are not supervised much of the time.”*

Essex Excelcare care worker

The CSCI inspections cover only a narrow aspect of the quality of employment. The inspection is essentially concerned about the number of staff, recruitment policy and

procedure and the level of training. Three inspections did not even cover all four standards and in another case the inspection report omitted to identify which standards had been inspected.

So claims made by Essex County Council and/or Excelcare that because the homes have been ‘inspected’ there was therefore nothing wrong with the quality of employment is a distortion because the standards cover only a very narrow aspect of the quality of employment.

Each of the ten inspection reports were examined to assess the degree to which they met the four CSCI standards and the extent to which the inspectors identified other employment issues. Only one inspector referred to employment contracts. There is little evidence that any of the other inspectors were either aware of Excelcare’s employment strategy or thought it relevant to their inspection. This makes a mockery of the inspection process.

*“Individual care and hygiene are being compromised.”*

Essex Excelcare care worker

### **Performance**

The performance of the 10 homes revealed:

- 80% of homes did not meet the National Minimum Standard requirement to have 50% of staff with NVQ Level 2 or above qualification. The Swayne care home had no NVQ trained staff and at the Saffron home 75% of the staff team were required to be placed on the NVQ Level 2 training course.
- Nine out of ten homes, except Greenways, were judged to have sufficient staffing levels (see below for further details).
- The recruitment process was satisfactory in all ten homes. In most cases two new staff members files were inspected and only in one case was a shortcoming identified – a medical declaration form had not been fully completed.
- Evidence of training in food hygiene, first aid, fire and other training was cited in the inspection reports.
- Staff induction was satisfactory in nine homes with the exception of Greenways where four new staff had not commenced induction..

*“This is not a family-style home any more but a business.”*

Essex Excelcare care worker

However, some inspections identified other staffing issues:

#### **Goldenley** (Inspected 27 October 2006)

“Staff morale is still low in some staff due to uncertainty in their future employment within the home.”

*“The home in the past has had problems with ‘domestic’ staff due to two being on long term sick and the Manager not being able to replace them. A staff member spoken to stated this had not changed. This has had some effect on the cleanliness of the home.”*

*“There is a core group of staff that have been employed at Goldenley for a long time and are aware of the residents needs. Some staff expressed concerns that they had not transferred over to Goldenley Healthcare Limited Contracts and due to this a couple of staff who have been at the home for a long time will be leaving the home for new employment. This is having some effect on the staff morale within the home. The home also has some staff from Poland.*

*Staff and relatives expressed their concerns regarding their ability to understand and speak English. The Inspector was advised that some of the staff from Poland have now enrolled for English lessons to help them in their job role.”*

**Greenways** (Inspected 10 and 17 May, 2006)

*“A consistent view of staff, residents and some relatives is that there are insufficient care staff on duty. Several staff considered that the main problem is that shift leaders spend too much time in the office and do not provide practical assistance with the care of residents. These views were expressed at the last inspection, which stated “Some staff spoken to were still of the opinion that shift leaders do not always provide sufficient assistance to staff”. Staff were of the opinion that nothing had changed. The concern is that there continues to be an issue about staffing levels, the duties and expectations of a shift leader and the increased dependency levels of residents that clearly need to be resolved by the manager and the provider in the interest of the residents.”*

**Longfield**

*“Residents may be placed at risk when left unsupervised unless a more coordinated approach is taken when staff take breaks.”*

**Okeley**

*“Domestic staff or hours may need increasing due to lack of cleanliness of the home.”*

*“Domestic and laundry staff are employed at the home, but due to the lack of cleanliness in some parts of the home it was questioned whether these were sufficient in numbers or hours as the home had not been maintained in a clean and hygienic state or free from dirt and unpleasant odours.”*

**Sweyne**

*“Staff spoken to during the Inspection stated that they did not feel there were enough staff upstairs as the dependency levels were very high and they were also in two lounges.”*

*“The home does not at present have any NVQ 2 staff.”*

Source: CSCI Inspection Reports, 2006.

*“Staff have become despondent. They cannot give the quality care they want to as the pressure of time is so great.”*

Essex Excelcare care worker

**Other issues raised by care workers**

Staff who took part in the semi-structured interviews and discussions also raised a number of other issues which impact on the quality of care:

- Staff shortages often meant too few staff were available to get 40 residents, many with dementia, ready for bed.
- Residents who have to go to hospital are not always escorted by a member of the care staff because of insufficient staffing levels.
- Inadequate staffing levels also mean that residents cannot be taken for a walk.
- Some activities coordinators had left because they often had to spend 50% of their time on care duties.
- None of the staff could remember there ever being an inspection during the night shift.
- English language difficulties of many agency and Polish workers (who were respected by the permanent staff) did raise care and communication and health and safety issues for residents and staff. On 18 September 2006 Excelcare Holdings advertised for health care assistants for care homes in Essex, Milton Keynes and Cambridgeshire on a Polish workers recruitment website ([www.polishworkers.co.uk](http://www.polishworkers.co.uk)).
- Excelcare reduced spending food from over £23 per person per week by Essex County Council to £14.22 (excluding green grocery). This figure has recently risen to just over £17 per person per week. One home was reported have had less than £100 of food in the larder. Excelcare reduced the allowance to residents to buy a Xmas present from £10.00 to £2.00. The purchase of a Easter egg for residents was stopped.
- Visitors to homes such as spouses and relatives spending time at the home were charged £1.08 per meal but this has been increased to £3.00. This is a burden for spouses or friends who regularly visit the home, for example, staying for lunch each day costs £21 per week.

*“Three months after Excelcare took over we had an inspection. I spoke to an inspector and said what happens when the care deteriorates, staff leave, morale goes (which by the way, 2 years on this has happened). His answer: I should get another job!”*

Essex Excelcare care worker

### **Essex Scrutiny of Excelcare performance**

A motion at full Council on 10 October 2006 passed the following motion”

*“Council notes the serious concerns reported in the press regarding the continuity of care provision for its clients in former Essex County Council Elderly Persons Homes now owned and operated by Excelcare.*

*Council notes an urgent review of the quality of care provided for the elderly and vulnerable individuals in those homes has been conducted under the processes already in place and a report will follow to PDG”*

However, this was accompanied by a reminder to Members:

*“Members are reminded that it is imperative that they make no public comment about the dispute between Excelcare, staff and unions. The Employment Tribunals are considering the issues. Also, any comments would risk claims by Excelcare for damages if it is deemed that these comments undermine Excelcare’s reputation or capacity to continue to run its business.”*

A background paper explained the Adult Social Care Approvals and Monitoring Unit's inspection of the Excelcare homes which took the form of unannounced visits, formal monitoring visits, service user interviews, postal survey of relatives/representatives, the collation of complaints and compliments and evaluation of Excelcare's own monitoring procedures.

However, the main focus of the report was the quality of food and the quality and quantity of nutritional intake. Menus in eight of the ten homes "were felt to be balanced, nutritional and offered an alternative choice" with menus in the remaining two homes "could be improved". The Monitoring Unit also found inconsistencies in the quality of recording of service users needs.

*"If there were hidden cameras the home would be shut down"*

Essex Excelcare care worker

A survey of 78 users in the 10 homes concluded: 78% of users expressed satisfaction or had no concerns about the overall quality of care; 15.5% were concerned about standards of care, 2.6% about choice of activities, 2.6% the attitude of carers and 1.6% lack of privacy.

The report also made the following conclusion:

*"During the course of the visits it was reported in some homes that staff morale is low due to Excelcare seeking to change the terms and conditions of the employment of staff. There was no evidence to suggest that this is having a significant impact in terms of the standard of care currently being provided to service users. It is recognised however that the present dispute between some staff and their employers has the potential to adversely affect the quality of service provision."*

Excelcare refused to attend the Adult Social Care Policy Development Group public meeting on 29 November 2006. Instead, the company attended a private meeting with Essex County Council on 16<sup>th</sup> October 2006. Excelcare had nine representatives, present compared to three Councillors and one officer. The only criticism of Excelcare was made by the Leader of the Labour Group.

Later, Excelcare sent a letter to relatives and carers stating *"We are fortunate to have the understanding of the Council with respect to the minority of staff mentioned and to have their support and encouragement, to enable each care home company manager to overcome any unhappiness caused as a result of recent unfair remarks about standards of care."* (Letter from Osman Ertosun, 5 December 2006).

*"We are not afraid of change, there has been plenty of that over the years. But Excelcare change is the worse for residents and staff."*

Essex Excelcare care worker

Following the ASCPDG meeting in November, the Cabinet agreed three recommendations at its January 2007 meeting:

Firstly, to encourage Elected Members to take up their 'Community Leadership role' and visit homes to review the quality of services.



*“This should be carried out on an Area Forum basis, with scheduled visiting rotas and the completion of the appropriate visits review forms by Members. To further assist, Members should be provided with the latest relevant reports on the homes they are scheduled to visit. A small cross party Member Panel should act as the initial monitoring body, looking at all reports completed by Members and drawing attention to any trends, themes or concerns arising from those reports.”*

Secondly, the Adult Social Care PDG should annually (November/December) review quality, to include visits review reports and service user and carer views on the establishments. The PDG, with all partners, should look at all aspects of quality of care with service users, carers and the community in general. It should result in an annual action plan, with progress monitored throughout the year. The Adult Social Care Service is requested to appoint a lead officer to work with the PDG on quality monitoring, developing and delivering the action plan.

Thirdly, complaints procedures should be made more visible, with increased public awareness of the process for making complaints, indicating who they can contact if they feel complaints are not being addressed adequately.

The Essex County Council Labour Group disassociated itself from the report of the ASCPDG (statement, 22 January 2007).

*“The Labour members who took part in this scrutiny voted against the recommendations outlined in the above report as they are inadequate and do nothing to move things forward. The recommendations are a cheap emulsion, the sole purpose of which is to cover over the real features and the failures of this whole sorry episode.”*

*“People with good sickness records are forced to have sick leave because of the stress and work levels.”*

Essex Excelcare care worker

## **Outcomes**

The government’s approach to performance management concentrates on ‘outcomes’ and places little value on the inputs, outputs and process of service delivery. The headline quality of care has been maintained in the ten care homes and both Essex County Council and the CSCI are thus satisfied that the ‘outcomes’ are satisfactory.

But another outcome is that the staff are poorer. Significant cuts in wages and other conditions of employment in the care sector increases poverty. Many have lost several hundred pounds in monthly earnings. This has a knock-on impact on the Essex economy because of lower spending in shops and services by 400 care home employees.

The Monitoring Unit’s approach was to express concern that a trade union dispute might affect the quality of care. There was no concern for the staff or the legitimacy of their grievances. This is further proof of the extent to which neoliberal ideology is established in public management.

*“Due to loss of staff the continuity of care has decreased”*

Essex Excelcare care worker

In addition, this approach represents poor public management practice and ignores all best practice issued by the IDeA and other bodies on engaging and involving frontline staff in

planning service delivery. How can Excelcare claim 'Investors in People' when it has such ruthless employment policies?

Recruitment and retention is a major issue for care homes. The National Care Forum reported care home turnover rates of 25% in 2006. Forty-five per cent of all staff leave within the first year and nearly two-thirds within two years. This not only imposes limitations on the continuity of care but also considerable recruitment and training costs (National Care Forum, 2006).

Clearly, the company strategy was to retain only a proportion of the transferred staff and to replace them with new staff on lower terms and conditions who would unlikely to be members of a trade union. This process was also intended to try to weaken trade union representation and organisation in the homes thus fragmenting opposition to Excelcare's policies.

### **Conclusion**

**The above evidence is testament to the professionalism and dedication of staff who will not allow their personal and employment circumstance to affect the quality of care to service users.**

**Essex County Council and Excelcare are aware of, and exploit, this dedication. The government and the CSCI inspection regime similarly know about and exploit this dedication by constructing standards and inspection processes, which deliberately exclude the quality of employment. The focus is only on whether staff have the relevant training and qualifications. This means that the conditions under which staff have to work are treated as irrelevant. The only consideration is the quality of care. This is a major abrogation of employment responsibilities by the employer, the County Council and the government. Because the quality of employment is directly linked to the quality of service, it ultimately means that they are responsible for reductions in the quality of care and the well being of elderly persons.**

*"The job I am doing under Excelcare bares little or no resemblance to the job I was trained to do by Essex County Council"*

Essex Excelcare care worker

## Part 6

# Policy and procurement lessons

### Introduction

This section assesses the implications of the findings of this report for Essex County Council's procurement policy. It makes the case for all future staff transfers being on a TUPE Plus basis and makes proposals for future inspection and scrutiny.

### Procurement process

This section makes a number of observations and proposals to improve Essex County Council's procurement policy and practice.

**Suitability and shortlisting** – the investigation of Excelcare should have identified the fact that there was a pattern of the company establishing separate companies for care homes and/or changing staff terms and conditions soon after transfer. Essex County Council should strengthen this aspect of the procurement process. Company searches and interrogation of the CSCI website would have revealed important clues regarding their corporate strategy.

**Analysis and evaluation of bids** – The evaluation process should have revealed details of Excelcare's operational practices and the financial assessment would have identified the plan to cut terms and conditions shortly after the contract was signed. If this was not revealed at this stage then there are fundamental flaws in Essex County Council's procurement policy and its implementation. These potential flaws should be investigated as a matter of urgency by the External Auditor to ensure that these practices are not repeated in other procurement processes.

The County Council's strategic procurement document P114 Evaluation of Offers (December 2004) recommends that the price/quality ratio should be 60/40 in favour of price. It is unclear whether this ratio was used in the residential care evaluation. The document states that "price should, therefore, be the single most important factor and will normally represent more than half of the total marks available." Many local authorities use a 50/50 ratio. The Essex approach may be deemed suitable for the purchase of goods and supplies, but certainly not for care and similar services.

**Negotiations at preferred bidder stage** – If Excelcare's intent to establish 10 separate companies was not evident from their bid then it should, and almost certainly did, become apparent during the preferred bidder negotiations.

**Did Excelcare produce a Business Plan?** – A Business Plan usually sets out how a service will be delivered and how an organisation will operate and manage the service for a three to five year period. It is not rocket science, just basic good practice. On the assumption that Excelcare were required or were asked to produce a Business Plan during the latter stages of the procurement process, then the company strategy to commence a radical change in terms and conditions should have been apparent to the County Council.

However, if Essex did not require or ask Excelcare to produce a Business Plan then this exposes serious flaws in the procurement process. It would imply that the County Council transferred the homes to a private company without fully understanding how it was going to operate and manage the homes in order to maintain the quality of care and the required standards.

The County Council must reveal whether a Business Plan was part of the procurement process or not, and if it was, its assessment of it.

**Transparency and release of information** – Information about Excelcare’s plans to operate 10 separate companies and the fact that staff were to be transferred to each care company and not directly to Excelcare Holdings Plc should have been released to the trade unions. This was a gross error of judgement. The County Council believed that this would generate further opposition to the transfer and we can only conclude that they deliberately withheld this information.

The Procurement Policy should contain a statement and protocol committing the authority to greater transparency and release of information at key stages of the procurement process.

**Trade union involvement in the procurement process** – The National Procurement Strategy for Local Government also set out best practice for trade unions and employee involvement in the procurement process. The Local Government (Best Value) Performance Plans Reviews (Amendment) (England and Wales) Order (2003) imposed a duty on local authorities to consult staff and trade unions in Best Value reviews and during the review process.

The Best Value Performance Improvement Statutory Guidance (ODPM Circular 03/2003) states that local authorities must provide full disclosure of information on all matters affecting the workforce. This includes information about the options being considered for service delivery. It states that “in reviewing functions, authorities must consult recognised trade unions and employees associations and staff engaged in that function.” It also states that “the mechanisms for involving staff and trade unions should be set out clearly, including how the views of staff will be taken into account in decision-making processes.” (para 53)

*“procurement decisions by local authorities should take proper account of workforce issues. Staff and unions should be involved in the option appraisal stage, and where, there is a decision to outsource, staff and unions should be involved in the selection process and in the subsequent detailed work around the transfer”* (Annexe C, para 10).

The case for employee and trade union involvement in service reviews and throughout the Best Value process was summarised as:

- Better quality of service
- Improved policy making
- Better management practice
- Increased job satisfaction
- More democratic accountability of management and service delivery
- Development ideas for service improvements and means of achieving continuous improvement
- Setting realistic targets for continuous improvement
- Drawing on employee knowledge of users’ views
- A more effective industrial relations framework. (IDeA, 2001)

### **Essex Approach and Corporate Plan**

Like all local authorities and public bodies, Essex County Council has a corporate strategy and priorities. *“Essex has defined its strategic objectives in the Essex Approach and is committed to delivering these in conjunction with a range of partners both internally and externally. The key values are as follows:*

- *put people at **the heart** of what we do and value their views;*
- *are committed to **fairness** and enable equal access to opportunities for all;*
- *make **best use** of all resources and seek to get better all the time;*
- ***develop** and support its staff and recognise their achievements;*

- *respect the environment for **today and tomorrow**;*
- ***work with others** to improve what we do.”*

The County Council has a set of Procurement Principles to guide all its activity.

*1.1 Ensure the principles of fairness, openness and transparency are applied to all its activities.*

*1.2 Seek to gain maximum mutual advantage and continuous improvement in relations with suppliers.*

*1.3 Consider the potential for innovation, the management and balance of risk and the opportunity for new or alternative methods of service delivery.*

*1.4 Seek to work with others including strategic partners, public sector agencies and consortia to maximise purchasing power and harness knowledge and the economies of scale.*

*1.5 Incorporate sustainability, equity, quality and safety as important criteria in the provision of all services procured.*

*1.6 Operate within the framework determined by EC and UK law and those outlined within the Financial Regulations and Procurement Rules, in that order of precedence.*

*1.7 In all dealings, Members and Officers will preserve the highest standards of honesty, integrity, impartiality and objectivity.*

*1.8 We will utilise competition as a means of achieving economy, efficiency and effectiveness, wherever appropriate and will seek to ensure that competition contributes to the competitiveness of suppliers, contractors and service providers.*

*1.9 Procurement activity will be customer focused involving internal consultation and involvement to support service objectives. Feedback will be sought and customer satisfaction measured as a means of improving performance.*

*1.10 Where appropriate, end Service Users will be consulted to ensure that the service meets their needs, especially where decisions directly affect their lives (Essex County Council, Procurement Strategy, October 2004).*

The are several observations to make about the ‘Essex Approach’/Corporate Plan and the ‘Procurement Principles’:

**Firstly**, there is no reference to staff and employment in the Procurement Principles although the Essex Approach does refer to “*develop and support its staff and recognise their achievements*” and a commitment “*to fairness and enable equal access to opportunities for all.*” In the light of the Excelcare contract, this is a rather vacuous statement.

**Secondly**, “the principles of fairness, openness and transparency” (1.1) and the highest standards of honesty, integrity, impartiality and objectivity (1.7) appear to have been selectively and narrowly applied in the sale of the 10 care homes to Excelcare.

**Thirdly**, mission statements, corporate policies and priorities and procurement principles are virtually meaningless unless they are translated into practice.

**Fourthly**, in the circumstances it appears that the County Council’s procurement practice falls well short of the National Procurement Strategy for Local Government launched by ODPM and the Local Government Association in 2003.

The local authority’s **Procurement Strategy** should also contain Protocols setting out how staff and trade unions will be involved in the different stages of the procurement process. This should include:

- A set of principals such as acting in the public interest, public service ethos, sharing information, non-disclosure of confidential information.
- Consideration of exclusion of support services from contracts or mandatory bids.
- Consultation, access and commenting on drafts of contract documentation.
- Non-disclosure agreement.
- Meetings with shortlisted tenderers.
- Access to bid documentation and meetings with bidders affecting the employment of staff and working practices.
- Evaluation criteria, trade union nominated observer to Procurement Committee/Panel, and opportunity to submit written submissions to the Committee/Panel.

Separate Protocols should cover:

- in-house bids and public sector consortia
- options appraisal
- staff and trade union involvement
- user and community involvement
- social and community needs
- equalities mainstreaming
- sustainable procurement
- community benefits

### **TUPE PLUS transfer**

The standard TUPE transfer does not provide adequate security and protection of terms and conditions for staff. Some local authorities, for example Newcastle City Council, requires new employers to agree to TUPE Plus transfers, which include the following:

- A guarantee that TUPE will last for the length of contract (the regulations do not specify a time period). This is essential to protect conditions of service, existing redundancy payments and early retirement provisions. Any variation to conditions of service would only be introduced following a collective agreement with the appropriate trade union.
- New starters will be on the same/very similar terms and conditions and the company will not operate a two-tier workforce.
- New employers must be required to obtain Admitted Body Status to the Local Government Pension Scheme (LGPS) and remain members for the length of the contract. The new employer should be required to give an undertaking to minimise the transfer of staff out of the LGPS pension scheme only where staff are required to work on other projects. A mechanism should be put in place which requires employer to seek Council approval for all transfers out of the LGPS other than for leaving or retirement.
- The current job evaluation scheme should be applied for the duration of the contract.
- Annual local government pay awards will be implemented in full unless otherwise agreed with the recognised trade unions.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employer's own terms and conditions unless absolutely necessary because of nature of the work (see section on pensions below).

- The contractor will be committed to equal opportunities, work-life balance, whistle blowing and health and safety policies at least equivalent to the Council's employment and corporate policies.
- The contractor will have a workforce development, education and training plan approved by the Council and trade unions.
- The current trade union recognition and facilities agreement must be maintained the duration of the contract unless changed by agreement. This should cover new staff who must have equal opportunity to join a recognised trade union.
- The contractor gives an undertaking not to offshore any work relating to the contract.
- The Council establishes a system to monitor the employment policies and practices of the contractor as an integral part of the performance management and reporting process.

### **Comprehensive Performance Assessment**

The Audit Commission carries out a Comprehensive Performance Assessment (CPA) of Essex County Council in 2006 which resulted in a four star ranking - 'performing strongly, well above minimum standards'. Local authorities are assessed on the use of resources, service performance, corporate assessment and the 'direction of travel' and receive between one and four stars. Essex received three stars for these elements of the assessment. The CPA assessment appears decidedly at odds with the experience of the County Council's procurement, transfer, monitoring and scrutiny of the care homes.

The 2006 CPA concluded that "political leadership is strong although the scrutiny function has yet to have significant impact" (Audit Commission, 2006).

### **CSCI inspection**

The CSCI Care Standards must be amended to include the quality of employment because both theory and practice have demonstrated that the quality of care and quality of employment are integral (IDeA, 2001, Centre for Public Services, 1992). This could be achieved by amending the current standards Nos. 27-30 or by introducing new standards.

CSCI inspectors should also be required to confer with a trade union or staff representative in each home as part of the inspection process to determine whether there are issues in the interface between quality of employment and quality of care which impact on the latter.

### **Future scrutiny**

The scrutiny of the care homes by Essex County Council in November-December 2006 was regarded by staff, UNISON and the Essex County Council Labour Group very unsatisfactory – the latter described the recommendations as "a cheap emulsion, the sole purpose of which is to cover over the real features and the failures of this whole sorry episode" (Labour Group Minority Report, 2007).

In future, scrutiny should be rigorous and comprehensive which means that the operation of the care homes should be regularly reviewed with the quality of care, standards, quality of employment and operation and management of the contract all within scope. This requires examination of both Excelcare and Essex County Council responsibilities. The contractor should be required to attend to give evidence and answer questions together with the Adult Social Care Policy Development Group. Relatives/friends, staff and trade union representatives, pensioner and care organisations should also be invited to give evidence. A full report of the findings should be in the public domain together with any recommendations.

### **The longer-term future quality of care**

The Essex/Excelcare partnership raises a number of important issues about the future quality of residential care. How can dignity, respect and quality of care be achieved and maintained if

the workforce is constantly subjected to cuts in terms and conditions and low quality employment conditions. Care workers are committed but they are unlikely to remain in this sector when they can earn higher wages with better conditions in other jobs.

At long-term strategy of employing staff with poor quality terms and conditions guarantees the provision of care at minimum standards but little more. It sends a message that staff are not valued. Experienced staff inevitably leave. Recruitment and retention problems ultimately rebound on the quality and continuity of care. Training and skills development suffer making a mockery of 'workforce development'. Intended national minimum standards become maximum standards to coincide with infrequent inspections.

### **New Labour's marketisation of care**

The Essex care contract is part of a wider marketisation and privatisation of public services. This is gaining pace through a five-part process of commodifying or commercialising public services and the welfare state infrastructure; reorganising labour; market mechanisms introduced to spur competition with services hived off to arms length companies and quangos; users are treated as consumers; and business interests further embedded in public policy making (Whitfield, 2006). A contracting culture will dominate and systematically replace public service principles and values.

Although the care sector remains fragmented, corporate consolidation is continuing with the US private equity group Blackstock overtaking BUPA as the largest care home operator in Britain. Excelcare is a relatively small company in comparison. However, it is a New Labour 'model' company to the extent in which it is competing to be a 'partner' in the privatisation of local authority care homes, participate in Private Finance Initiative projects and enforce the implementation of 'flexible' labour market practices.



## Part 7

# Recommendations

The recommendations are divided into those pertaining to Excelcare Holdings PLC, Essex County Council and the Commission for Social Care Inspection.

### **Excelcare Holdings PLC**

- Withdraw the changes to terms and conditions and revert to the TUPE transferred conditions which includes holiday entitlement, sick pay and pensions.
- The 2.95% pay rise, which was due on 1 April 2006, must be paid immediately including all back pay due.
- Increase staffing levels to provide good quality care for residents.
- Reduce the 12 hour shifts to 10 hours.
- Compensate staff for the loss of earnings and stress caused since the transfer of homes in 2005.
- Increase expenditure on food and the paltry Christmas present allowance for residents and reinstate Easter eggs.
- Agree to improve transparency and disclosure of costs (Excelcare receive over £8m of public money annually, which will increase further when some of the homes are extended).

### **Essex County Council**

The lessons learnt from the Excelcare contract must be implemented by amendments to the Council's options appraisal and procurement processes, employment strategies and performance assessment.

- TUPE Plus must be adopted as the basic standard for all future transfers of staff.
- Revise the Procurement Strategy to ensure that the procurement principles and practices are fully implemented.
- Staff and trade unions should participate in the procurement process as recommended by the National Procurement Strategy for Local Government and best practice.
- Consider more comprehensive and regular monitoring of standards and practices in the Excelcare care homes.
- Inspections must be unannounced and ensure that care homes and companies are not tipped off about inspection dates and times.
- Scrutiny procedures should be revised to ensure a rigorous process which involves all stakeholders.

### **Commission for Social Care Inspection**

- The CSCI inspection standards should be amended to include new employment standards.
- Inspectors should be required to talk with a staff/trade union representative during the inspection.

- Inspections must be unannounced and ensure that care homes and companies are not tipped off about inspection dates.

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