CABINET

Alternative Social Care Delivery Models and developing a trading arm

Report of Executive Director People Communities and Society

Portfolio Holder: Councillor Phil Harrison; Adult Social Services and Health

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Purpose of Report
The report seeks agreement in principle to establishing a trading arm, subject to a detailed business case being brought forward in June, and to consultation with staff and trade unions.

Executive Summary
The report looks at a number of options as to how best the Council can establish a trading arm in adult social care. It sets out the proposals to consult with staff and trade unions and outlines a timetable for bringing a formal proposal back to Council in June.

Recommendations
1. Approve in principle to the formal exploration of the benefits of establishing a trading arm for the Council’s Adult Social care services on the basis of a majority council owned company, with the minority stake held by the employees in a co-operative.

2. Approve a formal consultation with staff and trade unions on the above.

3. Agree to develop a more detailed proposal in the form of a business case which will be submitted to Cabinet in June.
Alternative Social Care Delivery Models and developing a trading arm

1 Background

1.1 Adult Social Services provides a wide range of care services for older people, people with a learning disability, mental health problems and physical disability. Broadly speaking one third are provided by the Council itself and two thirds are commissioned from the external sector. These internal services cost £15 million, employ over 400 people and have a good reputation for the quality of care. Under the previous ratings regime all the CQC registered services were rated as either as “Good” or “Excellent”.

1.2 Over the past 15 years, social care funding has increased but this has not kept pace with the rise in the numbers of older and disabled people. Nationally many Adult social care departments are unable to balance their books. The onset of the financial crisis combined with steadily increasing demographic pressure has raised serious questions over the sustainability of adult social care services.

1.3 In response to the challenges both to Adult Services and the wider local government landscape, Oldham MBC have initiated an ambitious programme of budget reductions and customer-led change in ‘Repositioning Oldham’ – that will fundamentally change the Council over the next three years. One of the key areas for potential change is the strategic case for innovative models of service delivery which includes exploring alternative ways to deliver services through, for example, Co-operatives, Social Enterprises and Local Authority Trading Companies.

1.4 Part of Repositioning Oldham is the ambition to become a Co-operative Council. An ambition rooted in a belief that the authority has all the necessary attributes of a Co-operative - it is not for profit, works in the public interest and most of the employees live within the borough. Delivering this ambition is integral to the work on Repositioning Oldham and recognises both that the borough faces significant challenges over the coming years and is being pro-active about finding solutions.

2 Current Position

2.1 The Council have begun to explore the potential to deliver services in a different way and commissioned a report to carry out an options appraisal. In assessing the options available, three factors were seen as critically important by Members, senior officers and staff:

- Quality – the ability of the Council to maintain oversight and control over the strategic direction service delivery is taking particularly to encourage a continuing emphasis on quality service provision
• Co-operative Council – How far the change supports the Councils strategic agenda (Repositioning Oldham) and the next phase of delivering Co-operative Council?
• Cost – How far the change will support meeting the planned savings requirements without putting this or other services at risk?

2.2 Officers are now seeking approval to:
1) Confirm that the preferred model for a trading arm in the case of Adult Social Care would be a local authority majority owned company, with the minority stake help by the employees in a co-operative.
2) Continue to develop a more detailed proposal in the form of a business case which will be submitted to Cabinet in June
3) Carry out a formal consultation with staff and trade unions

3 Options/Alternatives

3.1 The options to establish an alternative delivery model for provider services are:

• Continue in-house provision;
• Establish a social enterprise;
• Establish a co-operative;
• Establish a Local Authority Trading Company (LATC);
• Establish a joint venture company
• Outsource provision

3.2 The analysis against the potential options is summarised below:

3.2.1 Continue In house provision
In-house services offer unique control and influence combined with low risks. The ability to provide quality services alongside the opportunity to intervene in the case of failure makes continuing in-house provision the ‘safest’ option for the Council. These advantages are counterbalanced by significant challenges in terms of meeting the budgetary constraints set by the Council. In-house services offer unique control and influence combined with low risks. The ability to provide quality services alongside the opportunity to intervene in the case of failure makes continuing in-house provision the ‘lowest risk’ option for the Council, albeit at the highest cost. The significant challenges in terms of the financial constraints faced by the Council require a careful examination of value for money. These challenges are a risk to the ongoing delivery of quality provider services unless the Council adopts a fundamentally different strategy which will create a genuinely commercial environment for adult provider services within the Council structure.
3.2.2 Social enterprise
Social enterprises offer opportunities to carry out service delivery in the interests of a defined community. In organisational form they combine commercial principles with a community service ethos which resonates with the spirit of public service present in Oldham MBC officers. However any Social Enterprise would, by definition, be established independently from the Council allowing some reduction in opportunity for on-going control over service direction. In addition, there is potential for increased costs in terms of set up and procurement and any surplus would likely to be either locked (through for example, an ‘Assets Lock’) into the Social Enterprise or be at the disposal of the governing body.

3.2.3 Local Authority Trading Company
A LATC enables the Council to create a new trading organisation while retaining at least a majority share of the ownership. This ownership would allow any surplus or dividend arising from its success to be paid back to Oldham MBC for further investment in services or in the current climate to facilitate savings reducing the risk to other services. This dual element of control (through contract and through governance) allows significant flexibility, but low risk in terms of strategic alignment. As it is independent of the operational decision-making processes within the Council, the LATC can deliver services which are more flexible and adaptable than through in-house delivery and its arms length nature allows it to make cost reductions more readily than with in-house provision. However, as the majority shareholder of the LATC, Oldham MBC will retain control, and as a result, be able to readily influence how the company grows and develops in order to deliver the strategic vision of the Council. In setting up an LATC the Council would need to invest in set up costs but would not need to invest in procurement costs.

3.2.4 Co-operatives
Co-operatives are a form of social enterprise business which are owned and run by and for their members, whether they are customers, employees or residents. As well as giving members an equal say and share of the profits, co-operatives act together to build a better community through co-operation. A new co-operative would be independent from Oldham MBC, run democratically but with little opportunity for the Council to influence services if they were of a poor quality or moving in a different direction. Significantly, the Co-operative is likely to offer a significant amount of synergy with the Council’s Co-operative agenda. Like Social Enterprises, Co-operatives are likely to offer some flexibility in reducing high costs associated with in-house provision, to generate additional income as well as the potential for accessing additional funds and grants. However, the Council would likely need to invest in set up and procurement costs.
4 Proposed Consultation with staff & unions

4.1 Given the national economic outlook and acceptance that Council The Co-operative hybrid would be a form of social enterprise business which would aim to give members (in this case staff) an equal say and share of the surplus generated through trading with Oldham MBC and potentially other local authorities. If the business case is supported, the Co-operative hybrid would be independent from Oldham MBC, and staff would TUPE transfer into the new organisation. Significantly, this proposal has been developed to support the Co-operative Council agenda.

4.2 Officers have already carried out an informal briefing with staff and unions, and front line managers were involved in the appraisal which was the basis for this recommendation. The feedback from staff during these informal sessions was that they had some significant concerns about their future especially provided services are, in the main, more expensive than those provided by organisations outside the Council. On this basis, they were in principle supportive of moves to maintain quality service provision in light of a continuing reduction in resources. There were concerns around the impact on individual terms and conditions.

4.3 Should this recommendation be taken forward, a full and formal consultation period would begin. The consultation period would run in parallel to the business case phase of the project and would report back findings in June 2012.

5 Maintaining Control, Oversight and an emphasis on Quality

5.1 Due to the extent to which the above mentioned factors reflect Members desires to establish an organisation that is closely associated with the Council and where Members retain a strategic role, the business case would aim to support the Co-operative hybrid within the framework of a Local Authority Trading Company (LATC). The legal format for LATCs would require the Council to create a new trading organisation retaining at least a majority share of the ownership. The power to trade and LATC legal framework was established in the Local Government Act 2003. While the details structure and operating model of the company will be determined through the business case, the Co-operative hybrid will have the following elements:

- The Local Authority will retain a controlling share in the organisation, and maintain ownership of all assets.
- Employees will share in the success of the organisation through a formalised programme (be that legal share ownership or otherwise)
- The organisation will operate independently of the Council and have its own Executive Board, Managing Director and Management Team.
- The Council will nominate a majority of the Board members, and appoint the Managing Director and determine the strategic direction
5.2 Because of the controlling share, the Council would have the power to determine the configuration of board members and replace the managing director or board at any time. This oversight and control would mean that the Council would be able to continue to set priorities around for example choice and control which are likely to have a positive influence on the quality of service delivery. The Council would also be able to continue to hold services to account through executive board membership and is likely to be able to guarantee services for those with very complex needs.

5.3 Importantly this model achieves flexibility and responsiveness within the market which are a key requirement from any future service provider of choice (which this organisation is likely to be). This responsiveness will facilitate the ability to respond to changing needs of service users in the context of Council ownership and influence which will provide additional confidence for service users and citizens. As an independent organisation, the Co-operative would be free to generate income from competing for business from other Local Authorities, which is likely to contribute to further sustaining quality services.

6 **Supporting the next phase of Co-operative Council**

6.1 The ambition for Oldham to become a Co-operative Council is rooted in a belief that the authority has all the necessary attributes to be a Co-operative - it is not for profit, works in the public interest and most of the employees live within the borough.

6.2 This approach is relatively new and is continuing to develop. Early work has focused on the publication of the Co-operative Charter’ and ethical framework.

6.3 As part of repositioning to a cooperative council, Oldham Council is committed to exploring different ways in which services can be provided and delivered in the future. A number of ‘Co-operative Pilots’ ranging from re-commissioning of Children’s Centres to the local management of allotments are being delivered - exploring ways of achieving the cooperative difference required. The alternative service delivery model project is the latest development along these lines and represents the latest Co-operative ‘product’ or initiative that has been developed within the Council’s Co-operative Framework.

6.4 Co-operative Oldham is a relatively new initiative and as such the details of how the concept of Co-operative Council impacts decisions around service delivery are still being developed. There are a number of emergent responses to the recently published ‘Co-operative Charter’ including an ethical framework and delivery of a number of ‘Co-operative Pilots’ ranging from re-commissioning of Children’s Centres to the local management of allotments. The alternative service delivery model project is the latest development along these lines and represents the latest Co-operative ‘product’ or initiative that has been developed within the Council’s Co-operative Framework.
• Though the final details of how the Co-operative would function would need to be detailed during the business case phase, there would a number of distinctively Co-operative elements:

• A scheme which would facilitate employees to share in any surplus generated

• Governance structures which supported employee representation at board level

6.5 It is important that the Council undertakes a rigorous financial analysis and equality impact before it formally establishes a new company to deliver services. A full and detailed business case will be developed before any decision around implementation or the delivery of cashable savings is reached. The business case would contain:

• A five year business plan based on a financial model

• Detailed identification of potential savings and how those savings will be achieved

• A draft proposed organisational structure

• A detailed implementation plan

• An Equality Impact Assessment

6.6 Establishing an organisation external to the Council inevitably means that the relationship with the Council will change. In particular, the extent to which corporate support and the service requirement for support services provision including for example, business support officers will be managed along the lines of a commissioner/provider relationship with the new organisation ‘buying back’ Council services. While this could be seen as a risk to the ongoing sustainability of Council services, in the context of the Council’s drive towards a more commercial approach, the Council is likely to redesign these services regardless of this initiative, aiming to make them competitive in comparison to the wider ‘market’. As a result, though this initiative raises potential risks, it also represents an opportunity for the Council to redefine this support in partnership with a sizeable future customer.

7  Implementation planning and next steps

7.1 An indicative timeline for this project is shown below. The timeline shows that the earliest delivery for this project is slightly less than 9 months. If the Council were to proceed to the next phase of delivery by the end of January 2011 (following sign off by Members), full implementation would be possible by mid December.
8 Financial Implications

8.1 Due to the similarities between the ranges of alternative service delivery models the financial analysis has focused on three options: outsourcing, in house and alternative service delivery model. The analysis has been at a high level as part of the options appraisal process and fully detailed costing’s will be prepared as part of the business case development. The analysis to date has been based on previous experience of operating these models, experience within Oldham and professional judgement.

8.2 In coming to the estimated position judgements have been made of the financial consequences of service redesign, employee productivity and arrangement, supply savings, income sources, reduced support costs, service changes and contract negotiations.

8.3 The outline position, subject to the detailed business cases is summarised below:

**Table 1 Analysis of Savings Net of Set up Costs for each option**

<table>
<thead>
<tr>
<th>Option</th>
<th>2012/13</th>
<th>2013/14</th>
<th>2014/15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outsourcing</td>
<td>£'000</td>
<td>£'000</td>
<td>£'000</td>
</tr>
<tr>
<td>In House</td>
<td>75</td>
<td>775</td>
<td>1,275</td>
</tr>
<tr>
<td>Alternative Service Delivery</td>
<td>315</td>
<td>876</td>
<td>1,394</td>
</tr>
</tbody>
</table>

Funding for the set up costs will need to be identified in the Stage 2 financial deliberations.

The above may change as the detailed business cases are developed and the financing of investment costs to achieve the necessary change will be identified as the business cases are worked up in order that the budget saving requirements are met.

The option chosen will also influence the sources of external grant funding available and the potential tax liability both these issues will need to be covered in the detailed financial analysis. (Steven Mair)
Legal Services Comments

9.1 Put at its simplest, an authority is authorized to do for a commercial purpose anything which it is authorized to do for the purpose of carrying on any of its ordinary functions, provided that before exercising this power the authority has approved a business case. The power can only be exercisable through a company in which the authority has interests and can never be used for trading in anything which an authority is statutorily obliged to do in relation to any individual.

9.2 As the report recognizes, before the proposal can be implemented detailed work would be necessary, around things such as structure and governance, TUPE, procurement implications and competition law, with further legal comments at that point and close involvement of legal officers in the meantime. (Bill Balmer)

Human Resources Comments

10.1 Human Resources have been consulted on the proposals. Clearly, there are a number of staffing implications associated with the recommended proposal including the TUPE transfer of Provider Services staff and the impact on support services should TUPE not be applicable and the alternative model choose not to buy back the Council’s services.

10.2 The new organisation will be required to obtain Admitted Body Status (ABS) to the LGPS to ensure continuity of pension provision.

10.3 HR will need to play a key role in the next phase of this proposal to ensure that the full implications can be realised and timelines can be set within the legal requirements (Emma Gilmartin).

Property Implications

11.1 None. The assets and property will remain in the full ownership of the Council.

Procurement Implications

12.1 In order to transfer internal services to a co-operative hybrid without competitive tender, the Council would need to demonstrate that the “Teckal” exemption to the Public Procurement Regulations applies, i.e. that it wants to give a contract to a legally separate but substantively ‘in-house’ provider. The exemption applies when a contracting authority exercises control over a wholly-owned entity that is similar to the control it has over its own departments, and that the entity carries out the essential part of its activities for that authority.
12.2 Guidance on the Teckal exemption suggests that any private participation will prevent the Teckal exemption applying and the Council would then be required to competitively tender. As the co-operative hybrid model involves the Council owning a majority share, with the remainder being owned by the staff, further advice would be required as to whether the co-operative share constitutes ‘private participation’.

12.3 The business case for the co-operative hybrid will need to be sufficiently robust to withstand any potential challenge from the independent sector concerning the transfer of services without competitive tender.

12.4 Should the Teckal exemption apply, consideration needs to be given as to the extent to which the co-operative will be required by law to comply with the Public Procurement Regulations when undertaking its procurement of goods and services.

12.5 Procurement involvement in the development of the business case is recommended to assist in addressing the points raised above (Helen Ramsden)

13 **Equality, community cohesion and crime implications**

13.1 None. Change of ownership and management will not change the range of services.

14 **Equality Impact Assessment Completed?**

14.1 No, although this will be completed once the Business Case has been finalized.

15 **Key Decision**

15.1 No

16 **Forward Plan Reference**

16.1 N/A

17 **Background Papers**

17.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:
Appendices

18.1 None