

CABINET Agenda

Date Friday 17 June 2022

Time 4.00 pm

Venue Crompton Suite, Civic Centre, Oldham, West Street, Oldham, OL1 1NL

Notes 1. DECLARATIONS OF INTEREST- If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact Paul Entwistle or Liz Drogan in advance of the meeting.

2. CONTACT OFFICER for this Agenda is Liz Drogan Tel. 0161 770 5151 or email elizabeth.drogan@oldham.gov.uk

3. PUBLIC QUESTIONS – Any member of the public wishing to ask a question at the above meeting can do so only if a written copy of the question is submitted to the Contact officer by 12 Noon on Tuesday, 14 June 2022.

4. FILMING – This meeting will be recorded for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be recorded, except where there are confidential or exempt items and the footage will be on our website. This activity promotes democratic engagement in accordance with section 100A(9) of the Local Government Act 1972. The cameras will focus on the proceedings of the meeting. As far as possible, this will avoid areas specifically designated for members of the public who prefer not to be filmed. Disruptive and anti social behaviour will always be filmed.

Any member of the public who attends a meeting and objects to being filmed for the Council's broadcast should advise the Constitutional Services Officer who will instruct that they are not included in the filming.

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Recording and reporting the Council's meetings is subject to the law including the law of defamation, the Human Rights Act, the Data Protection Act and the law on public order offences.

MEMBERSHIP OF THE CABINET IS AS FOLLOWS:

Councillors Ali, Akhtar, Brownridge, Chadderton, Jabbar, Moores, Mushtaq, Stretton and Taylor

Item No

- 1 Apologies For Absence
- 2 Urgent Business
Urgent business, if any, introduced by the Chair
- 3 Declarations of Interest
To Receive Declarations of Interest in any Contract or matter to be discussed at the meeting.
- 4 Public Question Time
To receive Questions from the Public, in accordance with the Council's Constitution.
- 5 Minutes of the Cabinet Meeting held on 21st March 2022 (Pages 1 - 28)
- 6 Appointments to Cabinet Sub-Committees and Joint Committee (Pages 29 - 42)
- 7 Approval of Enforcement Policies (Pages 43 - 84)
- 8 Renewal of Framework of Contractors for Tree Surgery works. (Pages 85 - 88)
- 9 Procurement of Water and Wastewater Services (Pages 89 - 94)
- 10 The Supply and Delivery of Cleaning Chemicals and Materials (Pages 95 - 100)
- 11 A Bed Every Night Phase 5 Procurement (Pages 101 - 106)
- 12 Exclusion of the Press and Public
That, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they contain exempt information under paragraph(s) 3 of Part 1 of Schedule 12A of the Act, and it would not, on balance, be in the public interest to disclose the reports.
- 13 A Bed Every Night Phase 5 Procurement (Pages 107 - 112)

Present: Councillor Shah (Chair)
Councillors Akhtar, Jabbar, Moores, Mushtaq, Roberts, and
Stretton

1 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors
Chadderton and Chauhan.

2 **URGENT BUSINESS**

There were no items of urgent business received.

3 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

4 **PUBLIC QUESTION TIME**

There were no public questions received.

5 **MINUTES OF THE CABINET MEETINGS HELD ON 17TH
FEBRUARY 2022 AND 28TH FEBRUARY 2022**

RESOLVED – That the Minutes of the Cabinet meetings held on
17th February 2022 and 28th February 2022 be approved.

6 **REVENUE MONITOR AND CAPITAL INVESTMENT
PROGRAMME 2021/22 MONTH 9 – DECEMBER 2021**

Consideration was given to a report of the Director of Finance
which provided the Cabinet with an update on the Council's
2021/22 forecast revenue budget position at Annex 1 and the
financial position of the 2021/22 Capital Programme as at 31st
December 2021 together with the revised capital programme
2022/23 to 2026/27 as outlined in section 2 of the report at
Annex 2 of the report.

Revenue Position

The current forecast outturn position for 2021/22 was a
projected surplus variance of £2.680m after allowing for
approved and pending transfers to and from reserves.

The position included additional costs and pressures that had
been identified by the Authority in this financial year as a direct
result of the COVID pandemic. The additional pressures
included forecasts of both income shortfalls and additional
expenditure that had impacted on the Authority's budgets.

The pandemic was continuing to affect nearly all aspects of
Council service delivery; the most significant areas of concern
were the People and Place, Children's Services and Community
Health & Adult Social Care Portfolios. Action was being taken
and would continue right up to the end of the financial year to
address variances and take mitigating action as detailed in the
report.

The overall corporate position was partly being offset by the
application of £7.737m general COVID support grant and

£0.352m from the Quarter 1 compensation claim for lost income in relation to sales fees and charges (SFC); in total £8.089m, all of which was received from the Department for Levelling Up, Housing and Communities (DLUHC). In Appendix 1 to the report, the un-ringfenced Government support was presented as a single sum so that it highlighted the level of variation across all Council budgets, given that there was insufficient resource to fully offset the adverse COVID related variance. However, this summary report presented the position after applying the Government grant across Portfolio areas. An update on the major issues driving the revenue projections was detailed within Annex 1, Section 2 of the report.

The current projected position, after adjustment for reserves and, as outlined above, receipt of all additional Government funding to support COVID pressures that the Authority was expecting to receive, continued to show a net underspend, demonstrating the impact of the service and corporate actions that had been initiated across all service areas to review and challenge planned expenditure and to maximise income. Action would continue with the aim of, at the very least, maintaining this position to the end of the financial year.

Information on the Quarter 3 position of the Dedicated Schools Grant (DSG), Housing Revenue Account (HRA) and Collection Fund was also outlined in the report. There were currently no significant issues of concern in relation to the HRA.

Capital Programme

The report outlined the most up to date capital position for 2021/22 to 2026/27 for approved schemes. The revised capital programme budget for 2021/22 was £38.709m which was considerable movement from the month 8 forecast of £52.588m and a net decrease of £47.293m from the original budget of £86.002m. Actual expenditure to 31 December 2021 was £29.304m (75.7% of the forecast outturn).

It was anticipated that the forecast outturn will be close to the final position, although there may be further reprofiling up to the year-end.

Options/alternatives considered

Option 1 - To agree the forecast revenue and capital positions presented in the report including proposed changes.

Option 2 - To agree some of the forecasts and changes included in the report.

Option 3 - not to agree any of the forecasts and changes included in the report and ask for further information.

RESOLVED – That:

1. The forecast revenue outturn for 2021/22 at Quarter 3 being a £2.680m favourable variance having regard to the action being taken to manage expenditure be approved.
2. The forecast positions for the Housing Revenue Account, Dedicated Schools Grant and Collection Fund be approved.
3. The use of reserves as presented in Section 8 of Annex 1 of the report be approved.

4. The revised capital programme for 2021/22 to 2026/27 as at Quarter 3 be approved.



Oldham
Council

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HOUSING DELIVERY STRATEGY

The Cabinet gave consideration to a report of the Executive Director for Place and Economic Growth which sought approval of the Housing Delivery Strategy and programme of works. Oldham was targeted by Government to deliver c.700 homes per annum up to 2037, which was significantly higher than what had been achieved in the Borough in recent years. In order to meet both the Oldham Housing Strategy objectives and deliver at the scale required to support projected population growth, new models of delivery and partnership working would be necessary, with the need for the Council to take an active role in driving forward housing development.

The report provided a series of recommendations for the Council to drive forward a programme of housing development activity. It was reported that the document set out the current policy context and ambitions for housing delivery in the Borough as part of the Creating a Better Place regeneration programme. It considered the merits of a range of development options which the Council could progress to ensure delivery of housing on land under its control and updates on current housing activity and recent achievements in the borough. Progress towards developing brownfield land were highlighted and the report also considered and made recommendations regarding affordable housing, low and zero carbon housing and Modern Methods of Construction.

Three possible options were set out within the report, (a land sale, delivery via Building Lease and procuring a Strategic Development Partner) available to the Council and the advantages and disadvantages of each, before making site specific recommendations for delivery.

RESOLVED – That the Cabinet would consider the commercially sensitive information contained at Item 20 of the agenda before making a decision

8

SELECTIVE LICENSING OF PRIVATE RENTED PROPERTIES

The Cabinet gave consideration to a report of the Executive Director Place and Economic Growth which sought approval of a Selective Licensing Scheme to implemented in certain parts of the Borough.

It was reported that an extensive period of consultation had been carried out regarding the introduction of a second selective licensing scheme for privately rented properties in parts of the Borough.

The report detailed the findings of this consultation and also developed the final proposals for a second selective licensing scheme.

In 2015 Oldham Council introduced a Selective Licensing Scheme for privately rented properties in certain parts of the Borough as an intervention to address issues of low housing demand. It was a five-year scheme that ended in December 2020.

A review of the scheme was completed May 2019 and updated December 2020, which showed low housing demand had improved in some areas, had stayed the same in others, and had deteriorated in 2 areas. It also identified additional areas which are exhibiting low housing demand.

In January 2020, following Cabinet approval, a statutory consultation for proposals of introducing a new Selective Licensing Scheme commenced and this consultation was relaunched again in January 2021 due to the impact of the Covid pandemic both on the responses to the consultation and the resources available within the Council.

The private rented sector performs an essential role in the Borough's housing market. Many private landlords provided a decent service to their tenants, but the practices of some can give the sector a poor reputation and affect the housing demand of an area. Selective licensing can form a part of a wider set of measures to address the causes of low housing demand.

The Housing Act 2004 included provisions to develop an improved and more professional private rented sector. Section 80 gave powers to local housing authorities to designate areas as subject to selective licensing in respect of privately rented accommodation, provided certain conditions are met. A review of the housing market was carried out in 2019 and updated in 2020 which indicated there was evidence of low housing demand in the proposed areas. The report explained how selective licensing would support a range of measures to tackle the problem.

From the consultation exercise, private landlords had expressed their concerns;

- 1) that the introduction of a new licensing scheme is not required
- 2) that the housing market has changed
- 3) they are unclear on what the previous scheme has achieved and how any new scheme would make a difference.

Other consultees had stated that licensing should be introduced across the borough.

The report acknowledged the feedback from the consultation and sought to address the concerns. It was clear that different stakeholders had different opinions, and there is no way of achieving an outcome that is satisfactory to all.

Other options had been considered to address problems in the private rented sector, however these were too narrow in addressing management standards and do not provide a holistic, strategic response to raising management standards.

Selective licensing could be an integral part of the Council's wider housing strategy, by improving management standards. Managed well, the private rented sector can offer choice and flexibility within the Borough's housing market with the potential to support economic growth as well as meet housing needs. The implementation of Selective Licensing does have risks; however, these have been carefully considered. The Council has experience, knowledge, shared best practice and learning from the previous scheme that would greatly benefit any new scheme.

Options/alternatives considered

Option 1 – To consider the findings of the review, consultation, options appraisal and other measures available to work with Selective Licensing and to approve a two-phase approach to implementing a new Selective Licensing scheme, starting with the LSOAs with the worst low housing demand.

Approve the licence fee cost for phase 1 of the selective licensing scheme at £582 per property. The fee is split into two payments, an application fee of £340.34 and a monitoring & compliance fee of £241.66.

Option Two - Approval of the first phase only of a new Selective Licensing scheme in the LSOAs as stated in (Appendix 13) affecting 17.36% of the private rented sector.

Approve the licence fee cost for phase 1 of the selective licensing scheme at £582 per property. The fee is split into two payments, an application fee of £340.34 and a monitoring & compliance fee of £241.66.

Option Three - Approval of a new Selective Licensing scheme in all the LSOAs that have been statutorily consulted over 20% of the private rented sector and apply for Secretary of State Approval.

Option Four - Not approve the use of Selective Licensing in Oldham.

RESOLVED – That

1. The findings of the reviews and outcome of the statutory consultation be noted.
2. A two-phase Selective Licensing approach be approved.
3. The license fee cost for phase 1 of the selective licensing scheme at £582 per property be approved. The fee would be split into two payments, an application fee of £340.34 and a monitoring & compliance fee of £241.66.
4. It be noted that Phase 2 of the proposal, which involved a further period of consultation and the resultant recommendation potentially being approved by the Secretary of State would require a further budgetary provision of £25,000.

9

DISPOSAL OF VACANT LAND AT DERKER, ST JAMES

Consideration was given to a report of the Executive Director, Place and Economic Growth which sought approval of the disposal of three vacant plots in Derker and the approval of a Brownfield Housing Land agreement for Derker completed between Hive Homes and the Greater Manchester Combined Authority.

There were a number of vacant sites in Derker that were cleared as part of the Housing Market Renewal Programme and had remained vacant for over 10 years. The sites included a number of individual Council owned plots totalling approximately 4 hectares and cover land at the former Cromford Mill, Abbottsford Road and former Derker Hotel site, London Road and Evelyn Street, as shown at Appendix 1 to the report.

In July 2020 the Greater Manchester Combined Authority was awarded an initial allocation of £81.1 m over a 5-year period following a Government announcement with regards to a national pot of £400 m Brownfield Housing Land Fund (BHLF). The Ministry of Communities, Housing and Local Government (MCHLG) commenced a further bidding round in August 2020 for the remaining 10% of the £400 m allocated as BHLF grant. The £40 m was retained by MCHLG as a competitive element to help support the most ambitious projects. The focus of the bidding process and assessment was on identifying and supporting those Mayoral Combined Authorities that could demonstrate they had ambitious proposals and were ready to receive funding and where the funding could be utilized within 2 years. The grant for Derker was funded from this '10%' pot and in order to complete the funding agreement, a series of tight the milestones outlined in the report were required to be met. The BHLF provided grant support to bring forward residential development on brownfield sites. The grant can be used to address remediation issues, access works or service diversion and provision required in order to make sites deliverable. The funding cannot be used as revenue.

In September 2021, Cabinet approved that a provisional BHLF allocation for the sites in Derker of up to £2 m should be accepted. Derker had capacity for circa 150 homes and the grant would be used to help support zero carbon/highly energy efficient housing.

The funding needed to be spent (i.e. works completed up to the value of the grant) by March 2023 and in order to spend the grant the following development milestones had been agreed with GMCA. Whilst there was some flexibility with the milestones up to March 2023, if the project did not progress in accordance with the dates below, there is a risk the funding will be lost.

- Cabinet approval to dispose – March 2022
- Planning application submitted – June 2022
- Start on site – November 2022
- Works (to value of the grant) completed – March 2023
- Housing completed – early 2025

In order to achieve these tight deadlines, and based on advice from CBRE, it is proposed that the BHLF Grant Agreement should be completed directly between GMCA and Hive Homes. This approach has no financial impact on the council, as the grant would have subsequently been novated over to the developer partner in its entirety in any event.

Options/Alternatives considered

Option 1 - Procure a delivery partner through a compliant procurement process

By using this option, the Council would not be able to complete the process in time to draw down the BHLF Grant which would greatly affect the overall viability of the proposed development and the quality of the homes being built. This option, with the luxury of a longer time period, would however allow for the Council to enter into a Works Contract and therefore have more control over the type of homes being built.

Option 2 - Market the site on the open market for disposal
 The site could also be marketed for sale on the open market. This option would give the Council no certainty around the type of homes built (other than via the Planning Process) or on when the homes would be built. It was likely that the development would be only Policy Compliant in terms of affordable homes (i.e. 10%) and only be built to Building Regulations standards. The homes would not be low or zero carbon. Whilst it was possible this option would generate a capital receipt, none of the council's or GMCA's wider strategic objectives would be met. The terms and objectives around the BHL Grant, including timescales and 'Build Back Better' Agenda would also be seriously jeopardised, therefore under this option the grant would likely be lost

Option 3 - Direct disposal to Hive Homes

This option would enable a high-quality scheme to be built in accordance with the Council's aspirations for Derker and also enable Hive to access the allocated BHLF Grant. A buy-back agreement will be in place if the scheme is not built out in time or if Hive fail to meet any of the other requirements of the BHLF Grant Agreement.

RESOLVED – That the Cabinet would consider the commercially sensitive information at Item 21 before making a decision.

10

DISPOSAL OF LAND AT SOUTHLINK

The Cabinet gave consideration to a report of the Executive Director, Place and Economic Growth which sought approval for the Council to carry out a competitive land sale of vacant and derelict brownfield land at Southlink together with land owned by Greater Manchester Passenger Transport Executive (GMPTE) to enable the site to be developed for new housing.

The report provided details in relation to the redevelopment of the unutilised and vacant brownfield land to the south of the former Oldham Mumps Metrolink Station. The site, known as 'Southlink' previously contained the original Oldham Mumps Railway Station which closed completely in 2009 and has since been demolished. Covering around 3.5 hectares, the site is owned by Oldham Council and TFGM, (approximately 54% and 46% respectively).

In July 2020 the Greater Manchester Combined Authority was awarded an initial allocation of £81.1 m over a 5-year period following a Government announcement with regards to a national pot of £400 m Brownfield Housing Land Fund (BHL). BHL provided grant support to bring forward residential development on brownfield sites. The grant can be used to address remediation issues, access works or service diversion and provision required to make sites deliverable. The grant was used to support schemes that would otherwise be unviable. The funding cannot be used as revenue.

Bids were submitted in a number of tranches and GMCA agreed the prioritisation criteria focusing on deliverability, value for money and strategic fit. Under Tranche 2, Oldham Council and Transport for Greater Manchester (TFGM) were provisionally allocated up to £4.502M BHLF grant funding based upon a

GMCA led proposal (working directly with TfGM) to develop 265 apartments at Southlink.

In September 2021, Cabinet approved that the grant for Southlink should be provisionally accepted. In order to meet the grant requirements, set by Greater Manchester Combined Authority (GMCA) for Tranche 2 applications, the following development milestones must be met, or the Grant risks being re-allocated to other schemes within Greater Manchester:



Milestones	Date
Collaboration agreement signed	28th February 2022
Competitive Land Sale exercise commences	8 th April 2022
Developer partner selected	30 th June 2022
TfGM / OMBC approval for selected Developer partner	31 st July 2022
Planning application submitted	30 th September 2022
Planning decision	15 th January 2023
Start on Site	31 st March 2023

CBRE were appointed in September 2020 to prepare a development brief and provide delivery strategy and developer selection advice to the council for the proposed developments at Derker and Southlink in order to meet the requirements of the BHL Grant Funding timetables.

The CBRE Advice explored three options for bringing the site at Southlink forward for development which were:

1. Direct development by the Council.
2. Procurement of a private sector development partner under the public contract regulations 2015.
3. Land sale to a Developer.

The first option was discounted because of the risk it would place on the council and the significant resources, both expertise and finance, that would be required.

A fully compliant procurement exercise to appoint a developer partner in accordance with the Public Contracts Regulations (PCR) 2015 through a competitive tendering process is a tried and tested route. However, using this approach, the Council would be highly unlikely to complete the procurement exercise and other steps necessary, such as secure full Planning Permission, in time for the preferred partner to be on site by March 2023. CBRE have provided a timetable detailing this option and the earliest start on site date would be after April 2023. This would mean that the BHL grant offer would be withdrawn and reallocated to another scheme within GM.

A land sale to a preferred developer would sit outside the PCR (2015). It would require due diligence to be undertaken by the Council on the suitability of the developer and appropriate contractual arrangements being put in place, including a buy back agreement, to ensure that the project is delivered in accordance with the BHL grant requirements.

A competitive process was proposed to be undertaken to ensure the Council secures the best value offer for the site.

A Planning Development Brief had been drawn up to provide a planning and design framework to guide the redevelopment of the site. The brief included an illustrative concept plan, provisional development schedule and indicative viability assessment to inform the disposal exercise so that any offer is aligned with the Councils, TFGM's and GMCA's delivery expectations and requirements.

The viability work showed that an apartment led scheme, even with BHL Grant support would simply not be viable due to the low rents and values in the area, combined with the high abnormal construction costs relating to the former use and topography of the land. As such it was likely that any proposed scheme would be high-density low-rise housing with a revised density of around 50 dwellings per hectare, giving a scheme of around 120 homes. The exact proposals would not be known until the competitive land sale process was completed and the final revised BHLF allocation would also not be determined until an agreed scheme has been approved by both Oldham Council and TfGM as landowners.

The competitive land sale process offers developers an opportunity to:

- Effectively utilise vacant brownfield land
- Embed zero/low carbon technologies and construction methods to create highly sustainable new homes
- Deliver quality homes to meet the acute market and affordable housing needs in Oldham
- Deliver new homes in a highly accessible location close to public transport provision, shops, amenities, services and facilities; and
- Generate significant economic, social and environmental benefits locally.

Options/alternatives considered

Option 1 - Dispose of Southlink via a Competitive Market Sale Exercise

The CBRE report confirms that a development partner can be selected to bring forward residential development on the Southlink site via a market sale process which can commence on the 8th April 2022 (or preferably earlier) as soon as all the relevant site information is available for the marketing prospectus.

Option 2- Dispose of Southlink site using a procurement framework.

CBRE considered alternative procurement routes to select a development partner in accordance with the Public Contracts Regulations (2015), through a competitive tendering process. Procurement routes included the Homes England Dynamic Purchasing System and the Pagabo Framework. The relative merits of both routes were considered in the report together with the respective timescales against the project milestones.

The analysis concluded that while this is a tried and tested approach to select a development partner that would achieve all

the project objectives, the complexity of the Southlink site and the time that it is taking to assemble all the relevant site information that would inform such as process (which is still ongoing), has meant that there is insufficient time in the project programme to undertake a procurement process as this will require a minimum of 3 months.

In summary, there is insufficient time in the project programme to run a procurement process that would also meet the BHL grant deadline. This means under this option, Southlink would remain undeveloped.

Option 3 - Dispose of Southlink via a Council led procurement exercise.

CBRE highlighted in their report that there would be no time savings with a Council led procurement exercise when compared to Option 2 above, which means that the outcome would be the same, i.e. insufficient time to meet the BHL grant deadline. The Southlink site would not be developed.

Option 4 - Do not dispose of the site.

'Do nothing' is not the preferred option for the site as this would not meet the Council's 'Creating a Better Place' regeneration and housing development objectives. The availability of the BHL grant is in place for a specific purpose which is to off-set the viability gap and bringing forward challenging brownfield sites such as Southlink for residential development, and every opportunity should be taken to draw down the funding to make development happen.

RESOLVED – That the Cabinet would consider the commercially sensitive information contained at Item 22 of the agenda before making a decision.

11

SPECIAL EDUCATION NEEDS (SEND) TRANSPORT SERVICE

The Cabinet gave consideration to a report of the Director of Education, Skills and Early Years which sought to advise on the process undertaken on the Transport Service Tender by providing details of the recent tender allocation process. It also outlined details of the current provision of Travel Assistance, provided by the SEND Transport Team.

The SEND Travel Assistance Service provided the current provision for Home to School Transport. The service transports approximately 830 pupils with either special educational needs, disabilities or because of their mobility issues. There are approx. 2600 children and young people with EHCPs in the borough and circa 5000 children and young people 0-25 years on SEN Support.

The SEND Travel Assistance Service operates over 190 school days as determined by the School Holiday Calendar and other occasional days determined by individual schools governing bodies. All pupils with SEND are provided with free travel assistance, in accordance with the Council's current Travel Assistance Policy (July 2019), IPSEA Legal guidance and the Education Act 1996. It is the legal responsibility of the Local Authority to provide this service, as outlined in the Education Act 1996.

The provision of transport is determined by the needs of the individual pupil. Those with severe and complex health, physical or educational needs can be transported by either individual taxis or adapted vehicles. Children or young people with less severe needs ordinarily travel via a multi-passenger minibus. The SEND Travel Assistance Policy aims to ensure that all pupils eligible to access transport, will receive the appropriate provision which meets their needs.

At present, there is a concurrent internal travel training program in place with Oldham Council, led by the SEND Travel Assistance Service. The program aims to provide independent travel training to 30 children and young people per annum. New delivery models for providing a greater level of scale and pace for independent travel training will be considered before the financial year end as 30 per annum is deemed insufficient to meet potential demand/need, ensure independence and preparation for adulthood and ensure best value for money/a potential invest to save model. This will help to mitigate costs moving forwards as more children and young people may migrate to travel training from transport and/or assigned travel training in place of transport in the first instance.

The current contract to provide SEND Travel Assistance expires on 31st August 2022. although there is an option to extend by another year.

A dynamic purchasing system (DPS) is to be established and used for allocating routes via mini competitions of which can be accessed via the Chest. In accordance with the Council's Contract Procedure Rules and Public Contract Regulations 2015 the following procurement process was undertaken in establishing the DPS.

A supplier engagement event was advertised on the Chest accompanied with a soft market testing questionnaire designed to inform the Council of the market's perception of the current and future ways of working.

Following the event, the DPS opportunity was advertised on the Chest on 17th December 2021 with a closing date of 21st January 2022. Bidders were asked to review and complete a standard selection question which looks to assess the capability and quality.

The DPS was broken down into separate lots for:

- Private Hire/Taxi
- PSV Buses
- Minibuses
- Black Cab
- Wheelchair Adapted Minibuses
- PSV Wheelchair Adapted Buses

Once bidders have passed this initial stage, they shall enter into a Dynamic Purchasing Agreement, following which they are eligible to submit bids for routes via the published mini competitions. The mini competition documents will be evaluated 90% on price (on a fixed price basis) with a 10% caveat based on vehicle emissions and companies' adherence to Oldham's clean air policy.

Oldham's Travel Assistance Team works in partnership with Oldham Licensing, this is to ensure all of Oldham's licensed

Private Hire and Hackney Vehicles, working on an Oldham School Transport route, meet Oldham's minimum licensing standards. Transport also works to ensure the minimum standards of all other authority's vehicles are met, using Oldham Licensing standards as a benchmark.

It is intended that approximately 220 routes will be tendered via the mini competition process which is anticipated to start in April 2022 with a deadline of May 2022. These routes are due to commence in September 2022. It is recommended that delegated authority (Managing Director, Children & Young People) is given in awarding the routes in this mini competition. It is also recommended that any subsequent mini competitions during the lifetime of the DPS will also be approved by delegated authority (Managing Director, Children & Young People).

Option/alternatives considered

Option 1 - Open the Dynamic Purchasing System under The Chest and tender the 200+ routes to the successful bidders on the System. This approach would:

- Attract new companies to the tendering process, via the Chest, enhancing Oldham's pool of approved contractors.
- Seek new tenders at a lower price than current.
- Support local business, as well as enhancing Oldham's and Greater Manchester's transport network.
- Support Oldham's and Greater Manchester's Clean Air policy.

Option 2 - Utilise the last term extension period of 1 year.

Approach the current suppliers to continue undertaking the route previously tendered for the same price, This approach would:

- Provide a continuation of service, from the contract period which commenced in September 2019.
- Risk of Contractors pulling out from the contract, as increases in cost of living, petrol price increases and the introduction of Greater Manchester's Clean Air policy, could see contractors not afford to provide a service.
- Not having enough contractors to be able to provide a service, since 2019 we support 200+ more children. Oldham need to attract new companies to be able to meet future demand.
- Will not be able to push Oldham's and Greater Manchester Clean Air Policy.

Option 3 - To work with Procurement to explore the possibility of procuring our own fleet of PSV/Adapted Buses and employ a fleet of drivers under Oldham Council. In the future Oldham would utilise a hybrid model, opening the Dynamic Purchasing System under The Chest and tender the remaining Private Hire Taxi routes. This approach would:

- Remove daily pricing for all PSV/Adapted Vehicles
- Greater control of vehicle standards and passenger accessibility
- Quicker/leaner tender process
- Increase the number of staff employed by the Council
- Outlay of equipment, financial upkeep of the vehicles (PSV Standard Tests)

- Reduction in partnership working with Local Business
At this stage a full financial breakdown has not been completed, meaning a cost analysis process will have to be undertaken. It is estimated this would cost in excess of £5 million.

RESOLVED – That:

1. The acceptance of the formation and opening of the Dynamic Purchasing System be approved.
2. A retendering exercise for the 200+ routes under the Dynamic Purchasing System via mini competition be approved.
3. Delegated authority be given to the Managing Director, Children and Young People in awarding the initial mini competition (200+ routes) and any subsequent mini competitions during the lifetime of the DPS.

12

HOLIDAY ACTIVITIES AND FOOD PROGRAMME

Consideration was given to the Managing Director, Children and Young People which sought approve acceptance of the Holiday Activities Food (HAF) funding and implementation, including payment terms for providers and creation of dedicated delivery team via fixed term posts, covering the 3 years confirmed programme 2022/23, 2023/24, 2024/25.

The Department for Education (DfE) made funds available to every local authority in England to coordinate free holiday club/activity provision, including healthy food and enriching activities, for children receiving benefits-related free school meals for the Easter, Summer and Christmas holidays in 2021. Following the success of the HAF programme in 2021, the Chancellor confirmed in October that the programme will continue in all local authorities in England for the next three years, with funding of over £200m each year. This new funding covers the length of this spending review period – 2022-23 to 2024-25.

Oldham Council had been allocated £1,458,050 from the DfE to deliver the Holiday Activities and Food programme (HAF) in 2022/2023 and would receive additional allocations for the programme in 23/24 and 24/25.

With the funding confirmed 3 years, a 3-year delivery programme would be developed building on the processes established in the pilot year 21/22. With appropriate staffing resources to ensure the Council can meet its ambition to ensure eligible children and young people across Oldham have access to a diverse range of exciting holiday clubs and activities, offering a blend of borough-wide and more locally based activities.

To establish the programme delivery there were a number of decisions for consideration.

Payment terms for providers

Payment terms of the grants to delivery partners. It was recommended that based on the processes previously agreed in the pilot year the Council would continue to have a tiered payment process based on the value of the grant being awarded to the provider.

- Awards under £20k will be paid in advance



- Awards over £20k will be paid 75% in advance and 25% on completion.

Recruitment of dedicated HAF programme staffing

There was a requirement within the Department for Education programme guidance that each local authority appointed a HAF coordinator/manager alongside having sufficient staff who are dedicated to work on the HAF programme all year round. Local Authorities were able to use 10% of the allocated funding for administration costs, this included staffing costs.

It was proposed that to ensure the HAF programme to be sufficiently staffed, 2 fixed term post for the 3-year delivery programme be created One full time programme manager (NJC - grade 8) and one programme coordinator 22 hours (NJC grade 6).

Option/alternatives considered

Payment terms for delivery providers.

Option 1 -To pay all providers in advance of delivering their holiday activities and food provision. This would allow adequate funding for activities to be delivered by small providers with limited reserves. This option presents a level of risk to the council and there is potential for needing to claw money back if they fail to deliver in full.

Option 2 - To have a tiered payment process based on the value of the grant being awarded to the provider.

- Awards under £20k will be paid in advance
- Awards over £20k will be paid 75% in advance and 25% on completion.

This option allows us to balance the need of small providers with the risk presented to the council. It should also be noted that the majority of these providers are known to the council.

Option 3 - To pay all providers on completion of delivering their Holiday Activities and Food provision. This option provides maximum security to the council but will exclude a large number of providers from taking up the HAF grant and will ultimately limit the provision we are able to make available for our children and young people.

Recruitment of HAF programme team

Option 1 -To not recruit a dedicated team for the management and delivery of the HAF programme.

This option would mean we are not fulfilling the DfE guidance for the programme and would not have sufficient staffing resource for delivery the programme in Oldham.

Option 2 - To recruit one HAF manager and 1 HAF coordinator to lead delivery of the programme for the 3 years commitment to the programme

This option allows us to ensure the effective management and delivery of the programme over the 3 years.

RESOLVED – That:

1. The acceptance of the DfE funding for the Holiday Activities and Food Programme be approved.
2. A tiered payment process based on the value of the grant being awarded to the provider be approved.
 - Awards under £20k will be paid in advance



- Awards over £20k will be paid 75% in advance and 25% on
3. The recruitment of a manager and coordinator for the programme delivery – fixed term for 3 years be approved.

13

PRIORITY PROGRAMME FUND - VCFSE SUPPORT

The Cabinet gave consideration of a report of the Assistant Director for Youth, Leisure and Communities which sought approval to allocate grant funding from the Priority Programme Fund (PPF), renewing all grants for one year (22/23) and extending the grant to Action Together CIO for three years to enable them to provide voluntary sector infrastructure support, including intensive and specialist organisational development, in Oldham for three years 2022-25.

The Council had for a number of years, funded a range of voluntary, community and faith and social enterprise (VCFSE) sector organisations through its Priority Programme Fund (PPF). For the past three years, the CCG have also made a £50,000 contribution to this fund, to mitigate the impact of the 10% saving applied to this budget in 2019/20. The fund has had three main strands, alongside supporting a small number of community events:

- Voluntary Sector Infrastructure
- Community Centres and Organisations
- Legal and Advice Services

Voluntary Sector Infrastructure

Action Together provided the voluntary sector infrastructure support in Oldham and also provided VCFSE infrastructure support in both Tameside and Rochdale. They also play a prominent role in the leadership of the sector at a Greater Manchester level through 10GM and the GM VCFSE Leadership Group which champions the role of communities in devolution. Action Together having an influential voice within these forums enables Oldham’s co-operative ambition to influence across the GM city region.

Community Centres and Organisations

Oldham Credit Union, Werneth and Freehold Community Development Project and Greenacres Community Centre, Oldham Interfaith Forum,

Legal and Advice Oldham

Citizens Advice Oldham

The total grant awards that were recommended to the Cabinet were:

Grantee	Grant	Award	Funding Source
Action Together	VCFSE Infrastructure	£270,500	PPF
Action Together	Emergency Response Volunteers	£65,000	COMF
Greenacres Community Association	Community Centres & Organisations	£32,000	PPF
Werneth & Freehold CDP	Community Centres & Organisations	£32,000	PPF

Oldham Credit Union	Community Centres & Organisations	£36,000	PPF
Oldham Interfaith Forum	Community Centres & Organisations	£36,000	PPF
CAB	Legal & Advice Services	£260,000	PPF
CAB	Uplift for Covid19 Recovery	£48,200	COMF
Total Grants Awarded		£779,700	
Shortfall in PPF Funds		£35,000	COMF
Remainder (available to support the community events identified if required)		£15,440	



Options/alternatives considered

Option 1 – Decommissioning, this was not a viable option because there would be a loss of support and infrastructure to the VCSFE sector in Oldham

Option 2 – Renew all grant agreements for one year. This option would reduce the ability of Action Together to plan resources strategically over the medium term

Option 3 – Renew the infrastructure Grant Agreement for 3 years 2022-2025 and all other grants for one year 2022-2023 and undertake a full VCSFE review.

RESOLVED – That

1. The VCFSE infrastructure grant to Action Together be renewed for a period of three years (2022-25).
2. The remaining grants awarded through the Priority Programme Fund be renewed for one year (22/23)
3. COMF funding was allocated to ensure that there was sufficient budget to enable all grants to continue at the level previously funded (21/22) and avoid grant reductions at a time when all of the organisations funded make a significant contribution to supporting Covid19 response and recovery
4. A full review of VCFSE sector commissioning is undertaken, which included the Priority Programme Fund grants within this wider context and gave consideration to the appropriate value and term of any future agreements.

14

VCFSE INVESTMENT FUND (COVID19 RECOVERY

The Cabinet gave consideration to a report of the Director of Public health which sought approval to allocate £648,000 of Contain Outbreak Management Fund (COMF) monies to the previously established single grant for the Voluntary, Community, Faith and Social Enterprise sector (VCFSE) in Oldham, known as the ‘One Oldham Fund’. This investment would support the sector’s resilience to enable key VCFSE organisations to remain viable to continue to deliver the ongoing Covid19 response and to contribute to the delivery of Oldham’s Covid Recovery Strategy priorities.

The Covid19 crisis had a direct and significant impact on the Voluntary, Community, Faith & Social Enterprise (VCFSE) sector in Oldham. The crisis has precipitated a rise in demand for services delivered by the sector, reduced their ability to

generate income and left many community groups and organisations having to radically redesign their delivery or cease activity for some time. The sector has equally been a critical partner in delivering the Covid19 response work across Oldham's communities and has provided a significant leadership role at all levels of Oldham's coordinated response.

At the outset of the pandemic action was taken to support the sector. The Council and CCG in Oldham committed to allowing the sector to be creative with existing public sector funds and resources, and to easing monitoring and reporting deadlines, the Council also offered a route for VCFSE suppliers to request relief and for grant holders to make contact.

Action Together launched a quick response grant fund to help local groups and charities access immediate funding and support, as well as a public fundraising drive to help raise money, so that groups and charities could help local people struggling through the crisis. To date the quick response fund has raised £89,025 through a contribution from the Action Oldham Fund, public fundraising, GM grants and local business donations. Subsequently a further £170,000 was pooled from Thriving Communities Fast Grants, Standing Together and Oldham Housing Providers funds into the Covid19 Response Fund. To date grants have been awarded to more than 150 organisations through this fund to support Covid19 response. In addition, during the pandemic Oldham has been awarded funds through the MHCLG Community Champions fund and the DEFRA Emergency Assistance grant a proportion of which have been used to invest in VCFSE organisations to deliver Covid19 related engagement activities and humanitarian aid respectively. Action Together have also supported groups to access external funding throughout the pandemic.

These funds had been vital in enabling the sector to play an integral role in the Covid19 response in Oldham. However, often funding would cover new and additional costs, which could still leave some organisations drawing on reserves to cover core costs where income is reduced or with fewer options if they are unable to operate fully during the crisis although they may have a vital role in supporting the recovery within our communities. From a position of operating at historically low levels of reserves pre-Covid it is likely that coming out of the crisis the VCFSE sector would be less resilient than coming into the crisis. However, their services and activity are critical if we are to respond to the impact of the crisis on levels of poverty, food insecurity, mental health and wellbeing, domestic violence, social isolation and physical health.

A thriving and sustainable VCFSE sector is essential to the delivery of the ambition set out in the Oldham Plan and Locality Plan. Thinking differently about our investment to the sector is a key component of this, and through the Thriving Communities work prior to Covid19 consideration had been given to the role of a strategic VCFSE investment fund for Oldham as a vehicle for transforming our approach. The establishment of such a fund was also a recommendation of the recently published evaluation of the Thriving Communities programme. A single strategic fund would consist of:

- Pooled resources to invest strategically with joint investment principles and governance
- Invest to deliver shared outcomes aligned to key priorities
- Single brand, single process, one approach to evidencing impact
- Aligned support capacity e.g., community development, evaluation
- Alignment of investment to wider priorities e.g., place-based working, Covid19 recovery strategy

The use of COMF funding to invest in the VCFSE to support Covid19 recovery according to the same principles can act as a stepping stone to establishing a strategic investment fund.

Beyond this financial year (and the COMF funding allocation) the investment fund could provide a focus for external funding and an opportunity to drive innovation and grow the sector.

This report proposed that a further £648,000 of COMF funding is used to extend the One Oldham Fund for 22/23. This would equate to a total of £1.11m investment over 21/22 and 22/23.

When the decision was made to extend the funding in January 2022 this was done based on previous government requirement for funds to be allocated before 31st March 2022, so funds were awarded in anticipation of awarding micro and small grants to be spent in that time period. As the period over which COMF funds can be spent has been extended until 31st March 2023 it provides an opportunity to award larger grants which can be spent over a year and provide some longer-term stability for organisations.

The proposal to allocate COMF funding to a single grant investment fund for Oldham was built upon work that the Council and Action Together have been developing through the Thriving Communities Programme, 10+ years' experience of making grant investment to the VCFSE and learning and insight gained throughout the last 12 months of delivering Covid Response grant investment to the VCFSE.

The anticipated costs were detailed below:

Amount	Purpose	Allocation to
£580,000	Grant funding to be invested in the VCFSE up until 31 st March 2023	Oldham's VCFSE Via Action Together / Investment Board
£33,000	Investment to maintain capacity to deliver investment fund	Action Together
£35,000	External evaluation of impact of the investment and the development of a framework for ongoing impact measurement of the single investment fund	TBC

Options/alternatives considered

Option 1 – No investment is made to One Oldham Fund from COMF

This was not regarded as a viable option this would significantly impact on the VCFSE sector's ability to contribute to Oldham's Covid19 recovery strategy, as well as on the sustainability of organisations in the sector over the next 12 months.

Option 2 – £648,000 is awarded to One Oldham Fund from COMF

This option is recommended to ensure continued role of VCFSE sector in Oldham's Covid19 response and effective contribution to the recovery strategy and key outcomes. This investment will also benefit the sustainability of the sector over the short to medium term and provide a framework and learning for future strategic investment in the sector.

Option 3 – A smaller investment is made to One Oldham Fund from COMF

This option may be required if there were wider demands on the COMF funding. In this case a smaller investment fund could be established based on the same principles and investment framework. The option is not recommended as it will mean funding will not reach the breadth of organisations required and therefore will have more limited impact on key Covid19 recovery outcomes, and on the sustainability of the sector overall.

RESOLVED – That £648,000 is awarded to One Oldham Fund from Contain Outbreak Management Fund (COMF).

15

REQUEST FOR APPROVAL TO COMMISSION PROVISION OF THE OLDHAM HEALTH CHECK

Consideration was given to a report of the Managing Director, Community Health and Adult Social Care which sought approval to extend the current contract for Oldham's Health Checks which expires on 31/03/2022.

This report requested an extension until 30/06/2022 to cover procurement timelines and outlined a proposal for the new service specification which would form the basis of the new five year Health Check contract.

It was reported the Oldham Health Check was Oldham's approach to delivering the nationally mandated NHS Health Check service which Oldham Council commissions from the Public Health budget. Health Checks involved residents being asked a series of health and lifestyle related questions and a series of tests being performed. The aim is to identify those who are at a higher risk of developing heart problems so that preventative action can be taken.

Residents aged 40-74 who haven't already been diagnosed with certain conditions are eligible for a Health Check every 5 years; the national target is for 75% of eligible residents to receive their Check every 5 years.

Most GP practices in Oldham provide Health Checks, as well as three pharmacies. The current budget for Health Checks in Oldham is £138,000 per year. This budget is enough to provide checks for 45% of the eligible population every five years based on the current price commissioned per Health Check.

It was proposed that £1,500 of the £138,000 budget was retained for training and communications to promote Health Checks, the remaining £136,500 would be retained for delivery.

Oldham Council also pays £32k/year to EMIS to access the system; shared EMIS access with the CCG is being explored which could mean that £32k/year is saved.

Various engagement has taken place to inform the new service specification. This engagement, as well as our priorities as a borough and our knowledge of how Health Checks have worked in the past, has informed the five priorities for the Health Check programme going forward:

- 1) Reducing health inequalities
- 2) Targeting residents at highest risk of cardiac events
- 3) Commissioning for improved outcomes
- 4) Focus on Mental Health within the Health Check
- 5) Focus on Diabetes within the Health Check

Aligning with these priorities, colleagues were asked to consider the key changes to the Oldham Health Check contract outlined in detail in this report, and summarised below:

- **Prioritising patients based on their risk** – this report outlines an approach whereby patients will be prioritised for their Health Check based on their existing cardiovascular risk score and/or lifestyle factors such as smoking and BMI. Evidence suggests this improves the effectiveness and cost effectiveness of the Health Check Programme. Military veterans and asylum seekers aged 18 and above will also be prioritised for the Health Check given they are more likely to experience health inequalities.
- **Model of Delivery** – while many GP practices will want to deliver the Oldham Health Check individually, the contract will give practices the option to apply as a consortium of practices or as a PCN. Payments will be made quarterly in advance (except for quarter 4, see below) to allow providers dedicated resources to deliver the Health Check programme.
- **Commissioner rather than provider led volumes and prioritising funding for our more deprived areas** – currently the number of Health Checks delivered is determined by how many providers want to provide. The new specification will include target volumes for provider, with our most deprived areas having higher targets to help reduce health inequalities in these areas. This arrangement will mean providers in our more deprived areas receiving the biggest share of the annual Health Check budget.
- **Incentivising quality** – the current contract provides no incentives to provide a quality Check and quality follow up (e.g. referral to Your Health Oldham). The new contract will hold back the fourth quarter payment to providers and only pay this if a number of targets linked to quality are met.
- **Questions about patient's Mental Health** – given the importance of mental health in the borough, particularly since Covid-19, four questions are to be added to the Health Check which ask about a patient's mental health.

Provider staff will receive training to support this and a pathway for onward support is in development.

- **Onward referrals and integrating Your Health Oldham** – there were no accurate Oldham data on the number of onward referrals for lifestyle support after a Health Check, but based on experience from other regions, this number is expected to be low. The new specification will emphasise the importance of onward referral and provider training will include a shift in language towards a default to refer to onward support where certain conditions are met.
- **Improving our data and reporting** –The service specification would outline a range of metrics which will be collected to help drive improvements in outcomes from Health Checks.

Options/alternatives considered

Option 1 - Agree to extend the existing the current Health Check contract which is due to expire on 31/03/2022 for a period of 3 months to 30/06/2022 to allow time for the procurement process to be complete.

Approve the request to proceed to market for the procurement of the Oldham Health Check for a contract length of 3 years + 2; 5 years in total for a value of £682,500 (£136,500 per year for 5 years).

Delegate authority to the Director of Public Health, in consultation with the Cabinet Member for Health and Social Care, to approve the recommendation of the evaluation panel, in accordance with the results of the procurement exercise (based on quality, social value and financial modelling), on behalf of Oldham Council.

Agree on the suggestions outlined in this paper for changes to the new Oldham Health Check contract in Oldham from 2022.

Option 2 - Continue to procure Health Checks by replicating the existing contract.

RESOLVED – That:

1. The existing Health Check contract which is due to expire on 31/03/2022 be extended for a period of 3 months to 30/06/2022 to allow time for the procurement process to be complete.
2. The request to proceed to market for the procurement of the Oldham Health Check for a contract length of 3 years + 2 years; 5 years in total for a value of £682,500 (£136,500 per year for 5 years) be approved
3. Delegated authority be given to the Director of Public Health, in consultation with the Cabinet Member for Health and Social Care, to approve the recommendation of the evaluation panel in awarding the provider contracts, on behalf of Oldham Council.

In March 2018, Greater Manchester (GM) secured 25% of the UK Local Full Fibre Network (LFFN) funding pot, offered by the Department for Culture Media and Sport (DCMS), to connect over 1,600 public sector sites across GM.

The LFFN Programme is expected to have a transformational impact on digital infrastructure in GM - leading to an increase in full fibre coverage throughout Greater Manchester.

Each of the public sector organisations that are part of the LFFN anchor tenancy programme operate a “Wide Area Network” (WAN). The Oldham Council “WAN” provides network services for all Council, Unity Partnership, Miocare, CCG staff who operate from a Council building / asset and the public at Oldham Council Libraries, Access Oldham, Oldham Tommyfield Market.

Oldham Council WAN services are currently procured from four major telecoms companies and include both infrastructure and services. Recognising that LFFN is providing a shared fibre infrastructure, in 2020; Oldham Council with several other partners considered the option for jointly procuring a new “WAN” service across the fibre infrastructure for their own organisational needs to take advantage of economies of scale. Consequently, the principal drivers for the creation of a GM One Wide Area Network were identified as being to:

- Consolidate and reduce the total costs of ownership of WAN services procured from other telecom companies.
- Support GM to become a globally recognised digital city region.
- Realise the benefits of the Local Full Fibre Network investment.

Oldham Council alongside TfGM and three other Local Authorities have collaborated in a GMCA led procurement process to assess the costs and effort to “light up” and provide network services for 1,600 sites throughout GMCA including 71 Oldham Council buildings and assets and to identify a preferred bidder to deliver the GM One Network.

The procurement exercise was now complete, a preferred supplier has been identified for the Greater Manchester One Network to deliver the Wide Area Network services for Oldham Council; GMCA including GM Fire & Rescue, GMCA/TFGM Urban Traffic Controls Signals and select TFGM sites, and Stockport, Bury and Rochdale Councils.

The installation of the LFFN fibre network was expected to be completed April 2022; the next steps will be to “light the fibre” network infrastructure; migrate Council buildings to the new optical high-speed network and decommission legacy network services. Options /alternatives considered

Option 1 - Do nothing and stay “as is”.

With this option, the Council would make no use of the LFFN infrastructure at the 71 LFFN sites.

Option 2 - Subscribe to the GM One WAN service.

With this option, the Council would subscribe to the GM One service to make

use of the LFFN infrastructure at the 71 sites. Oldham Council would not own the network equipment.

Option 3 - Contract with the Council's Current Network Partner. With this option, the Council would contract with their current network partner to make use of the LFFN infrastructure at the 71 sites. The Council would own all the equipment and the current network partner would provide a managed service including maintenance.

RESOLVED – That the Council would consider the commercially sensitive information contained at Item 23 of the agenda before making a decision.

17

2022 CONTRACT AWARDS FOLLOWING TENDER PROCESS FOR HEALTHWATCH OLDHAM AND NHS INDEPENDENT COMPLAINTS ADVOCACY SERVICES

The Cabinet gave consideration to a report of the Managing Director Community Health and Adult Social Care which sought approval to award contracts for the provision of Healthwatch Oldham and the NHS Independent Complaints Advocacy Services.

The report also requested approval to extend the current contract provision with the existing providers for Healthwatch Oldham and the NHS Independent Complaints Advocacy for up to two months to allow for incumbent provider/s to implement the new contracts and allow for any Transfer of Undertakings (Protection of Employment) (TUPE) implications.

Under the Health and Social Care Act 2012, Local Authorities are mandated to provide local Healthwatch and NHS Independent Complaints Advocacy Services. These services do not have to be provided by the same organisation but must work together for the benefit of the local population.

The current contracts for both services expire 31st March 2022 with no provision to extend. An open tender exercise has been conducted, with recommended providers for services for the period 2022/23 – 2029/30 (with break clauses at year 3 and 5). Local authorities have a statutory duty to commission a local Healthwatch organisation, which in turn has a set of statutory activities to undertake, such as gathering local views and making these known to providers and commissioners, monitoring and scrutinising the quality of provision of local services, and a seat on the local Health and Wellbeing Board. The Health and Social Care Act 2012 requires all local authorities with adult social care responsibilities to “make such arrangements as it considers appropriate for the provision of independent advocacy in relation to its area” in the provision of assistance for individuals making or intending to make an NHS complaint.

Action Together has delivered the Healthwatch Oldham and NHS Independent Complaint Advocacy services since 2014 and 2016 respectively. The last competitive tendering process took place in 2017, with new contracts commencing 2018/19.

Over recent years, reviews on local Healthwatch services have taken place, most relevantly across Greater Manchester with the aim of seeking to commission consistently. Both commissioners

and service providers regularly attend the Greater Manchester sessions and it has been integral for updating service specification and monitoring of the services being delivered. Action Together currently delivers Oldham's Local Healthwatch service and the NHS Independent Complaints Advocacy Service, therefore fulfilling Oldham Council's statutory functions as established in the Health and Social Care Act 2012, outlined in paragraph 1.1 above.

The current contract price for Healthwatch was £138,700 per annum and the Independent Complaints Advocacy is £28,500 per annum. The budgets are currently funded via Oldham's allocation to the Better Care Fund (BCF) and engagement has taken place with NHS Oldham CCG on the tenders for the services. Working alongside local commissioning authorities the financial envelopes for both Healthwatch and NHS CAS services are comparative. It was also worth noting that the last time the services were commissioned (in 2018) a small reduction was applied to the financial envelopes. Prior to market engagement, a sustainability test was undertaken for the service delivery, this found the current financial envelopes to be sustainable for providers to continue to deliver.

The current contract would expire on 31st March 2022 with no further provision to extend. To enable an incumbent provider adequate time to implement the new contract and any TUPE implications an additional two months are requested to enable successful incumbent providers to implement the contract/s successfully.

An Open Tender Exercise (ITT) was undertaken in accordance with Oldham Council's Contract Procedure Rules and Public Contracts Regulations 2015. The tender was divided into 2 Lots; Lot 1, Healthwatch and Lot 2 NHS Independent Complaints Advocacy.

Lot 1 – Healthwatch (financial envelope of £135,000 per annum or £945,000 for up to seven years; please note break clauses at years three and five).

One bid was submitted;

- Provider A - £974,400.00 (seven years).

Lot 2 - NHS Independent Complaints Advocacy (financial envelope of £28,000 per annum or £196,000 for up to seven years; please note break clauses at years three and five).

Two bids were submitted;

- Provider B – £196,000.00 (Seven Years)
- Provider C – £193,228.75 (Seven Years)

The sole bidder for Lot 1 was Provider A receiving a score of 71.00% and the highest bidder for Lot 2 was Provider C receiving a score of 76.24%.

Options/alternatives considered

Option 1 - Approved to award the contracts on the basis of the tender exercise for Healthwatch Oldham and NHS Independent Complaints Advocacy.

Option 2 - Do not approve to award the contracts on the basis of the tender exercise for Healthwatch Oldham and NHS Independent Complaints Advocacy.

RESOLVED – That the Cabinet would consider the commercially sensitive information at Item 24 before making a decision.

18

COVID-19 GRANTS FOR ADULT SOCIAL CARE

The Cabinet gave consideration to a report of the Managing Director of Community Health and Adult Social Care which sought to update Cabinet on delegated decisions made in respect of various short term government grants received to support the Adult Social Care sector during the Covid pandemic, and to seek retrospective approval for the utilization of the funding.

The report set out the various short term government grants received by the local authority to support the adult social care sector respond to the Covid-19 pandemic. Ten different grants totalling £12,476,907 had been received between May 2020 and February 2022, each with their own conditions, reporting requirements, prescribed and discretionary amounts and different applicable time periods. Of this amount, £5,731,499 was received in the 2020/21 financial year and £6,745,408 in the current financial year, with a clear expectation-and for the prescribed elements, direction- that funding was distributed to independent sector adult social care providers operating in Oldham. Clarity was given in the grant conditions that the funding could not be used to offset existing planned expenditure or financial pressures within the local authority.

Grant conditions included distribution within 20 days of receipt, and prescription as to utilization and recipients. Therefore, decisions related to each grant were made by the Cabinet Member for Health and Social Care, in consultation with the Director of Adult Social Services and the Section 151 Officer, both of whom have been required to provide assurance statements to Department of Health and Social Care to confirm compliance with the various grant conditions.

All organisations in receipt of funding were issued with detailed grant conditions and links to the government guidance, including confirming the requirement to return any unspent funds, and acknowledgement that any funding found to be used not in accordance with the grant conditions would be required to be repaid.

Funding recipients had also been required to complete detailed expenditure reports to the Commissioning and Quality Service at intervals consistent with the returns required to DHSC, and to retain evidence of expenditure should this be required for audit purposes.

It was not clear at this stage whether any further grant funding for the sector will be announced.

During the Covid-19 pandemic, and in response to the challenges experienced in the adult social care sector as a consequence of high rates of transmission amongst vulnerable adults with care and support needs and within the workforce, the Department of Health and Social Care (DHSC) has issued a number of short-term grants to local authorities for the benefit of the wider social care sector.

Grant conditions included distribution within 20 days of receipt, and prescription as to utilization and recipients. Therefore,



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decisions related to each grant were made by the Cabinet Member for Health and Social Care, in consultation with the Director of Adult Social Services and the Section 151 Officer, both of whom have been required to provide assurance statements to DHSC to confirm compliance with the various grant conditions. All relevant reports have been listed as background papers at paragraph 20 of this report. Each report contains a link to the relevant grant conditions published on the DHSC website.

It is worth noting that each grant was issued for a specific purpose, with its own reporting requirements, grant conditions, mandated elements and discretionary elements, and as such each grant was required to be treated individually and processed accordingly.

The table detailed within the report summarised all short-term grants received by the local authority to support the adult social care sector to deal with the impact of the Covid-19 pandemic to date, and the allocations of the discretionary elements of the grants. It is worth noting that whilst there were discretionary elements of funding to some of the grants, the grant guidance gave a very clear steer as to how DHSC considered these elements should be used, with a clear expectation-and for the prescribed elements, direction- that funding was distributed to independent sector adult social care providers operating in Oldham. Clarity was given in the grant conditions that the funding could not be used to offset existing planned expenditure or financial pressures within the local authority.

Options/Alternatives considered

The range of options and alternatives for the utilization of each grant were minimal given the prescriptive nature of the grant conditions, as summarized in the table above. Even where there was discretion as to how some elements of the grants were distributed, there remained prescription as to their use. Where there were discretionary elements to the grants, consideration was given to the level of Covid-19 transmission amongst vulnerable adults and staff in adult social care services, vaccination and testing levels, infection prevention measures required in accordance with government and public health guidance, the workforce challenges being faced, and in consultation with the sector, the relative benefits of different options for utilization of the funding. Learning from previous funding rounds also informed decisions for the discretionary elements of grant allocations.

Further details related to each grant and the considerations given for utilization of the funding can be found in the delegated reports. This included providing funding to non-CQC regulated services, such as day services, personal assistants and housing related support providers, as well as unpaid carers.

RESOLVED – That the delegated decisions taken and outlined in the report made in respect of the various short term government grants received to support the adult social care sector during the Covid-19 Pandemic be endorsed.

RESOLVED that, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they contain exempt information under paragraphs 3 of Part 1 of Schedule 12A of the Act, and it would not, on balance, be in the public interest to disclose the reports.

20 **HOUSING DELIVERY STRATEGY**

The Cabinet gave consideration to the commercially sensitive information in relation to Item 7 of the agenda housing Delivery Strategy.

RESOLVED – That the recommendations contained within the commercially sensitive report be approved.

21 **DISPOSAL OF VACANT LAND AT DERKER, ST JAMES**

The Cabinet gave consideration to the commercially sensitive information in relation to Item 9 of the agenda - Disposal of vacant land at Derker, St James.

RESOLVED – That the recommendations contained within the commercially sensitive report be approved.

22 **DISPOSAL OF LAND AT SOUTHLINK**

The Cabinet gave consideration to the commercially sensitive information in relation to Item 10 of the agenda - Disposal of land at Southlink.

RESOLVED – That the recommendations contained within the commercially sensitive report be approved.

23 **OLDHAM COUNCIL LOCAL FULL FIBRE NETWORK (LFFN)**

The Cabinet gave consideration to the commercially sensitive information in relation to Item 16 of the agenda - Oldham Council Local Full Fibre Network (LFFN).

RESOLVED – That the recommendations contained within the commercially sensitive report be approved.

24 **2022 CONTRACT AWARDS FOLLOWING TENDER PROCESS FOR HEALTHWATCH OLDHAM AND NHS INDEPENDENT COMPLAINTS ADVOCACY SERVICES**

The Cabinet gave consideration to the commercially sensitive information in relation to Item 17 of the agenda - 2022 Contract Awards following tender process for Healthwatch Oldham and NHS Independent Complaints Advocacy Services

RESOLVED – That the recommendations contained within the commercially sensitive report be approved.

25 **COVID BUSINESS SCHEME**

The Cabinet gave consideration to a report of the Executive Director, Place and Economic Growth and the Director of Finance which sought to update the Cabinet on the Covid Business Scheme.

RESOLVED – That the recommendations as contained within the commercially sensitive report be approved.

The meeting started at 600pm and finished 6.33pm





Report to CABINET

Appointments to Cabinet Sub-Committees and Joint Committee

Portfolio Holder:

Cllr Amanda Chadderton, Leader of the Council

Officer Contact: Elizabeth Drogan, Head of Democratic Services

17th June 2022

Reason for Decision

To seek appointments from the Cabinet to:

1. The Failsworth Trust Cabinet Sub-Committee
2. The Local Investment Fund Cabinet Sub-Committee
3. The Commisising Partnership Board
4. The Shareholder Cabinet Sub-Committee

Recommendations

That the Cabinet appoint Members of the Cabinet to the Cabinet Sub-Committees, with full delegated powers as per the Terms of Reference as detailed within the appendances to the report.

Appointments to Cabinet Sub-Committees and Joint Committee**1 Background****Failsworth Trust Cabinet Sub -Committee**

- 1.1 The Failsworth Trust Committee is a sub-committee of the Cabinet which deals with the land in Failsworth which is held by the Council on charitable trust.
- 1.2 The Council holds the freehold title in trust for the subject site shown edged red on the plan at Appendix 2.
- 1.3 The charitable trust extends to two areas – the formal Lower Memorial Park area which measures circa 9.4 acres and acquired by the Council in 1922 and the naturalised area to the North of the Lancaster Club which measures circa 11.75 acres and acquired by the Council in 1924.
- 1.4 The formal Lower Memorial Park was registered by the Charity Commission on 19 January 2011 (1139908) and the area to the North of the Lancaster Club was registered with the Charity Commission on 24 June 2010 (1136597). The purpose of both charitable trusts is to provide a recreational ground. The Cabinet previously established a sub-committee of three to consider issues relating to the trust. Given the new composition of the Cabinet, new members of the sub-committee are requested to be appointed. Terms of reference are attached at Appendix 1.

Local Investment Fund Cabinet Sub-Committee

- 1.5 In May 2019 the Council resolved that a Local Improvement Fund (LIF) should be established. The LIF is a £500k fund that all elected members and District Teams can access through a bidding process. The terms of Reference are attached at Appendix 2.
- 1.6 Cabinet previously established a sub-committee of three to oversee the LIF application process and approve successful grant applications and 3 appointments to the sub-committee are requested.

Commissioning Partnership Board

- 1.7 In June 2018 Cabinet agreed to establish a Joint Committee of Oldham Council and Oldham Clinical Commissioning Group (Commissioning Partnership Board) under Regulation 10 (2) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, to undertake Executive functions within the Boards Terms of Reference.
- 1.8 Cabinet agreed to delegate authority to the Joint Committee to undertake joint commissioning functions that were Executive functions to a Commissioning Partnership Board within the procedures set out in the terms of reference, as detailed at Appendix 3 supporting the section 75 agreement(s) that would enable a scaling up of the integration of health and care commissioning in Oldham. It is requested that the Leader, Statutory Deputy Leader, Cabinet Member for Health and Social Care and Cabinet Member for Children and Young People area appointed to the Joint Committee.

Shareholder Cabinet Sub-Committee

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- 1.9 In October 2018 the Cabinet established a Shareholder Cabinet Sub-Committee to have responsibility for exercising “shareholder control”, with regard to wholly owned Council companies. The Shareholder Committee safeguards the Council’s interest as shareholder and take decisions in matters that require the approval of the Council as owner of the company. Decisions in relation to the day to day operation o. f the company are taken by the directors of the company. The Terms of Reference are attached at appendix 4. It is requested that 4 appointments are made to the Shareholder Cabinet Sub-Committee.

2 **Current Position**

- 2.1 Membership in 2021/22 of the Failsworth Trust Sub-Committee was:-

- The Council Leader
- The Deputy Leader (Statutory)
- The Cabinet Member for Housing

- 2.3 Membership in 2021/22of the Local Investment Fund Cabinet Sub Committee was:

- The Council Leader
- The Deputy Leader (Statutory)
- Cabinet Member for Finance and Low Carbon

- 2.4 Membership of the Commisising Partnership Board in 2021/22 was:

- The Council Leader
- The Deputy Leader (Statutory)
- Cabinet Member for Health and Social Care
- Cabinet Member for Children and Young People

- 2.5 Membership in 2021/22 of the Shareholder Cabinet Sub- Committee was:

- The Council Leader
- The Deputy Leader (Statutory)
- Cabinet Member for Finance and Low Carbon
- Cabinet Member for Neighbourhoods

3 **Options/Alternatives**

- 3.1 Option 1 – appoint new members to the Sub-Committees/JointCommittee, with full delegated powers.

Option 2 – do nothing. The Cabinet could make decisions in relation to the Local Investment Fund, Lower Memorial Park and the S.75 agreement/budgets/Shareholder.

4 **Preferred Option**

- 4.1 Option 1 – appoint new members to the Sub-Committees, with full delegated powers.

5 **Consultation**

5.1	n/a
6	Financial Implications
6.1	n/a
7	Legal Services Comments
7.1	These are contained within the body of the report.
8.	Co-operative Agenda
8.1	Appointing new members will enable the Council to meet its duties in relation to the charitable trusts most efficiently.
9	Human Resources Comments
9.1	n/a
10	Risk Assessments
10.1	n/a
11	IT Implications
11.1	n/a
12	Property Implications
12.1	n/a
13	Procurement Implications
13.1	n/a
14	Environmental and Health & Safety Implications
14.1	n/a
15	Equality, community cohesion and crime implications
15.1	None
16	Equality Impact Assessment Completed?
16.1	No
17	Key Decision
17.1	No
18	Key Decision Reference
18.1	n/a
19	Background Papers

19.1 None

20 **Appendices**

- 20.1 Appendix 1 – Failsworth Trust Sub-Committee Terms of Reference
Appendix 2 – LIF Cabinet Sub-Committee Terms of Reference
Appendix 3 – Commisising Partnership Board
Appendix 4 – Shareholder Cabinet Sub-Committee

Terms of Reference

- 4.1 The Failsworth Trust Committee (“the Trust”) will at all times act in the best interests of the Trust and in accordance with the provisions of the Charities Act 1993 and other applicable statutes and legal principles relating to the management of land which is held for charitable purposes.
- 4.2 The Trust will use all reasonable endeavours to further the object of the Trust which is that the land to the north of the Lancaster Club (comprising 11 ¾ acres of land acquired by the former Failsworth Urban District Council on 4 January 1924 from Constance Mary Solly Flood) be used for the purposes of a recreation ground.
- 4.3 The Committee will comprise 3 Members of the Council’s Cabinet, appointed by the Cabinet. The Chair will be appointed by the Committee from among their number at their first meeting.
- 4.4 Meetings will normally be held in a location which is accessible and acceptable to all members. Where possible the accommodation will be provided by Oldham Borough Council.
- 4.5 Meetings will be held quarterly provided that the Chair is of the opinion there is sufficient business to consider.
- 4.6 Any items for the agenda should be sent to the Chair four weeks before the meeting.
- 4.7 An agenda and other relevant papers will be dispatched to all members at least five working days before the meeting, by Oldham Borough Council’s Head of Constitutional Services.
- 4.8 Meetings will be administered by the Head of Constitutional Services.
- 4.9 All meetings will be minuted by the Head of Constitutional Services and the minutes sent to all members within ten working days of the meeting.
- 4.10 Any members of the Failsworth Trust Committee must declare at the beginning of the meeting, or at any other appropriate stage, whether they are affected by a conflict of interest or conflict of duties in relation to any item on the agenda. If they have a personal interest, they must not speak or vote on the item. If a potential conflict of interest or duty arises from any matter, a member shall consider whether to withdraw. However, provided that the all members agree and the member acts in the best interests of the Trust and after receiving independent advice or recommendations, a member is permitted to consider and vote on the matter.
- 4.11 Any proposal for alteration of the arrangements of the meetings of the Failsworth Trust Committee shall be considered by the Failsworth Trust Committee. Any such proposal should be subject to one month’s notice, and the proposed alteration sent with the Agenda to all members.
- 4.12 **Voting Procedures and Quorum** - Each of the Trust Committee members shall have one vote, each vote carries equal weight and decisions of the Failsworth Trust Committee shall

be made on a majority vote. A meeting of the Failsworth Trust Committee will only be considered quorate if at least two voting members are present. In the event of a tied vote the Chair shall have the casting vote.

- 4.13 The Failsworth Trust Committee has legal capacity to make and implement decisions in its own right without the need for ratification by the Council.
- 4.14 Decisions of the Failsworth Trust Committee will be binding both on the said Committee and on Oldham Borough Council.
- 4.15 **Administration and Support** - The Head of Constitutional Services for Oldham Borough Council will service the Failsworth Trust Committee. Meetings of the Failsworth Trust Committee will be convened by and attended by the Head of Constitutional Services, or such other officer as the Head of Constitutional Services so appoints, and other officers of Oldham Borough Council may be required to attend as and when required.

Terms of Reference

1. Name of Group

The Sub-Committee shall be called The Local Improvement Fund Committee.

2. Purpose of the Group

The purpose of the Sub-Committee of Cabinet is to allocate funding from the Local Improvement Fund to projects across the borough which promote and pursue the aims and objectives of the individual District Priorities.

The Sub-Committee is a constituted meeting of the Council is subject to the Council's procedure rules, Cabinet procedure rules and the access to information procedure rules, as set out in the Council's Constitution, unless stated otherwise in these terms of reference.

3. Duties and Powers

The Council has committed to resource a £500k Local Improvement Fund to provide funding for projects that meet local need as identified in the District Priorities. Members of the Sub-Committee will be required to declare interests, as set out in the Council's Members Code of Conduct.

Written Public Questions may be submitted to, and asked at, the Sub-Committee meeting but all matters must be within the remit of the terms of reference of the Sub-Committee (see section 2).

4. Reporting Arrangements

The Minutes of the Sub-Committee will be submitted to the Cabinet.

5. Membership

The Sub-Committee of Cabinet will comprise of 3 Members of the Council's Cabinet, appointed by Cabinet.:

- Leader of the Council
- Deputy Leader of the Council
- Cabinet Member for Finance and Low Carbon

6. Voting Procedures and Quorum

Each of the Sub-Committee Members shall have one vote.

In the case of equality of votes, the Chair shall have the casting vote. The quorum of the Sub-Committee is three Cabinet Members.

7. Frequency of Meetings

Meetings will take place as and when required, but not less than once a year.

All meetings will take place in Oldham Civic Centre, unless specifically pre-arranged at an alternative venue.

Agendas will be circulated to Members five clear working days before a meeting, by Constitutional Services at Oldham Council.

8. Support

The meetings will be administered and serviced by Constitutional Services. The Strategic Director for Reform and Director of Finance or their nominated representatives, will attend all meetings.

9. Review

These terms of reference will be reviewed annually at the first meeting of the Cabinet in the municipal year.

Commissioning Partnership Board

The Commissioning Partnership Board shall:

- a. Take responsibility for the management of partnership arrangements in accordance with such section 75 agreement or agreements that the Oldham Clinical Commissioning Group (CCG) and the Council may from time to time agree, including monitoring the arrangements and receiving reports and information on the operation of the arrangements;
- b. Together with the Commissioning Committee provide assurance to the Governing Body, CCG members and other relevant parties on delivery of statutory functions and responsibilities exercisable by the CCG.

The Commissioning Partnership Board will:

- a. Support the Health and Wellbeing Board to set the high-level commissioning strategy and health and wellbeing outcomes for the Borough in order to meet assessed population, community and individual need within the financial resources of the pooled funds over which the Commissioning Partnership Board has control.
- b. Make commissioning recommendations for the financial resources not controlled by the Commissioning Partnership Board.
- c. Support the dissolving of traditional boundaries between commissioning and provision of services in Oldham to improve outcomes for Oldham population against the agreed Oldham Cares Outcomes Framework.
- d. Have responsibility for all matters relating to the pooled funds as may be set out in a Section 75 agreement.
- e. Develop, implement and monitor those elements of the Alliance contract for the Oldham Integrated Care Organisation that relate to the provision of services that are subject to the integrated commissioning arrangements.
- f. Make recommendations regarding the other elements of the Alliance contract for the Oldham Integrated Care Organisation (ICO).
- g. Recommend the high level parameters for the Strategic Commissioning Function.
- h. Recommend the high level parameters for the Primary Care and Community and Social Care Clusters within the ICO.
- i. Recommend that appropriate contracting mechanisms are in place within the ICO Alliance and outside of ICO arrangements e.g. specialist hospital services.
- j. Maintain a strategic overview and assurance role on behalf of the Health and Wellbeing Board to ensure implementation and delivery of the agreed high level strategies and outcomes set jointly between Oldham CCG and Oldham Council.
- k. Monitor and review high level outcomes and performance data to ensure that the ICO is achieving the goals established by commissioners for the transformation of health and social care services against the Oldham Cares Outcomes Framework.

8. Objectives

The objectives of the Commissioning Partnership Board are;

- a. To govern the arrangements for integrated commissioning in the Oldham borough providing assurance to NHS Oldham CCG and Oldham MBC that their statutory and mandatory responsibilities and strategic objectives are being met and that their combined resources are being utilised to best effect.
- b. To provide assurance to Oldham Health and Wellbeing Board, NHS Oldham CCG and Oldham MBC for the achievement of the agreed outcomes, commissioning strategies and plans within the available financial envelope.
- c. To prepare an annual integrated commissioning strategy, setting out specific goals and outcomes for commissioning in the Borough and the intentions of the whole system to transform health and social care delivery in order to reflect best practice and value for money.
- d. Within the integrated commissioning strategy, describe how the outcomes and objectives set out in the Section 75 Agreement and the high level strategic goals and outcomes of NHS Oldham CCG and Oldham MBC will be achieved.
- e. To commit resource at high level within the pooled fund(s) to achieve the objectives of the integrated commissioning strategy through the Oldham Cares system structure.
- f. To develop a joint financial plan to underpin the overall commissioning strategy and providing direction in relation to investments and savings to be made jointly by the Council and CCG.
- g. To oversee the implementation of the integrated commissioning strategy.
- h. To set the high level quality standards for, and monitor and review the outcomes and performance for commissioned services within the s.75 agreement, identifying areas of good practice and taking action where outcomes and performance fall short of requirements.
- i. To ensure that the prescribed functions of Oldham Council and Oldham NHS CCG are properly and effectively discharged through the pooled funds and the strategic commissioning arrangements as appropriate.
- j. To ensure the engagement of stakeholder groups - including users, patients, carers, providers and community organisations - in the commissioning cycle and the co-design of commissioned services and the formulation of strategy as appropriate.
- k. To provide assurance to the Health and Wellbeing Board, CCG Governing Body, Oldham Council Cabinet and the Council's Overview and Scrutiny Committees of the quality and safety of commissioned services within the Section 75 agreement, of the proper and effective use of resources in the pooled fund and of the achievement of agreed strategy and outcomes.
- l. To conduct all business in accordance with the provisions of the Section 75 Agreement including the standards on partnership behaviours and the code of conduct on conflicts of interest.
- m. To be fully aware of the Greater Manchester integrated commissioning arrangements as they develop in the context of the Greater Manchester Devolution Agreement and ensure full alignment between the arrangements in the Oldham borough, the North East sector, and the city region.
- n. To identify, record, mitigate and manage all risks associated with strategic integrated commissioning, including the maintenance of a risk register which will be included on the risk registers of both NHS Oldham CCG and Oldham MBC.

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- o. To review regular high-level performance and financial monitoring reports relating to strategic integrated commissioning and the pooled fund and ensure, if required, appropriate action is taken to ensure annual delivery of expected performance targets and approved schemes within permitted budget for the financial year.
 - p. To promote improvement and innovation and demonstrate leadership in pursuing the objectives and upholding the principles underpinning the ways of working in the newly established partnership.

Oldham Council Unity Partnership Shareholder Committee

Terms of Reference

Overview

1. The Council has established the Unity Partnership as a wholly owned company The Council is the sole shareholder in the company. Shareholding is an executive function.
2. Under the Executive arrangements operated by the Council, executive power is vested in the Leader of the Council. The Leader of the Council therefore has the authority to determine how the Council is to be represented in its role as the shareholder of its companies.
3. The Leader of the Council has delegated responsibility for the shareholder function, in relation to the Companies, to the members of the Cabinet.
4. The members of the Cabinet will therefore form a Shareholder Sub-Committee to carry out this responsibility.
5. The Shareholder Committee will obtain advice from Council officers as required.
6. Responsibility for the day to day operation and management of the Companies (including the responsibility for internal processes and staffing matters) vests in that Company's Board of Directors, who must ensure that the Company's business is conducted in accordance with the terms of the Company's Shareholders' Agreement and its Articles of Association.

Terms of Reference of the Shareholder Committee

The Shareholder Sub-Committee will:

1. Safeguard the Council's investment in the Company and ensure the Company complies with the Council's corporate objectives and maximise outcomes in line with Council policy.
2. Approve the Shareholder's Agreement, where applicable.
3. Receive, review and comment on the annual report and financial accounts of the Council Company and agree how these are to be published and circulated.
4. Appoint (at least annually) and remove Company Directors and ensure directors operate in accordance with the Council Companies' objectives.
5. Agree the employment of any non-executive or external Directors and the basis on which these directors will be remunerated.
6. Appoint the Company auditors.
7. Determine the distribution of any surplus or the issue of any dividends from the Council Company, in accordance with the Shareholder's Agreement, and exercise any other strategic functions flowing from the Council's ownership of shares.
8. Approve any frameworks within which the Council interfaces with the Council Company (e.g. a code of conduct for how Council officers interact with the Company).
9. Exercise any reserved powers set out in the Company's Shareholder Agreement or Articles of Association.
10. Refer any conflicts arising between the Council Company and other Council-owned companies to the Cabinet for resolution.
11. Grant an indemnity to all Members and Officers acting as Directors on the company Board.

Meetings of the Shareholder Committee

1. Meetings will be operated in accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, requiring that:

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- Agendas are published 5 clear working days in advance of meetings. Private meetings are notified 28 days in advance. Otherwise urgency
 - rules will apply, requiring the agreement of the Chair of Scrutiny. Key decisions will be notified 28 days in advance. Otherwise urgency rules will apply, requiring that the Chair of Scrutiny is informed (or if less than 5 clear days in advance, agrees).
 - Members of Council will be able to attend public and private parts of meetings.
 - Members of the public will be able to attend the public part of meetings.
 - Meetings will be scheduled at annually.
2. Extraordinary meetings can be called at any time by the Leader of the Council or the Board of Directors. The quorum is 3 and must include either the Leader of the Council or Deputy Leader.
 3. Substitutions will not be allowed.
 4. Meetings will be chaired by the Leader of the Council or in their absence, the Deputy Leader.
 5. Meetings will also be attended by the Company Directors, the Company Secretary and the Shareholder Committee advisors.
 6. At each meeting the Chair will approve the minutes of the previous meeting.
 7. The Shareholder Committee will take decisions in respect of the Council's total holdings in the Company.
 8. Decisions will be taken by consensus of those present unless any member of the Shareholder Group requires a vote, in which case a majority decision will be taken with each member present having a single vote. In the event of a tied vote the Chair will have a casting vote.

Voting Procedures and Quorum

1. Each member of the Shareholder Committee shall have one vote, each vote carries equal weight and decisions of the Shareholder Committee shall be made on a majority vote. In the event of a tied vote the Chair shall have the casting vote.
2. The Shareholder Committee has legal capacity to make and implement decisions in its own right without the need for ratification by the Cabinet.
3. Decisions of the Shareholder Committee will be binding both on the said Committee and on Oldham Borough Council.

Relationship to the Performance and Value for Money Select Committee (Overview and Scrutiny Committee)

1. The Council's Performance and Value for Money Select Committee(PVFM) retains its scrutiny function in relation to the Shareholder Committee.
2. The Committee will be able to call the Shareholder Sub-Committee and its advisors to account for the progress and performance of the Company in accordance with a scrutiny protocol.

NOTE: Company Directors act in a way that is legally independent from the Council, in order to promote the best interests of the company



Report to CABINET

Approval of Enforcement Policies

Portfolio Holder:

Cllr Jean Stretton - Cabinet Member for Neighbourhoods

Officer Contact: Executive Director for Place & Economic Growth

Report Author: John Garforth – Trading Standards & Licensing
Manager

Ext. 5056

17 June 2022

Reason for Decision

To review and approve a revised Corporate Enforcement Policy in order to take account of updated guidance, codes of practice and new regulatory sanctions which have been introduced since the Council's Enforcement Policy was last reviewed in 2012.

To also agree a separate enforcement policy relating to the deciding of financial penalties and appropriateness of prosecution under The Tenant Fees Act 2019.

Recommendations

That Cabinet:

1. Note the report
2. Approve the enforcement policies

Approval of Enforcement Policies

1 Background

- 1.1 The Council is required to have an overarching statement of Enforcement Policy which governs the way statutory enforcement functions are provided.
- 1.2 The Council adopted the Enforcement Concordat in 2002 and established an enforcement policy to set out what businesses and others being regulated can expect from enforcement officers employed by the Authority. Since then additional guidance, codes of practice and new regulatory sanctions have been introduced and it is therefore appropriate to update the Enforcement Policy from time to time to reflect these changes and avoid challenge.
- 1.3 In addition, the Tenant Fees Act 2019 allows for financial penalties to be issued against lettings agents who contravene requirements imposed on them under the Act. The Council must publish its methodology on how it will deal with such breaches and how penalty amounts will be derived.

2 Current Position

- 2.1 The current Enforcement Policy was approved in 2012 and is reviewed from time to time to ensure that the Council lays out its generic principles for good enforcement.
- 2.2 It commits the Council to good enforcement policies and procedures including carrying out our activities in a robust but fair way that supports those who we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens and assessing whether lesser outcomes could be achieved by lesser means. It provides guidance on a range of options that are available to help the public achieve compliance with the legislation we enforce and how powers may be used to regulate and raise standards in various sectors.
- 2.3 The proposed policy can be found at Appendix 1.

3. Enforcement Policy relating to Letting Agency legislation

- 3.1 The Tenant Fees Act 2019 introduced new legislation relating to the activities of lettings agents. Breaches of this legislation includes:
 - A lettings agent who fails to publicise their fees
 - A failure by any person engaged in letting agency or property management work to hold membership of a redress scheme
 - A failure by a property agent who holds clients money to belong to an approved or designated client money protection scheme
 - Failure to display a certificate of membership at each agents premises
- 3.2 Enforcing authorities must have regard to statutory guidance and publish how what it will take into account when considering a financial penalty and this policy sets out those considerations.
- 3.3 The proposed policy can be found at Appendix 2.

3 **Options/Alternatives**

3.1 Option 1: Approve the implementation of the enforcement policies.

3.2 Option 2: Do not approve the enforcement policies.

4 **Preferred Option**

4.1 Option 1.

5 **Consultation**

5.1 All internal departments which have enforcement responsibilities have been consulted as part of the preparation of this report and the proposed policies.

6 **Financial Implications**

6.1 The level of income received by the Council from FPN income, and the enforcement costs involved in applying the Enforcement policies will be monitored to ensure that it aligned to the existing revenue budgets for respective services. The total income generated will be dependent on the levels of compliance with the policies. Should there be any variances from budget, the in-year financial position will be managed within the context of the budget for the wider Directorate. (James Postle)

7 **Legal Services Comments**

7.1 The Council should have a policy in place which provides guidance on how it carries out its enforcement responsibilities. In relation to prosecutions, the Council is required to follow the provisions of the Code for Crown Prosecutors, which have been incorporated into the Corporate Enforcement Policy. (A. Evans)

8. **Co-operative Agenda**

8.1 The policy sets out how the Council will be transparent in considering infringements by publishing options for consideration by Officers. The policy can be accessed by the public and regulated businesses and individuals. It supports the role of the Council in relation to its public protection responsibilities.

9 **Human Resources Comments**

9.1 N/A

10 **Risk Assessments**

10.1 N/A

11 **IT Implications**

11.1 None

12 **Property Implications**

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- 12.1 None
 - 13 **Procurement Implications**
 - 13.1 None
 - 14 **Environmental and Health & Safety Implications**
 - 14.1 None
 - 15 **Equality, community cohesion and crime implications**
 - 15.1 None
 - 16 **Equality Impact Assessment Completed?**
 - 16.1 No.
 - 17 **Key Decision**
 - 17.1 Yes
 - 18 **Key Decision Reference**
 - 18.1 NC-09-22
 - 19 **Background Papers**
 - 19.1 None
 - 20 **Appendices**
 - 20.1 Appendix 1 – Corporate Enforcement Policy
 - 20.2 Appendix 2 - Tenant Fees Act Enforcement Policy

Enforcement Policy



1. Introduction

1.1 Policy Statement

This document lays out the generic principles for good enforcement. This document sets out what business and others can expect from Oldham Council's regulatory services and its officers. It commits the Council to good enforcement policies and procedures. This includes carrying out our activities in a robust but fair way that supports those we regulate to comply and grow, avoiding imposing unnecessary regulatory burdens, and assessing whether similar social, environmental and economic outcomes could be achieved by less burdensome means. It is supplemented where necessary by other documents, which set out in greater detail the specific policies, procedures and standards of service, which apply to particular regulatory services. The Enforcement Policy is not exhaustive in its application. It is recognised that some regulatory services will have specific policies (which may be statutory in nature), that will either coexist alongside this policy, or in certain circumstances supersede it.

1.2 Purpose

The primary function of local government regulatory activity is to protect the public, the environment and the local economy. There is a wide range of tools available to us as an enforcement authority and by delivering on these commitments we shall help to maintain a fair and safe living and trading environment to promote the local economy, social cohesion and protection of public and environmental health.

This document seeks to communicate and explain the approach of the Council's regulatory services towards enforcement and dealing with non-compliance. It sets out the enforcement options ranging from no action to prosecution. It provides guidance on the range of options that are available to help the public achieve compliance with the legislation that we enforce and how discretionary powers may be used to regulate and raise standards in various sectors.

Section 6 of the Better Regulation Delivery Office's (Department for Business, Innovation and Skills) Regulators' Code sets out the Government's expectation that local authorities will ensure their approach to their regulatory activities is transparent. The provisions of section 6 include an expectation that local authorities will publish a clear set of service standards, setting out what those they regulate should expect from them. This enforcement policy explains how the Council will implement the Regulators' Code and what individuals, households, businesses and other agencies can expect from our enforcement activities.

This Enforcement Policy commits us to:

- Protecting residents, visitors, workers, consumers, businesses, the Council's financial position and the environment of the area
- Protecting against the spread of infectious diseases in the area
- Equitable and consistent enforcement actions
- Fostering an environment which encourages economic progress in our district
- Helping businesses and others to understand and meet their legal obligations
- Reducing unnecessary burdens on businesses and individuals
- Responding proportionately to the seriousness of regulatory breaches
- Taking firm action, including legal action where appropriate, against those who fail to change their behaviour, flout the law or act negligently or deliberately seek to distort the market place

1.3 Scope

Oldham Council has enforcement teams relating to the following areas of compliance:

- Trading standards
- Licensing
- Food safety
- Health and safety
- Nuisance, contaminated land and environmental matters
- Pest control
- Crime reduction/Anti-social behaviour
- Animal Health & Welfare
- Littering and Fly tipping
- Private Housing
- Internal Audit & Counter Fraud: Council Tax Reduction/Discount, Business Rates, Blue Badge including any other fraud perpetrated against the council
- Education
- Planning
- Building Control
- Highways Authority
- Parking Services

Some areas of discreet regulatory activity may also have further policy statements setting out in greater detail the methodologies of enforcement activity that will be adopted.

1.4 Policy Consistent with Best Practice and Statutory Requirement

This Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens on business and others subject to regulation. This Policy has been developed with due regard to the **Principles of Good Enforcement** set out in the following guidance documents:

- **The Regulators' Code**, a code issued under the Legislative and Regulatory Reform Act 2006 in respect of certain specified Council regulatory functions.
- **The Code for Crown Prosecutors** issued by the Director of Public Prosecutions under the Prosecution of Offenders Act 1985.
- **The Enforcement Policy Statement of the Health and Safety Executive and the National Local Authority Enforcement Code Health and Safety at Work England, Scotland and Wales, April 2013**, which the Council's Health and Safety Enforcement Officers should follow.
- **The Food Standard Agency's Regulators' Code**, which came into force in April 2014.

In certain circumstances we may conclude that a provision contained in one or more of these codes is either not relevant or is outweighed by another provision or relevant factor. We will ensure that any decision to depart from relevant policy guidelines will be properly reasoned and based on material evidence.

The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions, November 2015 details the policy framework on how to approach, carry out and review civil parking enforcement

1.5 What we mean by 'Regulatory' and 'Enforcement'

Although these terms are not specifically defined in legislation:

- **'Regulatory'** encompasses the Council's numerous powers and duties enabling the behaviour of individuals and/or organisations to be controlled in the public interest.

- **'Enforcement'** includes any action carried out in the exercise of, or against the background of, statutory powers and duties of regulation. This is not limited to formal enforcement action such as prosecution in the criminal Courts or the giving of Notices. It also includes, among other things, the inspection of premises for the purpose of checking compliance with regulations or conditions, the imposition of conditions on any licence, consent or similar formal permission, the issue of fixed penalty notices, the giving of Home Office cautions and the making of applications to the Courts for Orders to control the conduct of individuals and/or organisations.

1.6 Legal Obligations

All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the Council's statutory obligations. Council enforcement officers should act within the scope of their delegated authority and with due regard to all relevant legislation, such as:

- Health and Safety at Work etc. Act 1974
- the Police and Criminal Evidence Act 1984,
- the Criminal Procedure and Investigations Act 1996,
- the Human Rights Act 1998,
- section 17 of the Crime and Disorder Act 1998,
- the Regulation of Investigatory Powers Act 2000,
- the Criminal Justice and Police Act 2001,
- the Legislative and Regulatory Reform Act 2006,
- the Regulatory Enforcement and Sanctions Act 2008
- the Equality Act 2010, and
- the Home Office Code of Practice on Powers of Entry
- the Protection of Freedoms Act 2012

This is not an exhaustive list. Officers will have due regard to any relevant formal procedures and codes of practice made under such legislation and will be guided in their work by the principles laid down in legislation and underpinning this policy.

2. Our Enforcement Principles

We aim to apply the principles set down in the Legislative and Regulatory Reform Act 2006 to all of our regulatory activities, including, but not limited to, those that are specified in regulations made under the Act. The principles are that:

- Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- Regulatory activities should be targeted only at cases in which action is needed.

The following paragraphs set out how we aim to make this happen in practice.

2.1 Helping Businesses and Others to Compliance – Supporting Economic Progress

The effectiveness of legislation in protecting consumers, other businesses and the community depends crucially on the compliance of those regulated. We recognise that most people and most businesses want to comply with the law. We will, therefore, take care to help businesses and others meet their legal obligations without unnecessary expense.

We will strive to ensure that when information is needed from businesses that it is assessed to avoid duplication of requests and amended where necessary.

Whenever practicable we will promote positive incentives for businesses that comply, such as National Food Hygiene Rating Scheme, and Rent with Confidence Scheme. We will, where practicable and appropriate, provide feedback to business when there are changes in business risk ratings as a result of their performance.

2.2 Openness through Clear, Accessible Guidance

Any information and advice about the legislation that we enforce shall be provided in plain language where practicable including on the Council website at www.oldham.gov.uk

Within any limits imposed by law, we will be open about how we carry out our work, including any charges that we make for services.

2.3 Helpfulness through Clear, Accessible Guidance

We believe that it is in the interests both of regulated businesses and the wider public to get things 'right first time'. Our enforcement role should involve actively working with all those subject to regulation, especially small and medium sized businesses, to guide and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name and carry proof of their identity. We will provide a contact point and telephone number for further dealings with us and we will encourage businesses and others to seek guidance or information from us. All requests for service, including applications for approval of establishments, licences, registrations, etc, will be dealt with efficiently and promptly within the resources available. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

2.4 Meeting the Needs of All Our Service Users

As far as it is reasonable to do, we will make provision for the particular interests of our service users, including businesses, their employees and the public e.g. access requirements and plain English. We are committed to providing equality of access to all the services that we provide. Full regard will be paid to different abilities and officers will be committed to ensuring that no one is discriminated against on the basis of their age, disability, employment status, ethnic or national origins, race or colour, marital status, religious or political beliefs, responsibilities for children or dependents, gender or gender reassignment, sexuality, social class, or unrelated criminal convictions. In line with the Council's published equalities policy, we will ensure that we provide services that are fair and accessible and make reasonable provision for particular needs for services.

2.5 Accountability – How to Make a Complaint about our Service

We want to sort your complaint out as soon as possible. If you have a problem with a council service, please talk to a member of staff or contact the Manager of the service concerned. They may be able to resolve the issue straight away. If you are unsatisfied with the service from the council, you can make a complaint under our Complaints and Feedback procedure:

customer.feedback@oldham.gov.uk

2.6 Targeted, Proportionate and Risk-based Enforcement

We will minimise the costs of compliance for businesses and the public by ensuring that any action we require is proportionate to the risks. We will adopt a risk-based approach to target resources where most needed. In line with the codes referred to above, we will take account of the circumstances of the case and the response of those subject to regulation when considering action. At the same time we will use intelligence and direct resources to identify those who flout the law or act irresponsibly and take firm action against them, including prosecution where appropriate.

2.7 Consistent Enforcement

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases and to treat each case on its own merits, we will have arrangements in place to promote consistency. Any actions taken should therefore:

- aim to change the behaviour of the offender;
- aim to eliminate any financial gain or benefit from non-compliance;
- be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- aim to restore the harm caused by non-compliance, where appropriate; and,
- aim to deter future non-compliance.

We support and will promote arrangements for effective liaison with other authorities and enforcement bodies through schemes such as the Home Authority principle, the Lead Authority principle and the Primary Authority principle.

www.gov.uk/government/publications/primary-authority-overview

2.8 Working with Other Enforcement Agencies

Some regulatory activity involves consultation with other agencies before deciding on the most appropriate course of action. Sometimes there is more than one agency that can act in response to a problem. If there is a shared enforcement role with other agencies, whenever possible our enforcement activities will be co-ordinated with these agencies in order to minimise unnecessary duplication or delays and to increase our overall effectiveness:

- Wherever we have a statutory duty to report regulatory matters to another body or agency, we will have procedures in place to ensure that this happens;
- If we become aware of an enforcement issue that would be of legitimate interest to, or more properly be dealt with by, another enforcement agency, we will ensure that the information is passed to that agency in good time. Equally we will take referrals from other agencies when appropriate to do so.

2.9 Adopting Good Enforcement Procedures

Guidance from an officer will be put clearly and simply, explaining why any remedial work or action is considered to be necessary and over what time-scale. Such guidance will make sure that legal requirements are clearly distinguished from best practice advice and will be usually confirmed in writing.

3. How We Take Enforcement Action

3.1 Unless immediate action is necessary and proportionate (such as the need to immediately prohibit an activity in order to avoid imminent harm to health and safety, or the need to resolve reported nuisance where we cannot find the person responsible, or to reduce capacity at a sports ground to protect spectators), the Council will afford an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference. Wherever possible, officers will seek to find solutions that are arrived at by agreement and co-operation and will keep in mind the maxim that prevention is better than cure.

3.2 Where there are statutory rights of appeal against formal action, information about those appeal rights will be given, either with the Notice governing the action taken or, where this is not appropriate or practicable, in a letter following the action to be sent as soon as reasonably practicable.

3.3 Enforcement Actions

Whenever enforcement officers deal with matters that could constitute a criminal offence, and for which legal proceedings may be taken against an individual and / or a company, such allegations will be properly investigated unless a Fixed Penalty Notice (FPN) is going to be

issued (see 3.5 below). Depending on the offence and function, officers have varying powers delegated to them.

3.4 At the conclusion of an officer's enquiries, a decision will be made as to whether or not it is believed that an offence has in fact been committed, and, if this is the case, whether to deal with the matter informally, or whether to pursue a more formal course of action. The enforcement action that the local authority chooses to take will depend upon the particular circumstances and the approach of the business or regulated person to dealing with the breach. Although the general rule will be to levy the minimum level of enforcement required to reach a satisfactory solution the Council will deal firmly with those that deliberately or persistently fail to comply or who target vulnerable persons, deprive the public purse or compromise public safety where there is an overwhelming public interest to take formal action.

3.5 Guidance for issuing Fixed Penalty Notices:

Officers and their representatives will follow this guidance

<https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notices>

(as updated in Feb 2017) to determine if it is appropriate to issue a FPN

3.6 Informal Action – Advice or Warning

Minor infringements are generally dealt with by means of informal action and would involve the officer drawing the matter to the attention of the individual or to the owner of the business or to an appropriate employee and giving appropriate guidance. Where appropriate a report will be left at the time of the visit or contained within a written letter of advice or warning. Rarely will a minor or technical infringement result in more formal action being taken, particularly if it is capable of immediate rectification. A follow-up visit will usually be made, where circumstances demand, to ensure minor matters have been rectified. However, if previous advice has been ignored, or if there is another factor that warrants a formal response, the Council may choose to treat the incident in a formal way.

3.7 Formal Action – Statutory Notice

Depending on the powers of the officer under the applicable legislation, and the remedy that best protects the public from harm, the officer may issue a statutory notice requiring that certain actions should be carried out within a given timescale. It is the responsibility of the recipient to comply with the notice. Failure to do so may result in criminal action being taken.

3.8 Formal Action – Investigation

In other cases, we will conduct an investigation in order to decide the appropriate course of action. You will be told who the investigating officer is.

3.9 We give suspected offenders the opportunity to give an explanation of the circumstances surrounding the commission of any alleged offence including, where provided for by the legislation, of any statutory defences. Officers may decide to do this by inviting the suspect to attend a formal interview.

3.10 Any formal interview about offences will be conducted having regard to the Codes issued under the Police and Criminal Evidence Act 1984 (PACE) and an appropriate record will be

made. Suspected offenders will be given the opportunity to seek legal advice prior to such an interview taking place and may be accompanied by a legal representative at the interview itself.

Some matters may not proceed to a full criminal investigation but may instead be dealt with by way of a committee hearing e.g. Taxi drivers and premises licence holders in order to assess their suitability to continue to hold such licence.

3.11 Formal Action - Criteria for Assessing Action on Suspected Offences

The Council takes care to ensure an independent and consistent approach is taken to prosecution decisions. In most cases where the investigating officer recommends prosecution the Council's delegated officer within Legal Services makes the decision whether or not to begin such proceedings. In those minority of cases where other Council officers are responsible for making the decision, any advice provided by the Head of Legal Services will be taken into account.

In all cases the appropriate course of action to take is decided having regard to relevant policies and the current **Code for Crown Prosecutors**, which involves a two-stage decision making process:

- Firstly, an **evidential test** to ensure that there is enough evidence to provide a 'realistic prospect of conviction'. If this is lacking, then no prosecution or alternative means of disposal of criminal offences will be taken.
- Secondly, a **public interest test**, which will determine whether it is in the public interest for a prosecution to be taken.

3.12 Public interest criteria

The Council will consider all relevant circumstances carefully and will have regard to the following public interest criteria:

- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender;
- whether there has been a reckless disregard of regulatory requirements;
- whether there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance;
- whether there has been a failure to honour voluntary undertakings or comply with statutory notices; or there has been a repetition of a breach that was subject to a simple caution;
- whether false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- whether authorised officers have been intentionally obstructed in the lawful course of their duties.

This is not an exhaustive list. Where we consider that formal enforcement action is necessary each case will be considered on its own merits.

3.13 The Code for Crown Prosecutors test insofar as it relates to the Council requires the consideration of the following questions:

a) How serious is the offence committed?

- The more serious the offence, the more likely it is that a prosecution is required.
- When assessing the seriousness of an offence, prosecutors should include in their consideration the suspect's culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

- The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

• Culpability is likely to be determined by:

i. the suspect's level of involvement;

ii. the extent to which the offending was premeditated and/or planned;

iii. the extent to which the suspect has benefitted from criminal conduct;

iv. Whether the suspect has previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order;

v. whether the offending was or is likely to be continued, repeated or escalated;

vi. The suspect's age and maturity (see paragraph d below).

• A suspect is likely to have a much lower level of culpability if the suspect has been compelled, coerced or exploited, particularly if they are the victim of a crime that is linked to their offending.

• Prosecutors should also have regard to whether the suspect is, or was at the time of the offence, affected by any significant mental or physical ill health or disability, as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether the suspect is likely to re-offend and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

• The circumstances of the victim are highly relevant. The more vulnerable the victim's situation, or the greater the perceived vulnerability of the victim, the more likely it is that a prosecution is required.

• This includes where a position of trust or authority exists between the suspect and victim.

• A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

• It is more likely that prosecution is required if the offence was motivated by any form of prejudice against the victim's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the suspect targeted or exploited the victim, or demonstrated hostility towards the victim, based on any of those characteristics.

• Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence, the availability of special measures and the possibility of a prosecution without the participation of the victim.

- Prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

- However, the Council does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) What was the suspect's age and maturity at the time of the offence?

Persons under the age of 18

Prevention and diversion activity is a key aim of the Council's response, working with partners, to young people identified as involved in, or at risk of anti-social behaviour and criminality. Where appropriate, prevention and diversionary action will be undertaken; however, prosecution remains an option for persons under the age of 18 where significant harm is being caused to individuals or communities.

Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.

- As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

e) What is the impact on the community?

- The greater the impact of the offending on the community, the more likely it is that a prosecution is required.

- The prevalence of an offence in a community may cause particular harm to that community, increasing the seriousness of the offending.

- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.

- Evidence of impact on a community may be obtained by way of a Community Impact Statement.

f) Is prosecution a proportionate response?

- In considering whether prosecution is proportionate to the likely outcome, the following may be relevant:

- i. The cost to the Council and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions, but cost can be a relevant factor when making an overall assessment of the public interest.

- ii. Cases should be prosecuted in accordance with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

3.14 Prosecutions related to Health and Safety

The Council will normally prosecute where one or more of the following circumstances are found to apply:

- Death was a result of a breach of the legislation.
- The gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it.
- There has been reckless disregard of health and safety requirements.
- There have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance.
- Work has been carried out without or in serious non-compliance with an appropriate licence.
- The standard of management of health and safety is found to be far below legal requirements and to give rise to significant risk.
- Failure to comply with an improvement or prohibition notice.
- False information has been supplied wilfully in relation to a matter which gives rise to significant risk.
- Inspectors have been obstructed in the course of their duties.

Where there has been a work-related death, enforcement officers will follow the National Work-related Death Protocol in liaising with the police to consider whether the circumstances of the case might justify a charge of manslaughter.

3.15 Formal Actions following conclusion of the criminal investigation

The eventual course of action taken may be one of the following: -

- No action
- Verbal or Written Advice or Warning
- Undertakings & Injunctive action
- Formal Notice
- Work in Default
- Simple Caution in accordance with current Home Office guidance
- Fixed Penalty Notice
- Seizure
- Prosecution
- Possession action
- Refusal/Suspension/Revocation of a licence, permit or certificate
- Review of Premises Licence
- Closure notice- persistently sell to minors
- Criminal Behaviour Order
- Forfeiture
- Tobacco Restriction Orders
- Taking animals into possession
- Post-conviction court orders
- Reduction in capacity at a sports ground
- Confiscation of Proceeds of Crime
- Restitution
- Referral to committee
- Administrative Penalty
- Financial or other Civil Penalty Notices.
- Unlawful profit orders.

This is not an exhaustive list. There are other options for formal action that are available to certain regulatory officers under the legislation that they enforce on behalf of the Council or other sanctions that may be provided for in subsequent legislation.

3.16 An explanation of the formal action options

a. No action

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

b. Verbal or written advice or warning

For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance. Sometimes we will advise offenders about 'good practice' but we will clearly distinguish between what they must do to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.

c. Undertakings & Injunctive action

The range of actions under various legislation (for example the Enterprise Act 2002 and the Anti-Social Behaviour, Crime and Policing Act 2014) include: informal assurances, formal undertakings, interim orders, court orders and contempt proceedings.

d. Formal Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice. All notices issued will include details of any applicable Appeals Procedures.

e. Work in Default

The Council is given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so. In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once the Council has started works it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant statutory provisions. The Council is not obliged to carry out works and reserves the right not to do so where the cost of the works is likely to be very high or there are likely to be difficulties in recovering the costs.

f. Simple Caution

In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be issued with the agreement of the defendant. This will be done in accordance with Home Office guidelines. The purpose of these cautions is to avoid unnecessary court action, but can only be used where the defendant fully admits the offence and agrees to it being dealt with by way of caution. Simple cautions are recorded by the Council and may be cited in court should a future infringement occur. This may include an infringement prosecuted by the Police or another body; as indicated above the Council will usually share relevant information (such as the fact that a simple caution has been given) with other investigators where satisfied that this will help in the prevention and detection of crime. No court proceedings are involved in the giving of a simple caution.

A Simple Caution will be issued in accordance with the current **Home Office Circular**. There is no legal obligation for any person to accept such a caution and no pressure will be applied to that person to do so. If a caution is declined, a prosecution should normally follow.

g. Fixed Penalty Notice

The Council has powers to issue fixed penalty notices in respect of some breaches. A fixed penalty notice is not a criminal fine and does not appear on an individual's criminal record. If a fixed penalty is not paid, the Council may commence criminal proceedings or take other enforcement action in respect of the breach.

If a fixed penalty is paid in respect of a breach the Council will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

The Council is only able to issue fixed penalty notices where it has specific powers to do so. If fixed penalty notices are available, their issue is at the discretion of the Council. In some circumstances, in particular where breaches are serious or recurrent, it may be that prosecution is more appropriate than the issue of a fixed penalty notice.

h. Civil or Financial Penalty notices

The Council has in certain circumstances the power to issue Civil or Financial Penalties in relation to particular offences in question. The powers are set out in law and the Council will follow the relevant policy and procedures when deciding on whether to make a financial penalty or civil penalty and the level or amount that the penalty should be. The details of the method of appealing these penalties will be set out in any notices served. In some cases, this will include the right to make representations before a final penalty notice is made.

i. Prosecution

In circumstances where none of the other forms of enforcement action are considered appropriate a prosecution will be considered and may ensue.

j. Refusal/ Suspension/ Revocation of a licence, permit or certificate

Oldham Council issues licences to carry out certain activities. It also has a role to play in ensuring that appropriate standards are met in relation to licences issued. Most licences include conditions which require the licence holder to take steps to ensure that, for example, a business is properly run. Breach of these conditions may lead to a review of the licence which may result in its suspension, revocation or amendment. When considering future licence applications or similar applications the Council may take previous breaches and enforcement action into account.

k. Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

l. Tobacco Restriction Orders

Where an offender continually breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premises or a person from selling tobacco for a period of time up to one year.

m. Taking Animals into Possession

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imbusement of expenses incurred and subsequent disposal.

n. Post-Conviction Court Orders

A person who is convicted of a relevant offence in the Criminal Courts, can under the Anti-Social Behaviour Crime and Policing Act 2014, be given an order that is equivalent to an Anti-Social Behaviour Order, known as a Criminal Behaviour Order, which prohibits and/or requires the offender from doing anything described in the order. A Remedial Order can be made for breach of a Community Protection Notice under section 49 of the Anti-social Behaviour, Crime and Policing Act 2014. Dog Destruction and Control Orders can be made under The Dangerous Dogs Act 1991 and the Dogs Act 1871.

o. Confiscation of Proceeds of Crime

Where a prosecution concerns offending conduct falling within the relevant tests under the Proceeds of Crime Act 2002, we will consider seeking a confiscation order to remove the benefit obtained from such criminal conduct. The making of such orders sends a clear message that 'crime does not pay'. The purpose is to recover the financial benefit the offender has obtained from their criminal conduct.

p. Reduction in capacity at a sports ground

Formal action may also be taken in relation to all or part of sports grounds such as imposing a reduction in capacity or issuing a Prohibition or Closure Notice.

4. How We Implement this Enforcement Policy

4.1 Implementation and Training

All officers when engaged in enforcement in services covered by this policy are required to use this policy in their work. To update existing practices, it is essential that the expectations of this policy are disseminated to all officers within those regulatory services covered by this policy. Appropriate training will be provided to ensure that each officer understands and applies this policy to all enforcement activity.

4.2 Publication and Publicity

Following adoption, this policy will be published on the Council's website and in printed form on request.

In order to deter others, the Council will aim to publish the outcome of any prosecution or other enforcement action within 24 hours of the conviction or sentence unless there is good reason not to do so.

4.3 Service Specific Standards and Charters

As set out in Section 1.1 of this policy, it will be a priority for each of the regulatory services covered by this policy to review and, where necessary, update their current enforcement policies and procedures and service standards in order to ensure that they are consistent with this policy.

4.4 Responsibilities

Each manager of a regulatory service that is covered by this policy will be responsible for its effective implementation throughout the enforcement activities of their team. Every officer within these teams will be responsible for applying it in relation to any enforcement activity covered by this policy.

4.5 Liaison with Other Regulatory Bodies and Enforcement Agencies

Where there is a wider regulatory interest, enforcement activities will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wider geographical area beyond the local authority's boundaries, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

The officers will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies including:

- Government Agencies Inc. HMRC, Border Force and DWP
- Police Forces
- Fire Authorities
- Statutory Undertakers
- Other Local Authorities

The sharing of any specific information with other regulatory bodies and enforcement agencies will take place having due regard for the requirements of the Data Protection Act 2018, The General Data Protection Regulations 2016 and Part 9 of the Enterprise Act 2002. Under s241A of the Enterprise Act 2002, a public authority which holds prescribed information to which section 237 applies, may disclose that information to any person for the purposes of, or in connection with, prescribed civil proceedings only (including prospective proceedings) in the United Kingdom or elsewhere. However, information gathered under other legislation may be subject to the provisions of the Freedom of Information Act 2000, Data Protection Act 2018 and General Data Protection Regulations 2016 or otherwise subject to disclosure provisions that may be contained within the relevant legislation.

4.6 Monitoring and Review of the Policy

The operation of this policy in practice will be reviewed from time to time. The content of the policy will be reviewed in the light of any relevant changes in legislation or updated codes of practice. Any significant changes will be subject to prior approval by relevant elected Members of the authority following consultation with the Council's senior officers.





OLDHAM COUNCIL ENFORCEMENT POLICY IN RELATION TO THE RELEVANT LETTING AGENCY LEGISLATION

Tenant Fees Act 2019

Consumer Rights Act 2015

**The Redress Schemes for Lettings Agency Work and Property Management
Work (Requirement to Belong to a Scheme etc) (England) Order 2014**

**The Client Money Protection Schemes for Property Agents (Requirement to
Belong to a Scheme etc.) Regulations 2019**

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Introduction

Oldham Council has adopted this policy on deciding financial penalties and the appropriateness of prosecution as an alternative to imposing financial penalties under the relevant letting agency legislation.

It applies in relation to any decision made by the Council in its capacity as Enforcement Authority and Lead Enforcement Authority under Sections 6 & 26 of the Tenant Fees Act 2019 respectively.

For clarity, “relevant letting agency legislation” means: -

1. The Tenant Fees Act 2019 (“the TFA 2019”)
2. Chapter 3 of Part 3 of the Consumer Rights Act 2015 as it applies in relation to dwelling houses in England
3. An order under Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013¹; and
4. Regulations under Sections 133 – 135 of the Housing and Planning Act 2016².

The policy takes effect from the 20 June 2022.

1. Sanctions

The Tenant Fees Act 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

- a. In respect of a first breach of Section 1 or Section 2, or a breach of Schedule 2 of the TFA 2019, a financial penalty not exceeding £5,000.
- b. Under Section 12 of the TFA 2019, a second or subsequent breach of Section 1 or Section 2 within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is alternative power to prosecute in the Magistrates’ Court where an unlimited fine may be imposed.

In respect of a failure of Letting Agents to publicise their fees as required by Section 83(3) of the Consumer Rights Act 2015 an enforcement authority may impose a financial penalty not exceeding £5,000.

In respect of a failure by any person engaged in letting agency or property management work to hold membership of a redress scheme as required by Article 3 (in respect of lettings agency work) or Article 5 (in respect of property management work) of The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) England) Order 2014, an enforcement authority may impose a financial penalty not

¹ Pertaining to The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

² Pertaining to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

exceeding £5,000. (Note that it is not sufficient to simply register for a redress scheme – the correct category of membership must be obtained depending on the work carried out.)

In respect of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, where there is: -

- a) a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3, the Council may impose a financial penalty not exceeding £30,000 or
- b) a failure to display a certificate of membership at each of the agent’s premises; or to publish a copy of that certificate on the agent’s website (if any); or to produce a copy of the certificate free of charge to any person reasonably requiring it as required; or to notify any client in writing within 14 days where the property agent becomes a member of a different CMP scheme or that the property agent’s membership of the CMP scheme has been revoked, as required by Regulation 4, the Council may impose a financial penalty not exceeding £5,000.

The Council will determine what is the most appropriate and effective sanction and whether it is appropriate to impose a financial penalty or prosecute having due regard to the Council’s Enforcement Policy.

Other Types of Enforcement Action that may be taken

In appropriate circumstances consideration will be given to less formal action such as warning letters or advice, in an effort to secure compliance, and this will be done so in accordance with the Council’s Enforcement Policy.

2. Statutory Guidance

The (former) Ministry of Housing, Communities & Local Government (“MHCLG”) has published guidance for enforcement authorities in respect of the Tenant Fees Act 2019 - [“Tenant Fees Act 2019: Statutory Guidance for enforcement authorities”](#) and in respect of Client Money Protection Requirements – [“Mandatory Client money protection for property agents – enforcement guidance for local authorities”](#)

This is statutory guidance to which enforcement authorities must have regard when considering whether to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalty to impose and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

3. Determining the level of the financial penalty

In accordance with the provisions of the statutory guidance, the following factors should be considered by an enforcement authority when determining the level of penalty to impose for a breach of relevant letting agency legislation: -

- a. Severity of the breach
- b. Punishment of the landlord or agent
- c. Aggravating and mitigating factors
- d. Fairness and proportionality

Each of these factors are explained in more detail in the statutory guidance which should be referred to for each penalty the Council is considering. For ease, the same considerations will be applied in cases of redress membership and breaches of S.83 Consumer Rights Act 2015.

Although the Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when making this policy.

The civil penalty as an alternative to prosecution under the Housing Act 2004 policy was reviewed in 2018 and was informed by the principles contained in the Sentencing Council's 'Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline'. The Council believes this to be a fair, relevant and reasonable model to follow; this policy was widely consulted on with various stakeholders.

Appendix 1 of this policy contains the processes that the Council will use in order to determine the level of financial penalty under the TFA 2019 and other relevant letting agency legislation. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the suspension of the process should an appeal be made to the First Tier Tribunal.

Appendix 1 – The Council’s process for determining the level of penalty to set

STEP ONE – Determining the category

The Council will determine the breach category using only the culpability and category of harm factors below. Where a breach does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. Other discretionary factors may also be applied in order to reflect consistency and the Council may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

Culpability

Very high: Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile³ and knew their actions were unlawful

High: Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken

Medium: Breach committed through act or omission which a person exercising reasonable care would not commit

Low: Breach committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on the relevant occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord’s or Agent’s business
- High risk of an adverse effect on individual(s) – including where persons are vulnerable⁴

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
- Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
- The Council’s work as a regulator is inhibited
- Tenant or prospective tenant misled

Category 3- Low Likelihood of Harm

- Low risk of an adverse effect on actual or prospective tenants.
- Public misled but little or no risk of actual adverse effect on individual(s)

³ Which may include any significant role in a trade or business representative organisation

⁴ A wide definition of vulnerability will be used. See Appendix 2 for a non-exhaustive list.

We will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

The nature of harm will depend on the personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular breach on the victim.

In some cases, no actual harm may have resulted, and the Council will be concerned with assessing the severity of the misconduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted.

To the community

Some breaches cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

STEP TWO - Starting point and category range

Having determined the category that the breach falls into, the Council will refer to the following starting points to reach an appropriate level of civil penalty within the category range. The Council will then consider further adjustment within the category range for aggravating and mitigating features.

Obtaining financial information

The statutory guidance advises that local authorities can use their powers to, as far as possible, make an assessment of a Landlord or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Council such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the person's means from evidence it has received, or obtained through its own enquiries, and from all the circumstances of the case which may include the inference that the person can pay any financial penalty.

Starting points and ranges

The tables in Appendices 4-9 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach: -

- Appendix 4 First breach in respect of a Prohibited Payment
- Appendix 5 Second & subsequent breach in respect of a Prohibited Payment
- Appendix 6 Breach of Publication of Fees requirements
- Appendix 7 Breach in respect of membership of a Redress Scheme
- Appendix 8 Breach in respect of membership of a Client Money Protection Scheme
- Appendix 9 Breach of transparency requirements of membership of a Client Money Protection Scheme (Regulation 4).

Context

Below is a list of some, but not all, factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions⁵ are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range, which will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

- Previous breaches of the TFA 2019 or relevant letting agency legislation
- Previous convictions, having regard to:
 - the nature of the offence to which the conviction relates and its relevance to the current breach; and,
 - the time that has elapsed since the conviction.

Other aggravating factors may include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider / community impact
- Obstruction of the investigation
- Record of poor compliance
- Refusal of advice or training or to become a member of an Accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous or no relevant/recent breaches
- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem

⁵ See Appendix 3 for a list of relevant convictions

- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of relationship with tenants
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the breach
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence

STEP THREE - General principles to consider in setting a penalty

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, the Council will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in STEP EIGHT below.

STEP FOUR- Issue Notice of Intent

In respect of prohibited payments, publication of fees etc and client money protection membership and transparency requirements, the Council will issue a Notice of Intent before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the breach. In respect of redress membership, the Notice of Intent must be served within 6 months of the date on which the Council is first satisfied of the failure to comply with Article 3 or Article 5. If the breach is ongoing, the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the statutory requirements according to which breach is being addressed, a Notice of Intent will contain the amount of the proposed penalty, the reason for imposing the penalty and information about the right to make representations concerning the penalty. In respect of the TFA 2019, the date of service is also required on the Notice of Intent.

STEP FIVE – Consideration of representations and review of financial penalty where appropriate

Where representations are received, the Council will review the penalty and, if necessary, adjust the initial amount reached at STEP FOUR, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.

Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two, providing it does not increase the penalty over the prescribed maximum. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP SIX – Reductions

The Council will consider any factors which indicate that a reduction in the penalty is appropriate and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties, such as (but not limited to):

- The impact of the financial penalty on the Landlord or Agent's ability to comply with the law or make restitution where appropriate
- The impact of the financial penalty on employment of staff, service users, customers and the local economy.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender accepted liability
- The circumstances in which they admitted liability
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the breach itself.

STEP SEVEN - Additional actions

In all cases the Council will consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

STEP EIGHT – Totality of breaching conduct

Where more than one financial penalty has been considered, the Council should consider the following guidance from the Sentencing Council's definitive guideline on 'Offences Taken into Consideration and Totality' which appears to the Council to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative, the Council should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case, including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to the Council.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate, the Council should consider how to reach a just and proportionate total financial penalty. There are a number of ways in which this can be achieved.

For example:

Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches. Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The Council should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate, the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are imposed, the Council must take care to ensure that there is no double-counting.

STEP NINE – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix 2 – Non exhaustive list of vulnerable people:

- Young adults and children
- Persons vulnerable by virtue of age
- Persons vulnerable by virtue of disability or sensory impairment
- People on a low income
- Persons with a drug or alcohol addiction
- Victims of domestic abuse
- Children in care or otherwise vulnerable by virtue of age
- People with complex health conditions
- People where English is not their first language
- Victims of Trafficking or sexual exploitation
- Refugees
- Asylum seekers
- People at risk of harassment or eviction
- People at risk of homelessness.

Appendix 3 – Non exhaustive list of relevant offences / breaches

Housing law or landlord and tenant related

Offences under:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949
- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004
- The Consumer Protection from Unfair Trading Regulations 2008

Offences involving fraud

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including: -

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

Offences involving violence

A conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

Offences involving drugs

- Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agent's business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition, where an offence of possession with intent to supply is involved, regard should be had to the role and importance of the subject in the supply chain

Offences involving sexual offences

- An offence contained in Schedule 3 of the Sexual Offences Act 2003.

Unlawful discrimination

- Unlawful discrimination can include findings of an Employment Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

Other offences

- Modern Slavery / Human Trafficking Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.

Appendix 4 – Financial Penalty in the case of a first breach in respect of Prohibited Payments.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1,250	250	2,250
Harm Category 2	1,500	500	2,500
Harm Category 1	1,750	750	2,750
Medium culpability			
Harm category 3	2,000	1,000	3,000
Harm Category 2	2,250	1,250	3,250
Harm Category 1	2,500	1,500	3,500
High culpability			
Harm category 3	2,750	1,750	3,750
Harm Category 2	3,000	2,000	4,000
Harm Category 1	3,250	2,250	4,250
Very high culpability			
Harm category 3	3,500	2,500	4,500
Harm Category 2	3,750	2,750	4,750
Harm Category 1	4,000	3,000	5,000

Appendix 5 – Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30,000.

		Range	
		Min (£)	Max (£)
Starting point (£)			
Low culpability			
Harm category 3	3,500	2,000	8,000
Harm Category 2	6,500	4,000	10,000
Harm Category 1	8,500	4,500	15,000
Medium culpability			
Harm category 3	6,500	4,750	17,000
Harm Category 2	10,500	5,000	20,000
Harm Category 1	12,500	5,500	22,000
High culpability			
Harm category 3	10,500	5,500	20,000
Harm Category 2	15,000	6,250	24,000
Harm Category 1	18,000	7,000	26,000
Very high culpability			
Harm category 3	15,000	7,000	24,000
Harm Category 2	17,500	7,250	28,000
Harm Category 1	20,000	7,500	30,000

Appendix 6 – Financial Penalty in the case of a breach in respect of Publication of Fees.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1,250	250	2,250
Harm Category 2	1,500	500	2,500
Harm Category 1	1,750	750	2,750
Medium culpability			
Harm category 3	2,000	1,000	3,000
Harm Category 2	2,250	1,250	3,250
Harm Category 1	2,500	1,500	3,500
High culpability			
Harm category 3	2,750	1,750	3,750
Harm Category 2	3,000	2,000	4,000
Harm Category 1	3,250	2,250	4,250
Very high culpability			
Harm category 3	3,500	2,500	4,500
Harm Category 2	3,750	2,750	4,750
Harm Category 1	4,000	3,000	5,000

Appendix 7 – Financial Penalty in the case of a breach in respect of Membership of a Redress Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1,250	250	2,250
Harm Category 2	1,500	500	2,500
Harm Category 1	1,750	750	2,750
Medium culpability			
Harm category 3	2,000	1,000	3,000
Harm Category 2	2,250	1,250	3,250
Harm Category 1	2,500	1,500	3,500
High culpability			
Harm category 3	2,750	1,750	3,750
Harm Category 2	3,000	2,000	4,000
Harm Category 1	3,250	2,250	4,250
Very high culpability			
Harm category 3	3,500	2,500	4,500
Harm Category 2	3,750	2,750	4,750
Harm Category 1	4,000	3,000	5,000

Appendix 8 – Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3,500	2,000	8,000
Harm Category 2	6,500	4,000	10,000
Harm Category 1	8,500	4,500	15,000
Medium culpability			
Harm category 3	6,500	4,750	17,000
Harm Category 2	10,500	5,000	20,000
Harm Category 1	12,500	5,500	22,000
High culpability			
Harm category 3	10,500	5,500	20,000
Harm Category 2	15,000	6,250	24,000
Harm Category 1	18,000	7,000	26,000
Very high culpability			
Harm category 3	15,000	7,000	24,000
Harm Category 2	17,500	7,250	28,000
Harm Category 1	20,000	7,500	30,000

Appendix 9 – Financial Penalty in respect of a breach of transparency requirements of membership of a Client Money Protection Scheme (Regulation 4)

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply, the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5,000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1,250	250	2,250
Harm Category 2	1,500	500	2,500
Harm Category 1	1,750	750	2,750
Medium culpability			
Harm category 3	2,000	1,000	3,000
Harm Category 2	2,250	1,250	3,250
Harm Category 1	2,500	1,500	3,500
High culpability			
Harm category 3	2,750	1,750	3,750
Harm Category 2	3,000	2,000	4,000
Harm Category 1	3,250	2,250	4,250
Very high culpability			
Harm category 3	3,500	2,500	4,500
Harm Category 2	3,750	2,750	4,750
Harm Category 1	4,000	3,000	5,000



Report to CABINET

Renewal of Framework of Contractors for Tree Surgery works.

Portfolio Holder:

Cllr Jean Stretton, Cabinet Member for Neighbourhoods.

Officer Contact: Emma Barton Executive Director – Place & Economic Growth

Report Author: Nik Anderson – Senior Arboricultural and Countryside Officer – Environmental Services

Ext. x4066

17TH June 2022

Reason for Decision

This paper provides information about Oldham’s framework of approved contractors for undertaking tree surgery works across Oldham.

Cabinet is requested to note the revised framework and agree that the award of the new framework be taken as a delegated decision.

Recommendations

The recommendation is for Cabinet to note that a proper and thorough assessment and selection process has been conducted in respect of creating a professional and resilient framework of approved tree surgery contractors to undertake tree works across Oldham. **It is recommended that Cabinet allows for the delegated award of the framework to the Executive Director of Place & Economic Growth.**

Renewal of Framework of Contractors for Tree Surgery Works

1 Background

- 1.1 Oldham Council operates a commissioning model for tree surgery work; the current framework of contractors is up for renewal expiring on 30th April 2022.
- 1.2 The current framework comprises 5 companies on it (one of which no longer operates on our behalf due to performance issues) attending to both emergency and planned work supporting the arboriculture team.

2.0 Current Situation

- 2.1 The current framework has the ability to direct award work to contractors or if above £10000 a mini competition is to be undertaken. When using the direct award option availability, suitability, and price are taken into consideration.
- 2.2 Works are issued on a priority basis and only within the constraints of existing budgets.
- 2.3 Contractors undertake a range of routine works as well as emergency works and stand-by cover during periods of storms/damaging winds.

3.0 Development of new framework

- 3.1 A new framework is required to continue to support the Council's arboricultural team. This framework would seek to increase the number of framework contractors from 4 to 6 in order to improve resilience (Storm Arwen in November 2021 stretched the resources in existing framework)
- 3.2 The evaluation criteria used to assess bidders is to be split between quality, environmental considerations, social value, and cost. Only those bidders demonstrating a combination of high quality, competitive costs and social value considerations will be offered a place on the framework.

4.0 Benefits

- 4.1 The benefits of continuing with the framework approach are:
 - Resilience
 - Value for money guaranteed through competition
 - Encouraging local companies who employ locally
 - Quick response times
 - Good customer care
 - Professionalism

5.0 Risks and mitigations

- 5.1 Many risks and liabilities are removed from the Council by outsourcing this service as all contractors will be insured independently. Risk assessments are currently and will continue to do so completed by the Contractors and submitted to the Council.
- 5.3 Works are only issued to the value of the existing budget

4.5 Delegation of decision to award

- 4.5.1 Standard protocol would be for Cabinet to approve the award of the framework. However, it is recommended that Cabinet agrees to delegate authority for the award to the Executive Director of Place & Economic Growth.

5.0 Options/Alternatives

- 5.1 Option 1 (recommended): To approve the commencement of the procurement to establish a tree surgery services framework and allow for delegated authority for the award. This will allow for a thorough and robust tendering exercise to be undertaken and award completed in time for 1st July 2022.

Option 2: To not approve and not allow for delegated authority for the award of the framework. This will constrict the timeframe for the renewal of the framework which may affect service provision and continuity.

6 Preferred Option

- 6.1 Option 1 (recommended): To approve the commencement of the procurement to establish a tree surgery services framework and allow for delegated authority for the award. This will allow for a thorough and robust tendering exercise to be undertaken and award completed in time for 1st July 2022.

7 Consultation

- 7.1 It is not deemed necessary to do any targeted consultation

8 Financial Implications

- 8.1 The cost of awarding contracts through the proposed framework for tree surgery works will depend on the scope, type and urgency of the works required.

- 8.2 Tree surgery and related works are funded from an existing revenue budget of £0.250m for arboriculture within Environmental Services. Paragraph 2.2 of the report confirms that works will only be undertaken on a priority basis within the constraints of existing budgets.

(John Edisbury)

9 Legal Services Comments

- 9.1 The existing framework agreements expire on 30th April 2022 and are not capable of being extended. Legal Services supports the recommendations outlined in the report and would support Environmental Services and Procurement to develop and execute new framework agreements in line with the Public Contract Regulations 2015 and the Contract Procedure Rules. (Sukie Kaur).

10. Co-operative Agenda

- 10.1 The structure of this framework is designed to be mutually beneficial to the Council and the successful framework contractors.

11 Human Resources Comments

11.1 No HR implications.

(Catherine Pearson, Strategic HR Lead)

12 **Risk Assessments**

12.1 All framework contractors will be expected to have a comprehensive health and safety policy along with a full set of Risk assessments as well as site/job specific risk assessments.

13 **IT Implications**

13.1 None

14 **Property Implications**

14.1 None

15 **Procurement Implications**

15.1 The Commercial Procurement Unit supports the recommendations outlined in the report. Procurement will work alongside Environmental Services to ensure the process is undertaken in line with the Public Contract Regulations 2015 and completed in time for the 1st July 2022. (Emily Molden).

16 **Environmental and Health & Safety Implications**

16.1 None

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

17.1 None

18 **Equality Impact Assessment Completed?**

18.1 There is no requirement to carry out an EIA.

19 **Key Decision**

19.1 Yes

20 **Key Decision Reference**

20.1 NC-04-22

21 **Background Papers**

21.1 None

22 **Appendices**

22.1 None



Report to CABINET

Procurement of Water and Wastewater Services

Portfolio Holder:

Cllr Abdul Jabbar - Cabinet Member for Finance and Low Carbon

Officer Contact: Emma Barton, Executive Director – Place & Economic Growth

Report Author: Stephen Linsky Energy Manager **Ext.** 4314.

17 June 2022

Reason for Decision

Oldham Council are currently paying 'out of contract' rates for water and wastewater services and to help realize the benefits and savings / efficiencies, this report seeks approval to award a 5-year contract to a new provider - Wave.

Executive Summary

The water services industry was deregulated on 1st April 2017 and by default Oldham Council's commercial supplies were placed with Water Plus on deemed out of contract rates and conditions. A review has been carried out to formally appoint a new supplier and identify savings and efficiencies for the Council's water usage.

Recommendations

To approve the appointment of Wave via the NEPO (North East Procurement Organisation) Water Retail Services framework.

Procurement of Water and Wastewater Services

1 Background

- 1.1 The water services industry was deregulated on 01/04/2017. Prior to this date these services were provided by United Utilities. By default, all of Oldham Council's commercial supplies were placed with Water Plus on deemed out of contract rates and conditions.
- 1.2 Under the Water Deregulation requirements 93% of the charges are fixed by United Utilities. Only 7% is subject to competition. Whilst the potential savings from an agreed water contract are not high there are other reasons to procure and agree a water contract, these are: -
- The Council has a duty to demonstrate value for money is being obtained.
 - An agreed contract will enable the Council to negotiate more favorable contract terms and conditions which will result in efficiency and other cost savings. These are not possible on a deemed contract. For example, electronic as opposed to manual billing.
 - An agreed contract allows for the supplier to provide additional services to assist the management of water services. Currently most water meters are read manually resulting in estimated invoices and leaks going undetected for long periods which can cost £1,000's. It is intended that the new supplier will install cameras on every water meter and provide a leak alarm system.
 - Schools will be given the option to share the terms and conditions of this proposed contract by signing their own customer Access Agreement with the proposed supplier.

2 Current Position

- 2.1 The current billing arrangements result in excessive administration time to process and check invoices. As a result, a review was carried out to contract water and wastewater services and to identify savings and increase efficiencies in the Council's usage and management.
- 2.2 Three compliant external frameworks were identified and the NEPO framework for Water Retail Services was deemed the most appropriate due to:
- A saving of approximately £51,000 per annum
 - Complementary Active Water Management service helping to reduce water usage by 10%
 - Additional ancillary services (chargeable) available to help increase efficiencies and savings i.e., leak alarm system and cameras to record meter readings.
 - Ability to dictate call off period.

3 Options/Alternatives

- 3.1 Option 1 (Recommended): To award the water and wastewater services contract to Wave to take advantage of the savings and efficiencies offered. Wave is a prominent organisation in the public sector market currently supplying to Manchester City Council and Lancashire County Council, both of which have provided references.

3.2 Option 2: To not award the contract, leaving the Council on the 'out of contract' deemed rates. A further procurement exercise would be required and is not guaranteed to increase the savings and efficiencies identified above. The estimated water charges for 2022/23 if no action is taken is £627,000 as opposed to £576,000

4 **Preferred Option**

4.1 Option 1 (Recommended): To award the water and wastewater services contract to Wave to take advantage of the savings and efficiencies offered. Wave is a prominent organisation in the public sector market currently supplying to Manchester City Council and Lancashire County Council, both of which have provided references.

5 **Consultation**

5.1 Manchester City Council and Lancashire County Council have recommended Wave. Procurement and the Council's Energy Team have been in discussion with Wave re the proposed contract.

6 **Financial Implications**

6.1 Whilst contract value with Wave at £576k represents a decrease in costs of circa £50k compared to remaining on a deemed contract with Water Plus at £627k, it should be noted that the water services budget for the Council for the contract is £548k for 2022/23, with actuals charged for water services totaling £565k in 2021/22.

6.2 As a result the Council will be facing a budget shortfall of circa £28k for 2022/23 and future years. The Council can manage this shortfall in the 2022/23 within the current financial year from within the overall existing Corporate Landlord budget. This will be reviewed ahead of confirming next year's budget plans.

(James Postle)

7 **Legal Services Comments**

7.1 Legal services have not been involved in this matter however has taken on board the lead procurement officer's comments in that the tender has been awarded in accordance with the Council's CPR's and The Public Contract Regulations 2015.

(Sukhdeep Kaur)

8. **Co-operative Agenda**

8.1 N/A

9 **Human Resources Comments**

9.1 N/A

10 **Risk Assessments**

10.1 There is minimal risk in the Council entering into this contract whereby the cost pressure on existing budgets should be reduced by a £50k reduction negotiated in the tender.

(Mark Stenson)

11 **IT Implications**

11.1 None

12 **Property Implications**

12.1 The Property Team support the recommendations outlined in the report. The appointment of Wave will result in the Council achieving better value for money on its property estate.

(Alan McCarthy)

13 **Procurement Implications**

13.1 The Commercial Procurement Unit supports the recommendation outlined in the report as use of the NEPO framework is compliant with the rule 4.1 of the Council's Contract Procedure Rules. Procurement will work alongside the client team to complete the call off procedure and facilitate the delivery of social value within the contract.

(Emily Molden).

14 **Environmental and Health & Safety Implications**

14.1 Although a relatively small proportion of the overall carbon footprint of Council Buildings, the carbon footprint of the Council's water consumption is included in the measure of progress against the 2025 carbon neutrality target set out in the Oldham Green New Deal Strategy. Any reduction in water use as a result of the efficiency services provided through the NEPO framework will support other work towards achieving the 2025 target.

(Andrew Hunt)

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

15.1 None

16 **Implications for Children and Young People**

16.1 None

17 **Equality Impact Assessment Completed?**

17.1 No

18 **Key Decision**

18.1 Yes

19 **Key Decision Reference**

19.1 FLC-02-22

20 **Background Papers**

20.1 N/A

21 **Appendices**

21.1 None

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Report to CABINET

For the Supply and Delivery of Cleaning Chemicals and Materials

Portfolio Holder: Cllr Abdul Jabbar, Deputy Leader/Cabinet Member for Finance & Low Carbon

Officer Contact: Emma Barton, Executive Director for Place & Economic Growth

Report Author: Jeannette Heath, Area Coordinator
Ext. 4235

17 June 2022

Reason for Decision

Approval is required to award a 4-year contract for the supply and delivery of cleaning chemicals and materials. This is a strategic function to improve and ensure the organisation receives best possible prices, quality and sustainability that enhances better operational performance.

Executive Summary

A tendering exercise has been carried out for the supply and delivery of cleaning chemicals and materials over the next 4 years. The products are used to clean and sanitise Council buildings along with schools and school kitchens. The result of the process has identified savings in the unit price of the products.

Recommendations

To award the contract to the bidder who is offering the most economically advantageous tender.

For the Supply and Delivery of Cleaning Chemicals and Materials

1 Background

1.1 Oldham Council in house Cleaning & Catering Services currently provide cleaning, caretaking & catering services to various council buildings including offices, libraries, children's centres, work depots, schools, special schools, and sports centres.

The Education Catering team provide catering services for 52 schools and hold the responsibility of cleaning the kitchens for these schools.

1.2 Contracts have been previously tendered for at an AGMA level. However, due to unsatisfactory service delivery in the current contract a decision was made to procure for Oldham only. As an interim measure until the new contract is in place Alliance Disposables Ltd have been supplying and delivering cleaning chemicals.

2 Current Position

2.1 An open Find a Tender (FTS) procurement route was followed in accordance with Oldham Council's Contract Procedure Rules and Public Contract Regulations 2015. The FTS Contract Notice was published on the 3rd March 2021 and the Invitation to Tender followed, being published on the Chest e-procurement portal on 15th March 2021 with a closing date of 7th April 2021. The following evaluation criteria and weightings were applied:

Quality/Technical Capacity	50%
Social Value	10%
Product Specifications	Pass/Fail
Product Testing	Pass/Fail
Price	40%

Nine bids were received in total; however, from an initial evaluation a submission was automatically disqualified. The evaluation of the bids by Anne Burns (Principal Catering Manager) and Karen Wood (Cleaning & LLPS Manager), sought to identify the submission offering the most economically advantageous bid, based on the above table.

Evaluations were also carried out by Karen Cox and Claire Povey from Health Safety on the product data sheets and by the cleaning staff on the products themselves.

The outcome of the evaluation process was that 'Accommodation Supplies at Pattersons' has been identified as the successful bidder, demonstrating their ability to deliver the most advantageous service and quality products.

'Accommodation Supplies at Pattersons' have also made a variety of commitments to continue to develop their ongoing contributions to social value in the borough including:

- Local employment/recruitment to support business expansion
- Volunteering at schools/colleges
- New training opportunities for employees
- Apprenticeship opportunity
- Work placements
- Supporting young people into work
- Local spend

-
- Business Advice sessions for VCSEs and MSMEs.
 - Donation of equipment/resources for VCSEs.
 - Donation/In-Kind contributions to Action Together
 - Donation/In-Kind contributions to local community projects
 - Staff volunteering on local community projects
 - Commitment to be carbon neutral by 2030

The Council were notified by the incumbent supplier that the unit cost of their supplies was increased from the 29th December 2021. Analysis of the revised pricing structure indicated an overall cost increase of around 30%, which equates to circa £27k per annum.

3 **Options/Alternatives**

3.1 Option 1) To award the contract to Accommodation Supplies at Pattersons who submitted the most economically advantageous tender; offering high quality goods at a competitive price.

Option 2) To not award the contract and continue with the existing arrangements. However, this would mean the services would not be able to embrace and realise the potential cost reductions. Furthermore, it would leave the Council with no formal contract in place, prompting a further tender exercise. This will increase the timescales in implementing a formal contract leaving the Council open to risk.

4 **Preferred Option**

4.1 Option 1) To award the contract to Accommodation Supplies at Pattersons who submitted the most economically advantageous tender; offering high quality goods at a competitive price.

5 **Consultation**

5.1 N/A

6 **Financial Implications**

6.1 The preferred option as detailed in paragraph 4.1 is to award the cleaning materials contract to 'Accommodation Supplies at Pattersons'.

6.2 In 2020/21, a combined total of £90k was spent by Catering and Cleaning services on cleaning chemicals and materials. The 30% price increase implemented by the incumbent supplier represents an equivalent annual spend of £117k.

6.3 If the preferred option is approved, the pricing of items will be broadly equivalent to the levels that were in place prior the previous supplier increasing their prices. This means the Council will avoid incurring additional costs of around £27k per annum relating to the purchase of cleaning chemicals and materials.

(Matthew Kearns – Senior Accountant)

7 **Legal Services Comments**

7.1 Legal Services has not been involved in the tender exercise and relies on the lead procurement officer's comments in the report. That the tender exercise has been carried out in accordance with the Public Contract Regulations 2015 and the Council's Contract

Procedure Rules. The client department and the procurement officer must ensure that the contractual documentation is executed in a timely manner.

8. **Co-operative Agenda**

8.1 The tender would include all aspects of our co-operative values and behaviour, as well as partnership working. The cleaning supplies are used across Council buildings promoting safe working spaces for employees and also in numerous school and school canteen settings again promoting safe and clean places of education for children.

9 **Human Resources Comments**

9.1 No HR implications

(Catherine Pearson, Strategic HR Lead)

10 **Risk Assessments**

10.1 There are no business risks associated with this procurement

11 **IT Implications**

11.1 None

12 **Property Implications**

12.1 None

13 **Procurement Implications**

13.1 The Commercial Procurement Unit supports the recommendation outlined in the report. The tender exercise has been carried out in accordance with the Public Contract Regulations 2015 and the Council's Contract Procedure Rules. (Emily Molden)

14 **Environmental and Health & Safety Implications**

14.1 The successful tenderer has confirmed that they have not received an enforcement order or breached regulations and have the relevant policies in place; post award copies will be requested.

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

15.1 None

16 **Implications for Children and Young People**

16.1 None

17 **Equality Impact Assessment Completed?**

17.1 No

18 **Key Decision**

18.1 Yes

19 **Key Decision Reference**

19.1 FLC-03-22

20 **Background Papers**

20.1 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 :

File Ref : DN446075

Name of File : Supply & Distribution of Cleaning Chemicals and Supply

Records held on the chest e-procurement portal (www.the-chest.org.uk) Officer Name :

Emily Molden

Contact No : N/A

21 **Appendices**

21.1 N/A

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Report to CABINET

PART A

A Bed Every Night Phase 5 Procurement

Portfolio Holder:

Councillor Amanda Chadderton – Leader & Cabinet Member for
Regeneration & Housing

Officer Contact: Emma Barton, Executive Director for Place and
Economic Growth

Report Author: Fiona Carr, Principal Homelessness Strategy
Officer
Ext. 5163

17th June 2022

Reason for Decision

Oldham Council's A Bed Every Night (ABEN) rough sleepers' accommodation project requires recommissioning from 1st July 2022 in line with contract procedure rules. This report proposes to do so for a period of up to three years and seeks delegated approval for the Cabinet Member for Housing award the contract to the successful bidder following a competitive tendering process.

Executive Summary

A Bed Every Night (ABEN) has been in operation since October 2018 and has now reached its fifth iteration, with Greater Manchester Combined Authority (GMCA) confirming their intention to continue funding the project for a further three years.

ABEN provides accommodation for up to 22/23 (including one emergency bed) rough sleepers, plus an additional 6 spaces for people with No Recourse to Public Funds (NRPF). The service provides support and housing management across three buildings, with the main 18-bed building acting as a 24-hour central hub.

Oldham Council currently has a provider in place until 30th June 2022 and therefore it is proposed to procure a new contract from 1st July 2022 to 31st March 2025. This contract is to be awarded on a 1+1+1 basis to allow for any potential changes in the funding model which GMCA have indicated may be subject to review across the next three years.

Recommendations

1. To support the continued delivery of A Bed Every Night in Oldham for the period 1st July 2022 to 31st March 2025.
2. To delegate approval to the Cabinet Member for Housing of the contract award of the A Bed Every Night service following a competitive tender exercise.

A Bed Every Night Phase 5 Procurement

1 Background

- 1.1 A Bed Every Night (ABEN) has been in operation since October 2018, with the service being recommissioned in each funding round through a competitive tender process. The service has evolved from a communal night shelter model to a 24-hour self-contained accommodation scheme in response to the Covid-19 outbreak, also increasing in bed spaces in response to demand.
- 1.2 ABEN is funded via grant from GMCA which is made up of contributions from a range of sources including Public Health, Probation and the Mayor's Fund. Local authorities are also asked to contribute to the scheme locally; in Oldham the Council funds the accommodation leases and most utility costs at the ABEN buildings, less any rebate recouped through Housing Benefit and service charges.
- 1.3 ABEN supports Oldham in having one of the lowest levels of rough sleeping in the Greater Manchester region, as reported via our Corporate Plan and Central Government returns.

2 Current Position

- 2.1 Oldham Council has existing provision for 22/23 (including one emergency bed) main ABEN bed spaces and 6 for people with No Recourse to Public Funds (NRPF). These are based across three buildings held on private sector leases by the Council.
- 2.2 The tender requires the service provider to deliver day to day support to residents and building management across the three sites. It includes Key Performance Indicators (KPIs) including efficient turnaround of property voids and submitting timely Housing Benefit claims to maximise income to the Council.
- 2.3 An incumbent service provider, DePaul, have held all previous ABEN Phase 1-4 contracts since its inception, although ABEN did close after its first incarnation between May 2019 and October 2019. There may therefore be TUPE implications should there be a change in provider following an award of contract, for which they will need to seek their own independent advice.
- 2.4 GMCA have tentatively confirmed funding for the next three financial years but have caveated this as being subject to change.
- 2.5 As a result, it is proposed to commission the new service on a '1+1+1' basis, to allow for any changes within the funding model. In addition to this there is provision within the building leases Oldham Council uses to accommodate ABEN residents meaning they could be sub-let to the successful bidder if this would allow for improved value for money, such as via an exempt accommodation model.
- 2.6 The value of the tender is to be as follows:

2022/23	£225,000 (9 months)
2023/24	£260,000
2024/25	£230,000

2.7 The incumbent service provider is in contract until 30th June 2022; due to this short timescale this report seeks delegated approval for the Cabinet Member for Housing to award the new contract.

3 Options/Alternatives

3.1 Option 1: Deliver the ABEN service by procuring a provider via a competitive tender exercise.

3.2 The option above is recommended to ensure the Council achieves value for money and quality via the open market. It is thought likely that the Council will secure a provider via this exercise via earlier soft market testing, and the contract will be procured on a 1+1+1 basis to help reduce risk should any changes need to be made to the funding model via GMCA.

3.3 Option 2: Deliver the ABEN service in-house via the statutory Temporary Accommodation (Housing Options) service.

3.4 The option above is not recommended due to a lack of staffing capacity to provide support to the 28/29 ABEN residents, and the time and cost it would take to recruit to fixed term contracts to remedy this.

4 Preferred Option

4.1 Option 1: Deliver the ABEN service by procuring a provider via a competitive tender exercise.

5 Consultation

5.1 Consultation undertaken with service users in February 2021 as part of GMCA Herriot-Watt study leading to service specification changes including inclusion of enhanced move-on support from Oldham Council.

5.2 Soft market testing undertaken with potential providers in August 2021 with five positive responses received.

6 Financial Implications

6.1 ABEN funding for 2022/23 has been confirmed at the same funding levels as 2021/22, on this basis the Council is confident that the 22/23 ABEN provision can be fully funded.

6.2 However from April 2023 further confirmations are required from GMCA as to what funding levels the Council will receive for both 2023/24 and 2024/25. Projected grant estimates, whilst much reduced, are still enough to cover the tender amounts.

6.3 The Council will however have to fund property costs from any remaining grant. As mentioned above there is a potential to sub-let property costs allowing for a potential increase in Housing Benefit receipts, however this is yet to be confirmed also.

6.4 Once future years funding levels have been confirmed by GMCA, the Council will need to assess whether the proposed options are still viable.

(John Hoskins)

7 Legal Services Comments

-
- 7.1 Should the proposed option be approved, then there would be TUPE implication for the staff employed by the current provider, in that, subject to satisfying the legal test for TUPE, those staff may be in scope to transfer to the successful bidder. This will not involve or affect the council, however, the council will be obliged to provide full information as part of any tender information to enable prospective bidders to price their fairly with full transparency. (Radhika Aggarwal, Principal Employment Solicitor)

8. **Co-operative Agenda**

8.1 This decision will positively support the Council's cooperative agenda:

- Fairness: Continuation of provision of the ABEN service will ensure rough sleepers have continued access to support via the agency they have engaged with to date.
- Openness: The ABEN service is well publicised across Greater Manchester serving to highlight the extent of rough sleeping and homelessness and the need to respond to this
- Working together: ABEN will increase joint working between the council and its partners across all sectors to achieve better outcomes for our rough sleepers

9 **Human Resources Comments**

9.1 Option 1 – No HR Implications for the council

Option 2 – If the service was agreed to be provided in-house, TUPE may apply for the incumbent provider workforce. The appropriate council role creation and recruitment policies and procedures would need to be followed and the service would need to work closely with HR colleagues to create the new team.

(Catherine Pearson, Strategic HR Lead)

10 **Risk Assessments**

10.1 The report sets out a proposal to procure the Service in accordance within the rules and predicted financial resources available over a 3 year period (Mark Stenson)

11 **IT Implications**

11.1 None

12 **Property Implications**

12.1 None

13 **Procurement Implications**

13.1 The Commercial Procurement Unit supports the recommendations outlined in the report and will work alongside the Strategic Housing Team ensuring the procurement exercise is carried out in line with the Public Contract Regulations 2015 and the Council's Contract Procedure Rules. (Emily Molden).

14 **Environmental and Health & Safety Implications**

14.1 None

15 Equality, community cohesion and crime implications

15.1 ABEN is an established scheme which, through its continued provision, will have a positive impact on reducing rough sleeping and resultant reports about this and associated community tensions.

15.2 The procurement of a high-quality provider to deliver the ABEN service will ensure the residents are well supported and the buildings are effectively run to reduce incidents of antisocial behaviour around the service.

16 Implications for Children and Young People

16.1 None

17 Equality Impact Assessment Completed?

17.1 Yes

18 Key Decision

18.1 Yes

19 Key Decision Reference

19.1 HSG-5-22

20 Background Papers

20.1 N/A

21 Appendices

21.1 N/A

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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