

Commissioning Partnership Board Report

Decision Maker	Commissioning Partnership Board
Date of Decision:	24th September 2020
Subject:	Integrated Health & Social Care Brokerage Framework
Report Author:	Lisa Entwistle, Manager, Client Finance Debra Pease, CHC Strategic Lead, Complex Care Team Laura Farnworth, Planning and Commissioning Officer, Children's Services

Reason for the decision:	The purpose of this report is to request approval to tender and implement an integrated Health and Social Care Brokerage Framework.
Summary:	This report will provide an outline for the requirements of a brokerage framework, provide some content regarding historic attempts to implement such a framework and provide assurances that full consultation has taken in place with all stakeholders.
<i>What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):</i>	<p>Option 1 – Retain the status quo.</p> <p>This option seeks to retain the current approach to brokerage services, i.e. having no framework in place. However, this poses a range of potential risks relating to safeguarding vulnerable adults, children and patients and accountability for public funds, whilst at the same time lack of appropriate oversight of the market and adherence to procurement regulations.</p> <p>This approach would not address contractual issues, nor enable the Council / CCG to ensure</p>

that robust approaches are in place by brokers to effectively support vulnerable adults and children with the plethora of functions relating to the management of direct payments.

The Care Act requires local authorities to help develop a market that delivers a wide range of sustainable high-quality care and support services, that will be available to communities. Therefore, when buying and arranging services, local authorities must consider how they might affect an individual's wellbeing. This makes it clear that local authorities should think about whether their approaches to buying and arranging services support and promote the wellbeing of people receiving those services.

Retaining the current approach would also present additional financial pressures to the local authority and CCG. The lack of contractual arrangements has led to increasing fees over previous years and will lead to a significant impact on the finite resources within the Council and CCG budget.

Option 2 – Cease Funding Brokerage Services.

Under this option, the Council would cease funding brokerage services. The funding of brokerage services is not a legal requirement, as it is not defined as an eligible social care need.

Within the Care Act 2014, Local Authorities are only required to offer 3 options:

1. A personal budget, managed by the council, on an individual's behalf;
2. The provision of a direct payment, managed by the individual or their nominated representative (where they lack capacity); or
3. As an Individual Service Fund (ISF), where the council pays the budget directly to the provider delivering their care and support services, who manages it on the individual's behalf.

Whilst the funding of brokerage services is not a statutory requirement, Adult and children's social

care and CCG recognises the invaluable support which brokers can offer to vulnerable adults and children, enabling wider choice and control over the service. Removing this funding could potentially lead to a reduction in choice for vulnerable adults and children taking up a direct payment.

Option 3 – Tender for an approved framework

Oldham Council and CCG share an ambition to see the greatest possible improvement in the health and wellbeing of residents, by the integration of services. By the introduction of a framework, there will be a list of commissioned brokers to provide services to people in receipt of social care and health direct payments, with clear expectations set of what is expected of them in regard to the services they provide. This improvement will be achieved by:

- Supporting people to be more in control of their lives;
- Having a health and social care system that is geared towards wellbeing and the prevention of ill health;
- Access to health services at home and in the community; and
- Social care that works with health and voluntary services to support people to look after themselves and each other.
- Less unwarranted variation in the service provision of brokerage.
- Revising the direct payment process and guidance, so people have full information on what is expected of them when in receipt of a direct payment, and that a broker is not used as a 'go to' where people can manage their own direct payment.

These changes will mean people in Oldham are

less dependent on public services and will reduce demands on services to the point where a more efficient and effective health and social care system is able to provide the best treatment and care.

The ambition is to ensure that services are complementary, work with people's own resources and are committed to achieving the best possible outcomes for people in Oldham. To achieve the ambition, a number of working models need to be adopted to boost people's sense of control, capability and independence so that links between socioeconomic factors, behaviours and ill health, equip people to manage existing health and social care conditions themselves.

Tendering for a closed framework agreement for brokerage services, is one of the proposed models. It would ensure appropriate market oversight of brokerage arrangements, and ensure services purchased are compliant with Care Act responsibilities. It would also address concerns about the existing lack of contractual arrangements with brokers.

More importantly, it would seek to ensure appropriate safeguards are in place for vulnerable adults and children in the management of their direct payments, public health payments, whilst providing accountability and assurance for public funds.

This option would seek to allow the use of only approved brokers on the framework. This would ensure appropriate oversight of market stability, with a view to re-tendering the service every 5 year (3+1+1 contract).

It is proposed that the framework is divided into 'Lots' within the specification, as the following:

Lot One -**Support Planning** to develop a person-centred support plan and agree final budget from the indicative budget allocated (CCG only)

Lot Two – **Implementing the Support Plan, Account management & Payroll** –

(Council and CCG): Complex packages only, this includes multiple providers, selection of staff, induction and engagement of PA's).

Lot Three - **Payroll Only**, (Council and CCG)

Due to market stability for a brokerage service, within this option we would also add to the tender document as a statement; 'if the local market cannot provide the service requirements, the council can look within GM to provide alternative providers.

This approach would not seek to limit the choice for individuals, as it is intended that the tender process would identify a range of brokers providing a range of services and support models from which service users could choose a broker per 'Lot'.

Recommendation(s):

Option 3 is the recommended option as it will:

- Ensure adherence with statutory responsibilities. Provide appropriate safeguards for vulnerable adults and children;
- Enable market oversight and lead to stability within the local brokerage economy, and;
- Ensure robust mechanisms and controls for the accountability of public funds, by setting fixed rate for brokerage fees.

If this option is agreed a procurement group will be established with representatives from adults and children's services, the CCG, procurement, commissioning, legal and finance to ensure that the tender process reflects the requirements and values of all partner organisations.

It is also proposed that the procurement process will include representation from service users who utilise local brokerage services.

Option 1 is not considered to be a viable option because it poses a range of potential risks relating to safeguarding vulnerable adults, children and patients and lack of accountability for public funds, whilst at the same time not ensuring appropriate oversight of the market and adherence to procurement regulations.

Option 2 is not considered to be viable option as removing this funding could potentially lead to a reduction in vulnerable adults and children taking up a direct payment, which would in effect reduce choice and control over their service.

Recommendations to Commissioning Partnership Board:

The board are asked to consider the information provided and approve for the implementation of the framework in accordance with the drafted specification. The board are asked to consider delegating authority to award contracts to the successful brokers, following full procurement to the following:

Mark Warren - Managing Director Community Health and Adults Social Care (DASS) in consultation with Gerard Jones - Managing Director, Children and Young People and Mike Barker – Strategic Director of Commissioning / Chief Operating Officer for NHS CCG

Implications:

What are the ***procurement*** implications?

The Commercial Procurement Unit supports the option in this report to go out to Procure. Given the nature of the services that are being procured in this commission, and the challenges within the market, Commercial Procurement will work with the services to develop a service specification that is in accordance with procurement obligations such as value for money and transparency.

Commercial Procurement Unit intends to advertise this opportunity on the Chest Portal and the requirement will need to be sufficiently mature in a timely manner to develop the suite of procurement documentation required.

*What are the **legal** implications?*

Having taken Counsel's advice the Council can be reassured that, in Leading Counsel's opinion, the proposal to tender for brokerage services to provide service users with the appropriate level support required to handle their direct payments is within the scope and remit of the statutory guidance issued by the Secretary of State under the Care Act 2014 and the proposal is capable of withstanding a legal challenge should such a challenge be made.

Legal Services notes that the very thorough consultation exercise which has taken place with all stakeholders and that the Council has incorporated the feedback into the detailed service specification. However, it should be noted that the consultation exercise with service users/patients took place in June 2019 and that the recent update consultation in February 2020 was only with the brokers. There is nothing to suggest that the feedback from service users/patients would have changed in the intervening period but the delay in considering the matter must be acknowledged.

"In making any decision which may affect individuals/ groups with protected characteristics the Council must have due regard to consider its duties under section 149 of the Equality Act 2010 and have due regard to consider the impact of such individuals affected by its decision in the light of the information provided in the accompanying Equality Impact Assessment. Having due regard does not mean Members cannot make decisions which have the potential to impact disproportionately, it means that Members must be clear where this is the case and must be able to demonstrate that the Council has consulted, understood and mitigated the impact". The Council must have due regard to the outcome of the Equality Impact Assessment before making any decisions in relation to procuring a brokerage service because the service users/patients for the procured services would fall into those groups with protected characteristics.

(Elizabeth Cunningham Doyle, Salma Yasmeen)

What are the **Human Resources** implications?

Not Applicable

Equality and Diversity Impact Assessment attached or not required because (please give reason)



EIA - Brokerage Framework.docx

What are the **property** implications?

Not Applicable

Risks:

The risks associated with this decision are around:

Option 1: Option 1 – Retain the status quo.

This option seeks to retain the current approach to brokerage services, i.e. having no framework in place.

Risks:

- Safeguarding vulnerable adults, children and patients, as there would be no appropriate oversight of spending in regard to the care and support plan.
- No appropriate oversight of the market and adherence to procurement regulations.
- Present additional financial pressures, due to no contractual arrangements, therefore resulting in no oversight of fee increases.

Option 2 Option 2 – Cease Funding Brokerage Services.

Under this option, the Council would cease funding brokerage services. The funding of brokerage services is not a legal requirement, as it is not defined as an eligible social care need.

Risk:

- Reducing choice of control for person in regard to their care and support plan.
- Although a broker service is not a statutory responsibility, the Care Act 2014, states a person should be offered

options, which includes a direct payment and a person may need a broker to support them with this option.

Option 3: Tender for an approved framework

Oldham Council and CCG share an ambition to see the greatest possible improvement in the health and wellbeing of residents, by the integration of services. By the introduction of a framework, there will be a list of commissioned brokers to provide services to people in receipt of social care and health direct payments, with clear expectations set of what is expected of them in regard to the services they provide

Risks:

- As a framework is being implemented with agreed associated costs, it may not be as feasible for providers, therefore may result in a reduction of brokers applying for the tender.
- As costs will be monitored in regard to the amount spent on brokers, it may see some brokers withdrawing from the market.
- There could also be a potential challenge from brokers that do not meet the framework.

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution/CCG's Standing Orders?	Yes
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Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the S.75 budget?	Yes
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Are any of the recommendations within this report contrary to the Policy Framework of the Council/CCG?	No
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Reason(s) for exemption from	Not Applicable
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publication:

Reason why this Is a Key Decision

- (1) to result in the local authority incurring expenditure or the making of savings which are, significant (over £250k) having regard to the local authority's budget for the service or function to which the decision relates; or
- (2) to be significant in terms of its effects on communities living or working in an area comprising two or more Wards or electoral divisions in the area of the local authority.

The Key Decision made as a result of this report will be published within **48 hours** and cannot be actioned until **five working days** have elapsed from the publication date of the decision, i.e. before 13th November, unless exempt from call-in.

This item has been included on the Forward Plan under reference CPB-14-20

List of Background Papers under Section 100D of the Local Government Act 1972:
(These must be Council documents and remain available for inspection for 4 years after the report is produced, there must be a link to these documents on the Forward Plan).

Title	Available from
Not Applicable	

Report Author Sign-off:	Lisa Entwistle
Date:	July 2020

Please list any appendices: -

N/a	
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1. Background

- 1.1 There isn't currently a framework in place to monitor and specify the requirements of a broker, therefore the Council and CCG have very limited oversight on the use of public funds and ensuring the direct payment provided is being used as the assessment states.
- 1.2 There have been several attempts to implement a brokerage framework. In 2016 a proposed framework was approved by Cabinet. However, this approved provider list was suspended following a potential legal challenge.
- 1.3 A further consultation exercise took place in summer 2017, where it was proposed to tender for an open framework. This meant that any providers who were unsuccessful could reapply at any time.
- 1.4 When exploring this proposal further and taking additional advice from internal colleagues, it was agreed that an open framework was no longer an option. An open framework would be too resource intensive both from a council, CCG and service user perspective and would not provide the end product in the best interest of the service user / representative.
- 1.5 Further consultation took place in 2019 with members of the public and brokers to proceed with a closed framework. The proposal was planned to be taken through the governance process in September 2019, with a view to implement, if agreed, early 2020. However, this was delayed for numerous reasons, which included a general election, redesign of services, EU exit and COVID pandemic in early 2020.

Current Position

- 1.6 As there are no current framework agreements in place, it is very difficult to monitor and manage funds in relation to brokerage services, and there are potential risks for the council in regard to being accountable for public funds. As more areas of health are delivered via a personal health budget brokerage costs may increase however it is unsure which of the health products will be delivered via a direct payment as yet.
- 1.7 The introduction of this framework is more apparent than ever, especially following the implementation of other project workstreams, such as the Care at Home contract, which resulted in an increase in brokerage services.
- 1.8 Currently around 50% of those on a direct payment require a broker to manage it on their behalf, with the majority of direct payments being with the same broker. The cost of brokerage service varies, with a number of brokers increasing their costs.
- 1.9 As the commissioner of the service, the Council and CCG currently fund the fees as it is not a statutory health and social care need. The Council and CCG pay brokers directly for this service.

- 1.10 In order to be accountable for public money and ensure service users, patients and children / young family members receive a quality service, it is imperative to implement a brokerage framework, which delivers the requirements of all key stakeholders.
- 1.11 Year in year there has been a significant increase in brokerage costs. By implementing a framework, option 3, this will give partners clear contracted specifications and fixed fees for brokers to adhere to. This will ensure partners are able to provide a consistent approach when financially forecasting spend on brokers.
- 1.12 It is recognised that as Oldham was a pilot for personalisation, it seems brokerage is the 'go to' option when offering a direct payment from an Adult Social Care perspective. The Care Act 2014 does not have a specific requirement where local authorities have to provide this as one of their options. Oldham Council currently offers this as they recognise not all recipients are able to manage the responsibility of managing a direct payment. Therefore, it is essential other options are made available to a service user when determining their care and support plan.
- 1.13 Communication to staff in regard to when to use a broker is also being implemented alongside this framework. This will ensure staff are not using brokerage as the first point of contact and managers are completing scrutiny of the use of a broker. Clear communications will be issued to staff and a direct payment guide will be developed for all staff to use when considering the use of a broker, to be able to support in their decision making.
- 1.14 All current care packages in place with a broker will also be assessed to determine whether it is appropriate for all packages to remain with them under a direct payment. This will be completed inline with the implementation of the framework, therefore giving practitioners sufficient time to complete over 900 reviews. A task and finish group will be set up to monitor the progress of the reviews and ensure they are kept on track. This will commence from April 2021.
- 1.15 It has also been identified that we need to change the expectations of the council and what is provided to members of the public in regard to the direct payment process. Therefore, a full review of the direct payment policy and toolkit will be completed in order to share with the public and practitioners. This will clearly articulate where and when a brokerage service is required.
- 1.16 The production of the guidance for practitioner's and also updated toolkit will provide them with the tools to make an informed choice for the use of a broker when deciding if a direct payment is the most suitable option for their service user.

Consultation

- 1.17 An in-depth consultation has taken place with all key stakeholders, in the form of surveys, focus groups and a market engagement event.

- 1.18 In February 2020 a further market engagement session took place with brokers, very similar to the one in 2019, to refresh the proposals that were being suggested to implement to the providers of the brokerage session, with one minor change, which was the agreed recommendation to bring the invoice only packages back in-house, which is part of a direct payment project. The feedback from brokers at the session in 2020, was that they were very much on board with the implementation of the framework.
- 1.19 A questionnaire survey was designed and issued by the council on behalf of all leads of the framework. Service users were defined as those in receipt of a direct payment, public health budget and in receipt of a brokerage service.
- 1.20 Over 1000 clients were sent a copy of the questionnaire to complete, via a hard copy, as well as access to an online survey. Telephone support was offered for any client requiring assistance. In total there were 155 completed surveys returned, meaning a response rate of 15%.
- 1.21 Two focus groups also took place in June 2019 for those in receipt of services. Although there was poor attendance to these meetings, for those who did attend provided key information for requirements for the brokerage framework.
- 1.22 A short online survey was also designed and issued by the council on behalf of all leads of the framework for providers of a brokerage service, where 3 providers responded.
- 1.23 In addition to the survey, there were also two Q&A sessions in June 2019 arranged for current providers to attend, to obtain their views on the requirements of a brokerage framework. The sessions were not heavily attended, however key providers were there and contributed towards the proposed framework.
- 1.24 To ensure a wider audience was captured, as part of this consultation process, a market engagement event took place in July 2019 and February 2020; this was advertised by the council's procurement section, via The Chest. This way capturing existing and new providers. This event was extremely useful and allowed the Council and Oldham CCG to gather further information from providers that all provide services outside of Oldham.
- 1.25 The outcome of the consultation identified the following, demonstrating the importance of a framework with an agreed specification on what the brokerage service should look like, this included;
- there was lack of communication between the broker and service user
 - regular statements should be issued to the service user on a monthly basis to ensure they are aware of their available balance
 - a fact sheet for families regarding brokers should be implemented to explain what they should expect from a broker
 - brokers should communicate with the council when a carer requires a break

- the fee to a broker should be based on the work they do, i.e. processing invoices / payroll
- a fact sheet should be provided to service users re: all brokers and what they offer
- no clear system to match families to a broker
- inconsistencies between services offered by brokers
- no formal monitoring system in place to ensure brokers are delivering a high-quality person-centred service
- there can be a lack communication between the Local Authority and brokers
- happy and open to the idea of working with a framework
- brokers having to collect client contribution
- if Brokers are invoice only – there are no contact details
- families being able to “add on” different care needs and hours if they have money still in the personal budget, that this is currently not possible and would need to be assessed by a social worker beforehand
- following the last consultation – providers felt they were not treated very well
- lack of a consistent approach for mandatory training for PAs
- not given a choice – informed which broker to use
- correspondence not user friendly
- no holiday cover when PA is on holiday
- struggle to recruit Pas

1.26 The new specification that has been compiled has been completed in line with all stakeholder’s feedback, but also in line with Council and CCG requirements.

Next Steps

- 1.27 The proposal of an integrated brokerage framework, has been the direction in which the Council and CCG have aimed to implement for the previous 4 years, following numerous consultation events, it is also evident that this is the request of the service users and brokers that they require some guidance and clear direction in regards to what to expect when delivery / receiving such a service. The implementation of the framework will also support frontline staff when completing care and support plans, as they will enable them to provide clear and robust information on the service provided by a broker.
- 1.28 Therefore, in regard to next steps, if approved to go ahead with the implementation and tender process, the aim is to have this framework implemented for the April 2021, and the mitigation plan will be completed in line with implementation.