

Report to CABINET

Title: Future contracting tender arrangements for residential and dual registered care homes

Portfolio Holder:

Cllr Barbara Brownridge, Lead Member for Health & Social Care

Officer Contact: Jayne Ratcliffe, Director of Adult Social Care (DASS)

Report Author: Neil Clough, Commissioning Manager

17th October 2022

Reason for Decision:

To update the contract arrangements for residential and nursing home provision in the borough and seeks approval to conduct an open tendering exercise.

Executive Summary

There are 44 care homes in Oldham, operating a mix of residential, and residential and nursing beds.

The current Oldham Council contract and service specification that is used when care home places are commissioned dates back to 2011 and a refreshed approach is now needed. The landscape for adult social care is changing rapidly. The reform programme for adult social care is ambitious and far reaching. Pivotal changes such as the Health and Care Act 2022 and adult social care charging reforms must be reflected in commissioning and contracting arrangements for the future.

The current arrangement does not have an expiry date so there is no risk of providers operating with a contract that has expired. However, it is acknowledged that NHS Greater Manchester Integrated Care Board (ICB) - Oldham locality (previously NHS Oldham CCG) also contract with a number of care homes in the borough who deliver nursing provision. These contracts did expire on 31st March 2022 and were extended for a further 12 months

to enable this work to conclude. We are working together with the intention of one contract with the commissioning lead being Adult Social Care.

The commissioning intention is to implement these revised contracting arrangements with the market by 1st April 2023 and this paper sets out the implementation plan in the run up to that date. The proposed contract arrangements will be in place for a minimum of 5 years with the option to extend for up to a further 2 years, on an annual basis.

This report is seeking approval to go out to market for the provision of residential and nursing care under these revised arrangements. The report also requests delegated authority to the DASS to approve the awarding of contracts to providers who have successfully completed the tender supplier questionnaire documentation, have provided the required evidence of their suitability, which includes compliance with all due diligence checks.

Recommendations

This paper proposes that revised commissioning and contracting arrangements are put in place with the market reflecting these changes, including the implementation a revised service specification which references all relevant legislative requirements, with an increased focus on quality, safety, meeting system pressures, unmet need and better recognising the staff who deliver these vital services. It is therefore recommended that:

- **Approval** is granted for undertaking an open tender exercise for residential provision in the borough
- **Approval** is granted to delegate authority to the Director of Adult Social Care (DASS) for awarding the contracts following the evaluation and moderation process being conducted

1. Background

1.1 Oldham Council and NHS Greater Manchester ICB - Oldham locality (previously NHS Oldham CCG) spend approximately £36m per annum and fund the care for circa 1130 people at any one time in the borough's care homes. Oldham Council funds the greatest element of this, circa £30m in the last financial year and this is consistent with the local authority position as lead commissioner in this market. Oldham ICF spent £6m with this market in the same period. It is estimated that there are around 450 people living in local care homes who are self-funders.

1.2 A project group consisting of representatives from the contracting and quality functions within the NHS team in Oldham, ASC commissioning, legal and procurement is in place and has been meeting regularly to plan for the implementation of this revised contracting and commissioning approach.

1.3 In March 2022 a series of 3 market engagement sessions were held with providers of residential and nursing care within the market. This was advertised on the chest procurement portal and through our existing networks. A total of 36 national and local providers attended and gave feedback on topics including contract and quality monitoring approach, discharge pathways, diversifying their service offer to address unmet need, and challenges that exist in their operating environment.

1.4 A similar engagement exercise was conducted with practitioners and other key internal stakeholders in May 2022 to understand the challenges, and successes associated with the current commissioning model for residential and nursing provision in the borough.

Market Sustainability Assessment of Oldham's residential market 2020

1.5 In the summer of 2020, at the height of the Covid 19 pandemic, the Commissioning Manager for Older People undertook a market wide care homes market sustainability assessment.

1.6 assessment followed a multi-disciplinary approach, and involved input from safeguarding, commissioning, quality, and business intelligence services. Care homes were assessed against a whole range of factors. These included their CQC rating, the quality of service provided, the type of service provision, acknowledging that some homes have a generic service offer whilst some deliver more specialist provision, a home's willingness to adapt to future changes within the market, such as diversifying into different types of care, bed base, location spread of homes across the borough, noting where there is a large concentration of homes offering generally similar provision.

1.7 The assessments enabled the establishment of a number of evidence based conclusions about the local market. These conclusions were consistent with what we know about the market from our interactions with providers and representatives across the health and social care system in Oldham, and feedback obtained through the discharge and enablement bronze system meetings and provider forums.

1.8 The assessments told us that the most strategically relevant homes were the nursing homes in the borough based upon the increase of complex needs being discharged from hospital, that there is a shortage of nursing provision and this shortage of provision is further exacerbated in the more specialist domains such as complex dementia, bariatric and specialist mental health provision for older people.

1.9 The inconsistent geographical spread of care home provision in the borough was also highlighted, as 70% of our care homes have at least 20 other homes located within a 2-mile radius, and the work also highlighted that almost 75% of the boroughs residential and nursing care is delivered from buildings that are over 40 years old.

1.10 A key motivation for completing these assessments in 2020 was out of a concern in respect of the fragility of a local residential and nursing market that had experienced a significant reduction in levels of occupancy as a result of the Covid-19 pandemic.

1.11 The assessments therefore provided a picture of the local residential and nursing market that was very current, reflective of the developments during the pandemic, and one that was consistent with what anecdotal experiences of the market had been indicating.

Market Position Statement

1.12 This very recent data has therefore been used to develop the care homes Market Position Statement (MPS). The information within this document was discussed as part of the engagement sessions with providers and practitioners. The primary aim of a MPS is to signal to existing operators in the market and prospective new entrants the types of provision that are required locally. The document is explicit in demonstrating that there is an oversupply of generic, residential care for over 65-year-olds, and this is extremely pronounced in certain localities within the borough, whilst other types of provision are under-represented.

1.13 It is hoped that the market will respond to the MPS in a number of ways. Those currently delivering in a more crowded part of the market may decide, after consulting the document, and assessing their own reduced levels of occupancy, to diversify into more specialist types of care. Examples of this might be a residential home registering with the CQC to deliver nursing care, or a nursing home branching out into complex dementia or bariatric services.

1.14 It is also noted that the MPS may better articulate to the market the very real situation that the generic residential market in Oldham is over catered for, and by articulating the position in this MPS, some providers may take the decision to undertake an orderly and managed exit from the market.

1.15 Oldham has also seen a number of instances in recent years where planning applications have been submitted for generic residential care services that have not been submitted following dialogue with the commissioning team prior to the submission of a planning application. Such prospective new services are not therefore reflecting what is required in the borough. It is acknowledged that the absence of an up to date and specific care homes MPS may be one of the factors that has contributed to elements of the market reacting without taking the local needs into account. There is work ongoing with Housing and Planning departments of the local authority to agree the strategy via the Local Plan.

1.16 The findings from the market sustainability work, production of the MPS, provider and practitioner engagement has been used to inform the draft service specification.

2. Current Position

2.1 A service specification has been produced. This work takes into account the current landscape around adult social care reform and has resulted in an updated service specification including, but not limited to;

- Revisions to The Care Act
- Discharge to Assess (D2A) arrangements from hospital into residential and nursing services,
- The flow between reablement services into and out of care homes,
- A holistic measure of quality that is consistent across the local authority and the ICF,
- Reference to Infection, Prevention & Control arrangements reflecting the learning from the Covid 19 pandemic,
- An updated and relevant offer in relation to provision of community equipment
- Considers our ambitions only to contract with those services rated with CQC as Good or Outstanding whilst recognising that a number of current operators (currently 19 %) in the local market are rated as Requires Improvement. (Albeit with quality improvement action plans in place and strong engagement with the quality service).

2.2 The new specification also better recognises the role of those staff that deliver front line care services, ensuring that they have appropriate pay, recognition and working conditions, and takes into account Oldham's ambitions in respect to ensuring all staff in contracted services are paid in accordance with the Real Living Wage and the work undertaken by the Living Wage Foundation which will become a contractual requirement following the implementation of the LWF rates from October 2022 in Oldham.

2.3 The specification also enables residential and nursing settings to perform appropriate lower-level health tasks underpinned by a robust governance structure to protect service users and staff.

2.4 To support contract and quality monitoring of services, a care homes outcome framework has been developed, building on the one in place for care at home services and developed in consultation with those who use these services.

2.5 This work has been progressed in recognition of the wider system change currently underway, reflecting the views of the market (particularly in respect of factors such as any premiums paid for complex dementia services, arrangements around continuing health care, and the payment profile for nursing services), the outcome and embedding the findings of the Fair Cost of Care workstream and following a detailed analysis of current systems, and how these might need to be revised in the future.

2.6 Alongside commissioning, the procurement service has developed a flexible route to market. These services currently exist and are operational within the local community and as such, a traditional competitive route to market, where existing providers may not be successful is not appropriate for this market. As a result, a compliance framework has been developed, which existing providers are able to engage with as well as potential new entrants to the market.

2.7 The contracting and market management approach recognises the Oldham Council and GM wide ambition only to contract with providers registered CQC Good or above. The process includes mechanisms to ensure that those providers who are registered Requires Improvement are able to evidence that they are working closely with the Quality Assurance and Monitoring function that sits within the commissioning service and can demonstrate appropriate levels of engagement.

2.8 The process does not support contracting with providers rated by the CQC as Inadequate and is developed in conjunction with the Oldham Council provider suspension and provider failure protocols.

2.9 All stakeholders acknowledge that care homes are operating in a challenging operating environment, with staff recruitment and retention concerns, significant market change and uncertainty in addition to the care homes building back towards business as usual as they emerge from the pandemic.

2.10 It is important that any procurement and contracting exercise that is undertaken acknowledges the pressures the market is currently facing and is conducted in as least disruptive a way as possible, therefore supporting good levels of support and engagement.

2.11 The process has been developed in conjunction with the market and the theme of co-production is set to continue as the new arrangements are implemented. Providers will be encouraged to develop solutions together and work collaboratively and will be an example of Oldham Cares 'doing with' the market rather than 'doing to'.

2.12 The proposed timeline for the work is set out in the table below:

Task	Timeframe
Alert the market that this opportunity will be going live during September 2022	This will take place in August 2022 following previous engagement sessions
Procurement exercise is published on the Chest portal	During September 2022
Deadline returns – allowing 6 weeks for providers to submit expressions of interest	Closing date for submissions 6 weeks after publication (i.e., late October / early November 2022).
Submissions evaluated by evaluation panel	By 31 st January 2023
Embed new contracting arrangements with providers	By 31 st March 2023

3 Options

The report presents the following options;

3.1 Option 1 – Do Nothing

3.1.1 The existing contracts that Oldham Council have with providers do not have an end date. Should we wish, we do not need to take any action and could allow the current contracts to continue.

3.1.2 The NHS contracts have an expiry date of 31st March 2023, so a do nothing option would leave these services out of contract and alternative contracting arrangements would be required. This contradicts the current objective of Adult Social Care as the lead commissioner and contracting body for residential care in Oldham.

3.1.3 This is not the recommended approach. The existing contracts require a refresh and do not reflect the changing landscape of adult social care, including recent and far reaching legislative changes.

3.2. Option 2 – Approval to go out to market with a revised contracting approach and provide delegated authority for the DASS to award the contracts to compliant providers following the tender process.

3.2.1. This option would ensure that the contracting approach is fit for the future and will better reflect our requirements as we head towards 2030.

3.2.2 By Cabinet authorising delegated authority to the DASS to award contracts

following a robust tendering process, this option will also ensure a timely contract award process, enabling new contracts to be in place for April 2023.

3.3 Options Table

The table below sets out advantages and disadvantages associated with the various options.

Option	Advantages	Disadvantages
Option 1 – Do nothing, Continue with existing Arrangements	Some existing providers would probably favour this option on the grounds that this would continue 'business as usual' and would mean that they did not have to engage in a procurement exercise which is something that they are not experienced in	This would ensure that the current contracting arrangements do not adequately reflect our current and anticipated future requirements.
		Significant changes in legislation and guidance would not be recognised in our contracting approach.
		NHS contracts have been extended already and expire 31 st March 2023.
Option 2 - Go out to market with a revised contracting approach and provide delegated authority for the DASS to award the contracts to compliant providers following the tender process.	Reflects our requirements going forwards and ensures that the contracting landscape for care homes is fit for the future.	Providers may not engage with the process. (Although there are mitigations planned to prevent this following a robust initial period of provider engagement).
	Better supports integration between health and care as this approach has been developed jointly and enables a seamless transfer to the new contracting arrangements in a timely manner.	
	Is expected to encourage existing providers to consider their offer going forward and whether they need to change this to meet future demand.	

4. Preferred Option

- 4.1. With reference to the options table above, 'option 2' is the preferred option; to go out to market and provide delegated authority to the DASS to award the contracts following the conclusion of the tender exercise. Given the objective as consolidating the lead commissioning arrangements to adult social care as per health and social care integration.

5 Consultation

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- 5.1 Consultation has taken place with a range of key stakeholders including providers, and colleagues who represent community health and adult social care. Adult Social Care operational practitioners have been involved in the engagement to develop the approach.

6 **Financial Implications**

- 6.1 The Finance Service has representatives on the working groups that are assessing what the joint commissioning arrangements will be from 1st April 2023. The Council's current contractual arrangements are adequate, but it is acknowledged that they may now not be as relevant post pandemic nor in line with the current market position statement.

- 6.2 At this stage, there are no financial implications should option 2 be approved. The Finance Service will continue to support colleagues with the impact of future commissioning arrangements. However, it should be noted that if the decision is made that the Council becomes the lead commissioner & purchaser of residential and nursing placements on behalf of the ICF, further financial modelling will need to be undertaken. This work will be required to ensure that adequate resources are in place to be able to manage the additional workload that will follow and that changes can be made to the ASC IT systems along with policy and procedural updates including staff training.

Liz Taylor (Senior Accountant)

- 6.3 There are no financial implications of choosing option 2 for NHS Greater Manchester Integrated Care Board - Oldham locality at this stage either.
Karen Ratzeburg (Senior Finance Business Partner, NHS Greater Manchester Integrated Care)

7 **Legal Services Comments**

- 7.1 A fit for purpose procurement exercise, which allows the Council to contract with any suitable current and future providers is required and this must be developed in consultation with the Commercial Procurement Unit and in accordance with the Contract Procedure Rules, incorporating public procurement legislation. A new form of contract will be issued with any tender documentation sent out to providers. The form of contract will incorporate all current Council priorities, including provision for payment (by the providers) of the Living Wage Foundation Rate. The contract will also be drafted to allow for future changes to be made in the event of new legislation or guidance. Finally, the contract will detail the process which both the Council and the Oldham Integrated Care Partnership will follow when making placements and the paperwork which will be put in place to formalise each placement. As this is intended to be a joint procurement with the Oldham ICP, any specification issued with the tender documents must detail any individual requirements of the two parties and any shared requirements. Work has begun to produce a suitable form of contract and the draft will be shared with Oldham ICP in due course.

Sarah Orrell (Commercial and Procurement Solicitor)

8. **Co-operative Agenda**

- 8.1 This action supports the continuation of residential and nursing provision and supports the ongoing relationship that Oldham care homes have developed with the community of Oldham. Oldham care homes were pivotal in the local response to the Covid 19 pandemic and have proved themselves to be a vital component of the community offer in the borough. These providers have continued to provide valued and relevant services to local residents.

9 **Human Resources Comments**

- 9.1 NA - We do not provide residential services in house.

10 **Risk Assessments**

- 10.1 N/A

11 **IT Implications**

- 11.1 N/A

12 **Property Implications**

- 12.1 N/A – These are privately owned businesses.

13 **Procurement Implications**

- 13.1 The Commercial Team is working with the commissioners to develop a sourcing strategy to undertake a tendering exercise in compliance to the Council's CPRs and Council's policies on Early Payment, Social Value etc for the provision of this service. A market engagement exercise took place in March 2022 to make the potential providers aware of the potential new procurement and enabled us to seek their views on the current service provision.

The new procurement is intended to be carried out jointly with GMCA ICS Oldham with Oldham Council to be the lead commissioner. Both organisations are working to agree a form of contract i.e. Standard NHS or Council's, to commission the service and also further clarity is sought on the role to GMCA who may commission Complex Care service that may have an impact on the scope of this tendering exercise.

Raj Ahuja (Lead Consultant)

14 **Environmental and Health & Safety Implications**

- 14.1 Oldham care homes are monitored to ensure their compliance with all environmental, health and safety requirements. This proposal supports the development of an overarching contract and quality monitoring approach including linking in more closely with key partners such as Infection Prevention & Control, Building Control and Fire Safety.

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

15.1 The service is available to eligible service users from all communities.

16 **Implications for Children and Young People**

16.1 None

17 **Equality Impact Assessment Completed?**

17.1 An EIA will be completed to reflect the preferred option

18 **Key Decision**

18.1 Yes

19 **Key Decision Reference**

19.1 CPB-01-22

20 **Background Papers**

20.1 These are included in the appendices

21 **Appendices**

N/A