
Report to CABINET

Future commissioning arrangements for Care and Support Services for people with Learning Disabilities, Complex Needs and/or Autism.

Portfolio Holder: Cllr Barbara Brownridge, Lead Member for
Health and Social Care

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Management

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Reason for Decision

The Council's contractual arrangements for the delivery of care and support services for adults with learning disabilities and/or autism ended in 2020.

The Council has a statutory duty to deliver care and support services for adults with learning disabilities and/or autism based on assessed Care Act 2014 needs to support some of Oldham's most vulnerable adults residing in supported living accommodation.

To meet its obligations, the Council proposes to utilise the GM Framework for Supporting People to Live Well at Home, which is being tendered by Rochdale Metropolitan Borough Council (RMBC) as the lead authority for the 10 GM authorities and will be available to the Council and other contracting authorities from its commencement. Tenders have been received and are being evaluated with STaR procurement advising RMBC. The estimated commencement date is 1 April 2025. The new contractual arrangements will replace the current GM Learning Disabilities and Autism Flexible Procurement System which expires on 31 March 2025.

Executive Summary

The Council entered into a Framework Agreement with six service providers in 2016 to deliver care and support services to eligible service users living in named properties (owned by third party landlords). The service providers were allocated to properties and all orders for services were directed to the relevant service provider attached to the relevant property. The Framework Agreements for the delivery of services for adults with learning disabilities and/or autism ended in 2020.

Since then, any additional placements required have been made with the previously appointed service providers in respect of those service users residing in the properties listed in the Annex to this report, using the framework approach.

In addition, individual placement arrangements have been made for service users requiring an out of borough placement where there is a limited market, where there was either a need to place out of borough for safety and best interest needs, or where there was not any appropriate provision in Borough.

Where possible, the Council has been placing orders under the current GM Learning Disabilities and Autism Flexible Procurement System, but this flexible system will close on 31 March 2025.

The Council has a statutory duty to deliver care and support services for adults with learning disabilities and/or autism based on assessed Care Act 2014 needs to support some of Oldham's most vulnerable adults residing in supported living accommodation. Therefore, it is vital that a procurement compliant route to market is established to procure the services in a swift but fit for purpose manner for both in and out of the Oldham borough placements.

To meet its statutory obligation to deliver a range of care and support services which meet assessed needs, the Council proposes to utilise the GM Framework for Supporting People to Live Well at Home, which is being tendered by RMBC and will be available to the Council and other contracting authorities from its commencement.

Recommendations

1. Approval is requested for Oldham Council to call-off any care and support (supported living) services it requires during the term of the GM Supporting People to Live Well at Home flexible framework arrangements which are planned to commence on 1 April 2025 in order to meet the assessed needs of service users.
2. Approval is requested to carry out a mini procurement exercise (competition) under Rochdale Metropolitan Borough Council's flexible framework arrangements for Supporting People to Live Well at Home, in respect of in-borough care and support (supported living) services:
 - (a) for existing residents in the properties listed in the Annex to this report; and
 - (b) for any replacement service users which take occupation in the properties
3. Approval is requested to carry out mini procurement competitions as and when required under the GM Supporting People to Live Well at Home flexible framework arrangements for the provision of care and support (supported living) services of any nature to new service users who:
 - (a) are not resident in the properties listed in the Annex to this report, but are or will be resident in properties in or outside of the Oldham borough.
4. Approval is requested to enter into Call-Off Contracts with the successful service providers referenced in recommendations 3 and 4 above who will be appointed from time to time by the Council under and in accordance with the GM Supporting People to Live Well at Home flexible framework arrangements.

1 Background

- 1.1 The Council entered into a Framework Agreement with six service providers in 2016 to deliver care and support Services to eligible service users living in named properties (owned by third party landlords). The service providers were allocated to properties and all orders for services were directed to the relevant service provider attached to the relevant property. The Framework Agreements for the delivery of care and support services for adults with learning disabilities and/or autism ended in 2020.
- 1.2 Since then, ad-hoc placements have been made with the previously appointed service providers in respect of those service users residing in the properties listed in the Annex to this report.
- 1.3 In addition, ad hoc arrangements have been made in respect of service users requiring an out of borough placement or requiring specialist services where there is a limited market.
- 1.4 Where possible, the Council has placed orders under the current GM Learning Disabilities and Autism Flexible Procurement System, but this flexible system will close down on 31 March 2025 and this will be replaced with the GM Framework for Supporting People to Live Well at Home.
- 1.5 The Council has a statutory duty to deliver care and support (supported living) services for adults with learning disabilities and/or autism based on assessed Care Act 2014 needs in order to support some of Oldham's most vulnerable adults residing in supported living accommodation. Therefore, it is vital that a procurement compliant route to market is established in order to procure the required care and support services in a swift but fit for purpose manner for both in and out of the Oldham borough placements.
- 1.6 To meet its statutory obligation to deliver a range of care and support services which meet assessed needs, the Council proposes to utilise the GM Framework for Supporting People to Live Well at Home, which is being tendered by Rochdale Metropolitan Borough Council (RMBC) as the lead authority for the 10 GM authorities and will be available to the Council and other contracting authorities from its commencement.
- 1.7 Submissions received in response to the invitation to tender issued by RMBC in respect of the GM Framework for Supporting People to Live Well at Home are currently being evaluated. Unless the procurement timetable is amended, it is anticipated that the GM Framework for Supporting People to Live Well at Home will commence on 1 April 2025 and will operate for an initial term of **4 years**, with the option for RMBC to extend that term for **two additional years**, followed by another possible extension of a **further two years**. This ensures that the contractual arrangements can remain adaptable to changes in demand while providing stability in service provision over a longer period.

2 Current Position

- 2.1 In anticipation of the GM Framework for Supporting People to Live Well at Home, officers within the commissioning team are currently completing the Oldham service specification for the care and support services required by those service users who currently live in the properties detailed in the Annex to this report and any future residents of those properties. It is anticipated that six service providers will be needed, but this will be confirmed in the final draft of the service specification.

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- 2.2 While the properties in which service users reside are not owned by the Council, efforts will be made to establish service level agreements with landlords to align property arrangements with service delivery. Further, obligations will be imposed on the service providers to work with the landlords. This alignment will create a cohesive and efficient framework for people living independently, benefitting both the service users and providers through clear agreements and operational stability.
- 2.3 The mini competition for the initial call-off under the GM Framework for Supporting People to Live Well at Home will be designed by the commissioning team, in consultation with the Commercial Procurement Unit. The award and scoring criteria will be led by what is permitted under the call-off process detailed within the GM Framework for Supporting People to Live Well at Home.
- 2.4 Any future call-off arrangements for the individual in-borough or out of borough placements will also be carried out in accordance with GM Framework for Supporting People to Live Well at Home.
- 2.5 No procurement activity under the GM Framework for Supporting People to Live Well at Home would be pursued until after it has been confirmed the arrangements have officially commenced and all appointed service providers have executed an overarching agreement with RMBC.
- 2.6 The GM Framework for Supporting People to Live Well at Home will provide a compliant and flexible framework for procuring high-quality care and support services through a streamlined call-off process.
- 2.7 All Call-Off Contracts entered following the completion of a call-off process under the GM Framework for Supporting People to Live Well at Home will be largely in the form prescribed under the GM Framework for Supporting People to Live Well at Home.
- 2.8 The estimated costs of commissioning the required services under GM Framework for Supporting People to Live Well at Home during its 4 + 2+ 2-year term are dealt with in the Finance implications.
- 2.9 A further report will be presented to DMT following the local competition and to confirm the approved providers going forward, to ratify the local commissioning arrangements.

3 Options/Alternatives

3.1 Option 1: Maintain the existing ad hoc service provision arrangements

- **Details**

Maintain the existing ad hoc service provision arrangements with the current providers of the required services.

- **Risks**

- **Viability Issue:** This option is not viable as the contracts for these services expired in 2019. Continuing with the current providers without new commissioning arrangements would breach the Council's Contract Procedure Rules, which incorporate the relevant legislative requirements.
- **Missed Opportunities:** Failing to test the market would mean missing opportunities to ensure value for money and service quality improvements.
- **Insufficient Terms and Conditions:** The purchase order terms and conditions may not meet the evolving needs of service users or reflect best practices.

3.2 Option 2: Cease Delivery of Supported Living Services

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- **Details:**
Discontinue the provision of care and support services for adults with learning disabilities and/or autism.
 - **Risks:**
 - **Statutory Duty:** This option is not viable as these services are statutory under the Care Act, 2014 which requires the Council to meet the assessed needs of individuals.
 - **Vulnerable Service Users:** The absence of care and support services would leave vulnerable individuals without necessary support, forcing the Council to seek costly alternative placements or emergency solutions.
 - **Reputational and Legal Risks:** There is the potential for reputational damage and legal challenges for failing to meet statutory obligations.

3.3 **Option 3: Procure Services via the GM Supporting People to Live Well at Home FPS Agreement (Preferred Option)**

- **Details:**
For the immediate in-borough requirements (for current service users resident in the in the properties listed in the Annex to this report and any new service users who move into the properties when accommodation becomes available), proceed with a mini competition under the GM Framework for Supporting People to Live Well at Home, procured by RMBC. For future in-borough and out of borough ad hoc arrangements, procure all requirements in accordance with the GM Framework for Supporting People to Live Well at Home. This option ensures a compliant and transparent process to secure high-quality care and support services through the GM Framework for Supporting People to Live Well at Home.
- **Risks:**
 - TUPE – subject to the way in which the lots are designed for the immediate in-borough requirements for the properties listed in the Annex to this report and subject to which service providers are allocated to the lots, there could be (but will not necessarily be) a fragmented service; however, it is anticipated that staff will be required so even if there are TUPE implications, a contractual transfer of staff could be agreed.

4 **Preferred Option**

4.1 **Option 3 – Procure Services via the GM Supporting People to Live Well at Home FPS Agreement (Preferred Option)**

This option aligns with statutory obligations, procurement regulations, and best practices for service delivery. This approach provides the most flexible, compliant, and transparent solution for securing high-quality services for Oldham's most vulnerable residents.

5 **Consultation**

5.1 A comprehensive consultation exercise has been conducted to inform the design and delivery of care and support services in Oldham for adults with learning disabilities and/or autism based on assessed Care Act 2014 needs. The consultation aims to ensure that individuals with learning disabilities and/or autism:

- Are fully included and integrated into the community.
- Are treated with dignity and respect.
- Have choice and control over their lives, enhancing their independence and promoting health and positive well-being.

Two key stakeholder groups have been engaged as part of this consultation:

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- Adults with learning disabilities and/or autism, alongside their parents, families, and carers.
 - Providers of the care and support Services.

Further consultation was undertaken by STAR procurement to help shape the GM Framework for Supporting People to Live Well at Home.

- 5.2 The principles outlined above guided the local Oldham approach to the consultation. Engagement visits were carried out with all six framework providers to explore their practices and gather examples of best practice. During these visits, service users were engaged with to capture a diverse range of perspectives. Structured questions were used to gather feedback, and the responses were analysed to identify recurring themes, strengths, and areas for improvement. This engagement model ensures that service providers are well-equipped to create inclusive, supportive, and empowering environments for individuals with learning disabilities and/or autism.
- 5.3 A market engagement event with existing and potential providers was held in May 2024 to initiate consultation on the proposed commissioning framework. Additionally, current providers were invited to a focused session on Friday, 10th May 2024, to directly discuss commissioning intentions. This dialogue with providers will continue throughout the procurement process to ensure alignment with service user needs and the Council's objectives.

6 Financial Implications

- 6.1 The proposal to procure services via the FPS Agreement is not expected to present any adverse cost implication to existing commissioned service provision. There is no intention to revise the current core and flex models of delivery, and the hourly rates will be agreed and set as part of the annual ASC market uplifts, subject to a separate report.

There may be opportunities to realise potential cost reductions from non-commissioned provision once framework providers are known and min-competitions are performed.

There are risks however, that specialist or out of borough settings could become more expensive if existing providers don't form part of the framework, resulting in service users being placed in alternative more costly provision.

Andy Pearson, Accountant

7 Legal Implications

- 7.1 Rule 4 of the Council's Contract Procedure Rules governs the procurement processes which must be followed depending on the proposed contract value.
- 7.2 Rule 4.1 allows for call-offs to be made under procurement compliant Framework Agreements which have been commissioned in accordance with the correct rules and legislation.
- 7.3 In this matter, it is proposed that the care and support services for adults with learning disabilities and/or autism based on assessed Care Act 2014 needs which are or may be required over the coming years are, where possible, commissioned under the GM Framework for Supporting People to Live Well at Home, which is currently out to tender and is scheduled to commence on 1 April 2025. The Framework is being tendered by RMBC and is available to other contracting authorities (such as the Council) to use. The Commercial Procurement Unit is monitoring the tender procedure to ensure that a

procurement compliant arrangement is finalised by RMBC and that it will be lawful for the Council to place orders under the Framework.

- 7.4 Once the GM Framework for Supporting People to Live Well at Home is in place and live, the Council must undertake all commissioning activity in accordance with the terms and conditions of the Framework and the form of contract must be as governed by the GM Framework for Supporting People to Live Well at Home.
- 7.5 Provided the Council complies with the GM Framework for Supporting People to Live Well at Home, the legal implications of delivering the recommendations in this report should be minimal. However, it isn't possible to guarantee that any commissioning activity under the GM Framework for Supporting People to Live Well at Home will not be challenged; all the Council can do is mitigate against any risks by complying with prescribed processes and terms and conditions.
- 7.6 If the Council were to be challenged by way of a judicial review claim, it should be noted that there are limited grounds for bringing such a claim; a decision made must be illegal (a decision-maker breaches a legal requirement, misdirects itself in law, exercises a power wrongly, or purports to exercise a power that it does not have, which is known as acting 'ultra vires') or it must be irrational (i.e., if it "is so unreasonable that no reasonable authority could ever have come to it") or if it is procedurally improper (a failure to observe statutory procedures or natural justice) or it is made in breach of legitimate expectation (when a public body has failed to act in line with an expectation that it has created by its own statements or acts).
- 7.7 Further, the claimant must have sufficient interest, or "standing" in the matter to which the judicial review relates (for example, a contractor who has not been given the opportunity to bid for the contracts). An application for permission to apply for judicial review in England must be made "promptly" and in any event not later than one month from the date when grounds for the application first arose (in procurement cases).
- 7.8 One or more of six forms of final relief are available, and all are at the discretion of the court. Declarations and quashing orders are by far the most granted remedies in judicial review. It is rare for the other remedies to be granted.

Sarah Orrell – Commercial & Procurement Solicitor

8 Procurement Implications

- 8.1 Current arrangements are non-compliant and carry a risk to the organisation, so it is important that this is addressed as a matter of urgency. The quickest and safest route to market would be through the new GM framework, and this would be compliant with the Oldham Council CPRs. If we were required to go out and create our own framework, this would result in significant delays (9-12 months), and the FPS/DPS model is not available under the new regulations.

The GM framework was started under the PC2015 regulations so is governed by these. It should end in 2029 as per government guidance around the length of these contracts following the implementation of the PA23 regulations. At this time, we do not know which companies have been successful in their application to the new GM framework. If there is a change in supplier for any of the lots then we would expect staff in current services to TUPE across to a new provider, ensuring consistency of staffing and care for the service users, with minimal impact to them.

We do need to be aware that there may be a short delay from the framework going live to us being able to access it, or there could be some delays in the final few weeks causing a

short delay to the implementation of the framework and therefore our ability to access it. We will need to finalise the breakdown of the lots, and decisions as to whether these are by properties or by geography (and depending on this, what happens to any new properties that come online in Oldham boundaries), before we can go out with a mini-comp.

James England – Procurement Manager

9 Human Resources implications

9.1 Should OPTION 3 be approved, there would be no HR implications as there are no people implications.

10 Equality Impact, including implications for Children and Young People

10.1 Yes – to follow

11 Key Decision

11.1 Yes

12 Key Decision Reference

12.1 This item has been included on the Forward Plan under reference HSC-01-25.

13 Background Papers

13.1 N/A

14 Appendices

14.1 None