

Report to CABINET

Oldham Active – Agency Model

Portfolio Holder:

Cllr Peter Dean, Cabinet Member for Culture & Leisure

Officer Contact:

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Report Author:

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20th October 2025

Reason for Decision

To confirm the Council's position to finalise the move to an agency model for our leisure services delivery model, and approving the necessary contractual modifications, including an updated Deed of Variation with Oldham Active (OCL)

Executive Summary

Following Cabinet's decision (December 2024) to explore alternative delivery models for leisure services, this report presents the final recommendation to adopt an Agency Model. This approach aligns with recent HMRC guidance on VAT recovery for leisure services, which now confirms that a Local Authority's supplies of leisure services are classified as non-business, and reflects best practice across the sector which ensure positive outcomes both financially and for our residents. It also enables the Council to retain strategic overview of our leisure services whilst ensuring that high quality delivery continues. Legal and procurement advice has confirmed that the proposed modifications to the existing contract with Oldham Active (OCL) are viable under regulation 72 of the Public Contracts Regulations 2015. The Deed of Variation will formalise the transition to an agency model for the remainder of the contract term (currently until March 2028).

Recommendations

1. Approve the work and transition to an agency model for the delivery of leisure services in Oldham.
2. Authorise officers to finalise and enter into a Deed of Variation with Oldham Active to reflect the agency model.
3. Delegate authority to the Cabinet Member for Culture and Leisure, the Director of Public Health, the Director of Finance, and the Director of Legal to approve and execute the Deed of Variation.

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4. Note that the new agency model will allow the Council and OCL to explore long term options for the delivery of leisure services in the borough such as Teckal / LATCo company model when the current contract ends (March 2028 or earlier)

Oldham Active – Agency Model

1. Background

- 1.1. In December 2012 Cabinet approved the recommendation to appoint Oldham Community Leisure Limited (OCL) as the preferred bidder for a new 10 plus 5 year contract to operate and manage the council's leisure facilities. OCL, now rebranded as Oldham Active, was appointed under a contract for services which commenced on 1 April 2013 ("Contract"). Prior to the expiry of the initial term of the Contract, the Council exercised the right to extend the term for an additional 5 years. This was done in line with prior Cabinet approval.
- 1.2. The terms of the contract, including the 5 year extension, will end on 31 March 2028
- 1.3. In addition, and again, in accordance with Cabinet approval, a small number of changes to the contract had been agreed with Oldham Active under clause 50 of Schedule 24 to the Contract. The Deed of Variation to formalise the changes is pending, but the effective date of the following is 1 April 2023:
 - (a) Schedule , Part 2 of the Contract updated (Service Specification);
 - (b) Schedule 4 to the Contract replaced (Facilities)

The Annual Payment payable under the contract was duly adjusted, where required, to take into account the financial implications of the agreed changes.

- 1.4. Oldham Active has responsibility for the management, operation, and development of six facilities under the contract, which include Council owned leisure centres, swimming pools and synthetic pitches in Oldham. It also delivers a wider community offer and has a vision of 'Inspiring people to live active healthy lives" and to 'Create an environment in which sport, active recreation and leisure are integrated into the lifestyles of all Oldham residents, in order that community cohesion and health benefits are continually improving."
- 1.5. The contractual relationship between the Council and Oldham Active aligns with broader Public Health goals and social development objectives to reduce inequalities in Oldham, including working collaboratively with partners to tackle health inequalities and improve mental health through activity.
- 1.6. Beyond the requirements of the contract, Oldham Active deliver a lot of additional work to support our residents and the aims of the council, including reducing inequalities. Some of the programmes and initiatives delivered by Oldham Active include:
 - (a) Exercise Referral for a variety of conditions including Musculoskeletal, Mental Health, Obesity and Blood Pressure.
 - (b) REACH scheme specifically for Cardiac & Pulmonary patients.
 - (c) Falls Prevention including community classes.
 - (d) Free Swimming lessons for adult non swimmers.
 - (e) Co-location of midwifery services & social prescribing.
 - (f) Welcome to Oldham scheme, providing free access for those facing financial hardship.
 - (g) Plus 1 card for Carers, allowing free access for those providing support to those who would otherwise struggle to access services.

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- (h) Friday Club (to reduce isolation).
 - (i) Regular apprenticeships and work experience opportunities to tackle worklessness.
- 1.7. Oldham Active is an Oldham organisation which employs around 280 members of staff including full time, part time and regular casuals. Over 70% of the Oldham Active workforce are Oldham residents.
- 1.8. The council works closely with Oldham Active to ensure that the outputs and outcomes that Oldham Active is obliged to deliver under the contract are met and that continuous improvement is achieved throughout the contract period.
- 1.9. A performance monitoring system is in place with the aim of providing reasonable and prudent checks, while focusing on KPIs which confirm that a high quality of service is being delivered and measuring the contribution of the service to the Council's outcomes. Oldham Active continue to perform well. As well as regular check ins and open lines of communication, we continue to have quarterly contract performance monitoring meetings.
- 1.10. The management fee paid by the council to Oldham Active is low in comparison to other GM authorities and many nationally. The outcomes and outputs stipulated in the contract are also being met. In addition, memberships sales are good, external inspections of the centres are all very good or excellent, and customer feedback is also good. Overall financial performance is positive. Over recent years the cost of utilities has impacted on Oldham Active's financial position, and they have instigated the utility benchmarking contract clause.
- 1.11. Cabinet approved the exploration of alternative models in December 2024.
- 1.12. The Chelmsford ruling (June 2022) has shifted the sector towards agency models for leisure services due to VAT recovery advantages. The ruling established that leisure services provided by Local Authority's should be classified as non-business, which means VAT should no longer be charged to customers, but Local Authority's are able to reclaim any VAT incurred in providing leisure services. Oldham Active incur around £420,000 worth of irrecoverable VAT each year, so moving to an agency model remove the irrecoverable VAT and is therefore more tax efficient.
- 1.13. Legal & procurement advice has been sought to ensure compliance with contract modification regulations.
- 1.14. The contract links to Corporate Priorities, as follows:
- 1.14.1. Health, safe and well supported residents
 - 1.14.2. A great start and skills for life.
 - 1.14.3. Better job and dynamic businesses

2. Current Position

- 2.1. The contract between Oldham Council and Oldham Active is a 10 + 5-year contract which is due to end on 31 March 2028. Prior approval was given by Cabinet to undertake negotiations with Oldham Active to utilise the available 5-year contract extension and to vary the contract to include a number of agreed additions in terms of social value and to refresh the list of facilities.

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- 2.2 Oldham Active have consistently met and exceeded the requirements of the Contract and have provided above and beyond in terms of social value as well as their positive engagement in supporting the health and wellbeing of our residents, and wider council priorities.
- 2.3 Usage numbers have continued to rise year on year, and in 2024/25 we saw over 1.46 million come through the facility doors. Current year to date figures for 2025/26 exceeds the same period from the year before, meaning more and more people are accessing the facilities and activities being provided.
- 2.4 The Contract expires in March 2028. As previously stated, options for the delivery of the Council's leisure provision are being investigated however it must be noted that any re-procurement exercise is anticipated to take between 18 months and two years, therefore the Council needs to determine its preferred model going forward as soon as possible.
- 2.5 An increasingly popular model for the delivery of leisure services is for the leisure operator to work on an agency basis. This has the following significant advantages over the current model whereby Oldham Active acts as a leisure operator in its own right:
- a) It better reflects the situation where the leisure operator carries out the services to residents' accordance with the Council's core objectives;
 - b) It more clearly defines the responsibilities over how the Council's assets are used and maintained;
 - c) It is more tax efficient. This follows from a ruling in June 2022 in a case between HMRC and Chelmsford City Council (the "Chelmsford Ruling").
- 2.6 Following the Chelmsford Ruling, many leisure operators will no longer consider bidding for leisure contracts that do not follow the agency model.
- 2.7 Given the costs of procurement and the change in approach to leisure contracts, a re-procurement may not be in the best interests of Oldham's residents. An alternative solution would be move to the appointment of a wholly owned in-house Council company to act as the Council's agent for the delivery of leisure services. Several other Councils are moving towards this latter model. However, the working arrangements together with the contractual and procurement implications would need to be explored in detail to determine whether this new arrangement would be viable, procurement compliant, and in the Council's best interests.
- 2.8 In addition to the potential longer-term benefits, there would be immediate benefits in considering whether it would be procurement compliant to amend the contract so that Oldham Active would act as the Council's agent for leisure services, as opposed to as acting as a principal operator.

To this effect:

- a) Discussions have taken place with Oldham Active whose Board has confirmed that it is supportive of moving towards such a model.
- b) The Council has obtained professional legal and taxation advice that has confirmed what amendments would need to be made to the contract to effect the proposed changes.

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- c) Extensive discussions have been held with the Council's Head of Procurement and Legal Services has been engaged to consider whether the proposed changes would be in line with Contract Procurement Rules, and the relevant procurement regulations and whether a notice must/should be published to inform the market of any modifications made to the Contract. Please see Procurement and legal comments given after the review of this.

2.9 The Head of the Commercial Procurement Unit has indicated that a procurement challenge at this point may not be a significant risk based on the procurement comments below and given the limited time left on a 15-year contract and that Oldham Active will not be significantly commercially advantaged by any new arrangement; this has been explored and considered alongside procurement rules, legislation and guidance as best as it can be with the complication of the contract spanning over 3 separate sets of Procurement Regulations and the introduction of the Concession Contracts Regulations in 2016.

3. Options/Alternatives

3.1. Option 1 (Preferred)

- (a) Approve the work and transition to an agency model for the delivery of leisure services in Oldham
- (b) Authorise officers to finalise and enter into a deed of variation with Oldham Active to reflect the agency model.
- (c) Delegate authority to the Cabinet Member for Culture and Leisure, the Director of Public Health, the Director of Finance, and the Director of Legal to approve and execute the Deed of Variation.
- (d) Note that the agency model will enable improved VAT recovery and financial efficiencies, and that further work will be undertaken to explore a longer term Teckal / LATCo model when the current contract ends (March 2028 or earlier)

3.2. Option 2

- (a) Not approve the recommendation of the transition to an agency model for delivery of leisure services in Oldham and the work to finalise and execute the deed of variation with Oldham Active to reflect the agency model.
- (b) Note that we will not improve our position of VAT recovery and efficiencies that will benefit all involved including our residents.

3.3 Option 3

- (a) Do not approve the work and transition to an agency model for the delivery of leisure services in Oldham and instead consider a re-procurement of leisure services at the end of the current Oldham Active contract.

4. Preferred Option

4.1. Option 1

- (a) Approve the work and transition to an agency model for the delivery of leisure services in Oldham
- (b) Authorise officers to finalise and enter into a deed of variation with Oldham Active to reflect the agency model.
- (c) Delegate authority to the Cabinet Member for Culture and Leisure, the Director of Public Health, the Director of Finance, and the Director of Legal to approve and execute the Deed of Variation.

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- (d) Note that the agency model will enable improved VAT recovery and financial efficiencies, and that further work will be undertaken to explore a longer term Teckal / LATCo model when the current contract ends (March 2028 or earlier)
 - (e) This is anticipated to be the most viable and cost-effective means to provide a long-term solution that provides best value for all involved. This will deliver immediate financial and operational benefits, aligns with new sector best practice, and avoids significant procurement costs.

5. Consultation

- 5.1. Consultation with Oldham Active's senior leadership and board who are in support of the council's request to move towards an agency model.

6. Financial Implications

6.1. Revenue Implications

- 6.2 The preferred option, as outlined in paragraph 4.1, is to approve the transition to an agency model for the delivery of leisure services in Oldham. This includes authorising the necessary legal arrangements with Oldham Active, delegating authority for execution, and acknowledging the financial and operational benefits. Further consideration will be given to a longer-term Teckal/LATCo model ahead of the expiry of the current contract in March 2028.

(Matthew Kearns – Finance Manager)

7. Legal Implications

- 7.1 Browne Jacobson overlooked that this is a 2012 contract and should therefore have been assessed under Pressetext and while they state the position is not notably different and that the Council does not benefit from assessing it under Pressetext, I take a slightly different view — although the modification may be viewed as significant, applying Pressetext potentially reduces our assessment of the risk, as it is a more principles-based test rather than being constrained by the narrower “safe harbour” provisions in Reg. 72.

We have been diligent in ensuring legal advice sought is robust and, while we acknowledge there is some risk, the combined assessment from external legal advice and Pressetext is that the risk is reduced.

Sent on behalf of Pamela Nsofor - Solicitor

8. Procurement Implications

- 8.1 External legal advice on the procurement implications was obtained from Browne Jacobson in addition to internal legal and procurement conversations with regards to this matter due to the complexity of the contract spanning over 3 separate sets of Procurement Regulations. This contract in its ‘delivery’ currently is what would now be considered a concession arrangement but, the Concessions Contracts Regulations were only introduced in 2016, four years after this contract was awarded. The applicable legislation at the time was the PCR 2006 and the old EU Directive 2004/18/EC.

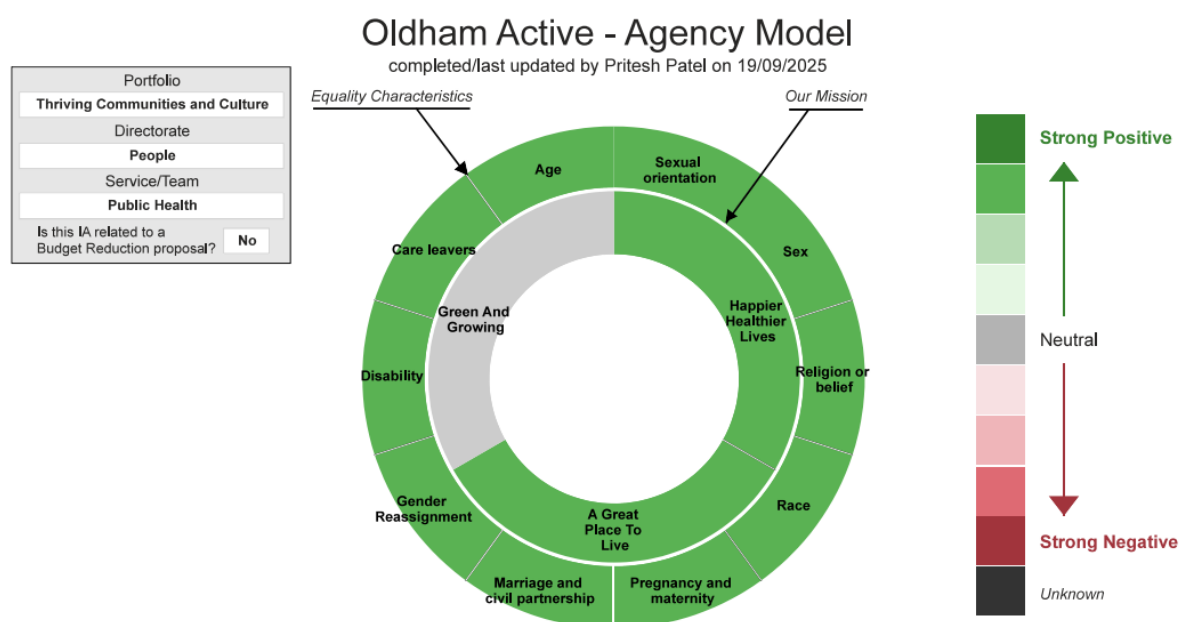
Whilst the nature of the modification may be considered significant and the new model being Oldham's choice not a mandatory adoption, a Concession Contract could not be awarded in 2012 and so the contract is not a Concession contract, and it would be the switch from a Concession to a regular contract which would likely make this a significant modification. As such, in terms of risk, applying Presstext makes it a more principles-based risk test rather than the narrower "safe harbour" provisions in Reg. 72 of the Public Contracts Regulations 2015. The Procurement Act 23 would not apply at all.

My understanding is that elements of the contract will continue to operate as a Concession but elements are changing where the Council will reap the direct benefits of memberships and not OCL. We can't say whether this new model would have attracted a wider bidder pool at the time or indeed changed the outcome of the procurement and that to prove this so many years later along with this being adopted by others as the known model combined, presents less risk but as with all procurement modifications, there still could be some risk.

Jasmin Banks-Lee, Head of Commercial Procurement Unit

9. Equality Impact, including implications for Children and Young People –

9.1. Yes - IAReport_Oldham Active_Agency Model (please see appendices)



10. Key Decision

10.1. Yes

11. Key Decision Reference

11.1 EE-03-25

12. Background Papers

12.1. Previous Paper / Report "Committee-Report-OCL Future Model -Oct-2024 – Final" included

13. Appendices

13.1. IAReport_Oldham Active_Agency Model (Please see appendices)

13.2 Committee-Report-OCL Future Model -Oct-2024 - Final



IAReport_Oldham
Active_Agency Model.



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