

## OFFICER DECISION RECORD

For staff restructures, please also complete an RA1 form to update the HR Portal. This is attached at Annex 2.

Decision Ref. No:  
**AHWB/105/2017 part-funding for additional Commissioning & Contracts team**

### Box 1

**DIRECTORATE:** AHWB

**DATE:** 06/10/17

**Contact Name:** Patrick Birch

**Tel. No.:** 07917 698576

**Subject Matter:** Request for part-funding for additional Commissioning & Contracts team resources

### Box 2

#### DECISION TAKEN:

Provision of **£235,000** one-off funding from the Council's General Service Transformation Fund as a contribution to total estimated spend of **£553,000** for the procurement / recruitment of additional Commissioning and Contracts team resources on an initial 12 month basis.

### Box 3

#### REASON FOR THE DECISION:

##### Give relevant background information

Delivering effective commissioning and contract management is right at the heart of our Transformational ambitions. Indeed, the inputs of the Commissioning and Contracts team are critical to the success of the vast bulk of transformation / improvement projects that are either already underway or planned. The size and scale of this challenge should not be underestimated and there is a clear and obvious need to ensure that the commissioning function is stable and robust in order to maximise its effectiveness moving forward.

Crucially, the move towards the development of a strategic commissioning approach with external partners is a key element of the Doncaster Place Plan. This will include moves towards joint commissioning arrangements where appropriate / achievable. The Commissioning and Contracts team will play a key role in this work.

A key part of this requirement is ensuring that the team is fit for purpose given the multiple demands and challenges that it is facing both now and in the future. It will be essential that the team has adequate capacity – in terms of numbers, experience, skills and expertise – in order to deliver against expectations. At present, the team has a number of vacant posts and there is a need to not only seek to fill some key team

member positions but also to secure the services of senior, experienced resources to provide the leadership, drive and energy that the team will need to succeed.

Approval for recruiting additional resources to increase the capacity of the Commissioning and Contracts team was given at the Adults Improvement Board meeting on 26<sup>th</sup> September 2017. This Board is chaired by Jo Miller (Chief Executive) and attended by Councillor Rachael Blake (Portfolio Holder for Adult Social Care), Simon Wiles (Director of Resources), Damian Allen (Director of People) and other key Council officers. A separate business case document has also been prepared by AHWB in conjunction with officers from Finance, HR and Procurement.

The demands placed on the Commissioning and Contracts Team are significant and are likely to grow. This comes at a time when there are vacant posts within the structure. It should be acknowledged that, at a time of reduced capacity particularly at senior levels, the team has worked hard and made progress in a number of key areas despite, as yet, there being no clear plan or clarification regarding priorities for the team. The team have continued to work within this challenging situation and both individuals and the team have displayed resilience.

A 4-year Commissioning Delivery Plan is currently being finalised with support from Ernst and Young and is due to be reported to Audit Committee on 26<sup>th</sup> October 2017.

The Plan represents a strategic approach to programme areas considering contracts holistically rather than triggered by individual contract expiry dates. It is based upon local strategic priorities and capacity of the Directorate and provides clarity both internally and to the market as to our strategic direction incorporating:

- A programme of reviews of existing commissioned services, some of which will lead onto procurement activity and will require the plan to be continually refreshed; and
- A range of procurement activities for both new and existing services

In view of the extensive workload required of the team and the impending completion of the Commissioning Delivery Plan (which will provide clarity on resourcing requirements for key activities moving forward), there is a need to address the current capacity issues within the team. As part of this, a long list of core tasks has been identified that can only be successfully delivered if team capacity is increased significantly.

A number of key posts need to be filled:

- Strategic Lead (Commissioning) (Chief Officer Grade)
- 2 x Heads of Service (Senior Management Grade)
- Team members (various) – key identified roles are Contracts Officer x 2 (Grade 9), Commissioning Officer x 2 (Grade 9) and 1 x Community Equipment Service Practitioner (Grade 10)

The senior roles will be expected to lead on the successful implementation of the Commissioning Delivery Plan and directing the team's critical inputs to the wider transformation work by having the capacity to deploy the resources effectively within the team as well as forging constructive relationships with key colleagues both within the Council and partner organisations.

Moving forward, the team has identified the following tasks as being ones which it will have the capacity to deliver providing that the identified senior roles are filled (1 x Strategic Lead and 2 x Heads of Service). All of these tasks will be embedded within the Commissioning Delivery Plan:

- Overall leadership, direction and management of the team, its priorities, structure and workload;
- Overall leadership and management for the implementation of the Commissioning Delivery Plan and inputs to improvement / transformation projects;
- To identify the options for savings in commissioned adult services to match or more than match the targets set within the 2017-21 budget plan, and to ensure work is commenced on achieving those savings;
- To review the Adults contracts register with a view to minimising breaches and waivers, improving contract compliance and agreeing in which services we should defer commissioning/ procurement activity to better align it with other aspects of the Adults Transformation / Improvement programme;
- Playing a key role in developing the provider marketplace to align with the transformational agenda and working with providers to redesign service offerings to meet future service demands;
- To contribute towards the scoping and development of the proposed move towards integrated commissioning in line with the Doncaster Place Plan and to manage the interface with the nominated Place Plan lead person for this work;
- Playing a key role in upskilling and developing the team to meet future workload demands;
- Leading the team's inputs to ensure delivery in key areas of work, including:
  - Weekly Attendance Residential & Older Peoples Panel - preparation and co-ordination;
  - Weekly Section 117 Panel & Joint Funding;
  - Care Homes Fee Negotiation/Model;
  - Specialist Fee Uplifts;
  - CCASH Refresh and Phase Implementation;
  - Housing Position Statement Work across vulnerable groups;
  - Supported Living Re-Tender;
  - Specialist Framework;
  - Money Management and Direct Payment Support;
  - Community Based Mental Health Support (Doncaster MIND, Changing Lives);
  - Planned De-commissioning of Mobile Day Care to move to Direct Payment route;
  - Home from Hospital - Intermediate Care;
  - Mental Health Floating Support re-tender;
  - Doncaster Citizens Advice Service;
  - Carers Emergency Support Scheme;
  - Carers Support Service;
  - Shared Lives; and
  - Social Prescribing

The above is in addition to other business as usual activity such as contract monitoring, contract meetings, provider engagement, and risk panels.

In addition to the above, filling the other posts that have been identified – i.e. the operational team roles – will enable the successful fulfilling of the functions listed below:

- Complex Lives Programme (early indications are that this will be an extensive programme of work. Additional resource will also need to underpin any housing support services deemed outside the Complex Lives cohort);
- Dementia Integrated Pathway;
- Proactive management of the NRS equipment contract – including review of current approach and challenging traditional ways of working to help eliminate the current £500k overspend;
- Procurement flowing from RDASH LD Residential / Day Care (Solar Centre) Re-provision;
- Domestic Abuse Service Re-design (commissioning input and contracts officer capacity)
- Sub-regional perpetrator programme (contracts officer capacity);
- Thorne Extra Care Scheme (including potential service model implications on existing schemes depending on outcome of options appraisal); and
- Day Opportunities for Older People static provision

The key benefits of providing additional capacity to the Adults Commissioning and Contracts team include:

- Much needed senior leadership and strong management for the team;
- Effective management and delivery of the Commissioning Delivery Plan;
- Enabling the provision of more effective and consistent contributions to Adults Improvement / Transformation Programme – both in terms of supporting the achievement of targeted financial savings and informing the wider strategic change agenda;
- Better clarity over workload planning and priorities for the team;
- A strengthened approach to dealing with contract management issues and working with Council colleagues to strategically and operationally address emerging issues such as waivers and breaches; and
- Strengthened relationships with other parts of the Council and, crucially, the Council's key partners

The pivotal role that the Adults Commissioning and Contracts team must play in delivering against the Directorate's many current and future operational and transformational requirements means that the team must be appropriately resourced. There is a need for visible, strong senior leadership to drive and shape the team's workload in line with Directorate priorities and the wider partnership agenda. There is also a need to ensure that team resources are sufficient to cope with multiple workload demands.

The cost of the structure outlined above is estimated at **£492,567**. This however

assumes that the posts will be filled on a substantive basis and will therefore incur the same cost. For the purposes of contingency planning, a further £60,000 has been added taking the full cost to £552,567, although this may well reduce once the procurement of the service/posts is better defined.

Based on vacancies within the current structure, it is estimated that a maximum of **£318,418** funding could be made available. This would leave a maximum unfunded cost of **£235,000**. In addition, options for procuring a 'commissioning partner service' based on contractually agreed outcomes rather than simply a 'like for like' posts approach are currently being considered.

#### **Box 4**

#### **OPTIONS CONSIDERED & REASONS FOR RECOMMENDED OPTION:**

#### **If other options were considered, please specify and give reasons for recommended option**

This is an urgent need for additional resources as identified by the Improvement Board on 26/09/17. Therefore, it is imperative that the additional one-off funding is approved and additional resources are secured asap.

Notwithstanding the above, various options are currently being considered for recruitment to these posts, on a 12 month basis initially. These include:

- Potential use on a temporary basis of DMBC officers from elsewhere in the Council on a short term basis;
- Exploring with Team Doncaster partners (most notably, the CCG) the possibility of pooling some commissioning resources;
- Recruitment to permanent / fixed term / interim positions using the Council's standard approach to recruitment;
- Seeking the assistance of Reed (the Council's recruitment partner) to fill the roles;
- Procuring the services of a 'commissioning partner' service – i.e. an external body that would provide experienced personnel to fill these roles and to provide the skills and capacity that is required to help the commissioning team to deliver the many requirements that are currently being asked of them. This could be contracted on a risk-reward basis; and
- A combination of the above

Discussions are currently ongoing regarding the potential for sharing commissioning resources with the CCG. Timescales for moving this matter forward are not yet confirmed but it is obvious that this work will not be concluded in the short term hence the need to obtain the necessary funding to procure / recruit additional resources.

**Box 5****LEGAL IMPLICATIONS:**

S112 of the Local Government Act 1972 allows a local authority to appoint such officers as are necessary for the proper discharge of its functions, on such reasonable terms and conditions as it thinks fit. The grading of any posts is subject to the outcome of a job evaluation exercise.

A number of options are proposed for the recruitment of the staff in question including secondment, temporary posts and the use of agency workers. It is important that sight is not lost of the Council's recruitment and retention and vacancy management policies which should be followed in all of these instances.

Regarding the secondments Secondment Agreements should be set up that set out the terms of the secondment in writing. The council has a secondment policy, which should be followed to ensure the secondment process is fair.

Given the nature of the temporary posts required they should have been set up as temporary for a fixed term whether they are to back fill a seconded employee or otherwise. Any employee regardless as to whether or not they are employed for a fixed term, part time or otherwise obtain certain employment protection, which includes protection from unfair dismissal after 2 year's employment service. In order for liability in relation to, inter alia, unfair dismissal, to be limited there must be a legitimate reason for a fixed term contract and the employee must be made aware of this reason and of the anticipated length of the contract at the commencement of the contract. After the 4<sup>th</sup> year of renewal the Employee may be entitled to the position on a permanent basis. The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 confirm that employees should not be treated less favourably on the ground they are fixed term unless this is objectively justified. Less favourable treatment means, but is not limited to pay and terms and conditions. The extension of the role would be regarded as a renewal.

As the length of the contracts exceed 1 year the Employee will be entitled to be placed on the redeployment register and after 2 years will be entitled to a redundancy payment. If the Council terminates the contract early, then there may be some liability for payment of the outstanding salary to the employee unless a suitable break clause is included. Therefore terms of the contract must therefore be carefully considered to avoid additional liability and/or financial loss.

There are no legal restrictions on the use of Agency workers for a local authority. Doncaster MBC has a policy that regulates the use of Agency workers and care must be taken to ensure this policy as followed as when seeking authority to operate outside the policy this could create a precedent. There is a legal obligation to consider best value and therefore it is recommended that there be regular reviews of the decision to use agency staff to ensure this obligation is being met. The contractual arrangements should be agreed and in place prior to the commencement of the assignment. There are regulations that govern the employment of agency staff which must be followed.

Reed were appointed as the Council's supplier of temporary staff following a procurement process which was compliant with both EU Procurement Regulations and Contract Procedure Rules.

In addition it should be noted that since April 2017 the rules relating to the application of the Intermediaries Legislation (IR35) for individuals engaged 'off-payroll' in the public sector has changed. In summary, the payments we make to such workers will be subject to the application of the new legislation which means that contractors supplying their services through their own personal service companies (PSCs) will be considered to fall within IR35 unless it can be proven otherwise. The application of IR35 will require the Council to deduct and national insurance contributions for all payments made to these contractors after 6 April 2017.

Adherence to the Council's Financial Procedure rules is necessary in relation to the use of funding from the Council's General Service Transformation Fund.

**Name: Helen Wilson & Karen Winnard Signature: \_\_by email\_\_ Date: \_\_01/11/2017\_\_**

**Signature of Assistant Director of Legal and Democratic Services (or representative))**

### **Box 6**

#### **FINANCIAL IMPLICATIONS:**

The cost of recruiting to the additional Commissioning & Contracts team as identified above, for 12 months is as follows

	£'000
Assistant Director	113
Head of Service x 2	156
CES Practitioner (Grade 10)	52
Commissioning Officer x 2 (Grade 9)	86
Contracts Officer x 2 (Grade 9)	<u>86</u>
	493
Add contingency	<u>60</u>
<b>Total funding required</b>	<b><u>553</u></b>

(The posts above are estimated at top of scale and include on-costs)

Funding available:

Head of Service (substantive, vacant)	78
Lead Commissioning Officer (substantive, vacant)	49
Head of Service (temporary, vacant, iBCF-funded)	78
Assistant Director (temporary, vacant, iBCF-funded)	<u>113</u>
<b>Funding available</b>	<b><u>318</u></b>
<b>Required from Service Transformation Fund</b>	<b><u>235</u></b>

The approval of the Chief Financial Officer & Assistant Director – Finance and Mayor is needed to allocate funding from the Service Transformation Fund.

It should also be noted that some of the funding identified above is temporary and whilst available to support a 12 month project as identified in the report, would need to be reviewed should the resource need to be secured any longer than this.

**Name: Paul Williams Signature: \_\_by email\_\_ Date: 16/10/17**

**Signature of Assistant Director of Finance & Performance (or representative)**

## **Box 7**

### **HUMAN RESOURCE IMPLICATIONS:**

Wherever possible, engagement of agency workers should be avoided or minimised on grounds of cost and to encourage effective deployment of existing staff. Recruiting managers should establish whether current members of staff in their own or other areas of the authority have the necessary knowledge, skills and capacity to undertake the piece of work / project required and, if so, utilise these staff. As it is proposed to recruit additional staffing resources on an initial 12 month basis, consideration should be given to recruiting to fixed term contracts rather than agency workers.

Where a fixed term contract is utilised it should be noted that fixed-term employees have the right not to be treated less favourably than comparable permanent employees because they are on a fixed-term contract. Consequently, you must follow the Council's recruitment procedures and treat fixed-term employees the same as comparable permanent employees unless there are 'objectively justifiable' circumstances for not doing so (i.e. there is a genuine, necessary and appropriate business reason). This means the same or equivalent (pro-rata) pay and conditions, benefits, pension rights and opportunity to apply for permanent positions within the business.

Under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, employees who have been on a fixed-term contract for four years or longer will usually be legally classed as permanent if their contract is renewed or if they are re-engaged on a new fixed-term contract. The only exemptions are when employment on a further fixed-term contract is objectively justified to achieve a legitimate business aim or when the period of four years has been lengthened under a collective or workplace agreement.

When appointing an agency worker, the Hiring and Managing Agency Worker policy must be followed and the Council's managed service provider, Reed Specialist Recruitment Ltd must be used to source appropriate candidates (as per contract effective from 10/09/16). There must also be either a vacant post or an approved ODR (for project work) in place to support the use of an agency worker.

Changes to the intermediaries' legislation (commonly referred to as IR35) came into effect on 6<sup>th</sup> April 2017 and applies to both new and existing workers / roles. The change moves responsibility from the worker's personal service company (PSC) to the organisation paying the worker / PSC to ensure they make appropriate deductions of tax and NI at source. It is the council's responsibility to determine whether a role will fall inside or outside IR35.

It is the hiring manager's responsibility to substantiate if a role falls outside IR35 with a completed IR35 [employment status tool](#) and supporting information. This must be carried out before placing an order for the agency worker through the MSP's ordering system (XMS). A copy of the assessment must be sent to the Directorate's HR Business Manager.

Throughout the project, managers should assess the need to use agency workers on an on-going basis, conducting regular reviews to consider whether the need continues or whether alternative arrangements could be made such as secondments or



temporary contract arrangements.


Any posts to be advertised should follow the Council's Safer Recruitment policy, initially open to redeployees before being advertised on the wider Bulletins and will need to be created on the HR portal. Where new posts are to be created job descriptions and person specifications should be submitted for job evaluation. Current job descriptions should also be reviewed to ensure they are fit for purpose prior to posts being advertised.

**Name: D L Dawson**   **Signature:**    **Date: 17.10.17**  
**Signature of Assistant Director of Human Resources and Communications (or representative)**

**Box 8**  
**PROCUREMENT IMPLICATIONS:**

Any spend must be in line with the Council's CPRs including the exploration of any existing frameworks for recruitment before any approval to commit funds to recruitment campaigns is given.

[redaction]

**Name: Dan Charlesworth**   **Signature:**    **Date: 24<sup>th</sup> October 2017**  
**Signature of Assistant Director of Finance & Performance**  
**(or representative)**


**Box 9**  
**ICT IMPLICATIONS:**

In implementing the recommended options within this ODR, the recruiting manager should consider the ICT and technology needs of any recruited resources and ensure timely notification is made to ICT via iServe, for the creation of accounts, access to technology and systems.

The recruiting manager must also ensure that all mandatory training in respect to data quality and protection is undertaken by any new recruits as well as familiarisation with acceptable use policies as set by the Council and its SIRO.

Any additional technology requirements to those listed above, must be submitted via the prescribed Business Case pro-forma for consideration by the ICT Governance Board.

**Name: Peter Ward (Governance & Support Manager)**

**Signature:**    **Date: 16/10/17**

**Signature of Assistant Director of Customers, Digital & ICT (or representative)**

**Box 10****ASSET IMPLICATIONS:**

Any requirement that might arise for additional accommodation or the reconfiguration of existing workstations to support the recruitment proposal as outlined should be directed to the Assets & Property team in the first instance in order that such a need can be provided for in line with the Council's wider Assets Transformation programme and WorkSmart strategy.

**Name:** Gillian Fairbrother (Assets Manager, Project Co-ordinator)

**Signature:** By email

**Date:** 13<sup>th</sup> October, 2017

**Signature of Strategic Lead of Trading Services and Assets  
(or representative)**

**Box 11****RISK IMPLICATIONS:**

**To be completed by the report author**

Should the Council choose not to provide additional capacity within the Commissioning and Contracts team, the following risks will apply:

- Continued pressure on existing team resources with potential consequence of poor morale, lack of job satisfaction, higher sickness levels and people choosing to find employment elsewhere;
- Lessened ability to provide the required Commissioning inputs and expertise to support key improvement / transformation projects;
- Lack of senior leadership – only one of the three management posts is currently filled and this is only on a temporary basis. The current interim Head of Service is only contracted until the end of March 2018;
- Increased risk of contract management issues, unexpected breaches and waivers occurring;
- Inability to address skills and expertise gaps within the team; and
- Potential inability to deliver against all tasks identified in the Commissioning Delivery Plan

**(Explain the impact of not taking this decision and in the case of capital schemes, any risks associated with the delivery of the project)**

**Box 12****EQUALITY IMPLICATIONS:****To be completed by the report author**

We are aware of the Council's obligations under the Public Sector Equalities Duty and will ensure that due regard is embedded within each of the individual work areas identified within the Commissioning Plan.

**Name: Patrick Birch   Signature: \_\_by email\_\_   Date: 13/10/17  
(Report author)**

**Box 13****CONSULTATION****Officers**

**(In addition to Finance, Legal and Human Resource implications and Procurement implications where necessary, please list below any other teams consulted on this decision, together with their comments)**

**Members**

**Under the Scheme of delegation, officers are responsible for day to day operational matters as well as implementing decisions that have been taken by Council, Cabinet, Committee or individual Cabinet members. Further consultation with Members is not ordinarily required. However, where an ODR relates to a matter which has significant policy, service or operational implications or is known to be politically sensitive, the officer shall first consult with the appropriate Cabinet Member before exercising the delegated powers. In appropriate cases, officers will also need to consult with the Chair of Council, Committee Chairs or the Chair of an Overview and Scrutiny Panel as required. Officers shall also ensure that local Members are kept informed of matters affecting their Wards.**

**Please list any comments from Members below:**

**Box 14**

**INFORMATION NOT FOR PUBLICATION:**

In accordance with the Freedom of Information Act 2000, it is in the Public's interests for this decision to be published in full, redacting only the signatures.

Name:  Gillian Parker  Signature:  by email  Date:  07/11/2017   
Signature of FOI Lead Officer for service area where ODR originates

[redaction]

**Box 15**

Signed: \_\_\_\_\_ Date:  08/11/2017   
Director of People Damian Allen

[redaction]

Signed: \_\_\_\_\_ Date:  08/02/2018   
Additional Signature of Chief Financial Officer –  
Steve Mawson

[redaction]

Signed: \_\_\_\_\_ Date:  08/02/2018   
Signature of Chief Executive Jo Miller

- This decision can be implemented immediately unless it relates to a Capital Scheme that requires the approval of Cabinet. All Cabinet decisions are subject to call in.
- A record of this decision should be kept by the relevant Director's PA for accountability and published on the Council's website.
- A copy of this decision should be sent to the originating Directorate's FOI Lead Officer to consider 'information not for publication' prior to being published on the Council's website.
- A PDF copy of the signed decision record should be e-mailed to the LA Democratic Services mailbox