

OFFICER DECISION RECORD 1 FORM

This form should be used to record Officer Decisions in Excess of £100k (but below the key decision threshold), or where required by Financial, Contract or other Procedure Rules or following formal delegation from Cabinet or a Cabinet Member or a Council Committee.

Decision Reference No: AHWB.026.2021 Additional Safeguarding Staff

BOX 1**DIRECTORATE: AHWB****DATE: 28th May 2021****Contact Name: Carolyn Nice****Tel. No.: ext 36124**

Subject Matter: Additional staffing capacity and resource for Adults Social Care to support a targeted follow up of safeguarding concerns raised regarding a provider across Children's and Adult Services in the Borough.

BOX 2**DECISION TAKEN**

To temporarily employ (for 6 months) 1 x Advanced Practitioner FTE to provide leadership and oversight of the information pack collection, as well as provide 1:1 supervision and support to the additional Social Work capacity. 4 x Social Workers FTE to undertake the information collation and reviews. In addition they will also undertake any s42 investigations which will be generated retrospectively from the ongoing current reviews. 1 PTE Business Support/ Admin to co-ordinate and oversee the information collation, respond to the requests for information from other LA's and Partners.

BOX 3**REASON FOR THE DECISION**

A significant safeguarding investigation is taking place within the Borough focused on a provider of Children and Adult's services. So far, this has highlighted the need to review and explore the records and information on a significant number of young adults.

In order to complete the work within a timely way which will support the wider Police and multi-agency investigations we need additional experienced staff capacity to support the work. We have taken 2 experienced members of staff and leadership capacity from our Community Adult Learning Disability Team and Safeguarding. We are now needing to backfill these roles and bolster the capacity available now that the numbers potentially impacted are understood.

The work is likely to take 6 months (minimum) to complete and will be reviewed on a monthly basis in terms of whether the level of capacity continues to be needed. If it is not required then this will be addressed to ensure the cost impact is minimised. The rationale for using agency staffing means that contracts can be ceased at short notice as the work reduces over time.

Within adults we are working across multiple placing authorities and CCG's who are requesting information and regular updates. This is being managed currently via a single inbox which is being overseen and monitored via a Business Support colleague who is reaching in but this is not sustainable for an extended period. In addition there are regular feedback sessions with the relevant authorities and CCG's which are attended by Adults and Children colleagues.

This work cuts across a range of policy and legislation within the Children's and Adults arena as well as regulation. As a result we need people who are experienced and understand the frameworks of the arena which they are required to operate in. This means targeting appropriately qualified and experienced staff and we will need some additional resource to ensure we can get this in place.

BOX 4

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Release internal staff without backfill

Initially it was felt that this would be the preferred and manageable option. It has become apparent as the scope and complexity of the situation has been revealed that it is not a sustainable approach. Within the current staffing capacity of the directorate there is not the level knowledge and expertise which we can take off line to focus without backfill.

Mutual Aid from other authorities

Due to the number of placing authorities this would prove to be extremely difficult to enact in practice in terms of oversight and accommodation (office space). This has also been trialled in Children's in the early days of the investigation with limited success.

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. Salary grade should be determined by job evaluation.

Given the temporary nature of the post it is advisable to set up a temporary contract for a fixed term. Any employee regardless as to whether or not they are employed for a fixed term 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 4th 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.

If the length of the contract goes on to exceed 1 year upon termination the Employee may be entitled to be placed on the redeployment register and after 2 years may be entitled to a redundancy payment.

There are no legal restrictions on the use of Agency workers for a local authority. 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. There should be a contract that sets out the terms of assignment in place prior to the renewal of the role. 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 care must be taken to ensure the Agency Worker Regulations and the Council's Policies relating to Agency workers and Recruitment in general are adhered to. Care should also be taken to manage the risk of an implied employment contract, As a minimum there should be regular assessment of the nature of work that agency workers are engaged to do; focus on using agency workers for specific projects or cover for fixed periods. Incorporate a review of requirements for agency workers into a regular review of staffing levels and needs.

The Agency Workers Regulations 2010 (SI 2010/93) provide rights for agency workers, including:

- The right to the same pay and other "basic working conditions" as equivalent permanent staff after a 12-week qualifying period.
- Access to collective facilities and to information about employment vacancies from day 1 of their assignment.

The Council should also note that should the worker become a permanent employee in the future, the time spent as an agency worker may count towards continuous service in order for employment rights to be conferred in terms of qualifying service to be able to bring an unfair dismissal.

An agency worker may also be deemed to be a DMBC employee for the purposes of vicarious liability depending on the amount of day-to-day control DMBC has of their work.

From 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 tax and national insurance contributions for all payments made to these contractors.

Off-payroll working rules change on 6 April 2021. From this date, all public authorities will be responsible for deciding the employment status of workers (sometimes known as contractors). Extra responsibilities require public authorities to decide the employment status of every worker who operates through their own intermediary, even if they are provided through an agency. Since 6 April 2020, agency workers have had the right to a written statement of terms under section 1 of the ERA 1996 which must be given on day one of their engagement.

The Council has a policy covering recruitment which should be followed.

The proposed additional posts will assist the Council in compliance with its duties under Care Act 2014.

Name: Neil Concannon Signature: By Email Date: 28/5/21
Signature of Assistant Director of Legal and Democratic Services (or representative)

BOX 6

FINANCIAL IMPLICATIONS:

	In-house			Agency		
	Grade	Min	Max	Rate of	Min	Max
Advanced Practitioner (1 FTE)	Grade 10	25,405	27,947	£33.75 - £36.64 p/hr (37hrs p/wk for 26 weeks)	32,468	35,248
Social Workers (4 FTE)	Grade 9	83,524	94,001	£31.75 - £31.99 p/hr (37hrs p/wk for 26 weeks)	122,174	123,098
Business support (0.54 FTE)	Grade 5	6,334	6,334	£12.84 p/hr (20hrs p/wk for 26 weeks)	6,677	6,677
Grand Total		115,262	128,281		161,318	165,022

The above table shows the potential cost of the additional staffing capacity identified, for a period of 6 months. Given the nature and urgency of the work required to be undertaken it is most likely that agency staffing will be required and this will cost up to £165k.

The service will explore the option of funding this via a recharge from the reserve currently held by the Council which is earmarked for use by the Adults Safeguarding Board. This is currently £377k so has sufficient funds and is held for purposes such as complex case reviews, but approval will need to be sought from the Adults Safeguarding Board and this could take some time.

To avoid unnecessary delay in appointing the staffing required, it is confirmed that should the Adults Safeguarding Board not agree to meet the cost it will be met from wider Council contingencies.

Name: Paul Williams Signature: Date: 14/05/2021
Signature of Assistant Director of Finance & Performance
(or representative)

BOX 7

OTHER RELEVANT IMPLICATIONS

N/A

Name: _____ Signature: _____ Date: _____

Signature of Assistant Director (or representative)

ANY IMPLICATIONS SENT TO DEPARTMENTS SHOULD GENERALLY BE SUBMITTED AT LEAST 5 WORKING DAYS IN ADVANCE TO ENSURE THESE CAN BE GIVEN THE RELEVANT CONSIDERATION.

BOX 8

EQUALITY IMPLICATIONS: (To be completed by the author).

The recruitment process will be followed in accordance with the appropriate equality measures in place. Therefore there are no equality implications to be considered.

BOX 9

RISK IMPLICATIONS: (To be completed by the author)

The main risk issue is that we are not able to secure the capacity and resources needed to get the work completed in a timely way. This would result in us having a lack of capacity to complete the investigation or capacity to undertake the day to day business if we take staff off line.

If the information is not ready and available this could delay any Police/ Safeguarding or partner actions needed to protect vulnerable young adults.

BOX 10

CONSULTATION

This decision has been discussed and agreed in consultation with partners via SMG as well as with the DASS.

BOX 11

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: _08/06/2021_
Signature of FOI Lead Officer for service area where ODR originates


BOX 12

BACKGROUND PAPERS

Please confirm if any Background Papers are included with this ODR /NO

(If YES please list and submit these with this form)

**BOX 13
AUTHORISATION**

Name: Phil Holmes Signature : 


Date: 02/06/2021

Director of Adults Health and Wellbeing

Does this decision require authorisation by the Chief Financial Officer or other Officer

YES

If yes please authorise below:

Name: Faye Tyas Signature: 

Date: 03.06.21

Assistant Director of Finance and Section 151 Officer

Consultation with Relevant Member(s)

Name: _____ Signature: _____ Date: _____

Designation _____

Declaration of Interest YES/NO

If YES please give details below:

PLEASE NOTE THIS FORM WILL BE PUBLISHED ON THE COUNCIL'S WEBSITE IN FULL UNLESS IT CONTAINS EXEMPT OR CONFIDENTIAL INFORMATION.

Once completed a PDF copy of this form and any relevant background papers should be forwarded to Governance Services at Democratic.Services@doncaster.gov.uk who will arrange publication.

It is the responsibility of the decision taker to clearly identify any information that is confidential or exempt and should be redacted before publication.