

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.041.2022 Increase Staff at Hamilton Court

BOX 1**DIRECTORATE: AHWB****DATE: 12/07/2022****Contact Name: Claire Heriot****Tel. No.: 07977077387****Subject Matter: Increase in budget for senior and support staff at Hamilton Court****BOX 2****DECISION TAKEN**

Approval of funding to increase staffing capacity within Hamilton Court so to enable the provision by the Council of an additional 151.5 hours of support for individuals who use Hamilton Court and remain in the "Well Led" Care Quality Commission ("CQC") category of inspection.

BOX 3**REASON FOR THE DECISION**

Hamilton Court is a supported living service and provides support for people with learning disabilities and autism living in the community. Accommodation is a small housing complex owned by South Yorkshire Housing Association.

The Registered Manager, Service Manager and Head of Service have acknowledged the need to further increase capacity within Hamilton Court, building on the existing support offer in place which is currently provided by Doncaster Councils existing support staff. The aim being to enable us to facilitate and support the implementation of the current support schedule for individuals who are supported at Hamilton Court. This in turn will assist in maximising a 'person centred, strengths based approach'; connecting people to their communities, enabling people to live independently, focusing more resources to supporting people at home. The additional weekly capacity will create 151.5 hours additional support. The additional staffing as required for the service to remain Well Led through the Care Quality Commission (CQC).

An analysis was completed to look at what support schedules for each individual in houses 1, 2 and 3 at Hamilton Court, and what permanent positions were already in our budget.

It is understood that the existing support is block purchased from a commissioned service provided, however this clearly only covers the basic support and leaves nothing in budget to allow any leave and training cover.

Annual leave and training therefore do take place, and without this additional cover individuals' support hours quite simply are not delivered.

It is appreciated that this is a large budget request, however it is felt this is essential in order to confidently say we are delivering what has been assessed for these individuals and what they are entitled to.

The required support hours for with the combined 12 support schedules is 734 hours. Permanent contracted hours when fully staffed is 759 hours, therefore there are surplus hours of only 25.

Annual Leave, averaging per week 139 hours, which is 18.3% of the current contracted hours - 759.

Training per week averaging 13 hours, which is 1.7% of the current contracted hours – 759.

A total of 152 hours per week is required in addition to the 734 hours support on schedules.

We already have 25 hours of this, therefore we have a shortfall of 127 hours per week.

To create an additional 127 hours, this would in itself incur another 25.4 hours leave and training (at 20% of the 127) per week. Therefore there would be a requirement to increase the contracted hours by 152.4.

The proposal is therefore to increase the staffing budget, in order to create the following positions: – 1 X 31.5 hour (nights grade 6), 4 X 30 hour (days 1 X grade 7 and 3 X grade 6) – total of 151.5 hours.

There is currently recruitment to four x 20 hour support worker positions to support the individuals, due to a move into the flats. This 80 hours was calculated using the same method as above. Approval for these have already confirmed by Carolyn Nice on a 12 month basis.

BOX 4

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Option 1: Maintain existing service provision. Maintaining current levels of service provision will result in the lack of capacity to meet the current requirement of existing service users. This option will result in greater risks in relation to complaints, safeguarding and inability to delivery essential requirements in line with CQC.

REJECTED Should the decision be rejected, the impact will be the service is unable to meet the essential needs of individuals, as is detailed in their formal reviews.

BOX 5

LEGAL IMPLICATIONS

Section 1 of the Localism Act 2011 provides the Council with a general power of competence, allowing the Council to do anything that individuals generally may do.

Section 111 of the Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

Section 2B of the National Health Service Act 2006 (as amended by Section 12 of the Health and Social Care Act 2012) introduced a duty on Councils in England to take appropriate steps to improve the health of the people who live in their area.

The Care Act 2014 obligates the Council to meet eligible care and support needs of its population in accommodation in care home or by providing care and support to those individuals in their home or in the community. 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.

It is advisable to set up a temporary contract for a fixed term. In order for liability in relation to 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.

If the length of the contract exceeds 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.

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.

In the event that Agency workers were used, 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 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. Off-payroll working rules changed on 6 April 2021. From this date, all public authorities will be responsible for deciding the employment status of workers (sometimes known as contractors). 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.

It is important that sight is not lost of the Council's recruitment, retention, and vacancy management policies, which should be followed.

Name: Paula Coleman Signature: By e-mail _ Date: 20.07.22

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

BOX 6

FINANCIAL IMPLICATIONS:

The total including on-costs is:

	Min	Max
Grade 6 (0.85fte) (night allowance)	25,590	26,680
Grade 7 (0.81fte)	22,550	25,430
Grade 6 (0.81fte) x 3	<u>60,960</u>	<u>63,550</u>
Total permanent cost	109,100	115,660
Grade 6 (0.54fte) x 4 (12 months)	54,190	56,500

The full cost of this decision will be met from existing contracted Supported Living budgets held within AHWB. The costs were reflected in the Q1 reporting cycle so will not result in a change to forecast spend levels.

Name: Paul Williams Signature: by email_ Date: 19/07/22

Signature of Chief Financial Officer and Assistant Director of Finance (or representative)

BOX 7

OTHER RELEVANT IMPLICATIONS

HR

The following roles are all established posts and have been through the Council's GLPC Job Evaluation system and therefore do not need re-evaluating.

Grade 6 Support Worker ID 4180

Grade 7 Senior Support Worker ID 1485

The new posts should be recruited to in line with DMBC's Safer Recruitment policy, initially open to Redeployees before being advertised to the wider public and then created on the HR portal.

Employees who were employed before 6 April 2012 and have 1 year's continuous service, or after 6 April 2012 and have at least two years continuous service, accrue employment rights. Employees who complete 2 years continuous service accrue rights to a redundancy payment. Fixed-term employees have the right not to be treated less favourably than comparable permanent employees because they are on a fixed-term contract. This means you must 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.

Name: Paula Monk Signature:  Date: 25/07/22

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).

There are equality implications with a failure to increase the current capacity. There is strong evidence that highlights that

- Improved outcomes and independence for a high proportion of those accessing the service
- All individuals supported at Hamilton Court would not receive their allocated/assessed support hours

BOX 9

RISK IMPLICATIONS: (To be completed by the author)

Failure to increase capacity:

- Inability to deliver assessed support needs
- Delay the increase in individuals we are able to deliver support to
- Negative impact on individuals well-being due to restrictions imposed on their independence
- Continue to see a shortfall between capacity and demand within the service
- Increased staff absence following long periods working at low levels of staffing

BOX 10

CONSULTATION

No consultation has been undertaken in support of this, although it was discussed with key internal partners as part of the Future Options project work, and provides a solution that enables us to support more people to return home.

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: 28/07/2022_

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 **YES/NO**

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

**BOX 13
AUTHORISATION**

Name: _Carolyn Nice_ Signature :  Date: 28/07/2022

Assistant Director of Adults Health and Wellbeing

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

YES/NO

If yes please authorise below:

Name: _____ Signature: _____ Date: _____

Director/Assistant Director of _____

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.