

**Report of:** Strategy & Development Manager, Health Partnerships

**Report to:** Director of Adults and Health

**Date:** 12th July 2017

**Subject:** Arrangements for the interim transfer of agency staff from Leeds South and East Clinical Commissioning Group to Leeds City Council

Are specific electoral wards affected? If relevant, name(s) of ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. In February of this year a report was approved to enable the continuity of joint working being undertaken between Health & Social Care Partners with respect to Procurement and Estates. This work will be required to support the delivery of the Leeds Health and Care Plan (Leeds Plan), and in particular to contribute to closing the finance and efficiency gap for Health and Social Care in Leeds.
2. It was anticipated that this work would be undertaken by fixed-term posts to be established to support all of the work required to implement the Leeds Plan. Both the Leeds Plan itself and the resource requirements to deliver it are still to be formally agreed and thus the fixed-term posts are not yet in place. The existing approval to extend the current agency worker by up to 6 months expires on 24<sup>th</sup> August 2017. The fixed-term posts will not be in place by that date.
3. Significant progress has been made through the existing arrangements with potential savings of £15m for Estates and £3m for Procurement having been identified, together with other locality based proposals being developed to ensure more effective use of joint estates. In order to maintain continuity and sustain progress, a further waiver of Contract Procedure Rules 8.1 and 8.2 is requested to enable LCC to

continue the existing short-term contract with Practicus (an employment agency on the NHS framework agreement), whilst LCC is currently out of contract with Comensura, for a further 6 months. This will allow the senior member working on the Procurement and Estates enabling programmes to stay in post for up to a further 6 months whilst the programmes are further developed and longer term posts recruited to.

4. LCC is also holding the joint partnership funding for the implementation of the Leeds Plan. The cost of this arrangement can be met from within that agreed funding on an invest to save basis.

## **Recommendations**

1. The Director of Adults and Health is recommended to approve the waiver of the contracts procedure rule(s) no 8.1 and 8.2 intermediate value procurements and place an order for an agency worker directly with Practicus without seeking competition to cover an interim period of up to 6 months to work on the Procurement and Estates enabling programmes of the Leeds Health and Care Plan, commencing on 24th August 2017, whilst the fixed-term posts to continue this programme of work are finalised and recruited to. This decision will be implemented with immediate effect by the Chief Officer Resources and Strategy, Adults and Health. This will maintain continuity of the development and delivery of the Leeds Plan as agreed at the Leeds Health and Care Partnership Executive Group on 6th October 2016.

### **1 Purpose of this report**

- 1.1 This report sets out the particular circumstances with regard to entering into a new contract for an agency worker previously transferred to LCC from Leeds South and East CCG for which a waiver of CPRs 8.1 and 8.2 is requested. The waiver will allow the existing agency worker to continue to work on the Estates and Procurement enabling programmes of the Leeds Plan, a key and time limited programme of work to drive transformation in the Leeds health and care system, for which the Chief Executive is the Senior Responsible Officer.
- 1.2 The report provides background and context to the waiver request, including approval at the Leeds Health and Care Partnership Executive Group (PEG) on 6<sup>th</sup> October 2016 to keep existing agency workers on the programme of work, and the more recent need for an renewal of those arrangements.

### **2 Background information**

- 2.1 Achieving Leeds' ambition to be the Best City for Health and Wellbeing is a key priority for all health and care partners. Transforming the Leeds health and care system to increase both its sustainability and quality is a significant part of this ambition. Accordingly, the Leeds Transformation Programme Management Office was set up several years ago, to drive change across a number of key workstreams. The PMO was jointly funded by the three Leeds CCGs and hosted by Leeds South and East CCG. The PMO was staffed predominantly by agency workers, recruited through NHS framework agreements and using standard NHS procedures.

- 2.2 A review of the Transformation Programme began in the summer of 2015 with many agency workers having their contracts terminated; in December 2015, NHS England produced guidance for all areas to develop Sustainability and Transformation Plans setting out how they would close the health and wellbeing, care quality and finance and efficiency gaps. Senior health and care leaders in Leeds agreed that this significant piece of work would be carried out by the former Transformation PMO, “repurposing” the small number of agency staff at that time hosted by LSE CCG, who would be working closely with the Health Partnerships Team hosted by LCC. PEG would oversee the process and the Chief Executive of Leeds City Council (as Chair of this group) was appointed as the Senior Responsible Officer for the Leeds Plan.
- 2.3 In the autumn of 2016, the three Leeds CCGs began to develop a “One Commissioner Voice” (OCV) and ‘system integration’ for the city. This has resulted in significant reorganisation and restructure of these three bodies some of which still has to be finalised and implemented. In January 2016, it was agreed that due to the restructures taking place within the CCGs it was not viable for LSE CCG to continue to host agency workers or for one of the other two CCGs to take over this function. Additionally, it has been agreed by PEG that the collective funds to progress Leeds plan are to be held by LCC. Since the initial Waiver Report, the citywide Transformation function within the CCGs has been wound down and the Health Partnerships Team has taken over management of the citywide ‘transformation’ on behalf of the health and care partnership. The Health Partnerships Team is also managing the shared funding and overseeing the resources working on the Leeds Plan. Thus, it is logical to move agency contracts to LCC in the interim.
- 2.4 The development of the Leeds Plan and the reconfiguration of Health Partner resources within the ‘One Commissioner Voice’ and ‘System Integration’ initiatives are ongoing pieces of work that have not yet been finalised. The fixed-term programme resource requirements to support the delivery of the Leeds Plan have also therefore yet to be finalised, leading to the need to continue the current arrangements in place for the agency worker providing programme management support to the Estates and Procurement programmes.

### **3 Main issues**

#### *3.1 Reason for contracts procedure rules waiver*

3.1.2 Throughout 2016, Transformation and Health Partnerships colleagues have worked intensively to develop a robust and credible plan for Leeds to close the three gaps. There is still a substantial amount of work to complete, which requires resource from across the partnership: namely to further scope, monitor and deliver the programmes, oversee the overall monitoring and reporting of the delivery of the Leeds plan, manage risks and issues, identify and track benefits and budgets and ultimately to ensure that the Leeds Plan is delivered to time, cost and quality. At the PEG meeting of 6<sup>th</sup> October 2016, it was agreed to jointly fund (across the statutory NHS organisations and LCC) a core team to do this, with LCC offering to be a substantive employer or contractor for resources where this best meets partnership needs as LSE CCG was no longer in the position to act as host.

3.1.2 There were originally four contractors who worked for the citywide health and care Transformation PMO who undertook specific roles and had a good understanding of

the system, the programme of work required to deliver the Leeds Plan as outlined above and had established good working relationships across the partnership. Three of these contractors have since left at the end of their contracts with their functions being taken on by the Health Partnerships Team. The programme lead for Procurement and Estates in particular has made significant progress to date and requires specific skills, experience and knowledge of major estates and procurement transformation programmes. All agency staff were recruited through the CCGs using the approved NMC NHS framework (meaning they are banded at NHS grade level).

- 3.1.3 The Estates and Procurement Programme Manager was employed via Practicus (an agency which specialises in interim NHS managers). Unfortunately there were no existing links in place between Comensura and Practicus to swiftly move them over and subsequently LCC came to the end of its framework contract with Comensura in December 2016 as set out in the report on agency worker contracts written by the Head of HR. Thus it has not been possible to transfer the Practicus agency worker to LCC under a contract framework.
- 3.1.4 Health and care colleagues are in the process of establishing fixed-term appointments for the posts required going forwards, which will be hosted by one of the statutory health organisations. The appointments are likely to initially be open to internal staff across the statutory health and care organisations to minimise any additional cost to the system as well as giving opportunities to internal staff across the partnership first. These fixed-term appointments are clearly therefore dependent upon the 'One Commissioner Voice' and 'System Integration' restructures.

### 3.2 *Consequences if the proposed action is not approved*

- 3.2.1 Should the waiver not be agreed there will be a significant loss of momentum in relation to the key enabling Estates and Procurement programmes; key pieces of work for the city and specifically in relation to closing the financial gap. There is simply not the resource nor the required skill and knowledge set within the Health Partnerships Team or the wider health and care system to pick up this piece of work should the existing agency resource no longer be available if there is no host organisation.
- 3.2.2 It has been agreed at PEG that LCC is to host any agency workers for the Leeds Plan and its programmes. To not approve the extension of the waiver request would undermine citywide health and care partnership working for which LCC takes a lead.

### 3.3 *Advertising*

- 3.3.1 Agency workers were appointed through standard recruitment processes via the existing Nursing and Midwifery Council NHS framework agreement. The fixed-term posts in development will firstly be advertised across the Leeds health and care partnership organisations, then go out to external recruitment if no suitable candidates can be appointed. This is in line with LCC's current recruitment practices.

## **4 Corporate considerations**

### **4.1 Consultation and engagement**

4.1.1 A paper setting out plans to further organise the health and care partnership in Leeds to develop and deliver the Leeds Plan was discussed and approved by PEG at their meeting of 6<sup>th</sup> October 2016. LCC's role in this was discussed with the Chief Executive of LCC and the Deputy Chief Executive, Strategy and Resources prior to the paper being finalised.

4.1.2 In order to begin to implement the recommendation, close engagement with LCC HR has been sought and HR is also involved in devising and recruiting to the new posts. Trade Unions have also been consulted on the proposals through a JCC committee meeting.

4.1.3 It is important to note that the waiver to allow the agency staff to work on the Procurement and Estates programme requested in this paper will have no direct impact on service users or the wider population of Leeds.

## **4.2 Equality and diversity / cohesion and integration**

4.2.1 Further consideration of implications for inclusion and diversity will be made as part of the recruitment of staff to the fixed-term posts and the Plan will be taken through an equality screening process.

## **4.3 Council policies and best council plan**

4.3.1 Developing and delivering a credible and robust Leeds Plan, together with the enabling Estates and Procurement work, will contribute towards achieving the ambition of being the Best City for Health and Wellbeing and to meeting the outcomes set out in the Leeds Health and Wellbeing Strategy.

## **4.4 Resources and value for money**

4.4.1 The agency contract will be extended for a further interim period of up to 6 months whilst the fixed-term posts are finalised and recruited to in an NHS organisation. It is not considered value for money to carry out a procurement exercise for this short period of time when the existing agency staff is knowledgeable of the requirements of the role and willing to continue to work on the Leeds Plan and the Estates and Procurement requirements.

4.4.2 Funding for this role will continue be met from the joint reserve created with health partners as outlined elsewhere in this report.

## **4.5 Legal implications, access to information and call-in**

4.5.1 The value of the individual order placed for the agency member of staff under this arrangement over the next 6 months will not exceed £100,000. The arrangement is on a short-term, interim basis and as such the decision is a Significant Operational Decision that is not eligible for call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

4.5.2 The Council does not currently have a framework contract in place for agency workers at present. A waiver report prepared by the Head of HR, has been approved by the Chief Officer of Human Resources which sets out the process for placing orders for agency workers immediately to ensure service delivery and it was agreed that such orders can be placed with any provider(s) by utilising CPR 7.1 (for contract values up to 10K) which allows officers to place orders directly with an organisation without seeking competition until a new framework contract is in place.

- 4.5.3 As a partnership resource hosted by LCC, it is important to note that the agency worker employed via Practicus was procured through the NMC NHS Framework Agreement.
- 4.5.4 Awarding the new contract direct to Practicus in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to contractors on other EU member states and, if it could, the opportunity should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance.
- 4.5.3 The Director of Adults and health has considered this and, due to the nature of the services being delivered, the relatively low contract value and the requirement to be physically located in Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states.
- 4.5.4 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration; however, such investigations are by their nature more subjective than legal proceedings.
- 4.5.5 Although there is no overriding legal obstacle preventing the process set out in this report being followed the above comments should be noted. In making a final decision, the Director of Adults and Health should be satisfied that the course of action proposed represents best value for money to both the Council and the wider health and care partnership.

## **4.6 Risk Management**

- 4.6.1 The main issues section of this report requires LCC to consider a number of risks to the successful delivery and development of the Leeds Plan if continuity of experienced, knowledgeable, senior staff is not maintained. This risk can be substantially mitigated by extending the contract for the existing Practicus agency worker to LCC to continue to lead on this key piece of work for health and care in the city.
- 4.6.2 Changes to tax liability concerning the employment of Personal Services Companies undertaking public sector work came in to force on the 1<sup>st</sup> April 2017. An appropriate assessment has been undertaken and that assessment identified that this worker sits outside of these regulations.

## **5 Conclusions**

- 5.1 The Leeds Plan is a significant piece of work for the city, which can make a real difference to delivering better quality of care and improving health outcomes for our citizens. Its enabling programmes, particularly Estates and Procurement, will also support the health and care system to achieve financial balance and become more sustainable.
- 5.2 Significant progress has been made to develop the Plan and its programmes over the past year by the agency workers hosted by LSE CCG and LCC's Health Partnerships Team. In order to sustain progress to develop and deliver the Plan, it is clear that continuity of staff that understand the system and nature of work required is vital.
- 5.3 With the One Commissioner Voice review of the current CCG arrangements in Leeds still ongoing, it is sensible that Leeds City Council holds the joint funding and extends the hosting of the agency worker contracted by Practicus for a further interim period to continue with the Procurement and Estates enabling programme of the Leeds Plan, as per the agreement at the PEG meeting of 6th October 2016, chaired by the Chief Executive.
- 5.4 In line with the recent waiver report approved by the Chief Officer of HR, agreeing this waiver to move the contract with Practicus from LSE to LCC will enable the city to maintain focus on delivering a credible and robust plan and ultimately support achievement of Leeds' bold ambition to be the Best City for Health and Wellbeing.

## **6 Recommendations**

- 6.1 The Director of Adults and Health is recommended to approve the waiver of the contracts procedure rule(s) no 8.1 and 8.2 intermediate value procurements and place an order for an agency worker directly with Practicus without seeking competition to cover an interim period of up to 6 months to work on the Procurement and Estates enabling programme of the Leeds Health and Care Plan, commencing on 24<sup>th</sup> August 2017, whilst the fixed-term posts to continue this programme of work are finalised and recruited to. This decision will be implemented with immediate effect by the Chief Officer Resources and Strategy. This will maintain continuity of the development and delivery of the Leeds Plan as agreed at the Leeds Health and Care Partnership Executive Group on 6th October 2016.

## **7 Background documents**

- 7.1 None<sup>1</sup>

---

<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.