

Delegated Decision Notice

This form is the written record of a key, significant operational or administrative decision taken by an officer.

Decision type	<input type="checkbox"/> Key Decision	<input checked="" type="checkbox"/> Significant Operational Decision	<input type="checkbox"/> Administrative Decision
Approximate value	<input type="checkbox"/> Below £500,000 <input type="checkbox"/> £500,000 to £1,000,000 <input type="checkbox"/> over £1,000,000	<input type="checkbox"/> below £25,000 <input type="checkbox"/> £25,000 to £100,000 <input checked="" type="checkbox"/> £100,000 to £500,000 <input type="checkbox"/> Over £500,000	<input type="checkbox"/> below £25,000 <input type="checkbox"/> £25,000 to £100,000
Director¹	Victoria Eaton, Director of Public Health		
Contact person:	Vineeta Sehmbi Vineeta.sehmbi@leeds.gov.uk		Telephone number: 0113 37 86056
Subject²:	Lateral Flow (Asymptomatic) Testing of Key Workers		
Decision details³:	<p>What decision has been taken? (Set out all necessary decisions to be taken by the decision taker including decisions in relation to exempt information, exemption from call in etc.)</p> <p><u>Context and background</u></p> <p>Initial plans for mass asymptomatic testing, targeted and at scale, were developed by Leeds City Council in December 2020 following announcement and communication by central government via the Department of Health and Social Care (DHSC). However, following the national lockdown imposed in January 2021, DHSC recommended that local asymptomatic testing should instead be targeted to critical key workers and cohorts of the workforce that are frontline and unable to work from home. Local councils were encouraged to develop plans and submit a proposal for key worker testing, setting out costs, arrangements, and key worker cohorts. DHSC stated that the testing programme could only run during a specific time frame until March 31st 2021; this meant that the development of local plans and discussions with partners had to occur at pace to ensure testing could be implemented for a 6-8 week period.</p>		

¹ Give title of Director with delegated responsibility for function to which decision relates.

² If the decision is key and has appeared on the list of forthcoming key decisions, the title of the decision should be the same as that used in the list

³ Simply refer to supporting report where used as these matters have been set out in detail.

Leeds proposal

The proposal in Leeds is to test approximately 3,500 key workers twice a week, from the following cohorts:

- Fire service/ West Yorkshire Police/ Transport
- 3rd sector
- Hostel and temporary accommodation staff
- Funeral directors
- Hotel staff
- Early years staff
- Taxi drivers
- Passenger transport
- Cleaning staff
- Waste management
- Children's homes

This amounts to 56,000 tests over the duration of an 8 week programme.

The three testing sites proposed across the city are:

1. Headingley Campus, Leeds Beckett University, LS6 3QS
2. City Campus, Leeds Beckett University, LS1 3HE
3. The Old Fire Station, Gipton, LS9 6NL

The two Leeds Beckett University sites are already established, with existing infrastructure and workforce arrangements in place to undertake student and staff lateral flow testing. Following discussion with university colleagues, utilising the space capacity at these sites (due to a decrease in student testing demand following the national lockdown) was agreed to be a prudent approach to developing the testing programme. The third site at Gipton was agreed to be ideally located to capture the key workers transiting in/out of Leeds, in particular third sector workers. Unlike the university sites, the Old Fire Station will require setting-up as a test centre in the first instance, which includes establishing the appropriate infrastructure. This site will be staffed by Leeds City Council workforce identified within the human resources staffing pool.

Multiple site visits have been made to the three sites to ensure they are fit for purpose, with close working alongside partners from Leeds Beckett University and the Old Fire Station at Gipton. Health and safety risk assessments are also taking place. The council is also adhering to the DHSC-issued Clinical Standard Operating Procedure (SOP) for the three sites, which has been tailored to ensure it is fit for purpose locally.

The ambition of the testing programme is to expand the scale through a phased approach, with the aim of offering all key workers across Leeds the opportunity to engage. Through collaboration with university and other third sector partners, there are the potential numbers and available infrastructure to develop the plan to increase the number of key workers, and longer-term the community, taking part in regular lateral flow testing.

Estimated costs

For the 8 week programme:

Gipton Old Fire Station – total estimated grant of £18,967

- Gipton Old Fire Station site hire: £12,600 (payable to Gipton Fire Station Community Enterprise).
- Consumables including cleaning materials: £1,750.
- Digital and technology: £1,757.
- Misc. costs including petty cash and additional PPE: £1,750.
- Clinical waste: £1,110.
- Staff for the Gipton Old Fire Station site have been recruited from the Leeds City Council human resources pool and incur no additional costs.

Leeds Beckett University two sites – total estimated grant of £140,554

Headingley Campus, Leeds Beckett University, LS6 3QS

City Campus, Leeds Beckett University, LS1 3HE

To include site hire, workforce, additional materials and infrastructure:

- 2000 tests at Headingley campus costing £11,054.75 per week
- 600 tests at City Centre campus costing £6,514.50 per week
- £17,569.25 per week

TOTAL £159,521

DHSC have agreed to directly fund the tests, logistics, PPE and workforce training. There is a 3 point payment system for reimbursing local councils, based on the estimated costs as outlined in the proposal. The current cost estimates are well within the DHSC capped funding arrangement.

Risk and assurances

A grant agreement between Leeds City Council and Leeds Beckett University will be finalised and signed off.

DHSC Schedule 3 - Costs Recovery Guidance

In accordance with the prospectus issued to Local Authorities wishing to participate in the community testing programme, DHSC has agreed to provide certain funding for Testing by the Authority in accordance with its Proposal. Such funding by DHSC will be made by way of grants under section 31 of the Local Government Act 2003.

DHSC has set out below how it intends that funding will be provided to the Authority. However, on the basis that this funding is by way of grant under section 31, DHSC does intend that the funding is to be ring-fenced and accordingly the terms set out below are not legally binding.

DHSC will make available up to a total of £14 per test carried out under this agreement to reimburse the reasonable and demonstrable costs (showing value for money) incurred by the Authority in performing the Testing under this agreement, subject to the allocation of a proportion of this sum to DHSC to cover the provision of the DHSC Supplies by DHSC (excluding the LFD test kits, which are supplied to the Authority free of charge for these purposes).

Any such costs must be spent in accordance with the provisions of this agreement and allocated against a category of goods or services in the Bill of Materials in Schedule 2.

Payment will be made to the Authority by DHSC as follows:

1. 15% of £14 per test (ie £2.10 per test) for the number of tests planned in the Proposal – payable on commencement of this agreement.
2. 30% of £14 per test (ie £4.20 per test) for the number of tests planned in the Proposal – payable approximately halfway between the commencement of Testing under this agreement and the planned date for completing Testing

under this agreement as set out in the Proposal.

3. A “true up” payment shall be made within a reasonable time following the end of Testing under this agreement and of DHSC’s review of the Authority’s evidence (which must show the reasonable and demonstrable costs incurred by the Authority).

The true up payment shall be either a further payment by DHSC to the Authority or a repayment by the Authority to the DHSC, as required, such that the total sum that the Authority has received under this Schedule 3 following the true up payment is equal to:

$$(A \times B) - C$$

Where:

A = The actual number of tests performed by the Authority under this agreement

B = The lower of (i) £14 and (ii) the costs which the Authority is able to demonstrate that it has incurred under and in accordance with this agreement per test performed by the Authority

C = The total value of DHSC Supplies less the cost of the LFD test kits

For the avoidance of doubt, in the event that $(A \times B) - C$ is less than zero, it shall be deemed to be zero for the purposes of calculating the true up payment.

Notwithstanding the above, Local Authorities have received a letter from Lord Bethel dated 24 December 2020 in which Lord Bethel assures Local Authorities that costs which “have been incurred reasonably and with best endeavours to keep the costs as low as possible, up to the limit of £14 x number of tests planned (less the value of goods supplied by DHSC Commercial)” shall be recoverable.

Lord Bethel’s assurance is subject to a Local Authority ensuring:

- there is evidence that they have been incurred by it in connection with the Community testing. It will need to maintain reliable, accessible and up to date accounting records with an adequate audit trail for all expenditure funded by grant monies; and
- it has not deliberately incurred liabilities for eligible expenditure before there was an operational need to do so.

Local Authorities should seek to mitigate costs incurred in relation to Testing where possible.

DHSC have reassured local councils through a Letter of Comfort from the Secretary of State for Health and Social Care, recognising that the scale, speed and scope of the programme would require taking on responsibilities outside of usual activities. This letter provides reassurance that local councils will not be

asked to bear an unfair proportion of the risk associated with setting up a local testing programme at pace. DHSC agreed to take responsibility for the costs of any clinical negligence and/or product liability claims by members of the public against those delivering testing in line with the terms of the collaboration agreement.

As the Council would be entering into grant arrangements with the above named organisations, the Council will have no contractual control over enforcement of the terms. The only sanction available with grant payments is for the Council to claw-back grant monies unspent. However, this is balanced by the opportunity for creative approaches to be developed making use of the flexibility of the grant; and for added value to be obtained.

There is a risk of challenge that the grant payment is not a grant. Sometimes there is a fine line between a grant (which is not caught by the procurement rules) and a contract for services (which is caught by the procurement rules). Although no longer directly applicable due to the UK's departure from the European Union the preamble to EU Procurement Directive 2014/24/EU (from which the Public Contracts Regulations 2015 were transposed into English law) is persuasive and the directive makes it clear at paragraph (4) that "the mere financing, in particular through grants, of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall within the scope of the public procurement rules".

Funding from which any grant payment is made must be designated as "grant" money. If the Council wish to make a grant, the money must be in the "grant" block. If it is not, it can normally be moved from other blocks in the Council budget into the grant block.

Awarding the grants directly to the named organisation in this way could leave the Council open to a potential claim from other organisations that were not given the opportunity to be involved in this programme and to whom this grant could be of interest, that it has not been wholly transparent. However the risk of this would appear to be low.

As this is a grant it is not subject to the council's Contracts Procedure Rules or within the Public Contracts Regulations 2015 but good practice and transparency will be observed throughout.


There is no overriding legal obstacle preventing the award of the grants and the contents of this report should be noted. In making their final decision, the Director of Public Health should be satisfied that the course of action chosen represents best value for the Council.

	<p>A brief statement of the reasons for the decision (Include any significant financial, procurement, legal or equalities implications, having consulted with Finance, PACS, Legal, HR and Equality colleagues as appropriate)</p>
	<p>Brief details of any alternative options considered and rejected by the decision maker at the time of making the decision</p>
Affected wards:	Citywide
Details of consultation undertaken⁴:	Executive Member for Public Health – Cllr Arif – 25-02-2021
	Ward Councillors
	Others
Implementation	<p>Officer accountable, and proposed timescales for implementation</p> <p>The three sites will be prepared to go live the week beginning 15th February 2020.</p>
List of Forthcoming Key Decisions⁵	Date Added to List:-
	If Special Urgency or General Exception a brief statement of the reason why it is impracticable to delay the decision
	<p>If Special Urgency Relevant Scrutiny Chair(s) approval</p> <p>Signature _____ Date _____</p>
Publication of report⁶	If not published for 5 clear working days prior to decision being taken the reason why not possible:

⁴ Include details of any interest disclosed by an elected Member on consultation and the date of any relevant dispensation given.

⁵ See Executive and Decision Making Procedure Rule 2.4 - 2.6. Complete this section for key decisions only

⁶ See Executive and Decision Making Procedure Rule 3.1. Complete this section for key decisions only

	If published late relevant Executive member's approval	
	Signature	Date
Call In	Is the decision available ⁷ for call-in?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If exempt from call-in , the reason why call-in would prejudice the interests of the council or the public:	
Approval of Decision	Authorised decision maker ⁸ Victoria Eaton Director of Public Health	
	Signature 	Date 25/02/2021

⁷ See Executive and Decision Making Procedure Rule 5.1. Significant operational decisions taken by officers are never available for call in. Key decisions are always available for call in unless they have been exempted from call in under rule 5.1.3.

⁸ Give the post title and name of the officer with appropriate delegated authority to take the decision.