

	Officer Key Decision
	Report from the Corporate Director, Law and Governance.
	Lead Member – Deputy Leader & Cabinet Member for Finance and Resources
Authority to extend call off contract for the provision of Brent Agency Temporary Staff managed service with Comensura Ltd	
Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	N/A
Background Papers:	Authority to award contract for the managed service for temporary agency staff.
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Andrew Baxter - Senior Recruitment and Resourcing Manager Tel: 07776 664473 Email: Andrew.baxter@brent.gov.uk

1.0 Executive Summary

- 1.1 This report requests authority to extend and vary a call-off contract in respect the supply for temporary agency workers by Comensura Limited, as required by Contract Standing Order 112. The report summarises the reasons for the request to extend and the duration of the extension and for the request to vary.

2.0 Recommendation(s)

That the Corporate Director of Law and Governance in consultation with the Deputy Leader & Cabinet member for Finance and Resources:

- 2.1 Approves the extension of the contract for the provision of Brent agency temporary staff managed service with Comensura Limited for a period of 12 months from 05 February 2025.
- 2.2 Approves the variation of the contract to include additional terms and conditions in line with the new statutory guidance for Local Authorities on the use of agency child and family social workers from the Department for Education dated September 2024.

3.0 Detail

3.1 Contribution to Borough Plan Priorities & Strategic Context

- 3.1.1 It is crucial the Council has access to a reliable and good quality agency staff workforce. Historically there has been an overdependency on agency workers, however with the costs associated and pressures on budgets, this is not sustainable in the long term. There has been a recent corporate drive across the council to reduce agency spend, with some positive results; Between March to September 2024, agency workers reduced from 330 to 307 with a £440,000 monthly spend reduction.
- 3.1.2 The proposed contract variation and extension will support the Brent Borough Plan 2023 – 2027 priorities 'Prosperity and Stability in Brent' and 'Thriving Communities' with a focus on achieving the desired outcomes, easing the Cost-of-Living Crisis' for our residents, Brent for Business and ensuring a Representative Workforce.

3.2 Background

- 3.2.1 The Council entered into a call-off contract via the Yorkshire Purchasing Organisation (YPO) 942 Managing Temporary and Permanent Recruitment Framework Agreement for the provision of Brent agency temporary staff managed services with Comensura Limited on 05 February 2022 (the "Contract").
- 3.2.2 The Contract contains provision permitting extension of the Contract by 12 months.

3.3 Reasons for proposed extension

- 3.3.1 Officers recommend the extension of the contract by 12 months as utilising the extension allows the Council to secure better rates compared to sourcing temporary agency staff directly. Benefits of the extension will include cost savings and avoiding costs of going to procure a new contract, in addition to saving officer time by exercising the extension option. The current contract expires on 04 February 2025.

- 3.3.2 Extending the contract will allow the Council necessary time to properly assess future temporary agency staff needs in alignment with the Council's strategic priorities. It will also allow efforts to be invested earlier in the procurement process of a new contract, which will benefit the contract that is procured from 04 February 2026.
- 3.3.3 The HR&OD service recently implemented a new resourcing model, which includes newly created positions of Senior Recruitment and Resourcing Manager and two Resourcing Business Partners. Extending the contract will allow the new resourcing model to become properly embedded. The new model and additional resource will enable the Council's Recruitment and Resourcing service to provide enhanced support to hiring managers who have hard to fill roles and complex local resourcing challenges. It also provides the strategic and capability capacity to strengthen agency contract management overall, carry out operational effectiveness reviews, increase outputs and support the ongoing drive to reduce agency costs.
- 3.3.4 Significant savings have been made collectively over the contract term and by utilising the 12-month extension, this allows for time to start the process for a new procurement in 2026. These savings are made from the placement of long-term workers and supports an ongoing initiative to reduce agency spend through permanent employment conversions. Total savings of £57,000 is forecasted to 4 February 2025. Recent introduction of a tenure savings mechanism will continue to yield cashable rebates for the Council. Utilising the one-year extension available under the existing contract will enable the Council to closely monitor the impact of the new tenure savings approach and ongoing initiatives to reduce agency. There is a concerted effort to decrease reliance on agency staff, supported by new HR&OD posts aimed at further reducing overall agency expenditure. These posts were appointed to across August and September 2024 (one remaining Resourcing Business Partner vacancy is currently being advertised).

3.5 Reasons for proposed variation

- 3.5.1 Officers also recommend a variation to the contract to allow for the contract to include additional terms and conditions in line with the new statutory guidance for Local Authorities on the use of agency child and family social workers from the Department for Education dated September 2024. The Department for Education has released statutory guidance for Local Authorities on the use of agency child and family social workers. The guidance provides that from 31 October 2024, Local Authorities should comply with all agency rules for all new agency child and family social work assignments across all contracts to supply agency child and family social workers, except where existing contractual obligations prevent implementation of particular rules or parts of a rule.

3.5.2 Under the new Statutory Guidance released, Local Authorities are expected to ensure all contracts to supply agency child and family social workers via a project team or other packaged model comply with the following requirements:

- prior identification and local authority approval of all constituent child and family social workers
- disaggregation of costs related to the provision of each child and family social worker and any other service provide.
- governance arrangements that allow the local authority to maintain complete oversight, control, and management of social work practice delivered via the project team or other packaged model.
- ensure all agency assignments have a four-week notice period or align the length of assignment notice periods with that of the local authority's contractual notice period for substantive staff in the same or an equivalent job role where that is less than four weeks.
- not engage agency child and family social workers for a minimum period of three months after the worker has left a substantive role in their children's services department or that of a local authority within the same region.
- not engage agency child and family social workers with less than three years post qualifying experience (PQE) in direct employment of an English local authority practising in a child and family context while registered as a social worker with a UK regulator.
- ensure that they provide a detailed practice-based reference using the agency rules standard reference template for all agency child and family social workers on assignment irrespective of length of assignment.
- require at least two detailed practice-based references for all agency child and family social workers before offering an assignment (the agency rules standard reference template should be used for references dated on or after this guidance has taken effect)

3.5.3 The contract expressly provides for a 12-month extension in section 1.2 of the Order Form and clauses 2 and 3 of the contract. The contract also provides for a variation in accordance with clause 37 of the Contract. As referred to in paragraph 3.2.1 - 3.5.2 above, Officers have been satisfied with the significant savings made collectively over the contract term and are satisfied that a variation and extension to the contract is required to incorporate the new statutory guidance on the use of agency child and family social workers from the Department for Education. Officers therefore wish to vary and extend the contract by 12 months as provided for in the contract.

3.5.4 Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Corporate Directors and Directors can extend and vary

contracts and agreements without the need for Cabinet approval, provided that:

- (a) the extension, variation, renegotiation, novation, or assignment would not be in breach of Procurement Legislation.
- (b) the extension, variation, renegotiation, novation, or assignment does not substantially alter the terms and conditions of the contract.
- (c) there is sufficient existing budgetary provision.
- (d) provided that in the case of any variation (other than an extension):
 - (i) the total value of the variation is less than £1 million; and
 - (ii) if the total value of the variation is more than £50k it is not more than 50% of the original contract value (calculated over the life of the contract including any extensions or possible extensions and adjusted in accordance with any price review mechanism provided for in the contract).
- (e) if the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract:
 - (i) in the case of any contract, agreement, deed or other transaction with a life of not more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of six months; or
 - (ii) in the case of any contract, agreement, deed or other transaction with a life of more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of one year.
- (f) The relevant cabinet member shall be consulted prior to a decision within (d) (i) or (ii) or (e) (i) or (ii) above and may request that the decision instead be referred to them.

3.5.5 Subject to consultation with the relevant Cabinet Member, it is considered that the Corporate Director, Law & Governance has delegated authority to agree the extension and variation as, addressing the points detailed in paragraph 3.5.4:

- (a) The proposed extension of 12 months was provided for when the contract was let and is thus permitted in accordance with Regulation 72(1)(a) of the Public Contracts Regulations 2015. The proposed variation is not considered to be in breach of the

Procurement Legislation, being permitted pursuant to, inter alia, Regulation 72(1)(c). There are also other grounds under Regulation 72 that could be relied upon to justify the variation.

- (b) The proposed extension is in accordance with the Contract provisions and the variation and extension does not substantially alter the terms and conditions of the Contract.
- (c) There is sufficient budgetary provision provided for the extension and variation – see Section 5 below for further details.
- (d) The total value of the variation is less than £1m and does not exceed £50k.
- (e) The extension does not go beyond the period of extension provided for in the Contract and is in accordance with the extension provisions in the Contract and therefore sub-paragraph (e)(i) and (ii) do not apply.
- (e) The relevant Cabinet Member shall be consulted as the decision falls within d(i) and (ii) and may request that the decision instead be referred to them

4.0 Stakeholder and ward member consultation and engagement

- 4.1 As this is an extension of the contract provided for when the Contract was let, and as the proposed variation is a result of new statutory guidance released from the Department for Education, there has been no consultation with the Ward Member or Stakeholders.

5.0 Financial Considerations

- 5.1 The cost of the contract will be met from existing service budgets and is dependent on the overall use of agency staff. Each individual assignment is subject to an internal budget authorisation before any spend is committed under the contract. In general, the Council does not budget specifically for agency staffing costs since the cost is usually funded through vacancies in staffing budgets.
- 5.2 Total spend through the contract for the one year extension period is expected to be approximately £30m (based on spend in 2024/25). This includes the gross amount paid to the agency worker, the fees paid to the employing agency and the fee paid to Comensura for their service.
- 5.3 The proposed variation as a result of new statutory guidance released from the Department for Education is not considered to having any financial implications for the Contract.

6.0 Legal Considerations

- 6.1 Officers recommend the extension and variation of the contract for the provision of Brent agency temporary staff managed services with Comensura Limited by 12 months from 5 February 2025.
- 6.2 The value of the original contract is such that it is subject to full application of the Public Contract Regulation 2015 (PCR 2015).
- 6.3 A contract may only be modified (to include an extension) without a new procurement procedure where this is done in accordance with Regulation 72 of the PCR 2015. Regulation 72 sets out various circumstances in which it is possible to vary and extend a contract.
- 6.4 With regard to the contract extension, the contract contains express provision allowing for the extension as recommended and as such extension is permitted in accordance with Regulation 72(1)(a) of the PCR 2015.
- 6.5 With regard to the contract variation, Regulation 72 (1)(c) of the PCR 2015 states that a contract can be modified where all of the following conditions are fulfilled:
- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - (ii) the modification does not alter the overall nature of the contract;
 - (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- 6.6 Given that the proposed variation is required due to new statutory guidance released which the Council could not have foreseen and given that the modification does not alter the overall nature of the contract and does not include any increase in price, it is considered that the Council can rely on Regulation 72 (1) (c) for the variation of the contract. It should be noted that potentially there are also other grounds under Regulation 72 that could be relied upon to justify the variation.
- 6.7 The Corporate Director, Law & Governance is authorised pursuant to Paragraph 9.5 of Part 3 of the Constitution to vary and extend contracts subject to the conditions set out in paragraph 3.5.4 above. As set out in paragraph 3.5.5 above, none of these conditions preclude the Corporate Director, Law & Governance agreeing the recommended extension and variation.

6.8 In accordance with Contract Standing Order 112, the Corporate Director, Law & Governance should only agree to extend the Contract if the extension will achieve best value and is reasonable in all the circumstances. The Corporate Director is referred to paragraphs 3.3.1-3.3.4 of this report for further information.

7.0 Equity, Diversity & Inclusion (EDI) Considerations

7.1 Pursuant to s149 Equality Act 2010 (the “Public Sector Equality Duty”), the Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

7.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

7.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.

7.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.

7.6 It is not considered that there are any health equalities implications arising from the recommendations contained in this report.

8.0 Climate Change and Environmental Considerations

8.1 Given the nature of the services, Officers do not envisage that there will be any direct Climate Change and Environmental considerations

9.0 Human Resources/Property Implications (if appropriate)

9.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from extending the contract.

9.2 There are no property/accommodation implications to note.

10.0 Communication Considerations

10.1 Given the nature of the services, Officers do not consider there are any communication considerations.

Related document(s) for reference:

Authority to award contract for the managed service for temporary agency staff.

Report sign off:

Debra Norman

Corporate Director, Law &
Governance