

Decision under Delegated Powers

Officer Making the Decision

Chief Executive

Recommendation

That the appended Section 113 agreement be made with Leicestershire County Council (LCC).

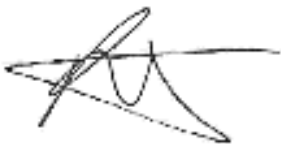
Reason

To put certain Officers at the disposal of LCC to carry out functions under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020, as set out in the agreement.

Authority for Decision

The Chief Executive (as head of paid service) has delegated authority to make agreements with other local authorities for the placing of staff at the disposal of those authorities.

Decision and Date



Approved 25th September 2020

Background

District Councils¹ and County Councils² have responsibilities in relation to public health issues in their respective areas.

The Parties (Charnwood Borough Council and LCC) agree that the transmission of Covid 19 represents a significant threat to the health and economic wellbeing of the peoples served by the Parties.

Accordingly, the Parties wish to co-operate in relation to the implementation of measures intended to limit the transmission of Covid 19 in the Charnwood Borough Council Area.

¹ See Section 1(a) of the Public Health (Control of Disease) Act 1984

² E.g. Section 12 of the Health and Social Care Act 2012

The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 were brought into force to empower local authorities to implement measures to combat Covid 19 in their respective areas.

Those regulations entitled local authorities to impose restrictions and prohibitions on premises, places and events in their areas.

LCC recognises that the enforcement of the said regulations would achieve greater effectiveness if the Council could secure assistance from the Environmental Health Officers and Technical Officers employed by Charnwood Borough Council.

In appropriate circumstances, the said regulations enable County Councils to direct District Councils to exercise their functions in specified ways in support of the purposes underpinning the regulations.

However, the Parties are agreeable to entering into a contract, pursuant to the terms of Section 113 of the Local Government Act 1972, which will enable LCC to secure support and assistance from the Borough Council.

The Borough Council agrees, subject to the terms of this Agreement, to put certain Officers at the disposal of LCC to carry out the Services.

HR Implications

HR Advisor: Anna Cairns (22/9/20)

Summary of Comments from HR: Whilst this is not a HR related matter, once finalised please ensure these changes are clearly communicated with affected employee.

HR seen recommendations (both draft and final, if amended): Y

Financial Implications

As set out in the agreement.

Risk Management

No specific risks have been identified with this report – LCC have agreed an indemnity for Borough officers while undertaking the relevant duties.

Key Decision: No

THIS AGREEMENT is made this day of September 2020

BETWEEN:

- (1) CHARNWOOD BOROUGH COUNCIL of Southfield Road, Loughborough, LE11 2TX (hereinafter “the District Council”); and
- (2) LEICESTERSHIRE COUNTY COUNCIL of County Hall Glenfield Leicester LE3 8RA (hereinafter “LCC”).

Each a “Party” and collectively the “Parties”.

Recitals

- A. *District Councils³ and County Councils⁴ have responsibilities in relation to public health issues in their respective areas.*
- B. *The Parties agree that the transmission of Covid 19 represents a significant threat to the health and economic wellbeing of the peoples served by the Parties.*
- C. *Accordingly, the Parties wish to co-operate in relation to the implementation of measures intended to limit the transmission of Covid 19 in the Charnwood Borough Council’ area.*
- D. .
- E. *The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 were brought into force to empower local authorities to implement measures to combat Covid 19 in their respective areas. Those regulations entitled local authorities to impose restrictions and prohibitions on premises, places and events in their areas, and impose fines on individuals.*

³ See Section 1(a) of the Public Health (Control of Disease) Act 1984

⁴ E.g. Section 12 of the Health and Social Care Act 2012

- F. The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 were brought into force to identify potential positive cases of coronavirus quickly and help to break potential chains of transmission. This instrument requires designated venues to collect certain contact details mainly from customers, visitors and staff for 21 days, and share it with NHS Test and Trace or local public health officials, if requested.

- G. *LCC recognises that the enforcement of the aforementioned regulations would achieve greater effectiveness if the Council could secure assistance from the Environmental Health Officers and Technical Officers employed by the District Council.*

- H. *In appropriate circumstances, the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 enable County Councils to direct District Councils to exercise their powers in specified ways in support of the purposes underpinning the regulations.*

- I. *However, the Parties are agreeable to entering into a contract, pursuant to the terms of Section 113 of the Local Government Act 1972, which will enable LCC to secure support and assistance from the District Council.*

- J. *The District Council agrees, subject to the terms of this agreement, to put certain Officers at the disposal of LCC to deliver certain services.*

OPERATIVE PROVISIONS

IT IS AGREED as follows: -

1. Definitions and Interpretation

In this Agreement the following expressions shall have the meanings set out opposite:-

“Collection of Contact Details Regulations” means the Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020.

“Commencement date” shall mean the date this Agreement is exchanged between the Parties;

“Confidential Information” Shall mean:-

- (a) the financial provisions of this Agreement;
- (b) The personal details of any staff member identified within this Agreement (*albeit either Party shall be entitled to confirm to the members of the public that an Officer is a designated officer for the purposes of this Agreement*);
- (c) Any intelligence shared between the Parties pursuant to the provisions of this Agreement;
- (d) Any personal information (including special category information) acquired or held pursuant to the provisions of this Agreement.

“LCC Nominated Officers” shall mean any officer employed by LCC who is authorised to give instructions to the Officers employed by the District Council for the purposes only of this Agreement. Without further designation the LCC Nominated Officers shall include:-

- (a) The Director of Law and Governance;
- (b) The Head of Regulatory Services;
- (c) The Director of Public Health;
- (d) A Team Leader in Trading Standards.

“No. 3 Regulations” means The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 as amended⁵

⁵ Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 3) Regulations 2020/863

“Officers”	shall mean those officers employed by the District Council as set out at Schedule 2. Likewise, the expression “Officer” shall mean any individual named in Schedule 2.
“The Regulations”	The Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020 as amended ⁶ and The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020.
“Services”	shall mean the services to be provided by the District Council as described in Schedule 1.
“Specific Costs”	Shall mean the total of the costs described in Schedule 3 of this Agreement.
“Termination Date”	shall mean 31 March 2021 unless the term of this Agreement is extended by a subsequent agreement or unless this Agreement is determined at an earlier date.

2. General Provisions

- 2.1. Words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations.
- 2.2. Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time

⁶ Health Protection (Coronavirus, Restrictions) (No. 2) (England) (Amendment) (No. 3) Regulations 2020/863

amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions.

- 2.3. References to a Clause or a Schedule shall be deemed to be references to a clause or a schedule to this Agreement and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears.
- 2.4. In this Agreement clause headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

3. Legal Context

- 3.1 This Agreement is made under the provisions of section 113 of the Local Government Act 1972 and section 1(1)(b) of the Local Authorities (Goods and Services) Act 1970 together with all other enabling powers.
- 3.2 This Agreement is not intended to prejudice LCC's entitlement to issue directions under *regulation 17 of the No. 3 Regulations in appropriate circumstances*.

4. Term

- 4.1 The operative provisions of this Agreement shall commence on the date hereof and they will cease on the Termination Date unless this Agreement has been determined earlier or it has been extended.

5. Employment Status

- 5.1 The Officers shall, at all times, remain employees of the District Council and they shall continue to be employed on the District Council's terms and conditions.

5.2 LCC hereby designates each of the Officers named in Schedule 2 as a “local authority designated officer” for the purposes of Regulation 12(9)(b) of the No. 3 Regulations. LCC further designates each of the Officers named in Schedule 2 as a “designated officer” for the purposes of Regulation 18(3)(b) of the Collection of Contact Details Regulations. These designations are intended to run concurrently with the term of this Agreement and shall cease upon the termination of this Agreement.

5.3 The District Council shall communicate the aforesaid designation to the Officers and advise LCC if any of the Officers decline to accept the designation.

6. Duties

6.1 The District Council shall supply LCC with the Services of the Officers for the purpose of assisting in the exercise of LCC's obligations under the Regulations. The Services of the Officers are as described in Schedule 1.

6.2 *The District Council shall not be obliged under this Agreement to provide Agency staff in the case of any absence of any of the Officers.*

6.2 LCC Nominated Officers shall be entitled to provide instructions to the Officers in connection with the provision of the Services described in Schedule 1.

6.4 The District Council shall ensure that the Officers provided and named at Schedule 2 shall perform their duties with reasonable skill and care.

7. Contribution towards Costs.

7.1 In consideration of the District Council's promises herein, LCC agrees to pay the District Council the Specific Costs as detailed in Schedule 3.

7.2 The District Council shall invoice LCC on a monthly basis. Unless an invoice is disputed, LCC shall settle the costs set out in the invoice within 30 days.

7.3 The District Council shall maintain records of the time spent by its officers in connection with their duties under this Agreement. The District Council shall disclose copies of any records within seven days of any request by LCC.

7.3 In the event of any dispute over the recovery of any of the Specific Costs, the Parties shall nominate officers to seek to agree a resolution of the costs involved. The nominated officers shall negotiate in good faith to resolve any such dispute.

8. Indemnity

8.1 LCC shall indemnify the District Council for all direct losses, costs and professional fees in the event that the Officer's take any legal action (including in the Employment Tribunal) against the District Council as his employer, in connection to his/her carrying out the Services in Schedule 1 as if the Officer had been employed by LCC.

9. Review

9.1 The provision of this Agreement shall cease on the Termination Date unless further services are required and agreed in writing between officers of the District Council and LCC.

9.2 At all other times should either Party have any concerns regarding the provision of the Services then that Party shall notify the other to arrange a meeting no less than 14 days after such notification.

9.3 If any concern relates to the conduct of the Officer's, either Party may suspend the Agreement in writing and arrange a meeting to discuss how any concerns are to be resolved. Such a meeting shall take place within 5 working days of notification by the concerned Party to the other.

10. Termination

10.1 LCC may give notice to terminate this Agreement forthwith if:

- 10.1.1 The District Council is unable to provide the Services due to any Officer's immediate suspension or dismissal from the District Council or the Officer's long-term illness or death.
 - 10.1.2 The conduct of the Officer is such that, in the opinion of LCC, is likely to cause damage to that Council's reputation.
 - 10.1.3 There is a material breach of the obligations contained in this Agreement by the District Council that, in the opinion of LCC, is incapable of being remedied.
- 10.2 The District Council may give notice to terminate this Agreement forthwith should there be a material breach of the obligations contained in this Agreement by LCC that, in the opinion of the District Council, is incapable of being remedied.

11. Confidentiality

- 11.1. Each Party undertakes to the other that neither it, nor the Officers or the LCC Nominated Officers, or any other employees will at any time after the date of this Agreement (save as required by law or by order of a Court of competent jurisdiction or any other relevant regulatory authority or as expressly permitted to be disclosed) use any of the Confidential Information (other than for the purposes of this Agreement) or disclose or divulge any Confidential Information to any person and that it shall use its best endeavours to prevent such use or publication or disclosure of any of the Confidential Information by any other person.
- 11.2. Except to the extent set out in this clause 11.2, or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
 - 11.2.1. treat the other Party's' Confidential Information as confidential; and
 - 11.2.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

11.3. Clause 11.2 shall not apply to the extent that:

11.3.1. such information was in the possession of the Party making the disclosure, without obligation of confidentiality, prior to its disclosure;

11.3.2. such information was obtained from a third Party without obligation of confidentiality;

11.3.3. such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or

11.3.4. such information was independently developed without access to the other Council's Confidential Information.

11.4. Each Party may only disclose Confidential Information to its employees who are directly involved in the provision of this Agreement who need to know the information for the purposes of the Agreement. Each Party shall ensure that such employees are aware of, and comply with, these confidentiality obligations.

11.5. The Officers will at all times comply with the District Council's policies and procedures as they relate to the Data Protection Act 2018, (or any subsequent statute), the General Data Protection Regulation, Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

12. Force Majeure

12.1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such a delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected Party shall be entitled to a reasonable extension of the time for performing such obligations.

12.2. If the period of delay or non-performance continues for two months, the Party not affected may terminate this Agreement by giving 14 days written notice to the affected Party.

13. Assignment

13.1. This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

14. Consequences of Termination

14.1. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15. Entire Agreement

15.1. This Agreement constitutes the entire agreement between the Parties in respect of the matters it deals with and it supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

16. Costs

16.1. Except as expressly provided in this Agreement, each Party shall pay its own costs legal or otherwise incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

17. Variation

17.1. The Parties may, by further written agreement, amend the expression “Regulations” within this Agreement or further amend the Agreement in order to include further secondary legislation which is related to the control of Coronavirus in the District Council’s area.

17.2 Such agreements may have the effect of bringing such further secondary legislation (including secondary legislation not yet in force) within the scope of this Agreement.

17.3 If the Parties elect to conclude a further Agreement as aforesaid, it shall be sufficient for the terms of that agreement to be evidenced by an exchange of emails between serving officers in the District Council and LCC. All other terms of this Agreement shall apply with full force and effect.

18. Waiver

18.1. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights And Remedies

19.1. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Mediation

20.1. If any dispute arises in connection with this Agreement, the Parties agree to enter into mediation to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Party to

the dispute referring the dispute to mediation. A copy of the referral should be sent to CEDR.

- 20.2. The mediation will start not later than 28 days after the date of the ADR notice. The commencement of mediation will not prevent the Parties commencing or continuing court proceedings.

21. Third Party Rights

- 21.1. Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

22. Governing Law

- 22.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

23. Jurisdiction

- 23.1. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

Execution

- 24.1 The signatories to this Agreement warrant that they are authorised to represent the Parties on whose behalf they sign.
- 24.2 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. For the purposes of completion, signatures by the Parties' legal advisers shall be binding.
- 24.3 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without

prejudice to the validity of the agreement thus made, each Party shall provide the others with the original of such counterpart within seven days of completion.

24.4 No counterpart shall be effective until each Party has executed at least one counterpart.

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of CHARNWOOD BOROUGH
COUNCIL Was hereby affixed in the presence of:

Authorised Officer

The Common Seal of
LEICESTERSHIRE COUNTY COUNCIL
Was hereby affixed in the presence of:

Authorised Officer

SCHEDULE 1
SERVICES REQUIRED

Undertaking the activities of a local authority designated officer for the purposes of the Regulations within the District Council's local area.

Without prejudice to the generality of the foregoing, the Officers shall, if requested by LCC Nominated Officers, provide the following services in connection with the enforcement of the Regulations in the District Council 's local area:-

- (1) Identifying commercial premises, public places or public events which raise concerns in relation to:-
 - a. the congregation of groups of people and / or poor social distancing;
 - b. the implementation of adequate measures to control the transmission of Covid 19;
- (2) Undertaking planned monitoring visits in relation to premises, places and events in the District Council 's local area which may include weekends;
- (3) Making copies of test and trace records in connection with premises designated under "Collection of Contact Details Regulations where compliance with legal requirements is of particular concern;
- (4) So far as it is within their expertise, providing basic advice to the operators of businesses at premises, places and events on suitable measures likely to reduce the risks of transmission of Covid 19;
- (5) Explaining LCC's policies on enforcement to the operators of premises, places or events, provided always that the said policies have themselves been explained to the Officers.
- (6) Reporting to LCC Officers on their findings following monitoring visits;
- (7) If requested, attending meetings with LCC Officers for the purposes of receiving training;

- (8) Disclosing information or evidence to LCC Officers which is material to the consideration of the imposition, renewal, variation or removal of directions pursuant to the Regulations;
- (9) Attending and participating in strategy meetings with LCC officers and or with other agencies (*typically by phone or video-conferencing*);
- (10) Serving notices, directions or correspondence on behalf of LCC in connection with the Regulations;
- (11) If appropriate, issuing fixed penalty notices pursuant to the Regulations. In considering whether to issue a fixed penalty notice, District Council officers shall have regard to any prosecution policy or guidance provided by LCC;
- (12) Advising LCC in relation to any non-compliances with directions or advice given to the operators of any premises, outdoor place or event; and
- (13) If requested providing witness evidence and attending a hearing in the Magistrates Court in the event of an appeal against a direction notice;
- (14) Undertaking services which are ancillary to the foregoing services or otherwise reasonably required and agreed with the prior written consent of the Parties for the purposes of the enforcement of the Regulations.

SCHEDULE 2

THE OFFICERS

Nadine Buckland

Vicky Spanovic

Stuart Adkins

Kerry Bowley

Donna Shaw

Laura Cowlshaw

SCHEDULE 3

LCC will pay the Specific Costs incurred by the District Council in accordance with this Schedule 3. The expression "Specific Costs" shall mean the total of the following costs:-

(1)	Payments in relation to standard Contractual Hours	<p>Fifty percent (50%) of the costs incurred by the District Council which was:-</p> <p style="padding-left: 40px;">(a) incurred as a result of Officers acting on behalf of LCC in connection with the enforcement of the Regulations; and</p> <p style="padding-left: 40px;">(b) which are incurred during the Officers' usual contracted hours.</p> <p>Costs will be claimed on the basis of the standard hourly cost for the Officer's salary plus "on costs⁷".</p>
(2)	Overtime costs	<p>The costs of overtime claimed by Officers against the District Council which was:-</p> <p style="padding-left: 40px;">(c) incurred as a result of Officers acting on behalf of LCC in connection with the enforcement of the Regulations; and</p> <p style="padding-left: 40px;">(d) which was outside of the Officers' usual contracted hours.</p> <p>Costs will be claimed on the basis of the standard hourly cost for the Officer's salary plus "on costs⁸".</p> <p>However, if the Officers' contract of employment entitles the Officer to an uplift for work undertaken during anti-social hours or during bank holidays then LCC shall meet the costs of that uplift.</p>
(3)	Officer's Expenses	<p>The reasonable costs of any out of pocket expenses claimed by Officers in connection with the performance of duties on behalf of LCC.</p> <p>This can include a mileage allowance for travel at the District Council's standard mileage rate. Any expenses other than travel and subsistence (limited to £10 per day) shall be agreed in advance.</p>
(4)	Additional costs	Disbursements properly and reasonably incurred by the

⁷ Employers National Insurance, Employer's contribution to Pension and the Apprenticeship levy.

⁸ Employers National Insurance, Employer's contribution to Pension and the Apprenticeship levy.

		<p>District Council in connection with the Regulations.</p> <p>This may include the costs of any additional insurance premia arranged by the District Council during the term in connection with any possible employment risks arising from this Agreement.</p> <p>Any costs in excess of £200 per month shall be agreed in advance.</p>
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