

Appendix 1

Internal Audit Draft Report

USE OF CONSULTANTS

Governance Opinion

Adequacy of System	Satisfactory
Compliance	Limited
Organisational Impact	Minor

Report Issued	July 2018
Follow Up Due	TBC
Audit Committee Schedule	November 2018

Executive Summary

1 Background

- 1.1 Internal Audit was requested to undertake a review of the use of consultants at Cambridgeshire County Council, to provide assurance that consultancy is subject to the appropriate controls; transparent and justifiable; and effective in achieving value for money.
- 1.2 At Cambridgeshire County Council, the policy for procurement of consultants is contained within the Council's Contract Procedure Rules and a separate Consultancy Policy. Consultants provide specialist advice where the knowledge does not exist internally within the Council, and the policy also covers the appointment of interims, who are individuals contracted to cover vacant managerial posts on a temporary basis when these cannot otherwise be filled.

2 Audit Approach / Scope

- 2.1 The review was scoped to cover the lifecycle of a consultancy contract, including:
 - Initial assessment of need and decision to procure consultancy services;
 - Procurement of consultancy;
 - Ongoing management of consultancy contracts;
 - Termination and review of consultancy contracts.
- 2.2 The initial audit approach was to select a sample of ten consultancy arrangements in place during the 2016/17 financial year, and review the way in which these arrangements had been procured and managed.
- 2.3 The audit also included a review of the Council's Consultancy Policy and related documents, review of recent Approval Forms for the use of consultants which had been submitted to the Procurement team, and benchmarking of the current Cambridgeshire policy against the policy in place at Peterborough City Council.

3 Key Risks

- 3.1 The primary risks relating to the use of consultants are the risk that consultancy arrangements do not achieve value for money for the Council, and the risk of fraud and corruption in relation to the appointment of consultants or their subsequent involvement in procurement processes.

4 Limitations of the Review

4.1 Difficulty of identifying consultancy expenditure

Identifying a sample of consultancy expenditure for the review was hampered by the fact that expenditure on the 'Consultancy' subjective code does not exclusively relate to actual consultancy but includes other costs such as delivery of training courses. Significant expenditure on consultancy has been coded to the 'Other Hired Contract Services' subjective code, which also includes expenditure on an extremely wide range of unrelated spend areas including children's breakfast clubs, works on traveller sites, and payments to pharmacies for chlamydia screening. Payments for interim staff are similarly split across different subjective codes. Consequently, identifying a sample of consultancy contracts for review, and identifying the Council's actual expenditure on consultancy costs, proved challenging.

Although LGSS Procurement used to provide regular analysis of consultancy expenditure to SMT as per the Consultancy Policy, these reports are no longer provided. Consequently there is no central oversight or analysis of consultancy expenditure. As LGSS Procurement do not currently undertake compliance reviews as part of their role, and this information is not centrally available to the Council, there is also no overarching review of compliance with the policy.

TABLE 1: Total expenditure on Consultancy, Interim Staff and Other Hired Contract Services subjective codes for the past three full financial year.

Total Expenditure	2014/15	2015/16	2016/17
Consultancy (38906)	£852,516.42	£414,213.85	£639,085.45
Interim Staff (38907)	-	£46,982.90	£282,997.48
OHCS (38900)	£24,498,015.57	£34,101,544.51	£35,396,519.70

Of the sample of ten consultancy contracts from 2016/7, which were selected based on line descriptions and supplier names indicating an element of consultancy work, only seven proved to be expenditure on consultants or interims relating to that year (two were not related to consultancy in any way; and one was an historic payment relating to 2011). Two further contracts were consultants who act as occasional contractors for the Council, in one case as part of a traded service; these arrangements were included in the review although they did not entirely meet the definition of true consultancy or interim services.

Of the five contracts identified and reviewed which did constitute true consultancy or interim services (two consultancy and three interims), expenditure on four of them was coded exclusively to the Other Hired Contract Services subjective.

Recommendation:

Budget holders and financial advisors should be reminded to ensure that all expenditure, and particularly consultancy and interim expenditure, is coded to the correct account code (the new name for subjective codes on ERP Gold) and any mis-codes are corrected, to enable analysis and monitoring of the Council's spend in these areas.

A system for oversight of expenditure on consultancy and interim expenditure should be re-introduced and include oversight from HR and/or Procurement, with reporting to senior management at Cambridgeshire County Council.

4.2 Lack of records relating to consultancy expenditure

For two of the five true consultancy/interim contracts under review, very little information could be identified about the initial procurement (in this case, both were appointments to interim head of service posts where recruitment had failed to identify a viable candidate). This was largely due to turnover of staff within the directorate since the procurement of these interims, but it appears that records relating to the procurement of these individuals had not been retained or passed on.

Recommendation:

Records relating to procurement should always be retained by services and stored in an appropriate location so they can be accessed when staff move on.

Internal Audit Opinion and Main Conclusions

5 Main Conclusions

Based on the completion of our fieldwork we are giving satisfactory assurance over the control environment surrounding the use of consultants and interims at Cambridgeshire County Council, and limited assurance over compliance with that environment. Weaknesses in the current arrangements represent a high risk to the Council's ability to achieve value for money in this area.

5.1 The Consultancy Policy is not followed in practice

The Council's Consultancy Policy is accessible to staff online and sets out a number of clear steps to be taken when procuring consultants, including a formal process of approval and justification for the use of consultants. There was no evidence of the process set out in the policy being followed from the sample of seven consultancy/interim contracts, and feedback from staff was that they were not aware of the policy.

5.2 The Consultancy Policy is not up to date and does not reflect the needs of the Council

The Council's Consultancy Policy has not been updated in a number of years and no longer reflects the needs of the Council; the lead-in time for going out to market for a consultant is considerable and when the Council is under pressure to achieve savings targets, the authority needs the ability to react quickly when risks to those targets are identified. Equally, for larger pieces of work which do not require fast-paced initiation, open competition is likely to be the most appropriate way to ensure that the Council achieves value for money and finds the best consultants for the job.

The Council commissioned a Managed Service Provider framework contract for consultancy services and SMT and CLT have been informed that any consultancy expenditure must go through this arrangement. This must be signed off by the Deputy Chief Executive or the Director of Business Development & Improvement and the provider has been told not to accept any mandates which have not been signed off in this way. Under this contract, work must be allocated out in work packages. This framework and requirements represent new pragmatic controls on the process of appointing consultants at Cambridgeshire County Council, however as yet information on the new arrangements is not reflected in the Consultancy Policy or available to all staff.

Recommendation:

The Consultancy Policy should be updated to reflect the evolving needs of the Council and the new arrangements in place, and should be communicated to staff. A draft suggested Consultancy Policy, which is aligned to the policy in place at Peterborough City Council, has been provided at Appendix 1.

5.3 Lack of ownership of consultancy arrangements

Lack of clear ownership over consultancy arrangements was noted as a factor which prevented effective management of consultancy arrangements. Consultancy work is generally commissioned at the highest levels of management within the organisation, but given the pressure on managers at this level, they are unlikely to have the capacity to undertake day-to-day management of procurement and contracts; consequently there is a need to delegate this role. In the cases that were examined as part of this review, the delegation of these responsibilities was not always clear. While officers were asked to complete specific tasks such as filling-in exemption requests or arranging for a contract to be put in place, from discussions they did not have a sense of ownership with regards to ensuring overall effective procurement and management of consultancy arrangements; their focus was on processing individual tasks. Consequently, individual consultancy arrangements lacked comprehensive oversight.

This was less of an issue for consultants acting as interims, as these arrangements were subject to the usual line-management arrangements for the posts being filled.

Recommendation:

It is appropriate that consultancy should be commissioned at the highest levels within the authority. Consultancy arrangements should have a named responsible officer who takes on the day-to-day procurement and management of the contracts and is responsible for ensuring that the arrangement complies with Council guidance and legislation and that outcomes are delivered; this officer should have the ability to escalate serious issues to the senior commissioning officer where necessary. The responsible officer should be named in the Business Case for the consultancy on Verto.

5.4 Alternative approaches to commissioning consultants/interims

There was evidence of staff following approval and procurement routes other than that set out in the Consultancy Policy, with the intention of ensuring that their

consultancy/interim procurement was transparent and justified. While there were good intentions underpinning these cases, it has not always led to the intended outcomes, with findings from the review including:

- The role of ‘independent person’ for the investigation of Children’s Social Care complaints is effectively a form of consultancy role, with a small group of individuals who may be called upon to undertake reviews. These roles are not appointed through any form of procurement process but through word of mouth. Around £15k was spent with these individuals in 2016/17, so the consolidated spend over several years would breach the £25k threshold at which a procurement process is required.
- One contract was identified where the exemption requests significantly underestimated the actual level of expenditure on consultants and were therefore not approved at the correct level of authority.
- In two cases, gaps between exemption requests meant that expenditure with the supplier was at times not covered by any approved arrangement.
- An instance was identified where an exemption was granted, as recruitment had failed and the usual framework supplier could not supply an interim; in this sense the exemption was justified, but there was no attempt to offer the post to the market as the Council was approached by a supplier and accepted. Consequently there is no evidence that this was secured at a competitive rate.

These approaches to procurement therefore do not provide assurance that the Council secured value for money and maintained an open and transparent approach to procurement of consultants and interims when officers have acted outside the guidance in the Consultancy Policy. It is understood that exemptions to Contract Procedure Rules are now being reviewed by the Council’s Commercial Board, which should provide greater scrutiny over the use of exemptions in future.

Recommendation:

A framework contract should be put in place for Children’s Social Care Independent Persons. Identified individuals should be invited to submit bids to join the framework as part of an open procurement process.

5.5 Repeat and long-term exemptions from Contract Procedure Rules

A number of exemptions to Contract Procedure Rules were repeated over significant periods of time:

- A framework contract with a number of consultants who deliver a traded service was let in 2011 and expired in March 2015. Since then repeat exemptions were

approved (to March 2017) despite Procurement stating in each exemption form that the service needed to re-tender the framework.

- An interim arrangement for a head of service, which started in August 2015 under an exemption, continued under repeat exemptions. The service have stated this is to enable transformation work to be completed. The total expenditure on this arrangement by the end of 2016/17 was £185,390 which puts the arrangement in breach of the EU Procurement threshold.
- A consultancy arrangement which was initiated through an exemption request breached the EU threshold for procurement before arrangements to ensure the consultancy was procured in a compliant way were finalised.
- An interim head of service who started work in the 2014/15 financial year was replaced in 2016/17 by another interim, who is still in post although their successor has now been appointed.

It is recognised that certain management posts can be difficult to recruit successfully and in these cases it may be necessary to appoint an interim to ensure the Council is able to continue to provide services. These arrangements should always be approached as temporary, and as soon as an interim is in post, succession planning should be initiated.

Recommendations:

When a repeat exemption to contract procedure rules is approved for appointments of consultants or interims, the Procurement team should follow-up with the service to ensure an appropriate long-term solution is being put in place, as at present it appears that while services are prompted to consider alternative arrangements at the point of exemption approval, there is a risk that this is then forgotten about afterwards. Repeat exemptions where Procurement advice is not being taken should be flagged by the Procurement team to senior management at the Council.

It is understood that SMT has recently identified succession planning as a priority. As part of this, a review should be undertaken of all posts currently occupied by interims, and plans should be developed to transition these into permanent arrangements through development of existing staff, external recruitment processes etc. Long-term succession planning for these difficult-to-recruit posts should also be put in place.

The Associate Advisers framework contract should be re-tendered in an open procurement process.

5.6 Payments not linked to outcomes

The Council's Consultancy Policy states that payment to consultants should be linked to the achievement of outputs/outcomes and that payment should be staged to ensure the largest proportion is allocated upon completion of the outcomes.

In practice, the review identified little evidence of contracts being set up in this way. Where consultants are used as interims to fill vacant management posts, payment on the basis of a daily rate is likely to be appropriate. In the case of more traditional consultancy work, daily rate payments are not the best way to incentivise performance and ensure that outcomes are delivered in a timely way.

Recommendations:

Payment to consultants should be linked to the achievement of outputs/outcomes and payment should be staged to ensure the largest proportion is allocated upon completion of the outcomes.

5.7 Payment of expenses

The Council's Consultancy Policy states that expenses should only be paid to consultants in line with rates paid to Council staff. Testing identified that expenses were paid for consultants at a higher rate than that paid to Council staff and for items, such as day-to-day accommodation, which would not be covered by the Council's travel and subsistence scheme. This included payment to a consultant acting as an interim member of staff.

Recommendations:

Interim staff should only be paid expenses and travel costs through the Council's usual travel and subsistence scheme and in line with the rates paid to Council staff.

Contracts for consultancy should be clear that providers must include expected costs for expenses as part of their bids for work, and no separate expenses will be paid.

5.8 Cross-Council consultancy

The review identified an instance of a consultant who had been appointed at Peterborough City Council being brought over to Cambridgeshire to work within the People & Communities Directorate. The consultant was effectively loaned to the authority and was paid directly, although there was no contract in place with Cambridgeshire. Officers were not aware of what procurement process was followed at Peterborough, although controls were in place to manage ongoing spend with the consultant.

It is understood that Peterborough Council has a recruitment officer for the People & Communities Directorate who is the key contact for arranging any consultancy or other temporary staff arrangements and ensures they are procured transparently and managed effectively. Given the close working arrangements between the two authorities, there is potential for a joined-up approach between Cambridgeshire and Peterborough Councils.

Recommendations:

As part of the development of the new Consultancy policy, the possibility for cross-Council working should be explored, and particular consideration should be given to the possibility of sharing recruitment officer posts between Councils.

Detailed agreed actions are listed within the Management Action Plan (MAP) at pages 10 to 12 of this report.

MANAGEMENT ACTION PLAN

The Agreed Actions are categorised on the following basis:

Likelihood H M L	S	I	E	Essential - Action is imperative to ensure that the objectives for the area under review are met. Important - Requires action to avoid exposure to significant risks in achieving objectives for the area under review. Standard - Action recommended to enhance control or improve operational efficiency.
	S	I	E	
	S	I	E	
	L	M	H	
	Impact			

Ref	Issues & Risks	Agreed Action	Management Comments	Manager & Target Date
1.	Consultancy Policy. The Council's Consultancy Policy is out of date and no longer reflects current arrangements for procuring consultancy. Although new arrangements have been communicated to SMT/CLT, there is a need for the Policy to be revised and updated in line with the new arrangements, and to reflect key findings of this report.	Important The Council's Consultancy Policy should be updated to reflect the new processes in place and should address the key points outlined in this report, including: <ul style="list-style-type: none"> Requirement for sign-off of all consultancy expenditure by the Deputy Chief Executive or the Director of Business Development & Improvement. Consider a requirement that a business case must be approved on the project management system before any action can be taken to engage temporary resource, as this would fit with existing processes. Require each consultancy arrangement to have a named officer who is responsible for day-to-day management of the contract and has sufficient capacity to do so. This officer should be named in the Verto Business Case. Identifying distinct requirements regarding interims vs. consultants. Requiring expenditure to be coded correctly on the finance system. Requiring payment to consultants to be linked to outcomes and clarifying how expenses should be handled. Providing draft proposed conditions of contract for areas such as conflicts of interest and skills transfer to be incorporated within consultancy contracts. A draft suggested Consultancy Policy, which is aligned to the policy in place at Peterborough City Council, has been prepared by Internal Audit and is now being agreed and finalised with HR and Procurement colleagues. When the policy has been agreed, this should be communicated clearly to staff.	The Consultancy Policy is in the process of being updated with HR and Procurement colleagues, to incorporate the issues outlined in the recommendations. See Appendix I for the current draft.	Janet Atkin, Head of HR Advisory & Internal Audit 30 th September 2018

Ref	Issues & Risks	Agreed Action	Management Comments	Manager & Target Date
2.	<p>Cross-Council Consultancy</p> <p>In at least one case, a consultant has been brought to CCC from Peterborough City Council. Guidance is not clear on how this should be handled.</p>	<p>Important</p> <p>As part of the further development of the new Consultancy Policy, senior management should consider how any cross-Council arrangements should be managed in future.</p> <p>As part of the development of the new policy, the possibility for cross-Council working should be explored, and particular consideration should be given to the possibility of sharing recruitment officer posts between Councils. Such post(s) could act as the named officer with responsibility for ensuring that consultancy contracts are procured in compliance with guidance and legislation, and that they are managed effectively.</p>	<p>The Consultancy Policy is in the process of being updated with HR and Procurement colleagues, to incorporate the issues outlined in the recommendations. See Appendix I for the current draft.</p> <p>Potential for longer-term cross-Council rationalisation will be considered by the Business Improvement and Development Directorate.</p>	<p>Janet Atkin, Head of HR Advisory & Internal Audit 30th September 2018</p> <p>Amanda Askham, Director of Business Improvement and Development 31st January 2019</p>

Ref	Issues & Risks	Agreed Action	Management Comments	Manager & Target Date
3.	Control over Expenditure Expenditure on consultancy and interims is regularly mis-coded on the Council's financial systems, making analysis difficult. There is a lack of management oversight of total expenditure in these areas.	Important Budget holders and financial advisors should be reminded to ensure that all expenditure, and particularly consultancy and interim expenditure is coded to the correct account code to enable analysis and monitoring of the Council's spend in these areas. Miscodes of such expenditure should be corrected. Procurement should produce a report detailing expenditure on consultants and interims and share this with members of SMT and HR on a quarterly basis. This should improve the ability of senior management and HR to identify and address areas of high spend; areas which may be nearing EU Procurement Thresholds; and areas where consultants or interims have been in post for extensive time periods.	This action will be taken forward by the Business Improvement and Development Directorate.	Amanda Askham, Director of Business Improvement and Development 31 st January 2019

Ref	Issues & Risks	Agreed Action	Management Comments	Manager & Target Date
4.	Succession Planning Several instances were identified by the review of interims remaining in post for significant time periods.	Important A review should be undertaken of all posts currently occupied by interims and plans should be developed to transition these into permanent arrangements through development of existing staff, external recruitment processes etc. Long-term succession plans should be developed for these posts, and other posts which have been occupied by interims over the past three years. When a repeat exemption to contract procedure rules is approved for appointments of consultants or interims, the Procurement team should follow-up with the service to ensure an appropriate long-term solution is being put in place, as at present it appears that while services are prompted to consider alternative arrangements at the point of exemption approval, there is a risk that this is then forgotten about afterwards. Repeat exemptions where Procurement advice is not being taken should be flagged by the Procurement team to senior management at the Council.	This action will be taken forward by the Business Improvement and Development Directorate.	Amanda Askham, Director of Business Improvement and Development 31 st January 2019
5.	Independent Persons 'Independent Persons' in Children's Social Care are a small group of consultants who may be called upon to undertake reviews. These are appointed through word of mouth.	Important Around £15k was spent with these individuals in 2016/17, so the consolidated spend over several years would breach the £25k threshold at which a procurement process is required. A framework contract should be put in place for Children's Social Care Independent Persons. Identified individuals should be invited to submit bids to join the framework as part of an open procurement process.	This action will be taken forward by the Children's Directorate.	Lou Williams, Director of Children's Services 31 st January 2019

Ref	Issues & Risks	Agreed Action	Management Comments	Manager & Target Date
6.	Associate Advisers The framework contract for Associate Advisers was let in 2011 and expired in March 2015. Since then repeat exemptions have been approved.	Important The Associate Advisers framework contract should be re-tendered in an open procurement process immediately.	This action will be taken forward by the Education Directorate.	Jon Lewis, Director of Education 31 st January 2019

Appendix 1 – Glossary / Definitions

There are three elements to consider when determining an assurance opinion as set out below.

1 Control Environment / System Assurance

The adequacy of the control environment / system is perhaps the most important as this establishes the key controls and frequently systems ‘police/ enforce’ good control operated by individuals.

Assessed Level	Definitions
Substantial	Substantial governance measures are in place that give confidence the control environment operates effectively.
Good	Governance measures are in place with only minor control weaknesses that present low risk to the control environment.
Satisfactory	Systems operate to a moderate level with some control weaknesses that present a medium risk to the control environment.
Limited	There are significant control weaknesses that present a high risk to the control environment.
No Assurance	There are fundamental control weaknesses that present an unacceptable level of risk to the control environment.

2 Compliance Assurance

Strong systems of control should enforce compliance whilst ensuring ‘ease of use’. Strong systems can be abused / bypassed and therefore testing ascertains the extent to which the controls are being complied with in practice. Operational reality within testing accepts a level of variation from agreed controls where circumstances require.

Assessed Level	Definitions
Substantial	Testing has identified that the control environment has operated as intended without exception.
Good	Testing has identified good compliance. Although some errors have been detected these were exceptional and acceptable.
Satisfactory	The control environment has mainly operated as intended although errors have been detected that should have been prevented / mitigated.
Limited	The control environment has not operated as intended. Significant errors have been detected and/or compliance levels unacceptable.
No Assurance	The control environment has fundamentally broken down and is open to significant error or abuse. The system of control is essentially absent.

3 Organisational Impact

The overall organisational impact of the findings of the audit will be reported as major, moderate or minor. All reports with major organisational impact will be reported to SMT along with the relevant Directorate's agreed action plan.

Organisational Impact	
Level	Definitions
Major	The weaknesses identified during the review have left the Council open to significant risk. If the risk materialises it would have a major impact upon the organisation as a whole.
Moderate	The weaknesses identified during the review have left the Council open to medium risk. If the risk materialises it would have a moderate impact upon the organisation as a whole.
Minor	The weaknesses identified during the review have left the Council open to low risk. This could have a minor impact on the organisation as a whole.

4 Findings prioritisation key

When assessing findings, reference is made to the Risk Management matrix which scores the impact and likelihood of identified risks arising from the control weakness found, as set out in the MAP.

For ease of reference, we have used a high/medium/low system to prioritise our recommendations, as follows:

E	Essential	I	Important	S	Standard
	<p>Failure to address the weakness has a high probability of leading to the occurrence or recurrence of an identified high-risk event that would have a serious impact on the achievement of service or organisational objectives, or may lead to significant financial/ reputational loss.</p> <p>The improvement is critical to the system of internal control and action should be implemented as quickly as possible.</p>		<p>Failure to respond to the finding may lead to the occurrence or recurrence of an identified risk event that would have a significant impact on achievement of service or organisational objectives, or may lead to material financial/ reputational loss.</p> <p>The improvement will have a significant effect on the system of internal control and action should be prioritised appropriately.</p>		<p>The finding is important to maintain good control, provide better value for money or improve efficiency. Failure to take action may diminish the ability to achieve service objectives effectively and efficiently.</p> <p>Management should implement promptly or formally agree to accept the risks.</p>

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Chief Internal Auditor: Duncan Wilkinson

Lead Auditor: Mairead Kelly

Status of report: Draft

Consultants and Interims Policy

1. Introduction and purpose

- 1.1 The overall objectives of this policy are to:
- Ensure consistent application in the use of Consultants and Interims across the Council;
 - Ensure correct procedures are followed when sourcing a Consultant or Interim, and as a result ensuring there is appropriate transparency;
 - Ensure that all available alternatives are considered prior to engaging a Consultant, and to minimise the use of non-payrolled workers to reduce overall spend; and
 - Ensure the council complies with all HMRC regulations.
- 1.2 Officers should, wherever possible, seek to fill senior management posts with a permanent employee where it is beneficial for the council and consider all other available options (e.g. internal employees acting up) before seeking to recruit an interim to a managerial position.
- 1.3 Where it is not possible to fill posts with a permanent or temporary employee this policy provides Council managers with clear instructions in respect of the engagement and management of Consultants and Interims.
- 1.4 The Council aims to ensure that value for money is received from all non-payrolled workers. Internal resources should always be used where they are available.
- 1.5 This policy does not apply to interim employees where that interim is employed under a fixed-term employment contract, and paid via the payroll to carry out work which is “business as usual”.

2. Definitions

2.1 ‘Non-payrolled’ workers:

The council defines non-payrolled workers as either:-

Consultant

Consultants are any party, whether an individual or a firm, with expertise that is typically not available internally. A Consultant is engaged for a limited period or for short-term projects to provide professional advice or services and will usually specify an endpoint to their involvement in a project. A Consultant transfers skills and/or expertise to the Council which, it either does not possess in-house, or which require an independent evaluation/assessment to be made.

Consultants are not held against an existing post on the establishment.

Engaging a Consultant is a procurement activity, therefore LGSS Procurement must be contacted in the first instance. It is important that any expenditure in relation to engaging Consultants must be in accordance with the Council’s Contract Rules.

A consultant may be sourced through OPUS LGSS; alternatively a consultant can be engaged via framework contracts, or a contract should be advertised. If a direct

appointment is proposed without advertising or appointment via a framework, then an exemption form for the total value of the contract must be approved.

Interim/Agency Worker

An Interim is engaged to cover a substantive post within our organisational structure for a defined period of time. The worker covers business-as-usual activities for that role on a short-term basis, under the supervision of the Council. The maximum length of an agency worker placement is 13 weeks, or 20 weeks for a placement in a Social Care role.

The individual is paid via OPUS LGSS payroll and OPUS LGSS is responsible for making tax and NI deductions. The Council is invoiced by the agency.

The Council has a specific Agency Worker Policy which gives detail on the appointment of agency workers. This is available on LGSS Direct and should be followed by all managers looking to appoint an agency worker.

Interims/Agency Workers are usually fulfilling a substantive post on the establishment or undertaking a temporary increase in workload.

Under no circumstances must a Council Officer engage an Interim/Agency Worker without going through OPUS LGSS. Any appointments outside of OPUS LGSS require an exemption to be approved. See the Agency Worker Policy for more information.

3. Process that must be followed when engaging non-payrolled workers

- 3.1 OPUS LGSS is the first source for appointment of non-payrolled workers. The council also has a number of existing supplier framework contracts available relating to consultancy. The LGSS Procurement team can advise on the use of these framework contracts, and the procurement process that must be followed under each framework.
- 3.2 Engaging a Consultant is a procurement activity. It is important that any expenditure in relation to engaging a Consultant must be in accordance with the council's Contract Rules. Selection criteria for a Consultant should relate both to the technical skills required and the total cost relating to the consultancy placement.
- 3.3 The following table will assist managers to understand the correct process for engaging a non-payrolled worker, and clearly differentiates between consultants, interims and agency workers.

Description	Payment Method	Engagement Process
Consultant	Where IR35 does not apply, the Consultant is paid via OPUS LGSS or set up as a supplier and paid by invoice. Where IR35 applies, the Consultant will be paid via OPUS LGSS subject to tax and National Insurance deductions.	1. A Business Case must be written and approved on Verto. This must include: <ul style="list-style-type: none"> • The name of an accountable officer to act as 'Engaging Manager', who will be responsible for day-to-day management and oversight of the contract and has both seniority and capacity to manage this. • Detail on what alternatives to appointing a consultant have been considered, and why these have been rejected. • Defined outputs required from the Consultant

	<p>Payment must be linked to the achievement of outputs/outcomes. Payment should be staged to ensure the largest proportion is allocated upon completion of the outcomes.</p> <p>Consultants will only be entitled to be reimbursed for reasonably incurred expenses that have been submitted to and approved by the Engaging Manager. Approved expenses will be reimbursed on submission of a valid VAT receipt. Rates for expenses must be in line with those paid to Council employees. If the contract is priced on an inclusive basis, no expenses will be payable.</p>	<p>and detail of how payment will link to delivery.</p> <ul style="list-style-type: none"> •Detail of how quality and performance will be measured, including performance measures. •Defined budget for the Consultant. •Detail of how skills and knowledge acquired will be captured for future use. •Evaluation and award criteria for the procurement stage. <p>The Business Case must be approved by either the Director of Business Development & Improvement or the Deputy Chief Executive, before any expenditure is incurred. You should ensure your Director approves the submission of the Business Case before this is sent for approval.</p> <p>2. LGSS Procurement must be contacted in order to determine the most appropriate solution:</p> <p>(i) Source consultant via OPUS LGSS.</p> <p>(ii) Tendering process to invite bids, in accordance with Contract Procedure Rules: http://sharepoint.lgss.local/sites/lpg/procurement/LGSS%20Direct%20Content%20OPEN/Contract%20Procedure%20Rules.pdf</p> <p>(ii) Call off from existing framework contracts where the appointment falls within the scope of these contracts.</p> <p>3. Determine IR35 status. The Engaging Manager must complete the HMRC Employment Status Tool available here and provide a copy of this to their HR Business Partner.</p> <p>Full details are provided in the flowchart at Appendix A.</p> <p>Any extensions to the original consultancy placement are also subject to approval and a revised Business Case should be sent for approval by the Director of Business Development & Improvement or the Deputy Chief Executive.</p>
Interims	<p>Paid through invoice to OPUS LGSS. Rates for expenses must be in line with those paid to Council employees.</p>	<p>1. Obtain an authorised Recruitment Freeze Exemption form.</p> <p>2. Appoint through OPUS LGSS as per the Agency Worker Policy</p> <p>3. Undertake formal succession planning. As interims provide temporary cover for key roles,</p>

		once an interim is appointed, their line manager has responsibility to develop a succession plan to identify a permanent solution for filling the post. This may include identifying existing staff members to undertake skills transfer work with the interim worker. Advice may be sought from HR Advisory.
Agency Workers	Paid through invoice to OPUS LGSS. Rates for expenses must be in line with those paid to Council employees.	<p>1. Obtain an authorised Recruitment Freeze Exemption form.</p> <p>2. Appoint through OPUS LGSS.</p> <p>Full details are provided in the Agency Worker Policy.</p>

3.4 Exemption from the engagement process - only in consultation with LGSS Procurement

Where it is not possible to engage a Consultant/Interim/Agency Worker in accordance with the engagement process stipulated above, a Council Officer may request an exemption from the process. The fundamental principles of exemptions are that they should be used only in exceptional circumstances and any exemption request must be approved at the correct level (stipulated in Contract Procedure Rules, depending on the total value of the contract) prior to engagement. Repeat exemptions should not be sought. LGSS Procurement must be consulted in all instances where an exemption from the above process is sought.

- 3.5 Before any consultant is engaged, a Business Case must be approved on Verto by the Director of Business Development & Improvement or the Deputy Chief Executive. Even where a Business Case has been approved, a separate exemption must be sought if the process outlined above to engage consultants is not being followed.
- 3.6 Budget holders are responsible for ensuring that all consultant and interim expenditure must be coded to the correct account code on ERP Gold.
- 3.7 Engaging managers are responsible for maintaining information for all Consultants engaged. This must include copies of any approvals, the approved Business Case, all relevant procurement and contract information and a copy of the employment status check.
- 3.8 There may be instances where the Council may wish to use the services of a Consultant who has been appointed by a partner organisation; for instance where the Consultant has already undertaken work on aspects of a joint project. In such cases, before the Council incurs any costs or agrees to fund the work, a Business Case must be written and approved as per the steps detailed above, and LGSS Procurement consulted on the most appropriate route to engage the consultant.

4. IR35 Status (HMRC regulations) Consultants/Interims/Agency Workers

- 4.1 IR35 is the reference used to describe a piece of tax legislation which aims to differentiate between genuine businesses and workers who are *for all intents and purposes* a temporary employee. It is our legal responsibility to determine whether IR35 applies. Failure to comply with IR35 rules will result in liability for the additional tax/NI, fines and potentially a full tax audit. In addition, there is potential reputational damage to the organisation if we are not compliant. If

HMRC impose a claim/fine, these will be charged to the cost centre where the Consultant was engaged.

4.2 IR35 Status (HMRC regulations) Interims/Agency Workers

The council will adopt a blanket approach in respect of the tax status of each interim/agency worker. All interims/agency workers will be classed as within the IR35 regulations. These workers will be set up via OPUS LGSS and be subject to tax and NI deductions. IR35 status need not be considered further unless the status is disputed by the interim/agency worker, in which case the Engaging Manager will need to complete the HMRC employment status tool.

4.3 IR35 Status (HMRC regulations) Consultants

A decision will be required for each consultant engaged. HMRC provide an Employment Status (ESS) tool that enables employers to check what the employment status of each consultant should be (that is whether they are employed or self-employed for tax, National Insurance contributions (NICs) or VAT purposes). This must be used to determine the exact status for each individual. (This tool was previously known as the Employment Status Indicator tool).

4.4 Before starting to use the ESS tool, HMRC recommends that their guidance on employment status has been read. This explains the factors that determine whether a worker is considered employed or self-employed. (These tools cannot be used to check the employment status of agency workers or anyone providing services through an intermediary). The Engaging Manager must answer the questions honestly and accurately based on the requirements of the role. If the result is achieved through contrived answers designed to get a particular outcome, HMRC will treat this as evidence of deliberate noncompliance. HMRC have the ability to award higher penalties in this situation.

[Read more guidance about employment status](#)

Click [here](#) to access the ESS tool. For further advice and guidance contact your HR Business Partner. Following the test you must provide a copy to your HR Business Partner, and keep a copy of the outcome on the Consultant's record for a minimum of 6 years.

4.5 Payment via OPUS LGSS - Where OPUS LGSS is advised that an individual has been identified as outside the scope of IR35, they will check this determination with a HR Business Partner. If HR Advisory confirm that the individual is outside of the scope of IR35 OPUS will process payments to the individual via a limited company.

4.6 Payment via invoices – Alternatively, where a Consultant is determined to be outside of the scope of IR35 they will be set up as a supplier. P2P must see evidence of the employment status check result and will check this determination with the relevant HR Business Partner before setting up the supplier record. The supplier record should clearly state that it is related to consultancy spend.

4.7 During the course of the consultancy contract, precautions should be taken to ensure that Consultants cannot claim employment rights with the Council. Consultants must not be used for a protracted period or integrated into the Council more than necessary. Matters of pay, sickness, leave and any performance problems should be raised with the consulting firm and detailed in the framework agreement contracts. The Engaging Manager must not control the way the Consultant does his/her work but should focus on the achievement of agreed outputs.

4.8 Officers who choose not to follow this policy and/or process will face disciplinary action which could result in dismissal for a first offence.

5. Skills Transfer

- 5.1 'Skills transfer' must be a written contractual requirement for appropriate professional skills contracts for Consultants, to enable officers to develop expertise which will directly benefit the council.
- 5.2 The Consultant shall identify the required knowledge and skill set to carry out the services and impart the necessary skills and knowledge to the council's employees with whom the Consultant has contact in the performance of their duties. **This should be undertaken with a view to increasing and consolidating the skills base within the council.**
- 5.3 In addition the Consultant shall deliver training including a Question and Answer Session to those workers and employees with whom the Consultant has had contact together with such others as are nominated by the council. The training shall be of such duration and timing as specified by the council and shall focus on those areas identified by the council that arise from the delivery of the Consultancy Services to the council.
- 5.4 When consultant assignments are coming to end, Engaging Managers must plan accordingly for the decommissioning of the Consultant's agreement, and consider what information needs to be appropriately transferred or distributed within the Council to ensure a smooth transition period. Engaging Managers who have used Consultants to deliver project work, manage a project or carry out any work on a project, should ensure that the usage of external resources is considered in their Lessons Learned Report and Project Closure Report.
- 5.5 Managers should stage the payment of consultancy payments with the largest proportion to be allocated upon successful completion of the project/Consultant's contribution.

6. Conflicts of Interest

- 6.1 Officers must ensure that any contract with the consultant contains a requirement that any conflicts of interest which arise during the course of the contract (including those of any sub-contractor engaged) will be notified to an officer of the council. Consultants must not allow personal and/or private interests to influence their conduct during the assignment. The Consultant must notify a conflict of interest if they, their colleagues, partner and/or close relatives have an interest in a private enterprise that could potentially benefit from the advice given by the Consultant or by information acquired by the Consultant during the course of the engagement.
- 6.2 The principles of the Code of Conduct for Officers applies to those engaged as Consultants, Interims/Agency Workers.

Examples of potential conflicts of interest

- 6.3 The following are matters which could potentially give rise to a conflict between the Consultant and the council's interest. This list is not exhaustive but it might assist in identifying whether any potential conflict of interest arises:
 - The Consultant's financial interests are affected by the outcome of the contract (but this does not include the salary paid to the Consultant).
 - The Consultant is a member of a body or holds a position of responsibility in a body whose interests may conflict with those of the council.

- The Consultant is personally known to the officer or member awarding the contract (this is not necessarily fatal to the contract if the contract has been obtained through fair competition but should be declared in any event).
- The Consultant owns shares or has an interest in any company which is affected by the outcome of the contract.
- The Consultant has another contract which conflicts with the council's interests.

6.4 If the Council considers there is a conflict of interest as a result of the information that has been disclosed, the Consultant will not be considered for assignment. Non-disclosure of a possible conflict of interest could result in the Consultant's contract being terminated and/or legal action taken if identified at a later date or stage of their assignment.

7. Reporting and Monitoring

- 7.1 The Engaging Manager responsible for engaging a Consultant will be required to complete monthly progress reports on Verto, to demonstrate that the objectives of the original Business Case are being achieved.
- 7.2 A report on Consultant usage, bringing together the Verto reporting for each open consultancy appointment, will be submitted to SMT on a monthly basis.
- 7.3 The ongoing monitoring role at Member level is undertaken by Audit & Accounts Committee. Quarterly reports will be produced for the Audit & Accounts Committee.
- 7.4 Senior managers will be expected to confirm that they have complied with IR35 requirements in respect of engaging consultants and office holders, as part of the annual statement of accounts assurance process.

8. Further information for Managers

- 8.1 Managers must always aim to source internal skills, expertise and resources before preparing a Business Case for consultancy resources (including Consultants in interim positions). This will include checking the Council's 'at risk' register of redundant and re-deployed staff.
- 8.2 HR will provide the necessary advice and support to ensure appointments are made via the payroll in the first instance.
- 8.3 Where appropriate, HR should be involved in the recruitment process for Interims occupying managerial positions to ensure that advice can be given on suitable candidates from amongst existing employees and in-house expertise, skills or knowledge utilised in accordance with the council's equality policies.
- 8.4 Engaging Managers are responsible for ensuring Consultants are aware of their responsibilities under the principles of the Data Protection Act and associated legislation, ensuring that external resources such as Consultants provide written confirmation that both the Consultant and their staff will treat the Council information confidentially.

- 8.5 Consultants should acknowledge that the Council is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR) and shall assist and cooperate with the Council to enable timely compliance with its information disclosure obligations.
- 8.6 The procurement process itself and the Consultant once appointed must comply with all legislation relevant to their assignment including but not limited to Equalities legislation.
- 8.7 All contracts entered into for consultancy services must have a clear outline of termination conditions, to accommodate a change in organisational requirement, breach of contract and/or poor performance.
- 8.8 Poor performance must be addressed promptly and before serious damage to the project, work or to the Council's reputation can occur. Engaging Managers must consult with LGSS Law on how to exit from a contract if this is outside of the normal termination process and ensure that the available exit strategies and penalties are explicitly written in the contract.
- 8.9 If a Confidentiality Agreement is required, please contact LGSS Law.
- 8.10 An employee terminated on the grounds of voluntary or compulsory redundancy should not normally be re-engaged as a Consultant. Further details are given in the [Re-engagement and re-employment rules](#). In exceptional circumstances a manager who wishes to make a business case to engage an ex-employees who has previously been made redundant from the Council will require prior authorisation from the Director of HR. A summary of all ex-employees reengaged as consultants will be presented to SMT/CMT on a regular basis.

9. Review of policy

This policy will be reviewed by HR and Procurement on an annual basis, in line with any changes in legislation or relevant best practice.

Appendix A

Process flow chart for Consultants

APPENDIX A

Appendix A: Engagement of a Consultant

Engaging a consultant is a procurement activity and LGSS Procurement must be involved in the process. It is important that any expenditure in relation to engaging consultants must be in accordance with the council's Contract Procedure Rules.

A summary of the process for engagement of a consultant is outlined below.

STEP 1: The requirement for a consultant is identified.
Consultants are not held against an existing post on the establishment.

STEP 2: A Business Case must be approved on Verto by the Director of Business Development & Improvement or the Deputy Chief Executive. This must contain all key information as set out in the Consultancy Policy.

STEP 3: Please consult with Legal and LGSS Procurement to ensure your engagement of a consultant is completed in accordance with the Contract Procedure Rules and Consultancy Policy.

STEP 4: There are three options available in order to engage a consultant:

Option 1: Where the contract value is between £2k and £100k, three written quotations are required; for consultant engagements over £10,000, also place an advert on the Council's Tender Advertising Portal. For a value between £100k up to the current EU threshold a formal tender process is required.

Option 2:
Utilise OPUS LGSS.

Option 3: Utilise existing supplier framework contracts for the provision of consultants where the council is permitted to call-off from that framework.

STEP 5: In accordance with HMRC Regulations, the consultant's IR35 status must be determined. A decision will be required for each consultant engaged. HMRC provide an Employment Status (ESS) tool that assists in determining IR35 status. Please contact HR Advisory.

STEP 6: You MUST notify your HR Business Partner of the outcome of the ESS tool and provide a copy.

STEP 7: Contact Legal to discuss contract formalities.

STEP 8: Consultant's engagement may formally commence.