

APPENDIX 1 Report 6 Consultants Policy Review Quarter 1

Consultants Policy

This policy defines our approach to engaging and using consultants. We are committed to only using consultants where absolutely necessary and where their use represents value for money.

1. Policy Principles

- We will consider all available alternatives prior to engaging a Consultant.
- Engaging Managers will produce a Business Case prior to engaging a Consultant.
- The Engaging Manager will obtain appropriate approval prior to engaging a Consultant.
- The Engaging Manager will adhere to the requirements of this policy and Contract Procedure Rules.
- The Engaging Manager, in conjunction with HR Advisory, will assess the employment status of any Consultant prior to engagement.
- The Engaging Manager will retain records of each consultancy placement in line with the relevant Records Retention policy.
- Each Directorate will maintain a record of all consultant placements within their Directorate.
- Consultancy spend will be coded to the Consultancy account code on ERP Gold, to allow for full and accurate monitoring and reporting.

2. Definitions of Non-Payroll Workers

This policy only applies to the engagement of and use of consultants. The appointment of agency workers and interims are subject to a separate Agency Worker Policy
<http://sharepoint.lgss.local/Pages/Agency-Workers.aspx>

For reference the following terms are used throughout this policy with reference to agency workers and interims being for information purposes.

Term	Definition and information	Engagement Route	Payment and tax arrangements
Consultant	<p>A consultant can be an individual/pair of individuals/consultancy company.</p> <p>A consultancy arrangement is distinct from a Hired Services contract (e.g. a highways maintenance contract).</p> <p>A consultant is engaged to undertake a specific project/task with a specified endpoint, and provides expertise that is not available internally.</p> <p>Consultants are not held against an existing post in our establishment. This policy covers the use of consultants.</p>	<p>Prior to undertaking any procurement activity, a Business Case must be written and approved by the appropriate individuals (see section 5, below).</p> <p>Engaging a consultant is subject to Contract Procedure Rules. A consultant can be engaged via OPUS LGSS in some circumstances, via a framework contract; or the contract can be advertised.</p> <p>Where a direct appointment is proposed without following one of the above options a Procurement Waiver must</p>	<p>Payment of a consultant must be linked to the achievement of outputs/outcomes and should be staged to ensure the largest proportion is allocated upon completion of the outcomes. Consultants must not be paid a daily rate.</p> <p>Where IR35 does not apply - Consultant paid via OPUS LGSS or set up as a supplier and paid by invoice.</p> <p>Where IR35 applies consultant will be paid via OPUS LGSS/the supplier subject to tax and NI deductions.</p>

	<p>A Business Case must be approved prior to engaging a consultant, and any extensions to the original consultancy placement are subject to additional approvals and require a revised Business Case (see section 5, below)</p>	<p>be approved for the total anticipated value of the contract prior to the consultant being engaged.</p> <p>Seek guidance from Procurement and LGSS Law.</p>	<p>Bids for consultancy contracts should be inclusive of any expenses expected to be incurred in delivery of the consultancy work, as this ensures comparability of costs across different prospective providers.</p>
Agency worker	<p>Engaged as a temporary resource. The maximum length of an agency worker placement is 13 weeks, or 20 weeks for a placement in a Social Care role. A single extension beyond this time period may be approved via a formal Business Case, as per the Agency Worker Policy.</p>	<p>Sourced via OPUS LGSS. The approach to be followed is detailed in the Agency Worker Policy.</p> <p>Any appointments outside of OPUS LGSS will require a Procurement Waiver to be approved prior to engagement.</p>	<p>Individual paid via OPUS LGSS/the agency payroll. OPUS LGSS/agency is responsible for making tax and NI deductions – the Council are invoiced by OPUS LGSS where sourced via them.</p> <p>Rates for mileage and expenses must be in line with those paid to Council employees.</p>
Interim	<p>Engaged to cover a substantive post within our organisational structure for a defined period of time.</p> <p>Covers business-as-usual activities of a role on a short term basis.</p> <p>As interims provide temporary cover for key roles, 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.</p>	<p>Sourced through OPUS LGSS. The approach to be followed is detailed in the Agency Worker Policy.</p> <p>Any appointments outside of OPUS LGSS will require a Procurement waiver to be approved prior to engagement.</p>	<p>Interims are automatically classed as within the scope of IR35 regulations, and subject to tax and NI deductions. OPUS LGSS or the relevant agency is responsible for making these deductions and the Council is invoiced by the agency. If the IR35 status of an interim is unclear, the Engaging Manager will need to complete the HMRC employment status tool.</p> <p>Rates for mileage and expenses must be in line with those paid to Council employees.</p>

Please note: appointing an employee on a fixed term contract is outside of the scope of this policy. An individual on a fixed term contract is an employee, they are recruited in line with the recruitment and selection policy, has a contract of employment and are paid via the payroll.

3. Alternatives to Using Consultants

Before engaging a Consultant, the Engaging Manager must consider using existing resources within the Council. The Engaging Manager should discuss with their HR Business Partner any alternatives available, for example:

- Using an existing employee or amending working arrangements within the service area.
- Use of unallocated resource from elsewhere in the Council.
- Seconding resource from inside or outside the Council.
- Creating a fixed-term post.
- Sharing resources with other local authorities and government organisations.
- Training internal staff.
- Experience-sharing with other organisations which have undertaken similar projects/work.

Particular attention should be paid to consultancy placements of 3 months or more, as alternative arrangements are likely to be more cost effective.

4. Who Engages/Oversees a Consultant?

Engaging Managers must be employees of the Council. The Engaging Manager is the accountable officer for day-to-day management and oversight of the Consultancy contract, including the management of outcomes and costs.

In some cases, the Engaging Manager may assign an employee to be the named Accountable Officer for the duration of the consultancy placement. The Accountable Officer must have both seniority and capacity to carry out this task.

If the named Accountable Officer leaves the Council, the Engaging Manager must assign this role to another employee or take on the responsibility themselves. If an Engaging Manager leaves the Council, they should assign responsibility for managing any Consultant placements to another appropriate manager.

Unless the consultant has been appointed via OPUS LGSS or via a procurement process undertaken via the Council's e-tendering system then the Engagement Manager is responsible for updating and maintaining details of the contract on the Council's Contract Register and completing other requirements relating to reporting of the contract as defined in the Council's Contract Procedure Rules.

5. Consultancy – Business Case

The Engaging Manager must write a Business Case. The Business Case must include the following information:

- What alternatives have been considered and why these have been rejected.
- The specific outputs required from the placement and detail of how payment will link to delivery.
- Detail of how quality and performance will be measured, including specific performance measures.
- The total expected cost of the consultancy placement, and the budget for the consultancy spend.
- Detail of how the skills and knowledge acquired will be captured for future use.
- The name of the accountable officer who will be responsible for day-to-day management and oversight of the contract.
- Evaluation and award criteria for the procurement stage if applicable (see section 8).

The engaging manager must detail the business case on the [Approval to Engage a Consultant form](#). This form must be approved by the Deputy Chief Executive, or the Director of Business Development. The engaging manager is expected to discuss their intention to engage a consultant with their Director prior to obtaining approval.

Extensions

Where an engaging manager proposes an extension to any consultancy placement they must complete a new Approval to Engage a Consultant form. This form must be approved by the Deputy Chief Executive, or the Director of Business Development. An extension to a placement must not happen until the Engaging Manager has obtained this approval. In instances where the consultant was secured via a waiver a new waiver must also be approved prior to extending the arrangement.

6. Routes to Engaging a Consultant

There are 4 options available for obtaining a consultant

1. Engage via OPUS LGSS.	The Engagement Manager should contract OPUS LGSS to discuss their requirements as in some specific circumstances OPUS LGSS may be able to assist in the appointment of individual consultants although their primary role is to secure agency workers and interims.
2. Utilise existing supplier framework contracts for the provision of consultants.	There are a number of existing supplier framework contracts available to the Council relating to consultancy. The Engaging Manager must contact the LGSS Procurement team for advice on the use of these framework contracts and the procurement process that must be followed under that framework including whether a mini competition is required and whether direct award is possible and under what circumstances.
3. Advertise and run a competitive tendering process to invite bids, in accordance with the Contract Procedure Rules.	Where an existing supplier framework contract is not suitable, the requirement for the contract should normally be advertised via the appropriate advertising site in each Council, contact LGSS Procurement for details.
4. Submit a Procurement Waiver for approval	If the Engaging Manager considers that the existing framework contracts or a competitive tendering process is not suitable to meet the requirements they must submit a Waiver Request as defined in the Contract Procedure Rules and submit this for approval prior to any engagement. Advice should be sought by the Engaging Manager from LGSS Procurement in this situation.

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 Section 5 and appointment must also follow one of the routes defined above.

7. Selecting a Consultant

The selection criteria for the Consultant should relate both to the technical skills required and the total cost relating to the consultancy placement.

For all consultant placements, the Engaging Manager must:

- Where the requirement is advertised, formulate evaluation and award criteria for the procurement stage. If using an existing Framework agreement, the same evaluation or award criteria must be applied where this is a requirement of the framework contract.
- Formulate the required outcomes that must be delivered, which will form the acceptance criteria for the assignment.
- Formulate appropriate performance measures.

8. Contractual Arrangements

The Engaging Manager must obtain advice from LGSS Law to ensure that the appropriate terms and conditions are used to protect the Council's interests.

Where the value or complexity requires a contract rather than a Purchase Order, the Engaging Manager must use the Council's template terms and conditions relating to Consultancy. These can be provided by LGSS Law.

The Engaging Manager must ensure that specific provisions relating to the required outputs/outcomes, termination, insurance, assignment etc. are agreed with LGSS Law. Officers must ensure that any contract with a 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. All contracts entered into for consultancy services must also have a clear outline of termination conditions, to accommodate a change in organisational requirement, breach of contract and/or poor performance. Under no circumstances should the supplier's terms and conditions be used unless this is explicitly agreed in writing by LGSS Law.

The Engaging Manager must ensure that the contract stipulates that any Intellectual Property Rights remain with the Council and not with the Consultant; if this cannot be readily agreed advice must be sought from LGSS Law.

The Engagement Manager must also create a Purchase Order for the consultancy placement (unless via OPUS LGSS) and this must contain the relevant Finance Code for Consultancy (D4100).

9. Assessing Employment Status – IR35

IR35 is a piece of tax legislation that differentiates between genuine businesses and workers who for tax purposes are considered to be temporary employees. Where a contractor meets the HMRC definition of employment for tax purposes, they must be paid via the relevant payroll and will be subject to tax and national insurance deductions.

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.

It is a mandatory requirement for the Engaging Manager to assess the employment status of a Consultant before making arrangements to engage them. This means that the Engaging Manager must complete the HMRC Employment Status Tool available [here](#) and provide a copy of this to their HR Business Partner.

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. The employment status check results must be saved and retained by the Engaging Manager. The status check results must be accessible should a query or challenge arise. A copy of the outcome should be kept on the Consultant's record for a minimum of 6 years.

Where a consultancy assignment is extended, or the scope of the placement changed the Engaging manager must repeat the employment status check.

10. Payments to Consultants

Payment to consultants 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.

Payment Mechanisms: Payment will be made to consultants via the following mechanisms, as appropriate:

Payments to consultants within the scope of IR35:

Where a Consultant is determined to be within the scope of IR35 the individual will be set up via the supplier and subject to tax and NI deductions.

Payments to consultants outside the scope of IR35:

There are two options for payment of consultants outside the scope of IR35:

- Payment via OPUS LGSS where the consultant engaged 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 LGSS will process payments to the individual via a limited company.
- 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 by P2P and will be paid via invoice. The supplier record should clearly state that it is related to consultancy spend.

Expenses: Expected expenses costs should be included in the quoted price of a consultancy contract. This is to ensure comparability in the full cost of the contract across quotations by different firms, and to ensure that the total actual cost of the contract does not exceed the expected total cost. This means that no expenses can be claimed by the consultant. In exceptional circumstances, the Engaging Manager may approve the reimbursement of a reasonably-incurred expense claim by a consultant, on submission of a valid VAT receipt. Any such additional expenses may only be paid in line with the rates paid to Council employees.

Recording: Budget holders are responsible for ensuring that all Consultancy expenditure must be coded to the Consultancy account code on ERP Gold.

11. Managing a Consultancy Contract

Skills Transfer: Skills transfer must be a written contractual requirement for Consultants, to enable officers to develop expertise which will directly benefit the Council. The Consultant shall identify the knowledge and skills needed to carry out the services, and impart the necessary skills and knowledge to the appropriate Council's employees e.g. via training sessions or question and answer sessions.

This training must increase and consolidate the skills base within the Council. The Consultant must also provide appropriate written documentation before the end of their engagement e.g. process notes or reference material.

Performance Management: Poor performance must be addressed promptly and before serious damage to the project, work or to the Council's reputation can occur.

Record-Keeping: Engaging managers must maintain information for each consultant engaged both via OPUS LGSS and directly, in line with the Council's Records Retention Policy. This must include a copy of the business case and approval, all the relevant procurement and contract information and a copy of the employment status check. OPUS LGSS also maintains a central record of any interim or consultant placed via them. This will specify if a placements in within/outside of the scope of IR35.

12. Reporting and Monitoring

A file will be held for each consultant that contains all of the documents relating to the consultants engagement and the consultancy placement. These files must be held centrally by each directorate. A consultant's file must be retained for 6 years following the end of the consultancy placement.

The Engaging Manager must complete monthly progress reports to demonstrate that the objectives of the original Business Case are being achieved.

SMT will review a summary of all of the current Consultancy placements and spending on consultants on a quarterly basis to see whether these are on track.

The ongoing monitoring role at Member level is undertaken by the Audit and Accounts Committee. The Deputy Chief Executive will provided a report on consultancy use and spending to the audit and accounts committee on a quarterly basis (based on information held by X and provided by OPUS LGSS).

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.

13. Ending or Terminating a Consultancy Arrangement

Managed Exit: 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 should also consider whether training of internal employees should be carried out so that they are able to replicate work without needing to call on the services of a Consultant again.

Terminating a Contract: 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.

Assignment Evaluation: 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.

14. Avoiding Legal Claims for Employee Status

Consultants are not employees of the Council. Precautions should be taken to ensure that Consultants cannot claim employment rights with the Council. Therefore the Engaging Manager must not:

- Use a Consultant for a protracted period.
- Control the way the Consultant does his/her work – focus on achievement of agreed outputs.
- Integrate the Consultant into the Council more than is necessary. Matters of pay, sickness, leave, and any performance problems should be raised with the consulting firm and detailed in the framework agreement contracts.

15. Conflicts of Interest

Manager Conflicts of Interest: A manager is not permitted to engage a relative as a Consultant. Any conflict of interest when engaging/overseeing a Consultant must be avoided. Where the Engaging Manager has a conflict of interest in the selection and procurement, they must make this known to their manager and an alternative requestor should manage the procurement. Where this is not possible, advice must be sought from LGSS Head of Procurement who may refer the issue to the Monitoring Officer.

Use of Ex-Employees: An employee terminated on the grounds of voluntary or compulsory redundancy must not 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. Where an ex-employees has been reengaged as a consultant this will be highlighted to SMT on the quarterly reporting of consultancy arrangements.

Consultant Conflicts of Interest: Consultants must not allow personal and/or private interests to influence their conduct during the assignment and must notify the Council of any potential conflicts of interest prior to engagement or as soon as these arise. In particular all Consultants are required to inform the Council if they have any other current assignments which may conflict with their consultancy role within the Council.

The Consultant must also inform the Council prior to engagement 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. If the Council considers that there is a conflict of interest, 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.

16. Data Protection and Other Legislation

While engaged and providing services for the Council, all Consultants shall comply with any notification requirements and its obligations under the Data Protection Act and the Computer Misuse Act insofar as performance of the Agreement gives rise to obligations under those Acts.

Consultants shall ensure that they do nothing knowingly or negligently, which places the Council in breach of their obligations under the Act. Consultants shall at all times value the right to privacy of the people about whom information is held and manage personal information professionally and in accordance with the law.

Engaging Managers are responsible for ensuring Consultants are aware of their responsibilities under the principles of the General Data Protection Regulations 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.

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.

If a Confidentiality Agreement is required, please contact LGSS Law.

17. Freedom of Information

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.

18. Monitoring and Review

This policy is a corporate policy and will be reviewed in line with any changes in legislation or relevant best practice. Any requested changes to the policy must be made via the joint document owners within Human Resources and Procurement.

Appendix 1 Process to Engage a Consultant



