

EMPLOYMENT MATTERS COMMITTEE

29 NOVEMBER 2012

USE OF CONSULTANTS

Report from: Tricia Palmer, Assistant Director, Organisational Services

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Summary

The report provides information on the use of consultants in the Council

1. Budget and Policy Framework

1.1 The resourcing of work to support the delivery of Council services is a matter for this committee.

2. Background

2.1 This committee considered a report on 18 July 2012 on "Use of People Resources" which had set out the position of the Council's use of external consultants for specific pieces of project work. This committee referred it to the Business Support Overview and Scrutiny Committee asking that Members give further consideration to this matter, especially with regard to value for money.

3. Consideration by Business Support Overview and Scrutiny Committee

3.1 The Business Support Overview and Scrutiny Committee discussed the referral from the Employment Matters Committee at its meeting on 8 August 2012. Members were advised that consultants would only be employed when the council did not have the relevant in-house expertise or capacity. Managers would be expected, when proposing the use of consultants, to identify how they would support a project and to work within the budget, considering value for money aspects at that time.

3.3 A Member, who was also a Member of the Employment Matters Committee, stated that this was why the issue had been raised as there may be staff within the council who had skills and expertise the council was unaware of, especially at a time when jobs were being put at risk, and these staff should be utilised rather than employing a consultant.

3.4 The Chairman suggested that HR should be asked to be more responsive on this issue, with managers reporting this information on a regular basis to HR in order that the council had a record of people/companies working in this

capacity. Councillor Carr advised the committee to refer the issue back to the Employment Matters Committee in order that it could consider the way forward on this matter.

4. Current Position

4.1 The Assistant Director, Organisational Services has gathered information on a case by case basis from across the council on consultants that are engaged.

4.2 This information indicates that 85 consultants have been engaged this financial year, ranging from technical project managers in ICT to solicitors for children's work.

4.3 The reasons for using these consultants are summarised as follows:

- No directly employed post holder with the level of technical or specialist expertise required
- More cost effective as on an "as required" basis
- External person considered critical for success
- Insufficient capacity in house
- Short, specific piece of work
- Specialist that understands the market
- Independent from the Council (certain appeals in Planning, Chair of Serious Case Review)
- Independent review as directed by Members.

4.4 HR are putting in place a system for obtaining approvals for the use of consultants. This is subject to approval but will cover the following:

4.5 It will now be necessary to seek approval from HR for the appointment of consultants so that we are aware as to who is being engaged and why, ensuring we can answer all the queries, avoid potential fines from HMRC and be compliant with all other employment legislation.

4.6 Managers will make a request via the current on line recruitment tool *e-source*. The request will be managed by a resourcing officer who will work through the requirements and help to assess if this should be a consultant or a resource employed directly by the council. The overall cost of the placement will be monitored by the Resourcing team ensuring accurate and timely management information can be collated and reported.

5. Risk management

5.1 There could be a risk that those being paid as consultants should be on the Council's payroll. However, we have a robust system in place to ensure that those who should be on the payroll are on the payroll. Every application for self employed status has to be examined in accordance with the Her Majesty's Revenue and Customs (HMRC) regulations.

5.2 Managers are expected to make a decision on the status of employment, not only to ensure that employment rights are attained (if these are applicable), but also to meet the requirements of tax legislation, which require certain deductions to be applied by us at source from the payments that we make.

- 5.3 There is sometimes an assumption that a worker will be self-employed because they operate under a company name. However, each contract is tested to ascertain whether or not the person is engaged to work under a contract of employment, or a contract for services.
- 5.4 Some decisions that we make are reviewed at different stages by external bodies, such as HMRC. In HR we provide managers with professional advice in order to make the right decision before appointing the person to work, as Medway Council will be liable for any underpayment in tax and national insurance, plus interest and penalties.

6. Financial and legal implications

- 6.1 Agency and external consultant costs are charged to the individual budget headings appropriate to the service being provided and therefore subject to the same constraints as other Council spending.
- 6.2 Her Majesty's Revenue and Customs (HMRC) have specific rules regarding the taxation status of individuals and 'companies' and the Council has to be cognisant of these rules or face the possibility of sanction should HMRC determine that there has not been a satisfactory treatment of taxation status.
- 6.3 The Council needs to be mindful that there could be a challenge from an individual consultant, say for example if their services are no longer required, that they should have been on a contract of employment and therefore eligible for employment rights, such as the right not to be unfairly dismissed or the right to a redundancy payment. In addition, the Council could be held liable for the actions of external consultants for example, for acts of harassment under The Equality Act 2010.

7. Recommendation

- 7.1 The Employment Matters Committee is asked to note the information in this report.

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Background papers

Employment Matters Committee 18 July 2012

Business Support Overview and Scrutiny Committee 8 August 2012