

EMPLOYMENT MATTERS COMMITTEE

4 JULY 2013

USE OF CONSULTANTS

Report from: Tricia Palmer, Assistant Director, Organisational Services

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Summary

The report provides an update 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 Following discussions at this committee and Business Support Overview and Scrutiny Committee, this report is an update on the use of consultants as a resource within the Council.

2.2 Consultants will only be engaged when the council does not have the relevant in-house expertise or capacity. Managers are 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.

2.3 HR Services have instigated and manage a process whereby all requests for consultants are co-ordinated and subsequently approved through the Resourcing team to ensure that the council has a record of individuals and companies working in this capacity.

2.4 The approval from HR for the appointment of consultants ensures the council understands and has a record of 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.

3 Current position

3.1 Managers make a request via the current on line recruitment tool *e-source*. The request is managed by a resourcing officer who robustly works through the requirements and helps to assess if this should be a consultant or a resource employed directly by the council.

- 3.2 The Resourcing team keep data on a case by case basis of consultants that are used across the organisation
- 3.3 The data collated includes name of person or organisation, duration of engagement, cost and reason for not using internal staff or any other method to deliver the work.
- 3.4 The report to Employment Matters Committee in November 2012 confirmed that 85 consultants were engaged.
- 3.5 As at end May 2013 we have 54 consultants engaged.
- 3.6 For the purposes of keeping accurate records in terms of numbers and overall costs, each engagement is counted separately regardless of length of assignment.
- 3.7 The number of consultants therefore needs to be treated with caution as it does not mean we have this number working at any one time, some are re-engagements for another small project or specialist advice requirement for example advice in relation to a planning application.
- 3.8 The consultants engaged have been for a wide ranging number of requirements from Children's Social Care independent reviewing officers to archaeological specialists to give ad hoc advice on planning applications.
- 3.9 The reasons for using the diverse range of consultants is 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. Risk management

- 4.1 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.
- 4.2 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.
- 4.3 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.

- 4.4 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.

5. Financial and legal implications

- 5.1 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.
- 5.2 Her Majesty's Revenue and Customs (HMRC) have specific rules regarding the taxation status of individuals and 'companies' and the Council has to be cogniscent of these rules or face the possibility of sanction should HMRC determine that there has not been a satisfactory treatment of taxation status.
- 5.3 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.

6. Recommendation

- 6.1 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
Employment Matters Committee 29th November 2012