



# **Business Support and Digital Overview and Scrutiny Committee**

**26 October 2023**

## **Use of Agency Staff and Consultants**

Report from: Phil Watts, Chief Operating Officer

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### **Summary**

This report provides an overview of the use of agency staff and consultants by the Council and any action being taken by directorate management teams to identify opportunities for a reduction on reliance on off-payroll staff.

### **1 Recommendations**

1.1. The Committee is asked to note this report.

### **2 Budget and policy framework**

2.1 The resourcing of agency staff and consultant engagement supports the delivery of Council services which is a matter for this committee.

### **3 Background**

3.1 The report has been requested by this committee and represents an overview of agency staff and consultants across the Council, detailing where they are, why we are engaging them and the cost of doing so.

3.2 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.

3.3 Agency staff will only be engaged when the council cannot recruit to a post due to business demand/immediate need and skills shortage in the market. When proposing the use of agency staff, managers would need to agree plans to attract and retain permanent staff.

3.4 HR Services have TUPE transferred the recruitment agency back from Kyndi and have instigated and managed a process whereby all requests for agency

staff and 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.

#### 4. Current position

- 4.1 There are around 193 agency / consultants being used across the Council over the duration of quarter 2 (2023/24), this compares to approximately 169 for the same quarter last year (2022/23). Current appointments are used for a variety of reasons across several projects. In the main they are mix of short-term projects where the Council does not have the specialist expertise and longer term appointments where there is a skills shortage in the market and we are unable to recruit.
- 4.2 All placements / contracts are checked by the HR team to ensure that it is the best way of acquiring people via our Dynamic Purchasing System. The reasons for continuing to use the diverse range of agency staff / consultants is summarised as follows:
- No directly employed post holder with the level of technical or specialist expertise in-house.
  - More cost effective, as on an “as required” basis
  - External person considered critical for success
  - Insufficient capacity in house
  - Market supply low
  - Short, specific piece of work
  - Specialist that understands the market
  - Independent from the Council
- 4.3 The charge for agency staff / consultants range between £220 and £690 per day, the cost varies across the level and type of expertise. Some of the projects are charged on a single price for the delivery of a project and this is cost effective because the Council only pays for actual work done, others are chargeable by the hour.
- 4.4 Whilst the daily rate of an agency staff / consultant may at first appear high it is important to remember that this way of securing resources mitigates against the liabilities of employing staff. However, it is important to take into account the cost of holidays, sickness, training plus the provision of accommodation and equipment when calculating the true cost of an employee. Whilst it is difficult to cost this precisely, it would not be unreasonable to add a further 30% to take into account all these factors. In addition, there are the resources required to recruit, manage and where appropriate dismiss the relevant employee for such short-term projects. These are the factors considered when appointing the use of consultants.
- 4.5 Agency staff have been engaged for wide ranging number of requirements, however skills shortage is the main reason. This applies to Children’s Social Care, Adult Social Care and Legal Services. The table below summarises where the bulk of the agency staff are:

**Agency staff 30/09/2023:**

Childrens	Adults	Legal	Other	Total
89	40	25	39	193

4.6 Whilst numbers in Childrens Social Care are high, the majority are covering posts where we have been unable to retain and or recruit, the rest are for a number of service reasons ranging from mentor support for NQSW, to additional project team support, which will be released in January.

## 5. Childrens Social Care

5.1 Nationally the number of children's social workers directly employed by local authorities decreased for the first time in 5 years by 2.7% (900 social workers), and vacancies increased by 21% (7,900). The number of children's social workers directly employed by Medway is 187. This has increased by 61 social workers since 2019.

The vacancy rate of children's social workers in Medway compared to England and the South East is shown below –

	2019	2020	2021	2022
England	16.4%	16.1%	16.7%	20.0%
South East	16.0%	15.4%	15.8%	18.8%
Medway	20.4%	29.0%	21.5%	29.4%

5.2 As of 31 August 2023, the vacancy rate for Medway is 29.65%. This equates to 78.94fte social work vacancies. The number of new children's social workers starting in Medway for the period 1 October 2022 to 31 August 2023 was 42.50fte. A further 7 social workers will start in September 2023. This is an increase to the previous year where 32 new social workers started during the period 1 October 2021 – 30 September 2022. Whilst recruitment has increased we are failing to retain our staff. The turnover rate for Children's social work in Medway compared to England and the South East is shown below:

	2019	2020	2021	2022
England	15.1%	13.5%	15.4%	17.1%
South East	15.0%	12.6%	14.6%	18.6%
Medway	22.5%	18.3%	18.1%	19.3%

The turnover rate for Medway for the period 1 October 2022 – 30 September 2023 is 27%. This will be comparable to South East and England once DfE share all returns in QT4.

- 5.3 The number of permanent social workers who have left Medway during the period 1 October 2022 – 30 September 2023 is 50.91fte (49.5 starters, so we have simply replaced leavers rather than reduce agency staff). Exit interviews are offered to staff who resign. Over the last year the main factors contributing to staff leaving include pay, career progression, workload, excessive hours and work / life balance. Stay interviews are undertaken by the Principal Social Work team. Key themes identified from staff about why they stay in Medway include having supportive managers and teams, a good culture, feeling valued and supported, learning and development opportunities, and visible, stable and approachable senior leaders. In contrast some of the areas where staff feel conditions could be improved includes unsupportive managers, bureaucratic processes, pay (particularly for non-social work staff) and IT (Mosaic and surface pro laptops). The turnover of permanent workers hinders our ability to release contractors.
- 5.4 Many permanent members of staff have moved into agency work, with a high percentage having moved into project roles, which warrant a higher than agreed rate, which sits outside the Memorandum of Cooperation. We had expected the results from a government consultation paper on 'Child and Family Social Worker workforce' to be published in September 2023 but it has unhelpfully, been delayed. It is anticipated that from Spring 2024 all local authorities will be required to comply with the national rules governing the use of agency workers. [Child and Family Social Worker Workforce – government consultation](#), aimed at preventing the permanent workforce from opting to leave and take up agency work.
- 5.5 To reduce the reliance on agency workers we are growing our own and focussing on early talent identification, our focus to reduce agency placements includes:
- Targeted campaigning around our 'Good' Ofsted judgement;
  - Newly Qualified Social Workers – propose to recruit a further cohort in April 2024;

- Rolling programme of 4 social work apprentices every two years. Next intake of 4 apprentices commences in January 2024;
- Step up to Social Work 14 month programme - commences in January 2024 – 4 students (funded by DfE);
- Quarterly temp to perm events being held to encourage further conversions;
- Meeting with agencies being held in October 2023 to increase partnership working;
- Perm and agency glide path being created with key targets to reduce number of agency staff and increase stability across the workforce;
- Overseas recruitment campaign;
- Hosting an open day for recruitment;
- Continuing to advertise roles across Jobs Go Public and Guardian;
- Increase use of social media postings to attract permanent candidates;
- Working with agencies to replace bank / project workers with permanent staff or agency workers on MOC rates.

## 6. Adults Social Care

- 6.1 There were 113,900 adult social services jobs in local authorities in England (held by 111,100 people), a decrease of 1.0% or 1,150 jobs from 2021. The number of jobs fell by 28% (41,000 jobs) between 2012 and 2017. Since 2017, filled posts have increased by 4.3%, an increase of 4,700 jobs.
- 6.2 The number of local authority filled posts has decreased by 36,700 in total or an average of 4,000 filled posts each year between 2012 and 2022. Other parts of the adult social care sector have grown, between 2012 and 2022, especially the independent sector which increased by 130,000 filled posts. Between 2012 and 2017 filled posts for local authority adult social services decreased by 28% (41,400 filled posts), since 2017 this figure has remained relatively stable, increasingly slightly from 109,200 to 113,900 in 2022, an increase of 4% (4,700 filled posts).
- 6.3 To reduce the reliance on agency workers we are redesigning the workforce strategy, some of the early areas being worked on include:
- Quarterly temp to perm events being held to encourage further conversions;
  - Meeting with agencies being held in October 2023 to increase partnership working;
  - Perm and agency glide path being created with key targets to reduce number of agency staff and increase stability across the workforce;
  - Continuing to advertise roles across Jobs Go Public;
  - Increase use of social media postings to attract permanent candidates;
  - Newly Qualified Social Workers campaign
  - Rolling programme of social work apprentices every two years.

## 7. Legal Services

- 7.1 Legal Services have for a while struggled to attract lawyers and paralegals. They have since undergone a restructure as part of the MedPay review and this has seen the introduction of a new senior pay band and a different organisational focus. Final sign off on the restructure is due to be discussed at Full Council in October.
- 7.2 They have also needed to respond to increased demand from other Council services most notably Children's social care which led to an ad hoc increase in the number of lawyers in the People team over and above the establishment of circa 8 FTE. The restructure also looks to regularise this with an increase in the number of posts within the service by five.
- 7.3 Vacancies to backfill agency posts are being advertised, and a number of casual to permanent conversions with individuals and agencies direct have taken place.
- 7.4 Further recruitment activity is being scoped to ensure wide reach, targeted campaigning, promotion of internal career opportunities, use of apprenticeships etc.
- 7.5 Acknowledging the severity of the Council's current financial position a decision was made to terminate several agency lawyers and a 5.1 FTE reduction implemented as of 13<sup>th</sup> October 2023. This does have an effect on service delivery which the team are working exceptionally hard to mitigate.

## 8. All other areas

- 8.1 Outside of Social Care and Legal Service we have 39 agency staff / consultants, these fall within the following categories:
- Skills shortage
  - Project Work
  - Ad hoc use

Apart from the ad hoc use of consultants, all others have an end date within the next 18 months.

## 9. Risk management

- 9.1 There could be a risk that those being paid as consultants should be on the Council's payroll (IR35). 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 must be examined in accordance with the His Majesty's Revenue and Customs (HMRC) regulations, managers must complete a check list and this is held alongside the assignment specification.
- 9.2 Some decisions that we make are reviewed at different stages by external bodies, such as HMRC. In HR we provide managers with professional advice to help them 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.

9.3 The use of project teams and high cost consultants may destabilise the permanent workforce, leading to high turnover

Risk	Description	Action to avoid or mitigate risk	Risk rating
Wrong IR35 Status	The off-payroll working rules make sure that a worker (sometimes known as a contractor) pays broadly the same Income Tax and National Insurance as an employee would.	Advice given to managers.  Copies of IR35 check list for compliance is reviewed.	CII
High turnover	Staff become demotivated when seeing people being paid more to do the same role.	Using a number of marketing tools and channels to go to market and recruit permanent hirers.	BIII

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

10. Financial implications

- 10.1 Agency / 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. Managers are expected to ensure they are getting value for money and are following the relevant procurement rules.
- 10.2 Final finance clearance of the completed report will be required from a finance manager - this process will be more expedient if prior discussions with Finance Business Partners and or accountants have been undertaken.
- 10.3 The total forecast spend for all agency staff / consultants, including cover for establishment posts for 2023/24, is estimated to be £13,140,174. It is

important to note at least 80% of these roles are filling establishment posts, so whilst we are paying a higher fee (up to 30%) this will not all be a full cost saving, as a permanent workforce will need to be secured.

A summary of where the spend is in the table below:

<b>Directorate</b>	<b>Amount</b>
Business Support Department	£2,772,829
Adult Social Care	£2,421,647
Children Social Care	£7,829,368
Regeneration Culture and Environment	£116,330
<b>Total</b>	<b>£13,140,174</b>

## 11. Legal implications

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

11.2 The Council needs to be mindful that there could be a challenge from an individual agency staff / 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 agency staff / consultants for example, for acts of harassment under The Equality Act 2010.

### Lead officer contact

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### Background papers

None