

**Decision Maker:** EXECUTIVE AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

**Date:** 3<sup>RD</sup> September 2015

**Decision Type:** Non-Urgent Non-Executive Non-Key

**Title:** Expenditure on Consultants 2014/15 and 2015/16

**Contact Officer:** Lesley Moore, Assistant Director Special Projects & Transformation  
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**Chief Officer:** Doug Patterson, Chief Executive

**Ward:** N/A

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1. Reason for report

Members of ER PDS requested a full report on Consultant expenditure in the last year. Officers have therefore looked at total expenditure in 2014/15 and expenditure to date for 2015/16 for both Revenue and Capital Budgets.

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2. **RECOMMENDATION(S)**

**Members to:**

**2.1 Note the overall expenditure on Consultants as set out in this report.**

**2.2 Refer this report onto individual PDS Committees for further consideration.**

### Corporate Policy

1. Policy Status: Not Applicable
  2. BBB Priority: Not Applicable:
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### Financial

1. Cost of proposal: N/A
  2. Ongoing costs: All one-off expenditure met from allocated budgets
  3. Budget head/performance centre: Consultants
  4. Total current budget for this head: £
  5. Source of funding: Revenue & Capital
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### Staff

1. Number of staff (current and additional): N/A – one-off costs
  2. If from existing staff resources, number of staff hours:
- 

### Legal

1. Legal Requirement: None:
  2. Call-in: Not Applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

### 3. COMMENTARY

- 3.1 ER PDS members requested information on the Councils expenditure on Consultants over the last year. To do this officers have looked at the total expenditure in 2014/15 and also the expenditure for this financial year as at the end of June 2015. This work covered both Revenue and Capital expenditure.
- 3.2 The basic reason for the use of consultants is that at times the Council requires that specialised work is undertaken for specific projects. This is particularly valid when consultants are engaged to work on large scale projects. For completeness expenditure on Architects, Engineers, Surveyors and other consultants commissioned to work on Capital Projects have been included as these generally meet the definition of one-off projects. Proposed expenditure on Capital Projects will have been approved by Executive before being included in the Capital Programme.
- 3.3 The Councils Contract Procedure rules (8.5) sets out the procurement process to be followed when appointing a consultant and there is also guidance available to staff about what needs to be included in the formal agreement when engaging a consultant, which as a minimum needs to confirm the overall cost, project deliverables, clear brief and reporting arrangements. Appendix 1 provides this in more detail.
- 3.4 There is an element of subjectivity as to what constitutes a “consultant” as a number of services could fall within this definition, however it is generally defined as “a person brought into the Council to carry out a specific job” which is not on-going. For the purposes of this report expenditure on medical fees, counsel and legal fees have been excluded as these are considered to be professional fees rather than consultants. It has also been difficult for finance staff to pull this information together as budget holders have not always used the correct expenditure codes.
- 3.5 In looking at consultants members need to be minded that officers will use them to carry out work on the Council’s behalf when:-
- There is no one internally with the relevant skills or experience
  - There is no capacity/resources available to undertake this work
  - Specialist skills are required
- 3.6 It is important when recruiting a consultant that the project brief sets out the reasons for the use of consultant, that officers have consider any alternative options and also to evaluate the effectiveness of the work undertaken by consultants within the authority.
- 3.7 The benefit of employing consultants is that the Council makes a saving in relation to employer National Insurance and pension contribution. Also in employing consultants the Council is under no obligation to pay consultants for days when they are not working for the Council e.g. sickness and holiday and they are only engaged for a specific period of time – however offsetting this is that these staff are often more expensive.
- 3.8 The risk in not using consultants is that the Council would have to recruit a more substantial and specialised workforce at a greater expense.
- 3.9 This report provides a detailed breakdown of all costs officers believe are consultants, broken down over Portfolio’s and service areas. This is shown in Appendix 2 (revenue) and Appendix 3 (capital). It also examines the procurement arrangements associated with engaging the consultants as part of that process.

## **HM Revenue & Customs**

- 3.10 From April 2015, Employers must complete a return to the HMRC on a quarterly basis providing a detailed breakdown of all workers they have employed that do not get paid through the PAYE system. The information that needs to be captured is quite detailed and so officers have now reviewed current processes to ensure that this information is collected.
- 3.11 This applies to all staff who are engaged directly as independent self-employed contractors or through personal service companies
- 3.12 It does not apply to the procurement of services from professional services firms such as accountants, actuaries, estate agents or lawyers.
- 3.13 An approvals form has been created that managers will need to complete whenever they are recruiting staff outside of the PAYE system that will need to be signed off by both HR and the Chief Officer.
- 3.14 As the worker is set up on either IPROC or Confirm to authorise payments, they will need to complete this information at the same time. A report can then be run each quarter and submitted to the HMRC.
- 3.15 If the report is late, incomplete or incorrect then the HMRC will charge a penalty based on the number of offences over a 12 month period. These are:-
- £250 – first offence
  - £500 – second offence
  - £1,000 – Third and later offences
- 3.16 Where there are continued failure to by organisations to send the reports or if they are frequently late, then HMRC may penalise organisations for every day the report is late.

## **4. FINANCIAL IMPLICATIONS**

- 4.1 Included in the body of the report.

## **5. LEGAL IMPLICATIONS**

- 5.1 There is a considerable amount of legislation affording specific employment rights such as paid holiday, maternity leave and pay, entitlement to redundancy payments, minimum notice periods and protection from unfair dismissal, to name but a few to employees. Self-employed consultants, on the other hand, are not entitled to these enhanced statutory rights or protections.
- 5.2 In addition to statutory rights, an employer/employee relationship also implies a duty of trust and confidence between the parties concerned and suggests that neither should act in such a way as to undermine it. This notion introduces the idea of reasonableness into the way in which employers treat their employees. But the relationship between an organisation and a self-employed consultant does not have the same implied duties, with the consultant's protection relying largely on the contractual terms in place.
- 5.3 Describing a role as a consultant will not provide a definitive position and as a starting point, there are three key areas that should be evaluated:

- (i) a requirement for personal service
- (ii) the existence of mutuality of obligation
- (iii) the level of control that the council has over an individual.

**5.3.1 Personal service** - Is the individual personally required to perform services for the company?

An employee is someone who is employed under a contract of service, that is, a contract that requires them to personally turn up for work and carry out the duties requested of them.

A consultant, on the other hand, is engaged under a contract for services, that is, a contract under which they agree to provide the company with particular services. But, while they are obliged to ensure that these services are provided, they are not necessarily required to carry out the work personally.

**5.3.2 Mutuality of obligation** - Are employers obliged to offer individuals work under their agreed contract? Equally, if an employer offers an individual work, are they obliged to accept it? If they are, it could indicate an employment relationship.

**5.3.3 Control** - How much control does the employer have over an individual? Who decides what work needs to be done, how it should be done and when?

5.4 HMRC uses different, albeit similar, criteria when determining individual's employment status or otherwise. This means that an individual could be considered an employee for tax purposes, yet remain a consultant from an employment perspective. As stated above the process of engaging consultants is being tightened with the appropriate checks and balances. These will reduce or eliminate the obvious employment law risks including the accrual of the statutory protection rights set out in para 5.1 above. HR advice should be sought to ensure that each assignment/engagement is not likely to give rise to employment or "contract of services

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| <b>Non-Applicable Sections:</b>                       |                       |
| Background Documents:<br>(Access via Contact Officer) | Held in finance teams |