

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

**Date:** 8th October 2020

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

**Title:** Expenditure on Consultants 2019/20 and 2020/21

**Contact Officer:** David Bradshaw, Head of Finance  
Tel: 020 8313 4807 E-mail: [david.bradshaw@bromley.gov.uk](mailto:david.bradshaw@bromley.gov.uk)  
James Mullender, Head of Finance  
Tel: 020 8313 4196 E-mail: [james.mullender@bromley.gov.uk](mailto:james.mullender@bromley.gov.uk)  
Keith Lazarus, Head of Finance  
Tel: 020 8313 3163 E-mail: [keith.lazarus@bromley.gov.uk](mailto:keith.lazarus@bromley.gov.uk)  
David Dobbs, Chief Accountant  
Tel: 020 8313 4145 E-mail: [david.dobbs@bromley.gov.uk](mailto:david.dobbs@bromley.gov.uk)

**Chief Officer:** Peter Turner, Director of Finance

**Ward:** N/A

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1. Reason for report

Members of ER PDS requested a full report on Consultant expenditure be submitted each year. Officers have therefore looked at total expenditure in 2019/20 and expenditure to June 2020 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

### Impact on Vulnerable Adults and Children

1. Summary of Impact: Any issues concerning vulnerable adults and children should be considered within each individual project brief.
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### Corporate Policy

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

1. Cost of proposal: Not Applicable
  2. Ongoing costs: All one-off expenditure met from allocated budgets
  3. Budget head/performance centre: Consultants
  4. Total current budget for this head: £N/A
  5. Source of funding: Revenue & Capital
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### Personnel

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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### Procurement

1. Summary of Procurement Implications: Consultants should be appointed in accordance with CPRs 8.2 and 8.6. IR35 Tax implications also need to be considered.
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
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### 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 be reported each year. To do this officers have looked at the total expenditure in 2019/20 and also the expenditure for this financial year as at the end of June 2020. 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 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.
- 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, and thus creating an employment relation or a “contract of service” with the associated diversity of employment rights including unfair dismissal and redundancy payment rights, etc.
- 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.

#### 4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 Any issues concerning vulnerable adults and children should be considered within each individual project brief.

#### 5. FINANCIAL IMPLICATIONS

- 5.1 The financial implications are included in the body of the report and the appendices.
- 5.2 A summary of the expenditure is detailed in the table below

<b>Expenditure on consultants</b>		
	<b>2019/20</b>	<b>2020/21</b>
	<b>£'000</b>	<b>£'000</b>
		<b>Part Year</b>
Revenue	588	140
Capital	419	71
	<b>1,007</b>	<b>211</b>

#### 6. LEGAL IMPLICATIONS

- 6.1 Legislation affords employees employment rights e.g. paid holiday, maternity leave and pay, entitlement to redundancy payments, minimum notice periods and protection from unfair dismissal. In general terms self-employed individuals and consultants are not entitled to these enhanced statutory rights or protections, because, arguably, they are not employees in the strict legal sense. However, the law around who is an employee/not an employee is constantly evolving and has resulted in a number of high profile cases e.g. Uber, Pimlico Plumbers and Deliveroo.
- 6.2 In addition HMRC also uses criteria e.g. IR35 when determining an individual's employment status. This means that an individual could be considered an employee for tax purposes and yet remains a consultant from an employment perspective. Ultimately, who is an employee or a worker, or self-employed individual for employment law purposes is a matter for the employment tribunal to decide.
- 6.3 To manage and minimise the risk to the Council, the Council procedures should be followed as referred to in para 3.3 and 7.1, which also reference IR35 together with using the Councils consultant contract documentation or other suitable contracts e.g. Jct. In addition the Councils HR and legal departments can be consulted.

#### 7. PROCUREMENT IMPLICATIONS

- 7.1 Consultants should be appointed in line with CPR 8.6 which requires a detailed project brief to be included with specific outcomes identified, and in line with guidance from the Corporate Procurement Team. Chief Officers are responsible for ensuring that project briefs are in place and that no payments are made until the specific outcomes have been achieved.

#### 8. POLICY IMPLICATIONS

- 8.1 Consultants may be used to assist officers in meeting the Council's key priorities.

<b>Non-Applicable Sections:</b>	Personnel Implications
Background Documents: (Access via Contact Officer)	Held in Finance teams