

**REDACTED**



## **INTERNAL AUDIT FINAL REPORT**

### **CHIEF EXECUTIVE'S / PEOPLE**

#### **REVIEW OF THE ENGAGEMENT OF A SUPPLIER FOR CONSULTANCY WORK**

**Issued to:** Janet Bailey, Director of Children's Services  
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**Cc:** Claudine Douglas-Brown, Assistant Director Exchequer Services  
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**Prepared by:** Principal Auditor

**Reviewed by:** Head of Audit and Assurance

**Date of Issue:** 12 October 2021

**Report No:** CEX/08/2021/UN

## REVIEW OF THE ENGAGEMENT OF A SUPPLIER FOR CONSULTANCY WORK

### INTRODUCTION

1. Our audit of creditors included testing the procedures for setting up new suppliers on the Council's financial system. Our testing identified a supplier which had been set up on the Council's financial system in December 2020 for providing consultancy work in Children's Services. We noted that the supplier's name on the supplier set up form was 'Supplier A' with a supplier address in a country of the European Union and the company was registered at Companies House in that country. The payment details section of the set-up form, completed by the supplier, showed however that the name of the bank account to be paid was the supplier's personal bank account with a bank address in the north of England. The form had been authorised by the Director of Children's Services.
2. This report sets out the findings from our separate review into that engagement. The scope of our review included the financial and procurement arrangements and the IR35 assessment.
3. We would like to thank everyone contacted during this review for their help and co-operation.

### SUMMARY OF FINDINGS

4. We would like to bring to management's attention the following key findings which we identified:
  - We found that the consultant's tax arrangements were properly considered by the Director of Children's Services, who sought advice from Finance Directorate, before the payment arrangements were put in place. It is not however clear who has responsibility within Finance Directorate for deciding how international payments to suppliers based overseas should be made. BACS payments made through the Council's financial system can only be made in British pound sterling. Payment by CHAPS was considered but not proceeded with as it would not be cost effective to make international payments in this way. We were however informed subsequently by senior management in Finance Directorate that the cost is not as prohibitive as a member of Finance Directorate had originally told Children's Services. The Council should liaise with its tax advisors to confirm that the payment arrangement made in this case does not leave the Council at risk of a subsequent enquiry and possible financial penalties from the HMRC.
  - The consultant was engaged due to their expertise in the specialism of a particular area of Children's Social Care. No quotations were sought for this work and a waiver exemption was not obtained, as required by Contract Procedure Rules. A total of £94,850 was spent on this work since November 2019 against an original budget of £33,750. There was no evidence that sufficient funds were made available prior to the re-engagement of this consultant. The Children's Social Care

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consultancy cost centre was overspent in 2019/20 and 2020/21; this was contained in the overall expenditure on Council Services. The consultant was part of an exit strategy which has now handed this over to the service to continue the work and therefore no further expenditure is expected.

- The consultant's performance has been reviewed at regular meetings between the Assistant Director for Children's Social Care and the Head of the particular area of Children's Social Care. Invoices for the re-engagement (four months after the initial engagement ended) showed an increase in the daily rate of £100 (22%). This was a market factor as the expert was being used by other local authorities for similar work. The Director of Children's Services and Assistant Director for Children's Social Care confirmed that they were aware and had agreed that in advance, although there was no evidence of a formal written agreement. At the end of the first engagement the consultant relocated to a country in the European Union and set up a new business 'Supplier A'. At the time of the audit there were contracts for the original engagement, but no new contract had been issued and signed by the consultant and the Council for the re-engagement. This was remedied by the Department as soon as it was identified during the audit. We requested, but did not see, the supplier's public liability and professional indemnity insurance for the new contract or the specification accompanying the initial and re-engagement contracts. The supplier's contract has now ended following completion of the improvement work.
- An IR35 assessment was not carried out when the consultant was re-engaged, because they would be carrying out the same work as when they was previously engaged. Any consultant working in improvement work will stop and start with pieces of work including auditing and other quality assurance areas. There is however no guidance in the 'Engagement of Additional Resources' procedure manual specifying what information and evidence of relevant due diligence checks should be obtained, prior to re-engaging someone for an off-payroll engagement. The Director of HR and CS and the Director of Finance approved the re-engagement without being aware that the original budget of £33,750 for this work had been exceeded by £17,100, with a further £13,200 paid by the time the re-engagement was identified by HR.
- A comprehensive Procurement Practice Note entitled 'Contracting for Professional and Consultancy Services' was written by the Head of Procurement in March 2021. It was uploaded on the Procurement Team's Sharepoint site but has not been publicised Council-wide.

## DETAILED FINDINGS AND RECOMMENDATIONS

5. We have not provided an overall audit opinion because this was a review into the engagement of one particular supplier, identified from our testing on the creditors' audit. The detailed findings arising from this review are set out below.

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Recommendations and the risk associated with any control weaknesses identified, are detailed in the table at Appendix A, together with management’s responses and timescales for implementation.

6. The number of recommendations by risk rating are as follows:

Number of recommendations by risk rating		
Priority 1	Priority 2	Priority 3
0	3	1

## IR35 ASSESSMENT

### Initial engagement

7. The consultant was first engaged by the Council in November 2019. At that time their company was called Supplier B’ and they were the sole Director. A business case had been completed and submitted to HR by the Assistant Director, Children’s Social Care. An IR35 assessment was carried out by HR for the initial engagement. The assessment result was ‘Self-employed for tax purposes for this work’.

### Re-engagement

8. In February 2021, HR identified from the monthly report of payments that a payment had been made to the consultant. HR recognised the name from the previous IR35 assessment and asked the Director and Assistant Director, Children’s Social Care by email for further information about this. They were informed that the work being performed was not different from the work performed during the original engagement. On that basis, a further business case was not requested and an IR35 assessment was not completed. Instead, the email exchange was sent to the Director of HR and CS and the Director of

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Finance who approved the off-payroll engagement for a further period. We have examined this and there is nothing in the information provided to suggest that another IR35 assessment would have produced a different result.

9. There were however two related matters which were not identified at the time of the re-engagement. Firstly, the original business case showed a budget of £33,750 with a maximum budget of 75 days, but expenditure for the first engagement totalled £50,850 with a total of 113 days incurred. This was contained within the overall improvement team who work with Children's Social Care. The HR guidance document 'Engagement of Additional Resources – Role of the Manager' states that 'If an interim assignment is going to last beyond its planned end date or to exceed its agreed budget, then HRIS and Reward team must be notified one month before the planned end date or as soon as the overspend is known. In either case a revised Business Case approved by the Service Director and Director of HR must be forwarded to HR and the process of approvals should follow the guidance as set out in the Engagement of Additional Resources – Procedure Manual.' We were unable to evidence that this had been done.

### Engagement of Additional Resources guidance

10. We noted that there is no guidance in the 'Engagement of Additional Resources – Procedure Manual' stating what process should be carried out if the supplier of an off-payroll engagement is re-engaged. In future, where an individual is re-engaged within a given period (e.g. twelve months) for the same work and the decision is made to not carry out another IR35 assessment, management need to identify what information should be presented instead to the Director of HR and CS and the Director of Finance to enable them to make a decision to approve or refuse that re-engagement.
11. The 'Engagement of Additional Resources – Procedure Manual' includes a flowchart of due diligence checks which should be carried out for an off-payroll engagement. These include certificates of Professional Indemnity and Public Liability insurance, bank account details, five years of references and (if required) VAT registration certificate and DBS check. The guidance does not however specify who should carry out these checks or when or what procedure is in place to evidence that they have been checked and are satisfactory. We have recommended that a review of the procedure manual should be undertaken to address this and the finding in paragraph 9 above. (Recommendation 1)

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### ENGAGEMENT OF THE CONSULTANT

#### Contract Procedure Rules – quotations/waiver

12. The procurement requirements and financial limits for awarding contracts are set out in Section 8.2 of Contract Procedure Rules. They state that for an estimated cost or value between £25,000 and £100,00 the sourcing procedure is a request for quotation to at least 3 and no more than 6 candidates. From our discussions and enquiries of the Director of Children's Services and Assistant Director, Children's Social Care, we have established that the consultant is an expert in a particular area of Children's Social Care and therefore no quotations were sought for this work due to the fact that this field of work is specialised in relation to the methodology used by regulators.
13. Whilst it may have been reasonable to estimate that the initial requirement was for £25,000 or less, which would only require one quote, at the point of re-engagement it was clear that cumulative spend would exceed that threshold. Therefore, either a Request for Quotes / tender process should have been undertaken; or formal authorisation to award the contract via exemption (with supporting business case demonstrating Value for Money using the Gateway template provided for this purpose) should have been obtained. Formal Chief Officer or Portfolio Holder approval should have been obtained for the exemption (given that the cumulative value was close to the threshold of £100k for which Portfolio Holder approval for exemptions is required).

#### Contract and specification

14. Section 8.6 of Contract Procedure Rules is entitled 'The Appointment of Consultants to Provide Services'. In summary, Section 8.6 sets out the rules to be followed when commissioning professional consultants including the scope of services to be provided, formal letter or contract of appointment and evidence of professional indemnity insurance by the consultant. We saw a copy of the contract for the initial engagement with the rate agreed but noted that it had not been signed by the consultant. The contract for the re-engagement was the same as the original one, in the name of the consultant's original company -Supplier B'. A new contract was drawn up and signed subsequently by the Assistant Director, Children's Social Care on 30 July 2021 and by the consultant on 6 August 2021, during this review. The contract signed by the consultant states that they have professional indemnity insurance and public liability insurance and sets the level of insurance cover required for each of these. We requested, but did not see, these insurances or the specification accompanying the initial and re-engagement contracts. The supplier's engagement and contract has now ended. We have included in the recommendation

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about reviewing the IR35 arrangements that assigning responsibility and the procedure for evidencing checks carried out needs to be put in place.

### Payment/fees

15. Section 6 of the contract (entitled 'Payment') states 'the Fees set out in Schedule 1', but there is no Schedule 1 at the end of the contract. Schedule 1 just says 'Confirmation email sent'. We noted that invoices for the re-engagement (four months after the initial engagement ended) showed an increase in the daily rate of £100 (22%). The invoices did not show an explanation for that. The Director of Children's Services and Assistant Director, Children's Social Care confirmed that they were aware and had agreed it in advance, but there was no evidence of a formal written agreement. They also confirmed that the performance of the consultant was reviewed at regular meetings between the Assistant Director for Children's Social Care and the Head of the particular area of Children's Social Care.

### Tax arrangements

16. Paragraph 8.6.4 of Contract Procedure Rules concludes 'The Officer commissioning the employment of a Consultant and/or responsible for the Approval of their employment shall ensure that the Consultant's tax arrangements or company structure are properly considered and do not result in any tax liability to the Authority'. We were able to see email exchanges which confirm that, when the consultant was re-engaged, the Director of Children's Services followed these rules correctly in asking Finance Directorate about paying the supplier's company bank account in a country of the European Union in Euros.
17. In response to this enquiry, the advice from the Council's Exchequer Services Contractor, subsequently confirmed by the Head of Financial Systems in Finance Directorate was that BACS payments made through the Council's financial system could only be made in British pound sterling. A member of Finance Directorate informed Children's Services that it was not cost effective to make these international payments via CHAPS. Subsequently, the supplier's invoices were paid in British pound sterling to the supplier's personal bank account in this country. After issuing the draft audit report, a discussion with senior management in Finance Directorate revealed that the cost is not as prohibitive as a member of Finance Directorate had originally told Children's Services. The email exchange following the original enquiry did not specify who, in Finance Directorate, had given authority for making payments in this way and it is unclear who has ultimate authority for deciding how international payments should be paid. (Recommendation 2)

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18. The Director of Children’s Services and the Assistant Director, Children’s Social Care informed us that the consultant is a resident of that particular country in the European Union and pays all their taxes to that country’s Government. We have seen a bank transfer receipt, provided by the consultant, showing that the amount paid to them in May 2021 had been transferred in June to their company account in that particular country in the European Union. We have recommended that HR inform the Council’s tax advisors of the payment arrangement made by the Council in this case and seek advice from them about what further action we need to take to ensure that there is no tax liability for the Council. (Recommendation 3)

Procurement Practice Note

19. We found out that a comprehensive Procurement Practice Note entitled ‘Contracting for Professional and Consultancy Services’ had been written by the Head of Procurement in March 2021. It has been uploaded on the Procurement Team’s Sharepoint site but has not been publicised Council-wide. (Recommendation 4)

**FINANCE**

20. The total expenditure for the initial engagement and the re-engagement of this consultant is shown in the table below.

<b>TOTAL EXPENDITURE AGAINST BUDGET</b>		
Budget specified in business case	75 days	£33,750
Actual	193 days	£94,850

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21. The consultant finished their engagement in August 2021. The cost centre from which the invoices were paid showed an overspend of £26,681 in 2019/20 and £26,995 in 2020/21. The Assistant Director, Children's Social Care, informed us that funding for this was provided from an amount of money set aside for inspection related work but we were unable to evidence that funds to cover the additional expenditure following the re-engagement of the consultant had been vired into that cost centre, or where that additional funding was held. The recommendation about reviewing the IR35 arrangements includes checking that sufficient funding has been made available before a supplier is re-engaged.
22. We noted that for 13 out of the 15 invoices paid, an iproc order had been raised after the invoice had been received. A recommendation has been made in the audit report of creditors relating to orders raised after an invoice has been received. There were numerous instances of that identified during our creditors' audit. We will also be providing advice to the Finance Directorate on expected controls in the new financial system to help mitigate the risk of this occurring in future.
23. We have not carried out an Internal Audit of the Council's arrangements for engaging consultancy services in recent years. As a result of the findings from this review we intend to carry out, as a separate exercise in the coming months, an audit review of a sample of current consultancy services which are in place Council-wide. This will replace the audit of professional and consultancy services which we were proposing to include in our 2022/23 Audit Plan.

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DETAILED FINDINGS AND ACTION PLAN

APPENDIX A

1. Review of the 'Engagement of Additional Resources – Procedure Manual'	
<p><b><u>Finding</u></b></p> <p>We noted that there is no guidance in the 'Engagement of Additional Resources' procedure manual stating what process should be carried out if the supplier of an off-payroll engagement is re-engaged. This is relevant because HR will need to determine what information about the re-engagement is required before deciding (i) whether a further IR35 assessment should be carried out and (ii) what information needs to be presented to the Director of HR and CS and the Director of Finance to enable them to make a decision as to whether or not to approve the re-engagement. This should include information about the re-engagement such as confirming that sufficient funding has been made available, there is an agreed contract, specification and required insurance.</p> <p>The procedure manual includes a flowchart of due diligence checks which should be carried out for an off-payroll engagement. These include certificates of Professional Indemnity and Public Liability insurance, bank account details, five years of references and (if required) VAT registration certificate and DBS check. The guidance does not however specify who should carry out these checks or what procedure is in place to evidence that they have been checked and are satisfactory. They are equally relevant where a supplier is re-engaged.</p> <p><b><u>Risk</u></b></p> <p>Senior management's decision to approve an off-payroll engagement may be based on incomplete or inaccurate information and a lack of due diligence checks, leading to financial, legal and reputational implications for the Council.</p>	
<p><b><u>Recommendation</u></b></p> <p>The 'Engagement of Additional Resources – Procedure Manual' should be reviewed and revised by HR to set out:</p> <p>(i) the procedure to be followed and the information and evidence required if the supplier of an off-payroll engagement is engaged and</p>	<p><b><u>Rating</u></b></p> <div style="border: 1px solid black; background-color: #ffc107; padding: 5px; display: inline-block;">Priority 2</div>

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<p>(ii) the responsibility for carrying out and evidencing due diligence checks prior to an engagement. <i>(This recommendation refers to both an initial engagement and any re-engagement)</i></p>	
<p><b><u>Management Response and Accountable Manager</u></b></p> <p>At present the managers have responsibility for undertaking relevant due diligence however HR are looking at options for centralising this work to have greater control. This will include the completion of the relevant due diligence checks, providing the off-payroll worker with the contract of services and status determination statement before the start of the engagement, all documentation being saved centrally and regular inhouse HR audits to ensure full compliance.</p> <p>HR Business Services and Reward Manager</p>	<p><b><u>Agreed timescale</u></b></p> <p>There is currently no agreed timescale at present due to budget constraints.</p>

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2. Authority for deciding how international payments to suppliers should be made	
<p><b><u>Finding</u></b></p> <p>When Children’s Services asked about making payments in Euros to a new supplier based in a country of the European Union, it was confirmed that BACS payments could only be made in British pound sterling. Payment by CHAPS was considered but not proceeded with as it would not be cost effective to make international payments in this way. Therefore, the supplier’s invoices were paid in pound sterling to the supplier’s personal bank account in this country.</p> <p>We were however informed subsequently by senior management in Finance Directorate that the cost is not as prohibitive as a member of Finance Directorate had originally told Children’s Services. The email exchange following the original enquiry did not specify who, in Finance Directorate, had given authority for making payments in this way and it is unclear who has ultimate authority for deciding how international payments should be paid. The decision-making process within Finance Directorate for authorising international payments to suppliers needs to be clarified.</p> <p><b><u>Risk</u></b></p> <p>Payments to suppliers based overseas may not be made by the most appropriate method, taking into consideration the cost and operational process involved. An adequate audit trail may not be available to support these ‘one off’ decisions to evidence that the decision was taken at the approved/delegated level of management.</p>	
<p><b><u>Recommendation</u></b></p> <p>The Director of Finance should assign responsibility within Finance Directorate for deciding how international payments to suppliers based overseas should be made. Any decision should be formalised, attached to the supporting documents to evidence the decision and that approval was at an appropriate or delegated level, providing an adequate audit trail.</p>	<p><b><u>Rating</u></b></p> <div style="border: 1px solid black; background-color: #90ee90; padding: 2px; display: inline-block;">Priority 3</div>

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<p><b><u>Management Response and Accountable Manager</u></b></p> <p>Responsibility for deciding on the best way to pay overseas suppliers will rest with the Head of Corporate Finance and Accounting. An audit trail of the decision will be maintained.</p> <p>Head of Corporate Finance and Accounting</p>	<p><b><u>Agreed timescale</u></b></p> <p>Implemented</p>
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**3. Payment arrangements and tax liability**

<p><b><u>Finding</u></b></p> <p>BACS payments to this supplier could only be made in British pound sterling and there was a large cost associated with making a payment in Euros via CHAPS to the supplier’s business bank account. Therefore, the supplier’s personal bank account in this country was entered on the supplier set up form and payments were made to that account instead.</p> <p><b><u>Risk</u></b></p> <p>The Council may be subject to an investigation and/or financial penalty from HMRC if it is found that tax regulations have been breached by making payment in this way.</p>	
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<p><b><u>Recommendation</u></b></p> <p>HR inform the Council’s tax advisors of the payment arrangement made by the Council in this case i.e. paying a personal bank account in the UK, instead of a supplier’s company bank account abroad, and seek their advice</p>	<p><b><u>Rating</u></b></p> <p>Priority 2</p>
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<p>about what further action the Council needs to take to ensure that there is no tax liability for the Council arising from this.</p>	
<p><b><u>Management Response and Accountable Manager</u></b></p> <p>The Council's tax advisors have been contacted and have confirmed that in their opinion, as the engagement was outside of the off-payroll working rules and the worker was based in a country of the European Union, there would be no liability for UK tax/NICs to be deducted from the payments.</p> <p>HR Business Services and Reward Manager</p>	<p><b><u>Agreed timescale</u></b></p> <p>N/A</p>

<p><b>4. Procurement Practice Note</b></p>
<p><b><u>Finding</u></b></p> <p>A comprehensive Procurement Practice Note entitled 'Contracting for Professional and Consultancy Services' was written by the Head of Procurement in March 2021. It has been uploaded on the Procurement Team's Sharepoint site but has not been publicised Council-wide.</p> <p><b><u>Risk</u></b></p> <p>There may be a lack of awareness of the procedures to be followed by officers when procuring professional services, leading to errors or gaps in control, an inconsistent approach or a breach of regulations resulting in legal action against the Council.</p>

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<p><b><u>Recommendation</u></b></p> <p>The Procurement Practice Note entitled 'Contracting for Professional and Consultancy Services' is publicised Council-wide via appropriate communication channels e.g. the next Corporate Leadership Team meeting, the next Managers' monthly briefing, the next quarterly contract managers' meeting, the Chief Executive's monthly newsletter, a Procurement Team Sharepoint news post.</p>	<p><b><u>Rating</u></b></p> <p>Priority 2</p>
<p><b><u>Management Response and Accountable Manager</u></b></p> <p>A Procurement Practice Note will be sent, via email, to all Officers highlighting the guidance and providing links to the relevant Sharepoint page.</p> <p>Assistant Director Governance &amp; Contracts</p>	<p><b><u>Agreed timescale</u></b></p> <p>31 October 2021</p>

OPINION DEFINITIONS

Assurance Level

Assurance Level	Definition
<b>Substantial Assurance</b>	There is a sound system of control in place to achieve the service or system objectives. Risks are being managed effectively and any issues identified are minor in nature.
<b>Reasonable Assurance</b>	There is generally a sound system of control in place but there are weaknesses which put some of the service or system objectives at risk. Management attention is required.
<b>Limited Assurance</b>	There are significant control weaknesses which put the service or system objectives at risk. If unresolved these may result in error, abuse, loss or reputational damage and therefore require urgent management attention.
<b>No Assurance</b>	There are major weaknesses in the control environment. The service or system is exposed to the risk of significant error, abuse, loss or reputational damage. Immediate action must be taken by management to resolve the issues identified.

Recommendation ratings

Risk rating	Definition
<b>Priority 1</b>	A high priority finding which indicates a fundamental weakness or failure in control which could lead to service or system objectives not being achieved. The Council is exposed to significant risk and management should address the recommendation urgently.
<b>Priority 2</b>	A medium priority finding which indicates a weakness in control that could lead to service or system objectives not being achieved. Timely management action is required to address the recommendation and mitigate the risk.
<b>Priority 3</b>	A low priority finding which has identified that the efficiency or effectiveness of the control environment could be improved. Management action is suggested to enhance existing controls.