

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

Date: 8th July 2024

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

Title: EXPENDITURE ON CONSULTANTS AND CONTRACTORS
2023/24

Contact Officer: David Bradshaw, Head of Finance
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Chief Officer: Peter Turner, Director of Finance

Ward: N/A

1. Reason for report

Members of ER&C PDS requested a report on Consultant and Contractors expenditure. Officers have therefore looked at expenditure in 2023/24 in both Revenue and Capital Budgets.

2. **RECOMMENDATION(S)**

Members of the ER&C PDS are requested to:-

- 2.1 Note the overall expenditure on Consultants and Contractors/Agency as set out in this report.

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:
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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&C PDS members requested information on the Councils expenditure on Consultants and Contractors/Agency be reported to the Committee.

3.2 To do this officers have for the Consultant element:-

- Looked at the total expenditure on consultants in 2023/24.
- This covers Revenue and Capital Expenditure.
- The list has been approved by the relevant Executive Director.

3.3 For the Contractors expenditure officers have:-

- Taken a point in time (1st April 2024)
- For comparison purposes converted all rates to a day rate so that costs can be compared.
- This is a day rate only, some may only do a few hours/days in a working week, or only have worked for a short period of time so overall total costs will vary.
- The cost includes the cost of the agency, so this is not what the worker actually receives as a payment.

Consultants

3.4 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.

3.5 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.

3.6 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.

3.7 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

3.8 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.

- 3.9 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.
- 3.10 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.
- 3.11 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 1 (revenue) and Appendix 2 (capital).

Contractors/Agency

- 3.12 The main reason to employ Contractors/Agency staff is to fill vacancies (long term and to cover statutory duties) or to cover short term periods of pressures in particular areas.

4. FINANCIAL IMPLICATIONS

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

<u>Expenditure on consultants</u>		
		<u>2023/24</u>
		<u>£'000</u>
Revenue		1,052
Capital		4,335
		<u>5,387</u>
<u>Expenditure on Contractors/Agency</u>		
		Per day
Average day rate of contractor/Agency (inclusive of fees)		£289
Average day rate of top 40 most expensive (inclusive of fees)		£547
		£m
Spend on Contractors/Agency in 2023/24		18

- 4.3 Details of the Consultants expenditure is contained in Appendix 1 and 2.
- 4.4 The cost of Contractors/Agency staff in 2023/24 was in the region of £18m. As of June 2024 there are approximately 270 contractor/agency staff.

5. LEGAL IMPLICATIONS

- 5.1 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.

- 5.2 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.
- 5.3 To manage and minimise the risk to the Council, the Council procedures should be followed which also includes IR35 together with using the Councils consultant contract documentation or other suitable contracts. In addition the Councils HR and legal departments can be consulted.

6. PROCUREMENT IMPLICATIONS

- 6.1 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.

7. POLICY IMPLICATIONS

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

Non-Applicable Sections:	Strategic Property, IT and GDPR, Transformation, Impact Assessments & Personnel Implications
Background Documents: (Access via Contact Officer)	Held in Finance teams