

Report to the Resources Select Committee

Date of meeting: 28 March 2017

Portfolio: Finance

Subject: Agency Staff and Consultancy



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Recommendations

That members note the report and comment as appropriate

Executive Summary

The report provides information on the Cost of Consultants and Agency staff for both 2015/16 and up to the end of February for 2016/17. The schedules show the areas where they have worked and how much has been spent in those areas. Within the report there is some further detail and information to provide some context where possible.

Reasons for proposed action

Members are asked to note the report and comment as appropriate

Other options for action

No other options applicable.

Report

1. The Council on occasions needs employ people either on a temporary basis or for a particular project. The former situation can be for peaks in workload or to cover maternity and longer term sickness. The latter is for short term specific projects when the expertise does not exist in house and to employ someone for such a short term is impractical.
2. Such expenditure is recorded on the Council's finance system such that it is easily identifiable. However a reasonableness check has also been carried out to make sure that as far as possible the amounts recorded meet either the definition of an Agency worker or a consultant. Some commentary is provided below on a directorate by directorate basis and attached are two appendices with more detail on the areas where such costs have been charged.
3. From the new tax year there are new arrangements regarding the accounting for tax and national insurance that may apply to some of the contracts referred to in this report. Information is given on what these changes are and how it is established whether a particular contract is affected by the changes. The legislation is referred to as Intermediaries legislation (IR35).

Communities

4. Expenditure in 2015/16 was £95,000 and in 2016/17 £193,000. Most of this expenditure was for temporary agency cover with more occurring in 2016/17 than 2015/16. There is also more consultancy expenditure on Housebuilding and the HRA Business Plan in this financial year due to additional work required.

Governance

5. Expenditure in 2015/16 was £98,000 and in 2016/17 £94,000. Expenditure falls into three areas Legal, Building Control and Development Control. There is a mixture of both agency and consultancy in all three areas but the largest proportion of expenditure is for specialist legal advice that is required from time to time when the need arises. There is a budget provided each year for this purpose which in 2015/16 was slightly underspent and based on the latest position looks likely to be underspent this year too.

Neighbourhoods

6. Expenditure in 2015/16 was £913,000 and in 2016/17 £1,448,000. Expenditure in Neighbourhoods is far higher than other directorates but given the areas they deal with this is not entirely surprising.

7. Expenditure relating to the local plan was £301,000 in 2015/16 but £917,000 so far this year. The nature of the local plan is that a significant number of consultants are required to carry out pieces of work to provide the evidence on which the plan is based. 2015/16 and the first half of 2016/17 was spent completing the draft plan and carrying out the sustainability appraisal followed by a two month consultation period ending on 12 December 2016. The preparation of the submission plan and sustainability appraisal will take up the whole of 2017 with final adoption expected to be in the Autumn 2019. There has therefore been significant expenditure required to reach the consultation stage and further significant expenditure will be needed to meet the proposed timetable with completion still around two and a half years away.

8. As well as the various consultants costs temporary staffing has also been necessary to cover the maternity of the Assistant Director of Planning Policy and other planning staff as it has proved extremely difficult to recruit and retain the necessary staff to ensure that the Local Plan work continues.

9. Expenditure in the Estates division has also been quite significant £183,000 in 2015/16 and £269,000 in 2016/17. The majority of this is on agency staff as again it has proved extremely difficult to recruit and retain the necessary staff. There has, and continues to be, significant additional income generated by the Council's property holdings that are managed by this team which has more than compensated for the additional cost employing the staff concerned. For example the team has worked on the St Winston Churchill Development, David Lloyd Centre lease renewal and the Glyn Hopkins lease renewal amongst others all of which have generated additional income to the Council.

10. There has also been a drive to make better use of Council Assets which has involved a number of pieces of work being carried out to establish how this might be achieved. Expenditure in 2015/16 was £287,000, including work undertaken at North Weald Airfield, and in 2016/17 £147,000, including time spent dealing with the St John's Road development. There is also some consultant expenditure relating to the Leisure and car parking contracts. The former expected to yield savings in excess of £1 million.

Resources

11. Expenditure in 2015/16 was £342,000 and in 2016/17 £258,000. The figures include external training providers, the Council's treasury advisors, ad hoc VAT advice and a number

of temporary agency costs. The most significant areas in the latter category relate to additional staffing in revenues and benefits that are funded from the agreement with major preceptors rather than the Council itself.

Chief Executive

12. The only expenditure showing here relates to 2016/17 and the Accommodation Review (£82,500).

Intermediaries legislation (IR35)

13. IR35 was introduced in April 2000 to combat disguised employment. It stopped permanent employees leaving their employment one day and returning to their desks the next day as a limited company contractor and gaining the tax and benefits of running their own limited company.

14. The draft Finance Bill 2017 introduces a new Chapter 10 into the Income Tax Earnings and Pensions Act 2003 which will be known as 'Workers services provided to public sector through intermediaries'.

15. Broadly speaking, the legislation maintains that if the individual 'looks and smells like an employee' i.e. would have been an employee, but for the fact that their services are provided via the intermediary, they should be taxed as if they were an employee.

16. Currently, these changes are only where the client is a public body.

17. From the 6 April 2017 the public sector will have responsibility for deciding whether an individual who is personally providing a service falls in or out of scope of IR35; and in certain circumstances liable for deducting tax and National Insurance Contributions (NICs) at source. Currently this responsibility falls to the individual themselves.

18. The first assessment is to decide whether the intermediary is a Personal Services Company if so then an employment status check has to be carried out.

19. The main features of the employment status test are;

(a) Do they have to provide the service personally or can they be substituted?

(b) How much control does the Council have over when, where, how the work is carried out? Are they covering/fulfilling a role on the Council's structure?

(c) Is there a mutuality of obligation on both parties? i.e. is there an obligation for the Council to offer the work or for the individual to accept the work.

(d) Does the individual carry any of the financial risk? i.e. Is the individual able to make more profit by more efficient working, or incur loss if overruns on time, or if required to rectify defects in own time?

(e) Are they using their own or equipment provided by the Council? This would include, IT equipment, a desk/office etc.

(f) Are they part and parcel of the organisation? Do they have access to the Council's email system? Do they get invited to the Christmas lunch?

(g) What is the intention of the parties regarding employment status? Is the contract specific?

20. The answers to the first three questions are likely to determine whether or not the person falls within the scope of IR35 assuming they have met the first test. If both tests are

met then the council becomes liable for the Tax and NIC Contributions in relation to those people.

21. There are expected to be a few contracts with the Council that will be subject to the new arrangements and how we manage these going forward needs to be decided. There will also potentially be an additional administrative burden placed on the Council as a result. A verbal update will be provided on this point.

Conclusion

22. Consultants and agency staff are used for a number of reasons and in most cases are either for short term cover arrangements or specific projects which are short term in nature and require expertise that the Council does not have in house.

Consultations Undertaken

Information has been provided to each Director for their observations and comments.

Resource Implications

The report refers to the cost of agency staff and Consultants in some cases specific budget is provided in other cases costs of agency staff have to be funded from salary savings.

Legal and Governance Implications

The Council has to comply with the additional requirements from April 2017 and some legal advice may be required, which can be met from existing budgets.

Safer, Cleaner, Greener Implications

Nothing specifically identified.

Background Papers

Various working papers held in Accountancy.

Impact Assessments

Risk Management

With regard to the additional IR35 requirements there may be some amendments necessary to exiting procedures to ensure the Council fulfils its requirements properly as failure to do so may result in a fine being imposed by HMRC.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties; reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process? None

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group? N/A

