

Briefing note to	Resources Overview & Scrutiny Committee – 11th February 2021
From	Tim Normanton, Assistant Director HR (Acting)
Date	2nd February 2021
Subject	Oversight of the use of consultants

Background

As a result of the review of the constitution in 2020, agreed at full council in November 2020, the cabinet portfolio holder for finance and resources has a new accountability - 'Oversight of the use of consultants' (https://www.birmingham.gov.uk/downloads/file/13654/part_b_constitution, page 53).

Most contingent labour for the council is secured through contracts with agency providers (Hays and Extra Personnel) who ensure compliance and consistent, visible, reporting.

Reporting of interim/consultancy assignments from January 2021

Since September 2020 a Workforce Spending (Recruitment) Business Case for interim/consultancy assignments must be approved at the Directorate Workforce Review Board (WRB), chaired by the Director. From January 2021, where the business case is proposing a consultancy assignment with a value above £100k, this will be referred to the corporate WRB (Chaired by the CEO or s151 Officer) for approval.

CLT will be advised that officers must consult the relevant Portfolio Holders prior to high value consultancy assignments being submitted to WRB for approval.

From January 2021, the Portfolio Holder for Finance and Resources will receive a monthly report as part of regular HR Cabinet Member briefings on individual interim/consultancy assignments which have a planned or actual cost (for extensions) in excess of £100k. The new Gateway Review Panel process detailed below will improve the visibility of these assignments, and the procurement team will identify contracts for services, which are delivered by a consultancy company, to add to this regular report.

It is important to note that interim managers appointed to established JNC posts are recruited with the oversight of the Chief Officers and Deputy Chief Officers Appointments Dismissals and Service Conditions Sub-Committee (sometimes described as 'JNC panel').

A high-level overview of all interim/consultant assignment details based on procurement data is currently reported to the corporate WRB, with the most recent data provided in November 2020 (and shared with Trade Unions in December) provided at appendix 1.

Interim/Consultancy process (including IR35 compliance)

When specifically identifying consultancy assignments, it is useful that the council have needed to check employment status via an online HRMC assessment tool to assess if the IR35 off-payroll working regulations apply since 2017.

IR35 is significant, as, in broad terms, a consultant is generally outside of IR35 regulations as they have a high degree of autonomy with a very clear short-term remit and contribute

particular expertise to deliver a specific outcome. In contrast, an interim manager is generally inside IR35 (and therefore pays income tax and national insurance from payroll) as the individual covers an established and ongoing role in the organisation with clear leadership and management accountability.

To support the portfolio holder, and prior to implementation of changes to IR35 that were delayed in 2020, but will be introduced in April 2021, a review of the BCC Engaging Individuals (Interim and Consultant) Procedure was undertaken by HR/Procurement supported by the BCC tax advisor and legal services. This review was informed by an audit of records held for non-payrolled workers engaged by the Council in 2019/20.

The review has highlighted gaps in records relating to:

- Public sector off-payroll IR35 working responsibilities (i.e. evidence of tax status determination/ notification - with risks relating to deduction of tax/ NI from payments where IR35 applies)
- Prevention of illegal working (i.e. missing ID documents)

Revised process for engagement of interims/consultants from January 2021

From January 2021 the engaging individuals procedure has been rewritten to provide detailed guidance on the process and requirements for engaging and managing non-payroll workers including:

- **Updated** - Workforce Spending (Recruitment) Business Case form which replaces the critical resourcing request form to avoid duplication
- **Updated** process flow chart and managers guidance
- **Updated** business case for extension form
- **New** Status Determination process and statement template, and CEST Appeal process/outcome letter template
- **New** Gateway Review Panel – all interim/ consultant roles must be sent to this panel for review before they have been engaged to ensure the correct resourcing route has been identified, and documentation is compliant
- **New** requirement for all engagements completed via a procurement process (not agency) to have an electronic record created (whether In or Out of scope of IR35 rules) in order for determinations to be recorded for audit/reporting purposes
- **New** Termination of Engagement process and form

This new procedure was communicated to managers in a bulletin week commencing 11th January – provided at appendix 2; with a briefing for each directorate management team delivered by HR Business Managers during January. As the new Gateway Review Panel completes reviews of new and extended assignments, the quality of data will improve significantly. Procurement will continue to report on payments to identified interims/consultants to highlight any areas of non-compliance and ensure that gateway review panel process is followed. An illustration of the process is provided at Appendix 3.

Officers welcome Finance and Resources OSC feedback on approach, particularly in relation to thresholds for reporting on consultancy contracts, and ongoing reporting expectations from the committee.

Appendix 1 – High level interim consultant data (November procurement report – year to date and live assignment overview)

Directorate	Spend 20/21 YTD	Count	Comment
Adult Social Care	£168,411.00	3	
Digital & Customer Services	£3,492,439.00	51	Approx. half are in 1B (SAP replacement) programme – others ICT&D pending service redesign
Education & Skills	£806,076.00	8	Childrens commissioning/SEND/safeguarding
Finance & Governance	£1,455,909.00	22	Mostly Finance interim roles – pending recruitment (close to hire) and redesign of service
Inclusive Growth	£277,849.00	2	
Neighbourhoods	£192,969.00	2	
Partnerships, Insight & Prevention	£382,532.00	6	Programme and project management
Grand Total	£6,776,185.00	94	

There were 36 consultants and 54 interim managers who were recorded on live assignment in October (50 of these are in ICT&D).

Managers' HR Bulletin 409: Engaging interims/consultants – mandatory actions needed for recruitment of non-payrolled workers

This bulletin contains important information on processes you must follow when engaging interims/consultants, outside of the citywide agency worker contract with Hays.

Background

When the council contracts workers to provide services for us (for example, interims and consultants), through intermediaries, since April 2017, we have had to decide if the off-payroll working rules apply (HMRC IR35).

The IR35 off-payroll working rules make sure non-payrolled workers' pay is broadly subject to the same tax and National Insurance contributions as an employee, if they:

- provide services through their own intermediary – most commonly, a limited company they control
- would have been an employee if they were providing their services directly

The intermediary will normally be the worker's own personal service company, but could also be a partnership, a managed service company or an agency.

Why you're getting this information

All recruiting managers must follow the 'Engaging Individuals Procedure' on the intranet when recruiting non-payrolled workers.

This updated information also introduces the Check Employment Status for Tax (CEST) determination process, incorporating upcoming changes to IR35, including an appeal process.

NB: This is a mandatory requirement – with no exceptions – due to the significant financial and legal risks to the council highlighted in recent audit work. Interim/consultancy expenditure, and compliance with this process, is reported to the Chief Executive and Cabinet portfolioholder for Finance and Resources on a regular basis.

What you need to do next

You must ensure that the Engaging individuals Procedure is followed when recruiting anyone who is not a payrolled, permanent, fixed-term employee or casual worker. This includes:

- Obtaining approval via the workforce spending business case
 - For JNC positions only, you will need to obtain additional sub-committee approval
 - For all interim/consultant positions, the request will also need to be reviewed by a Gateway Panel, which will ensure process compliance prior to any engagement
- Completing the HMRC 'Check Employment Status for Tax' (CEST) test*
- Notifying the worker, or their intermediary, of the CEST outcome, using a Status Determination Statement (SDS)
- Dealing with any CEST appeals in a timely manner
- Following the relevant recruitment processes – Hays (agency), Procurement (non-agency), Talentlink (permanent, fixed-term contract, casual workers).

You **must** follow the relevant procurement procedures and liaise with Corporate Procurement Services for all **direct engagements** of non-payrolled workers, i.e. interims, consultants. You will

also need to obtain HR and payroll information in order for an HR record to be created as part of this process, including DBS checks (if applicable) and Right to Work evidence.

Important: If you currently engage a non-payrolled worker directly (not via an agency), and they do not have an HR record, you **must** submit a completed external engagement form along with copies of the engagement documentation and CEST determination to [AskHR](#) in order for a record to be created.

Further information

- [You'll find the Engaging Individuals – Interims/Consultants process here.](#)

For further support, please call HR on 675 7070 or Procurement on 464 8000.

Appendix 3 - Consultant engagement flowchart

