

AUDIT AND RISK MANAGEMENT COMMITTEE

Wednesday, 24 April 2019

Present: Councillor AER Jones (Chair)

Councillors RL Abbey JE Green
J McManus D Elderton

Deputies: Councillors K Hodson (In place of T Anderson)
G Wood (In place of A Davies)
C Carubia (In place of P Gilchrist)

71 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state what they were.

No such declarations were made.

72 MINUTES OF MEETING MONDAY, 11 MARCH 2019 OF AUDIT AND RISK MANAGEMENT COMMITTEE

The Committee was requested to approve the accuracy of the minutes of the meeting of 11 March 2019.

Resolved – That the minutes of the meeting of 11 March 2019 be approved as a correct record.

73 INTERNAL AUDIT REVIEWS: VERIFICATION OF VALIDITY OF SUPPLIER VAT REGISTRATION NUMBERS; APPOINTMENT OF AGENCY WORKERS

Mark Niblock, Chief Internal Auditor introduced his report that provided Members of the Committee with the outcome from two Internal Audit reviews undertaken into the effectiveness of systems in operation at the Council for the 'Verification of the Validity Supplier VAT Registration Numbers' and the 'Appointment / Employment of Agency Workers'.

The Audit and Risk Management Committee was apprised that in February 2019 the Director of Governance and Assurance had commissioned Internal Audit to undertake detailed reviews, to provide management with assurances regarding the efficiency and effectiveness of the systems in operation at the Council in the area detailed in the Chief Internal Auditors report.

The Chief Internal Auditor informed that the review relating to the verification of the validity of supplier VAT registration numbers had been completed and the key findings were that:

- The Council had a system in place for inputting VAT registration numbers that satisfied the requirements of HMRC;
- The system in operation at the Council was consistent with the approach adopted by the majority of Councils across the North West of England and advice and guidance provided by professional bodies and organisations;
- Testing undertaken during the audit review identified a number of potentially incorrect VAT Registration Numbers that required further investigation by the Council and possible reporting to HMRC, pending the outcome; and
- A number of actions for consideration by senior managers had been identified that would further strengthen arrangements in this area for the future.

The Chief Internal Auditor further informed that the review relating to appointment/employment of agency staff had been completed and the key findings were that the Council should undertake the following:

- Ensure that a more robust procedure/process was in place when considering and appointing agency staff;
- Strengthen controls for monitoring and managing agency / interim workers;
- Improve Contract Procedure Rules compliance when appointing agency/interim workers outside of the corporate contract;
- Ensure that an agreement (in the form of a contract or service level agreement) was always in place when appointing an agency / interim worker outside of the corporate contract;
- Strengthen controls over determining and communicating IR35 status when the corporate contract had not been utilised; and
- Improve the process of raising purchase orders and subsequent payment of invoices, for agency workers appointed outside of the corporate contract.

Members noted that the Chief Internal Auditor's report had resulted in recommendations to improve and develop systems of control currently in operation.

Members stated that this matter continued to be of extreme public interest and questioned the Director of Finance and Investment and the Head of Human Resources on concerns regarding issues raised in the Chief Internal Auditors report, namely:

- Issues of confusion arising from combining discussion on the employment of key people i.e. consultants, and the use of agency workers – these elements needed to be disentangled to allow clarity.
- Extreme concern over the use of consultants paid in excess of £500 per day, Members expressed a wish that before such appointments were made there should be Member oversight either via a Cabinet Member Decision or the Employment and Appointments Committee, and such decisions should not be taken by Council Officers only.
- Concern that it appeared that general experience of IR35 (fundamentally introduced to ensure consultants pay the relevant tax, identified via a series of tests / questions) had led to the establishment of 'Umbrella Companies' to circumvent this. As a public body, the Council should not employ people in such a way – it was inappropriate.
- Ideally, the Council should operate on the basis of no IR35 arrangements and pay all people via the payroll. A Member stated that he had been assured (in the past) that all people brought in were on the payroll, and how at the previous meeting of the Audit and Risk Management Committee when this had been suggested as an option, there appeared some hostility to this idea.

The Director of Finance and Investment responded to a number of the points raised, informing that when using agency workers – all of whom were employed via 'Matrix' (an umbrella organisation for a collective of temporary worker employment agencies) - the payroll function was administered by Matrix who deducted all the relevant tax and NI contributions. She added that use of Council payroll was not feasible, given that agency staff were used when, for example, there had been a failure to appoint to a post via direct recruitment.

The Director of Finance further informed that consultants had been used when it was not possible to recruit and/or use agency staff.

The Head of Human Resources then provided additional information to the Committee on how the introduction of Matrix assisted by acting as a single point of contact, in a similar fashion to the role of an Insurance Broker, and that the Council paid Matrix (umbrella co) who then paid the workers. He added that for each arrangement an IR35 test was undertaken. This was the 'default position', and further review work had been undertaken by Human Resources on the use of IR35.

A Member thanked the Officers and welcomed the assurance that Tax and NI deductions were managed effectively under the Matrix arrangements, and that for 'general' recruitment to fill vacant positions Matrix arrangements appeared to be working well. However, where it hadn't, the Member requested that the Audit and Risk Management Committee be provided with some oversight and information as to why certain positions could not be filled - particularly when it had resulted in individuals being employed on >£500 per day.

The Head of Human Resources assured Members that in all cases there was still a requirement to make an assessment under IR35 and it was fairly exceptional for any arrangements to be made outside of Matrix and IR35.

A Member expressed concern on a particular employee of 2 years 2 months having received payments totalling £400k. Another Member questioned who decided such contract levels payments and who was responsible for the authorisations.

The Head of Human Resources informed that agency / interim workers generally tended to be employed for 12 week 'blocks' with the aim to appoint to a vacant post in 3 to 4 months (through continued advertisement, or conversion of the agency worker to permanent employee). After the initial 12 weeks period for project based, maternity or sickness cover, the line Manager would make a decision regarding extension of the period of contracted employment.

The Head of Human Resources added that the Internal Audit Action Plans contained in the Chief Internal Auditor's report had highlighted the need for review of controls for monitoring and managing agency / interim workers.

He further informed that in terms of executive interim arrangements – these varied and employment / rates were matched to the roles required.

Following a short discussion, and on a motion moved by Councillor Jeff Green and seconded by Councillor Ron Abbey, with the addition of a further recommendation on the matter of intellectual property rights, it was -

Resolved (7:0) One abstention (Chair)

That the Internal Audit Reports 'Verification of the Validity Supplier VAT Registration Numbers' and the 'Appointment / Employment of Agency Workers' be noted; and

it be recommended to Cabinet, that:

- 1) any Company / Contractor recruited at a rate in excess of £250 per day should be reported to the relevant Cabinet Member for political oversight prior to employment;**
- 2) in the case of employment at a rate of in excess of £250 per day, verification is also sought via Internal Audit to ensure that the IR35 assessment by the relevant service manager has been undertaken and is accurate;**
- 3) where a situation exists that a Contractor has been taken on for over 2 years (or 2 contract extensions / continuations) there should be a formal review led by Human Resources Department; and**
- 4) clarity be sought regarding contractual arrangements regarding ownership of intellectual property rights of the Council and Contractors working for the Council.**

74 EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC

Under section 100 (A) (4) of the Local Government Act 1972, it was proposed from the Chair that the press and public be excluded from the meeting during consideration of the following item of business (Forge House Associates) on the grounds that they involve the likely disclosure of exempt information as defined by paragraph 1 of Part I of Schedule 12A (as amended) to that Act.

Following advice from the Director of Governance and Assurance, and on a motion moved by Councillor Jeff Green and seconded by Councillor Ron Abbey that the exemption be lifted in respect of the covering report i.e. content of pages 57 to 60 of the agenda papers.

Following a show of hands, it was:

Resolved (7:0) One abstention (Chair) – That the exemption in respect of report pages 57 to 60 of the agenda papers be removed.

75 FORGE HOUSE ASSOCIATES

Following formal lifting of the exemption of elements of the report (i.e. covering report pages 57 to 60 of the agenda papers), Minute No. 73 (ante) refers, the Chief Executive introduced his report that provided Members of the Committee with the opportunity to discuss further the history of appointment of an individual, firstly as an agency worker, secondly as a consultant under a contract for services and then as an interim (agency) director.

The Chief Executive informed that further to the previous item, and following consideration on the matter at the meeting of the Audit and Risk Management Committee (11 March 2019, Minute 61 refers), Members had requested opportunity to consider the results of the further investigations and progress with any subsequent investigatory work into the arrangements for payments made to Forge House Associates. He further informed that for additional clarity his report included a timeline and sequence of decisions in respect of the contract appointment.

A Member questioned the Chief Executive on whether a review had been undertaken at the stages where the contract had been altered or extended, expressing concern that it appeared only one check had been undertaken and that subsequently the contract had then been allowed to 'run on'. The Member also expressed doubt over the contractor's credentials and why appointment on a full-time permanent employment basis had been considered. He further questioned whether communications (or lack of) had resulted in the Chief Executive himself being placed in the position of having to respond to interrogation by Members.

The Chief Executive informed that an initial business case had been established, and the contractor had originally been employed to focus on asset management. When revised contractual requirements and a change of duties had occurred, a review should have been undertaken at that time. He further informed that as a result of the Internal Audit investigation, the Director

of Finance will be informed immediately of any such instances. The Chief Internal Auditor confirmed that these action points, as reported under the earlier item of business and endorsed by the Committee, had been addressed in his report (Minute No. 73 refers).

A Member questioned that once the action points contained in the Chief Internal Auditor's report were followed, could assurance be given that similar instances wouldn't happen again, highlighting that communication within the same directorate had compounded the issue.

In response to the question, the Chief Executive informed that the matter had been discussed with the relevant people involved and expected behaviours for the future had been explained to them.

In response to a question on the matter of compliance with IR35 and how this appeared to be a classic example of a role and status having changed, the Head of Human Resources confirmed that a more robust process was required. He confirmed that as highlighted by the Internal Audit Review, no additional assessment of IR35 had been undertaken in January 2018 when support to other projects had been added into the position under discussion. This notably included work in relation to the Local Plan development and response to Ministry for Housing Communities and Local Government (MHCLG).

A Member questioned how, in December 2018 when the role had been reclassified, and elements of work had been handed over, why there appeared to be no significant change to the level of invoicing for work undertaken. The Member also questioned whether 'dummy' purchase order (POs) numbers had been issued, and whether this was normal. If so, who sanctioned and authorised this.

The Director of Finance and Investment responded, informing that in the past POs had sometimes raised been raised retrospectively, but present policy was that now unless a PO existed no invoice payments would be made.

Another Member enquired if there were any specific departments with a history of not following procurement / PO arrangements. The Chief Internal Auditor informed that there were further checks to be made in this regard and this work would be reported to the Audit and Risk Management Committee.

Referencing the timeline, a Member questioned the Chief Executive on who was accountable for the highlighted failings, and what actions were being taken to rectify these.

The Chief Executive explained that since his appointment it had been his personal directive that the Council would not run a blame culture, and that he was ultimately accountable for the work of the organisation. He added that junior members of staff should also not be penalised for working in a particular way but should be encouraged to work more effectively and learn from instances such as this.

In response to a particular question regarding the taking up of references, the Chief Executive stated that he had personally followed up Members concerns with the Chief Executive at York City Council who assured him that there had been no wrong doing in York, therefore did not affect employment or engagement of the individual (as an agency worker and consultant).

Following consideration of the item, and on a motion moved by Councillor Jeff Green and seconded by Councillor Leslie Rennie, regarding the acknowledgment of accountability, it was –

Resolved (7:0) One abstention (Chair) That:

- (1) the Committee welcomed the acknowledgement of accountability had been accepted by the Chief Executive and his officer team, and looked forward to the implementation of the changes as reported to Members; and**
- (2) that the report, and content of the exempt report appendices, be noted.**