

SUSTAINABLE GROWTH SCRUTINY COMMITTEE	Agenda Item No. 8
6 MARCH 2012	Public Report

Report of the Executive Director of Strategic Resources

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CONSULTANCY AND INTERIM POLICY

1. PURPOSE

- 1.1 This report provides an updated draft consultancy and interim policy for consideration by Committee.

2. RECOMMENDATIONS

- 2.1 Committee is asked to comment on the updated draft consultancy and interim policy, and recommend to Cabinet for approval.

3. LINKS TO THE SUSTAINABLE COMMUNITY STRATEGY

- 3.1 This report links to the Single Delivery Plan and its commitment to the following:
- Using our resources more efficiently, effectively and innovatively

4. BACKGROUND

- 4.1 In March 2010, the Sustainable Growth Scrutiny Committee requested a review into Peterborough City Council's use of consultants. A cross-party review group was established to undertake this work on behalf of the Sustainable Growth Scrutiny Committee.

The scope of the review focused on the following objectives:

- To examine the cost of consultants and whether that provides value for money.
 - To review the processes for engaging and monitoring the work of consultants.
 - To look at the relationship between consultants and staff of the council.
 - To examine the likely future use of consultants by the council.
- 4.2 The report from the Consultancy Review Group was issued in March 2011 and contained 33 recommendations: 27 of these recommendations were endorsed by Cabinet in June 2011.

In broad terms, the recommendations related to policy and process changes. A common theme in the Consultancy Review recommendations is the need to consider available internal resources before external resources are deployed.

Alongside these comments, the Review Group made the specific recommendation referred to below.

4. A policy on the use of consultants ought to be written for the benefit of officers to ensure consistent application in the use of consultants across the council.

4.3 Progress in implementing the recommendations, including a draft of the policy, was considered by Committee at their meeting on 8th November 2011. Committee made a number of comments regarding the draft policy, and requested that an updated draft was brought back to a future meeting.

4.4 Appendix 1 outlines how Members comments have been taken into account in revised policy drafting. Appendix 2 contains the revised draft.

5. KEY ISSUES

5.1 The Committee should provide any comments on the draft consultancy and interim policy, as appropriate.

6. IMPLICATIONS

6.1 Where appropriate, Appendix 2 outlines implications for areas such as Legal, Human Resources, Procurement and Finance.

This report does not have implications for specific wards.

7. CONSULTATION

7.1 The following were consulted in the preparation of this report:

- Head of Legal
- Head of HR
- Cabinet Member for Resources

8. NEXT STEPS

8.1 Following this Committee meeting, the policy is due for approval by Cabinet at their meeting of 26th March 2012.

8.2 The Scrutiny Review recommended that the on-going monitoring role at Member level is undertaken by Audit Committee. Regular reports will be produced for the Audit Committee as requested. The first report is due at their meeting of 26th March 2012.

9. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 9.1
- Consultancy Review Report, March 2011
 - Report to Sustainable Growth Scrutiny Committee, 8th November 2011

10. APPENDICES

- 10.1 Appendix 1 - How Members comments have been taken into account in revised policy drafting
Appendix 2 - Consultancy and Interim Policy

How Members comments have been taken into account in revised policy drafting

Issue	How covered in revised draft
<p>Councillor Murphy commented that he had previously asked officers to address the issue of Code of Conduct and transparency of Consultants. He had highlighted that employees of the Council had to follow a higher level of Code of Conduct than Consultants and that Consultants should be required to follow the same level of Code of Conduct. Councillor Murphy referred to Appendix 2 of the report; the Consultancy and Interim Policy and schedule 1 of the policy which had addressed some of his concerns but he felt that the Conflicts of Interest listed had still not met the standard that an employee of the council had to abide by.</p>	<p>Legal advice in this area indicates that an employee code of conduct cannot be applied to a contractor. However it is considered that the revised draft of this policy actually make the potential disclosures that are required should a conflict of interest arise more demanding than this code:</p> <p>The office code of conduct can be found at the link below: http://democracy.peterborough.gov.uk/mgConvert2PDF.aspx?ID=8034</p> <p>A personal interest is defined in section 3, including paragraphs 3.2 to 3.4. This outlines there is an interest where the employee is a partner in the company concerned, or has a close relative or personal partner in that company.</p> <p>Schedule 2 contains the examples of potential conflicts of interest in the case of this policy, and includes that disclosure should be made where the employee or Member and consultant simply know each other:</p> <ul style="list-style-type: none"> • <i>The consultant is personally known to the officer or member awarding the contract (this is not necessarily fatal to the contract if the contract has been obtained through fair competition but should be declared in any event).</i> <p>The updated policy requirements also make it clear that there should be the following requirements to check whether disclosure is needed:</p> <ul style="list-style-type: none"> • During the tendering exercise • A contractual clause requiring disclosure if such a conflict arises during the contract, with the model clause being included in Schedule 3 (the PSP contract already includes such a clause)
<p>Section 1 Aim - Members agreed that the wording was suitable.</p>	<p>No update needed</p>
<p>Section 2 Definitions - Councillor Arculus requested that the comma should be removed after the wording "Consultants are external third parties"</p>	<p>Included in revised draft</p>

Issue	How covered in revised draft
<p>Section 3 Objectives - Members requested that an objective be included regarding levels of disclosure which mirrored that of officers and members of the Council. <i>The Head of Corporate Services said that he would have to take advice on this as there was a wide range of consultants being used and that it may not be appropriate for all companies. An example of that was the use of Experian. However there was no reason why staff filling interim roles should not follow similar levels of disclosure and code of conduct to that of Council employees. The Head of Corporate Services advised that he would prepare some wording to be included under objectives to cover this.</i></p>	<p>See comments above re disclosure and employee code of conduct</p>
<p>Section 4 Policy Statement - Members requested that the wording: <i>"The Consultancy Review report made a number of recommendations upon its publication in March 2011"</i> be amended to reflect the fact that Cabinet had approved the recommendations.</p>	<p>This has been removed. As the policy will be considered by Cabinet at their meeting of 26th March, this date of approval will be inserted in the final version</p>
<p>Members discussed the Consultancy or Interim Policy – Procedure and made the following comments:</p>	
<p>Section 1 Process for Engaging Consultants or Interims - Members wanted clarification on who would be the ultimate arbiter on whether expenditure on consultants should be authorised or not. The Consultants review group had been concerned at the level of spend on consultants and interims and wanted to ensure that it was monitored. <i>The Cabinet Member for Resources informed Members that the Director of Strategic Resources would sign off the business case for expenditure of between £5,000 and £50,000 and anything over £50,000 would be passed to the Cabinet Member for Resources for review before sign off. The Legal Officer advised that this responsibility fell within the Cabinet Members delegations and would not require a Cabinet Member Decision Notice.</i></p>	<p>Schedule 1 now includes specific statement that the Director of Strategic Resources must sign off the business case for expenditure of between £5,000 and £50,000 and anything over £50,000 would be passed to the Cabinet Member for Resources for review before sign off.</p>

Issue	How covered in revised draft
<p>Members noted that the sign off from the Cabinet Member of Resources was not mentioned in the policy and requested that this be made clear.</p>	<p>See comment above</p>
<p>Councillor Sandford highlighted that there were two links within the policy to documents on Insite that could not be accessed by members of the public. Members felt that this did not provide transparency and that all contents in the document should be accessible to the public. This was to be avoided in future documents.</p>	<p>The reference to contract regulations now includes the link to the Council's website.</p> <p>The ordering process outlines in practical terms the steps needed once the business case approved. As the policy is aimed at guiding officers through the process, it is sensible that this link is included</p>
<p>Schedule 1 – Conflicts of Interest - Members felt that consultants and or Interims ought to have an obligation to declare any conflicts of interests and that this could be set at the same level as Members or Officers. This could be dealt with by adding a paragraph relating to the Member and Officer protocols. <i>The Legal Officer informed Members that this was already dealt with through the normal contracting arrangements through the standard contracting documentation. There was a question asking contractors to declare if they had a conflict of interest with the Council.</i></p>	<p>The advice from legal stands, but please see comments above regarding strengthening of conflicts of interest elements</p>
<p>Councillor Arculus felt that the wording in Schedule 1 needed to be in a more legalistic format.</p>	<p>Schedule 2 (schedule 1 in the November draft is now schedule 2) is intended to provide some examples of areas where Managers should be careful to ensure conflicts to do arise, so is written as simply as possible.</p> <p>This is now supported by Schedule 3 that outlines the specific contract conditions that should be included</p>

Consultancy and Interim Policy

1. Aim

- 1.1 The aim of this policy is to provide Peterborough City Council managers with guidance on the engagement and management of external consultants
- 1.2 The Council aims to ensure that value for money is received from consultants and that internal resources are used where they are available.
- 1.3 This policy does not apply to the engagement of temporary agency staff or interims where that interim is employed under a fixed term employment contract to carry out work which is “business as usual”. However some reference is made to these processes where necessary to make the appropriate differentiation to consultancy.
- 1.4 The overall objectives of this policy are to:
 - Ensure consistent application in the use of consultants across the Council
 - Ensure correct procedures are followed when sourcing a consultant, and as result ensuring there is appropriate transparency
 - Minimise the use of consultants to reduce overall spend.

2. Definitions

- 2.1 Understanding the different processes for engaging persons under a temporary or fixed term contract can sometimes be confusing.
- 2.2 The Sustainable Growth Scrutiny Committee’s Consultancy Review report (March 2011) outlined the following definitions for distinguishing between consultant and interim/agency staff.

Consultant

Consultants are external third parties with expertise that is typically not available internally. Clients employ consultants for short-term projects, and usually specify an end point to their involvement in a project.

Interim

Interims fill permanent vacancies or temporary increases in operational workload. Interims are therefore contractors used as day-to-day operational resources to maintain departmental function, and are managed by client staff.

- 2.3 Interims can be sourced in a number of ways. This is further outlined in section 3 below.

3. Approach to engaging consultants

3.1 The following table will assist you in understanding the correct process for engaging a temporary resource, and differentiates between consultants and other interim resource.

3.2 The policy itself covers the use of consultants. Existing procedures cover the use of Agency staff and Temporary employees.

Description	Payment Method	Engagement	Process
Consultant	Paid through invoice Short-term or fixed length employment	Requires tendering process to invite bids or sourced from the Professional Services Partnership (PSP) contract	Procedures outlined in this Policy (Schedule 1)
Interim	Paid through invoice Short-term or fixed length employment	Requires tendering process to invite bids or sourced from the Professional Services Partnership (PSP) contract	Procedures outlined in this Policy (Schedule 1)
Agency staff	Paid through invoice	Appointed through the council's framework arrangements for agency staff	See Insite
Temporary employee	Paid through salary	Advertisement	<ul style="list-style-type: none"> • Director's Board approval • Advert • Normal recruitment process

4. Policy Requirements

4.1 This policy requires that:

- Officers are required to ensure that recruitment (and on-going management) of any consultant complies with the requirements of this Policy.
- The consultant in turn will be bound by the terms of the contract with them (either through the overarching PSP contract, or via a direct contract for services)
- Officers will be required to ensure that any tendering exercise includes a requirement for consultants to certify that they do not have any conflict of interest in carrying out the contract. Examples of potential conflicts of interest are set out at Schedule 2 to this policy.
- Officers must ensure that any contract with the consultant contains a requirement that any conflicts of interest which arise during the course of the contract (including those of any sub-contractor engaged) will be notified to an officer of the Council. See Schedule 3 for an example of an appropriate condition. A similar clause is contained within the PSP contract
- Skills transfer must be a written contractual requirement for appropriate professional skills contracts, particularly project and programme management, to enable officers to develop expertise which will directly benefit the council. An example of a model skills transfer condition is also included at Schedule 4.
- Where the Council engages consultants on a long-term contract or on a series of successive short term contracts, there should be, only in appropriate circumstances, a requirement for managers to approach the consultant, at fixed periods in the contract, about filling a permanent role within the Council.
- Managers should negotiate, where appropriate, fixed-price or incentive-based contracts. It is noted that incentive-based contracts contain an element of high risk: therefore, guidance and agreement should be sought from the Senior Contracts & Partnerships Manager before managers embark on this course
- Officers should, wherever possible, seek to fill senior management posts with a permanent employee where it is beneficial for the Council and consider all other available options (e.g. internal employees acting up) before seeking to recruit an interim to a managerial position.
- Where appropriate, HR should be involved in the recruitment process for interims occupying managerial positions so that advice can be given on suitable candidates from amongst existing employees and in-house expertise, skills or knowledge.

5. Reporting and Monitoring

- 5.1 The recruiting manager will be required to complete progress reports on Verto to demonstrate that the objectives of the original business case are being achieved.
- 5.2 A monthly report on consultancy/interim usage will be submitted to the Executive Director Strategic Resources and the Cabinet Member for Resources for their information and scrutiny.
- 5.3 The Scrutiny Review recommended that the on-going monitoring role at Member level is undertaken by Audit Committee. Regular reports will be produced for the Audit Committee as requested.

6. Further support for Managers

- 6.1 Managers will be encouraged to source internal skills, expertise and resources before preparing a business case for consultancy resources (including consultants in interim positions).
- 6.2 HR will provide the necessary advice and support to test internal capacity before a decision is made to procure external assistance.
- 6.3 Legal Services will provide a standard form of consultancy contract for use by the Council which officers should use in preference to any contract proposed by the consultant. Where officers intend to rely upon a contract proposed by the contractor it must ensure that as a minimum the conflicts of interest condition and the transfer of skills condition at schedules 3 & 4 are included in the agreement.
- 6.4 Further guidance and support can be obtained from the contacts below:

Area	Contact
Business cases and Verto	Ramnit Bassi Business Transformation Manager (01733) 452388 ramnit.bassi@peterborough.gov.uk
Procurement	Andy Cox Senior Contracts & Partnerships Manager (01733) 452465 andy.cox@peterborough.gov.uk
Legal advice	Kim Sawyer Head of Legal (01733) 452361 kim.sawyer@peterborough.gov.uk
Finance	Departmental Heads of Business Support Steven Pilsworth Head of Strategic Finance (01733) 384564 steven.pilsworth@peterborough.gov.uk

Schedule 1

Process for Engaging Consultants or Interims

- A business case must be completed on Verto (the Council's project management system) outlining the need for a consultant, the benefits and the cost. Business cases need to be approved by the department Head of Service or Director (along with finance, legal and procurement approval).
- Those exceeding £5,000 in cost require approval from the Executive Director Strategic Resources. Where the business case exceeds £50,000, the EDSR will in turn seek approval from the Cabinet Member for Resources.
- The business case must be approved before any other elements of the process can be undertaken. If you have any queries about this process, please contact Ramnit Bassi on (01733) 452388 or ramnit.bassi@peterborough.gov.uk
- Business cases will be available for Members to view via their Verto access
- If the cost of the consultant exceeds £5,000, then Council contract regulations also apply. These are available on the Council's Website and can be accessed via the following link:
<http://democracy.peterborough.gov.uk/mgConvert2PDF.aspx?ID=8810>
- The ordering process is also explained on Insite and can be accessed via the following link:
<http://insite/Information%20Library2/InfoLibraryPages/CategoryDetails.aspx?CatID=631>

Schedule 2

Examples of potential conflicts of Interest

The following are matters which could potentially give rise to a conflict of the consultant's interest with the Council's interest. This list is not exhaustive but it might assist in identifying whether any potential conflict of interest arises:

- The consultant's financial interests are affected by the outcome of the contract (but this does not include the salary paid to the consultant).
- The consultant is a member of a body or holds a position of responsibility in a body whose interests may conflict with those of the Council.
- The consultant is personally known to the officer or member awarding the contract (this is not necessarily fatal to the contract if the contract has been obtained through fair competition but should be declared in any event).
- The consultant owns shares or has an interest in any company which is affected by the outcome of the contract.
- The consultant has another contract which conflicts with the Council's interests.

Schedule 3

Proposed condition of contract - Conflicts of Interest

Conflicts of Interest

- 1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any of its personnel is placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or such persons and the duties owed to the Council under the provisions of the Agreement. The Consultant shall disclose to the Council any actual or likely conflict of interest arising from the Consultant's provision of Services under the Agreement within 5 Working Days after becoming aware that such actual or likely conflict exists.
- 2 The Council reserves the right to terminate the Agreement immediately by written notice and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Council under the provisions of the Agreement.
- 3 The Consultant acknowledges that a conflict of interest shall, or is likely to, arise in circumstances where either it or any of its personnel:
 - 3.1 bids for work from the Council in relation to the same procurement for which the Consultant is or has provided consultancy services to the Council; or
 - 3.2 is asked by the Council to review or evaluate any aspect of the business of a competitor including, without limitation, its commercial proposals, strategies, methodologies, goods and services.

Schedule 4

Proposed condition of contract - Skills Transfer

Skills Transfer

1. The Consultant shall where required use its best endeavours to identify the required knowledge and skill set to carry out the Services and impart the necessary skills and knowledge to the Council's employees with whom the Consultant has contact in the performance of the Consultancy Services. This should be undertaken with a view to increasing and consolidating the skills base within the Council.
2. In addition the Consultant shall deliver training including a Question and Answer Session to those workers and employees with whom the Consultant has had contact together with such others as are nominated by the Council. The training shall be of such duration and timing as specified by the Council and shall focus on those areas identified by the Council that arise from the delivery of the Consultancy Services to the Council.