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| <b>CABINET</b>      | <b>AGENDA ITEM No. 9</b> |
| <b>11 JUNE 2018</b> | <b>PUBLIC REPORT</b>     |

|                                |  |             |
|--------------------------------|--|-------------|
| Report of:                     | Peter Carpenter, Service Director - Financial Services                                 |             |
| Cabinet Member(s) responsible: | Cllr David Seaton, Cabinet Member for Resources  |             |
| Contact Officer(s):            | Natalie Moulton, Assistant Lawyer<br>Project Delivery Team – Contracts and Procurement | Tel. 452527 |

## **CONSULTANT, INTERIM AND AGENCY WORKER POLICY**

| R E C O M M E N D A T I O N S  |                           |
|--|---------------------------|
| <b>FROM:</b> Audit Committee   | <b>Deadline date:</b> N/A |
| <p>It is recommended that Cabinet approve the revised Consultant, Interim and Agency Worker Policy, which has been drafted in consultation with key stakeholders and officers to reflect compliance with procurement and HMRC regulations.</p> |                           |

### **1. ORIGIN OF REPORT**

- 1.1 This report is submitted to Cabinet following a recommendation by officers as part of an overall review of the Council's compliance with changes to tax legislation (IR35); and referral by Audit Committee.

### **2. PURPOSE AND REASON FOR REPORT**

- 2.1 The purpose of this report is to recommend for approval the revised Consultant, Interim and Agency Worker Policy. The revised policy makes clear the process that officers must follow to ensure all non-payrolled workers are engaged compliantly, in accordance with procurement regulations and Contract Rules and that due consideration is given to IR35 status and HMRC regulations.
- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.4, 'To promote the Council's corporate and key strategies and Peterborough's Community Strategy and approve strategies and cross-cutting programmes not included within the Council's major policy and budget framework.'

### **3. TIMESCALES**

|   |           |                                  |            |
|---|-----------|----------------------------------|------------|
| Is this a Major Policy Item/Statutory Plan? | <b>NO</b> | If yes, date for Cabinet meeting | <b>N/A</b> |
|---|-----------|----------------------------------|------------|

### **4. BACKGROUND AND KEY ISSUES**

- 4.1 The purpose of the Consultant, Interim and Agency Worker Policy is to provide officers with clear instructions in respect of the engagement and management of non-payrolled workers where it is not possible to fill posts with a permanent or temporary employee.
- 4.2 Throughout the council, interims and agency workers are engaged to work temporarily for and

under the supervision of the council, usually to cover business-as-usual activities/providing cover for a role and are ideally engaged on a short term basis. Consultants are generally engaged for a limited period or for short-term projects to provide professional advice or services.

- 4.3 The council aims to ensure that value for money is received from all non-payrolled workers and has competitively tendered Corporate Framework Agreements for the provision of all social care and non-social care roles. Under no circumstances must an interim or agency worker be engaged without attempting to utilise these frameworks in the first instance. Engaging a consultant is a procurement activity, therefore it is important that any expenditure in relation to engaging a consultant must be in accordance with the council's Contract Rules.
- 4.4 The revised policy sets out the process of engagement to ensure compliance with the Contract Rules and applicable legislation. This ensures a consistent application in the use of non-payrolled workers across the council and that correct procedures are followed to engage them. The revision of the policy also establishes a process for ensuring that IR35 status is correctly applied and recorded for all engagements, hence that the council is compliant with HMRC regulations. IR35 is the reference used to describe a piece of tax legislation which aims to differentiate between genuine businesses and workers who are for all intents and purposes a temporary employee.
- 4.5 As a result of these revisions there will be clearly defined processes for all officers to follow when engaging either a consultant, interim or agency worker and greater transparency. Once the policy has been approved, it will be widely publicised via the Council's established staff communication tools (weekly briefing, manager briefings etc.) and a dedicated webpage will be set up on Insight to host the policy with appropriate links and contact details incorporated as appropriate.

## **5. CONSULTATION**

- 5.1 Feedback from officers over a period of time has indicated the process for engaging non-payrolled workers within the current policy is confusing and unclear. Central to revision to the policy has been that officers have clear steps to follow when engaging an agency worker/interim/consultant to ensure compliance at all times.
- 5.2 CMT, all DMTs, the Unions and Audit Committee were consulted upon the final draft of the policy:
- Resources DMT – 31<sup>st</sup> January 2018
  - Growth and Regeneration DMT – 22<sup>nd</sup> January 2018
  - Governance DMT – 6<sup>th</sup> February 2018
  - P&C DMT - 5th March 2018
  - Unions - 12th March 2018
  - CMT - 14th March 2018.
  - Audit Committee – 26<sup>th</sup> March 2018
- 5.3 The general feedback from each of the DMTs was that a clear, step by step process is welcomed in relation to engaging a non-payrolled worker. Officers in general are unaware of the current policy's location on Insite and many have found the policy difficult to understand and unnecessarily lengthy. Officers require (i) clear definitions; (ii) user friendly processes to follow; and (iii) signposts to relevant points of contact and forms.
- 5.4 These recommendations have been incorporated both in the policy and the proposals for its publication once approved.

## **6. ANTICIPATED OUTCOMES OR IMPACT**

- 6.1 The revised policy has been developed in order to clarify and update the process that officers should follow to ensure all non-payrolled workers are engaged compliantly, in accordance with

procurement regulations and Contract Rules and that due consideration is given to IR35 status and HMRC regulations.

## **7. REASON FOR THE RECOMMENDATION**

7.1 To ensure all agency workers, interims and consultants are engaged compliantly, in accordance with procurement regulations and Contract Rules and that due consideration is given to IR35 status and HMRC regulations.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

8.1 To not update the existing policy. This option was dismissed as this would not ensure compliance with procurement regulations, the Contract Rules nor HMRC regulations.

## **9. IMPLICATIONS**

### **Financial Implications**

9.1 The financial implications of not following this process in respect of IR35 status recording is fines/costs from HMRC.

### **Legal Implications**

9.2 The policy reflects the requirements for compliance with procurement regulations, the Constitution's Contract Rules and that consideration is given by all officers to IR35 status and HMRC regulations.

### **Equalities Implications**

9.3 There are none.

## **10. BACKGROUND DOCUMENTS**

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

10.1 There are none.

## **11. APPENDICES**

- 11.1
- *Appendix 1 - Key changes between the original and revised policy*
  - *Appendix 2 - Consultant, Interim and Agency Worker Policy plus Appendices A and B*

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