



REVIEW OF THE USE OF AGENCY STAFF AND CONSULTANTS

**Report of the Best Value and Corporate Resources
Policy Overview Committee**

March 2006

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1. INTRODUCTION

In September 2005, the Best Value and Corporate Resources Policy Overview Committee agreed to undertake a review of the Council's use of agency staff and consultants.

A review group was established to examine this issue in detail on behalf of the Committee. This report was agreed by the Best Value and Corporate Resources Policy Overview Committee on 23 March 2006 and was submitted to the Cabinet for their consideration.

The Committee would like to thank all the members of the Group for their time and effort in producing this report.

The review group comprised of the following people:-



Councillor Michael Burton
Conservative Member for West Ward



Councillor Cathy Weaver
Labour Member for Orton
Longueville Ward



Councillor Charles Swift
Minority Parties Member for North Ward



Councillor John Crane
Liberal Democrat Member for Orton
Waterville Ward



Councillor Stephen Lane
Independent Member for Werrington
North Ward

The Group was supported by Louise Tyers, Scrutiny Manager and Hilary Gallup, Governance Support Officer.

2. SUMMARY OF RECOMMENDATIONS

Recommendation 1

That a centralised list of consultants used by the Council should be maintained.

Recommendation 2

That when there is a need to appoint someone for a time limited piece of work, the Council's policy should be to look within existing staff first to see if anyone has the required skills.

Recommendation 3

When the use of consultants is being considered, a full assessment on the risks of not undertaking the work should be carried out.

Recommendation 4

When a contract comes to an end, a full review of the work and a view on the value for money should be undertaken. These should be kept centrally so there is a corporate record of the suitability of consultants.

Recommendation 5

There should be a clear process and procedure in place for deciding whether or not to appoint a consultant and this should form part of the Council's Constitution. This should include levels of authorisation e.g. Cabinet member, Director, Head of Service, Senior Manager and when the tender process should be used for obtaining the services of a consultant. This will ensure that there is a clear audit trail for the whole appointment process.

Recommendation 6

Each project should be assessed individually and a reasoned decision made as to whether or not to appoint a consultant. No additional pieces of work should be given to a consultant without this process having been gone through.

Recommendation 7

Full terms of reference for each appointment should be drawn up and approved by the relevant Director or Head of Service.

Recommendation 8

The relevant committee should monitor the work of the Programme Boards to ensure that the new project management processes are being implemented in all areas of the Council's work.

Recommendation 9

Guidance on the use of agency and temporary staff, including the full implications of employing such staff, should be developed and provided to all managers.

Recommendation 10

That all managers are made aware of the proposed changes to legislation regarding agency employees and that its impact should be considered before employing such staff, if the changes are introduced.

Recommendation 11

The use of agency staff for engagements longer than three months should be discouraged.

Recommendation 12

That the monitoring of the use of agency staff should be centralised so that the number of agency staff employed by the Council is known, along with how long they have been employed for and which departments use agency staff regularly.

Recommendation 13

That HR progress their work on succession planning and recruitment quickly to enable the Council to move forward as an employer of choice.

3. PURPOSE OF THE REVIEW

The purpose of the Review was:-

- To examine how and why Peterborough City Council uses consultants and how much is spent on engaging consultants.
- To form an opinion as to the effectiveness of the consultants engaged and what impact their work has had.
- To examine how and why Peterborough City Council uses agency/temporary staff and how much is spent on engaging agency/temporary staff.
- To examine whether the introduction of agency/temporary staff has had an impact on the cost and quality of staff engaged.
- To examine how much consideration is given to alternatives to engaging agency/temporary staff or consultants.

4. BACKGROUND TO THE REVIEW

This review was undertaken following concerns raised by a number of councillors about how much the Council spends on external consultants and whether we are receiving value for money.

In the 2004/05 financial year, the Council spent £4.6m on external consultants. The work undertaken comprised a number of elements, including expert advice, planning consultancy, recruitment support, specialist staff, interim management and project support.

5. METHODOLOGY

The Review Group met on five occasions.

Interviews were undertaken with Barbara Prince, Group HR Manager, Mike Health, Director of Contract Services and Mohammed Mehmet, Director of Children's Services.

All Directors were asked to supply details of the consultants used over the 2 year period ending 31 March 2005. They were asked to include details of the cost, funding, level of authorisation, whether the consultancy is ongoing and the justification for the use of the consultant.

6. FINDINGS

CONSULTANTS

- 6.1 There is no centralised list of the consultants used by the Council. This means that there is no easily accessible record of whether a consultant has provided value for money and whether or not they should be used again. The Strategic Procurement Unit has advised that the category of consultants would be added to the Contracts Management System.

Recommendation

That a centralised list of consultants used by the Council should be maintained.

- 6.2 There also appears to be no corporate policy on when consultants should be engaged and how they should be appointed. This appears to be entirely the decision of the director concerned. The process for approving the use of consultants also appeared to vary between departments.
- 6.3 The Group felt that often there was the opportunity for an existing employee to act up and queried whether this was Council policy and whether the Council was aware of the full range of skills of its employees and whether this could be considered as an alternative to recruitment or the use of consultants. Officers have confirmed that the Council does have a Secondment Policy in place. However, it was accepted by officers that the Council was not currently particularly good at succession planning and that this was being addressed through new initiatives such as 'talent-spotting'. A Skills Audit is currently underway to collate the skills possessed by current employees.

Recommendation

That when there is a need to appoint someone for a time limited piece of work, the Council's policy should be to look within existing staff first to see if anyone has the required skills.

Contract Services Department

- 6.4 From the evidence seen, it appears to vary between departments who authorises the use of consultants. In Contract Services, the Director confirmed that senior managers within his department would not be able to sign off the use of a consultant without his consent. However, Heads of Service are encouraged to take responsibility for the justification of using a consultant. The Director acknowledged that the use of consultants can be emotive and any potentially emotive issues must be referred to him. When proposing to use any consultant, managers have to fully make a case for the proposed appointment which is then passed through to him for consideration; this includes confirming where the funding for the consultant is to come from. Initially he would want to know what other options had been considered, and whether the department had the relevant skills and expertise in-house which could be utilised. In the broader context of the Council, there might be an opportunity for a secondment, or the use of a temporary member of staff might be considered. Only when these avenues had been exhausted would the use of a consultant be confirmed.
- 6.5 To illustrate why a consultant may be used within his department, the Director highlighted a case where ownership of some land had apparently not been transferred to the Council. The risk of injury and consequent claim had to be considered, and there was no record of what might be on the land from its previous use. It was considered essential to undertake an assessment of the land. Expertise was available within the Council but following enquiries it was felt that that there was insufficient capacity to carry out the work within the timescales required. The next step was to consider having the assessment carried out by the Property Services Section, with the possibility of someone being trained in the necessary competences. The other options were to employ a suitable person for this task through an agency or go to an outside contractor. Although the issue was viewed as urgent, it was still necessary to select the most cost-effective option. The degree of

risk in not undertaking the work was also considered. The Council's insurers advised that in this case there would be a significant increase in insurance premiums.

- 6.6 The Group saw this example as a case where a decision had to be made on the facts available at the time, including an assessment of the risk of not doing the work. They were pleased that the process followed showed that all routes had been considered. The Director confirmed that there was not anything in Council policy that states that issues must be handled in this way, however there is a requirement to demonstrate best value.

Recommendation

When the use of consultants is being considered, a full assessment on the risks of not undertaking the work should be carried out.

- 6.7 Whilst examining the list of consultants who have been engaged during the past two years, it was noted that there was a consultant within the Contract Services department who appeared to be engaged on an ongoing basis. The Director was asked to explain why this approach was being taken. In response, the Director confirmed that the consultant in question had been working two days per week but had dropped to one day a week after Christmas. He had been engaged due to his suitability as an adviser on the impending relocation of the Depot. He stated that one of the advantages of continuing with the same consultant was that he would have already become familiar with the department and the Council. Therefore this makes the continued use of the same consultant more cost-effective than starting again with a new consultant.

Children's Services Department

- 6.8 The Director of Children's Services was interviewed by the Group to discuss the principles involved in the recruitment of agency and temporary staff and the engagement of consultants within his department. In particular, the Group was interested to know what involvement he had at director level, and what criteria were used to decide upon an appointment. He confirmed that the arrangements and the funding varied between the different sections of the department as some sections used temporary staff or consultants more than others. The Learning and Standards team, which gives support to schools and pupils, makes considerable use of consultants. These are people who are specialists in the different curriculum subjects and work in schools in connection with delivering the curriculum, or other aspects of the school's profile. The Council does not have these skills in-house because it was not practicable and would be very expensive for an authority of this size to have an in-house expert in each subject. Most schools will pay for this service directly and the department is only facilitating the provision of the service. At secondary school level, the Council has two advisers who ensure that best value implications are taken into account when a specialist adviser is used. If the authority was to look at appointing specialist advisers, the level of salary would be about £45,000 per annum. With regard to the use of consultants, a list for a particular specialism would be given to a school from which a selection is made. At the end of each appointment, feedback is requested and consultants who it is felt are not providing value for money should not be used again. In cases where the DfES supply a list of consultants, the Director confirmed that it depended on the type of work whether a contract was put out to tender. If there was a need for a consultant to provide one days work, then this would not be put out to tender but if the input required is significant in terms of time or cost, then it would go out to tender. A Head of Service or Assistant Director would monitor this process.

Recommendation

When a contract comes to an end, a full review of the work and a view on the value for money should be undertaken. These should be kept centrally so that there is a corporate record of the suitability of consultants.

6.9 The Strategic Resources team deals with the secondary schools review and has made extensive

use of consultants such as architects, accountants and legal advisers under the PFI. As has been proved, it is essential to have very good advice in this complex area, although this is expensive and the skills at this level are not maintained in-house. In all other cases, such as planning school policy, admissions, budgets and ICT, the team utilises its own staff. Children's Social Care makes very little use of consultants. Occasionally it might be necessary to commission an independent person or organisation to carry out a specific task but these areas are funded almost exclusively by central government grant. Little use is made of agency staff (as opposed to consultants), although looked-after children are placed with external agencies. The department has no policy on temporary staff, and as a matter of good practice appointing on a temporary basis is avoided where possible.

6.10 For work, other than in the schools environment, the Director confirmed that if a consultant was identified for a particular piece of work, a specification would be drawn up for the work to be done and how it should be accomplished. If this was done at a level below Assistant Director, then it would be cleared with the Assistant Director and then it would be commissioned on a competitive basis. The Assistant Director would not be involved in contracts where the cost was relatively low. It is accepted that budgetary pressures may influence or dictate which route to take. The Group had some concerns with this approach because if existing officers did not have the appropriate skills to undertake the work, how would they have the appropriate skills to draft the specification properly and know if the right person was appointed, or the work done correctly.

6.11 It was noted that some very big firms are used by the Children's Services department. The Group questioned whether this was an efficient use of resources as the people who undertake this type of work would know nothing about the department or the Council and therefore their first steps are to get information from the employees in the department in order to analyse it. Further work is then required in order for the identified issues to be examined. In response, the Director advised that with very large projects, such as PFI, the use of technical advisers is unavoidable. The difference between these and other consultants lies in the very high level of technical skill. Either this has to be developed in-house or it has to be paid for.

Control of Consultants

6.12 The Group felt that the use of consultants must be carefully controlled. It is important that the contract for the use of any consultancy services is written correctly with as least risk as possible to the Council. The appointing manager should fully understand any contract which it is being proposed to enter into and if they are unclear or not satisfied with the proposed terms of contract then they should seek the appropriate advice from the Strategic Procurement Unit before entering into any agreement. With regards to the recruitment of consultants to assist with the Private Finance Initiative for secondary schools, the Director of Children's Services confirmed that as there was a lack of experience within the Council, the proposed outcomes were checked by the Department for Education and Skills. With the new Programme Boards which the Council has established, it was hoped that they will provide a greater certainty in overseeing decisions but it should be accepted that they can not eliminate all risks. Subsequently, if there is evidence that the agreed work had not been undertaken correctly or bad advice had been given, then a claim should be considered against the consultant.

6.13 The Group noted that in some cases a consultant was employed for one piece of work and then because they had completed that job well, and fitted in, further pieces of work were put their way without an assessment being undertaken of whether a consultant was needed for the additional work. This may be because an individual/firm of consultants was reaching the end of their current contract and it was the easier option to put further work their way.

Recommendation

There should be a clear process and procedure in place for deciding whether or not to appoint a consultant and this should form part of the Council's Constitution. This should include levels of authorisation e.g. Cabinet member, Director, Head of Service, Senior Manager and when the tender process should be used for obtaining the services of a consultant. This will ensure that there is a clear audit trail for the whole appointment process.

Each project should be assessed individually and a reasoned decision made as to whether or not to appoint a consultant. No additional pieces of work should be given to a consultant without this process having been gone through. Full terms of reference for each appointment should be drawn up and approved by the relevant Director or Head of Service.

The relevant committee should monitor the work of the Programme Boards to ensure that the new project management processes are being implemented in all areas of the Council's work.

AGENCY/TEMPORARY STAFF

- 6.14 The Group HR Manager met with the Group and explained the legal position regarding the use of agency and temporary staff. Staff employed on a temporary or fixed term basis are on the Council's payroll, whereas agency staff are not paid directly by the Council but payment is made to the agency that supplied them. Rolling individual contracts of up to 12 months which have been extended for a further 12 month period can only be extended up to four years. On the anniversary of the fourth year the individual automatically becomes permanent by default. This is also the position with regards to fixed term contracts. It is possible for a temporary staff member to transfer to a different, temporary role following consultation and acceptance of the new terms by the temporary employee.
- 6.15 A 'consultant' is self-employed and therefore receives no benefits from the Council. They are not normally employees of the Authority, but in the event of a dispute and in order to prevent a consultant asserting that he has the status of an employee, and to claim employment rights such as unfair dismissal or redundancy, careful consideration should be given as to the basis on which the consultant is retained or the arrangements entered into with them for their services.

Agency Staff

- 6.16 Managers are expected to use the preferred agency suppliers unless the use of an alternative supplier could be justified. However it was felt by the Group that there was not any evidence that this system was being used throughout the Council. It was HR's view that best practice was that agency staff should not be used for contracts of more than three months. If a contract for longer was required, attempts should be made to employ someone on a temporary or fixed term basis.
- 6.17 Employment agencies are responsible for providing agency employees with their statutory employment benefits such as paid holidays, statutory sick pay. Normally, if an agency worker is off work owing to sickness, the agency may be asked to provide a replacement. Proposed changes in legislation may result in the employer's statutory obligations being transferred from the agency to the host employer. This is the result of European legislation, encompassing the Human Rights Act and the Equal Treatment Directive. This will dramatically alter the position on the advantages and disadvantages of using agency staff as opposed to temporary staff. It was noted that temporary staff can by law access employees' benefits such as the pension scheme once they have been employed for a consecutive three-month period. It was considered that this was an issue that needed to be highlighted. It was confirmed that the on-costs of temporary or permanent staff are 15%- 20% of salary. Therefore, the proposed new legislation is likely to add a similar amount to the costs of employing agency workers. The advantage to the Council of employing agency (as opposed to temporary) staff is that if the individual supplied is not satisfactory, the Council can terminate employment without the need to give notice (as would be the case with temporary staff other than at the end of a fixed term) and seek an alternative if required. This will also negate potential litigation for unfair dismissal.
- 6.18 The Strategic Procurement Unit have advised that they are currently developing guidance for managers on the use of agency staff.

Recommendation

Guidance on the use of agency and temporary staff, including the full implications of employing such staff, should be developed and provided to all managers.

That all managers are made aware of the proposed changes to the legislation regarding agency employees and that its impact should be considered before employing such staff, if the changes are introduced. The use of agency staff for engagements longer than three months should be discouraged.

- 6.19 HR does not get involved with the engagement of agency staff as each department appoints their own. It therefore follows that HR are not necessarily aware that an individual has moved from one department to another in a temporary role. At the present time it is not possible, without enquiring separately of every department, what the current level of agency staff working at the Council is. In answer to a query on why the HR team is not involved in the employment of agency staff, it was noted that the department was not resourced for this activity and if it was agreed that this process should be controlled centrally, then there was a need for a system to be established. The Council used to run its own 'casual' pool of temporary staff, these were people who had been interviewed by the Council and had various skills. This involved considerable amount of administrative input and had been discontinued, as applicants were not prepared to wait for intermittent work when they can obtain temporary work to suit individual circumstances from the numerous employment agencies within the area. As part of the corporate contracts which cover ICT, Accountancy, Secretarial & Admin and Manual Skilled agency staff, the 'preferred agencies' provide a monthly report on all assignments.

Recommendation

That the monitoring of the use of agency staff should be centralised so that the number of agency staff employed by the Council is known, along with how long they have been employed for and which departments use agency staff regularly.

- 6.20 Work is being carried out as part of the updating of the Council's recruitment processes, where it was expected that there would be more attention paid to succession planning, training and appropriate qualifications. This is in line with the requirements of a modern organisation which needs people with a range of skills. The contending claims of qualifications against experience were noted, and it was acknowledged that a balance was required. The requirement for previous experience with a local authority was discussed and it was noted that this could be addressed by making previous local authority experience a desirable attribute when appropriate, rather than an essential requirement as it was felt that the scope should be widened as much as possible to attract the widest range of applicants.

Recommendation

That HR progress their work on succession planning and recruitment quickly to enable the Council to move forward as an employer of choice.

7. NEXT STEPS

If our recommendations are accepted by the Cabinet, Officers will develop a full action plan to ensure that the recommendations are taken forward. This Action Plan will be regularly monitored by the Best Value and Corporate Resources Policy Overview Committee.

8. ACKNOWLEDGEMENTS

The members of the Review Group would like to thank all the Council officers who contributed towards the work of this review, particularly:

Mike Heath
Mohammed Mehmet
Barbara Prince

Director of Contract Services
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