



# **Internal Audit Report**

## **Agency Staff**

**Issued to:**

Richard Ellis, Interim Depute Chief Executive (Director of Corporate Governance)  
Ewan Sutherland, Head of HR  
Craig Innes, Head of Commercial & Procurement Services  
Steven Whyte, Head of Finance  
Martin Allan, Business Manager, Corporate Governance  
External Audit

## **EXECUTIVE SUMMARY**

In 2015/16, the Council recorded expenditure of approximately £7.9 million on agency staff. The objective of this review was to ensure that that agency staff are being appointed through appropriate channels and that arrangements for their induction are robust.

Testing identified significant levels of off contract spend, resulting in a failure to comply with EU Procurement Regulations, and issues with regard to the recording of induction checks and compliance with European Working Time Directive requirements.

## **1. INTRODUCTION**

- 1.1 Agency Staff are procured by Council Services through Framework Agreements arranged by Scottish Procurement, Scotland Excel and in collaboration with other local authorities. The Frameworks comprise selected supplier(s) for a range of work specialisms. Agency staff may be required to provide temporary or interim support to Services where a fixed term or permanent recruitment is not suitable.
- 1.2 In 2015/16, approximately £7.9 million was processed through agency staff codes. This compares to £6.6 million in 2014/15 and £7.3 million in 2013/14. Current year spend to 30 September 2016 was £4.2 million.
- 1.3 The objective of this audit was to ensure that agency staff are being appointed through appropriate channels and that arrangements for their induction are robust. This involved reviewing written procedures; authorisation of agency staff requests; procurement processes and agency staff induction.
- 1.4 The factual accuracy of this report and action to be taken with regard to the recommendations made have been agreed with Richard Ellis, Interim Depute Chief Executive (Director of Corporate Governance), Craig Innes, Head of Commercial and Procurement Services, and Ewan Sutherland, Head of HR.

## 2. FINDINGS AND RECOMMENDATIONS

### 2.1 Written Procedures

- 2.1.1 Comprehensive written procedures which are easily accessible by all members of staff can reduce the risk of errors and inconsistency. They are beneficial for the training of current and new employees and provide management with assurance of correct and consistent practices being followed, especially in the event of an experienced employee being absent or leaving. Procedures regarding the use of agency workers are available on the Council's intranet. These cover when an agency supplier can be used, the Service requisitioner to contact prior to engaging an agency worker, the framework agreement suppliers to contact by work specialism, guidance on how to complete the agency staff authorisation form, an induction checklist and a list of frequently asked questions on the UK legislation Agency Worker Regulations 2010.
- 2.1.2 The 'Authorisation for use of Agency Workers' form is well laid out and includes hiring Service details; post to be covered; expected duration of cover; expected cost of cover; reason for cover; authorisation and whether it is an extension of cover. The form also includes guidance for completing the form. The 'reason for cover' section provides a variety of options including short term cover for sickness; short term cover for annual leave and options should the corporate recruitment process be deemed unsuitable. These include failure to fill the post by the usual means; the need for specialist assistance as well as critical and unexpected demand. While the guidance for annual leave cover is clear and restricted to cover of front line services, the guidance for when it is acceptable to use agency staff in other circumstances is open to interpretation. This includes a lack of indication of how long sickness must continue; how many attempts have to be made through the normal corporate recruitment process; and, what constitutes a seasonal peak in critical business requirements, before agency staff are used.

#### **Recommendation**

Completion guidance for the 'Authorisation for Use of Agency Worker' form should be updated in order to formalise the arrangements for engaging agency workers as an alternative to recruiting through the corporate recruitment process.

#### **Service Response / Action**

Agreed. Current guidance will be reviewed and updated where appropriate.

#### **Implementation Date**

February 2017

#### **Responsible Officer**

Team Leader  
(Resourcing)

#### **Grading**

Important within audited  
area

- 2.1.3 Written procedures lack detailed instruction on the processing and retention of agency worker timesheets and completion of induction checklists. This increases the risk that agency worker supplier invoices are paid in the absence of supporting timesheets. The absence of induction checklist guidance increases the risk of agency staff not being properly inducted and thereafter breaching Council policy and procedures as a result.

#### **Recommendation**

Written procedures should be expanded to include standardised procedures for the processing of timesheets and the induction process.

#### **Service Response / Action**

Agreed.

<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
February 2017	Team Leader (Resourcing)	Important within audited area

- 2.1.4 Procedures require that, for the admin/clerical Framework Agreement, suppliers be approached in ranked order. Where a supplier chosen in ranked order can provide an agency worker that matches the requirement of the Service, the Service is obliged to engage that worker. However, Services have advised that all suppliers will be given the opportunity to submit CVs from agency workers, with the hiring manager(s) selecting the best CV, irrespective of which supplier is providing the worker. In some instances the Service will go to the lowest ranked supplier as a matter of course. This is in contravention of established procedures, leaves the Council open to challenge from framework suppliers should an agency worker be chosen out of ranked order and increases the likelihood best value will not be achieved.

**Recommendation**

Services should select agency workers in accordance with the ranking recorded in established procedures.

**Service Response / Action**

Agreed. Services should select agency workers in accordance with the ranking recorded where possible. However, it is recognised that demands vary from Service to Service and it is not appropriate for one approach to encompass every possible scenario. This approach will allow flexibility for Services to ensure that Service delivery continues.

<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
February 2017	Team Leader (Resourcing)	Significant within audited area

## 2.2 Use of Suppliers

- 2.2.1 Standing Orders Relating to Contracts and Procurement, approved by Council in 2010, superseded by Procurement Regulations in 2016, give clear guidance on the procurement process to be applied, and the relevant contract values. Services should use contracted suppliers where suppliers exist in order to obtain best value for the Council. A review of supplier use from 1 April 2016 to 9 August 2016 evidences that of a total spend of £2.7m, £1.1m (41%) was placed with suppliers not on the procurement framework for agency workers.

**Recommendation**

All Services should procure agency workers from contracted suppliers.

If this is not possible advice should be sought from Commercial and Procurement Services before an order is placed with a non-framework supplier.

**Service Response / Action**

Agreed. Services should seek further advice from Commercial and Procurement Services where the suppliers cannot meet their requirements, however, alternative options for engagement, e.g. fixed term employment should always be explored with HR prior to engaging agency. CMT is monitoring agency spend as are individual services which will help reduce the amount of agency staff being procured.

<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
February 2017	Team Leader (Resourcing)	Significant within audited area

- 2.2.2 One order issued by Communities, Housing & Infrastructure (CH&I) to an off-contract supplier was identified in the course of audit testing totalling £644,767 to date, covering the period 30 March 2015 to a proposed end date of 19 June 2016, with a spend to date of £417,714. The Service advised that this arrangement was agreed with C&PS since specialist agency staff were required at short notice which the Council's framework suppliers were unable to provide. This was due to special circumstances to ensure the road-worthiness of fleet vehicles to meet the requirements of the councils "Operators Licence". It was essential that action was taken immediately as failure to show the Traffic Commissioner that the Council was taking her concerns seriously could have resulted in the loss of the Council's "Operators Licence" and the cessation of Roads and Waste Services.
- 2.2.3 Whilst this mitigated immediate risks, the above arrangements covered a period of almost 15 months. Standing Orders relating to Contracts and Procurement and EU Procurement Directives require that before a contract of this value is agreed, it should be subject to competitive tender and publication in the Official Journal of the EU (OJEU). No evidence that the appropriate procurement process was applied could be found. Failing to follow established procurement procedures increases the risk of EU tendering legislation not being complied with, and the Council not obtaining best value for procured services.
- 2.2.4 Three agency appointments for Corporate Governance were reviewed where it is apparent that the relevant Standing Orders, Financial Regulations and EU tendering legislation has not been complied with. Orders totalling £280,689 were placed with an off-contract supplier for two workers for the period November 2015 to March 2017 although there is no evidence that it was subject to a formal procurement process. The amount paid against that order to the end of 2016 is £147,655 as one of the workers left and was not replaced. Another order was placed with an off-contract supplier to provide temporary cover. No formal procurement was undertaken, and the cost to the Council was £114,114 compared to gross salary costs for the post of £73,818. One order was placed with a supplier to assist in the procurement of a consultant. Although the costs involved in the exercise were reported to Members, C&PS has advised that a contract is not in place with the agency worker supplier used.

**Recommendation**

Services should ensure Standing Orders, Financial Regulations and EU Tendering legislation are complied with.

**Service Response / Action**

The responsibility of adhering to Standing Orders and Procurement Regulations is for the hiring manager responsible for the budget. The Corporate Procurement Steering Group, with involvement from each Directorate is working to establish a 'gatekeeper' role for the commission of agency staff going forward.

**Implementation Date**

June 2017

**Responsible Officer**

Head of Commercial &  
Procurement Services

**Grading**

Major at a Service Level.

**2.3 Procurement of Agency Workers**

- 2.3.1 To procure an agency worker, the hiring manager should complete an Authorisation for Use of Agency Worker form, which should be approved by a Head of Service or Service Manager. The form should be submitted to the Service agency requisitioner, who will raise an order on the PECOS purchasing system. The order will be routed to a relevant authorised signatory for approval prior to being issued to the supplier. The supplier will submit invoices for payment following receipt of an authorised timesheet from the agency

worker. The invoice and timesheet should be scanned into the InfoSmart Document Management system for payment and storage.

2.3.2 Agency workers should be engaged for a period not exceeding 12 weeks, at which point Agency Worker Regulations 2010 (AWR) require that agency workers are entitled to the same basic employment conditions, including contractual pay, as if they had been recruited directly to the organisation. It is the responsibility of the supplier to ensure that the correct rates of pay are applied.

2.3.3 A random sample of 15 authorisation forms were selected to see if they were approved appropriately. Ten out of fifteen agency workers were engaged prior to an authorisation form having been approved. Delays in approving the use of an agency worker ranged from the day the engagement started, to over 2 months after the start of engagement, including one case where it had been authorised six weeks after the engagement was originally due to end. A similar finding was noted in a previous Internal Audit report prepared by PWC in June 2014 (Sourcing and Management of Agency Staff) where it had been found that 48% of the agency workers had been engaged prior to approval having been sought. Where approval is not sought this increases the likelihood that agency staff will be engaged without adequate consideration of alternative Service delivery methods.

**Recommendation**

Approval for the use of agency workers should be sought prior to a worker being engaged.

**Service Response / Action**

Agreed. All Services will be reminded of their obligations to follow this process when seeking to get approval for an agency worker.

**Implementation Date**

February 2017

**Responsible Officer**

Team Leader  
(Resourcing)

**Grading**

Significant within audited area.

2.3.4 Financial Regulation 18.2.4 requires that an order must be issued for all work, goods or services. A review of all invoices posted to the agency worker ledger code (1,787 invoices), found 322 that had no evidence of being supported by a purchase order created on PECOS, including 44 invoices from agency worker framework suppliers, breaching Financial Regulations. The Internal Audit report on Agency Workers issued in 2014 recommended that Hiring Managers be reminded to only source staff through the proper channels. It is apparent that this recommendation is not being complied with.

**Recommendation**

All agency worker procurement should be processed through PECOS by Service contacts designated in established procedures.

**Service Response / Action**

The responsibility of adhering to Standing Orders and Procurement Regulations is for the hiring manager responsible for the budget. The Corporate Procurement Steering Group, with involvement from each Directorate is working to establish a 'gatekeeper' role for the commission of agency staff going forward.

**Implementation Date**

June 2017

**Responsible Officer**

Head of Commercial &  
Procurement Services

**Grading**

Significant within audited area.

- 2.3.5 Agency worker authorisation documentation notes that an engagement should be for a maximum of 12 weeks, a view supported by HR, and should be extended only in *exceptional circumstances*. A review of agency worker engagements for CH&I evidenced that for 58 current engagements, 44 exceeded the 12 week limit. The average period covered by the 44 engagements was 69.3 weeks, with engagements ranging from 23.6 weeks to 198.6 weeks, indicating that agency workers are routinely used to provide cover for substantive vacancies.

**Recommendation**

The Council should review ways in which services are delivered to assess if alternative methods of delivery can minimise the need to engage agency workers for a prolonged period.

**Service Response / Action**

Agreed. The Corporate Procurement Steering Group is looking at options to reduce agency and consultancy spend across the Council. Business Managers will arrange communication on this in liaison with the Steering Group.

**Implementation Date**

February 2017

**Responsible Officer**

Business Support  
Managers / Steering  
Group

**Grading**

Significant within audited  
area.

- 2.3.6 Financial Regulation 19.1.3 indicates that the appointments of all employees are to be made in accordance with the regulations of the Council. Therefore where a permanent vacancy exists, it should be filled by applying the corporate Recruitment and Selection procedures. A review of agency worker supplier usage highlighted two instances of Services seeking to use Agencies to source permanent staff, therefore circumventing corporate recruitment procedures. In one of these instances, the Service has been quoted £3,875 by an agency worker supplier to source a permanent member of staff. By recruiting permanent staff in this manner, Services may be in breach of Financial Regulations, and will not obtain best value for the recruitment of permanent staff. Orders have not been placed in either of the above instances.

**Recommendation**

Agencies should not be used to source permanent staff.

**Service Response / Action**

Agreed. Where conventional recruitment methods have failed then other strategies (including agency) need to be explored and the Council requires this degree of flexibility. The Council has used a recruitment partner for certain chief officer appointments who head-hunt to supplement our conventional process. This approach has been approved by the relevant Committee of the Council.

Commercial and Procurement Services will raise such instances to the relevant HR Business Partner to raise with the Service involved.

**Implementation Date**

February 2017

**Responsible Officer**

Team Leader  
(Resourcing)

**Grading**

Significant within audited  
area.

- 2.3.7 A review of timesheets submitted with invoices from agencies evidenced a lack of compliance with the EU Working Time Directive concerning unpaid breaks. Where an employee works in excess of six hours, a 30 minute unpaid break must be taken. Four timesheets did not evidence a break being taken, and one timesheet evidenced a break of less than 30 minutes, with the balance being paid at the contract rate. As a result, the



Council is breaching the Working Time Directive, and paying for hours that should be classified as unpaid breaks. All timesheets referred to had been authorised for payment.

**Recommendation**

The EU Working Time Directive should be applied. Any timesheet claiming unpaid break time as hours worked should be returned to the agency worker for correction prior to authorisation and submission.

**Service Response / Action**

Agreed. Specific evidence where the Directive has not been applied has been shared with the relevant Service. Business Managers will contact all Managers reminding them of the Directive and that it applies to agency workers.

**Implementation Date**

February 2017

**Responsible Officer**

Business Support  
Managers

**Grading**

Significant within audited  
area.

## 2.4 Induction of Agency Workers

- 2.4.1 Agency Worker procedures on The Zone refer hiring managers to an Induction Checklist, which is designed to ensure all agency workers have received any relevant pre-employment screening; are given a tour of the work area; are provided with suitable equipment and materials; have read and understood the Anti-bribery policy and ICT Acceptable Use Policy; are aware of Data Protection and Freedom of Information requirements; have been instructed on the use of in-house systems; have been issued with an ID badge; have been briefed on health and safety matters and have had an explanation of the expectations of their duties and performance. The document should be completed by the hiring manager, and signed by the agency worker at the end of their induction. Completed forms should be held by the hiring manager.
- 2.4.2 Twelve agency worker engagements were selected from the sample of fifteen above to ensure that an Induction Checklist had been completed and signed for each worker. The Agency workers' line managers were contacted, and only three could provide a copy of the completed and signed Induction Form. Where the induction process is not carried out, there is an increased risk to Council security and agency worker health and safety.

**Recommendation**

Services should ensure the induction of agency workers is carried out, and is evidenced.

**Service Response / Action**

Agreed. It is proposed that the Business Managers in Services liaise with the HR Business Partners to revise induction checklists for agency workers to make them fit for purpose and to ensure that there are mechanisms in place to record and monitor the checklists. The recruiting managers would then record and monitor the lists.

**Implementation Date**

February 2017

**Responsible Officer**

Recruiting Manager /  
Business Managers / HR  
Business Partners

**Grading**

Significant within audited  
area.

- 2.4.3 The induction process is an important one, for the reasons described above. However, there is currently no monitoring to ensure agency worker induction has taken place.

**Recommendation**

Completion of agency worker induction checklists should be recorded and monitored centrally within Services.

**Service Response / Action**

Agreed. See above.

**Implementation Date**

February 2017

**Responsible Officer**

Recruiting Manager /  
Business Managers / HR  
Business Partners

**Grading**

Significant within audited  
area.

## 2.5 Contracts and Contractor Performance

2.5.1 Human Resources currently have no involvement in the agency worker procurement process, other than to provide advice as and when required. Despite the procurement process involving technical HR issues, the final decision will be the responsibility of the Service and CPS. Procedures do not contain any HR advice other than guidance on the Agency Worker Regulations.

2.5.2 One order for the provision of an agency worker was noted where a contracted supplier was used, but the correct contract rate was not applied. In the process of negotiating for the provision of an agency worker, the supplier advised the hiring Service that a charge would be applied for "Supplier's Contribution per hour", which included National Insurance contributions and a charge relating to the Working Time Directive. The applicable rate for the post being covered is £24.30, including the supplier's fee. However, the rate applied to the above order was £30.23. The current order for additional supply is awaiting approval, however the Service has made payment at the incorrect rate on three invoices to date at a cost of £889 over and above the agreed contracted rates.

**Recommendation**

Services should ensure only agreed contract rates are applied to the procurement of agency workers.

**Service Response / Action**

Agreed.

**Implementation Date**

February 2017

**Responsible Officer**

Team Leader  
(Resourcing)

**Grading**

Significant within audited  
area.

2.5.3 Two queries brought to the attention of CPS by Agency Worker suppliers were discussed where agency workers had queried the non-payment of increments payable to permanent employees of the Council following a performance review. The agency concerned argued that the workers were entitled to an increment, although the terms of the agency supplier framework provide for only two rates per post (as opposed to 3 rates per salary grading for permanent employees). Although HR were contacted for advice, a definitive steer was not provided to CPS or the Service. It was concluded to not pay increments to the agency workers concerned. Without official HR involvement in the procurement process, there is a risk that incorrect terms and conditions could be applied to agency workers.

**Recommendation**

Human Resources should be formally involved in the agency worker process in an advisory capacity to Commercial and Procurement Services, on issues relating to rates of pay and terms and conditions.

**Service Response / Action**

Agreed. The Corporate Procurement Steering Group is looking at options to reduce agency and consultancy spend across the Council and will look at this point.

**Implementation Date**

February 2017

**Responsible Officer**

Head of HR

**Grading**

Significant within audited area.

**AUDITORS:** D Hughes  
A Johnston  
N Ritchie

## Appendix 1 – Grading of Recommendations

GRADE	DEFINITION
<b>Major at a Corporate Level</b>	The absence of, or failure to comply with, an appropriate internal control which could result in, for example, a material financial loss, or loss of reputation, to the Council.
<b>Major at a Service Level</b>	<p>The absence of, or failure to comply with, an appropriate internal control which could result in, for example, a material financial loss to the Service/area audited.</p> <p>Financial Regulations have been consistently breached.</p>
<b>Significant within audited area</b>	<p>Addressing this issue will enhance internal controls.</p> <p>An element of control is missing or only partial in nature.</p> <p>The existence of the weakness identified has an impact on a system's adequacy and effectiveness.</p> <p>Financial Regulations have been breached.</p>
<b>Important within audited area</b>	Although the element of internal control is satisfactory, a control weakness was identified, the existence of the weakness, taken independently or with other findings does not impair the overall system of internal control.