

Report of the Chief Officer (HR)

Report to Scrutiny Board Resources and Council Services

Date: 17th December 2012

Subject: Personal Service Companies

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

- 1 As noted at Full Council in November, it has become apparent that across the public sector there are many instances of staff engaged through personal service companies to fulfil roles in organisations. Full Council committed to bring this practice to an immediate end and were given assurances in relation to the progress made in relation to the small number of such arrangements that existed in the Council in recent times.
- 2 The opportunity has been taken to clarify how the Council fills posts on the structure on a short term basis in relation to this and further work is proposed to strengthen this framework and provide further assurances in this area.

Recommendations

- 3 Members are asked to note the progress made in this area to ensure delivery of the position as set out at full Council and consider the further measures proposed as follows;
 - Updating the contract procedure rules and communicating this to senior officers
 - Reflecting the position in the revised Senior pay policy/statements in 2013
 - Considering the implication of the potential changes to taxation legislation
 - Reporting to Executive Board and back to Scrutiny as required in 2013.

1 Purpose of this report

1.1 To provide Scrutiny Board with an overview of the key issues in relation to personal service companies and how the Council engages people for short term work.

1.2 To also specifically address the following issues as requested;

- The progress made to ensure that no permanent member of staff is being paid off payroll
- Why such arrangements were not challenged in the past
- The issue of ensuring guidelines are in place for senior officers to enable them to sensibly decide how to fill interim positions
- Long term skill planning to reduce the need for relying on external expertise

2 Background information

2.1 There is no clear definition in law of personal service company however the term generally relates to people fulfilling a contract for services who are not on an organisation's payroll, sometimes referred to as 'off payroll spend.' A personal service company is typically a limited company, with a sole director who owns most or all the shares in that company.

2.2 As noted a Full Council in November, it has become apparent that across the public sector there are many instances of staff engaged through personal service companies to fulfil roles in organisations. This included the former Head of the Student Loans Company, and (as referenced at full Council) 2,400 people working in the Civil Service. The Public Accounts Committee recently looked at this practice and cited the importance of the public sector maintaining high levels of propriety in employment practice. The aforementioned Council meeting saw the Council committing to "bring this practice to an immediate end."

2.3 It is important to clarify an important distinction in terms of engaging people to work for the Council, sometimes overlooked in the coverage of these issues. Firstly, there is the issue of how positions on the Council's structure are filled. Secondly, there is the issue of how the Council engages people to do specific, time limited work. This note will deal with these in turn;

3 Main issues

Filling Positions on the Council's structure

3.1 In line with the outcome of the November Council meeting, the approach now being taken is that where there is a need to fill a post on the Council's structure on a short term /interim basis, the Council will either employ someone on a temporary basis through the Council's normal payroll arrangements, or will engage them through a recognised agency. For the former, this would be through either a temporary or fixed term contract, and for the latter, the Council has two main routes the Executive Search and Selection Framework contract

(Gatenby Sanderson and ProVenture) and the vendor neutral agency contract (Commensura). In the case of work secured via one of these agencies, this will mean that the Council will not make any payments directly to the individuals concerned but would pay the agency.

How the Council engages people for specific, time limited work

- 3.2 Where the Council is engaging an organisation or individual to undertake a specific piece of work which is time limited, then normal procurement arrangements and financial procedure rules would apply. This could include contracting with an individual or an individual operating as a personal services company, if they were successfully in being awarded the work. In order to ensure appropriate challenge is provided where services seek to engage an organisation or people to do specific, time limited work, it is proposed that the following checklist is incorporated into the existing Contract Procedure Rules;

“Where the use of external capacity to undertake specific pieces of work is considered, Chief Officers must consider;

- (1) The nature of the unique or specialist skills required,
- (2) The Council’s capacity and ability to redirect resources to undertake such tasks
- (3) Whether or not there is a statutory need for an independent person
- (4) Overall timescales required, and;
- (5) Overall cost effectiveness.

Officers making decisions to procure a service should note why this has been the case and, using the checklist above satisfy themselves that this approach is more appropriate than seeking to create and fill a position on the Council’s structure.”

- 3.3 Scrutiny Board are asked their views on both the position taken in line with the outcome of the Council meeting and the above proposed addition to the Contract Procedure Rules.

Progress on ensuring no permanent member of staff is being paid off payroll

- 3.4 At the time of the Council meeting four of the five individuals identified as covering positions and being paid ‘off payroll’ were no longer engaged in that way. Since the Council meeting the case of the fifth individual has being resolved (the individual having being recruited via a competitive process). HR are not aware of any other instances of posts on the Council’s structure filled by individuals operating as personal service companies. HR continue to work across the Council to ensure that posts on the Council’s structure are not filled by individuals operating as personal service companies, ahead of the formal changes to policy suggested in this note.

Why were such arrangements not challenged in the past?

- 3.5 The arrangements in relation to those five individuals were in place primarily as a means of engaging individuals with scarce skills in a mutually agreeable and entirely lawful manner. The majority of the posts were engaged in Childrens Services providing key capacity in hard to recruit to areas. These arrangements were agreed between the services and the people concerned. The responsibility for ensuring the correct level of taxation is paid rests / rested with the personal service company, not the Council.
- 3.6 As set out in full Council, the government is considering new legislation which potentially would provide more responsibilities on a large employer such as the Council, and work is required to assess the potential impact of this on the existing arrangements in place where services are provided to the Council via the Executive Search and Selection contract, the agency contract or with individuals or organisations delivering time limited work. It is proposed that HR work with colleagues in Finance and Procurement to carry out this work and update Scrutiny in 2013.

Ensure guidelines are in place so officers can sensibly decide how they cover interim positions

- 3.7 In order to further strengthen the arrangements for engaging senior staff it is proposed that the Council's position is reflected as proposed in the Contract Procedure Rules and also included in the revisions required to the Council's Senior Pay Policy/statement in 2013. Subject to the views of Scrutiny Board on the matter it is proposed that a key message is communicated to Directors and Chief Officers to reflect the issues contained in this note, and that services involve HR in the early stages of planning their approach to covering interim positions.

Long term skill planning to avoid relying on external expertise

- 3.8 The Council through its Budget Plus process is developing an updated workforce plan for the forthcoming 3 years, linked to the emerging budget proposals. HR have, in partnership with the Trade Unions, developed the Talent Pool and sees this as a key component in delivering a more flexible workforce. Consideration is currently being given as to the best way of linking the Talent Pool to the current medium term Early Leavers Initiative so that the Council can ensure that it has the right people with the right skills in the right place at the right time.
- 3.9 Scrutiny are also asked to note that there are circumstances where it will remain essential to utilise external expertise, where for example, there is a statutory requirement for an independent person e.g. Chair of the Childrens Safeguarding Board etc. or where highly specialist skills are required often for short periods of time e.g. niche ICT specialists.

4 Corporate Considerations

Consultation and Engagement

4.1 N/a

Equality and Diversity / Cohesion and Integration

4.2 There are no specific implications for Equality and Diversity.

Council policies and City Priorities

4.3 The proposed changes to the Council's Contract Procedure Rules are set out at paragraph 3.2.

Resources and value for money

4.4 The proposals further strengthen value for money considerations and ensure that a clear position is in place in terms of how the Council fills posts on its structure.

Legal Implications, Access to Information and Call In

4.5 N/a

Risk Management

4.6 N/a

5 Conclusions

5.1 The Council has adopted a clear position in not employing senior staff via personal service companies, and strong progress has been made to ensure this in enacted.

6 Recommendations

6.1 Members are asked to note the progress made to ensure delivery of the position as set out at full Council and consider the further measures proposed as follows;

- Updating the contract procedure rules and communicating these to senior officers
- Reflecting the position in the revised Senior pay policy/statements in 2013
- Considering the implication of the potential changes to taxation legislation
- Reporting to Executive Board and back to Scrutiny as required in 2013.

7 Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.