

**SUBJECT: INTERNAL AUDIT SECTION
AGENCY WORKERS – LIMITED
ASSURANCE AUDIT OPINON**

**DIRECTORATE: Resources
MEETING: Audit Committee
DATE: 26th November 2020
DIVISION/WARDS AFFECTED: All**

1. PURPOSE

To update Members on the significant issues identified during the Internal Audit review of the Council's administration of Agency Workers which led to a **Limited Assurance** audit opinion being issued; to reassure Members that senior management have taken on board the concerns raised; to provide assurance that audit recommendations have been accepted, in the main, and have been, or will be, implemented in order to improve the controls in place.

2. RECOMMENDATION(S)

- 2.1 That the Audit Committee note the significant concerns raised in the report, the action taken by management to address those concerns and acknowledge what still needs to be implemented by management to demonstrate improvements in the way this service is administered within the Council.
- 2.2 If the Members of the Audit Committee are concerned about lack of improvement or progress being made, consideration should be given to calling in the operational managers and the Head of Service to obtain further assurance that the agreed improvements will be made and that satisfactory progress is being made to address control weaknesses highlighted in the audit report.

3. KEY ISSUES

- 3.1 It was identified that between 2016/2017 and 2018/2019 the Authority spent a total of £11.205m on employment agencies. Of this, just under £6m was spent with the Authority's (then) preferred suppliers; New Directions (£1.6m for

schools agency workers) and Randstad (£4.3m). Monmouthshire's total employee costs (calculated as per CIPFA Accounting standings) for this period was £352.081m, therefore Agency costs equated to 3.2% of total employee costs.

- 3.2 The administration of Agency Workers was therefore a significant system within Monmouthshire to be reviewed by Internal Audit.
- 3.3 The audit report has become very long and detailed so an Executive Summary has been prepared to give Members an overview of the significant weaknesses identified during the course of the audit, progress to date by management (Peoples Services & Procurement), what needs to happen next along with ongoing concerns.
- 3.4 The Executive Summary is attached for information, Appendix 2.
- 3.5 Significant weaknesses were identified in the following areas of the Agency administration:
 - Policy & Guidance Framework
 - Procurement
 - Business Cases
 - Safeguarding & Pre-Employment checks
 - Re-employment of past employees
 - Selective Recruitment
 - Monitoring of Agency Assignments
 - Rebate
- 3.6 Since the report was issued in draft (December 2018), there have been ongoing discussions between Internal Audit and management (People's Services and Procurement) and it has been identified that significant progress in some areas has been made to improve how this system is operated and minimise the risks involved.
- 3.7 However, there are a number of actions still required to ensure that the Authority obtains best value for money from its use of agency staff, engages appropriate individuals when required and complies with relevant legislation.
- 3.8 Responses to the recommendations made in the Internal Audit report have generally been positive and as shown in the 'Progress to Date' section of the Executive Summary, many of the key actions identified have already been delivered. However there remain some ongoing concerns based on responses to the Action Plan.
- 3.9 This audit will be followed up in 2021/22 to ensure the agreed recommendations have been implemented such that significant improvements have been made within the system to minimise the weaknesses identified in the Internal Audit report. The subsequent audit opinion will then be reported back to Audit Committee.

4. SERVICE MANAGEMENT RESPONSIBILITIES

- 4.1 Heads of Service and service managers are responsible for addressing any weaknesses identified in internal systems and demonstrate this by including their management responses within the audit reports. When management agree the audit action plans they are accepting responsibility for addressing the issues identified within the agreed timescales.
- 4.2 Ultimately, managers within MCC are responsible for maintaining adequate internal controls within the systems they operate and for ensuring compliance with Council policies and procedures. All reports, once finalised, are sent to the respective Heads of Service for information and appropriate action where necessary. All Internal Audit opinions are also reported into the Senior Leadership Team (SLT) every six months. SLT's focus is, along with Chief Officers and DMTs, ensuring that satisfactory progress is being made to address control weaknesses highlighted in the audit reports, in particular Limited assurance reports.

5. RESOURCE IMPLICATIONS

None.

6. CONSULTEES

Chief Officer, Resources
Head of People Services & Information Governance
Head of Human Resources
Corporate HR Lead
Head of Enterprise & Community Animation
Strategic Procurement Manager

7. BACKGROUND PAPERS

Internal Audit management information; Internal Audit report on Agency Workers

8. AUTHOR AND CONTACT DETAILS

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Internal Audit Opinions

SUBSTANTIAL	<p>Substantial level of assurance.</p> <p>Well controlled although some minor risks may have been identified which require addressing.</p>
CONSIDERABLE	<p>Considerable level of assurance.</p> <p>Generally well controlled, although some risks identified which should be addressed.</p>
REASONABLE	<p>Reasonable level of assurance.</p> <p>Adequately controlled, although risks identified which could compromise the overall control environment. Improvements required.</p>
LIMITED	<p>Limited level of assurance.</p> <p>Poorly controlled, with unacceptable levels of risk. Fundamental improvements required immediately.</p>

The table below summarises the ratings used during the reviews:

RATING	RISK DESCRIPTION	IMPACT
1	Significant	<p>(Significant) – Major / unacceptable risk identified.</p> <p>Risk exist which could impact on the key business objectives. Immediate action required to address risks.</p>
2	Moderate	<p>(Important) – Risk identified that requires attention.</p> <p>Risk identified which are not business critical but which require management as soon as possible.</p>
3.	Minor	<p>(Minimal) - Low risk partially mitigated but should still be addressed</p> <p>Audit comments highlight a suggestion or idea that management may want to consider.</p>
4.	Strength	<p>(No risk) – Good operational practices confirmed.</p> <p>Well controlled processes delivering a sound internal control framework.</p>



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INTERNAL AUDIT REPORT
- EXECUTIVE SUMMARY

USE OF AGENCY WORKERS

Date of Fieldwork	<i>May 2018 - November 2019</i>
Date of Report Issue	<i>November 2020</i>
Report Status	<i>Executive Summary</i>
Report Author	<i>Mark Stenner, Principal Auditor David Walton, Audit Manager, Andrew Wathan, Chief Internal Auditor</i>
Issued on Behalf of	<i>Andrew Wathan, Chief Internal Auditor</i>
Issued to	<i>Senior Leadership Team Audit Committee Tracey Harry, Head of People Sally Thomas, Human Resources Lead Scott James, Strategic Procurement Manager Cath Fallon, Head of Enterprise & Community Animation</i>

Introduction

The Internal Audit Section have completed an audit of the Authority's arrangements for the use of Agency workers.

Through a review of the Business World financial system, we identified that from 2016/2017 to 2018/2019 the Authority spent a total of £11.205m on employment agencies. Of this, just under £6m was spent with the Authority's (then) preferred suppliers; New Directions (£1.6m for schools agency workers) and Randstad (£4.3m). Monmouthshire's total employee costs (calculated as per CIPFA Accounting standings) for this period was £352.081m, therefore Agency costs equate to 3.2% of total employee costs.

Our full report contains detailed audit findings, recommendations and management responses. A total of 26 recommendations were included in the full report (11 significant risk and 15 moderate risk). All of the recommendations, bar one, were accepted by management. The one not accepted was for the setting of directorate and corporate performance targets to monitor the usage of agency workers over time.


This Executive Summary has been prepared to highlight the key messages arising from the audit, the progress made to date and what we believe needs to happen next.

The audit report was consulted on widely, mostly with People Services and Procurement, but specific cases and issues were also explored with individual service managers and Headteachers, leading to a delay in concluding the audit. The report was also updated to include more recent results prior to issue. Whilst the final audit report was issued in March 2020, this Executive Summary has itself been delayed by the involvement of the Internal Audit Section in the business support grants provided in response to the coronavirus pandemic.

Audit Opinion

Overall, the Authority's arrangements for the use of agency workers have been assessed as providing a '**Limited**' level of assurance, which reflects that the financial and administrative systems reviewed were found to be poorly controlled, with unacceptable levels of risk.

SUBSTANTIAL	<p>Substantial level of assurance.</p> <p>Very well controlled, with numerous strengths identified and any risks being less significant in nature.</p>
CONSIDERABLE	<p>Considerable level of assurance.</p> <p>Generally well controlled, although some risks identified which should be addressed.</p>
REASONABLE	<p>Reasonable level of assurance.</p> <p>Adequately controlled, although risks identified which could compromise the overall control environment. Improvements required.</p>
LIMITED	<p>Limited level of assurance.</p> <p>Poorly controlled, with unacceptable levels of risk. Fundamental improvements required urgently.</p>



The key findings behind this audit opinion are summarised in the section below.

Whilst the full report has been issued to People Services and Strategic Procurement, it is the hiring managers and Headteachers right across the Authority who engage and manage these agency workers and as such also have key roles to play in ensuring the consistent implementation of the audit recommendations to achieve the improvements required.

Key Findings

Policy & Guidance Framework

Although guidance around agency workers existed in the form of an Agency and Self Employed Workers Policy, there were some key omissions in the original policy and our testing found that there was a widespread lack of awareness of the Policy requirements amongst hiring managers. Areas missing from the original Policy included guidance around lengths of assignments and assignment review processes, the position with regard to the re-employment of past employees and a leaver process for the ending of agency worker assignments.

Since the audit fieldwork, People Services have revised this Policy, taking on board the recommendations made in the audit report. It is important that managers now adhere to the updated Policy in their use of agency and self-employed workers. The Policy may also now require a further update in light of the new agency arrangements for schools and the impending new framework for corporate agency staff.

Procurement

Our testing found that a wide range of different agency staff providers were used, by both schools and corporate teams.

There were consistent breaches of Financial Procedure Rules and Contract Procedure Rules, where agencies other than the preferred suppliers (of Randstad and (at the time) New Directions) had been used. Contracts had not been established for these ad hoc off-framework arrangements.

In some cases, notably at secondary schools, there was evidence that EU procurement limits had been breached. The table below highlights this:

School	Most used Agency	Spend with most used Agency (£'000s) from April 2016- March 2019
Caldicot	Teaching Personnel	337
Monmouth Comprehensive	Back Office Support	371
Chepstow	Supply Desk	311

All three schools used agencies other than the Authority's sole preferred supplier at that time. In addition these levels of expenditure (over 3 years) were significantly in excess of the EU threshold for services contracts (£181,302 as at January 2018). It should also be noted that none of the three agencies above were included in the new Schools agency workers framework arrangements for Monmouthshire effective from September 2019, so the schools concerned will need to either switch to using the framework agencies or ensure that appropriate alternative contracting arrangements are in place that comply with EU legislation.

The Procurement Section did not review off-contract spend for agency costs, citing that they did not have sufficient resources to do so.

Other procurement concerns were:

- Hiring managers were not always checking the hourly rates of staff to the framework;
- Off-contract procurement of agency staff was often done without evidence of a formal agreement in place.

Business Cases

There was no clear evidence that the business need for each new agency member of staff had been considered. There was no additional approval required for the use of agency workers outside of the hiring manager. In many cases, there were other more cost effective options that could have been undertaken instead of recruiting an agency employee. Managers should consider carefully the suitability of using agency workers, particularly if the placement is expected to be on a long-term basis. It may be more appropriate to appoint a fixed term employee through the normal recruitment process.

Examples included:

- *Cases in Grounds Maintenance where agency workers were used because there was a fear that a major external contract could be lost, however this decision was unlikely to occur for another six months at least. In addition, in Waste there was due to be a service reconfiguration. In both cases, fixed term contracts could have been offered, potentially at lower cost, as an alternative to using agency staff.*
- *Within Adult Services, an unsuccessful candidate for a Senior Social Worker post was instead offered the vacant role of a Social Worker. As there was a salary difference between the role originally applied for and the one offered, the individual was employed through an agency, where she could achieve a higher rate of pay that was acceptable to her, but which led to the Authority incurring significant agency fees. As an alternative a market forces supplement could have been considered.*
- *Property Services had 2 individuals who were employed through agencies as it was understood that the job evaluated salaries on offer would not be attractive, although this assumption had not been tested via advertisement of the roles for some time. Their rates of pay through the agencies were considerably higher than MCC salary levels and again market forces supplements could have been considered as an effective alternative, if the roles could not be filled after advertisement.*

Safeguarding & Pre-Employment checks

Reliance was placed almost exclusively on the agency for performing safe recruitment checks. Whilst reputable agencies should be completing such checks, it is still incumbent on the hiring managers to seek assurance and to evidence these checks.

Our testing highlighted the following concerns:

- 8/20 roles sample tested required a DBS check. However, evidence was only available to show 2/8 had actually been checked before commencing with MCC.
- The hiring managers confirmed that eligibility to work in the UK had only been checked for 2 of the 20 agency workers.
- For 12/20 roles specific qualifications were required, however only 3/12 had been checked and evidenced by the hiring manager.
- Copies of references had only been obtained from the Agencies for 2/20 workers appointed.

Failure to exercise due diligence in conducting pre-employment checks could result in the appointment of inappropriate agency workers possibly putting staff, service users and residents at risk as well as impacting on standards of services delivered. The Authority could also be subject to legal action (under, for example, the Immigration Act 2016).

Re-employment of past employees

At the time of the review the Authority employed 6 previous employees through Randstad. 3 of these were re-employed by MCC within two weeks of them being made redundant by the Council, all within Highways.

4/6 individuals had been made redundant by MCC at a total cost of £122,901.93 in redundancy payments. One of these had returned to perform a role that had previously been written out of the establishment and another was recorded by Randstad as working in the same role they had been directly employed in previously by MCC.

Generally, the hourly rate for agency staff is markedly higher than in-house rates. For example, in two cases we had paid Randstad £71.66 and £34.43 per hour respectively, against their previous hourly rates as direct employees (including on costs) of £38.32 and £21.88 respectively.

The revised Agency and Self Employed Workers Policy now includes a requirement for Chief Officer approval where former MCC workers are recruited as agency workers.

Selective Recruitment

It was also found that at least 5 of the sample of 20 agency staff recruited were named individuals specifically requested from Randstad. Where possible, hiring managers should evaluate a range of people offered by the agency to seek to recruit the most suitable candidate. Where, exceptionally, a manager already knows of a suitable available candidate for a role prior to going out to an agency, then with People Services' support the manager should consider the option of offering a short fixed term contract to that individual rather than recruit through an agency at additional cost.

Monitoring of Agency Assignments

In the original policy there was no guidance on setting the length of agency engagements and review processes. This has resulted in the reliance in some areas on agency members of staff on a long-term basis. The Randstad management information report for the end of April 2018, highlighted that of their 47 agency workers, placed at MCC at that time 70% had worked for MCC for more than 6 months, including 40% with more than a year's service. Note that this is Randstad workers only, equivalent data was unavailable for New Directions and the non-framework agencies used:

Length Assignment	Of	No.
Less Than 1 Month		3
1 - 3 Months		6
4 - 6 Months		5
7 - 9 Months		8
10 - 12 Months		6
More Than 12 Months		19
Total		47

One of the sample, a Mechanical Design Engineer hired by Property Services had been employed via agency for this role since November 2004. In 2017/18, we paid the Agency £67k for his services, whereas the vacant establishment post was costed at £48k, a difference of £19k (40% more expensive). Given that this individual had been employed on an agency basis at that point for 14 years, this placement has clearly cost the Authority significantly more than was necessary had the post been filled by a direct employee.

There was no wider monitoring of the use of agency members of staff nor was there regular monitoring or reporting of their usage. Other authorities had introduced performance monitoring data, including:

- Spend over time on agency workers to identify trend;
- Numbers of agency workers compared to council employees (FTE equivalents);
- Monthly use of agency workers;
- Use of agency workers by department; and
- Average length of engagements.

Rebate

As part of the Randstad contract the Authority was in receipt of a rebate, based on agency spend. The Authority holds no documentation to support the rebate paid and payments received were not monitored. The auditors calculated rebate earned over a 10 week sample period at £13,323 (4.77% of the relevant spend with Randstad for that period). All rebates were received into the Strategic Procurement Unit's cost centre. The rebate was originally understood to have been set at 5% of eligible expenditure. Internal Audit calculated that the Authority would have missed out on over £3,500 in rebate in just one year if the rebate had been consistently paid at 4.77% instead of 5%.

Progress to Date by Management (Peoples Services & Procurement)

Since the start of the audit, significant progress has been made in some areas. In particular:

- The Agency & Self Employed Workers Policy had been revised, taking on board many of the audit recommendations (e.g. approval method for each new agency worker engagement, approval for any ex-MCC employees appointed, and a suitable exit process for leavers).
- The Recruitment & Selection Policy has also been revised and includes guidance for managers on the circumstances in which the engagement of temporary agency workers may be appropriate, together with the alternatives that should also be considered (e.g. fixed term contracts, selective use of market forces supplements, etc.).
- For schools, a new National Procurement Service (NPS) Agency Worker framework agreement came into effect from 1st September 2019. This includes 17 pre-approved agencies to provide a wide choice of available staff at confirmed rates. As independent bodies, schools can still choose to seek agency staff from outside of this framework, at their own risk, and guidance has been provided by People Services explaining this and some of the pitfalls to avoid if doing so.
- The Strategic Procurement Team working with People Services have awarded a new framework for corporate (i.e. non-school) Agency staff framework, which is due to go live in the coming months.

What Needs to Happen Next

Going forward, there are a number of actions required to ensure that the Authority obtains best value for money from its use of agency staff, engages appropriate individuals when required and complies with relevant legislation:

- Hiring managers should ensure that agency workers are only employed where necessary, after consideration has been given to other options and in line with approved policies;
- Engagements should be authorised by senior management in advance and for a defined maximum period. Any extensions required should be subject of further approval;
- Hiring managers should use approved framework providers; they should only go outside of these arrangements where preferred suppliers are unable to provide an appropriate staffing resource and this needs to be documented and approved by Senior Management;
- Hiring managers should ensure that an agreed hourly rate is in place prior to the start of the engagement, consistent with the framework or other agreement in place;

- Before commencing employment, hiring managers should confirm and seek evidence of the agency having checked for:
 - Workers right to work in the UK
 - Proof of identity
 - Any DBS or other safeguarding requirements needed
 - Relevant qualifications, driving licence etc. necessary for the specific role
- The new corporate agency workers' framework should be finalised, approved and implemented as soon as possible, with details and appropriate guidance provided to all managers;
- Effective contract monitoring should be introduced to ensure that charges are applied consistently, any rebates are received in accordance with contracts and the calibre of agency staff used is appropriate. Off contract agency spend should also be reviewed and justified; and
- Secondary schools should ensure that they adhere to procurement legislation and do not use individual agencies outside of framework agreements in excess of EU thresholds.

Ongoing Concerns

Responses to the recommendations made in the report have generally been positive and as shown in the 'Progress to Date' section above, many of the key actions identified have already been delivered. However there remain some ongoing concerns based on responses to the Action Plan, notably:

- Resources for contract monitoring have not been identified - both People Services and Strategic Procurement have stated that they do not have sufficient resources to fulfil this role. The same applies to off contract agency spend. Whilst expenditure at cost centre level may be examined through the monthly budget monitoring reports, this would not be sufficient to review corporate spend or to evaluate the quality of agency worker provision.
- Whilst updated policies have been produced and are available to managers/headteachers on The Hub, there are concerns that managers may not pay due regard to the policies in place. Other recent audits have highlighted repeated breaches of corporate policies including Contract Procedure Rules, Attendance Management Policy and Volunteering Policy for example.
- No performance indicators or target setting for the use of agency staff were in place. Our recommendation had been rejected by management, although other authorities had reported success in reducing their expenditure and reliance on agency workers.