Argyll and Bute Council

Internal Audit Report

June 2019

FINAL

Off-Payroll Working

Audit Opinion: Limited

	High	Medium	Low
Number of Findings	3	0	1

Contents

Contact Details

Internal Auditor: ***Mhairi Weldon***

Telephone: ***01546 604294***

e-mail: ***mhairi.weldon@argyll-bute.gov.uk***

www.argyll-bute.gov.uk

1. Executive Summary

Introduction

1. As part of the 2018/19 internal audit plan, approved by the Audit & Scrutiny Committee in March 2018, we have undertaken an audit of Argyll and Bute Council's (the Council) system of internal control and governance in relation to off-payroll working.

2. The audit was conducted in accordance with the Public Sector Internal Audit Standards (PSIAS) with our conclusions based on discussions with council officers and the information available at the time the fieldwork was performed.

3. The contents of this report have been agreed with the appropriate council officers to confirm factual accuracy and appreciation is due for the cooperation and assistance received from all officers over the course of the audit.

Background

4. Off-payroll workers may be engaged by the Council, with the appropriate authorisation, in circumstances where a manager has been unsuccessful at filling a vacant post via the Council's normal recruitment procedures or, in exceptional circumstances, where there is a requirement for a specific skill set.

5. The Council has framework agreements in place with certain agencies to provide candidates, this should be the first point of contact when managers require to source workers. These agencies are set up as suppliers within the PECOS purchasing system to aid compliance with the requirements of the frameworks. Where a suitable candidate cannot be provided through these framework agreements, management may conduct a wider search using other suppliers available on PECOS.

6. Management are responsible for monitoring the use and cost of off-payroll workers. IR35 is tax legislation designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used. The off-payroll working rules are designed to ensure that, where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and National Insurance contributions (NICs) as an employee.

7. The Council is responsible for determining whether the off-payroll working rules apply when they decide to offer temporary employment to someone who supplies services through an intermediary. HMRC provide an online 'check employment status for tax' IR35 toolkit to help determine whether the off-payroll working rules apply. The Council is required to notify the individual, or intermediary who supplies the worker, of this determination. This needs to be done before the contract or service starts (whichever is later).

8. If the Council determines that off-payroll working rules do apply they are required to make tax and NIC deductions from payments to the worker. Interest and penalties can be charged on any income tax or NICs owed because the off-payroll working rules have not been applied. The penalties can be more severe if the rules were deliberately ignored.

9. A review of the Council's Creditors system using supplier names provided in the listing detailed in paragraph 20 indicated that from 01 April 2018 to 10 March 2019, 1,500 payments with a total value of £1.8m had been paid in respect of off-payroll workers.

Scope

10. The scope of the audit was to review the Council's guidance and arrangements in place for compliance with IR35 which came into force in April 2017 as outlined in the Terms of Reference agreed with the Head of Customer and Support Services and the Head of Improvement and HR on 13 February 2019.

Risks

11. The risks considered throughout the audit were:

   - **Audit Risk 1** – Failure to comply with IR35 legislation
   - **Audit Risk 2** – Incur interest and/or penalties resulting in financial loss for the Council
   - **Audit Risk 3** – Failure to deliver best value

Audit Opinion

12. We provide an overall audit opinion for all the audits we conduct. This is based on our judgement on the level of assurance which we can take over the established internal controls, governance and management of risk as evidenced by our audit work. Full details of the five possible categories of audit opinion is provided in Appendix 2 to this report.

13. Our overall audit opinion for this audit is that we can take a limited level of assurance. This means that internal control, governance and the management of risk are displaying a general trend of unacceptable residual risk above an acceptable level and placing system objectives at risk.

Recommendations

14. We have highlighted three high priority recommendations and one low priority recommendation where we believe there is scope to strengthen the control and governance environment. These are summarised below:

   - responsibility for the appointment and management of agency workers should be resolved as a matter of priority
   - a register of all agency workers appointed by the Council should be compiled and maintained
   - all relevant documentation should be completed, retained and be accessible for review
   - the manager's guidance should incorporate a link to the HMRC IR35 toolkit.

15. Full details of the audit findings, recommendations and management responses can be found in Section 3 of this report and in the action plan at Appendix 1.

2. Objectives and Summary Assessment

16. Exhibit 1 sets out the control objectives identified during the planning phase of the audit and our assessment against each objective.

Exhibit 1 – Summary Assessment of Control Objectives

	Control Objective	Link to Risk	Assessment	Summary Conclusion
1	The Council has guidance in place which is aligned to IR35 off payroll working rules for public authorities and is complied with.	Audit Risk 1 Audit Risk 2	Limited	Manager's guidance is in place, however there is a lack of overall control over the appointment and management of agency workers and the IR35 toolkit is not being completed as required.
2	Services procured through off-payroll working arrangements are appropriately monitored to ensure best value is achieved.	Audit Risk 3	No Assurance	Sample testing of appointed agency workers highlighted a range of issues relating to compliance with procedures and maintaining appropriate documentation. It has not been possible to provide any assurance over whether current appointment processes are delivering value for money.

17. Further details of our conclusions against each control objective can be found in Section 3 of this report.

3. Detailed Findings

The Council has guidance in place which is aligned to IR35 off payroll working rules for public authorities and is complied with

18. 'Agency Workers Manager's Guidance' (the Guidance) is available on the Council's intranet where it is easily accessible. This offers a step by step process to follow when appointing agency workers. Step 6 within the Guidance instructs management to complete the HMRC toolkit but does not provide a link to where the toolkit is available online.

Action Plan 4

19. The process to appoint agency workers, following the Guidance and completing the HMRC toolkit is devolved to the employing manager rather than being a centralised process carried out by a specific support function. The audit findings detailed in this report provide sufficient evidence to support a conclusion that this decentralisation has resulted in a lack of awareness of the need to follow the Guidance and, consequently, an overall lack of control over the appointment and management of agency workers. This needs to be resolved as a matter of priority with consideration given to either centralising the process, or maintaining the current devolved approach but taking steps to raise awareness of the Guidance and the need to comply with it.

Action Plan 1

20. The Council does not maintain a register of agency workers, therefore, a complete and accurate population of workers could not be provided from which we could select a sample for audit testing. The Council's procurement team were, however, able to provide a list of 29 agency

workers by phoning officers in social work and strategic finance staff. This provided a list of social workers, however, procurement were aware of one additional worker engaged within Strategic Finance for whom they assisted in the negotiation of terms and conditions. It is likely that there may be more agency workers engaged by the Council who could not be easily identified. The Guidance states that "Should the engagements span beyond 12 weeks then the terms of the Agency Worker Regulations (AWR) 2010 may apply. Agency workers should not be engaged for more than 6 months." The AWR 2010 ensures that agency workers are equally treated to employees following 12 weeks of continuous engagement in respect of pay and other basic working conditions such as annual leave, breaks and pregnancy related leave. Engagements should not span beyond 6 months to reflect the temporary nature of the engagement and the increased costs involved. Without a controlled register of agency workers including start dates there is limited control to ensure the 12 week and 6 month thresholds are not breached. This has been highlighted further at paragraph 23.

Action Plan 2

21. A sample of 10 agency workers was selected from the 29 identified in social work and the relevant recruiting officers contacted to provide evidence of HMRC IR35 assessment. This highlighted that there was no evidence of completion of the HMRC toolkit for nine of the sampled ten and, where a toolkit was completed, the agency worker or agency was not notified of the IR35 determination. We also confirmed that the Council's payroll section have not been requested to process any off-payroll workers to date. This may be appropriate but also may suggest there are agency workers who the Council are paying without making appropriate tax and NIC deductions.

Action Plan 3

22. If the IR35 assessment required deductions to be applied, the worker would be added to the payroll system as if they were employed by the Council and follow corporate processes to ensure tax and NIC are deducted and notified to HMRC via the RTI (Real-Time Information) submissions. Funds would be paid accordingly to the worker and deductions to HMRC.

Services procured through off-payroll working arrangements are appropriately monitored to ensure best value is achieved

23. The sample referenced at paragraph 21 was used to undertake further testing in respect of the recruitment process. This highlighted that for the sample of ten:

- signed justification for engagement was only available for two
- justification for contract extensions was available for three however these weren't signed and the original justification was not available
- no justification for engagement could be provided for the remaining five
- established framework agreements were used for five and justification for non-competitive action was provided for one, there was no justification for deviation from the framework agreements for the remaining four
- there was no evidence of a review of CVs or interviews and references were only provided for one worker
- all five workers for whom documentation was available have been engaged for more than six months.

Action Plan 3

Appendix 1 – Action Plan

	No.	Finding	Risk	Agreed Action	Responsibility / Due Date
High	1	**Appointment of Agency Workers** The process to appoint agency workers is devolved to the employing manager rather than being a centralised process carried out by a specific support function. This decentralisation has resulted in a lack of awareness of the need to follow the Agency Worker Guidance and, consequently, an overall lack of control over the appointment and management of agency workers. This needs to be resolved as a matter of priority with consideration given to either centralising the process, or maintaining the current devolved approach but taking steps to raise awareness of the guidance and the need to comply with it.	Agency workers are appointed without following due process and appropriate payroll deductions may not be made prior to the Council making payments. This may result in the HMRC applying penalties.	All agency worker appointments in future will be notified to Head of Customer Support Services for review to ensure all payroll deductions are made.	Head of Customer Support Services and Head of Legal and Regulatory Support 31 December 2019

	No.	Finding	Risk	Agreed Action	Responsibility / Due Date
High	2	**Agency Worker Register** The Council does not maintain a register of agency workers meaning that monitoring the length of time workers are engaged for depends on whether the appointing manager has localised monitoring in place. The guidance to managers confirms that "Should the engagements span beyond 12 weeks then the terms of the Agency Worker Regulations (AWR) 2010 may apply. Agency workers should not be engaged for more than 6 months." Out of a sample of ten agency workers we identified five who had been employed for longer than six months with there being no available evidence of the start date of the other five.	The Council may not achieve best value through engagement of agency workers over prolonged periods of time and the Council may not comply with AWR2010.	A central register will be maintained and all reviewed and discussed with managers after twelve weeks and six months.	Head of Customer Support Services and Head of Legal and Regulatory Support 31 December 2019
High	3	**Evidence of Compliance with Guidance** Sample testing of appointed agency workers highlighted a range of issues relating to compliance with procedures and maintaining appropriate documentation. This included not: • completing the HMRC IR35 Toolkit • notifying agency workers of toolkit determination • having authorised justification for engagement or contract extensions • justifying deviation from framework agreements • reviewing CVs or references or carrying out interviews.	The Council may not achieve best value and may also fail to make appropriate payroll deductions resulting in the HMRC applying penalties.	All agency workers appointments in future will be notified to Head of Customer Support Services for review to ensure all payroll deductions are made, and council procedures are being complied with.	Head of Customer Support Services and Head of Legal and Regulatory Support 31 December 2019

	No.	Finding	Risk	Agreed Action	Responsibility / Due Date
Low	4	**Managers Guidance** 'Agency Workers Manager's Guidance' is available which provides a step by step process to follow when appointing agency workers. Step 6 within the Guidance instructs management to complete the HMRC toolkit but does not provide a link to where the toolkit is available online.	Absence of a link may deter managers from completing the HMRC Toolkit	A link to the HMRC toolkit will be added to the guidance document.	Head of Customer Support Services and Head of Legal and Regulatory Support 30 June 2019

In order to assist management in using our reports a system of grading audit findings has been adopted to allow the significance of findings to be ascertained. The definitions of each classification are as follows:

Grading	Definition
High	A major observation on high level controls and other important internal controls or a significant matter relating to the critical success of the objectives of the system. The weakness may therefore give rise to loss or error.
Medium	Observations on less significant internal controls and/or improvements to the efficiency and effectiveness of controls which will assist in meeting the objectives of the system. The weakness is not necessarily substantial however the risk of error would be significantly reduced if corrective action was taken.
Low	Minor recommendations to improve the efficiency and effectiveness of controls or an isolated issue subsequently corrected. The weakness does not appear to significantly affect the ability of the system to meet its objectives.

Appendix 2 – Audit Opinion

Level of Assurance	Definition
High	Internal control, governance and the management of risk are at a high standard. Only marginal elements of residual risk have been identified with these either being accepted or dealt with. A sound system of control designed to achieve the system objectives is in place and being applied consistently.
Substantial	Internal control, governance and the management of risk is sound. However, there are minor areas of weakness which put some system objectives at risk and specific elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale.
Reasonable	Internal control, governance and the management of risk are broadly reliable. However, whilst not displaying a general trend, there are a number of areas of concern which have been identified where elements of residual risk or weakness may put some of the system objectives at risk.
Limited	Internal control, governance and the management of risk are displaying a general trend of unacceptable residual risk above an acceptable level and placing system objectives are at risk. Weakness must be addressed with a reasonable timescale with management allocating appropriate resources to the issues raised.
No Assurance	Internal control, governance and the management of risk is poor. Significant residual risk and/or significant non-compliance with basic controls exists leaving the system open to error, loss or abuse. Residual risk must be addressed immediately with management allocating appropriate resources to the issues.