

## REPORT TO BUSINESS SERVICES COMMITTEE – 11 NOVEMBER 2021

### SCRUTINY REFERRAL FROM AUDIT COMMITTEE – INTERNAL AUDIT REPORT 2127 – PROCUREMENT COMPLIANCE

#### 1. Reason for Report/ Summary

- 1.1 Committee is requested to consider a referral from the Audit Committee that the Committee Review Process be applied in respect of areas of service improvement on the matter of procurement compliance, as detailed in Internal Audit report 2127.

#### 2. Recommendations

The Committee is recommended to:

- 2.1 **Consider and determine the request from the Audit Committee to conduct the Committee Review Process in respect of the matter of service delivery identified by the Audit Committee for improvement;**
- 2.2 **If the Committee determine to conduct the Committee Review Process, agree that the Head of Commercial and Procurement will report to Committee with the Stage 1 Report on 24 February, 2022; and**
- 2.3 **Instruct the Head of Commercial and Procurement to report to Audit Committee on 16 December, 2021 with the Committee's decision.**

#### 3. Purpose and Decision-Making Route

- 3.1 At a meeting of the Audit Committee on 16 September, 2021, an Internal Audit report was received and considered. The Audit Committee identified a matter of service delivery for improvement being to consider issues raised within the audit report and identify any improvements which could be made to ensure non compliance issues are addressed, including considering any alterations that may be required to the Scheme of Governance and Financial Regulations. The relevant extract of the draft minute of the Audit Committee meeting is attached at **Appendix 1**. The Internal Audit Report relating to Compliance with Procurement Related Legislation and Council Regulations is attached at **Appendix 2**.
- 3.2 The Audit Committee has powers relating to scrutiny of service delivery. Section G.2.2 of Part 2A of the Scheme of Governance allows the Audit Committee to request that a policy committee conduct the Committee Review Process in respect of a matter of service delivery, identified in an audit report for improvement.

3.3 Part 4A of the Scheme of Governance sets out how scrutiny at Aberdeenshire Council is carried out. The Committee Review Process (CRP) is a three-stage process. If the Committee are minded to initiate the CRP, the first stage is a report that will come back to this Committee on 24 February, 2022. The report provides further information about the issue and the action being taken by the Service. In accordance with the CRP, the report should be delivered back to Committee within two months. However, this date can be extended by Committee.

#### 4 Discussion

4.1 In relation to the referral, the Service’s explanation and comments on the issue are contained in **Appendix 3**.

4.2 The Committee’s options are –

1. Agree the request from Audit Committee to start the CRP in respect of the matter of improvement and agree that the CRP Stage 1 Report will be reported to the meeting of the Business Services Committee on 24 February, 2022.
2. Do not agree the request from Audit Committee and agree the reasons why the CRP is not required.

4.3 The Head of Commercial and Procurement will report the Committee’s decision to the meeting of the Audit Committee on 16 December, 2021.

4.4 If the Committee are not minded to conduct the CRP, then in accordance with Section G.2.2.b of Part 2A of the Scheme of Governance, if the Audit Committee determine that the report received from the Head of Commercial and Procurement does not provide sufficient reassurance then the Audit Committee may then conduct the CRP. Thereafter, the Audit Committee will report its recommendations to the Business Services Committee.

#### 5 Council Priorities, Implications and Risk

5.1 This report helps deliver the Strategic Priority “Our People” and the underpinning principle of “responsible finances”.

| <b>Pillar</b>   | <b>Priority</b>                              |
|-----------------|--|
| Our People      | Education<br>Health & Wellbeing              |
| Our Environment | Infrastructure<br>Resilient Communities      |
| Our Economy     | Economy & Enterprise<br>Estate Modernisation |

5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

| Subject  | Yes | No | N/A |
|--|-----|----|-----|
| Financial  |     | x  |     |
| Staffing   |     | x  |     |
| Equalities and Fairer Duty Scotland              |     | x  |     |
| Children and Young People's Rights and Wellbeing |     | x  |     |
| Climate Change and Sustainability                |     | x  |     |
| Health and Wellbeing                             |     | x  |     |
| Town Centre First                                |     | x  |     |

5.3 An integrated impact assessment is not required the report is asking the Committee to discuss and comment on Internal Audit recommendations and there will be no differential impact on any of the protected characteristics.

5.4 The following Risks have been identified as relevant to this matter on a Corporate Level [Corporate Risk Register](#)

- ACORP001 Budget Pressures

## 6 Scheme of Governance

6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

6.2 The Committee is able to consider and take a decision on this item in terms of Section G.2.2.b of the List of Committee Powers in Part 2A of the Scheme of Governance as the matter relates to the scrutiny of a Business Services matter of service delivery identified for improvement.

**Ritchie Johnson**  
**Director of Business Services**

Report prepared by Alison McLeod, Committee Officer and Ruth O'Hare, Legal Services Manager

Date 30 September, 2021

### List of Appendices:

- Appendix 1 – Extract Audit Committee Minute
- Appendix 2 – Extract Internal Audit Report
- Appendix 3 – Comment from the Service

## APPENDIX 1

### ABERDEENSHIRE COUNCIL

#### AUDIT COMMITTEE

#### SKYPE MEETING, 16 SEPTEMBER, 2021 (MINUTE EXTRACT)

**Present:** Councillors R Cassie (Chair), A McKelvie (Vice-Chair), D Aitchison, N Baillie, S Calder, M Ewenson, A Hassan, S Leslie, D Lonchay, M Roy, H Smith and I Sutherland.

**Apologies:** Councillors A Bews, A Buchan, W Howatson, A Kloppert and H Smith.

**Officers:** Director of Business Services, Head of Finance, Head of Housing and Building Standards, Head of Commercial and Procurement, Head of Lifelong Learning and Leisure, Interim Chief Internal Auditor, Strategic Finance Manager (P Mitchell), Team Manager, Finance (S Gordon), Legal Services Manager (R O'Hare), Business Strategy Manager (F McCallum), Housing Manager (D Thomson), Service Manager, Customer Services (M Milne), Risk and Resilience Manager (M McCowan), Pay and Rewards Manager (E Proudfoot), Mental Health and Learning Disability Manager (L Thom), Quality Improvement Manager, Education (P Wood), Fleet Manager, Transportation (P Gray) and Committee Officer (A McLeod).

**In attendance:** Ms A MacDonald, Senior Audit Manager, Audit Scotland.

#### 6. INTERNAL AUDIT REPORTS

There had been circulated a report dated 31 August, 2021 by the Interim Chief Internal Auditor advising of the conclusion of audits into (a) Recovery of Payroll Overpayments (Internal Audit Report 2120 – June 2021); (b) Mental Health and Substance Misuse (Internal Audit Report 2123 – August 2021); (c) Housing Purchasing and Creditors (Internal Audit Report 2124 – August 2021); and (d) Procurement Compliance (Internal Audit Report 2127 – August 2021).

In respect of Audit No. 2120, the Interim Chief Internal Auditor advised that the majority of overpayments were due to reporting delays by Services of employee changes in circumstances and this was a recurring problem. Identified overpayments were generally recovered consistently and timeously and recovery action taken promptly, however some overpayments reviewed were incorrectly calculated and recovered. Recommendations were made in relation to (1) the calculation process; (2) supporting documentation and review of overpayment calculations; (3) reconciliations of payments to amounts owed; (4) recovery of overpaid tax, national insurance and superannuation; and (5) overpayments caused by Services.

The Pay and Rewards Manager responded to Members questions on the resource implications of overpayment recovery, potential improvements in the links between the Service and HR in order to ensure the timeous notification of changes in circumstances, the process of recovering funds, and the desire of the Committee to have a better understanding of the process and proposed improvements.

In respect of Audit No.2123, the Interim Chief Internal Auditor advised that, in general, there were appropriate systems and processes to manage and record support arrangements, including expenditure and discretionary support, however recording practice varied, authorisations had been recorded retrospectively in the majority of cases and had not always been reviewed as frequently as required. Actions had been agreed with the Service to address these points.

The Mental Health and Learning Disability Manager responded to Members questions on the level of spend in the 2020/21 budget, noting that the budget year on year was dependant on the level of service required.

Discussion also took place on how current performance had been impacted negatively by the Covid-19 pandemic as teams were directed to critical activities only and some services had to be suspended.

In respect of Audit No. 2124, the Interim Chief Internal Auditor advised that, although procedures and training were in place in respect of orders raised by Housing through Council procurement systems and payments made for repairs, supplies and services, these were not always being demonstrably complied with and where procurement requirements were not adhered to, there was a risk that Value for Money may not have been obtained.

The Committee heard from the Head of Housing and Building Standards as to ongoing work in relation to staff training, confirming that steps were in place to ensure appropriate staff training was undertaken and a new procurement approval process was being put in place. The Head of Commercial and Procurement confirmed that the Service was being proactive in addressing the issue and the Procurement Team would provide relevant support.

Discussion took place on the scheduling of staff training, including refresher training, the visibility of training records, records that did not include a contract reference number, proposals for the introduction of monthly validation checks and the Committee noted that a significant level of work was ongoing in respect of the areas raised within the audit.

In respect of Audit No. 2127, the Interim Chief Internal Auditor advised that whilst 16 of 20 procurements reviewed had been procured appropriately in general, areas of non-compliance with the Council's Scheme of Governance were identified, including procurements which had been awarded without adequate planning or advertisement or had been undertaken by officers who had not completed the necessary training.

The Committee heard from the Head of Commercial and Procurement that Services were working with the Commercial and Procurement Shared Service (C&PSS) to ensure training was undertaken by Procuring Officers and purchase order approvers

and to work to adequately plan procurements and develop systems of control. Services had also agreed to remind Procuring Officers of the requirements to maintain the Contract Register system with accurate contract data and related documentation. A one-off exercise to review all existing contract entries and documentation was being undertaken with a completion date of 31 December 2021.

Discussion took place on procurement training requirements, the need for compliance with the Council's Scheme of Governance and Financial Regulations, and the need to consider improvements which could be made to ensure that non-compliance issues were addressed.

Thereafter, the Committee **agreed:**

- (1) In respect of the report on the Recovery of Payroll Overpayments (Report No. 2120 – June 2021) – to defer for a further report to the next meeting providing further detail of proposals to address the issues identified by the audit;
- (2) In respect of the report on Mental Health and Substance Misuse (Report No. 2123 – August 2021) – to be assured;
- (3) In respect of the report on Housing Purchasing and Creditors (Report No. 2124 – August 2021) – that a Stage 1 Scrutiny Referral be made to Communities Committee to investigate further how training is being implemented and monitored across the Housing service, including any connection between training records and contract approvals, and identify what improvements will arise from the actions proposed by the service to address the issues highlighted in the audit.
- (4) In respect of the report on Compliance with Procurement Related Legislation and Council Regulations (Report No. 2127 – August 2021) – that a Stage 1 Scrutiny Referral be made to Business Services Committee to consider the issues raised within the audit report and identify any improvements which could be made to ensure non-compliance issues are addressed, including looking at any alterations that may be required to the Scheme of Governance and Financial Regulations.

## **Appendix 2: Extract from report to Audit Committee**

### **Cross – Service:**

### **Compliance with Procurement Related Legislation and Council Regulations**

### **Internal Audit Report 2127 – August 2021**

#### Background

In January 2017, the Council approved a new Scheme of Governance which incorporated a refreshed set of Financial Regulations to match changes to delegations in the Scheme of Governance. There have been subsequent revisions to the Scheme of Governance since: Lists of Officer and Committee powers were updated in February 2021 and Financial Regulations were updated in April 2021. The Scheme of Governance delegates procurement authority to the Council's Policy and Area committees, and Chief Officers, based on defined criteria.

#### Objective

The objective of this audit was to review payments made to a sample of suppliers to ensure that appropriate arrangements are in place for the commodities procured. Where any failure to comply with Procurement Legislation / internal governance arrangements are identified, to ascertain the reasons for this.

A sample of payments made to 20 suppliers paid, in total, £157 million in the four years to 31 March 2021, was analysed to ensure that the requirements of the Scheme of Governance had been complied with and appropriate arrangements were in place. Housing procurement compliance has been covered recently in Internal Audit report 2124, Housing Purchasing and Creditors.

#### Assurance

Whilst 16 of 20 procurements reviewed had been procured appropriately in general, areas of non-compliance with the Council's Scheme of Governance were identified as set out below, including procurements which had been awarded without adequate planning or advertisement or had been undertaken by officers who had not completed the necessary training. Multiple breaches of the Council's Financial Regulations have been identified.

Reasons for failing to comply with the Scheme of Governance varied but generally it was due to a lack of understanding of the requirements of the Scheme of Governance and the processes to follow to ensure Best Value and compliance with Procurement Legislation.

#### Findings and Recommendations

Since 22 November 2019, under Financial Regulation 5.3.4, Council officers undertaking procurement activity including placing orders must be designated a Procuring Officer, and to do so, must complete ALDO Delegated Procurement Authority (DPA) training to the appropriate level. The Council's Procurement Guidance requires officers to complete DPA training level 1 before they may approve orders on the Council's electronic purchase ordering system (iProcurement). 4 of 20 Procuring Officers for the 20 procurements reviewed had not been designated Procuring Officers by the Head of C&PSS in advance of undertaking their respective

procurement. During 2020/21, 800 Council staff approved orders totalling £82.3million, yet 554 order approvers had not undertaken the required training. In addition, seven orders relating to four out of twenty invoices reviewed by Internal Audit were approved by an officer who had not been delegated authority to do so by a Chief Officer as required by Financial Regulation 5.3.43.

Where procurement training is not completed there is an increased risk Procuring Officers and officers approving purchase orders will be unaware of their responsibilities and will not meet the requirements of the Scheme of Governance and Procurement Legislation. A recommendation graded Major at a Corporate Level was raised with Services to ensure that only officers with Delegated Procurement Authority, who have completed the required training, carry out procurement activity including approving purchase orders.

All procurements of £50,000 or more must be included in annual Procurement Plans reported to, and approved by, the relevant Committee (Financial Regulation 5.2.2) in advance of the financial year commencing, and before any procurement activity commences. Exceptionally procurements may be submitted at a later date on a Supplementary Procurement Plan, in the event of an emergency or unforeseeable circumstance. In breach of this Financial Regulation one of the 20 procurements reviewed had not been included on a Procurement Plan or Supplementary Procurement Plan. Whilst the individual payment was less than £50,000 it related to a recurring requirement. It is a requirement of Financial Regulation 5.3.10 for Heads of Service to review contract expenditure at least every four years to ensure the procurement route is followed. This had not taken place representing a further breach of Financial Regulations.

The content of Supplementary Procurement Plans indicates poor planning, as they contained foreseeable requirements, and limited explanations for exceptions. If Council procurement activity is not adequately planned there is an increased risk of 'off-contract' expenditure, or failure to demonstrate Best Value through exposing supplies to competitive tender, which could result in Council Scheme of Governance and Procurement Legislation breaches. Recommendations graded Significant within the audited area were raised for Services to work with C&PSS to ensure that Procurement Plans presented to Committee contain all planned procurement activity for the financial year ahead and for Supplementary Procurement Plan covering reports to explain the circumstances causing supplementary procurements to be unexpected or an emergency.

Three instances were identified where authorisation to procure either through a Procurement Plan or Procurement Approval Form had not been obtained. In one case, the Award Report justifying the contract had not been considered and approved as required by Chief Officers and the Service Management Team. In two cases where contracts had been directly awarded without competition, Head of Procurement approval had not been recorded. A recommendation graded as Significant within the audited area was raised with Services to establish systems of control to ensure procurements are authorised as required by the Scheme of Governance.

In response to Covid-19, the Health and Social Care Partnership procured personal protective equipment for staff working in care homes. Whilst a direct award on the

grounds of 'extreme urgency' was likely to have been appropriate in the circumstances, the Council's Scheme of Governance was not complied with as Head of Procurement and Head of Finance approval was not obtained and the procurement was not reported promptly thereafter to the appropriate Committee. A recommendation graded Significant within the audited area was raised for procurement extreme urgency powers to be authorised in line with the Council's Scheme of Governance and reported to the appropriate Committee as required.

The Procurement Reform (Scotland) Act 2014 requires that local authorities publish a Contracts Register online for all "Regulated Contracts". Regulated Contracts include public contracts other than public works contracts of £50,000 or more and public works contracts of £2,000,000 or more. However, it is the Council's intention that the Contracts Register will be used to record all contracts of £10,000 and over so that it can be used to manage the Council's contractual arrangements. The Council's Procurement Manual also requires procurement related documentation to be stored in the Contract Register system. However, entries were missing or inaccurate, framework agreement adoption reports and call-offs from framework agreements were not recorded, and procurement documentation was not held, on the system. Recommendations graded Significant within the audited area were raised to ensure contract entries in the contracts register system are supported by appropriate governance documentation; missing Framework agreement adoption reports and evidence of their approval by the Head of Procurement are retained whilst framework agreements are in use by the Council; and for Services to ensure the Contracts Register is updated to accurately record Council contracts in accordance with Financial Regulations and Procurement Legislation.

Financial Regulations 5.3.14 and 5.3.15 require all contracts equal to or exceeding £10,000 to be advertised on the Public Contracts Scotland (PCS) website unless the Head of Procurement has given express permission otherwise. The Procurement Reform (Scotland) Act 2014 also requires the seeking of offers through a 'contract notice' and the award of contracts through an 'award notice', for all Regulated Procurements, to be published on the PCS website. In accordance with the Procurement Scotland Regulations 2016, the award notice must be published not later than 30 days after the award of the contract. 4 of the 20 procurements had not been advertised in this way, in addition to not being published on the Contracts Register, in breach of Financial Regulations and Procurement Legislation. Recommendations graded Significant within the audited area were raised for PCS contract notices and award notices to be published where required and within required timescales and for their respective notice references to be recorded on the contract register system as a record of what has been published.

Financial Regulation 5.3.43 requires that contract references be recorded on purchase orders providing assurance a Council contract is in place for goods / services ordered. However, a review of 773 sampled orders relating to procurements of £10,000 or more showed that 392 orders (50.7%) did not exhibit a Council contract reference number. In one case an alternative unrelated contract reference was used. Despite there being insufficient evidence on the purchase order request that the procurements related to a particular contract, the orders were nevertheless authorised. This increases the risk that the requirements of the Scheme of Governance have not been complied with, and the findings are similar to those identified in the previous review of this area (Internal

Audit report 2037 completed May 2020). A recommendation graded Major at a Corporate level was raised with Services for officers authorising purchase orders which are for £10,000 or more to only authorise them when they are satisfied that the Council's Scheme of Governance (including Financial Regulations) have been fully complied with.

Financial Regulation 5.3.41 requires that all works, goods, or services be ordered using an official purchase order unless a dispensation has been approved by the Head of Finance. 30,671 invoices totalling approximately £169 million relating to 2,388 suppliers had no matching PO details recorded in the system, and they did not have an approved dispensation. This indicates purchase orders are either not being raised or are not being recorded in the Council's Accounts Payable system. A recommendation graded Significant within the audited area was made for Services to ensure purchase orders are raised for all expenditure in a timely manner where dispensations do not apply.

#### Management Response

Services will work with the Commercial & Procurement Shared Service (C&PSS) to ensure Procuring Officers and purchase order approvers are trained where required. In addition, Services have agreed to work with C&PSS to adequately plan procurements and develop systems of control to ensure they are authorised as required by the Scheme of Governance. C&PSS has developed compliance reporting processes to identify missing PCS award notices and will complement this by developing processes to identify procurements that have not been advertised on the PCS website where required by Procurement Legislation and Financial Regulations.

Services have agreed to remind Procuring Officers of the requirement to maintain the Contract Register system with accurate contract data and related documentation. In addition, C&PSS has agreed to expand monthly validation checks of missing Contract Register system entries to include a review of documents saved against a sample of entries each month with inaccuracies highlighted to users for correction. In addition, a one-off exercise to review all existing contract entries and documentation stored within each will be completed by 31 December 2021, and a detailed summary of missing items sent to each responsible officer.

Services will remind Procuring Officers of their responsibility to ensure purchase orders are only approved where a Council contract is in place and they are satisfied the Council's Scheme of Governance has been complied with.

**Appendix 3**

Officers have considered the referral from the Audit Committee and are in agreement that this would be a useful area to do some scrutiny around. The officer recommendation therefore is for the Business Services Committee to accept the referral as set out.

Given the nature of the referral however and the short time period between the date of the Business Services Committee in November and the next meeting on 6 January 2022, it is not considered that this is a realistic timeframe to conduct that Stage 1 process, therefore the further recommendation is that the Stage 1 report will be presented to Business Services Committee at its meeting on 24 February 2022.