

# Final Internal Audit Report

## HMRC Compliance – Self Employed Status

January 2017

**Distribution:** Executive Director of Resources (Final Only)  
 Director of Customer and Corporate Services  
 Director of Commissioning, Commercialisation and Improvement  
 Head of Finance Service Centre  
 Head of Commissioning and Procurement, Resources

Assurance Level	Recommendations Made	
<b>Substantial Assurance</b>	Priority 1	0
	Priority 2	5
	Priority 3	0

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3. Statement of Responsibility

**1. Introduction**

- 1.1 The guidance on the HMRC website states that, 'A worker's employment status that is whether they are employed or self-employed, is not a matter of choice. Whether someone is employed or self-employed depends upon the terms and conditions of the relevant engagement.' The Employment Status Indicator (ESI) tool <<http://www.hmrc.gov.uk/calcs/esi.htm>> on the HMRC website can be used to determine the employment status of individuals. Where someone is determined to be employed, PAYE and NI deductions must be made at source.
- 1.2 Although all non-permanent resource is required to be procured through either Adecco, the Council's Consultancy Framework or the London Borough Recruitment Partnership (LBRP), there may be occasions where payments are made for the use of non-permanent resource outside of these. For these exceptions the Council needs to ensure that HMRC requirements regarding PAYE and NI deductions are complied with.
- 1.3 This audit is part of the agreed Annual Internal Audit Plan for 2016/17. The objectives, scope and approach are included in the Audit Terms of Reference at Appendix 1.

**2. Key issues**

<b>Priority 2 Recommendations</b>
Although the Head of Finance Service Centre has responsibility for HMRC self-employed status compliance, an alternate person and arrangements should she not be available were not in place, <b>(Rec 1)</b> .
Staff training on the engagement of new suppliers and HMRC self-employed status compliance was not yet in place, <b>(Rec 2)</b> .
Guidance on HMRC self-employed status compliance was not yet available, <b>(Rec 3)</b> .
There was a transitional period where new supplier checks, where the new suppliers were individuals, were not being sent by the Buying team to the Head of HR & Finance Service Centre to check the HMRC self-employment status, <b>(Rec 4)</b> .
Arrangements for detective checks going forward on payments to help ensure that HMRC self-employed status requirements are complied with were not yet in place, <b>(Rec 5)</b> .

### 3. Actions and Key Findings/Rationale

<b>Area 1 – Governance (Strategy and Responsibility of Supplier Checks)</b>					
<b>Priority</b>	<b>Recommendation 1</b>	<b>Detailed Finding/Rational</b>	<b>Agreed/Disagreed</b>	<b>Responsible Officer</b>	<b>Deadline</b>
2	An alternate officer for HMRC self-employed status compliance should be assigned and appropriate e-mail arrangements made, should the Head of Finance Service Centre be unavailable.	<p>To ensure that all HMRC self-employed status compliance queries are always dealt with properly and promptly, more than one appropriate officer should be formally assigned responsibility.</p> <p>The Head of Finance Service Centre has responsibility for HMRC self-employed compliance and any new supplier requests that are for individuals are sent to her to check. However, there is no other person that is available to review and approve individual supplier set up requests in the event that the Head of Finance Service Centre is unavailable. Discussions also established that supplier set-up requests are currently sent directly to the Head of Finance Service Centre for review and authorisation. No one has access to her email address in the event that she is absent.</p> <p>Where responsibility for HMRC self-employed status is not appropriately assigned and alternate arrangements not in place should the designated individual not be available, there is a risk that new suppliers may not be appropriately checked or that there may be delays in this process.</p>	Agreed	Head of Finance Service Centre and the Head of Commissioning and Procurement, Resources	April 2017
<b>Management Response</b>	<p>The process for employment status checks is under review due to the change in legislation from 1 April 2017 which shifts the liability to make the determination about whether the intermediaries' rules apply from the PSC to the Public body end-client (the Council).</p> <p>A working group has been setup led by the Director of Governance to ensure the impact on the Council of these changes is addressed.</p> <p>An action agreed at the working group held on 10th January 2017 was that the Head of Strategy, Communities and Commissioning, Resources will undertake a further review of the supplier setup process</p>				

(including employment status checks) and what, if any, the resource implications of this is.		
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<b>Area 2 – Policies, Procedures and Training</b>			
<b>Priority</b>	<b>Recommendation 2</b>	<b>Detailed Finding/Rational</b>	
2	To strengthen awareness of the HMRC compliance issues, by incorporating these into the Council's governance training provided to managers and staff.	<p>In order to help ensure that staff are aware of and comply with HMRC and Council requirements regarding the engagement and payment of individuals, appropriate training should be provided to staff.</p> <p>Discussion with the Head of Finance Service Centre and other members of staff established that staff training on the engagement of individual suppliers, HMRC self-employed status compliance and organisational requirements are not provided to staff, although the Head of Finance Service Centre and the Governance team are in the process of developing an E-learning module to resolve this.</p> <p>Where relevant and appropriate training and guidance are not provided to staff, there is a risk that they may be non-compliant with the HMRC requirements, leading to potential financial liability for unpaid tax and NI, interest and penalties.</p>	
<b>Management Response</b>		<b>Agreed/Disagreed</b>	<b>Responsible Officer</b>
Material for the course content has been drafted and passed to the L&D team to start building the course. It is anticipated this will be live in time for the April legislation changes.		Agreed	Head of Finance Service Centre
			<b>Deadline</b>
			April 2017

<b>Area 2 – Policies, Procedures and Training</b>		
<b>Priority</b>	<b>Recommendation 3</b>	
2	<p>Appropriate guidance be made available on the intranet regarding HMRC and Council requirements for the engagement and payment of individuals.</p>	
	<p><b>Detailed Finding/Rational</b></p> <p>In order to ensure that staff are aware of and comply with HMRC and Council requirements regarding the engagement and payment of individuals, appropriate policy and guidance notes should be readily available to staff.</p> <p>The 2015/16 Internal audit identified that the guidance on Payments to Individuals was out-of-date, being last updated in October 2011, and it was established that revised guidance was being drafted.</p> <p>Examination of the intranet at the time of this audit was unable to locate the guidance on Payments to Individuals or any revised guidance. Discussion established that the revised guidance had not been finalised or disseminated to staff and that the existing guidance had not been transferred to the new intranet.</p> <p>Where guidance is not available, there is a risk that Council staff may not be aware of and thus compliant with the HMRC requirements, leading to potential financial liability for unpaid tax and NI, interest and penalties for the Council.</p>	
<b>Management Response</b>		
	<p>This guidance will be contained within the content of the e-learning module.</p>	
<b>Agreed/Disagreed</b>	<b>Responsible Officer</b>	<b>Deadline</b>
Agreed	Head of Finance Service Centre	April 2017

<b>Area 4 – Monitoring of HMRC Compliance: Self Employed Status</b>	
<b>Priority</b>	<b>Detailed Finding/Rational</b>
<b>2</b>	<p>Discussions established that the former Payroll and Projects Manager had been responsible for the HMRC self-employment status checks of new suppliers prior to 31 March 2016. With the redundancy of the Payroll and Projects Manager, the duties assigned to this post were distributed amongst departmental staff; with responsibility for HMRC self-employment status checks being assigned to the Head of Finance Service Centre. It was identified that this change in responsibility was not noted by the Buying team until August 2016, with the effect that any new supplier checks during the interim period, where the new suppliers were individuals, were not being sent to the Head of Finance Service Centre to check the HMRC self-employment status.</p> <p>While Internal Audit is aware that Accounts Payable staff are aware of HMRC requirements regarding HRMC self-employed status and are duly diligent in processing any new suppliers, there is a risk that during the interim period that individuals non-compliant with the HMRC self-employed requirements may have been set up as suppliers.</p> <p>Where individuals are inappropriately set up as suppliers, there is a risk that payments are made to these individuals without NI and PAYE deductions being made and that the Council will be held liable for these PAYE and NI payments and also be fined.</p>
<b>Management Response</b>	<b>Agreed/Disagreed</b>
A list of supplier expenditure for the 2016 calendar against high risk categories e.g. consultancy has been extracted from One Oracle. This is being reviewed not only to identify any individuals being inappropriately paid but also to identify any potential issues with the changing legislation in relation to intermediaries.	Agreed
<b>Management Response</b>	<b>Responsible Officer</b>
	Head of Finance Service Centre
<b>Management Response</b>	<b>Deadline</b>
	April 2017

**Area 4 – Monitoring of HMRC Compliance: Self Employed Status**

Priority	Recommendation 5	Detailed Finding/Rational
2	<p>Arrangements for the periodic review of payments to ensure compliance with HMRC requirements regarding self-employed status should be agreed and put in place.</p>	<p>In order to help ensure that the Council is appropriately compliant with HMRC requirements regarding self-employed status and that, where appropriate, NI and PAYE deductions are made, appropriate preventative and detective controls should be in place.</p> <p>It was confirmed that a checking process is in place for all new supplier requests to help ensure that these are compliant with HMRC self-employed status requirements and, as part of the Internal Audit Plan, annual checks have been conducted on the payments made by the Council to help detect any instances where HRMC self-employed status requirements have not been complied with. However, going forward, Internal Audit should not be relied upon as the only detective controls and alternate arrangements need to be made.</p> <p>Where appropriate detective checks are not in place, there is a risk that should individuals, who are deemed to be employees by HMRC, are set up as suppliers that this may not be detected in a timely manner. Furthermore, with changes in legislation (such as the new more onerous requirements for IR35 from April 2017) there is a risk that, although the original supplier check may have been correct, this may longer be the case and this will not be detected.</p>
Management Response		Agreed/Disagreed
<p>This will be taken to the next working group meeting on 20<sup>th</sup> February for further discussion.</p>		<p>Unable to agree until further discussions held</p>
		Responsible Officer
		<p>Head of Finance Service Centre</p>
		Deadline
		<p>20<sup>th</sup> February 2017</p>



## TERMS OF REFERENCE

### HMRC Compliance – Self Employed Status

#### 1. INTRODUCTION

- 1.1 The guidance on the HMRC website states that, "A worker's employment status that is whether they are employed or self-employed, is not a matter of choice. Whether someone is employed or self-employed depends upon the terms and conditions of the relevant engagement". The Employment Status Indicator (ESI) tool <<http://www.hmrc.gov.uk/calcs/esi.htm>> on the HMRC website can be used to determine the employment status of individuals. Where someone is determined to be employed, PAYE and NI deductions must be made at source.
- 1.2 Although all non-permanent resource is required to be procured through either Comensura, the Council's Consultancy Framework or the London Borough Recruitment Partnership (LBRP), there may be occasions where payments are made for the use of non-permanent resource outside of these. For these exceptions the Council needs to ensure that HMRC requirements regarding PAYE and NI deductions are complied with.
- 1.3 As part of the agreed 2016/17 Internal Audit Plan, an internal audit of HMRC Compliance: Self Employed Status was identified to be undertaken.

#### 2. OBJECTIVES AND METHOD

- 2.1 The overall audit objective is to provide an objective independent opinion on the adequacy and effectiveness of controls / processes.
- 2.2 The audit will for each controls / process being considered:
- Walkthrough the processes to consider the key controls;
  - Conduct sample testing of the identified key controls, and
  - Report on these accordingly.

#### 3. SCOPE





- 3.1 This audit examined the Council's arrangements in relation to HMRC Compliance: Self Employed Status, and included the following areas:

Control Areas/Risks	Recommendations		
	Priority 1 (High)	Priority 2 (Medium)	Priority 3 (Low)
Governance	0	1	0
Policies, Procedures and Training	0	2	0
Initial Supplier Set-Up	0	0	0
Monitoring of HMRC Compliance: Self Employed Status	0	2	0

## DEFINITIONS FOR AUDIT OPINIONS AND RECOMENDATIONS

In order to assist management in using our reports:

We categorise our audit assurance opinion according to our overall assessment of the risk management system, effectiveness of the controls in place and the level of compliance with these controls and the action being taken to remedy significant findings or weaknesses.

	Full Assurance	There is a sound system of control designed to achieve the system objectives and the controls are consistently applied.
	Substantial Assurance	While there is basically a sound system of control to achieve the system objectives, there are weaknesses in the design or level of non-compliance which may put this achievement at risk.
	Limited Assurance	There are significant weaknesses in key areas of system controls and/or non-compliance that puts achieving the system objectives at risk.
	No Assurance	Controls are non-existent or weak and/or there are high levels of non-compliance, leaving the system open to the high risk of error or abuse which could result in financial loss and/or reputational damage.

Priorities assigned to recommendations are based on the following criteria:

<b>Priority 1 (High)</b>	Fundamental control weaknesses that require the immediate attention of management to mitigate significant exposure to risk.
<b>Priority 2 (Medium)</b>	Control weakness that represent an exposure to risk and require timely action.
<b>Priority 3 (Low)</b>	Although control weaknesses are considered to be relatively minor and low risk, action to address still provides an opportunity for improvement. May also apply to areas considered to be of best practice.

## **STATEMENT OF RESPONSIBILITY**

We take responsibility for this report which is prepared on the basis of the limitations set out below.

The matters raised in this report are only those which came to our attention during the course of our work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of our work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices. We emphasise that the responsibility for a sound system of internal controls and the prevention and detection of fraud and other irregularities rests with management and work performed by us should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify all circumstances of fraud or irregularity. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud. Our procedures are designed to focus on areas as identified by management as being of greatest risk and significance and as such we rely on management to provide us full access to their accounting records and transactions for the purposes of our work and to ensure the authenticity of such material. Effective and timely implementation of our recommendations by management is important for the maintenance of a reliable internal control system.

### **Mazars Public Sector Internal Audit Limited London January 2017**

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