

**Stephen Brown (Chief Officer)**  
Orkney Health and Social Care Partnership  
01856873535 extension: 2601  
[OHACfeedback@orkney.gov.uk](mailto:OHACfeedback@orkney.gov.uk)



Agenda Item: 6.

## **Performance and Audit Committee**

**Date of Meeting: 22 March 2023.**

**Subject: Orkney Islands Council Internal Audit of OHAC Contract Managed Services.**

### **1. Purpose**

1.1. To present, for information, the internal audit report completed for the Council, relating to Contract Managed Services within Orkney Health and Care.

### **2. Recommendations**

The Performance and Audit Committee is invited to note:

2.1. That the Council's Internal Audit has undertaken an Internal Audit of Contract Managed Services.

2.2. That the Internal Audit report, attached as Appendix 1 to this report, was scrutinised by the Council's Monitoring and Audit Committee on 9 February 2023.

2.3. The findings of the Internal Audit Report Orkney Health and Care Contract Managed Services, attached as Appendix 1, to this report.

### **3. Background**

3.1. Contract management is the administration of contracts between a company and its suppliers. Good contract management ensures that risk is reduced, savings and quality of service are maximised, and all parties involved in the contract fully understand their obligations and responsibilities and fulfil them as efficiently and effectively as possible.

3.2. Orkney Health and Care (OHAC) commissions various specialist groups to provide support and care as well as other services such as the provision of agency workers.

3.3. The objective of this audit was to review contract management within OHAC, including the policy and process for their governance, how they are entered into and how supplier performance is scrutinised and monitored.

## 4. Audit Findings

4.1. The audit provides limited assurance around the processes and procedures relating to contract managed services in OHAC.

4.2. The internal audit report, attached as Appendix 1 to this report, includes three medium priority recommendations concerning procurement and contracts and three low priority recommendations concerning complying with contract standing orders and contract monitoring. There are no high level recommendations made as a result of this audit.

4.3. The Council's Monitoring and Audit Committee recommended to the Council that, having reviewed the audit findings, assurance was obtained that action had been taken or agreed where necessary.

## 5. Contribution to quality

Please indicate which of the Orkney Community Plan 2021 to 2023 visions are supported in this report adding Yes or No to the relevant area(s):

<b>Resilience:</b> To support and promote our strong communities.	No.
<b>Enterprise:</b> To tackle crosscutting issues such as digital connectivity, transport, housing and fuel poverty.	No.
<b>Equality:</b> To encourage services to provide equal opportunities for everyone.	No.
<b>Fairness:</b> To make sure socio-economic and social factors are balanced.	No.
<b>Innovation:</b> To overcome issues more effectively through partnership working.	No.
<b>Leadership:</b> To involve partners such as community councils, community groups, voluntary groups and individuals in the process.	No.
<b>Sustainability:</b> To make sure economic and environmental factors are balanced.	No.

## 6. Resource and financial implications

6.1. There are no resource or financial implications associated directly with this report.

## 7. Risk and equality implications

7.1. There are no risk or equality implications associated directly with this report.

## 8. Direction required

Please indicate if this report requires a direction to be passed to:

NHS Orkney.	No.
Orkney Islands Council.	No.

## 9. Escalation required

Please indicate if this report requires escalated to:

NHS Orkney.	No.
Orkney Islands Council.	No.

## 10. Authors and contact information

10.1. Stephen Brown (Chief Officer), Integration Joint Board. Email: [stephen.brown3@nhs.scot](mailto:stephen.brown3@nhs.scot), telephone: 01856873535 extension 2601.

10.2. Andrew Paterson (Chief Internal Auditor) Integration Joint Board. Email: [andrew.paterson@orkney.gov.uk](mailto:andrew.paterson@orkney.gov.uk), telephone 01856873535 extension 2107.

## 11. Supporting documents

11.1. Appendix 1: Internal Audit - OHAC Contract Managed Services



## Internal Audit

### Audit Report

### Orkney Health and Care – Contract Managed Services

**Draft issue date:** 23 November 2022

**Final issue date:** 17 January 2023

<b>Distribution list:</b>	<p><b>Head of Strategic Planning and Performance Orkney Health and Social Care Partnership. Chief Officer for Orkney Health and Social Care Partnership.</b></p> <p><b>Interim Head of Children, Families and Justice Services and Chief Social Work Officer.</b></p> <p><b>Head of Finance.</b></p> <p><b>Service Manager, Procurement.</b></p> <p><b>Head of Legal and Governance.</b></p>
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### Contents

Audit Opinion .....	1
Executive Summary .....	1
Introduction .....	2
Audit Scope.....	3
Audit Findings .....	4
Action Plan.....	7
Key to Opinion and Priorities.....	9

## Audit Opinion

Based on our findings in this review we have given the following audit opinion.

**Limited**

**There are significant weaknesses in the framework of governance, risk management and control such that it could be or become inadequate and ineffective.**

A key to our audit opinions and level of recommendations is shown at the end of this report.

## Executive Summary

Buying care and support services is a complex area and, as such, it requires special consideration within the Council's approach to the procurement of these types of services.

This is because the quality or availability of care and support services can have a significant impact on the quality of life and health of people who use these services and of their carers. Also, many of these services are becoming increasingly personalised to better match individual needs.

There has been recent progress made to the governance and processes for contract management within Orkney Health and Care (OHAC). This includes a requirement for preparation of a procurement plan which applies to all service areas within the Council. The Procurement Team offer support to Services regarding procurement and specifically the preparation of the Procurement Plan. Contract management training was carried out during October and November 2021 throughout the Council, including to managers within OHAC. The Procurement Team has also prepared a briefing note to provide clarity to Care Managers over the required procurement and contracting process. Specifically, within OHAC some improvements to the completeness of records within service contract registers are being carried out.

Progress is also currently being made with encouraging some service providers to join the Scotland Excel national flexible framework agreement for care and support services. This framework agreement was developed by Scotland Excel in consultation with stakeholders including the Scottish Government, COSLA and the Care Inspectorate. The framework agreement ensures full compliance with legislative requirements allowing local contract management to be kept to the care needs of individual service users.

There remains a need for continued progression in ensuring that current contracts are in place and key documentation is held within OHAC for all active services above the procurement threshold of £10,000.

The report includes 6 recommendations which have arisen from the audit. The number and priority of the recommendations are set out in the table below. The priority headings assist management in assessing the significance of the issues raised.

Responsible officers will be required to update progress on the agreed actions via Pentana Risk.

Total	High	Medium	Low
6	0	3	3

The assistance provided by officers contacted during this audit is gratefully acknowledged.

## Introduction

Contract management is the administration of contracts between a company and its suppliers.

Good contract management ensures that risk is reduced, savings and quality of service are maximised, and all parties involved in the contract fully understand their obligations and responsibilities and fulfil them as efficiently and effectively as possible.

Poor contract management can lead to missed renewals, breach of contract, and can potentially leave the Council open to the risks of fraud and corruption through overcharging, invoicing for work that is not carried out, or falsification of performance reports.

Within Orkney Islands Council (OIC) the management of contracts is the responsibility of the individual Council Service area. Once a contract commences it is important that there is a robust basis on which to monitor the performance of the contract.

This audit, when referring to Orkney Health and Care (OHAC), relates to service delivery activity within OIC and should not be confused with services commissioned by the Integration Joint Board (IJB).

The development of Scottish Government guidance, since 2010 has placed the purchasing of social care and support services within a set of principles which acknowledges that a balance should be reached between human rights, outcomes for the individual, best value and procurement regulations.

The Council has a duty of care in relation to people with social care and support needs while also having a responsibility for demonstrating cost effectiveness, securing best value and maintaining expenditure within available resources.

The interaction between these responsibilities requires all Councils to give special consideration to their approach to the procurement of care and support services.

A public body has some flexibility to decide how to handle the procurement of care and support services for contracts below the threshold for care and support services, on a case-by-case basis, as specified in the Public Contracts (Scotland) Regulations 2015 and as amended by the Public Procurement etc (EU Exit) (Scotland) (Amendment) Regulations 2020. Since December 2020, the threshold has been set at £663,540 including VAT.

The Regulations provide for a “light-touch” regime to health and social care services public contracts which are equal to or above the threshold.

Procurements for values up to £50,000 are unregulated in legislation.

Scottish Government guidance envisages four stages to procuring a care and support service which public bodies should follow. These stages are as follows.

- stage 1: analyse individual needs, intended outcomes and service providers.
- stage 2: plan the procurement process and develop the service specification.
- stage 3: do the procurement exercise and award and manage the contract.
- stage 4: review the arrangements and individual outcomes.

When reviewing procurements for care and support services our audit focused on stages 2 and 3 of this process with the objective to review contract management within OHAC, including the policy and process for their governance, how they are entered into and how supplier performance is scrutinised and monitored.

This review was conducted in conformance with the Public Sector Internal Audit Standards.

## Audit Scope

The scope of the audit includes a review of the following:

- Processes within OHAC for entering into contracts with suppliers of contract managed services including assessments made against set criteria that include outcomes, financial aspects, delivery and risk.
- Renewal processes of contracts with suppliers.
- Whether processes are compliant with the Council's Contract Standing Orders and Financial Regulations.
- Contracts define exactly what services are to be provided and the required level or standard for these services that are based on SMART goals (Specific, Measurable, Achievable, Realistic, and anchored within a Time frame).
- Delivery of the set goals detailed in contracts are systematically monitored during the period of delivery of the contract.
- Payments are correctly authorised and are made to the supplier in line with the contract.

Our audit reviewed the contract management for a selection of payments made towards procurements made within OHAC, the selection included both procurements for care and support services and also other services such as the provision of agency workers.

A review of grants made by the Council is subject to a separate review as part of the Following the Public Pound audit review, which is also scheduled for later within this financial year.

# Audit Findings

## 1. Contract Management - Suppliers

- 1.1. Our audit reviewed expenditure made to 12 suppliers against invoices where authorisation for payment was made within OHAC.
- 1.2. The Council does not hold a completed written contract with 5 of these 12 suppliers. Payments made to each of these suppliers over the last 3 years range from £81,000 to £658,000 and total £1,633,005. In one of the 7 instances within the selection where there is a completed contract, the copy held on file by the Council is unsigned.
- 1.3. In the 7 instances within the selection where the Council holds a written contract, 3 of the contracts are out of date with expiry dates of 31 August 2018, 30 April 2019, and 2 May 2021.
- 1.4. In the 5 instances within the selection where there is not a completed contract on file, in one instance the Council holds a quotation and unsigned letter of acceptance on file, in one instance there is a partially completed and unsigned flexible framework order form to a framework agreement on file, and in one instance the structure of the contract has been agreed to but the services to be provided are not detailed within the contract. For the remaining two suppliers the services provided are flexible and may be cancelled by the Council at short notice.
- 1.5. Written and signed contracts are a vital part of contract management in ensuring that the service is delivered as agreed, to appropriate quality standards and is providing value for money.
- 1.6. Processes must ensure that external services engaged by OHAC are engaged by a written contract and in an approved form, using either the Council's standard conditions of contract or Scotland Excel framework agreements.

### Recommendation 1

- 1.7. In the 5 instances where written contracts are not held by the Council, there is not an authorised Non-Competitive Action (NCA) form held within the Service. In one of the 5 instances a Non-Competitive Action form has been prepared but the file copy is unsigned in authorisation.
- 1.8. Processes must ensure that NCA forms are sought, authorised and signed documentation kept, for all suppliers of services of a value over £10,000, unless there is necessary reason for the use of exemption from Contract Standing Orders.
- 1.9. Processes within the Council ensuring the completion of NCAs have been enhanced following recommendation from a previous internal audit review. We have therefore not repeated the recommendation to ensure the completion of NCA forms.
- 1.10. Section 23(2) of the Procurement Reform (Scotland) Act 2014 requires the Council to publicise the award of a contract on Public Contract Scotland (PCS) for all contracts of a value of more than £50,000 irrespective of the threshold or whether or not it decided to seek offers in relation to the proposed contract. In the 5 instances where written contracts are not in place, contract award notices have not been publicised on PCS.



- 1.11. Processes should ensure that contract award notices are published on the PCS in all required instances for values in excess of £50,000 in compliance with legislation.

## **Recommendation 2**

- 1.12. In the 3 instances in the sample where the supply of service is not under the terms of a framework agreement, or by a service provider registered with the Care Inspectorate, there is no documented record of supplier financial standing, or insurance cover being checked as required by the Council's Contract Standing Orders.
- 1.13. Processes should ensure the financial standing and insurance cover of potential suppliers are checked, in all relevant instances, in compliance with the Council's Contract Standing Orders.

## **Recommendation 3**

- 1.14. Under section 35 of the Procurement Reform (Scotland) Act 2014, a public body must keep and maintain a register of contracts. In the 5 instances where written contracts are not in place, the procurement activity from the supplier is not recorded on either the Council's external contract register held on PCS or any internal contract registers.
- 1.15. Processes and controls should be put in place to ensure that all regulated procurement agreements entered into by the Council are recorded on contract registers.

## **Recommendation 4**

## **2. Contract Management – Service Users**

- 2.1. Our audit also reviewed a selection of contract agreements to individual service users and to one care home located within Orkney.
- 2.2. For two of the 9 service users selected, contract details for the service provision applicable to the individual could not be provided to internal audit.
- 2.3. Two of the remaining 7 service user agreements held on file are unsigned versions of the agreement.
- 2.4. The contract held on file with the care provider specific to the care home selected is dated 21 August 2008 and ran to 31 March 2009.

## **3. Contract Management – Agency Staff**

- 3.1. Our audit also reviewed a selection of 5 contract agreements for the provision of agency staff.
- 3.2. For each of the 5 agency staff selected, adequate and suitable contract arrangements are in place.

## **4. Overall Comments and Conclusions**

- 4.1. Our review has identified several instances where the service does not hold signed contracts in respect of active services being provided. These instances relate largely to historic arrangements. However, it is important that current agreements are in place and that contracts are held for all active services procured above the procurement threshold of £10,000.

- 4.2. Every contract entered into within OHAC above the procurement threshold of £10,000, should be managed by a nominated member of staff i.e. a named contract management officer. The contract management officer for each contract should be recorded on the internally held contract register. The contract management officer should be updated upon staff changes.

**Recommendation 5**

- 4.3. Contract management officers should prepare regular update reports to senior management within OHAC specific to contract management. These updates should include, inter alia, information where contracts are either not in place, or the time period of the contract expired, to services being supplied by external organisations.

**Recommendation 6**

## Action Plan

Recommendation	Priority	Management Comments	Responsible Officer	Agreed Completion Date
1) Processes must ensure that external services engaged by OHAC are engaged by a written contract and in an approved form.	Medium	OHAC and Procurement, training and bulletins to be developed and included as part of staff induction and ongoing awareness raising to ensure that all staff (existing and new) are fully aware of the need to engage with Procurement and the appropriate policies and procedures to be followed.	Head of Strategic Planning & Performance Service Manager (Procurement)	30 June 2023 for bulletin and materials. Review training requirements (due to staff turnover) Sep 2023
2) Processes should ensure that contract award notices are published on the PCS in all required instances in compliance with legislation, as long as disclosure is not an issue (due to small population size)	Medium	OHAC will ensure that new contracts/ placement arrangements are notified to Procurement at or as soon as possible after the event for emergency placements for all those over £10K and the potential to be over £50K going forward in line with new procedures. Where contract arrangements have been confirmed by OHAC, Procurement will determine whether a contract award notice needs to be published.	Head of Strategic Planning and Performance	In line with 1 above, end June 2023 for materials detailing this. Continuous process to review compliance
3) Processes should ensure the financial standing and insurance cover of potential suppliers are checked, in all relevant instances, recognising that in some instances	Low	Processes will be reviewed to ensure that financial standing and insurance cover checks are carried out in accordance with the Contract Standing Orders.	Service Manager (Procurement)	October 2023

procurement may need to take place on an emergency basis, in compliance to the Council's Contract Standing Orders.				
4) Processes and Controls should be put in place to ensure that all regulated procurement agreements entered into are recorded on the Council's contract registers.	<b>Medium</b>	Service will notify Procurement at or as soon as possible after the event for emergency placements for all those over £10K and the potential to be over £50K, when the contract has been agreed or concluded to enable Procurement to update the contracts register.	Head of Strategic Planning and Performance	30 June 2023
5) Every contract entered into within OHAC above the Council's procurement threshold of £10,000, should be managed by a nominated member of staff i.e. a named contract management officer.	<b>Low</b>	Recording the member of staff managing each individual contract will be an ongoing exercise.	Chief Officer for Orkney Health and Social Care Partnership.	30 June 2023
6) Contract management officers should prepare regular update reports to senior management within OHAC specific to contract management.	<b>Low</b>	Currently OHAC has significant managerial vacancies and competing service priorities. Update reports will be prepared for senior management within the constraints of these challenges.	Chief Officer for Orkney Health and Social Care Partnership.	30 June 2023

## Key to Opinion and Priorities

### Audit Opinion

Opinion	Definition
<b>Substantial</b>	The framework of governance, risk management and control were found to be comprehensive and effective.
<b>Adequate</b>	Some improvements are required to enhance the effectiveness of the framework of governance, risk management and control.
<b>Limited</b>	There are significant weaknesses in the framework of governance, risk management and control such that it could be or become inadequate and ineffective.
<b>Unsatisfactory</b>	There are fundamental weaknesses in the framework of governance, risk management and control such that it is inadequate and ineffective or is likely to fail.

### Recommendations

Priority	Definition	Action Required
<b>High</b>	Significant weakness in governance, risk management and control that if unresolved exposes the organisation to an unacceptable level of residual risk.	Remedial action must be taken urgently and within an agreed timescale.
<b>Medium</b>	Weakness in governance, risk management and control that if unresolved exposes the organisation to a high level of residual risk.	Remedial action should be taken at the earliest opportunity and within an agreed timescale.
<b>Low</b>	Scope for improvement in governance, risk management and control.	Remedial action should be prioritised and undertaken within an agreed timescale.