

Audit Committee, 22 November 2016

Internal Audit Report – Non-case preparation and presentation legal services cost management

Executive summary and recommendations

Introduction

As part of the Internal Audit programme agreed at the June 2016 meeting of the Audit Committee, Grant Thornton have undertaken a review of HCPC's arrangements for managing non-case preparation and presentation legal services.

Decision

The Audit Committee is asked to discuss the report.

Background information

See Grant Thornton's report, attached

Resource implications

None

Financial implications

Grant Thornton's annual fees are approx. £47k including VAT.

Appendices

Internal Audit Report – Non-case preparation and presentation legal services cost management

Date of paper

11 November 2016



Grant Thornton

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The Health and Care Professions Council

Non-Case Preparation and Presentation Legal Services Cost Management

Last updated 04 November 2016

Distribution		Timetable	
For action	Andy Gillies, Finance Director	Fieldwork completed	10 October 2016
		Draft report issued	02 November 2016
For information	Audit Committee	Management comments	03 November 2016
		Final report issued	04 November 2016

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- A **Internal audit approach**
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Glossary

- 1 The following terms are used in this report:
- 5 HCPC The Health and Care Professions Council
- PO Purchase Order
- 7 Sage Accounting System
- 9 WAP Purchase Order System

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It is the responsibility solely of the Health and Care Professions Council's management to ensure that there are adequate arrangements in place in relation to risk management, governance and control.

1 Executive Summary

1.1 Background

As part of our 2016-17 Internal Audit Plan, it was agreed with the Audit Committee and Management that Internal Audit would review the processes for commissioning legal advice on matters other than case preparation and presentation within the Health and Care Professions Council ('HCPC'). Fitness to Practise case preparation and presentation is undertaken for HCPC by Kingsley Napley LLP (KN) who were appointed in 2014 following an OJEU tender. The commissioning of KN's work is outside the scope of this audit.

The HCPC is a regulator whose over-arching objective in exercising its function is the protection of the public. Due to the nature of the work, specialist legal advice is taken regularly on FTP work that falls outside the scope of the KN contract including challenges to HCPC FTP decisions in the courts, HR matters, statutory changes in relevant regulation and legislation, and general procurement advice including OJEU tendering. HCPC incurs around £1m per annum on non-case preparation and presentation legal costs. Some key facts around non-case preparation and presentation legal expenditure are summarised below:

- in 2014, Bircham Dyson Bell LLP (BDB) was appointed as the main provider of these services after an OJEU tendering process.

as at the end of August 2016, 2016-17 expenditure stood at just under £500k and projected year end spend for the current year is expected to be at par with previous financial year.

- in order to obtain greater control over the work commissioned from Bircham Dyson Bell, the Chief Executive and Finance Director approved changes to how non FTP legal expenditure was to be incurred which:
 - was communicated to the Executive Management Team and to Bircham Dyson Bell in early 2016 and took effect from 1 April 2016.
 - requires purchase orders to be raised for all legal work, and invoices not paid where there is no purchase order.

1.2 Scope

The objective of this review was to consider the following key areas:

- roles and responsibilities for managing the relationships with the legal providers;
- process for commissioning individual requirements, the nature of review and controls before a requirement is placed with a provider;
- process to ensure there is adequate and specifically defined requirement to ensure actual delivery and costs can be controlled;

- whether there is evidence of monitoring and review of actual costs incurred against initial requirements and agreed budgets.

As part of the review we also considered HCPC's processes and controls in comparison with other regulators for similar legal costs.

Further details on responsibilities, approach and scope are included in Appendix A.

1.3 Overall assessment

Overall, it was evident during our review that the policies, procedures and controls surrounding the commissioning of non-case preparation and presentation legal services at the HCPC were in the main well designed.

The HCPC's working relationship with Bircham Dyson Bell under this contract has been in operation for over two years at the time of our audit and from our discussions with management, appears to be working successfully. The tendering process which led to the appointment of Bircham Dyson Bell was designed to ensure that the HCPC gets value for money from its non-case preparation and presentation legal services.

The introduction of the new commissioning process from April 2016 includes the raising of purchase orders for legal services so that costs could be better monitored, controlled and managed under a commitment accounting system. In addition, regular monthly finance “business partnering meetings” provides the opportunity to review costs and take any appropriate action.

There are also monthly calls between the Director of Fitness to Practise and the litigation partner at Bircham Dyson Bell to discuss

the ongoing activity in relation to challenges against HCPC FTP decisions, as well as more formal quarterly meetings.

The HCPC uses a web based application called WAP to raise purchase orders. The system allows for automatic forwarding of purchase orders for approval to delegated authority holders. We found the control system within WAP to be strong, particularly as when lines are added to a purchase order, the entire order must go through the approval process again to ensure it is appropriately authorised.

We did note some limitations with the WAP system, for example, the system only allows for a percentage of the purchase order to be receipted rather than an actual value, therefore requiring an additional manual calculation to be performed and it does not fully interlink with Sage, the accounting system, therefore, requiring finance staff to manually enter details, such as the purchase order number into Sage.

As part of our work, we performed testing on a sample of purchases made since the introduction of the process in April 2016. We found in each instance that the appropriate approval of the purchase order had taken place and that the correct percentage of services had been receipted. We noted two minor exceptions to our testing which have been detailed below in Section 2.

Refer to Appendix B for definitions of internal audit issue ratings.

The table below details the key findings from our review.

1.4 Key findings

Risk / Process	High	Medium	Low	Info.
Roles and responsibilities	-	-	-	-
Commissioning	-	-	2	-
Control of costs	-	-	-	-
Monitoring and budget	-	-	-	-
Total	-	-	2	-

Further details of our findings and recommendations are provided in Section 2 of this report.

1.5 Basis of assessment

Our review of the HCPC's processes around the commissioning of non-case preparation and presentation legal services has confirmed the presence of a number of appropriate controls. Whilst we report by exception, in addition to the issues raised within the findings section of this report, we draw attention to the following areas of good or adequate control/risk management:

- The overall relationship with Bircham Dyson Bell is managed by the Chief Executive, and the relationship regarding litigation work (the largest part by value of BDB's work for HCPC) is managed by the Director of FTP. As part of the relationship, there is a monthly call between the Director of FTP and Bircham Dyson Bell in relation to the litigation work.
- The new process for commissioning work with Bircham Dyson Bell was communicated to the Executive Management team, who were responsible for cascading to their staff, as well as to Bircham Dyson Bell, who agreed the process in writing and confirmed their intention to follow it.
- The nature of some of the work (eg challenges against FTP decisions) that BDB do for the HCPC means that costs can't be reliably estimated from the outset, so management use their experience of previous casework to include an estimate of cost for legal advice in the purchase order which is not communicated to Bircham Dyson Bell. However, where more straight forward advice is required, for example, around HR or procurement, an estimate is sought from BDB.
- Purchase orders are raised by staff who have access to WAP. Once an order has been raised within WAP, it is forwarded onto the relevant delegated authority within the department, with separate approvals needed for purchases up to £10,000, between £10,000 and £25,000, between £25,000 and £50,000 and £50,000+. The approver reviews the specification and estimated costs before approving the order.
- Purchase orders can be raised as a call off purchase order for pieces of ongoing work, or as one off purchase orders for more discrete pieces of work. Where the value of work undertaken will exceed the original purchase order, a line can be added to the purchase order to increase the value. If this happens, WAP requires the full approval process to be reperformed. We found that all departments chosen as part of our sample understood and followed the same process for raising and approving purchase orders.
- Services are receipted based on the percentage of the purchase order to which the invoice relates. Given that a manual calculation takes place, Finance perform a check when paying invoices to confirm that the percentage receipted is correct.
- Budgets are set at the beginning of the financial year for each department based on experience and expected levels of activity in the forthcoming year. Budgets are then discussed in detail as

part of monthly meetings between departments and Finance in order to manage and control costs, including non-case preparation and presentation legal costs. Reforecasting takes place for every department in months 6 and 9 of the financial year. Expenditure with Bircham Dyson Bell in the period to the end of August 2016 was just under £500k, which was around £70k higher than the corresponding period in the previous year, which was mostly due to an increase in challenges to decisions.

- Legal costs are accrued for in the monthly management accounts in order to improve financial management.

1.6 Elsewhere in the sector

We detail below other ways of working and commonly occurring issues that we have experienced during similar types of reviews for other bodies. The following does not necessarily purport to be good practice but is included for your information and consideration:

- We noted that the requirement to use a purchase order was communicated in an email to Bircham Dyson Bell, who agreed to use the process for all pieces of work going forward. We have seen elsewhere that other organisations who use such a process have in fact informed all key suppliers of this arrangement in order to reduce the risk of work being performed without a purchase order.

1.7 Acknowledgement

We would like to take this opportunity to thank the staff involved for their co-operation during this internal audit. Their details can be found at Appendix A.

2 Detailed Findings

1.	Low	Formal documentation of new process
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Finding and Implication	Proposed action	Agreed action (Date / Ownership)
<p>As part of the audit, we received a copy of the email in which the Finance Director communicated the new process for commissioning, approving and budgeting for legal services provided by external lawyers to Executive Management and to Bircham Dyson Bell. We found the process to be very clear and well defined and in line with processes in operation at other similar organisations.</p> <p>We noted that the HCPC currently has process maps and formal process documentation saved on the staff intranet in respect of key activities. However, we noted that the new process has not been formally documented and added to the intranet alongside other key processes.</p> <p>Without formal documentation of the process, there is a risk that staff may be unclear about the new process and may operate it inconsistently.</p>	<p>We recommend that the process for commissioning non-case preparation and presentation legal work is formalised and placed on the staff intranet so that relevant staff members can quickly and easily refer to it.</p>	<p><i>Agreed. There is guidance on raising purchase orders but it focuses on the steps necessary to generate purchase orders from the system, rather than the required content of the purchase order and the communication with the supplier.</i></p> <p><i>The guidance will be reviewed and updated to include the process for commissioning work from BDB, and the application of similar good practice to the commissioning of work from other suppliers</i></p> <p><i>Date Effective: Guidance to be updated by end January 2017.</i></p> <p><i>Owner: Finance Director</i></p>

2.	Low	Outcomes from testing
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Finding and Implication	Proposed action	Agreed action (<i>Date / Ownership</i>)
<p>As part of our fieldwork, we completed testing on a sample of 20 purchase orders raised since the introduction of the new process in April 2016.</p> <p>We noted the following exceptions as part of our testing:</p> <ul style="list-style-type: none"> • One instance where a purchase order was raised after the invoice date. • One instance where an invoice was received and subsequently matched against two purchase orders, for £13,444 and £26,928. Both purchase orders were for the same expenditure and therefore should have been in one purchase order. <p>In both instances, the expenditure was valid and had been approved correctly by the relevant delegated authority. In the second example, as the value of the second purchase order exceeded the threshold for approval at £25,000 and the total value of both purchase orders did not exceed £50,000 (therefore falling between the level 3 limit for approval between £25,000 and £50,000) the purchase order went through the appropriate approval process.</p> <p>However, there is a risk that two purchase orders raised for £15,000, totalling £30,000 would bypass the control requiring further approval for purchases over £25,000. After discussion with the Director of Finance, we understand that there is no specific report run to identify instances such as these, resulting in a risk of unapproved purchases being made.</p>	<p>We recommend that the HCPC consider the possibility of checks to identify retrospective purchase orders and instances where there may be multiple purchase orders for the same legal advice.</p> <p>Additionally, we recommend that staff are reminded of the requirement for purchase orders to be raised before commissioning work, thus preventing retrospective purchase orders being raised.</p>	<p><i>The risk of a user circumventing the authorisation limits by raising separate purchase orders for the same piece of work is understood, but the system does not provide an automated way of checking for instances of this and we do not think it is necessary to introduce a new manual process to check against it. Other controls exist: all POs need to be approved by at least one other user other than the preparer, and budgetary controls and review of management accounts should identify material overspends.</i></p> <p><i>In the revised guidance (per response to recommendation 1) we will reiterate that each piece of work should be covered by a single purchase order and the value of that PO increased if necessary. The guidance will also reiterate the requirement for purchase orders to be raised before work starts.</i></p> <p><i>Date Effective: Guidance to be updated by end January 2017.</i></p> <p><i>Owner: Finance Director</i></p>

A Internal audit approach

Approach

Our role as internal auditor is to provide objective and independent assurance to the Audit Committee and Management that risks are being managed successfully for each of the areas being audited.

As part of our 2016-17 Internal Audit Plan, it was agreed with the Audit Committee and Management that Internal Audit would perform a review examining the policies, procedures and controls in place over key elements of HCPC's processes around the commissioning of non-case preparation and presentation services.

We achieved our audit objectives by:

- understanding the revised process and roles and responsibilities and assessing whether appropriate controls have been incorporated in the end to end processes;
- establishing whether these are understood by teams with key roles in the end to end process;
- reviewing and testing adherence to the revised processes for commissioning, budgeting and payment for non-case preparation and presentation legal costs;
- meeting with key staff members in Finance and Fitness to Practice to develop our understanding and application of the procedures.

The findings and conclusions from this review will support our annual opinion to the Audit Committee on the adequacy and effectiveness of internal control arrangements.

Additional information

Client staff

The following staff were consulted as part of this review:

- Andy Gillies, Finance Director
- Suellen Vassell, Financial Accountant
- Kelly Holder, FTP Director
- Kristel Whittaker, PA to FTP Director
- Francine Leach, PA to Chief Executive
- Richard Houghton, Head of Registration
- James Wilson, Registration Quality Assurance Manager.

Documents received

The following documents were received before the commencement of fieldwork:

- contract with Bircham Dyson Bell LLP

- purchase ledger transaction history for Bircham Dyson Bell LLP for the last 12 months
- open purchase orders issued to Bircham Dyson Bell LLP
- nominal ledger transaction histories for the relevant nominal codes for 2016-17 months 1-5 and 2015-16, which is required to make the link between the purchase ledger transactions and the purchase orders.

We received the following document during the course of our audit fieldwork:

- Email from Finance Director detailing the process by which expenditure at Bircham Dyson Bell LLP should be incurred
- List of Access rights to WAP/Sage
- Approval levels of WAP/Sage
- Closed purchase orders issued to Bircham Dyson Bell LLP
- Letters and emails confirming commissioning of work from Bircham Dyson Bell

Locations

The following location was visited during the course of this review:

Health and Care Professions Council
Park House
184 Kennington Park Road
London SE11 4BU

B Definition of audit issue ratings

Audit issue rating

Within each report, every audit issue is given a rating. This is summarised in the table below.

Rating	Description	Features
High	Findings that are fundamental to the management of risk in the business area, representing a weakness in control that requires the immediate attention of management	<ul style="list-style-type: none"> • Key control not designed or operating effectively • Potential for fraud identified • Non-compliance with key procedures / standards • Non-compliance with regulation
Medium	Important findings that are to be resolved by line management.	<ul style="list-style-type: none"> • Impact is contained within the department and compensating controls would detect errors • Possibility for fraud exists • Control failures identified but not in key controls • Non-compliance with procedures / standards (but not resulting in key control failure)
Low	Findings that identify non-compliance with established procedures.	<ul style="list-style-type: none"> • Minor control weakness • Minor non-compliance with procedures / standards
Improvement	Items requiring no action but which may be of interest to management or best practice advice	<ul style="list-style-type: none"> • Information for department management • Control operating but not necessarily in accordance with best practice



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