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Maria Battle
Chair

Mr Nick Ramsay AM
Chair Public Accounts Committee
National Assembly for Wales
By email: SeneddPAC@assembly.wales

Dear Mr Ramsay

Public Interest Report – Audit of Cardiff and Vale University Health Board's Contractual Relationships with RKC Associates Ltd and its Owner

Thank you for your letter of 31 October 2017.

The Chief Executive and I were grateful for the opportunity to attend the Public Accounts Committee on 25 September 2017 to discuss the above Report, and are pleased to hear that our answers assured the Committee about our response to this serious matter.

Since the Committee meeting, further progress has been made in taking forward the actions identified to address the shortcomings in the public interest report. I attach a copy of the updated action plan for your information. I confirm that this has been shared with the Wales Audit Office and will be considered at the public session of the Health Board's Audit Committee on 5 December 2017.

Of the 26 actions contained within the action plan, only 9 remain outstanding and the updates provided in the action plan provide assurance that good progress is being made in relation to these outstanding actions, including those that require input at an all Wales level. A meeting has been scheduled with Wales Audit Office in January 2018 to review our progress and it is proposed that a closure report, containing the completed action plan, be provided to the Board meeting on 29 March 2018. I will of course provide an update to the Committee as requested in April 2018.

There is work on-going looking at our policies and procedures around staff raising concerns, which we will feed into the Welsh Partnership Forum, and most importantly around ensuring our staff use these mechanisms and feel entirely comfortable and supported in doing so. In addition the following link sets out the bespoke information and guidance to staff which we have developed with Cardiff University <http://www.cardiffandvaleuhb.wales.nhs.uk/freedom-to-speak-up>. I will keep the Committee informed of the measures taken to improve this cultural issue, and their implementation.

I will also provide an update on the outcomes of the contract referrals to NHS Counter Fraud as a result of the review of payments once their investigations have been concluded, and will provide a copy of the Internal Audit Report once available.

I note that the Committee intends to write to the Chief Executive of NHS Wales concerning the process for appointing to senior executive posts at salaries in excess of the Welsh Government's approved pay scales and welcome any further clarity in this regard.

Yours sincerely



Maria Battle
Chair

Action Plan in Response to the Wales Audit Office Report in Respect of Cardiff and Vale University Health Board's Contractual Relationships with RKC Associates Ltd and its Owner

Conclusion 1 - The way in which the Cardiff and Vale University Health Board (UHB) procured and managed HR consultancy contracts awarded to RKC Associates fell well short of the standard that the public has a right to expect of a public body

- a) The UHB failed to comply with its own procurement procedures when it awarded consultancy contracts to RKC Associates in November 2014 and June 2015 and in consequence both the contracts and payments made under them are potentially unlawful.
- b) The award of consultancy contracts to RKC Associates breached public procurement rules.
- c) The UHB failed to undertake due diligence checks of RKC Associates resulting in the UHB being exposed unnecessarily to financial and reputational risk.
- d) The UHB was in breach of its own Standing Financial Instructions when it agreed contracts with RKC Associates which had been drafted by the owner of RKC Associates.
- e) The UHB appointed the owner of RKC Associates to deliver consultancy projects, but the UHB utilised her as a senior member of staff and, in consequence, has potentially over-claimed VAT amounting to £58,162.
- f) As the Officer who signed the contracts with RKC Associates in November 2014 and June 2015, the UHB's Chief Operating Officer had a duty to ensure proper process had been followed. The failure to do so has cast doubt on whether the decisions to award these contracts were based entirely on valid considerations.
- g) The UHB did not exercise effective financial monitoring of its contracts with RKC Associates, with payments exceeding the contracted value and contractual expenses not being verified.

UHB Response to Conclusion 1

Following publication of the Wales Audit Office report, a full report was received at the UHB's Board meeting on 27 July 2017 and discussion conducted in the public session of that meeting. In addition, the report has been raised at the meetings of our Management Executive (ME) and Health Systems Management Board (HSMB), and discussed with Senior Trade Union / Staff Side representatives and at our Local Partnership Forum (LPF).

As acknowledged by the Wales Audit Office, the UHB has a number of detailed policies and procedures covering this area. These have been developed to standardise processes based on best procurement practice and set out the governing principles for public procurement, for example, the Scheme of Delegation, Standing Orders, Standing Financial Instructions and Financial Control Procedures. Regrettably, these processes were not followed on this occasion, and there was no reference to the UHB's Head of Procurement as provided for in our Scheme of Delegation.

The Procurement Guide for Staff which was developed in conjunction with NHS Wales Shared Services Partnership Procurement Services, and approved through the All Wales Directors of Finance Sub Group in 2015, is provided to UHB staff as part of the training delivered by the UHB Procurement Department and will be further reinforced throughout the UHB.

Prior to the Wales Audit Office report, a review of our processes was already in train in response to changes to the IR35 legislation¹ relating to off-payroll working in the public sector. In addition, the process around requesting approval of contracts has been changed, a procurement checklist that sets out a defined approval hierarchy has been implemented to ensure compliance with Standing Orders and EC Regulations and that more than one signatory is obtained. All external Consultancy contracts are now signed off by the CEO.

The UHB, in conjunction with its colleagues in Procurement and Human Resources / Workforce, has developed this action plan to make the necessary further improvements to ensure no similar incidents of this kind occur in the future. The Action Plan will be presented to the UHB Board on 28 September 2017 and its Audit Committee on 26 September 2017 and will thereafter be monitored by the Audit Committee. The Action Plan has also been shared with Wales Audit Office.

¹ Her Majesty's Revenue and Customs (HMRC) introduced the 'intermediaries legislation' commonly known as IR35 or off-payroll rules in April 2000. This legislation is intended to combat tax abuse by an individual who would be treated as an employee were it not for the fact that they provide their services via their own company, called 'disguised employees' by HMRC. From April 2017, where a public sector organisation engages an off-payroll worker through their own limited company, that organisation will become responsible for determining whether the rules should apply, and, if so, for paying the right tax and National Insurance Contributions.

Conclusion 1 Action Plan	Lead	Completion	Update	Status
Training				
1. Provide training for all Board members on the law, rules and regulations relating to employment and procurement at the August Board Development Day.	Director of Corporate Governance	August 2017	Complete Training delivered on 31/08/17.	
2. Cascade the training provided at Clinical Board senior management teams and throughout the organisation to Directorate Management level.	Executive and Clinical Board Directors	October 2017	Complete Discussed at ME on 04/09/17 & cascaded.	
Review				
3. Undertake review of external consultancy categories in the purchase to pay system for period 2014-2017 to ensure compliance with procurement rules.	Head of Procurement	August 2017	Complete Reports received by CEO and Director of Finance.	
4. Review the Procurement Guide for Staff and revise to reflect process changes connected with the IR35 legislation.	Head of Procurement	September 2017	Complete	
Process				
5. Provide the Procurement Guide for Staff to the Management Executive Team meeting for cascading to Clinical Boards, and Corporate Departments.	Director of Finance	September 2017	Complete Approved by ME on 25/09/17	
6. Publish the Procurement Guide for Staff across the UHB and place on intranet and internet for ease of staff access.	Director of Corporate Governance	October 2017	Complete	
7. Implement a no purchase order, no payment system to prevent the processing of manual payments.	Head of Procurement	March 2018	Site visits underway, approval received from All Wales Directors of Finance & draft policy prepared. Full implementation by March 2018.	
8. Develop and cascade process guidance for off-payroll working.	Head of Procurement	August 2017	Complete Approved by ME on 14 August 2017, taken to HSMB on 17 August 2017 for cascading by Clinical Board Directors.	

Conclusion 2 - The way in which an HR consultancy contract was awarded to RKC Associates in February 2016, along with the actions of key decision-makers, compromised the integrity of the procurement process

- a) The UHB embarked upon a procurement process for a contract and invited and evaluated tenders for that contract, despite the fact that RKC Associates had been engaged in advance of the tender process.
- b) The robustness and integrity of the advertised procurement process was compromised in several key respects and the UHB's Chief Operating Officer participated in the process despite knowing that RKC Associates had already been engaged in advance of the procurement process commencing.
- c) The Procurement Department failed to keep adequate documentation of the procurement process.
- d) The UHB delayed seeking formal written approval for the fixed-term appointment of a new Director of Workforce and Organisational Development, resulting in the UHB incurring unnecessary expenditure on a consultancy contract.

UHB Response to Conclusion 2

The UHB has taken steps to strengthen its existing processes and extend training at all levels to reinforce the requirements in relation to these areas.

We recognise however that policies / procedures and training, whilst the foundation of good practice, are part of a bigger picture that includes a culture of sound behaviours and values, adherence to the rules at all levels of the organization, checks to ensure this is happening and an environment that enables individuals to confidently highlight departure from any rules no matter how senior those involved. As part of the communication with the UHB following receipt of this report, the CEO has asked staff to share any concerns they may have with him and provided assurance that anything raised will be explored to provide reassurance regarding our systems / processes and decisions made.

Procurement compliance reports are already presented to the UHB's Audit Committee outlining for example Contract Extensions and Single Quotation or Single Tender Actions. Steps are also being taken to put in place more vigorous checks around our processes to flag potential issues and to achieve more robust oversight and business scrutiny by our Management Executive Team, Board and its Committees.

We are committed to utilising temporary employment contracts rather than consultancy contracts wherever possible.

Conclusion 2 Action Plan	Lead	Completion	Update	Status
Training				
1. Develop and deliver an enhanced training programme for procurement staff focusing on the conclusions of the Wales Audit Office report.	Head of Procurement	September 2017	Complete All training complete, refresher sessions will continue.	
2. Obtain quality management accreditation for the Procurement Department in respect of its tendering processes.	Head of Procurement	November 2017	Assessment postponed to early January 2018 due to departure of Assessor.	
3. Develop a Procurement flowchart for use by Board and Senior Managers.	Head of Procurement	October 2017	Draft to be considered by ME on 11/12/17.	
Audit				
4. Enhance existing audit processes within the Procurement Department to verify compliance with contract procedure.	Head of Procurement	September 2017	Complete Forward programme for audit planned & training of Clinical Boards & departments to continue.	
5. Review Internal Audit Programme to include audits relevant to the issues highlighted in this report and to test compliance with new processes.	Director of Finance	September 2017	Complete Specific audit included in 2018 plan, to look at overall progress of action plan & review in detail a sample of actions.	
Assurance				
6. Enhance the statutory compliance report provided at each Audit Committee to include our compliance with and exceptions to recruitment requirements, Standing Orders and Standing Financial Instructions.	Directors of Finance and Workforce and Organisational Development	September 2017	Complete Standing agenda item with first report received at Audit Committee on 26/09/17.	
7. Review the Terms of Reference for the Remuneration and Terms of Service Committee to include a requirement to report any Executive level secondments and Consultancy appointments for approval to this Committee.	Director of Corporate Governance	October 2017	Complete Presenting to Board on 30/11/17.	

Conclusion 3 - The process followed by the UHB that led to the appointment of the owner of RKC Associates to the position of Director of Workforce and Organisational Development in April 2016 was fundamentally compromised, lacked transparency and was poorly documented.

- a) It is unclear why the UHB decided to proceed with a recruitment process for a Board level position with only a single candidate who had not applied for the position when it was originally advertised.
- b) The recruitment process was poorly documented and, as a consequence, it is not clear when the person who had been overseeing the recruitment exercise became a candidate.
- c) The integrity of the recruitment process was compromised because the sole candidate had access to some of the assessment questions in advance of being interviewed for the position.
- d) The information provided to the Board and its Remuneration and Terms of Service Committee regarding the appointment was inaccurate, incomplete and inconsistent.

UHB Response to Conclusion 3

High level appointments are not as frequent as other positions within the UHB and are often challenging to recruit due to small numbers of applicants with the relevant skills and experience.

As a result of this report, the UHB has looked at how these senior appointment processes are conducted and how the office of the Chief Executive and Director of Workforce and Organisational Development can work better together to ensure compliance with processes and that satisfactory documentation is maintained.

We also recognise that we can better support our Independent Board Members in relation to their Committee roles, to equip them to confidently scrutinise decisions and hold us to account.

Conclusion 3 Action Plan	Lead	Completion	Update	Status
Review 1. Review the procedures used to recruit Executive Directors and other Senior Managers.	Assistant Director of Workforce and Organisational Development	July 2017	Complete To be reflected in the updated Recruitment and Selection Policy & Procedure.	
2. Review the quality of information and its presentation to the Remuneration and Terms of Service Committee.	Chair and Director of Corporate Governance	September 2017	Introducing new process in January 2018 whereby all papers will be assured by Chair & Director of Corporate Governance prior to publication.	
Process 3. Revise the Executive recruitment process to include a clear defined role for the Director of Workforce and Organisational Development which can be delegated to their Deputy or Director of Corporate Governance if circumstances require or a conflict arises.	Chief Executive	August 2017	Complete To be reflected in the updated Recruitment and Selection Policy & Procedure.	
Training 4. Arrange training for Independent Board Members, including those sitting on the Remuneration and Terms of Service Committee, covering their roles and responsibilities. This should also provide them with example questions they may wish to ask and the minimum information they may require to assist them in discharging their role.	Director of Corporate Governance	August 2017	Complete Included in the programme for the August Board Development Day.	
5. Provide legal and governance training for all Board members on their roles and responsibilities at the October Board Development Day.	Director of Corporate Governance	October 2017	Complete Included in the programme for the October Board Development Day.	

Additional Improvements				
Action Plan	Lead	Completion	Update	Status
Whistleblowing				
1. Review current Procedure for NHS Staff to Raise Concerns which includes whistleblowing to ensure it is fit for purpose and easy for staff to raise any concerns regarding non-compliance.	Director of Workforce and Organisational Development	October 2017	All Wales Procedure under review, comments being provided by the UHB Employment Policy Sub Group to the Welsh Partnership Forum.	
2. Develop an internal protocol providing a system for senior leaders to raise concerns, with clear lines of reporting should a concern relate to the Chair, Vice Chair or Chief Executive.	Director of Corporate Governance	October 2017	Discussions underway & further meeting arranged for 10/01/18 to look at Standard Operating Procedure.	
Governance and Accountability Framework				
3. Revise the UHB Governance and Accountability Framework to reflect any amendments by the Directors of Finance All Wales Group to the Standing Financial Instructions and Standing Orders.	Director of Corporate Governance	March 2018	Model Standing Financial Instructions and Standing Orders being developed on an All Wales basis.	
4. Review and revise the UHB's Scheme of Delegation.	Director of Finance	October 2017	Review underway, to be presented to Audit Committee on 27/02/18.	
5. Circulate a bulletin to the UHB Board and throughout the UHB reinforcing the Nolan principles of Good Governance and duties of probity / candour and the Values and Standards of Behaviour Framework.	Directors of Corporate Governance and Communications	October 2017	The Academi Wales Good Governance Pocket Guide will be considered in the development of a bulletin for wider circulation by December 2017.	
Communication				
6. Communicate openly and transparently with staff about the findings of this report, the actions being taken by the UHB and their progress. This will include public meetings of Board / Audit Committee and meetings of LPF, Clinical Board Directors, HSMB and publishing of the action plan on the intranet for access by all staff, supplemented by other communication bulletins.	Chief Executive and Chair	October 2017	Complete Reports at Board, ME, HSMB, LPF. Continued dialogue with Senior Trade Union / Staff Side representatives, CEO communication placed on intranet and internet. Action plan monitored by Audit Committee & closure report anticipated for March Board.	