

Contractor Audits

Background

This case study summarises the process of delivery and subsequent findings from three Contract Audits that have recently been completed by The Curve Group. The three clients we audited operate in markedly different sectors:

- A utilities company that services more than one million people in the UK. They currently utilise professional contractors (earning an average day rate of £515) across the business, and contractor usage stands at c40-50 active contractors at any given time.
- A large wealth management business with c105 active contractors on an average day rate of £454
- A major Leisure company who utilise c30 contractors within their Head Office on an average day rate of £523.

Having a contractor population provides companies with temporary and speedy access to specialist skill sets to deliver projects and defined programmes of work or cover short-term absences. In the UK, 24% of the workforce is made up of contingent (non-permanent) workers.

To retain flexibility within their own workforces, it was essential for all three of our clients to continue to engage a pool of contractor resources, however, they each have a clear need to introduce robust management processes to manage spend and mitigate the increased legal and compliance risks which arise as a result of using a flexible workforce.

There are currently three specific pieces of legislation that pose a significant legal and financial risk for businesses who engage contractors:

- **The Criminal Finances Act** (Sept 2017): this legislation means that businesses are vicariously liable for the criminal acts of 'associated' persons who facilitate tax evasion whilst performing services for them. This legislation operates under a 'strict liability' arrangement with corporations being culpable even if they haven't directly participated in the act or are even aware the act has taken place. This legislation results in criminal liability and cannot be remedied financially. The only appropriate line of defence is being able to demonstrate that a business has reasonable and proportionate procedures (i.e. "policing") in place to prevent the facilitation of tax evasion by associated persons i.e. contractors and agencies providing these.
- **IR35:** This legislation provides a clear and distinctly differentiated definition of permanent employees and contractors to prevent disguised employment and hence tax and National Insurance contribution evasion. One of the criteria that HMRC apply when evaluating cases is that the individual must not be under the supervision, direction or control of the client if they are to be truly defined as 'self-employed'. The Government, HMRC and the Employment Tribunal Service are becoming increasingly attuned with employers abusing the Contractor model which has resulted in more claims, tightening of legislation and an imminent roll-out of the stricter public-sector standards to the private sector scheduled for April 2020.
- **General Data Protection Regulation (GDPR):** This regulation commenced in May 2018 and means that companies cannot operate under the principles of implied consent any longer, and that all 'Data Controllers' will be required to collect and handle all personal data to the 'minimum level necessary'. Given the level of information you need to capture and store in relation to contractor's insurance records, companies house registrations and

VAT certificates to name but a few, it is now essential to have strong processes in place to manage data.

In each of the cases referenced here, The Curve Group were commissioned to undertake an initial audit of our client's contractor books to: identify whether there was any risk to their business because of their current contractor usage; introduce suggested control and process improvements, and to seek out opportunities to save money.

The Scenario

Contractors are currently sourced by our clients via a number of disparate channels i.e. both directly by each client, and via multiple agencies and statement of work consultancy providers.

No single person / team within any of the three businesses we audited had full responsibility or oversight of the management of contractors, therefore there was no robust view of the true spend on contractors across any of the businesses or the associated risks.

At the beginning of each of the audits, we asked each client to estimate the volume contractors in situ.

On average their estimations were 44% less than the actual number being utilised within the business - highlighting the lack of true oversight

The Solution

Data Collected from Multiple Sources through its tried & tested audit framework

The Curve Group established and coordinated a robust audit project plan and timeline for each client and supported the key client contacts to gather the data required for the audits by:

- Providing templated communications to send out to all relevant parties including:
 - All contractors currently in situ
 - The client's finance department
 - All Hiring Managers who had sourced contractors on behalf of the business
 - All the agencies who were currently providing contractors to the business
- NB Each communication contained tailored requests for the specific, key*

data required from each party.

- Developing information matrix templates which we then populated with the data provided ready for analysis
- Gathering all legal documents stored by the clients such as contractor and agency agreements

The Curve Group maintained contact with each of the key client contacts throughout the process and provided them with updates on a weekly basis against the audit project plan. This data gathering phase took on average 3 weeks.

Data Analysis

Once all available data had been received, a robust analysis of all quantitative and qualitative data was completed. The review included analysis of:

- Information on the source of contractors i.e. whether they were sourced via an agency or whether they were sourced directly
- Relevant information about the contractors in situ, such as:
 - Start and end dates, extensions, length of service
 - Cost to hire (agency fees and rates to contractors)
 - Accumulative costs vs. original value signed off
 - Whether there were valid T&Cs in place and where the legal and commercial risks were
 - Whether vetting was completed as required

Reporting Back

A full report summarising the key findings and subsequently the risks to the business was presented back to each client. Headlines included:

- On average 21% of the contractors had been in place for more than 24 months, triggering a significant IR35 risk
- Between 10-24% of contractors had been sourced directly by the client, meaning that the client was responsible for:
 - Adhering to the Criminal Finances Act
 - Undertaking the IR35 assessments
 - Completing the vetting process, including checking for off-shore bank accounts etc
 - Issuing legal agreements
 - Storing / updating / managing all records linked to the areas above in a GDPR compliant manner

- Significant risk was presented from invalid agreements being used through to little or no vetting of management processes to comply with the legislation in 100% of cases where the contractor had been sourced directly by the client
- In 100% of cases of all contractors (whether sourced via agency or direct) there was little/no evidence on file to prove that the correct vetting had taken place and/or there were significant gaps in the checks which were completed
- Across **ALL** audits, the data provided by the client's HR, finance, procurement and suppliers was extremely inconsistent and required significant further investigation by The Curve Group to identify the correct data and update the client records
- There was no consistency across any of the contractor T&Cs or the professional services agreements from a commercial perspective and all were at least 18 months out of date relating to current legislative requirements on the use of contract workers
- There were ambiguities around whether agencies were charging the client a mark-up or margin on top of contractor day rates or if it was within an "all-in" rate, which led to significant miscalculations in the true costs of sourcing / ongoing spend, which were in all cases, much higher than estimated

As part of the analysis and value-added service, The Curve Group also developed an indicative contractor model which each client could adopt going forwards, to demonstrate the opportunities to save money on contractor spend whilst reducing the risk.

This conservative model created opportunities for savings of between £400,000 - £1.1million over a three-year period for each of the businesses

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Results and Success Factors

The findings of the audits resulted in the clients deciding to undertake a full restructure of the way in which they engage contractors and consultancies in the future to comply with relevant legislations and make significant savings.

"Our Contractor Audit was carried out by The Curve Group last summer, and I very much enjoyed working with them. They attended a couple of kick-off meetings with me and some key stakeholders in the business to fact-find and provided us with appropriate emails and spreadsheets to collate information from third-party suppliers and contractors.

They made the process very straightforward for us to follow and kept in close communication when I had any follow-on queries. We agreed our timescales and turnaround times at the outset, and The Curve Group consistently delivered to those, and helped me keep on track when other priorities got in my way!

The report they produced was thorough and showed a clear understanding of our position with our contractor population. They then visited to talk me through it in detail and it helped form the basis of a paper I wrote for the Board regarding our contractor population.

I have no hesitation in recommending The Curve Group for this work – I valued its content and felt the benefit of having a specialist looking at our situation, sharing best practice ideas with me, challenging our approach, and prioritising suggestions about what we need to do next."

HR Director, Wealth Management Customer