

REPORT TO: Audit and Governance Committee

MEETING DATE: 22 September 2020

BY: Service Manager – Internal Audit

SUBJECT: COVID-19 Change Control Assurance – September 2020

1 PURPOSE

- 1.1 To inform the Audit and Governance Committee of Internal Audit Assurance exercises completed since the last meeting of the Committee in relation to processes that have had significant changes in the control environment implemented as a result of the COVID 19 Pandemic.

2 RECOMMENDATION

- 2.1 That the Audit and Governance Committee note the findings and recommendations from the reported exercises attached as Appendix 1.

3 BACKGROUND

- 3.1 Since the last meeting of the Committee Internal Audit Assurance exercises have been finalised for:
- Supplier Relief;
 - Rent Deferment;
 - Non-Domestic Rates – Retail, Hospitality and Leisure 100% Relief;
 - Residential Care – Financial Reassessments.
- 3.2 The main objective of the Assurance exercises was to establish if the internal controls in place provide an appropriate control environment. A summary of the main findings and recommendations from the Assurance exercises is contained in Appendix 1.
- 3.3 As the Assurance exercises are not a complete audit of these processes they have not been assessed with an assurance level. However a conclusion on how appropriate the internal control processes are has been provided.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial - None

6.2 Personnel - None

6.3 Other - None

7 BACKGROUND PAPERS

7.1 None

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Appendix 1

East Lothian Council Internal Audit Memo

From:	Duncan Stainbank, Service Manager – Internal Audit Stuart Allan, Senior Auditor
To:	Jim Lamond, Head of Council Resources Tom Reid, Head of Infrastructure Agnes Eperjesy, Commercial Programme Manager Bruce Moffat, Service Manager – Transport and Waste
Date:	9 September 2020

Supplier Relief – COVID-19

1. Background

The Council's COVID-19 Support for Business Briefing Note for Services (19 March 2020) stated that:

“Existing contracted Suppliers/Providers:

- The Council has in place a number of contracts with key suppliers/providers which work in partnership to support the provision of essential local services and contractual costs are reflected within existing service budgets. The examples will be varied across service areas but include areas such as supported bus contracts including home to school transport etc.
- The ability to work flexibly with these suppliers/providers to support either on-going resilience during this prolonged period of uncertainty, or to protect, retain and support resilience within these service provisions remain essential to ensure that the Council continue to deliver service obligations both during and once the recovery phase of COVID-19 is implemented.
- Given the above, the following support is provided:
 - Services should identify relevant key suppliers/providers where existing contractual arrangements will now not be able to be fulfilled due to the ongoing COVID-19 outbreak.
 - Services should enter into constructive discussion with these relevant suppliers/providers with the object to agree to consider any flexibility in the existing contract arrangements which are deemed relevant and consider an appropriate level of on-going financial support to reflect an appropriate net operating level by the Council, which takes into consideration the following factors:
 - Understanding of the key fixed and variable costs within the supplier/provider which will require to be supported during this time – this will include staff and wages.
 - Evidence that the supplier/provider is doing all that it can to mitigate the impact arising from COVID-19 including review of insurance provision and any reduced costs/savings during this period of uncertainty e.g. reduction in fuel if buses are not operating.

- Taking the above into consideration, an appropriate net operating level should be agreed and authorised by the respective Head of Service in conjunction with relevant service management, working on advice and guidance with Legal, Procurement and Finance.
- It remains important that services maintain a clear and accurate record of any changes to contract payments during this time, and the impact of this is communicated clearly with Finance, Legal and Procurement.”

The Scottish Government has published a range of Scottish Procurement Policy Notes (SPPNs) to support public bodies in their response to COVID-19. These include SPPN 5/2020 – Supplier Relief due to COVID-19 (dated 26 March 2020) and SPPN 8/2020 – Recovery and Transition from COVID-19 (dated 12 June 2020). In addition, the Scottish Government published responses to Frequently Asked Questions (FAQs) on SPPNs 5/2020 and 8/2020.

SPPN 5/2020 – Supplier Relief due to COVID-19 states that:

- The purpose of the SPPN is to set out guidance for public bodies on options for payment to their suppliers to ensure service continuity during the current COVID-19 outbreak.
- Many suppliers to public bodies will struggle to meet their contractual obligations. This will put their financial viability, ability to retain staff and their supply chains at risk. Public bodies should act now to support their suppliers so they are better able to cope with the current crisis and to resume normal service delivery and fulfil their contractual obligations when the outbreak is over.

Annex A to SPPN 5/2020 provides a template of Model Interim Payment Terms that public bodies may wish to use when providing contractual relief. Key points from Annex A are:

- It will be for the supplier to set out proposals to vary an existing contract and/or request interim/advance payment.
- Both parties will be required to explore if other changes to the contract (for example, rescheduled delivery dates) would work better.
- The supplier will not be entitled to combine a claim under the contract with any other COVID-19 related relief, grant, intervention or other measure which results in the supplier receiving more than one benefit/relief for the same underlying cash flow issue.
- On request, the supplier will have to evidence that any monies paid out have been used as intended.
- A condition of payment will be that the supplier must also promptly pay its staff and supply chain under the contract.
- Suppliers will not be able to claim where there is no contractual volume commitment to deliver nor will be able to claim for profit on undelivered elements of the contract.
- Monies paid can be recovered by public bodies in specified circumstances.

The FAQs further state that “if the supplier is unable to deliver part or all of their contract due to the COVID-19 outbreak and the supplier relief measure agreed means that a public body are in effect paying for an element of contingency/retention to protect future delivery, the payment should not include a contribution to profit or variable costs for the elements of the contract not delivered. Parties should agree the process for reconciling payments made against costs as set out in the model interim payment terms accompanying SPPN 5/2020, as part of an agreed plan to transition to restart the contract”.

2. Findings

Internal Audit sought to review the processes by which supplier relief was provided by the Council in response to COVID-19. We note that Procurement maintain two spreadsheets, which contain details of requests received for supplier relief, the decision made in each case on whether or not to provide supplier relief and the type and amount of any relief provided. One of the spreadsheets relates to supplier relief/sustainability payments to social care providers, which is subject to separate COSLA guidance and our audit work in this area will be reported separately to the East Lothian IJB Audit and Risk Committee.

Our review of supplier relief provided in other service areas highlighted that the majority of supplier relief payments were being made to transport operators, in respect of transport provision including Home to School transport (Mainstream and ASN) and Social Work routes, which were not being delivered. Our audit work has focused on the supplier relief provided to transport operators.

Supplier Relief to Transport Operators

On 24 March 2020 a joint Scottish Government/COSLA letter advised all local authorities that “Following engagement with SOLACE and ADES on Friday 20th March COSLA Group Leaders agreed that, in the interest of supporting local businesses and ensuring available capacity when schools return, local authorities will continue to pay home to school transport providers through to the end of the summer term. Whilst the key aim is to ensure that staff get paid and that businesses remain solvent, more detail will be required on costs which can and cannot be met by local authorities in light of the changing policy landscape at the Scottish and UK Government level in relation to national reliefs and support, such as the 80% pay guarantee”.

We are advised that an initial decision was taken for all the Council’s transport operators to be paid 100% of their contract value up to the end of April 2020, by which time more would be known about future requirements. We are further advised that future payments were to be worked out through the transport operators completing a Confirmation Statement to ensure procurement transparency and fair treatment. This was to be a monthly decision moving forward based upon information provided by operators.

We sought to review the Confirmation Statement that all transport operators were required to complete, sign and submit to the Council on a monthly basis, along with their invoices. We note that the purpose of the Confirmation Statement is to ensure that payments made to providers, alongside other government COVID-19 business support, does not result in financial gain for the provider. In the Confirmation Statement, transport operators are required to confirm that:

- they are aware of and are claiming all COVID-19 related relief, grant or intervention and operators are required to provide details of all support received;
- payment from the Council is being used as intended i.e.
 - to employ and pay staff/drivers in full (including those on zero hours, self-employed and sub-contracted);
 - to pay suppliers;
 - to maintain the solvency and capacity of the business;
- they will remain flexible to continue to deliver essential services to the Council equal to the value of the contract price being invoiced;
- they will permit access to accounts (open book accounting) if requested, to demonstrate that no financial gain has been made from the payments and that payments have been used as intended, and to audit and reconciliation processes.

In addition, transport operators are required to:

- provide a summary of their normal and revised income and expenditure for the period that the schools will be closed (assume from 23 March 2020 to the end of term);
- provide details on their driver position (split between employed and self-employed drivers).

We are advised that the information submitted by each operator in their Confirmation Statement was assessed by a working group consisting of members of staff from Transport, Finance and Procurement and we note that a spreadsheet is maintained, which records the decision made and the reason for the decision. In all cases, we note that the decision made was to continue to pay the operators 100% of their contract value.

We examined a sample of transport operators and note that information provided by operators indicated that due to COVID-19, in most cases the operators were receiving very limited income other than that being received from the Council. The working group decisions were based on an assessment that the operators would struggle to survive without full payment of Council contracts and that the Council was very reliant on the operators being in place to provide services during the recovery phase.

The Confirmation Statements submitted by operators also highlighted that:

- bus operators were continuing to run their supported bus routes;
- where taxi operators had not been providing their contracted services, in a number of cases they had been providing other services at no additional cost (e.g. transport of school meals, key workers, children to Children's Hubs, ASN children to respite).

The information provided by transport operators in their Confirmation Statements indicated significant cost savings to operators through the non-delivery of services in respect of both fuel and staffing costs. In particular the information provided indicated savings in:

- fuel cost reductions for the routes that were not running;
- staffing cost savings due to drivers either being furloughed or leaving voluntarily.

We are advised that the current situation, as at September 2020, is that contracted services are back up and running, with the exception of social work routes, where only approximately 40% to 50% of routes are being delivered, although operators are continuing to receive payment for 100% of their contracted routes.

3. Conclusions

In paying 100% of the value of contracted routes, the Council may be contributing to a profit element and funding variable costs that are not being incurred for some operators. In addition, no adjustments have been made for other Government funding received by operators (in particular furlough) or where drivers may have left voluntarily and are not continuing to be paid as per SPPN 5/2020.

Many of the transport providers have been assisting with transport for key workers, community provision to shielding and vulnerable people, delivery of school meals and transport to School Hubs and respite care, which were being provided free of charge. This demonstrates the flexibility these operators have offered when contracted services cannot be provided.

We note that the supplier relief arrangements required to be put in place at very short notice, however the processes for assessing payments to be made to operators have not included entering into a formal agreement with operators, as recommended by SPPN 5/2020. Operators have however agreed to open book accounting and to an audit and reconciliation process. There is scope therefore, for the Council to assess the overall payments made to operators to ensure cashflow through the COVID-19 crisis and to reach an agreement with operators on the level and type of costs that should have been paid by the Council.

4. Recommendation

Recommendation 1: Management from Transport, Procurement and relevant service areas should work together to create formal agreements with transport operators outlining the process for reconciling payments made against costs incurred. As part of these agreements open book accounting requirements already agreed, should be enacted to confirm the funding that the Council should have provided. Payment or recovery of funds as required should then be agreed with the operator.

Management Response and Timescale:

Agreed – A formal agreement will be put in place with each transport operator, outlining the process for reconciling payments made against costs incurred and ensuring a clear understanding of what the Council is paying for. The agreements will be signed by both the transport operator and the Council and will be in place by 31 October 2020.



East Lothian Council Internal Audit Memo

From:	Duncan Stainbank, Service Manager – Internal Audit Stuart Allan, Senior Auditor
To:	Tom Reid, Head of Infrastructure Eddie Reid, Service Manager – Strategic Asset & Capital Plan Management Janet Placido, Team Manager – Estates
Date:	4 September 2020

Rent Deferment – COVID-19

1. Background

The Council's COVID-19 Support for Business Briefing Note for Services (19 March 2020) stated that "flexibility will be provided to commercial property, where East Lothian Council is the landlord, to offer payment holidays of up to 6 months with the option of repaying the rent in full over a maximum 18 month period". This information was made available on the Council's website and requests for a payment holiday (rent relief) were to be made directly to the Council's Estates section.

On 6 May 2020, the Head of Infrastructure asked Internal Audit to work with the Council's Estates section to review the COVID-19 response and ensure that appropriate governance and control is in place for the rent relief process.

2. Findings

Internal Audit sought to review the rent deferment process in place. We note that the Estates section maintain a spreadsheet detailing the rent holiday arrangements that have been put in place. The spreadsheet records details of all commercial tenants requesting rent relief, including the rent deferment period and the date by which Estates will notify the tenant of their new rental figure (comprising their existing rent and the rent due for the payback period). Internal Audit were provided with a copy of the spreadsheet, together with an example of the control form completed and sent to Finance for each tenant requesting a rent deferment period.

We note that the rent deferment process required to be put in place at very short notice and we are advised that a clear audit trail is in place with each tenant in receipt of rent relief, however we found that formal agreements were not in place between the Council and the tenants clearly outlining the terms of the rent deferment.

Internal Audit noted that most tenants seeking rent deferment had requested a six month payment holiday (from 1 April 2020 to 30 September 2020), however in some cases tenants had requested a shorter payment holiday period (for example, two months from 1 May 2020 to 30 June 2020 or three months from 1 April 2020 to 30 June 2020 or from 1 May 2020 to 31 July 2020). As part of our review we sought to confirm that appropriate processes had been followed for those tenants whose rent holiday period ended on 30 June 2020 (rent due from 1 July 2020) or 31 July 2020 (rent due from 1

August 2020). We reviewed a sample of five tenants in receipt of a two or three month rent deferment period and found that:

- In all cases, tenants were sent notification of their new rental figure by email, stating for example “rent payments including payback of rent for the Covid-19 rent holiday period are now required to start. You requested a 3 month rent payment holiday from 1st April 2020, so ‘normal’ rent payments should restart, along with the arrears over an 18 month period, from 1st July 2020”.
- Tenants were sent two standing order mandates, one to restart their original rent payment and one for the rent holiday period. However Estates are in the process of moving from standing order mandates to direct debits and from September 2020 tenants are being asked to set up two direct debits instead, one for their normal monthly rent payments and one for the rent holiday payments over an 18 month period.
- In three of the five cases reviewed, we found that the tenants were paying their full rental payments due following the end of the rent deferment period, comprising their normal rent due and the rent due for the payback period (in one case the tenant had chosen to pay this back over six months rather than 18 months); in one case the tenant was paying their normal rent due, but had requested a two month delay in their rent holiday repayments, which they would then pay back over 16 months rather than 18 months and in the final case the tenant had not commenced their normal rent payments or their rent holiday repayments and we are advised that this is currently being followed up by Estates in accordance with normal procedures.

3. Conclusions

Based on our review of the processes in place, and further to the one recommendation detailed in section 4 below, we are content with the control aspects of the approach being adopted. Further review of processes will be considered at a later date, particularly in respect of tenants who have requested a six month payment holiday.

4. Recommendation

Recommendation 1: To further enhance the arrangements in place, a formal legally binding side agreement should be put in place for each tenant in receipt of a rent deferment period. This should be drawn up in consultation with Legal and should be signed by both the Council and the tenant.

Management Response and Timescale:

Agreed – this is now in place. A COVID-19 Rental Payment Agreement has been put in place with each tenant requesting a rent deferment period: The agreement in place:

- details the rent holiday period;
- clearly outlines that the rent deferred for the rent payment holiday should be paid back to the Council in equal monthly instalments over an 18 month period (commencing immediately after the end of the rent holiday period);
- confirms that, notwithstanding the above, the terms and conditions contained in the Minute of Lease remain in full force and effect, and that the letter does not constitute a formal variation of the Minute of Lease;
- requires to be signed and dated by both the tenant and on behalf of the Council.



East Lothian Council Internal Audit Memo

From:	Duncan Stainbank, Service Manager – Internal Audit Andrew Steven, Senior Auditor
To:	Chris Hall, Systems Development & Business Support Team Leader Sharon Peel, Acting Senior Business Rates and Sundry Accounts Officer
Date:	25 th August 2020

Non-Domestic Rates – Retail, Hospitality and Leisure 100% Relief

1. Background

The Scottish Government introduced a number of reliefs in response to the Coronavirus pandemic for 2020/21 including a 1.6% relief for all Non-Domestic properties and 100% relief for properties in the retail, hospitality and leisure sectors.

We were informed that the Council are currently awaiting a software update from Capita which will reduce the annual rate poundage by 1.6% and introduce the intermediate rate poundage for properties with a rateable value between £51,001 and £95,000 (the Capita system currently only has 2 rates and has been unable to facilitate the 3 rates for 2020/21 – the basic property rate, the intermediate property rate and the higher property rate).

The update will ensure that the gross charges are correct on the Non-Domestic Rates bills issued for 2020/21 and the 100% relief for properties in the retail, hospitality and leisure sectors will subsequently be applied where applicable using Capita's local relief functionality. It is anticipated that the revised Non-Domestic Rates bills for 2020/21 will be issued in October 2020.

Internal Audit were asked to review the approach adopted by the Business Rates Team for the award of Retail, Hospitality and Leisure 100% Relief in 2020/21.

2. Findings

We note that a number of measures have already been implemented by the Scottish Government to support businesses during the pandemic including £10,000 grants for small businesses and £25,000 grants for retail, hospitality and leisure properties with a rateable value of between £18,001 and £51,000.

The guidance states that eligibility for the Retail, Hospitality and Leisure Relief is based on the property being wholly or mainly used for the purposes set out in Schedule 1 of The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020.

The Business Rates Team highlighted a number of scenarios where the decision on eligibility may not be straightforward, including where a business has a mixture of retail sales and sales to trade organisations or has a combination of different types of business. Following discussions with the Business Rates Team we are of the joint view that the term wholly or mainly should be interpreted as at least 50% of turnover being directly related to the purposes set out in Schedule 1 of the Regulations.

The approach being suggested by the Business Rates Team is to run a report of all the live accounts on the Capita system to identify and eliminate properties that already receive 100% relief or an exemption from other schemes e.g. Small Business Bonus Scheme (SBBS) Relief.

The remaining properties will be sorted by property description and a coding system of Red, Amber or Green will be applied. The Business Rates Team will then identify the properties that do not qualify (Red), properties that do qualify (Green) and properties that may qualify (Amber).

We note that further information may be required from the properties that are classed as Amber and an online form is currently being designed for this purpose, which will include questions on the use of the property and the percentage of turnover that relates to retail, hospitality and leisure.

An online form is considered the most efficient and safe way to gather information in the current climate. However we found that there is currently no information on the Council's website in respect of the Coronavirus rates relief available to businesses in 2020/21. We were informed that the website will be updated when the online form becomes available.

3. Conclusions

Based on our review, the approach adopted for the award of Retail, Hospitality and Leisure Relief is considered reasonable subject to our recommendations being implemented, including the introduction of documented procedures for the award of Retail, Hospitality and Leisure Relief, the Council contacting ratepayers in the Amber category to make them aware of the process for providing more information and updating the Council's website with details of the Coronavirus rates relief available to businesses in 2020/21.

4. Recommendations

Recommendation 1: Management should ensure that clear, written procedures are developed for the award of Retail, Hospitality and Leisure Relief.

Management Response

Agreed – procedures will be created once the method of business application is in place (an online form will be developed later this week) and the method of applying the relief on the Capita system is known (the Retail, Hospitality and Leisure Relief will be configured, tested and set up in our live system over the next few days).

Responsible Officer and Target Date

Systems Development & Business Support Team Leader

September 2020

Recommendation 2: Management should ensure that checks are carried out for NDR properties classed as Amber to establish if they received any Coronavirus grants and what information has already been provided to the Council.

Management Response

Agreed – any properties identified as Amber can easily be checked by searching previously received Business Support Grant applications, which will provide additional evidence to support any online Retail, Hospitality and Leisure Relief applications received. However, we need to bear in mind that the Scottish Government has already advised that receiving a Retail, Hospitality and Leisure Business

Support Grant doesn't necessarily mean that a Business is entitled to Retail, Hospitality and Leisure Relief (or vice versa).

Responsible Officer and Target Date

Systems Development & Business Support Team Leader

September 2020

Recommendation 3: Management should ensure that all ratepayers that remain in the Amber category are contacted by the Council and made aware of the process for providing more information in respect of the Retail, Hospitality and Leisure Relief.

Management Response

Agreed – once we have carried out a review, we can signpost businesses in the Amber category to complete our online form, if we are unsure of the property use. A batch email will be sent inviting businesses that may potentially qualify to apply online.

Responsible Officer and Target Date

Systems Development & Business Support Team Leader

September 2020

Recommendation 4: Management should ensure that the Council's website is updated as soon as possible with information on the Coronavirus rates relief available to businesses in 2020/21 and with details on how to provide more information relating to eligibility.

Management Response

Agreed – we already have a plan in place to update the Business Rates pages on the website with information on Coronavirus rates relief and a link to the online form. This will be in place once the online form exists and we have a working relief in the Capita system.

Responsible Officer and Target Date

Systems Development & Business Support Team Leader

September 2020



East Lothian Council Internal Audit Memo

From:	Duncan Stainbank, Service Manager – Internal Audit Andrew Steven, Senior Auditor
To:	John Cunningham, Service Manager – Benefits Dawna McPherson, Benefits Performance Officer
Date:	06 th July 2020

Residential Care – Financial Reassessments

1. Background

A form was previously issued to clients in Residential Care on an annual basis to gather updated evidence of their income and capital, and revised financial assessments were subsequently carried out following receipt of the new information.

The Financial Assessments Team are proposing a new approach for 2020/21 which would reduce the amount of paper evidence coming into the Council during the current Coronavirus pandemic and should shorten the timescales for processing.

Internal Audit were asked to review the new approach proposed for the financial reassessment of clients in Residential Care during 2020/21.

2. Findings

We were informed that the new approach being considered for the financial reassessment of clients in Residential Care has been successfully adopted for Care at Home clients over the last two years.

The approach requires clients to sign a customer consent form agreeing to the sharing of information between East Lothian Council and the Department for Work and Pensions (DWP). The majority of clients will not be contacted annually, the Financial Assessments Team will use their access to Searchlight, the new updated DWP Customer Information System to gain information on the clients' DWP Benefits including the State Retirement Pension.

For clients with private pensions the figure(s) from the previous year will be updated using the annual Consumer Price Index (CPI) and for 2020/21, the private pensions will be updated by 1.7% using the CPI from the DWP Housing Benefit Adjudication Circular A1/2020 (2nd Revision). We note that the Financial Assessments Team also do a spot check on some of the major private pension funds.

As part of the expected procedures to mitigate the risk, the Financial Assessments Team will send out a form to clients requesting evidence of their income and capital on a three year rolling basis and for a small number of more complex cases where there is a higher risk of misstatement, a form will be sent out on an annual basis.

The documentation clearly states that the onus is on the client to notify the Council of any changes that would impact on the financial assessment – there is a paragraph on the request form which

notifies the client of the requirement to inform the Council of any significant changes in income, capital or other circumstances. The notification letter also invites the client to inform the Council of any relevant changes in the same manner.

We note that documented procedures are currently not in place to assist staff with operational responsibility for implementing the new process and to provide guidance on how to identify clients that are considered to be a higher risk.

3. Conclusions

Based on our review, the approach proposed for the financial reassessment of clients in Residential Care is considered to provide a reasonable control environment with the risk of material errors in client contributions considered low. The onus is on the clients to notify the Council of any changes in circumstances that would impact on the outcome of the financial assessment. However to further minimise the risk, the majority of clients will be issued with a request form on a three year rolling basis and for more complex cases a form will be issued on an annual basis.

4. Recommendation

Recommendation 1: Management should ensure that clear, written procedures are developed for the financial reassessment of clients in Residential Care, which includes the criteria for identifying higher risk clients that will be fully assessed on an annual basis and the methodology for selecting clients that are to be assessed on a three year rolling basis.

Management Response

Agreed – the procedures are in the process of being developed.

Responsible Officer and Target Date

Benefits Performance Officer

July 2020