

Archwilydd Cyffredinol Cymru
Auditor General for Wales

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

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The Wales Audit Office team which carried out this audit comprised Alison Butler and Dave Rees under the direction of John Herniman.

Huw Vaughan Thomas
Auditor General for Wales
Wales Audit Office
24 Cathedral Road
Cardiff
CF11 9LJ

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Mae'r ddogfen hon hefyd ar gael yn Gymraeg.

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Summary report

Summary

- 1 On 1 October 2014, Cardiff and Vale University Health Board's (the UHB's) Director of Workforce and Organisational Development was seconded to another NHS organisation as an acting chief executive at short notice. As a consequence, the UHB experienced a reduction in its overall HR leadership capacity.
- 2 Between 1 December 2014 and 31 March 2016 the UHB entered into three contracts for the provision of HR consultancy services with a private company RKC Associates Ltd (RKC Associates), in order to address the shortfall in the HR leadership capacity. The owner and sole director of RKC Associates during this period was Ms Chana, who was subsequently appointed as the UHB's Director of Workforce and Organisational Development. The duration and specified contract deliverables for these contracts is set out in [Appendix 1](#). Ms Chana terminated her appointment as a director of RKC Associates on 28 October 2016.
- 3 Between 11 November 2014 and 31 March 2016, Ms Chana carried out 264.5 days of HR consultancy work at the UHB and the UHB paid RKC Associates £290,809 + VAT in respect of the service provided. A breakdown of the payments to RKC Associates is set out in [Appendix 2](#).
- 4 On 30 September 2015, the UHB's Director of Workforce and Organisational Development, who had been on secondment to another NHS organisation, left the employment of the UHB and the UHB commenced a recruitment exercise to appoint a replacement. The exercise proved unsuccessful as each of the shortlisted candidates withdrew for various reasons.
- 5 In January 2016, Ms Chana applied for the position, albeit the position had not been re-advertised. The UHB arranged an assessment panel to consider Ms Chana's application and, following the assessment panel meeting, Ms Chana was offered the position on a one-year fixed-term contract on an annual salary of £150,000. As the proposed salary was in excess of the Welsh Government approved salary range for NHS Executive Directors, the offer of employment was made subject to approval of the salary by the Welsh Government. This approval was received on 21 April 2016, albeit that Ms Chana commenced her employment on 6 April 2016. Ms Chana voluntarily left her employment at the UHB at the end of November 2016.
- 6 As part of my audit of the UHB's accounts, I became aware of the payments made to RKC Associates for HR consultancy services under the three consultancy contracts referred to in [paragraph 2](#) and that two of these contracts had been awarded without competitive tendering. Given the size of the contractual payments and the failure to seek competition for the contracts, I decided to undertake a review of the procurement, award and management of the contracts.

- 7 During the course of the review a number of serious issues were identified relating to the consultancy contracts and it was necessary to extend the scope of the review to examine the procurement process for the third consultancy contract and the recruitment process that led to the appointment of Ms Chana as the UHB's Director of Workforce and Organisational Development.
- 8 It is important to note that this review did not seek to assess the quality of the work undertaken by Ms Chana. My conclusions relate to the actions of officers and former officers of the UHB and it should not be inferred that the work undertaken by Ms Chana was not delivered to an appropriate standard.
- 9 During the course of my audit review, the UHB's Chief Operating Officer, Ms Casey, became the UHB's Executive Programme Director Unscheduled Care. However, in this report Ms Casey is referred to as the Chief Operating Officer, as this was the role she held at the time to which the events referred to in this report relate. Ms Casey left the employment of the UHB in May 2017.
- 10 The audit has been complex and protracted. It proved extremely difficult to obtain a clear position of the facts relating to the matters subject to audit. UHB officers and former officers provided conflicting and inconsistent accounts and there was a tendency for them to blame each other for the failings identified in the report. My requests for information were not dealt with in a satisfactory manner and documents I was informed did not exist were produced several months after they were requested. The UHB did not keep an adequate audit trail of how key decisions referred to in this report were made and, in consequence, I still have doubt as to the level of involvement some officers had in decisions to enter into contracts with RKC Associates.
- 11 The UHB's Chief Operating Officer, Ms Casey, maintained throughout the audit that the UHB's former Chief Executive, Professor Cairns, was responsible for negotiating and agreeing the award of contracts to RKC Associates; and other UHB officers also considered that he was involved in the decisions to award the contracts. Professor Cairns, however, states that he did not negotiate the contracts or authorise the contract awards, and I have seen no documentary evidence of his involvement. I was therefore unable to conclude on the extent of Professor Cairns' involvement in these matters.

- 12 Ms Casey considers she has been unfairly criticised on the basis that she considers the deficiencies identified were collective, corporate failings and that the key decisions relating to the award of consultancy contracts to RKC Associates were taken by Professor Cairns. However, as set out in paragraphs 31, 47, 48, 145 and 146, the documentary evidence available to me shows that Ms Casey was integrally involved in these decisions. Ms Casey signed two consultancy contracts in November 2014 and June 2015 between the UHB and RKC Associates which had not been procured in accordance with the UHB's procurement rules. In signing these documents Ms Casey accepted responsibility for the decisions to enter into the contracts which included responsibility for how the contracted services had been procured. Ms Casey was also involved in a tender process for a third contract despite the fact that she was already utilising RKC Associates to deliver the advertised contract both before and whilst the procurement process was progressing.
- 13 The detailed findings of my audit are set out in this report. My main conclusions are as follows:
- a The way in which the 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:
- 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;
 - the award of consultancy contracts to RKC Associates breached public procurement rules;
 - the UHB failed to undertake due diligence checks of RKC Associates resulting in the UHB being exposed unnecessarily to financial and reputational risk;
 - 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;

- 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;
 - 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; and
 - 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.
- b 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:
- 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;
 - 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;
 - the Procurement Department failed to keep adequate documentation of the procurement process; and
 - 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.

- c 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:
 - 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;
 - 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;
 - 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; and
 - the information provided to the Board and its Remuneration and Terms of Service Committee regarding the appointment was inaccurate, incomplete and inconsistent.

Detailed findings

The way in which the 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

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

The award of a contract to RKC Associates in November 2014 with a value of £114,625 + VAT breached the UHB's Standing Financial Instructions and Scheme of Delegation and Earned Autonomy Framework

- 14 In November 2014, the UHB entered into a contract with a private company, RKC Associates, for the provision of HR consultancy services for a six-month period commencing on 1 December 2014. The contract took the form of a 'proposal for consultancy support' document that was sent by the owner and sole director of RKC Associates, Ms Chana, to the UHB's Chief Operating Operator, Ms Casey, on 22 October 2014. Whilst the UHB has been unable to locate a signed copy of this document, contemporaneous e-mails between the UHB and Ms Chana confirm that the terms set out in the proposal document represented the agreed contractual terms, (supplemented by agreed contractual expense rates that were specified within those e-mails). Ms Casey also recalls signing the contract.
- 15 The proposal document specified that RKC Associates would provide the UHB with:
 - 'Senior level interim support to the Directorate of Workforce and OD reporting to the Chief Operating Officer for a period of six months starting 1st December 2014, renewable by mutual agreement;
 - two high priority areas within the [Workforce and OD] Directorate require specific reviews with the aim of making these more efficient and effective:
 - the recruitment process; and
 - the managing attendance process.

Other relevant priority areas may arise following initial review. These will be undertaken by agreement.'

- 16 The proposal document set out that the required services would be delivered in three phases as follows:

Phase 1: Analysis, review and diagnosis (December 2014 to January 2015)

Phase 2: Action planning workshops and plan approval (January 2015 to February 2015)

Phase 3: Plan implementation (March 2015 to May 2015).

- 17 The document also stated that Ms Chana is 'the key consultant identified for providing the senior level interim support as a self-employed management consultant' but that 'RKC Associates may be able to provide other interims as necessary'. The contractual rate payable to RKC Associates for the services to be provided was specified as £1,000 per day, plus 'reasonable expenses' + VAT.
- 18 The UHB made payments to RKC Associates of £114,625 + VAT for 104 days of HR consultancy work undertaken by Ms Chana and associated contractual expenses between 11 November 2014 and 31 May 2015, (albeit the start date of the contract was 1 December 2014).
- 19 The Chief Operating Officer, Ms Casey, states that she was asked by the then Chief Executive, Professor Adam Cairns (Professor Cairns), to: 'just get someone in' to provide cover within the Workforce and Organisational Development Department during the absence on secondment of the UHB's Director of Workforce and Organisational Development. In view of this instruction she contacted Ms Chana who she had previously worked with at two other NHS organisations. Ms Chana expressed an interest in a possible role at the UHB. Ms Casey subsequently arranged a meeting of Ms Chana and the UHB's Nursing Director and a separate meeting of Ms Chana and the UHB's Chief Executive, Professor Cairns. Ms Casey was present at both of these meetings. Ms Casey recalls that the purpose of the meetings was 'for [the UHB] to outline the nature of the role required, to consider whether [Ms Chana] may be a suitable candidate and for [Ms Chana] to consider whether she may be interested in the role'. Ms Casey states that: 'the conclusion of the meetings was that both parties would consider the matter further before any decision was made'. Ms Chana has told me that the then Chief Executive asked her in this meeting to submit a proposal for her possible engagement by the UHB.

Standing Financial Instructions and Scheme of Delegation and Earned Autonomy Framework

- 20 NHS bodies must act fairly and transparently when procuring works, goods and services and must ensure that they are able to demonstrate that decisions are made in accordance with UHB policy, or where a decision is made to deviate from policy, there is good reason to do so. Welsh NHS bodies are required under the National Health Service (Wales) Act 2006 to adopt Standing Financial Instructions (SFIs) for the regulation of their financial proceedings and business. The Welsh Government has issued model SFIs to Welsh NHS bodies and these SFIs were adopted by the UHB. The SFIs, together with Standing Orders (SOs), a scheme of decisions reserved for the Board and a Scheme of Delegation and Earned Autonomy Framework provide the regulatory framework for the business conduct of the UHB. The UHB's SFIs set out the rules which the UHB will follow when undertaking procurements. The Scheme of Delegation and Earned Autonomy Framework sets out who the UHB has empowered to make procurement and contractual decisions. If an NHS body fails to comply with its adopted SFIs, SOs and Scheme of Delegation and Earned Autonomy Framework without good reason, it has the potential to render decisions made and any associated expenditure contrary to law.
- 21 The UHB did not follow the requirements of its SFIs when it entered into a contract with RKC Associates for consultancy services in November 2014. The SFIs state that: 'procurement of all works goods and services in excess of £25,000 exclusive of VAT is to be by competitive tendering'. (SFIs schedule 1, para 4.1). They also state that: 'the LHB should invite a minimum of four companies to tender for contracts of value between £25,000 and the prevailing OJEU threshold'. (SFIs schedule 1, para 5.1). The contract, which had a value of £114,625 + VAT, was not subjected to competition and no tenders were sought from potential suppliers.
- 22 The SFIs set out exceptional circumstances where competitive tendering is not required, ie where delivery of a service could only be undertaken by a single firm or contractor or where the UHB requires a propriety item or service of a particular character. In such circumstances the UHB may award a contract without competition through a single tender action. There were numerous suppliers which could have delivered the service provided by RKC Associates, and the UHB did not require a propriety item or service. Furthermore, the UHB did not procure the service through a single tender action. The SFIs state that: 'single tender action shall only be employed following a formal submission and with the express written permission of the Chief Executive, or designated deputy having taken into consideration due regard of procurement requirements. A detailed

record shall be maintained by the Chief Executive. All single tender action and extensions of contracts must be reported to the Audit Committee.’ In regards to the contract awarded to RKC Associates in November 2014:

- there was no formal submission of a request for a single tender action;
- there was no written permission from the Chief Executive or a designated deputy approving a single tender action;
- no evidence has been provided to me to show that procurement requirements were taken into consideration, and the Procurement Department was not asked to give advice on procurement requirements;
- the Chief Executive did not maintain any record of a single tender action in respect of the contract; and
- the award of the contract was not reported to the UHB’s Audit Committee as a single tender action.

23 Furthermore, the UHB did not act within its Scheme of Delegation and Earned Autonomy Framework which set out that authority for procurement and contracting procedures for goods and services over £1,000, (except for specified exceptions not applicable in this case) was delegated to the UHB’s Head of Procurement. The services of RKC Associates were procured without reference to the UHB’s Head of Procurement and, in my view, those involved in this procurement acted without being authorised by the UHB to do so.

24 I therefore consider that the contract was awarded in breach of the UHB’s SFIs and Scheme of Delegation and Earned Authority Framework. Furthermore, the award of this contract breached other provisions within the UHB’s SFIs. These are set out in [Appendix 3](#). As set out in [paragraph 20](#), failure to comply with the requirements of SFIs and Scheme of Delegation and Earned Authority Framework without good reason has the potential to render a contract and all associated expenditure under it contrary to law. The UHB has not provided me with a reason to explain why proper process was not followed.

Decision to contract with RKC Associates

- 25 The UHB has been unable to provide me with any contemporaneous documentation that records how and why the decision was made to contract with RKC Associates in November 2014 without seeking competitive tenders. The NHS Wales Shared Services Partnership (NWSSP) Procurement Department, (the Procurement Department) manages procurements on behalf of the UHB. The UHB's Head of Procurement states that the Procurement Department was not asked to advise or be involved in any way with the proposed contract.
- 26 According to Professor Cairns, whilst he and Ms Casey met Ms Chana on 16 October 2014, the purpose of that meeting was to assess whether Ms Chana possessed the requisite skills and experience to undertake the required support role at the UHB. His assumption was that the contract award to RKC Associates was approved by Ms Casey and his recollection was that the Deputy Director of Finance had been involved from a finance perspective. Professor Cairns' expectation was that any award would have followed the UHB's finance and procurement arrangements.
- 27 Ms Casey maintains that the decision to engage Ms Chana through her company, RKC Associates, was made by Professor Cairns, and that Professor Cairns agreed the terms of Ms Chana's engagement at a meeting. Professor Cairns met with Ms Chana at the UHB's premises on 11 November 2014. Ms Casey states that she had thought that Professor Cairns would have ensured that the procurement of RKC Associates had followed proper process. This contention is, however, not consistent with the available documentary evidence. On 6 November 2014, the UHB's Deputy Director of Finance wrote to Ms Chana notifying her that the proposed contract 'is all fine and acceptable.' It would therefore seem that the terms of Ms Chana's engagement had been agreed in advance of Ms Chana's meeting with Professor Cairns on 11 November 2014.
- 28 Ms Casey has also made the point to my auditors, that she sent the draft contract to the then Director of Finance who was responsible for the procurement portfolio. She was subsequently informed by the Deputy Director of Finance that the contract was 'OK to sign'. She also states that: 'at no stage in any of this process was there ever any mention of the need to undertake a Procurement/SFI process'.
- 29 However, the former Director of Finance recalls that she asked Ms Casey how the award of a contract to RKC Associates had been agreed, and that Ms Casey told her that 'it had been agreed by [the then Chief Executive] and it was just the wording of the contract that needed to be reviewed'. The then Director of Finance also recalls that she checked this with Professor Cairns who confirmed that he had agreed the award of the contract. The then Director of Finance did not retain a written note of these conversations.

30 Professor Cairns maintains he did not negotiate the contracts or authorise the contract awards, and no documentary evidence of his involvement has been provided to me. I have therefore been unable to conclude on the extent of Professor Cairns' involvement in these matters.

31 Regardless of who agreed that a contract could be awarded to RKC Associates in November 2014, the fact remains that the contract was awarded in breach of the UHB's procurement rules. Furthermore, the documentary evidence available to me shows that Ms Casey was integrally involved in negotiating the terms of the contract with RKC Associates and signed the contract on behalf of the UHB. My conclusion is based on the following:

- Ms Casey received the proposed contract from Ms Chana by e-mail on 22 October 2014, just six days after the meeting referred to in paragraph 26. As the UHB's Chief Operating Officer, Ms Casey should have been aware that tenders could not have been sought and assessed as required by the UHB's SFIs within this time-frame. Nevertheless, Ms Casey signed the contract.
- whilst Ms Casey maintains that Professor Cairns agreed the terms of the engagement with Ms Chana, the covering e-mail to the proposed contract sent by Ms Chana to Ms Casey on 22 October 2014 states: 'please find attached my drafted proposal reflecting our phone discussion on Monday this week [20 October 2014]'. I am therefore of the view that Ms Casey was directly involved in agreeing the terms of Ms Chana's engagement.
- contemporaneous e-mails between Ms Casey and the UHB's Finance Department indicate that Finance Department staff considered that the decision to enter into the contract was to be taken by Ms Casey. For example, on 4 November 2014, the UHB's Deputy Director of Finance wrote to Ms Casey stating that: 'the contract looks ok to sign'.
- on 4 November 2014, Ms Casey wrote to the UHB's Deputy Director of Finance setting out that Ms Chana was available for two days the following week 'to get orientated' and that Ms Chana would then 'start formally 4 days a week from 1 December'. This e-mail strongly indicates that the decision to appoint RKC Associates was taken before Professor Cairns met Ms Chana on 11 November 2014. The meeting of 11 November 2014 between Ms Chana and Professor Cairns was part of Ms Chana's agreed orientation to the UHB and Ms Chana was paid for orientation days on 11 and 12 November 2014 as part of the consultancy contract.

- Ms Chana has stated that it was the Chief Executive who agreed the terms of her engagement, but has clarified that she considered he did this 'through his collective direct reports'. My understanding of this statement is that the then Chief Executive was not directly involved in discussing or agreeing the terms of the engagement with Ms Chana.
 - on 12 May 2016, the UHB's Director of Corporate Governance, in response to my audit queries, confirmed that the terms of the contracts with RKC Associates in November 2014 were agreed by Ms Casey.
- 32 In maintaining that her involvement in decisions relating to the contract was minimal, Ms Casey has pointed out that on 4 November 2014, she e-mailed the Deputy Director of Finance stating that as the then Chief Executive, Professor Cairns 'mentioned today, he is keen that she [Ms Chana] starts ASAP. I understand that she is available next week for 2 days to get orientated then start formally 4 days a week from 1 December. I understand that she is planning to work flexibly and this means working from home on some days.' However, at the point in time this meeting took place, the contractual terms had already been agreed subject to clarification of some financial details relating to contractual expenses and the wording of invoices.
- 33 Ms Casey maintains that she has: 'never denied that the procurement procedures were not complied with, [and] was not aware at the material times that they should have been'. She told my auditors that she became aware that the procurement rules had not been complied with when she was interviewed by them in December 2016.
- 34 Nevertheless, in signing the contract Ms Casey accepted responsibility for the decisions to enter into the contract which included responsibility for ensuring that the contracted services had been procured in accordance with the UHB's procurement rules. I do not accept Ms Casey's explanation that she was unaware at the time that procurement rules needed to be complied with. As an executive director of the UHB, she should have been aware of the requirements, and if she was not aware of the requirements she should have sought advice from the UHB's Procurement Department.

The award of a contract to RKC Associates in June 2015 with a value of between £110,888 and £112,078 + VAT breached of the UHB's Standing Financial Instructions and Scheme of Delegation and Earned Autonomy Framework

35 On 1 June 2015, a letter was sent to Ms Chana addressed from the UHB's Chief Operating Officer, Ms Casey, stating: 'I write to confirm that Cardiff & Vale University Health Board wishes to contract with you for the provision of support in respect of the interim cover required for the Director of Workforce & Organisational Development role. This will be for a period of six months with effect from 9 June 2015, with the duration subject to the hiring of a permanent Director of Workforce and Organisational Development. During this period , the expected deliverables will be as follows:

- Senior level interim support to the Directorate of Workforce.
- Implementation of the plans to reduce sickness absence.
- Implementation of the plans to improve the recruitment process.

I look forward to receiving your proposal.'

36 The implementation of the plans to reduce sickness absence and improve the recruitment process were specified deliverables of the previous contract awarded by the UHB to RKC Associates in November 2014, and under the terms of that contract were required to be delivered by May 2015 (see [paragraph 16](#)). The implementation of the plans to reduce sickness absence and improve the recruitment process were also specified deliverables of a further contract awarded by the UHB to RKC Associates in February 2016 (see [paragraph 116](#)).

37 The letter of 1 June 2015 was signed electronically with Ms Casey's scanned signature. Ms Casey states that the letter was prepared by the HR Department on the instruction of an unknown person whilst she was on leave and that she 'was not a party to the agreement to offer [Ms Chana] a new contract.' She also states that her Executive Assistant 'would have been asked to apply my electronic signature as I was on leave'. Ms Casey maintains that when she returned to work on 15 June 2015, Ms Chana had already commenced work on the new engagement set out in the letter of 1 June 2015 and she 'assumed that all was in order' and therefore signed the contract referred to in the next paragraph.

38 The suggestion that an unknown individual or individuals instructed that a letter be issued in Ms Casey's name without her consent, in order to secure a further contractual engagement for RKC Associates is a potentially serious matter. The letter of 1 June 2015 was sent by e-mail to Ms Chana by Ms Casey's Executive Assistant on 1 June 2015 and the covering e-mail stated: 'please see attached letter from [Ms Casey].' The HR records provided to me by the UHB indicate that Ms Casey did not commence her leave until 2 June 2015, the day after the letter was sent. Ms Chana replied directly to Ms Casey on 3 June 2015 attaching her contract proposal and stating: 'Dear [Ms Casey], thank you for your letter. Please find attached the proposal as requested. I look forward to your response.' I am unclear why, if Ms Casey had not authorised sending the letter, on receiving this e-mail she did not raise a concern regarding the unauthorised use of her signature. On 15 June 2015, Ms Casey signed a contract with RKC Associates for the provision of HR consultancy services to the UHB for a six-month period commencing on 9 June 2015. The contract takes the form of a 'proposal for consultancy support' drafted by the owner and sole director of RKC Associates. The contract is consistent with the letter of 1 June 2015 referred to above.

39 The contract specifies that RKC Associates will provide the UHB with:

- 'Senior level interim support to the Directorate of Workforce and OD reporting to the Chief Operating Officer for a period of six months starting 9 June 2015;
- Two high priority areas:
 - implementation of the plans to reduce sickness absence; and
 - implementation of the plans to improve the recruitment process.

Other relevant priority areas may arise. These will be undertaken with agreement.'

40 The proposal document states that the consultancy work would be undertaken by the owner and sole director of RKC Associates, Ms Chana, who would be paid £1,000 per day plus 'reasonable expenses' + VAT.

41 The UHB made payments to RKC Associates of £101,000 + VAT for 101 days of consultancy provided to the UHB between 9 June 2015 and 4 December 2015. In addition, RKC Associates was paid associated contractual expenses of between £9,888 and £11,078 + VAT. The exact figure is unclear as one invoice submitted by RKC Associates covered two contractual periods.

- 42 As at June 2015, the UHB's Director of Workforce and Organisational Development remained on secondment and my understanding is that the further contract awarded to RKC Associates was intended to provide continued consultancy support cover to the Department of Workforce and Organisational Development during the secondment period.
- 43 It is not clear to me whether the contract of June 2015 was intended to be a new contract or an extension of the contract awarded to RKC Associates in November 2014. In either case, in my view, this contract or contract extension was awarded in breach of the UHB's SFIs. As set out in [paragraph 21](#), the SFIs required all contracts in excess of £25,000 to be subjected to competitive tendering, (other than in exceptional circumstances not applicable in this case – see [paragraph 22](#)). No competition was sought for the award of the contract nor was the UHB's Procurement Department asked to provide advice on the procurement or contract award.
- 44 Paragraph 10.8 of the UHB's SFIs states that: 'subject to complying with any legal requirement and agreed contract conditions, a contract may be extended on a single occasion providing the additional cost does not exceed 50% of the original value of the contract to a maximum of £75,000 exclusive of VAT'. If the contract was intended to be a contract extension, as the value was in excess of £75,000 and exceeded 50% of the value of the November 2014 contract, its award was in breach of the UHB's SFIs. This is a moot point given that the November 2014 contract was awarded without competition.
- 45 UHB officers have been unable to provide any explanation of why the UHB awarded the contract to RKC Associates in June 2015 without seeking competitive tenders, as required by the UHB's SFIs.
- 46 Furthermore, the UHB did not act within its Scheme of Delegation and Earned Autonomy Framework which set out that authority for procurement and contracting procedures for goods and services over £1,000, (except for specified exceptions not applicable in this case) was delegated to the UHB's Head of Procurement. The services of RKC Associates were procured without reference to the UHB's Head of Procurement, and those involved in this procurement acted without being authorised by the UHB to do so.

- 47 Whilst the Chief Operating Officer, Ms Casey, maintains that the decision to award the contract to RKC Associates was made by the then Chief Executive, Professor Cairns, she has been unable to provide me with any contemporaneous documentation to support this contention. I do not accept Ms Casey's contention that she 'was not a party to the agreement to offer [Ms Chana] a new contract.' In signing the contract with RKC Associates Ms Casey was by definition a party to the agreement. Additionally, as the authorising officer she had a duty to ensure that the services being contracted had been procured in accordance with the UHB's procurement rules as set out in its SFIs. She failed to do so.
- 48 I have not been persuaded by Ms Casey's representation that the letter sent to Ms Chana was sent out without her knowledge or consent. Whether or not this was the case, as the UHB's signatory to the contract, Ms Casey should have ensured proper process was followed.
- 49 Regardless of how and when the decisions were reached to contract with RKC Associates, Ms Casey signed the contract. The contract was awarded in contravention of the UHB's SFIs and those who procured the services of RKC Associates did not have authority to do so under the UHB's Scheme of Delegation and Earned Autonomy Framework. As a consequence, the UHB cannot demonstrate that the contract was awarded lawfully, fairly and transparently.

The award of consultancy contracts to RKC Associates breached public procurement rules

- 50 The UHB, as a public body, is subject to the Public Contracts Regulations 2015, and before February 2015, it was subject to the Public Contracts Regulations 2006. These regulations are intended to ensure that, where a procurement is within their scope, the letting of the contract complies with the principles of:
- equal treatment;
 - transparency;
 - non-discrimination; and
 - proportionality.
- 51 The UHBs SFIs state that: 'EU directives and UK regulations ... exist covering the whole field of procurement, and these Directives set thresholds above which special and demanding procurement protocols and legal requirements apply. All Directors and their staff are responsible for ensuring that those Directives are understood and fully implemented.'
- 52 In November 2014, the UHB awarded a contract to RKC Associates for the provision of HR consultancy services for a period of six months. In June 2015, the UHB entered into a further contract with RKC Associates for the provision of HR consultancy services for a further six-month period. On 14 December 2015, the UHB re-engaged RKC Associates for a further three-month period ending on 31 March 2016. The UHB did not invite competition for any of these contractual opportunities before engaging RKC Associates, (although as set out in [paragraphs 110 to 132](#), the UHB did invite competition for the third contractual period on 23 December 2015, although in my view the UHB had already engaged RKC Associates on 14 December 2015).
- 53 Where a contract for services falls within the full scope of the public procurement regime, the contracting authority is bound by the following essential obligations:
- to publish a notice in the Official Journal of the European Union (OJEU) in a prescribed format advertising the contract;
 - to use a specified award procedure, and to comply with related requirements concerning selection and award criteria;
 - comply with reporting requirements following a decision to award a contract; and
 - comply with the principles of transparency, equal treatment, non-discrimination and proportionality.

- 54 Public procurement requirements are complex, and legal advice provided to me states that a contract for services will fall within the full scope of the public procurement regime if the following conditions are met:
- the services to be provided fall within specified categories; and
 - the contracting authority reasonably estimates, at the beginning of the procurement, that the total amount payable under the contract will exceed the relevant value threshold; and no legal exceptions apply (I am advised that none do in this case).
- 55 The advice to me is that the services that were to be provided by RKC Associates were best characterised as management consultancy services, which in principle were subject to the full ambit of the public procurement regime. The relevant value threshold at which the full requirements of the regulations applied was, at the relevant time, £111,676. Where a contracting authority does not estimate the likely value of a contract for a service subject to the public procurement regime, this is in itself a breach of the public procurement regulations. The UHB did not estimate the relevant value of the November 2014 and June 2015 contracts nor did it consider whether those contracts might be renewed.
- 56 Although some attempt can be made to work out what a reasonable estimate would have been, this is ultimately a matter for the UHB and I cannot take a definitive view on this. However, I consider it likely that had an estimated value been calculated by the UHB, it would have shown that the relevant value threshold was exceeded. The UHB ought therefore to have procured the agreements in accordance with the 2015 Regulations. In addition, the advice to me is that the procurement process carried out in relation to the contract awarded in February 2016 was potentially in breach of the 2015 Regulations because the contract notice which the UHB published was not fit for purpose as it was not advertising a genuinely available contract as set out in [paragraphs 110 to 122](#).
- 57 As stated above, the public procurement regulations are complex. I would not therefore expect most UHB officers to have a detailed understanding of the rules. However, I would expect senior UHB officers to be aware of the need for compliance with the rules, and, if unsure as to their applicability, to seek advice from the UHB's Head of Procurement. No such advice was sought. The Head of Procurement agrees that the amounts involved were above the relevant value thresholds and the procurements should have been subject to a full OJEU procurement process.
- 58 The failure of the UHB to comply with the regulations when awarding contracts to RKC Associates in November 2014 and June 2015 exposed the UHB to reputational risk and the risk of action against the UHB by potential tenderers and/or the European Commission.

The UHB failed to undertake due diligence checks of RKC Associates

- 59 When considering awarding contracts to external suppliers, it is crucial that public bodies understand who they are doing business with. This is necessary to ensure that potential suppliers have the capacity and capability to deliver the contract, are financially stable and have a sound reputation. In order to establish whether potential suppliers are suitable to deliver public contracts, public bodies undertake what are known as 'due diligence' checks. Where due diligence is not undertaken the organisation will be exposed to financial and reputational risk.
- 60 The UHB's SFIs state that: 'the Director of Finance has the responsibility to establish that all firms on the tender list are financially sound and professionally competent through a pre-qualification/financial vetting process undertaken by a suitably qualified and experienced procurement officer'.
- 61 For significant contracts, including all those over the public procurement thresholds, the UHB exercises its due diligence responsibilities by asking potential tenderers to complete Pre-Qualification Questionnaires (PQQs). These questionnaires are designed to identify suppliers who do not meet the organisation's core requirements. Where a supplier does not meet the requirements they are not considered for contract award.
- 62 The UHB's PQQ requires suppliers to answer detailed questions in the following areas:
- general organisation/company information;
 - capacity and capability;
 - economic/financial standing;
 - management/governance;
 - equal opportunities;
 - sustainability;
 - health and safety;
 - insurance; and
 - incidents and disputes.

- 63 RKC Associates was not asked to complete PQQs prior to it being awarded contracts in November 2014 and June 2015. Furthermore, no evidence has been provided to me to show that any due diligence checks were undertaken by the UHB in respect of RKC Associates or Ms Chana.
- 64 The failure to conduct appropriate due diligence checks is concerning. If the UHB had undertaken cursory checks of RKC Associates, it would have identified that RKC Associates was incorporated at Companies House on 7 November 2014, four days before Ms Chana, the owner of RKC Associates commenced work on the contract, and two weeks after Ms Chana had sent the UHB her contract proposal to the UHB headed up 'RKC Associates Ltd'.
- 65 When Ms Chana commenced work on the contract, RKC Associates was a newly-formed company, had not previously undertaken any consultancy work and had no financial or governance track record.
- 66 Furthermore, the UHB has been unable to provide me with any evidence that it sought to confirm that:
- RKC Associates had public liability and professional indemnity insurance cover in place;
 - Ms Chana had made arrangements for payment of income tax and national insurance (see [paragraphs 77 to 85](#)); and
 - Ms Chana had satisfactory references from past employment.
- 67 The failure of the UHB to carry out proper due diligence checks on both RKC Associates and Ms Chana exposed the UHB to unnecessary risk.
- 68 The UHB's Deputy Director of Finance describes the Finance Department's role in respect of the November 2014 contract being one of reviewing and commenting on the draft contract from a finance perspective. As set out in [paragraph 29](#), the UHB's then Director of Finance states that Ms Casey informed her that: 'it was just the wording of the contract that needed to be reviewed'. The Finance Department carried out this task at the request of the Chief Operating Officer, Ms Casey. The UHB's Deputy Director of Finance maintains that the Finance Department had no involvement in procuring the consultancy service nor did it undertake any due diligence checks.
- 69 Ms Casey was the officer who signed the contract with RKC Associates on behalf of the UHB and she had a duty as the authorising officer to ensure that the necessary due diligence checks had been undertaken.

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 and in doing so exposed the UHB to unnecessary risk

- 70 It is standard practice for public bodies entering into contracts with suppliers of services to formalise the terms and conditions in writing. Written contracts provide certainty to both parties and are an agreed point of reference if contractual disputes occur. A written service contract should cover matters such as:
- the agreed price and contract period;
 - the specification of the services to be delivered;
 - legal and other supplier obligations;
 - contract monitoring arrangements;
 - dispute resolution arrangements; and
 - cancellation provisions.
- 71 The UHB's SFIs state that: 'every invitation to tender should be accompanied by the LHB's standard contract terms and conditions, and the basis on which the LHB shall engage in business with the contractor. Where appropriate a customised contract can be developed by senior procurement officials with appropriate legal advice and subject to approval by the Director of Finance.' The SFIs also state that: 'in every contract document a clause shall be included to secure that the LHB shall be entitled to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have prepared his tender in collusion with others, or shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward.'
- 72 The UHB has adopted NHS Wales' standardised contract for the supply of services. If the UHB had used this standard contract document when contracting with RKC Associates, it would have ensured that its SFI requirements for a written contract were met.

November 2014 contract

- 73 In November 2014, the UHB's Chief Operating Officer, Ms Casey, acting on behalf of the UHB entered into a contract with RKC Associates for the provision of a six-month consultancy contract. As set out in [paragraphs 14 to 16](#), the contract takes the form of a 'proposal for consultancy support' document that was sent by the owner and sole director of RKC Associates, Ms Chana, to the UHB's Chief Operating Operator, Ms Casey, on 22 October 2014, albeit neither the UHB or Ms Chana have been able to provide me with a signed copy of the document.
- 74 The contract document does not contain the UHB's standard terms and conditions and, in my view, the contract entered into by the Chief Operating Officer, Ms Casey, with RKC Associates in November 2014 was in breach of the UHB's SFIs and placed the UHB at unnecessary risk for the following reasons:
- the contract did not contain a detailed specification of the services to be delivered, quality standards, legal and other supplier obligations including tax treatment, contract monitoring arrangements, dispute resolution arrangements and cancellation provisions.
 - the contract stated that: 'under this consultancy, my responsibility is to provide in good faith the advice and services contained in this proposal. Acceptance of it indemnifies me against any legal action (with the exception of criminal liability) that may be taken in the future concerning any of the advice or services provided and any of the consequences that may or may not result. The parties involved or affected by the consultancy will be made aware that this is the case and be party to this indemnity by their participation in the consultancy as described above.' In my view, this was a contract term that the UHB should never have agreed to. It indemnified RKC Associates from legal action by the UHB in the event of non-delivery, sub-standard performance or negligence by the consultant.
- 75 On 22 October 2014, Ms Casey had a conversation with the UHB's then Director of Finance (who was also the UHB's Executive Lead on procurement) and followed up this conversation by e-mailing the proposed contract to the UHB's then Director of Finance. The e-mail states: 'please see attached proposal. Is it OK to sign?' The then Director of Finance circulated the draft contract to members of the UHB's Finance staff for consideration.

76 Whilst the UHB's Finance staff raised some specific points regarding the terms of the contract, it is disappointing that the Chief Operating Officer was not informed that the proposed form of the contract was unacceptable. On 4 November 2014, the Deputy Director of Finance advised Ms Casey that the proposed contract: 'looks OK to sign' but that it would be helpful to have some rules over what represented 'reasonable expenses'.

June 2015 contract

77 On 15 June 2015, the UHB's Chief Operating Officer, Ms Casey, acting on behalf of the UHB signed a further contract with RKC Associates for the provision of another six-month consultancy contract. This contract again took the form of a document drafted by Ms Chana of RKC Associates. As was the case with the November 2014 contract, the contract drafted by Ms Chana was not consistent with the UHB's standardised contract for the supply of services and was deficient for the same reasons set out in [paragraph 74](#).

78 The UHB has also provided me with a further contract that covered the same service and period as the one signed on 15 June 2015. This further contract was signed by Ms Casey on behalf of the UHB on 9 July 2015 and by Ms Chana on behalf of RKC Associates on 15 July 2015. The contract dated 9 July 2015 was drawn up by the UHB's Head of Workforce Governance. The terms of the July 2015 contract are far more detailed than the terms set out in the June 2015 contract, and include provisions whereby the UHB was able to require Ms Chana to provide details of her tax and national insurance arrangements.

79 It appears that the second contract was drawn up to ensure that the UHB's contractual arrangements with RKC Associates complied with the recommendations of HM Treasury's 'Review of the tax arrangements of public sector appointees' (the HM Treasury review). The Welsh Government has adopted the recommendations of the HM Treasury review and Welsh NHS bodies were required to comply with these recommendations with effect from December 2013.

80 The recommendations included:

- 'board members and senior officials with significant financial responsibility should be on the organisation's payroll, unless there are exceptional circumstances – in which case the Accounting Officer should approve the arrangements – and such exceptions should exist for no longer than six months; and

- engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow the department to seek assurance regarding the income tax and NICS obligations of the engagee – and to terminate the contract if that assurance is not provided.’
- 81 On 27 February 2015, all NHS chief executives, including the UHB’s then Chief Executive, Professor Cairns, received correspondence from the Welsh Government regarding the need for compliance with these recommendations. Professor Cairns forwarded the correspondence to Ms Chana asking: ‘What do we need to do about you?’ Ms Chana responded to Professor Cairns copied to Ms Casey stating: ‘[Ms Casey] and I have discussed this and agreed to pick this up when I’m back in the office alongside [the Deputy Director of Finance] and take action on any agreed steps.’
- 82 Despite this, the contract with RKC Associates signed by Ms Casey on 15 June 2015 did not include provisions to allow the UHB to seek assurance from Ms Chana regarding her income tax and national insurance obligations.
- 83 The UHB’s Head of Workforce Governance states that he prepared a template contract for services document on his own initiative having attended a seminar which referred to the need for compliance with the HM Treasury review. On becoming aware that Ms Chana was to be re-engaged, he considered that she should be issued with the contract he had developed to ensure contractual terms were compliant with the recommendations of the HM Treasury review.
- 84 On 19 June 2015, the Head of Workforce Governance wrote to Ms Casey stating: ‘as part of the requirement to comply with HM Treasury rules in respect of the tax liabilities of contractors, we will need to issue [Ms Chana] with a new contract. I have drafted the attached (which we will use as a template for all other contractors).’
- 85 The contract awarded to RKC Associates in July 2015 introduced provisions to enable the UHB to seek assurances from Ms Chana regarding her tax and national insurance arrangements. In my view, the UHB failed to comply with its own SFIs when it entered into contracts with RKC Associates in November 2014 and June 2015 which had been drafted by Ms Chana and in so doing exposed the UHB to unnecessary risk.

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

- 86 RKC Associates' contractual appointments to provide consultancy services to the UHB, followed the secondment of the UHB's then Director of Workforce and Organisational Development to another NHS organisation at very short notice on 1 October 2014. As a consequence, the UHB experienced a reduction in its overall HR leadership capacity.
- 87 The UHB entered into contracts with RKC Associates in November 2014, June 2015 (which was superseded by a contract made in July 2015) and February 2016 (see [paragraphs 110 to 153](#) for details of the February 2016 contract). The UHB has treated these contracts as contracts for the delivery of consultancy services. All the work required under these contracts was delivered by the owner of RKC Associates, Ms Chana. As set out in [Appendix 1](#), each contract sets out the consultancy services Ms Chana would be required to deliver. The specified deliverables for each contract are very closely associated. The three key elements of each contract were:
- improvement of the UHB's recruitment processes;
 - reduction of sickness absence rates; and
 - provision of senior interim support to the Directorate of Workforce and Organisational Development.
- 88 On 22 October 2014, Ms Casey sent a copy of the proposed contract with RKC Associates to the UHB's then Director of Finance for review. A concern was raised by staff within the Finance Department as to whether the contract related to a supply of staff, or for consultancy services. This was an important distinction because if the contract was for the supply of staff, the UHB would be unable to recover any VAT charged by RKC Associates, but if the contract was for consultancy services, the UHB would be able to recover any VAT paid from HMRC.
- 89 Finance Department staff acted appropriately and sought advice on this matter from the UHB's external VAT adviser who advised that use of the word 'interim' in the proposed contract was unhelpful as: 'it's always seen as a sign by HMRC of a supply of staff. In this case, however, it feels as if interim means for a short or given time period rather than fulfilling an existing role. It looks as if Ms Chana will be being 'employed' to provide a working study of these processes and advise on changes. There is a definite beginning and end point to this process. A final check might be to make sure that this isn't a role [Ms Chana] is fulfilling that is an ongoing

position. If it isn't and I suspect not, then I would be happy for you to recover the VAT charged on this supply... I would however get some better wording on the invoices [Ms Chana] will send through to represent what is really being supplied. If you could ask that the word interim is avoided being used that would help, as this doesn't look to me as fulfilling an interim position, it looks like consultancy work completing a study of processes.'

90 In my view, the advice received by the UHB was sound. However, in practice, the UHB did not utilise Ms Chana solely as a consultant undertaking specific projects defined within the contracts, but as an employee exercising a broad range of employee-related functions unspecified within the contract. My reasons for reaching this conclusion include:

- When applying for the role of the UHB's Director of Workforce and Organisational Development in January 2016, Ms Chana submitted her curriculum vitae (CV) to be considered by the UHB's recruitment assessment panel. The CV records that Ms Chana had been operating in the role of the UHB's interim Director of Workforce and Organisational Development since December 2014. The CV sets out a broad range of leadership and managerial responsibilities that Ms Chana had been exercising during the period since December 2014, including: 'leading the Workforce and OD function (150 staff), clarifying accountabilities, roles and agile improvement'.
- The UHB's own internal documentation for the period in question, including Board minutes, record that Ms Chana was the UHB's Interim Director of Workforce and Organisational Development or Interim Director of Human Resources. These documents also set out that Ms Chana was exercising a wide range of responsibilities beyond those set out in her contracts for consultancy services.
- As set out in [paragraph 89](#), the UHB's VAT adviser had advised the UHB in October 2014 that use of the word 'interim' in the proposed contract was unhelpful as: 'it's always seen as a sign by HMRC of a supply of staff. In this case, however, it feels as if interim means for a short or given time period rather than fulfilling an existing role'. Despite this, the UHB entered into further contractual agreements in June 2015 and February 2016 which stated that Ms Chana would be required to provide senior level interim support to the Directorate of Workforce and Organisational Development (see [Appendix 1](#)) and letters addressed from Ms Casey to Ms Chana dated 1 June 2015 (see [paragraph 35](#)) and 14 December 2015 (see [paragraph 116](#)) stated that: 'Cardiff and Vale University Health Board wishes to contract with you for the provision of support in respect of the interim cover required for the Director of Workforce and Organisational Development role.' I therefore consider that Ms Chana was appointed as a 'supply of staff'.

- 91 Ms Chana has told my auditors that she was utilised to deliver the specific tasks set out in her consultancy contracts and that she met with the UHB's then Chief Executive, Professor Cairns, who asked her to undertake work on 'other relevant priority areas'. Ms Chana has set out examples of the activities she was asked to deliver and this has served to reinforce my view that Ms Chana was de facto operating as an employee of the UHB.
- 92 In **paragraphs 50 to 58**, I conclude that the UHB's contracts with RKC Associates were for the provision of management consultancy contracts for the purposes of public procurement rules. However, for the purposes of tax regulations, I consider that due to the scope and nature of the activities undertaken, Ms Chana should have been regarded as an off-payroll public sector appointee. In consequence, the UHB has potentially incorrectly recovered VAT totalling £58,162 from HMRC on payments made to RKC Associates in respect of the period November 2014 to March 2016. Notwithstanding this conclusion, I do not consider that the agreements were employment contracts for the purpose of the exception in the Public Contract Regulations 2006 and 2015.

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

- 93 The public has a right to expect public officials to carry out their responsibilities demonstrating high standards of behaviour. The UHB has put in place a 'Standards of Behaviour Framework Policy Incorporating Declarations of Interest, Gifts Hospitality and Sponsorship' (the Standards of Behaviour Framework). The Standards of Behaviour Framework states that: 'the Board expects all Independent Members and Employees to practice high standards of corporate and personal conduct, based on the recognition that the needs of patients must come first'.
- 94 The Standards of Behaviour Framework sets out guidance for UHB staff and independent members on managing and recording potential conflicts of interests. Of particular relevance are the following statements, members of staff should:
- 'Verbally declare any relevant interest when a potential conflict arises, eg at Board and committee meetings, during procurement processes;
 - observe the Standing Orders, Standing Financial Instructions and procurement policies and procedures of the UHB;

- if the employee is requested to participate in the procurement process they will be asked to reaffirm their interests and to confirm that there are no other relevant interests that should be declared;
- remember that the need to declare an interest also includes those of your close family and possibly friends; and
- declare any relevant interests (including anything) that could cause a potential conflict of interest.'

- 95 In the Summer/Autumn of 2014, as set out in [paragraph 19](#) the UHB's Chief Operating Officer, Ms Casey, contacted a former colleague, Ms Chana and informed her that the UHB was looking to procure interim support to the UHB's Workforce and Organisational Development Department whilst the Department's Director was on secondment. This ultimately led to Ms Chana's company, RKC Associates, being awarded three consultancy contracts with a value of £290,809 + VAT.
- 96 Ms Casey maintains that at the time she approached Ms Chana it had been several years since she had worked with Ms Chana and that their association was entirely professional. Furthermore, whilst she introduced Ms Chana to the UHB's then Chief Executive, Professor Cairns, she played no part in the decision to award a contract to Ms Chana's company, RKC Associates in November 2014, nor was she involved in negotiating the terms of the engagement. However, as set out in [paragraph 31](#), the available documentation indicates that Ms Casey was integrally involved in negotiating the terms of the engagement and signed the contract on behalf of the UHB.
- 97 Given Ms Casey's past association with Ms Chana, she should have formally declared this through the UHB's formal systems for declaring potential and actual interests, and she should have sought advice on whether it was appropriate for her to have any role in the procurement or contracting processes. Ms Casey did not formally declare what could be perceived to be a relevant interest.
- 98 Ms Casey was open with colleagues regarding her past association with Ms Chana, and this has been confirmed to me by the UHB's Nursing Director and the former Chief Executive and former Director of Finance. Had the matter been declared, it may have been determined that the interest was sufficiently remote that Ms Casey should not be disqualified from participating in any procurement and contracting process conducted in accordance with the UHB's SFIs.

- 99 However, as set out in this report, Ms Casey signed significant contracts with RKC Associates in November 2014 and June 2015 without having:
- sought advice from the UHB's Procurement Department;
 - ensured that the contract had been procured in accordance with the UHB's SFIs and Scheme of Delegation and Earned Autonomy Framework; and
 - ensured due diligence checks had been undertaken in respect of RKC Associates and Ms Chana.
- 100 If these services had been procured through the UHB's Procurement Department, Ms Casey would have been required to complete declaration of interest forms before participating in the procurement processes. However, because proper process was not followed, Ms Casey was not requested to, nor did she complete declaration of interest forms in respect of these procurements.
- 101 Ms Casey's failure to ensure that the contracts awarded to RKC Associates in November 2014 and June 2015 had been procured through proper processes in conjunction with her past association with Ms Chana, which was not formally declared, has cast doubt over whether the decisions to award these consultancy contracts to Ms Chana's company were based on entirely valid considerations.

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

The amount paid to RKC Associates exceeded the agreed contract value, but no contract variation was agreed and the overspend was not reported

- 102 When contracts for services are awarded by public bodies to external suppliers it is essential that financial monitoring arrangements are put in place to ensure that:
- the amounts paid to a supplier are in accordance with the agreed contractual terms;
 - any variations between the agreed terms are formally agreed and reported; and
 - all amounts charged by the supplier under the contract are scrutinised to ensure that they are legitimate contract expenses.

- 103 RKC Associates submitted invoices to the UHB in respect of consultancy undertaken for the UHB between November 2014 and March 2016. The work undertaken related to three consultancy contracts.
- 104 Under the terms of the contracts, RKC Associates was contracted to provide up to a maximum of 252 days of consultancy service at a rate of £1,000 + VAT a day with a total contract value of £252,000 + VAT. RKC Associates submitted invoices to the UHB for provision of 264.5 days of consultancy at a rate of £1,000 + VAT amounting to £264,500 + VAT. This was some £12,500 in excess of the agreed contractual amounts.
- 105 Ms Chana submitted invoices for the work undertaken to Ms Casey who authorised the invoices and in turn forwarded the invoices to the UHB's Finance Department for payment.
- 106 Whilst I have no reason to doubt that Ms Chana delivered the consultancy days for which the UHB was invoiced, the UHB has been unable to provide me with any documentation approving a variation of the contract terms or reporting the contract overspend and the reasons for it.

RKC Associates received payments of £26,309 + VAT in respect of expenses incurred in delivering its consultancy contracts with the UHB, but the UHB did not seek to verify that these expenses were legitimate under the contract terms

- 107 The terms of the contracts between RKC Associates and the UHB made provision for RKC Associates to claim reimbursement of expenses that had been incurred in delivering the contracts such as the cost of train travel, accommodation in Cardiff and taxi fares. In October 2014, the UHB's Finance Department agreed amendments to the contract proposed by Ms Chana setting out the maximum rates of expenses that Ms Chana would be able to claim. Further contracts awarded to RKC Associates in June 2015 and February 2016 set out that Ms Chana would be able to claim at the same rates as UHB employees.
- 108 During the period November 2014 to March 2016, RKC Associates was reimbursed £26,309 + VAT for expenses incurred. Ms Chana set out the amount of expenses she was seeking reimbursement of on each of RKC Associate's invoices. However, the invoices did not detail what the expenses related to or what rates were being claimed. Furthermore, no supporting receipts or invoices were provided in respect of the expenses claimed. Ms Chana states that she kept these receipts and offered to provide them to the UHB, but they were never requested. Despite the lack of detail provided to support Ms Chana's claims for reimbursement of expenses, the Chief Operating Officer, Ms Casey, authorised the invoices for payment and forwarded them to the UHB's Finance Department for payment processing.

- 109 Ms Casey did not have sight of any supporting documentation when authorising the expenses claims, and it appears that no effort was made to confirm that the expenses being claimed were legitimate contractual expenses. The UHB subsequently reclaimed VAT from HMRC in respect of these expenses, however, in the absence of any evidence to support what the expenditure related to and whether the amounts being claimed were gross or net of VAT, the UHB is not able to demonstrate that it was entitled to reclaim VAT.

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

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

- 110 On 4 December 2015, the six-month contract awarded by the UHB to RKC Associates in June 2015, (which was superseded by a contract awarded in July 2015) reached the end of its duration.
- 111 Ms Casey states that she reminded the then Chief Executive, Professor Cairns, in late November 2015 that the contract with RKC Associates was due to terminate.
- 112 At some point in December 2015, the UHB's Director of Corporate Governance contacted the UHB's Assistant Director of Finance to seek advice on the procurement requirements for a three-month consultancy contract. The Director of Corporate Governance cannot recollect the circumstances which prompted him to speak to the Assistant Director of Finance regarding this matter.
- 113 On 22 December 2015, the Assistant Director of Finance met with the UHB's Head of Procurement and the Head of Procurement advised that the proposed three-month consultancy contract needed to be procured through a competitive tendering exercise, in accordance with the UHB's SFIs.

- 114 On 23 December 2015, the UHB's Head of Procurement placed a contract notice advertising the availability of a three-month HR consultancy contract and inviting potential suppliers to submit tenders for the contract by 6 January 2016. Six tenders were received and evaluated by the UHB's Head of Procurement and a Procurement Officer on 7 January 2016. Following the evaluation, the Procurement Officer produced a draft procurement evaluation report and request for approval to award the contract. The Procurement Officer states that she sent these documents to the Chief Operating Officer, Ms Casey, at her request for acceptance or amendment. On 28 January 2016, the Head of Procurement e-mailed updated versions of the procurement evaluation report and request for approval to Ms Casey's Executive Assistant seeking approval to award the contract to RKC Associates. Ms Casey authorised the procurement evaluation report on 1 February 2016 and the UHB's Director of Finance authorised the request for approval on 9 February 2016.
- 115 On 12 February 2016, the UHB's Head of Procurement wrote to Ms Chana awarding RKC Associates the contract. The contract award letter specifies the period of the contract as 4 January 2016 to 31 March 2016.
- 116 During the course of my audit, the UHB provided me with a copy of a letter dated 14 December 2015 addressed from Ms Casey to Ms Chana and signed with Ms Casey's electronic signature which states: 'Cardiff and Vale University Health Board wishes to contract with you for the provision of support in respect of the interim cover required for the director of Workforce and Organisational Development role and the duration subject to the hiring of a permanent Director of Workforce and Organisational Development, which is now underway with interviews scheduled. During this period, the expected deliverables will be as follows:
- senior level interim support to the Directorate of Workforce;
 - implementation of the plans to reduce sickness absence; and
 - implementation of the plans to improve recruitment and retention especially for Band 5 nurses.'
- 117 The specification for the three-month consultancy contract set out in the letter dated 14 December 2015 is ostensibly the same as the contract advertised by the UHB's Procurement Department on 23 December 2015. It therefore appears that Ms Chana was informed in writing that she had been awarded the three-month consultancy contract in advance of the procurement process commencing.

- 118 Ms Casey maintains that the letter was prepared by ‘the HR Department’ and that she did not have any involvement in requesting the preparation of the letter. Ms Casey maintains that she believes the letter of 14 December 2015 was not sent to Ms Chana.
- 119 I have not been able to confirm definitively whether or not the letter was sent to Ms Chana. However, Ms Chana recommenced consultancy work at the UHB, reporting to Ms Casey, on 14 December 2015, the same date as the letter, and carried out 35 days of consultancy work for the UHB at a rate of £1,000 + expenses and VAT between 14 December 2015 and 11 February 2016.
- 120 Ms Casey maintains that she did not authorise the preparation of the letter dated 14 December 2015, nor does she believe it was sent to Ms Chana. However, if the letter dated 14 December 2015 was not sent to Ms Chana, it appears that Ms Chana reported to work at the UHB on 14 December 2015, undertook 35 days of consultancy work during the period 14 December 2015 and 11 February 2016 without having a contract in place, and Ms Casey authorised the payments to RKC Associates in respect of this work. Ms Casey has confirmed that she was aware at the time that the contract awarded to RKC Associates in June 2015 terminated on 4 December 2015.
- 121 Ms Chana has also confirmed that the letter dated 14 December 2015 would have been the basis for her engagement with the UHB from 14 December 2015.
- 122 I consider that the evidence strongly supports a conclusion that Ms Chana was informed that RKC Associates had been awarded a three-month consultancy contract and commenced work on that contract in advance of the tender process conducted by the UHB.

Backdating of contract awarded on 12 February 2016

- 123 The procurement evaluation report and the request for approval to appoint RKC Associates sent to the then Chief Executive on 28 January 2016, and the contract award letter sent to Ms Chana on 12 February 2016, state that the three-month contract period would run from 4 January 2016 to 31 March 2016. This was despite the fact that the deadline for receipt of tenders was 6 January 2016 and the date of contract award was 12 February 2016. Both of these documents were drafted within the UHB’s Procurement Department. It therefore appears to me that it was known that RKC Associates was already delivering the advertised contract in advance of tenders for the contract being evaluated.

- 124 The contract start date was backdated to 4 January 2016, before the deadline for receipt of tenders. In my view, this was because Ms Chana had already been engaged on 14 December to deliver what was ostensibly the same contract which was officially awarded on 12 February 2016.
- 125 The Head of Procurement provided a copy of the draft procurement evaluation report which she maintains was sent to Ms Casey for her acceptance or amendment. This document was dated 7 January 2016 and set out that the contract period would run from 7 January 2016 to 31 March 2016.
- 126 Subsequent to this, an updated version of the procurement evaluation report was produced. This document was dated 27 January 2016, and the contract period was amended from the earlier version to cover the period 4 January 2016 to 31 March 2016. The updated version of the procurement evaluation report was sent to Ms Casey's Executive Assistant on 28 January 2016 and signed by Ms Casey on 1 February 2016.
- 127 The Procurement Officer states that she backdated the contract start date to 4 January 2016 in the final version of the procurement evaluation report, the request for approval and the contract award letter, following an instruction she received by telephone from the UHB Headquarters. She has told me that she cannot recall who gave this instruction. The Head of Procurement has provided me with an undated file note that she told me was prepared by the Procurement Officer. The file note states: 'Contract awarded 12 February 2016, however advised that RKC Associates had early start of 4 January 2016 and this is detailed on the [Request for Approval] and Acceptance letter to ensure the full contract value is encapsulated'.
- 128 Any procurement specialist should have been aware that an instruction to backdate a contract award is highly irregular. The Procurement Officer should have been deeply concerned at being informed that a supplier was already delivering the contract in advance of the deadline for receipt of tenders. It is surprising that the Procurement Officer cannot recall who gave her the instruction to backdate the contract period and did not record this in her file note.
- 129 The Procurement Officer should have refused the instruction and raised the matter with the Head of Procurement. The Head of Procurement has told me that the Procurement Officer did not draw the matter to her attention at the time, albeit the Head of Procurement signed the request for approval and the contract award letter, both of which had been backdated. The Head of Procurement has also told me that she had no knowledge of the letter dated 14 December 2015 referred to in [paragraph 116](#).

- 130 When awarding contracts to external suppliers, public bodies have a duty to ensure that they act with integrity, transparency and can demonstrate that potential suppliers have been treated fairly. Failure to do so has the effect of undermining public confidence in organisations entrusted with delivering key services on their behalf.
- 131 The UHB has adopted principles to guide its approach to public procurement and these are set out in the UHB's SFIs. The principles are:
- 'Transparency: public bodies should ensure that there is openness and clarity on procurement processes and now they are implemented
 - Non-discrimination: public bodies may not discriminate between suppliers or products on grounds of their origin
 - Fair treatment: suppliers should be treated fairly and without discrimination, including in particular equality of opportunity and access to information
 - Legality: public bodies must conform to European Community and other legal requirements
 - Integrity: there should be no corruption or collusion with suppliers or others
 - Effectiveness and efficiency: public bodies should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement
 - Efficiency: procurement processes should be carried out as cost effectively as possible and secure value for money.'
- 132 In my view, the decision to progress a procurement process in respect of a contract which appears to have already been awarded has very serious implications. These include:
- the UHB has failed to comply with its own procurement principles.
 - the actions of the officer(s) responsible is likely to seriously undermine the trust and confidence of potential suppliers in the integrity of the UHB's procurement processes.
 - potential suppliers submitted tenders for the contract in good faith and incurred costs in so doing. They were unaware that there was no possibility of winning the contract because, in my view, the contract had already been awarded. In consequence, the UHB has laid itself open to possible legal claims from these tenderers.
 - valuable public resources have been used conducting a process, the outcome of which had been predetermined.

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 been engaged in advance of the procurement process commencing

- 133 As set out in paragraphs 110 to 132, the evidence strongly suggests that the outcome of the tender exercise that led to the award of a three-month contract to RKC Associates in February 2016 was predetermined. The tender exercise was essentially an artificial exercise given that RKC Associates had already been engaged on 14 December 2015. This calls into serious question the integrity of the procurement process.
- 134 The initial evaluation of the six tenders received by the tender deadline of 6 January 2016 was carried out by the Head of Procurement and the Procurement Officer as a desktop exercise with no involvement from other UHB officers. I would have expected an HR specialist with significant professional HR experience to have provided technical input to the evaluation of tenders given the contract was to provide senior level HR support to the UHB. Paragraph 10.2 of the UHB's SFIs states that: 'evaluation of tenders shall be entrusted to the appropriately qualified and experienced staff with the appropriate knowledge and skills to ensure that tenders are assessed in a robust and fair manner'. However, a file note maintained by the Procurement Officer records that the Chief Operating Officer, Ms Casey, requested that Procurement undertake the evaluation, 'due to the impartiality of Procurement'. This note indicates that Ms Casey recognised that she was not impartial in respect of this tender exercise.
- 135 After the initial evaluation exercise had been completed, the Procurement Officer produced a document pack containing a draft procurement evaluation report dated 7 January 2016, draft evaluation scores, a draft request for approval to award the contract, as well as copies of the tenders received. The Head of Procurement has confirmed that the document pack was provided to Ms Casey, at Ms Casey's request, for acceptance or amendment. The Procurement Officer states that she hand-delivered the document pack to the UHB building where Ms Casey was based, marked for her attention. The Procurement Department has not retained a copy of the document pack sent to Ms Casey. The Procurement Department has, however, been able to locate copies of each of the documents contained within the evaluation pack, other than the draft request for approval.

- 136 The draft procurement evaluation report dated 7 January 2016 records that whilst RKC Associates was the highest priced tenderer, its tender was awarded full marks on the other tender criteria (capability and internal and external alignment). In consequence, RKC Associates was identified as the highest scoring tenderer overall and the report recommended that RKC Associates be awarded the contract. The draft procurement evaluation report included spaces for Ms Casey and the UHB's Director of Finance to sign as authorising officers. Ms Casey has told me that she has no recollection of receiving the tender evaluation pack.
- 137 The Procurement Officer states that she asked for the procurement evaluation report to be authorised and returned to her on several occasions. On 27 January 2016, she produced a slightly amended version of the procurement evaluation report which she e-mailed to the UHB's Headquarters on 28 January 2016. The report was signed by the Chief Operating Officer, Ms Casey, on 1 February 2016 as the authorising officer. The tender evaluation scores in the final version of the procurement evaluation report are identical to those in the first iteration of the report dated 7 January 2016. The evaluation scores were therefore unchanged from the initial evaluation undertaken within the Procurement Department. On 28 January 2016, the Procurement Officer sent the final procurement evaluation report and the request for approval to Ms Casey's Executive Assistant. The request for approval states the contract value as £45,000 excluding VAT.
- 138 In my view, the integrity of the tender process was compromised due to the tender timetable, the involvement of the Chief Operating Officer, the backdating of the contract and the inherent advantage that RKC Associates had in the process. Each of these aspects is considered further below.

The timetable for submitting tenders had potential to restrict the number of tenderers

- 139 The contract advertisement was published on Wednesday 23 December 2015. The deadline for submission of tenders was midday on Wednesday 6 January 2016. This provided potential tenderers just six full working days, including Christmas Eve and New Year's Eve, to prepare and submit tenders. In my view, the timetable for the submission of tenders had the potential to restrict the number of tenders received. The Head of Procurement states that she was instructed to adhere to this timetable by Ms Casey because there was an urgent requirement for the service.

- 140 The Head of Procurement has provided me with a file note dated 22 December 2015 of a telephone conference she had held with Ms Casey and the UHB's Assistant Director of Finance regarding the tender process. The note records that Ms Casey 'confirmed urgent and can the tender be issued today'. However, this urgency was not in evidence after the deadline for receipt of tenders had passed. It was over four weeks' later that the UHB awarded RKC Associates the three-month consultancy contract (with only seven weeks remaining before the end of the three-month contract period specified in the contract award letter).
- 141 The Head of Procurement has told my auditors that Procurement staff contacted the UHB's Executive Headquarters on several occasions prior to 28 January 2016 seeking approval for the contract award but there was a delay in the approval process. The Chief Operating Officer, Ms Casey, did not sign the procurement evaluation report until 1 February 2016. She has told us that she does not know what the cause of the delay was. In my view, there was no urgency to formally award the contract because the recommended supplier had already been engaged on 14 December 2015 to deliver the contracted work.

The UHB's Chief Operating Officer participated in the procurement process when she was not impartial as she knew RKC Associates had already been engaged before the procurement process commenced

- 142 The initial scoring of tenders was undertaken by Procurement Department staff at the request of the Chief Operating Officer, Ms Casey. However, according to the Head of Procurement, Ms Casey instructed that the draft evaluation scores be sent to her. The Head of Procurement states that the purpose of sending the draft scores to Ms Casey was to enable Ms Casey to either approve the draft scores or to amend the scores as she saw fit. The Head of Procurement considered this to be an important control as the Procurement staff undertaking the evaluations were not specialists in HR and Ms Casey had an HR background.
- 143 In the event, Ms Casey did not request changes to the scores and signed the final procurement evaluation report, which recommended that RKC Associates be awarded the contract. However, Ms Casey should have played no role in the tender process as she had already recognised and informed the Procurement Department that she could not act impartially because Ms Chana had been reporting to her over the period of her past consultancy engagements at the UHB.

- 144 More fundamentally, in my view, Ms Casey was unable to act objectively and impartially in respect of the procurement process because, as set out in [paragraphs 110 to 122](#), Ms Casey was aware that Ms Chana had already been engaged to deliver the contract being tendered. Ms Casey should not have played any role in initiating a tender process or in evaluating the tenders. I consider that Ms Casey had an actual conflict of interest in respect of this matter.
- 145 Ms Casey disputes that she was involved in the tender process and states that: ‘she was not asked to nor did she assume responsibility for the competitive tender process’. Ms Casey further states that she was on leave abroad from 18 December 2015 to 30 December 2015, the period in which the contract opportunity was tendered, and that the only recollection she has of the tender evaluation process was to ask the Procurement Department to undertake the evaluation process.
- 146 I consider, however, that Ms Casey’s account is inconsistent with the contemporaneous documentation and the accounts of other officers of the UHB. All of which strongly support the position that Ms Casey was directly involved in both initiating the procurement process and participated in the tender evaluation process. My conclusion is based upon the following:
- as set out in [paragraph 140](#), the Head of Procurement provided me with a file note dated 22 December 2015 of a telephone conference held between the Head of Procurement, Ms Casey and the UHB’s Assistant Director of Finance, which records that Ms Casey informed the Head of Procurement of the contract specification to be advertised and that Ms Casey requested that the procurement process be progressed urgently. Both the Assistant Director of Finance and Ms Casey have confirmed that this phone conference took place.
 - the draft procurement evaluation report dated 7 January 2016 includes a space for Ms Casey’s signature at the end of the report, indicating that Procurement considered that Ms Casey was the commissioning/ initiating officer.
 - the Head of Procurement has told me that the draft tender evaluation pack was sent to Ms Casey, at her request, to confirm or amend the tender evaluation scores, and a file note retained by the Procurement Department dated 22 December 2015 records that Ms Casey ‘requested that Procurement undertake the evaluation and send draft to [Ms Casey] for review’.
 - the final version of the procurement evaluation report dated 27 January 2016 was signed by Ms Casey on 1 February 2016 recommending that RKC Associates be awarded the contract. Ms Casey signed this document as the UHB officer responsible for this contract.

- the Head of Procurement has provided me with a declaration of interest form signed by Ms Casey in respect of the procurement process. The only officers requested by the Procurement Department to complete a declaration of interest form are those involved in the tender evaluation process. Ms Casey completed the form to record that she had no interests to declare.

The contract was awarded on 12 February 2016 but the contract start date was inappropriately backdated to 4 January 2016

147 As set out in paragraphs 123 to 132, the contract was awarded to RKC Associates on 12 February 2016, but the contract documentation was backdated by the Procurement Officer to show a contract start date of 4 January 2016, two days before the deadline for receipt of tenders. The Procurement Officer states that she received an instruction to backdate the contract documentation on the basis that the consultant had already commenced work on site before that date. The Procurement Officer cannot recall who gave the instruction or when that instruction was given. I have therefore been unable to determine who issued this instruction. Nevertheless, the fact that the Procurement Officer continued to progress the procurement process to contract award after she became aware that the consultant was already delivering the contract, calls into question the Procurement Officer's objectivity regarding the procurement process. Furthermore, in my view, the integrity of the procurement process was fundamentally compromised.

RKC Associates had a significant advantage in the tender process as the contract specification directly followed on from previous contracts RKC Associates had been awarded by the UHB in November 2014 and June 2015 without competition and in breach of the UHB's SFIs

148 In my view, RKC Associates had a significant advantage in the tender process. The two specific deliverables of the contract opportunity advertised on 23 December 2015 were to implement the plans:

- to reduce sickness absence; and
- to improve the recruitment process.

149 The plans referred to were plans which RKC Associates had been required to produce and implement by May 2015 under the contract it had been awarded by the UHB in November 2014. RKC Associates had also been contracted to implement these plans in the contract it had been awarded by the UHB in June 2015. The contracts awarded to RKC Associates in November 2014 and June 2015 had been awarded without competition and in breach of the UHB's SFIs.

The Procurement Department failed to keep adequate documentation of the procurement process

150 When undertaking a procurement exercise, those involved in procurement decisions must maintain good documentation to show what decisions have been taken, who made those decisions and the reasons for those decisions. This is critical if the UHB is to be able to demonstrate transparency and objectivity in decision making.

151 In my view, the documentation maintained and/or retained by the Procurement Department in respect of the HR consultancy contract awarded to RKC Associates in February 2016, was deficient in some key respects:

- whilst the Procurement Department maintained a matrix showing how tenderers were scored against the evaluation criteria, in my view, the narrative recorded for assessing the qualitative aspects of the tenders, (80% of the total marks) does not provide sufficient information to justify the scores allocated. This concern is accentuated by the fact that the procurement staff who carried out the initial scoring of the tenders had no specialist knowledge of HR consultancy. The Head of Procurement has told me that the scores were authorised by Ms Casey who 'is an HR professional'. Whilst Ms Casey signed the procurement evaluation report, no evidence has been provided to me to indicate that Ms Casey carried out a professional, specialist HR assessment of the scores awarded by the Procurement Department,
- as set out in [paragraph 135](#), the Head of Procurement maintains that the Chief Operating Officer requested that the draft tender evaluation scores be sent to her for acceptance or amendment. The Head of Procurement states that the Procurement Department did not retain a hard copy of the draft tender evaluation pack sent to Ms Casey, and that the electronic versions of the draft procurement evaluation report and request for approval document contained within that pack were overwritten when these documents were finalised. Several months after auditors acting on my behalf requested these key documents, the Procurement Department managed to locate a hard copy of the draft procurement evaluation report.
- as set out in [paragraph 127](#), the Procurement Officer maintains that she was instructed by telephone that the procurement evaluation report dated 27 January 2016 and the contract award letter sent to RKC Associates on 12 February 2016 should stipulate that the contract period was 4 January 2016 to 31 March 2016. This was despite the fact that the deadline for receipt of tenders was 6 January 2016. Whilst the Procurement Department holds a file note recording that an instruction was given, the file note is not dated nor does it record who gave the instruction.

- the request for approval sent to Ms Casey's Executive Assistant on 28 January 2016 by the Procurement Department stated that the total value of the contract to be awarded to RKC Associates was £45,000 + VAT. The Procurement Department holds no written record to support the contract value. Furthermore, this value is inconsistent with the tender submitted by RKC Associates, which indicated that the work would cost £52,000 + expenses + VAT (based on four days a week for 13 weeks at £1,000 a day + VAT). The Head of Procurement has told me that the difference was due to Procurement becoming aware that Ms Chana would be taking leave during the contract period. The Head of Procurement has told me that the Procurement Officer was informed of this by a UHB officer, but did not keep a file note of the conversation and cannot recall who spoke to her.
- the Head of Procurement has stated that the contract specification was instructed by Ms Casey in a telephone conference on 22 December 2015 and she has provided me with a file note of the discussion which took place. Nevertheless, the Procurement Department should have requested confirmation in writing of the specification from the individual authorising the commencement of a procurement process in advance of advertising the contract.

152 During the course of my audit, I was disappointed with the responses received from the Procurement Department in respect of audit requests for information and documentation needed for my audit. The Procurement Department has failed to locate documents requested, stated that some documents did not exist and subsequently found them and provided inconsistent answers to audit questions. In short, the Procurement Department did not maintain an adequate audit trail in respect of the procurement in question. I have previously set out concerns regarding the standard of documentation maintained by the Procurement Department when reporting my audit of the accounts of the UHB for 2012-13, 2013-14 and 2014-15. The Head of Procurement has acknowledged that the standard of documentation in respect of the procurement should have been better and that, in hindsight, several things should have been done differently during the procurement process.

153 The Head of Procurement has told my auditors that since this audit commenced the Procurement Department has introduced a number of measures to improve internal procurement processes and documentation including:

- providing training for all procurement staff with particular emphasis on escalation and challenge;
- clarifying and improving contract approval processes, including a requirement for all consultant/interim appointments to be approved by the Chief Executive;

- undertaking local quarterly audits of OJEU and sub-OJEU procurements, (in addition to existing audits);
- amending procurement documentation to clarify procurement approval hierarchies; and
- the Procurement Department has applied for ISO 9001 quality management accreditation in respect of the UHB's procurement processes and an accreditation assessment is due to take place in September 2017.

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

- 154 In September 2015, the UHB commenced a process to appoint a new Director of Workforce and Organisational Development following the resignation of the previous post-holder. On 30 September 2015, the UHB advertised the post with a deadline for receipt of applications of 6 November 2015. Ms Chana, the owner of RKC Associates states that she was approached by the then Chief Executive, Professor Cairns, in December 2015 who asked her to consider applying for the post (although the deadline for applications had passed). Ms Chana says that that she informed the then Chief Executive after the Christmas 2015 holidays that she was willing to apply for the role 'if the salary and flexible working needs could be met'. I have commented on the recruitment process followed by the UHB in [paragraphs 167 to 187](#).
- 155 On 13 January 2016, Ms Chana was interviewed for the permanent position of Director of Workforce and Organisational Development by a recruitment panel. The Welsh Government's Director of Workforce and Organisational Development for NHS Wales, (who was on the recruitment panel in her capacity as the Head of Profession for Workforce and Organisational Development in NHS Wales) has told my auditors that she was not satisfied that Ms Chana had fully demonstrated the competencies required for a permanent appointment and therefore made it clear that the UHB could not offer Ms Chana a permanent position. She states that she suggested to the other members of the recruitment panel that the UHB could offer Ms Chana a one-year, fixed-term appointment with the condition that the post would be re-advertised and subjected to open competition before the end of the one-year period. Having discussed this, the recruitment panel agreed to offer the position to Ms Chana on the suggested basis.

- 156 At some point between the recruitment panel meeting of 13 January 2016 and a meeting of the UHB's Board on 28 January 2016, Ms Chana was verbally offered the position of the UHB's Director of Workforce and Organisational Development. I have not been able to ascertain the date or the terms of this offer.
- 157 On 28 January 2016, the then Chief Executive, Professor Cairns, verbally informed a meeting of the UHB's Board that Ms Chana 'had been appointed to the Executive post after open competition'.
- 158 On the same day, 28 January 2016, Professor Cairns wrote to the Chief Executive of NHS Wales regarding the appointment stating that Ms Chana 'performed excellently at interview and I am delighted to be able to offer her the role.' and that Ms Chana 'is seeking to secure a salary of £150k. The current range for the role is up to £134k. I am therefore looking for your support to enable the Board to offer this post, subject to all the usual qualifications, at the rate of £150k'. As the proposed salary was above the Welsh Government's approved salary range of £125,000 to £134,000 for NHS executive directors, the UHB needed Welsh Government approval to appoint at the higher salary level.
- 159 However, the letter to the Welsh Government did not refer to a fixed-term appointment and, as Ms Chana was deemed not to have met the standard required for a permanent appointment in the assessment process, the Welsh Government was unable to approve Ms Chana's appointment to a permanent post regardless of salary. The Welsh Government's Director of Workforce and Organisational Development for NHS Wales advised the Chief Executive of NHS Wales that the letter was inconsistent with the recruitment panel agreement and it was conveyed to Professor Cairns that the Welsh Government would only be prepared to support a request for approval of the salary level if that request was for a one-year fixed term appointment in line with the panel's agreed outcome.
- 160 On 2 February 2016, Professor Cairns provided a written report to the UHB's Remuneration and Terms of Service Committee stating that Ms Chana: 'has now been verbally offered the post on an initial 12-month contract' and was seeking the Committee's approval to offer Ms Chana a salary of £150,000 subject to Welsh Government approval.
- 161 The Remuneration and Terms of Service Committee ratified the salary arrangements to be offered to Ms Chana subject to Welsh Government approval (based on a one-year fixed-term appointment).

- 162 On 5 January 2016, Ms Chana had submitted a tender to undertake HR consultancy work at the UHB. This contract was not awarded until 12 February 2016. However, the Remuneration and Terms of Service Committee had approved Ms Chana's appointment as Director of Workforce and Organisational Development on 2 February 2016 subject to Welsh Government approval and the Board had been informed of Ms Chana's appointment to the post on 28 January 2016. The appointment of Ms Chana to the post of Director of Workforce and Organisational Development should have been a material factor in the decision on whether to award a further consultancy contract to RKC Associates. The UHB had the option to cancel or delay the procurement process to enable Ms Chana to take up the post of Director of Workforce and Organisational Development. Nevertheless, Ms Chana was awarded a further consultancy contract with a three-month duration.
- 163 As set out in [paragraph 158](#), Professor Cairns wrote to the Welsh Government on 28 January 2016 seeking support to appoint Ms Chana as the UHB's Director of Workforce and Organisational Development on a salary of £150,000, but the Welsh Government's Director of Workforce and Organisational Development for NHS Wales, having received a copy of the letter, told Professor Cairns that a request to approve the salary for a permanent appointment could not be considered and that she would only be prepared to support a proposal for a one-year fixed-term appointment, as had been agreed by the recruitment panel. However, Professor Cairns did not write to the Chief Executive of NHS Wales requesting approval for a fixed-term appointment with an annual salary of £150,000 until 15 April 2016.
- 164 The Welsh Government's Director of Workforce and Organisational Development for NHS Wales states that in the intervening period she sought updates from the UHB regarding the proposed appointment but she is uncertain as to why the UHB did not submit a request for approval to appoint on a fixed-term basis at a salary of £150,000 until 15 April 2016. The Chief Executive of NHS Wales replied to Professor Cairns' letter of 15 April 2016 on 21 April 2016 approving the appointment at a salary of £150,000.
- 165 Professor Cairns wrote to Ms Chana on 4 April 2016 formally offering her the post of Director of Workforce and Organisational Development and Ms Chana commenced work as an employee of the UHB on 6 April 2016. This was in advance of Professor Cairns writing to the Chief Executive of NHS Wales to seek approval on 15 April 2016, and to receiving approval for the salary from the Chief Executive of NHS Wales on 21 April 2016.

166 It is unclear why Professor Cairns did not write to the Welsh Government until 15 April 2016 to seek approval for a fixed-term appointment at a salary of £150,000. The former Chief Executive told me that he could not recall the reason for the delay, and that it was probably an administrative issue. However, in view of the other matters outlined in this report, the possibility cannot be ruled out that the purpose of the delay was to enable Ms Chana to undertake the three-month consultancy contract resulting in unnecessary additional expenditure by the UHB. Ms Chana's remuneration as an employee of the UHB would have been less than the amount she received from the consultancy contract (£1,000 + VAT per day).

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

167 As set out in [paragraph 4](#), on 30 September 2015, the UHB's former Director of Workforce and Organisational Development who had been on secondment to another NHS organisation left the employment of the UHB. The UHB then commenced a process to appoint a new Director of Workforce and Organisational Development using recruitment consultants to support the process.

168 Despite a national advertisement campaign, the interest shown in the position was very limited. Three candidates were shortlisted for a panel interview that was scheduled to take place on 7 December 2015. Shortly before the planned panel interviews, two of the shortlisted candidates withdrew from the process. In consequence, the recruitment process was placed on hold until January 2016. Ms Chana told my auditors that she was tasked by the former Chief Executive, Professor Cairns, with taking the recruitment process forward and that the UHB's Workforce Governance Manager was asked to provide co-ordination and administrative support to Ms Chana.

169 Ms Chana states that she was approached by Professor Cairns after the first two shortlisted candidates withdrew in December 2015 and he encouraged her to apply for the post. Ms Chana states that she informed Professor Cairns that she would consider whether to apply over the Christmas/New Year holiday and that, after this period, she informed him that she would apply subject to agreement of salary and flexible working terms. She also states that at this point she advised Professor Cairns that in view of her candidacy it would no longer be appropriate for her to oversee the recruitment process.

- 170 On 4 January 2016, the remaining shortlisted candidate withdrew with the result that Ms Chana was the only candidate for the post. On 13 January 2016, Ms Chana was interviewed by a recruitment panel for the permanent position of Director of Workforce and Organisational Development which comprised the UHB's then Chief Executive, the Chair of the UHB, an independent member of the UHB's Board and the Welsh Government's Director of Workforce and Organisational Development for NHS Wales (in her role as the Head of Profession for Workforce and Organisational Development in NHS Wales). The Welsh Government's Director of Workforce and Organisational Development for NHS Wales recalls that she was only informed at the beginning of the week commencing 11 January 2016 that there was only one candidate, and that candidate was Ms Chana, who had not originally applied for the role.
- 171 The Welsh Government's Director of Workforce and Organisational Development for NHS Wales told my auditors that following Ms Chana's interview she told the other members of the panel that as Head of Profession she considered that Ms Chana had not demonstrated the full range of competencies required of the role. Consequently she was not willing to support Ms Chana's appointment to the post on a permanent basis.
- 172 The Welsh Government's Director of Workforce and Organisational Development for NHS Wales states that she suggested that the UHB could offer Ms Chana a one-year fixed-term appointment on the condition that the post would be re-advertised and subjected to an open competitive process before the end of the one-year period. She recalls that the recruitment panel discussed this proposal and there was agreement to this way forward.
- 173 As set out in [paragraph 157](#), on 28 January 2016, the UHB's then Chief Executive, Professor Cairns, informed the UHB's Board that Ms Chana 'had been appointed to the Executive post after open competition'. The minutes do not state that the appointment was for an interim period, nor do they refer to the need to obtain approval from the Welsh Government for the appointment. As set out in [paragraph 158](#), on the same day Professor Cairns wrote to the Chief Executive of NHS Wales seeking the support of the Welsh Government to appoint Ms Chana to the post at a salary level of £150,000. The letter made no reference to the request being for a fixed-term appointment. The Welsh Government's Director of Workforce and Organisational Development for NHS Wales has told me that on receipt of a copy of this letter she advised the Chief Executive of NHS Wales that the letter was inconsistent with the recruitment panel agreement and this was conveyed to Professor Cairns.

- 174 On 2 February 2016, the UHB's Remuneration and Terms of Service Committee considered a written report from Professor Cairns that stated that: 'Ms Chana has now been verbally offered the post on an initial 12-month fixed-term contract'. It also stated that as the proposed salary of £150,000 was above the Welsh Government's approved salary range of £125,000 to £134,000 for NHS executive directors, approval had been sought from the Welsh Government to pay the higher rate. The letter dated 28 January 2016 from Professor Cairns to the Chief Executive of NHS Wales seeking approval for Ms Chana's appointment was referred to and appended to his written report. The report recommended that Remuneration and Terms of Service Committee ratify: 'the salary arrangements to be offered to Ms Chana subject to Welsh Government approval'.
- 175 At its meeting on 2 February 2016, the Remuneration and Terms of Service Committee received a verbal update from Professor Cairns in which he told the Committee that Ms Chana had been 'successfully interviewed' and 'was seeking a salary of £150k per annum'. He also told the Committee that Ms Chana: 'had agreed a flexible working arrangement which would allow Ms Chana to lead on and role model remote working. The post has been offered on an initial 12-month fixed-term contract which would allow both parties to determine if this flexible working arrangement would work in the long-term, subject to Welsh Government sanction of the starting salary.'
- 176 On 6 April 2016, Ms Chana formally commenced employment as the UHB's Director of Workforce and Organisational Development, albeit the UHB did not seek formal approval from the Welsh Government for the fixed-term appointment at a salary level of £150,000 until 15 April 2016.
- 177 The process followed by the UHB that led to the appointment of Ms Chana to the position of Director of Workforce and Organisational Development in April 2016 was fundamentally compromised, lacked transparency and was poorly documented for the reasons set out below.

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

178 The UHB has not provided any documentation setting out how or why the decision was taken to progress the recruitment process for the post of Director of Workforce and Organisational Development when there was only a single candidate for the post. The post was a Board level position, and the only candidate interviewed had not applied for the post when it was originally advertised. Whilst UHB officers have stated that the response to the original advertisement was poor, the remuneration level agreed with Ms Chana was significantly greater than that originally advertised. In my view, it is possible that if the UHB, following the initial unsuccessful recruitment campaign, had sought approval from the Welsh Government to seek interest to appoint with an improved remuneration package, there may have been greater interest in the opportunity. I have not been provided with a convincing explanation as to why the UHB did not take this course of action.

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

179 On 11 January 2016, Ms Chana wrote to the UHB's Chief Executive, Professor Cairns, formally applying for the post of the UHB's Director of Workforce and Organisational Development and enclosing her CV. This was just two days before Ms Chana was interviewed. It is clear from internal e-mails that Ms Chana was already being treated as the only candidate before 11 January 2016.

180 As set out in [paragraph 170](#), the sole remaining candidate who had originally applied for the position, withdrew her application on 4 January 2016. Nevertheless, internal e-mails show that the UHB continued to progress the recruitment process in the days immediately following this, and Ms Chana was the only possible candidate from 4 January 2016. On 7 January 2016, the UHB's Workforce Governance Manager wrote to Ms Chana informing her of the presentation title for the panel meeting on 13 January 2016, and stating that the then Chief Executive, Professor Cairns, 'has asked me to get a copy of the CV for the panel'. At this point she had not yet submitted an application for the post. I therefore consider that Ms Chana was already a candidate before she formally applied for the role on 11 January 2016.

181 Whilst it is clear that Ms Chana was a candidate for the post in early January 2016, the records kept by the UHB do not provide a clear picture of how and when Ms Chana became a candidate for the recruitment process which she had been overseeing. In consequence, I have been unable to completely satisfy myself that Ms Chana was not overseeing the recruitment process after she became a candidate. Ms Chana has told me that she agreed to become a candidate after the Christmas/New Year holiday and that she withdrew from overseeing the recruitment process when she became a candidate.

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

182 Whilst overseeing the recruitment process, Ms Chana was supported by the UHB's Workforce Governance Manager. The Workforce Governance Manager's responsibilities included developing possible questions to be asked of candidates by the recruitment panel. On 15 December 2015, the Workforce Governance Manager sent Ms Chana an early draft of suggested questions, and a proposed topic that candidates would be expected to present on. The topic sent to Ms Chana was the one Ms Chana was asked to present on at the recruitment panel on 13 January 2016. Some of the questions sent to Ms Chana on 15 December 2015 were also used at the panel. It is probable that on 15 December 2015, Ms Chana was not a candidate for the post of Director of Workforce and Organisational Development. However, once the UHB became aware that the individual leading the recruitment process had become a candidate, every effort should have been made to ensure the integrity of the process was not compromised. It is clear that no such action was taken. Contemporaneous e-mails between Ms Chana and the Workforce Governance Manager indicate that discussions regarding the possible interview questions were ongoing up until 6 January 2016.

183 On 6 January 2016 the Workforce Governance Manager wrote to Ms Chana stating: 'I need to get interview pack etc out to the panel in the next day or two. I'll continue with the questions as we discussed previously'. At this point in time, Ms Chana was already a candidate for the post. The possibility cannot therefore be discounted that Ms Chana had access to the final interview questions in advance of her assessment. Furthermore, Ms Chana was asked to present to the subject of: 'What will your approach be to developing the flexible and prudent workforce we are going to need to deliver our Shaping Our Future Wellbeing strategy.' Ms Chana's CV, which she submitted to the UHB for the purpose of the recruitment exercise, lists as one of her achievements: 'Aligned the

workforce strategy and resources to the new corporate strategy “Shaping Our Future Wellbeing 2015- 2025”.’ Ms Chana was therefore asked to present on the same subject that she had been working on at the UHB under her consultancy contract.

The information provided to the Board and its Remuneration and Terms of Service Committee regarding the appointment was inaccurate, incomplete and inconsistent

184 As set out in [paragraph 157](#), the minutes of a meeting of the UHB’s Board held on 28 January 2016 record that the then Chief Executive gave an oral report stating that: ‘the Interim Director [of Workforce and Organisational Development] had been appointed to the Executive post after open competition’. This statement was misleading for the following reasons:

- it does not reflect the agreement of the recruitment panel that Ms Chana would only be offered an interim contract; and
- it does not refer to the need to obtain approval for the proposed salary range from the UHB’s Remuneration and Terms of Service Committee and from the Welsh Government (as the proposed salary was outside the Welsh Government approved range).

185 As set out in [paragraphs 174 to 175](#), the proposal to appoint Ms Chana as the UHB’s Director of Workforce and Organisational Development on a one-year basis on a salary of £150,000 was put before the UHB’s Remuneration and Terms of Service Committee meeting of 2 February 2016. Neither the Chief Executive’s report to the Remuneration and Terms of Service Committee meeting of 2 February 2016, nor the minutes of that meeting refer to the fact that Ms Chana was the only candidate interviewed for the role. Furthermore, the Chief Executive’s report to the Committee states that Ms Chana ‘performed excellently at interview’ but does not mention the reservations expressed by the Welsh Government’s Director of Workforce and Organisational Development for NHS Wales regarding Ms Chana’s performance at interview, nor the fact that the panel concluded that Ms Chana could not be offered the executive director post on a permanent basis at that time.

- 186 Whilst both the Chief Executive's report and the minutes state that the appointment was for a one-year period, neither record the fact that this was because the Welsh Government's Director of Workforce and Organisational Development for NHS Wales had been unwilling to support a permanent appointment, and that the post would need to be re-advertised at the end of that period. The minutes of the Remuneration and Terms of Service meeting appear to suggest that the reason why a fixed-term contract had been offered to Ms Chana was to determine whether the remote working arrangements would work for both the UHB and Ms Chana in the long-term. The Welsh Government's Director of Workforce and Organisational Development for NHS Wales is clear that the principal reason a one-year contract was offered was because Ms Chana 'was not above the line for the process' and the panel concluded after some discussion that they could not offer a permanent appointment.
- 187 There is inconsistency between the Chief Executive's report to the Remuneration and Terms of Service Committee which proposes that Ms Chana be appointed on a one-year basis, and the letter dated 28 January 2016 appended to the report from the UHB's then Chief Executive to the Chief Executive of NHS Wales, which makes no mention of a fixed-term appointment.

Appendix 1 – Summary of consultancy contracts awarded to RKC Associates and the specified contract deliverables

Exhibit 1: summary of consultancy contracts awarded to RKC Associates

	Contract period	Contract deliverables
Contract 1	1 December 2014 to 31 May 2015	<ul style="list-style-type: none"> • Senior level interim support to the Directorate of Workforce and Organisational Development. • Review with the aim of making more efficient and effective the recruitment process. • Review with the aim of making more efficient and effective the managing attendance process. <p>The contract includes three project phases: Phase 1: Analysis, review and diagnosis (December 2014 to January 2015) Phase 2: Action planning workshops and plan approval (January 2015 to February 2015) Phase 3: Plan implementation (March 2015 to May 2015)</p>
Contract 2	9 June 2015 to 4 December 2015	<ul style="list-style-type: none"> • Provide senior level interim support to the Directorate of Workforce and Organisational Development. • Implementation of the plans to reduce sickness absence to ensure the realisation of the required benefits, utilising best practice methodologies. • Implementation of the plans to improve the recruitment process to ensure the realisation of the required benefits utilising best practice methodologies. • Provide interim support in relation to other priority areas which may arise. Any such support will be undertaken with agreement.
Contract 3	4 January 2016 to 31 March 2016	<ul style="list-style-type: none"> • Senior level interim support to the Directorate of Workforce. • Implementation of the plans to reduce sickness absence. • Implementation of the plans to improve the recruitment process and retention.

Appendix 2 – Payments made by the UHB to RKC Associates for HR consultancy work undertaken from 11 November 2014 to 31 March 2016 (exclusive of VAT)

Exhibit 2: payments made by the UHB to RKC Associates for HR consultancy work

	Consultancy at daily rate	Expenses	Total	Days worked
Contract 1	£104,000	£10,625	£114,625	104
Contract 2	£101,000	£9,888 - £11,078*	£110,888 - £112,078	101
Contract 3	£59,500	£4,606 - £5,796*	£64,106 - £65,296	59.5
Total	£264,500	£26,309	£290,809	264.5

*it is not evident from the invoices submitted by RKC Associates whether certain expenses relate to Contract 2 or 3.

Appendix 3 – Examples of breaches of the UHB’s SFIs in the award of contracts to RKC Associates in November 2014 and June 2015

SFI requirement	Process followed in award of contracts to RKC Associates in November 2014 and June 2015
<p>Procurement of all works, goods and services in excess of £25,000 exclusive of VAT is to be by competitive tendering. (Schedule 1 Para 4.1)</p>	<p>HR consultancy contracts in excess of £25,000 exclusive of VAT were awarded without any competitive tendering process.</p>
<p>The Director of Finance has the responsibility to establish that all firms on the tender list are financially sound and professionally competent through a pre-qualification / financial vetting process undertaken by a suitably qualified and experienced procurement officer. (Schedule 1 Para 5.1)</p>	<p>Neither the UHB’s finance or procurement functions had any involvement in the procurement of RKC Associates and there is no record that any financial or professional vetting of RKC Associates took place.</p>
<p>In accordance with best practice, the LHB should invite a minimum of four companies to tender for contracts of value between £25,000 and the prevailing OJEU threshold. (Schedule 1 Para 5.1)</p>	<p>No tenders were sought or obtained.</p>
<p>Single tender action shall only be permitted when a single firm or contractor or a propriety item or service of a special character is required and as set out in law. Single tender action shall only be employed following a formal submission and with the express written authority of the Chief Executive or designated deputy having taken into consideration due regard of procurement requirements. A detailed record shall be maintained by the Chief Executive. All single tender action and extension of contracts must be reported to the Audit Committee. (Schedule 1 Para 5.1)</p>	<p>RKC Associates was the only supplier approached to deliver the contract. The consultancy services required were not unique and there was a competitive market available. The service could not therefore be procured through a single tender action. There is no written authority for a single tender action, no record has been maintained of a single tender action and no report has been made to the UHB’s Audit Committee.</p>

SFI requirement	Process followed in award of contracts to RKC Associates in November 2014 and June 2015
<p>Subject to complying with any legal requirement and agreed contract conditions, a contract may be extended on a single occasion providing the additional cost does not exceed 50% of the original value of the contract to a maximum of £75,000 exclusive of VAT. Such extension must have the express approval of the Chief Executive or designated deputy in their absence. Where a contract was advertised and includes a legal clause providing the option to extend, such approval is not required unless there is a change to any of the current contract terms and conditions including price. Any contract extensions must be reported to the Audit Committee. (Para 10.8)</p>	<p>The contract awarded to RKC Associates in June 2015 was essentially a continuation of the contract awarded to RKC Associates in November 2014. The value of the extension was in excess of £75,000 + VAT and exceeded 50% of the value of the November 2014 contract. Neither contract was subjected to competition.</p>
<p>Every invitation to tender should be accompanied by the LHB's standard contract terms and conditions, and the basis on which the LHB shall engage in business with the contractor. Where appropriate a customised contract can be developed by senior procurement officials with appropriate legal advice and subject to approval by the Director of Finance. (Schedule 1 Para 5.4)</p>	<p>The UHB had adopted 'NHS Wales Conditions of Contract for the Supply of Services' but these were not used. The Chief Operating Officer signed contracts on behalf of the UHB which had been drafted by Ms Chana of RKC Associates. No advice was sought from either the UHB's Procurement or Legal Departments prior to signing these contracts.</p>
<p>In every contract document a clause shall be included to secure that the LHB shall be entitled to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have prepared his tender in collusion with others, or shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward. (Schedule 1 Para 13.2)</p>	<p>The contracts entered into with RKC Associates in November 2014 and June 2015 were drafted by RKC Associates and these contracts did not include anti-collusion clauses.</p>

SFI requirement	Process followed in award of contracts to RKC Associates in November 2014 and June 2015
<p>Prior to any officer entering into [pre-tender discussions], advice must be sought from the procurement department who should also be afforded the opportunity to be party to any discussions. (Schedule 1 Para 6.2)</p>	<p>The UHB's Chief Operating Officer and Chief Executive met with Ms Chana, the owner of RKC Associates, shortly before RKC Associates was awarded a contract in November 2014. No record has been retained of the discussions which took place, no advice was sought from the Procurement Department before the meeting took place and the Procurement Department was not invited to be present at this meeting.</p>
<p>Should any difficulties arise regarding the interpretation or application of any of the SFIs then the advice of the Board Secretary or Director of Finance must be sought before acting. (Para 1.1.4)</p>	<p>No advice was sought from either the Board Secretary or the Director of Finance regarding the interpretation or application of the SFIs in respect of contracting with RKC Associates.</p>
<p>Full details of any non-compliance with these SFIs, including an explanation of the reasons and circumstances, must be reported in the first instance to the Director of Finance and the Board Secretary, who will ask the Audit Committee to formally consider the matters and make proposals to the Board on any action to be taken. All Board members and LHB officers have a duty to report any non-compliance to the Director of Finance and Board Secretary as soon as they are aware of any circumstances that have not previously been reported. (Para 1.2.1)</p>	<p>The instances of non-compliance with SFIs as set out in this table were not reported to the Board Secretary, Director of Finance, Audit Committee or Board.</p>

Appendix 4 – HM Treasury Review of the tax arrangements of public sector appointees - Summary of recommendations

The review recommends that, in central government departments and their arm's length bodies, for all new engagements and contract renewals:

- board members and senior officials with significant financial responsibility should be on the organisation's payroll, unless there are exceptional circumstances – in which case the Accounting Officer should approve the arrangements – and such exceptions should exist for no longer than six months;
- engagements of more than six months in duration, for more than a daily rate of £220, should include contractual provisions that allow the department to seek assurance regarding the income tax and NICS obligations of the engagee – and to terminate the contract if that assurance is not provided; and
- these measures should be implemented within three months – and implementation will be monitored after one year, reporting back to the Chief Secretary to the Treasury and the Minister for the Cabinet Office; and if it emerges that any departments have not abided by these rules, sanctions will apply – with departmental resource budgets reduced by up to five times the payment in question.

Departments should also seek to apply these principles to existing contracts – subject to ensuring value for money for the taxpayer – and report to Parliament on the outcome as part of the 2012-13 annual report and accounts process.

The Secretaries of State for Health and Education will also consider how to take forward the principles of this approach in the NHS organisations and non-maintained schools that fall under Managing Public Money guidance.

Wales Audit Office
24 Cathedral Road
Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

We welcome telephone calls in
Welsh and English.

E-mail: info@audit.wales

Website: www.audit.wales

Swyddfa Archwilio Cymru
24 Heol y Gadeirlan
Caerdydd CF11 9LJ

Ffôn: 029 2032 0500

Ffacs: 029 2032 0600

Ffôn Testun: 029 2032 0660

Rydym yn croesawu galwadau
ffôn yn Gymraeg a Saesneg.

E-bost: post@archwilio.cymru

Gwefan: www.archwilio.cymru