

**The Highland Council**  
**Audit and Scrutiny Committee**  
**20<sup>th</sup> June 2013**

Agenda Item	11(a)
Report No	AS/19/13

**EU programme audit (ESF): non-compliance finding on the ESOL support for migrant workers Project 0274**

**Report by the Director of Education, Culture and Sport**

**Summary**

This report explains that one ESF project audited was found to be non-compliant and consequently the EU grant has to be repaid.

**1. Background**

- 1.1 The Council first applied for European Social Fund (ESF) support for ESOL - support for migrant workers and their families (2009) on 8 December 2008 and received formal approval of the project's application on 26 May 2009. The project was concluded on 17 April 2010 having achieved 131% of its target in terms of number of people assisted. All claims were submitted achieving 99% of the budget allocated. With the project closed all records were stored in case of audit. A further ESOL project was submitted later in 2009 and approved in February 2010.
- 1.2 The Scottish Government selected both of these ESOL projects for audit as part of the Article 62(1)(b) audit. This type of audit is commissioned by the European Court of Auditors and is an audit of the programme management by the Managing Authority through actual projects. The audit focuses on finances, publicity, beneficiary records and procurement. The Audits were carried out on 28 and 29 March 2012 by members of Audit Scotland operating on behalf of the European Court of Auditors.
- 1.3 At the audit it was identified that the procurement of the contractor (WEA) used by the project did not meet the requirements of the ESF Programme (basically the contract was placed directly with them rather than tendered competitively). The elements of the project that did not relate to procurement were found to be fully compliant. The Council was asked to supply any additional evidence that may prove the appointment of the WEA was carried out in accordance with Public Procurement rules and the Council's own standing orders as well as the ESF Programme rules. Further information was provided on 21 August 2012 and 04 February 2013, but it was deemed to be insufficient to change the audit finding.
- 1.4 In February 2013 the Scottish Governments Structural Funds Division, the Programme Managing Authority (MA) contacted the Council to discuss the audit non-compliance and how to resolve this.

**2. Rectifying the problem**

- 2.1 It should be noted that at the time the project was developed, it was not uncommon across Council services for funding to third sector bodies to be regarded as grant funding rather than as being about services to procure and to follow procurement policy. This was reported to the Resources Committee in February 2010 in the report titled [Improving Working and Financial](#)

Arrangements with the Third Sector. Members agreed the recommendations in the report including the following improvements:

- There must be clarity on whether the Council is purchasing a service or where it is providing grant aid in support of an organisation's objectives (with new guidance under preparation at that time).
- That Contract Standing Orders are to be used for the procurement process, with the Procurement Unit advised of all contracts with the sector.
- These and other improvements would be integrated into the revision of Contract Standing Orders.

The revised guidance has been in use since then and this should reduce the risk of noncompliance occurring again in funding third sector bodies.

2.2 The MA requested that the Council voluntarily withdraw the project from the ESF programme and pay back the claimed grant which amounts to £69,579.96.

2.3 In agreeing to this pay back the grant the Council would:

- avoid a non-compliance marking against the Council;
- reduce the risk further targeted EU audits; and
- reduce the overall non-compliance to the programme across Scotland.

This approach has been approved by the Director of Finance in agreement with the Director of Education Culture and Sport based on the advice of the European Policy Team.

2.4 Consideration was made to re-work the grant application for those elements that did not relate to procurement (amounting to around £27k) and apply retrospectively; however this would require considerable officer time, raise the non-compliance finding with the original application and have no guarantee of success. Indeed the application would most likely fail (the new project would not resemble the original enough) and there is no procedure to allow for such a case in the National Rules or the EU regulations.

### **3. Implications.**

#### **3.1 Financial Implications**

Repayment of £69,579.96 is to be paid from the ECS Service budget.

#### **3.2 Risk implications**

The risk of non-compliance with procurement procedures for third sector organisations since 2010 should have been reduced through the new policy on improving working and financial arrangements with the third sector. Since the policy was implemented it has been subject to internal audit and a follow up audit to be reported as a separate item at a future committee meeting. It should be noted that further EU audits could be requested at any time for the 2007-13 Structural Funds Programme up to the end of 2019.

#### **3.3 Equalities implications**

This project was established to enable inward migrants without English as a first language to settle in the Highlands. It supported the Council's equalities duties with regard to race and to foster good relations in the community. The Auditors commented positively on the support given to clients by the project and the accessibility of the training sessions.

### 3.4 Climate change implications

There are no climate change implications associated with this report.

#### **4. Recommendations**

Members are asked to note the non-compliance with procurement in an ESF project run by the ECS service, as found in an European audit of the Scottish Government's management of EU programmes. The non-compliance has led to the need to repay the ESF grant award amounting to £69,579.96 from the ECS service budget.

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