GCRB Glasgow Colleges' Regional Board

Nominations and Remuneration Committee Meeting

Date of Meeting	Monday 10 October 2016
Paper Title	Current GCRB Establishment and Employment Considerations
Agenda Item	8
Paper Number	NRC2-D
Responsible Officer	Robin Ashton, GCRB Executive Director
Status	Disclosable
Action	For Noting

1. Report Purpose

1.1. The purpose of this report is to provide the Committee with an update on work to implement appropriate contractual arrangements for GCRB staff.

2. Recommendations

2.1. The Committee is invited to:

- **note** the current GCRB establishment;
- **note** the advice received from GCRB's lawyers, CMS Cameron McKenna LLP, and advice received with regards to the proposed Executive Director secondment arrangement;
- **note** the advice received from VAT Services (Scotland) Ltd regarding VAT liabilities related to the proposed Executive Director secondment arrangement;
- **agree** to instruct further legal advice for GCRB as to the employment options available to it, including setting out the financial cost and employment implications for both GCRB as an organisation and for the individuals involved; and
- **request** a further update on GCRB employment arrangements at the next meeting of the committee.

3. Background

3.1 GCRB's current establishment is as follows:

Post	Budget FTE	Actual FTE
Executive Director	1.0	1.0
Executive Assistant	1.0	1.0

3.2 The first employee recruited within this structure was the Executive Assistant. This was initially arranged as a secondment from Glasgow Clyde College, and at a later date, a decision was made to employ the Executive Assistant as a direct GCRB employee. In respect of this latter development, an open interview process was implemented and a GCRB contract agreed with the successful candidate (who was same Glasgow Clyde College employee who had previously worked for GCRB on a secondment basis).

3.3 When the Executive Director post was being recruited, due to potential issues in relation to pensions (the most significant aspect being the risk of GCRB becoming liable for a one-off pension charge relating to the difference between: the incoming transfer value from new Executive Director's existing pension scheme; and the pension liability as at the date of appointment) it was agreed by GCRB that the best approach was to establish a 'permanent secondment' arrangement between the candidate's existing employer, Glasgow Kelvin College, and GCRB. Under this arrangement, the candidate's pension scheme would remain unchanged. Further, because of the different management and funding arrangements for that scheme, it was considered very unlikely that any form of one-off charge will crystallise.

3.4 In line with this position, the Executive Assistant was informed that similar arrangements would also be implemented in respect of their role and that they would also work for GCRB on a secondment basis, with Glasgow Clyde College reverting to being their employer. It should be noted that whilst for the recent period, the GCRB Executive Assistant has been working to a GCRB contract, payroll and pension payments have remained within Glasgow Clyde College's provision of these services and that in employment law terms, the employee would likely be considered a Glasgow Clyde College employee, rather than a GCRB employee.

3.5 At the previous meeting of the Committee, members reviewed a secondment contract for the Executive Director which had been drawn up with advice from HR colleagues at Glasgow Kelvin College. Following consideration by members, it was agreed that the draft secondment agreement should be provided to GCRB's lawyers (CMS Cameron McKenna LLP) for further review.

4 Advice received with regards to the proposed Executive Director secondment arrangement

4.1 The following advice was received from CMS Cameron McKenna LLP with regards to proposed Executive Director secondment arrangement:

- this agreement could incur VAT which would add 20% to the cost of the secondment;
- intellectual property rights should be assigned to GCRB
- there should be a clause on termination of the agreement
- GCRB need to clarify the position on employers liability insurance in case of an accident at work
- there should be a clause on data protection;
- there should be a clause stating that the employee remain a college employee throughout the secondment.

4.2 Of the above issues highlighted by the GCRB lawyer, the incursion of VAT would have a significant financial impact on GCRB running costs (estimated to be around £20k-£30k per year if applicable to both GCRB employees). Given the significant potential financial impact, further advice was sought by City of Glasgow College from a VAT specialist.

4.3 This advice is provided within Annex 1 and confirms that as proposed, VAT would liable on the Executive Director secondment costs.

4.4 In terms of the Executive Assistant, due to them having a GCRB contract it may be that VAT is not liable in this case due to the Paymaster Services exclusion highlighted within the VAT advice report. However, further expert opinion would be required to confirm this.

4.5 Given the complexity of the matters being considered and the risks faced by GCRB with regards potential financial or employment issues, it is recommended that the committee agree to sanctioning further legal advice for GCRB as to the employment options available to it. This advice should seek to set out the pros and cons of the options available to GCRB, including the financial cost and employment implications for both GCRB as an organisation and for the individuals involved.

4. Risk Analysis

4.1. GCRB must have the staff capacity to operate effectively and fulfil its statutory obligations. Although the organisational model used to support GCRB achieve this is based on drawing as much as possible on existing college resources, GCRB will continue to require a small compliment of staff who work directly for GCRB, whether as direct employees or through secondment arrangements.

4.2. GCRB need assurance that the risks associated with any arrangements it has in place for its staff resources are known, are managed appropriately, and do not pose a significant risk to GCRB. The provision of further legal advice will clarify the pros and cons of the options available to GCRB, including the financial cost and employment implications for both GCRB as an organisation and for the individuals involved.

5. Legal Implications

5.1. At the time of writing, GCRB have not yet agreed a legal contract for the establishment of a permanent secondment agreement between GCRB, Glasgow Kelvin College and Robin Ashton.

6. Financial Implications

6.1. There are two areas of potentially relatively significant financial implications for GCRB relating to the matters considered within this paper.

6.2. Most significantly, the VAT costs relating to secondment agreements could amount to around £20k-£30k per year in total for both employees. This is currently not within the GCRB budget and would constitute a loss to the region as it the only option would be to re-allocate main teaching grant funding.

6.3. Provision of further legal advice as recommended above will require additional legal charge costs. The current GCRB budget for legal costs is around £2k. For the purposes of this legal advice, it is suggested that this is capped at a maximum of £5k and that £3k from GCRB's office expenses budget line is reallocated to offset this additional charge.

7. Regional Outcome Agreement Implications

7.1. There are no specific implications for the Regional Outcome Agreement associated with this paper.

Background
There are three colleges in Glasgow: City of Glasgow College, Glasgow Clyde College and Glasgow Kelvin College. In May 2014 the Glasgow Colleges Regional Board ('GCRB') was set up. Its role is to secure the coherent provision of high quality fundable further and higher education in Glasgow's colleges. There are number of functions GCRB undertake. These include: funding of the colleges, administration of funds, planning and performance monitoring. GCRB is ultimately funded by the three Glasgow colleges.

In order to keep salary costs down within GCRB, a number of individuals at the three Glasgow Colleges undertake work on behalf of GCRB. The salary costs of these individuals, including pension costs are then recharged by the individual colleges to GCRB periodically during the year. This has been the case since the GCRB was established in May 2014. These costs are recharged on a pro-rata basis i.e. there is no mark up by the colleges. Therefore, where an individual at one of the colleges works 1-day a week for GCRB it recharges 20% of the individual's salary and pension costs to GCRB.

It is our understanding that since May 2014 there have been recharges from both Glasgow Clyde College and Glasgow Kelvin College to GCRB. No VAT has been accounted for by either college on these recharges. The third college, City of Glasgow College, undertakes some financial administration work on behalf of GCRB, including the preparation of management accounts. However, City of Glasgow College, unlike the other two colleges, has not recharged the costs of the individual undertaking the preparation of the management accounts to GCRB. In summary, City of Glasgow College has not recharged any costs to GCRB.

It is our understanding GCRB is not VAT registered and, therefore, if it was charged VAT by any of the colleges it would not be able to recover the VAT it incurred.

VAT advice requested
City of Glasgow College has sought our advice on the following:

1. Should VAT be levied on the recharge of costs from both Glasgow Clyde College and Glasgow Kelvin College and, if so, what are the ramifications for each college; and
2. Although no charge is levied on the financial administration work undertaken by City of Glasgow College in preparing the management accounts for GCRB is there any VAT implication for the college of undertaking this work and not levying a charge.

The VAT advice and recommendation within this report are based on our understanding from the information provided by City of Glasgow College. Should our understanding be incorrect, **please advise us** as even a slight difference in the understanding of the facts and/or circumstances could result in a material effect on the VAT advice provided.

1. **VAT advice re recharge of salary costs by Glasgow Clyde College and Glasgow Kelvin College to GCRB**
   Both colleges supply staff to GCRB and a recharge is made to GCRB by each college on a time basis and a pro-rating of the salary and pension costs incurred by each college for each of their employees. In VAT terms, there is a 'supply of staff' where the employee is employed by the supplier (one of the colleges in this instance) and the employee comes under the direction of GCRB. There could also be the situation where an employee is supplied to GCRB and the employee remains under the direction of the supplier. It is our understanding this is not what is happening in this instance. This distinction is significant where the services may be zero-rated or

exempt, or where determining whether the supply is made in the UK. As such, the distinction is not relevant in this instance.

A supply of staff is normally regarded as being made in the course of furtherance of a business and VAT must be accounted for at the standard rate. There are however a number of exceptions to this where certain supplies of staff are not always made in the course of business and thus may be outside the scope of VAT. These include:

- Secondments between and by government departments;
- Secondments between NHS bodies; and
- Some secondments between local authorities and by local authorities where they have a statutory obligation or monopoly.

As the supplies of staff by Glasgow Clyde College and Glasgow Kelvin College do not comply with any of the exceptions above, **VAT at the standard rate i.e. 20% requires to be charged on the full amount of the consideration**.

There are a number of alternative arrangements that are considered by organisations such as the colleges and GCRB. We have considered these below but none of them appear to be either applicable/relevant to the colleges and GCRB.

Paymaster services – Paymaster services commonly occur between associated companies in one of two situations. Firstly where staff are jointly employed or secondly where each company employees its own staff and one of the companies pays all the salaries for each company and is reimbursed by each company (for the salaries and associated paye/nic paid). Such reimbursements are outside the scope of VAT as they are treated as a disbursement.

Joint employment – This arrangement can be operated where staff contracts make it clear that each member of staff works for more than one employer. This is not the situation with the colleges and GCRB. It is our experience that businesses/organisations do not like this type of arrangement as it can be problematic from an HR perspective.

Temporary suspension of employment contract – This arrangement operates where an employee takes up a temporary post with another employer. There is deemed to be no supply of staff in the following circumstance. A temporary post is organised on the employees own initiative and the second employer issues the employee with a new contract or letter of appointment. To ensure such an arrangement is valid i.e. not a supply of staff, it requires to be supported by a number of pieces of evidence. We have not elaborated here as this does not seem a likely scenario for the colleges and GCRB.

Concession for the secondment of staff – This arrangement operates where the both the secondee is controlled by the organisation he/she is seconded to i.e. GCRB and the organisation the person is seconded to is responsible for paying the secondees salary. This does not assist the colleges and GCRB as the secondee continues to be paid by their employer i.e. one of the colleges.

In summary, none of the above 4 scenarios assist the colleges and GCRB on a retrospective basis although they may wish to consider the possibility of joint employment contracts going forward.

Conclusion

Glasgow Clyde College and Glasgow Kelvin College have under declared output tax (VAT) on the recharge of salary costs to GCRB.

Recommendations
Our main recommendation for each college is:

- Quantify the amount of VAT that has been underdeclared;
- Write to HMRC outlining the background to their VAT underdeclarations and submission of an Error Correction Notification ('ECN') i.e. a voluntary disclosure and mitigate any VAT penalties from HMRC; and
- Issue credit notes for invoices previously issued with no VAT and re-issue with VAT. We understand this will have a negative impact on GCRB as it is not VAT registered. This point should be included in the ECN letter to HMRC. Where an ECN has submitted and an assessment raised by HMRC, care is required to ensure the correct accounting of output tax (VAT) in the VAT quarter where credits are issued and invoices re-issued with VAT as it is possible output tax is paid twice to HMRC.

We would be happy to assist either college with the preparation and submission of an ECN and covering letter to HMRC should they so wish.

The risk of not declaring the VAT errors to HMRC is a penalty of 30% of the underdeclared output tax (VAT) if the errors are later identified by HMRC within the next 4-years i.e. at a VAT visit. Such a penalty could be mitigated down to between 0%-15% of the error by making an unprompted declaration to HMRC.

It should be noted where total value of the errors by each college is less than £10,000, the college is not compelled to advise HMRC and could amend the error in its next VAT return. However, we always recommend a business/organisation advises HMRC as it mitigates the risk of a penalty and, where a penalty is levied, the value of the penalty.

2. VAT advice re financial administration work undertaken by City of Glasgow College for GCRB
This scenario is covered within the 'business gift' rules for VAT purposes. A business gift is deemed to be given where the donor (City of Glasgow College) is not obliged to give it and the recipient ('GCRB') is not obliged to do or give anything in return.

A business gift can be either a 'good' or a 'service' and this is very important in determining the VAT position for the donor (City of Glasgow College). A business requires to account for output tax (VAT) where it supplies a gift to a third party and the cost of this gift, excluding VAT, is greater than £50. The value of a gift or a number of gifts given to the same third party is the cumulative value of a series of gifts in any 12-month period. It is our understanding that City of Glasgow College do not provide 'goods' for no consideration (charge) to GCRB.

City of Glasgow College does supply services to GCRB for no consideration (charge). However, unlike goods (see above) the VAT regulations in connection with the gift of a supply of services, is not a taxable supply, and no output tax (VAT) charge arises. The only occasion where this could be an issue (but not likely, from our understanding of City of Glasgow College) is where City of Glasgow has bought-in services and used them to provide the gift to GCRB. This will not apply in this instance as it only the service of a City of Glasgow College employee that is gifted in preparing the management accounts. Therefore there are no VAT implications for City of Glasgow College.

Conclusion
As City of Glasgow is supplying a service and not a good to GCRB we conclude it has been correct not to account for output tax (VAT) on the services of supplying management accounts and not levying a charge for this service.

Recommendation

Each of the 3 colleges should check that they are not providing any goods as a gift i.e. with no charge to GCRB. Where a charge is levied by a college to GCRB it should ensure VAT is charged where the value of the good, excluding VAT, is in excess of £50. Should goods exceeding £50 be gifted to GCRB then the value of the under declared output tax should be calculated and a potential ECN may require to be submitted to HMRC. An ECN must be submitted where the value of errors in the last 4 years exceed a total of £10,000. Where an amount is less than £10,000 the error can be adjusted in the current VAT, but, in these circumstances we always recommend that HMRC is advised of these errors as it negates the possibility of a penalty (of up to 30%) being levied by HMRC at a future VAT visit.

VAT Services (Scotland) Ltd
17 August 2016