



Report to Audit & Governance

Date: 1st February 2023

Title: Contract Procedure Rules – Waivers & Breaches

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Recommendations:

i. Note this report and the work of the Strategic Procurement Team.

1. Summary

1.1 This report provides a six monthly summary in relation to compliance with the Council's Contract Procedure Rules (CPR's), compliance with the Public Contracts Regulations 2015 as well as summarising waivers and breaches. It also provides a quick summary of the current procurement culture in the Council.

- Pages 1-8 Main report
- Appendix 1 page 9 - Waivers over the last 12 months
- Appendix 2 – Note on Procurement Action on Past Breaches (Confidential session)
- Confidential Appendix 3 – Breach report

2. Background

2.1 The Committee have received previous reports on this subject, the last presented on 28th July 2022 which covered the last 6 months of the financial year 21/22. This report is a six-month update and covers the first 6 months of financial year 22/23. The Council is subject to Procurement Legislation when entering into contracts with suppliers. These laws must be followed regardless of the types of goods, services or works.

The reporting period covers the following period:

1st April 2022 until 30th September 2022

The CPRs state that Corporate Directors are responsible for procurement exercises and contract management activities. This responsibility is then delegated to Service Directors & Heads of Service.

3. Contract Procedure Rules relating to Contracts, Waivers and Breaches

The Procurement & SRM Team provide service areas with a monthly report of all contracts on CMA. In addition to this, a quarterly update report of all contracts over £50k due to expire within the next 18 months is sent to Contract Managers which the team proactively follow up to ensure appropriate action is being taken. In addition, when a waiver is requested, service areas are required to complete mandatory actions to reduce both the risk of future waivers and breaches. Compliance checking is undertaken to ensure these actions are followed up and that those members of staff involved in purchasing activity are both adequately trained and ensuring contracts are up to date.

3.1 Rules 6.31 to 6.37 state that all purchases over £25K (inc. VAT) must be subject to competition. Where the estimated whole life cost of a contract is:

Up to and including £25,000 for Goods, Services and Works:	A minimum of 1 written quotation is required. This can be a written confirmation by an officer of an oral quotation. Where possible local suppliers should be given the opportunity to bid.
Over £25,000 and up to the Procurement Threshold for Goods & Services (including the Light Touch Regime):	A minimum of 3 written quotations requested. Where possible local suppliers should be given the opportunity to bid.
Over £25,000 and up to the Procurement Threshold for Works:	A minimum of 4 written tenders requested. Where possible local suppliers should be given the opportunity to bid.
Relevant Procurement Threshold and over:	Full Tender Process or compliant Framework Agreement.

Table1: Internal Thresholds – All thresholds now include VAT

3.2 Rule 6.18 allows a Waiver to the requirement for competition and allows a contract to be placed by direct negotiation with one supplier. This needs to be agreed and documented in advance. Waivers under this Rule, however, cannot be granted if over the relevant legal procurement thresholds.

£213,477	The goods and services threshold.
£5,336,937	The works threshold.
£663,540	The Light Touch Regime (LTR) threshold (This is a procurement regime for social and other specific services such as social care; education services; healthcare).

Table 2: Relevant Legal Procurement Thresholds effective Jan 2022 (including VAT)

3.3 If a direct award is made which is above the relevant procurement threshold (if a legal alternative such as a Framework is not used) or a contract has rolled on after its end date then a breach has occurred, and officers are obliged to report this to the S151 Officer and Monitoring Officer (statutory officers). In some instances, there may be legal permitted changes within the Public Contracts Regulations 2015.

4. Waivers

4.1 Service areas can complete waiver forms to waive internal rules, but not contracts that are subject to the Procurement Regulations such as contracts over the legal procurement threshold, unless legal advice states otherwise. Service areas must demonstrate in advance why a waiver is needed and must include evidence to prove this is best value. The Procurement team carries out commercial assessments on all waivers using a risk-based approach. Legal and financial input is requested when appropriate.

4.2 Waivers are signed off by sign off by:

1. S151 Officer (delegated to the Head of Strategic Procurement);
2. Relevant Corporate Director;
3. Relevant Cabinet Member.

4.3 The main factors considered in how the risk rating is arrived at include:

- The value of the contract and previous spend on the contract.
- Reasons for the Waiver.
- Any risks associated with the supplier.
- Whether the marketplace is prone to challenge.
- The requirement is a one-time requirement.
- There is an on-going requirement, but a compliant procurement process is underway or substantially planned.
- Possible reputational damage.

4.4 Waiver summary April 2022 – September 2022

Summary of all Waivers registered during Q1 – Q2 2022/23

Summary FY 2021/22	Qtr.1	Qtr. 2	Total
Total number of Waivers registered	15	13	28
Lowest value Waiver	£15,058	£15,000	
Highest value Waiver	£828,002	£2,173,500	
Total number of Waivers raised retrospectively	8	6	14

Total value of retrospective waivers	£1,031,950	£1,411,818	£2,443,767
Total value of all waivers processed	£2,221,489.42	£4,998,297	£7,219,786

Table 2: Summary of all Waivers registered during Q1 – 2 2022/23

There were a total number of 28 Waivers registered in this 6-month period.

➤ **Quarter 1**

- There were 15 completed Waivers.
- The total value of Waivers approved during this period was £2,221,489.42
- The highest value Waiver was for £828,002. This was for Revenues and Benefits remote processing support – Backlog. Legal advice was sought and agreed under Regulation 32(2)(b)
- The lowest value Waiver was for £15,058.

➤ **Quarter 2**

- There were 13 completed Waivers.
- The total value of Waivers approved during this period was £4,998,297.85.
- The highest value Waiver was for £2,173,500 for the E-Scooter Agreement. Legal advice was sought & agreed. The value of the waiver and the overall value of the existing contract and the extension of the trial is below the Concessions Contract Regulations threshold of £5,336,937 including VAT.
- The lowest value Waiver was for £15,000.

It should be noted, that waivers are not negative. They are a tool for the Council to get a quick solution at best value and are subject to a high level of assurance.

5. Waiver Data tables

	QUARTER 1 - 22/23		
	NO. REGISTERED	WAIVER VALUE	WAIVER RISK RATING
ADULTS & HEALTH			
Community Safety Service	2	£212,000.00	Low
Public Health	2	£115,058.00	Low
ADULTS & HEALTH Total	4	£327,058.00	
CHILDRENS SERVICES			
Integrated Commissioning	1	£43,383.96	Low
School Improvement	1	£27,000.00	Low
CHILDRENS SERVICES Total	2	£70,383.96	
COMMUNITIES			
Cemeteries & Crematoria	1	£120,000.00	Low
COMMUNITIES Total	1	£120,000.00	
PLANNING, GROWTH & SUSTAINABILITY			
Climate Response & Grants & Adaptations	1	£177,898.00	Low
Housing	1	£40,197.78	Low
Property & Assets	1	£44,000.00	Low
Property FM	1	£51,400.00	Low
PLANNING, GROWTH & SUSTAINABILITY Total	4	£313,495.78	
RESOURCES			
Business Operations	1	£92,320.00	Low
Corporate Business Support	1	£430,229.68	Medium
Revenues & Benefits	1	£828,002.00	Low
Service Finance	1	£40,000.00	Low
RESOURCES Total	4	£1,390,551.68	
GRAND TOTAL	15	£2,221,489.42	Low Risk 14 Medium Risk 1

Table 3: Summary of Waivers for Q1 22/23

	QUARTER 2 - 22/23		
	NO. REGISTERED	WAIVER VALUE	WAIVER RISK RATING
ADULTS & HEALTH			
Housing and Equipment	1	£855,755.00	Low
Prevention in the Community Team	1	£380,225.25	Low
ADULTS & HEALTH Total	2	£1,235,980.25	
CHILDRENS SERVICES			
Adult Learning	1	£30,000.00	Low
Personalisation Team - Integrated Commissioning	1	£25,000.00	Low
Education	1	£1,169,318.00	Medium
CHILDRENS SERVICES Total	3	£1,224,318.00	
COMMUNITIES			
Parking Services	1	£140,000.00	Low
Neighbourhood Services	1	£77,000.00	Low
COMMUNITIES Total	2	£217,000.00	
PLANNING, GROWTH & SUSTAINABILITY			
Property & Assets	1	£65,000.00	Low
Planning Improvement Board/Planning Policy	2	£47,499.60	Both Low
Strategic Transport & Infrastructure	1	£2,173,500.00	Low
Town Centre Regeneration / Economic Development Team	1	£20,000.00	Low
PLANNING, GROWTH & SUSTAINABILITY Total	5	£2,305,999.60	
RESOURCES			
Business Rates	1	£15,000.00	Medium
RESOURCES Total	1	£15,000.00	
GRAND TOTAL	13	£4,998,297.85	Low Risk 11 Medium Risk 2

Table 4: Summary of Waivers for Q2 22/23

5.1 Tables 3 and 4 above shows the number of contract waivers granted in the last two quarters to September 22. Appendix 1 lays out the number of waivers and contract values over the last four quarters to analyse any trends over the last year. Barring an increase in Quarter 4 21/22 which was because of increased waivers in Planning, Growth and Sustainability there is a steady level of waivers being granted. The Procurement Team will be engaging more with Directorates in 2023, mainly through their Budget Boards with a more granular level of data including the forward-looking procurement pipeline timelines, so that we can have encourage better planning and procurement preparation and see a reduction in the number of waivers coming through.

6. Breaches to Public Contracts Regulations 2015

- 6.1 One breach has been reported to the Statutory Officers in the period since the last report. This is contained in confidential Appendix 3.
- 6.2 At the Audit and Governance meeting in July a request was made for what action Procurement had taken on incidences of past breaches. This is contained in confidential Appendix 2.

7. Publication of Opportunities and Award Notices

- 7.1 The Public Contracts Regulations 2015 require Local Authorities to publish contract opportunities and award notices on the Government website Contracts Finder where the value is above their own quotation threshold. Over the relevant legal procurement threshold these must be advertised on the 'Find a Tender Service'.
- 7.2 The Local Government Transparency Code 2015 requires all contracts with a value of £5K and higher to be published. The Council meets this requirement and uploads all contracts to its internal Contract Management Application (CMA) to ensure it has oversight and governance on all procured contracts.
- 7.3 The Cabinet Office monitors potential breaches raised by suppliers via a Procurement Review Service (previously the Mystery Shopper Service). Procurement Review Service will contact public bodies to investigate any potential breach and ask for any evidence. The Procurement Review Service shall then make a ruling on the proposed course of action including any lessons for the future. The Council has not been subjected to any investigation by the Cabinet Office' Procurement Review Service for this period.

8. Procurement & Contract Management Training

- 8.1 An additional **243** training sessions have been attended in Q1 and Q2 2022/23 bringing the cumulative total since 1st April 2020 to 1,318.

Training Courses	F/Y 20/21	F/Y 21/22	F/Y 22/23 (April – September)
Understanding Procurement	182	176	65
Understanding G-Cloud (launched April 2022)	0	0	23
Pro-Contract e-Sourcing Tender portal	91	66	36
Modern Slavery in the Supply Chain training	108	32	25
Contract Management Development (CMD)	61	103	38

Contract Management Application (CMA)	119	72	44
Best Practice Self-Assessment training	44	21	12
Total	605	470	243

Table 5: Summary of Procurement & SRM training to September 2022

9. Procurement Legislation Changes

9.1 In May 2022 the Procurement Bill was published in Parliament. A&G Committee received an update in July on the proposed Bill. There is no further update at present, however a plan has been drafted for the roll out of this new legislation. The plan covers, training, internal communications, the need to change documents and changes to the CPRs.

Directorate	Quarter 3 FY 21/22		Quarter 4 FY 21/22		Quarter 1 FY 22/23		Quarter 2 FY 22/23	
	No. of Waivers registered	Total Value	No. of Waivers registered	Total Value	No. of Waivers registered	Total Value	No. of Waivers registered	Total Value
ADULTS & HEALTH	0	£0.00	2	£98,317.00	4	£327,058.00	2	£1,235,980.25
CHILDRENS SERVICES	2	£82,008.00	1	£305,000.00	1	£120,000.00	2	£217,000.00
COMMUNITIES	2	£49,381.74	3	£223,745.00	2	£70,383.96	3	£1,224,318.00
DEPUTY CHIEF EXECUTIVE	1	£635,000.00	2	£69,831.00	0	£0.00	0	£0.00
PLANNING, GROWTH & SUSTAINABILITY	4	£13,773,221.58	9	£566,294.33	4	£313,495.78	5	£2,305,999.60
RESOURCES	1	£35,136.85	3	£1,117,225.00	4	£1,390,551.68	1	£15,000.00
TOTAL	10	£14,574,748.17	20	£2,380,412.33	15	£2,221,489.42	13	£4,998,297.85

Table 6: Summary of all Waivers registered in the past 12 months