



# Report to Audit & Governance

<b>Date:</b>	6 <sup>th</sup> March 2024
<b>Title:</b>	<b>Contract Procedure Rules – Waivers &amp; Breaches</b>
<b>Cabinet Member(s):</b>	Cabinet Member for Accessible Housing and Resources
<b>Contact officer:</b>	Simon Davis, Head of Strategic Procurement
<b>Ward(s) affected:</b>	None specific
<b>Recommendations:</b>	<b>Note this report and the work of the Strategic Procurement Team.</b>
<b>Reason for decision:</b>	Not applicable

## 1. Executive summary

- 1.1 This report provides a quarterly 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.

## 2. Content of report

- 2.1 This report covers the second and third quarter of financial year 2023/24, July to December 2023. The Council is subject to Procurement Legislation when entering contracts with suppliers. These laws must be followed regardless of the type of goods, services or works contract.
- 2.2 A summary table of contract waivers over the last 12 months is provided at Appendix 1.

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

- 3.1 The Contract Procedure Rules (CPRs) state that Corporate Directors are responsible for procurement exercises and contract management activities. This responsibility is then delegated to Service Directors and Heads of Service through formal schemes of delegation.
- 3.2 The Procurement Team provide a monthly report of all contracts on CMA that are coming up for renewal over a 2-year timescale. CMA sends automated alerts to Contract Managers when a contract review date is approaching and when a contract is due to expire as a prompt for them to consider next steps and take appropriate actions.
- 3.3 The team also issue a monthly report of live contracts with an end date in the past, requiring action to each directorate to ensure that staff are taking necessary action and keeping CMA up to date. 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.
- 3.4 Rules 6.31 to 6.37 of the CPRs state that all purchases over £25K (inc. VAT) must be subject to competition. Where the estimated whole life cost of a contract is:

<b>Up to and including £25,000 for Goods, Services and Works:</b>	A minimum of <b>1 written quotation</b> 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.
<b>Over £25,000 and up to the <u>Procurement Threshold</u> for Goods &amp; Services (including the Light Touch Regime):</b>	A minimum of <b>3 written quotations</b> must be requested. Where possible local suppliers should be given the opportunity to bid.
<b>Over £25,000 and up to the <u>Procurement Threshold</u> for Works:</b>	A minimum of <b>4 written tenders</b> must be requested. Where possible local suppliers should be given the opportunity to bid.
<b>Relevant <u>Procurement Threshold</u> and over:</b>	Full Tender Process or compliant Framework Agreement.

**Table1: Internal Thresholds – All thresholds inclusive of VAT**

- 3.5 Rule 6.18 of CPRs 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 they are over the relevant legal procurement thresholds shown below.

<b>£214,904</b>	The goods and services threshold
<b>£5,372,609</b>	The works threshold
<b>£663,540</b>	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 2024 (including VAT)**

3.6 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 legally permitted changes within the Public Contracts Regulations 2015, for instance to cover emergency provisions.

#### **4. Waivers Summary July 2023 – December 2023**

4.1 Appendix 1 sets out the number of waivers and contract values over the last four quarters to analyse any trends over the last 12-month period. The Procurement Team is continuing to work closely with each of the Directorates through the monthly Directorate Budget Boards with a more granular level of data provided including the forward-looking procurement pipeline timelines, encouraging better planning and procurement preparation and facilitate a reduction in the number of waivers coming through. The forthcoming changes to CPRs and related procurement guidance will also help to support a reduction in waivers and breaches which have arisen due to a lack of adequate planning.

4.2 Tables 3 and 4 shows the number of waivers granted in Quarter 2 2023/24 and Quarter 3 2023/24 including the value and the risk rating.

	QUARTER 2 - 23/24		
	NO. REGISTERED	WAIVER VALUE (inc. VAT)	WAIVER RISK RATING
<b>ADULTS &amp; HEALTH</b>			
Home Independence	1	£164,725	Low
Integrated Commissioning	1	£10,498,841 <sup>(1)</sup>	Low
Prevention in the Community Team	1	£805,451 <sup>(2)</sup>	In progress
Public Health	1	£22,500	Low
<b>ADULTS &amp; HEALTH Total</b>	<b>4</b>	<b>£11,491,517</b>	

<b>CHILDRENS SERVICES</b>			
<b>CHILDRENS SERVICES Total</b>	<b>0</b>	<b>0</b>	
<b>COMMUNITIES</b>			
Cemeteries & Crematoria Services	1	£87,230	Low
Client Transport	1	£12,349	Low
Highways & Technical Services	1	£168,845	Low
North Waste Collection and Street Scene Services	1	£192,000 <sup>(3)</sup>	Low
Strategic Waste Management and Enforcement	1	£317,548 <sup>(4)</sup>	Low
Transport Service, Public Transport	3	£131,307	Low
Transport Services	1	£76,799	Low
<b>COMMUNITIES Total</b>	<b>9</b>	<b>£986,077</b>	
<b>DEPUTY CHIEF EXECUTIVE</b>			
Policy Partnerships and Comms - Digital	1	£54,360	Low
<b>DEPUTY CHIEF EXECUTIVE Total</b>	<b>1</b>	<b>£54,360</b>	
<b>PLANNING, GROWTH &amp; SUSTAINABILITY</b>			
	0	0	0
<b>PLANNING, GROWTH &amp; SUSTAINABILITY Total</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>RESOURCES</b>			
Business Operations	1	£28,800	Low
<b>RESOURCES Total</b>	<b>1</b>	<b>£28,800</b>	
<b>GRAND TOTAL</b>	<b>15</b>	<b>£12,560,753</b>	<b>Low 14 In progress 1</b>

**Table 3: Summary of Waivers for Q2 23/24**

	QUARTER 3 - 23/24		
	NO. REGISTERED	WAIVER VALUE (inc. VAT)	WAIVER RISK RATING
<b>ADULTS &amp; HEALTH</b>			
Adult Social Care	1	£82,667	Low
Public Health	1	£105,172	In progress
<b>ADULTS &amp; HEALTH Total</b>	<b>2</b>	<b>£187,839</b>	
<b>CHILDRENS SERVICES</b>			
Education	1	£14,688,000 <sup>(5)</sup>	Low
Education	1	£45,600	In progress
<b>CHILDRENS SERVICES Total</b>	<b>2</b>	<b>£14,733,600</b>	
<b>COMMUNITIES</b>			
Highways & Technical Services	1	£94,080	Low
Parking Services	1	£673,879 <sup>(6)</sup>	Low
<b>COMMUNITIES Total</b>	<b>2</b>	<b>£767,959</b>	
<b>DEPUTY CHIEF EXECUTIVE</b>			
Legal and Democratic Services	1	£147,210	Low
Legal Services	1	£43,461	Low
<b>DEPUTY CHIEF EXECUTIVE Total</b>	<b>2</b>	<b>£190,671</b>	
<b>PLANNING, GROWTH &amp; SUSTAINABILITY</b>			
Economic Growth & Regeneration	1	£99,000	Low
Housing	1	£195,180	Low
Property & Assets	1	£120,000	In progress
<b>PLANNING, GROWTH &amp; SUSTAINABILITY Total</b>	<b>3</b>	<b>£414,180</b>	
<b>RESOURCES</b>			
	0	0	0
<b>RESOURCES Total</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>GRAND TOTAL</b>	<b>11</b>	<b>£16,294,249</b>	<b>Low 6 In progress 3</b>

**Table 4: Summary of Waivers for Q3 23/24**

4.3 The 6 high value waivers were in respect of:

- 1. Adults & Health – Integrated Commissioning - The Provision of Buckinghamshire Help to Live at Home.  
Suppliers: Primecare Support Ltd; All Care; Westminster Home Care**

This waiver was in respect of three block home care contracts, which originally commenced on 1<sup>st</sup> April 2016 with an initial 5+2 year term, due to expire on 30<sup>th</sup> September 2023. All extension options had been utilised. The waiver was requested to align the end dates with the launch of the new home care Dynamic Purchasing

Vehicle (DPV) which will launch in April 2024 and further extend these contracts by a further 12 months to April 2025 to ensure Value for Money and remove the need to use spot purchasing. Legal advised that this is legally compliant with Regulation 72(1)(c) of the Public Contracts Regulations 2015 (PCRs) permitted modifications to contracts procured pursuant to the PCRs. From April 2024 the DPV will be the primary mechanism for purchasing home care.

**2. Adults & Health - Community Prevention Service.**  
**Supplier: Connection Support**

This waiver was for the Community Prevention Service contract, which aims to support people to live independently and prevent the need for formal care. The waiver was needed to allow time for the development of a new model for front-end delivery for Adult Social Care (I-ASC) that aligns with the government's direction for social care and the local prevention landscape. This was requested for a period of 18 months to allow sufficient time to complete a robust recommissioning project and procurement process, with the new service starting on 1<sup>st</sup> October 2025

**3. Communities - North Waste Collection and Street Scene Services**  
**Supplier: Chambers Engineering**

The existing contract was coming to an end on 31/08/2023 after a 1-year extension. The mechanical & engineering services being bought were complex and needed specific conditions, so the directorate was unable to reprocure before the current contract expired. A full competitive tender exercise is underway.

**4. Communities - Strategic Waste Management and Enforcement**  
**Supplier: Mott MacDonald Limited**

The waiver was requested for the Capital Biowaste Project at High Heavens Waste Facility due to project delays relating to material supply challenges, on-site ground risk conditions materialising, and a delay in meeting certified completion requirements. There had been a previous waiver approved for this contract which was rescinded. This waiver sought approval to direct award using the negotiated procedure (Public Contract Regulations 2015) to Mott MacDonald Limited. This was a one-off requirement to be able to complete the project, there are no further works planned of this nature.

**5. Childrens Services - Education - Kingsbrook Secondary School 2 FE Extension - Design and Build Services Contractor [CAPITAL]**  
**Supplier: Morgan Sindall Construction & Infrastructure Ltd**

The waiver was to procure the Contractor via the Southern Construction Framework Direct Appointments process, which is permitted under the Southern Construction Framework. This ensured no loss of critical site and building design knowledge as well as avoiding a duplication of costs for the Council and a loss of extensive and pertinent stakeholder knowledge of the Kingsbrook School.

**6. *Communities – Parking Services – Security - multi-storey car parks***  
***Supplier: Risk Management Security Services***

This waiver was for an interim contract for new car park security arrangements and new response time requirements. This is to be followed by a scoping exercise, and to then run a fully compliant procurement process.

**5. Breaches to Public Contracts Regulations 2015**

- 5.1 No breaches have been reported to the Statutory Officers in the period since the last report. Grant Thornton raised a query about a potential breach due to the cumulative spend on Purchasing Cards for one supplier relating to white goods due mainly in response to emergency support to residents as part of the Helping Hand programme. Although these items were individually less than the procurement thresholds, and less than the internal Contract Procedure Rule limit of £25k, requiring a single quote.
- 5.2 With Procurement Team purchasing card analysis we have seen that the cumulative spend adds up to a much larger amount and for this reason we have taken the proactive steps of moving white goods spend onto a central contract which provides for better planning and value.

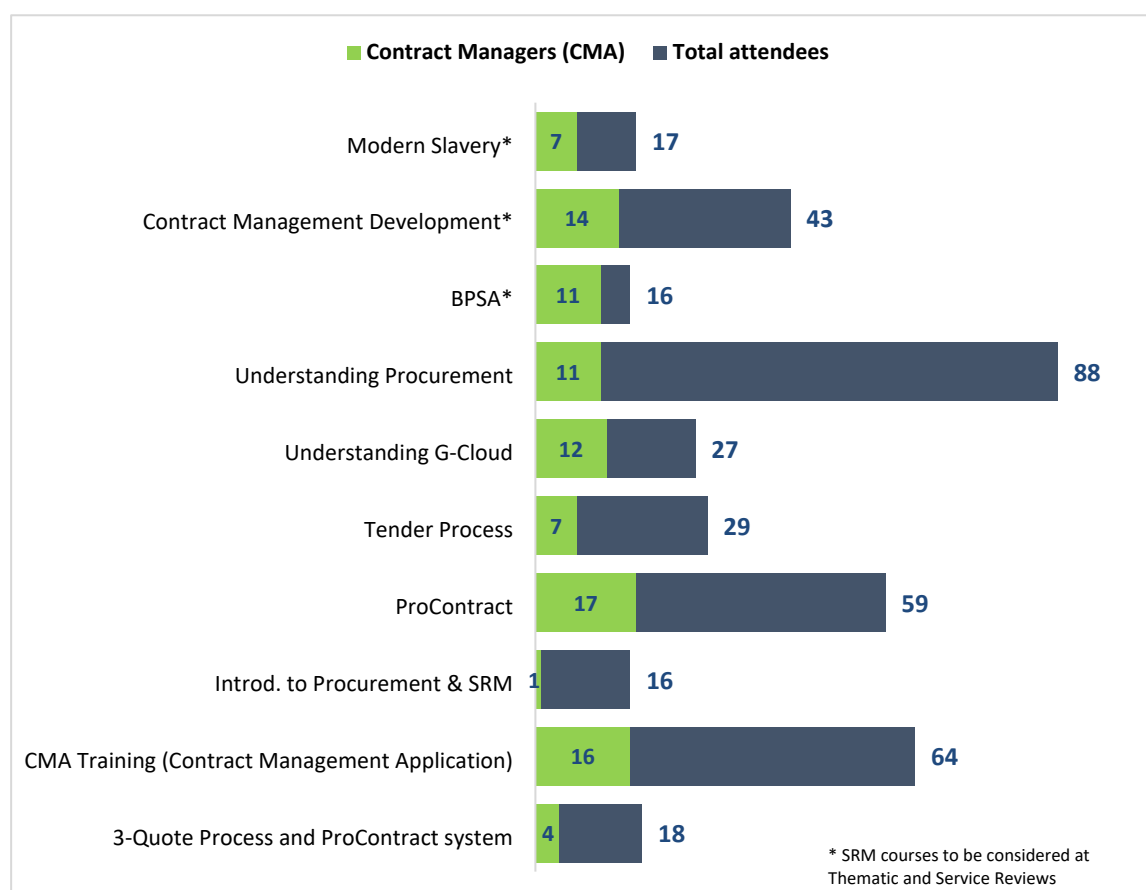
**6. Publication of Opportunities and Award Notices**

- 6.1 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'.
- 6.2 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.
- 6.3 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.

## 7. Procurement & Contract Management Training

- 7.1 We have made changes to rationalise our training programme and 3 courses\* will no longer be delivered by the team. Instead, we have adopted the Contract Management Capability Programme 2022/23 provided by the Government Commercial Function. Modern Slavery is an existing corporate training session and the BPSA training will be incorporated within the existing CMA session. This will allow the additional capacity to develop new sessions to deliver the requirements of the new Procurement Act in early 2024.
- 7.2 At the Audit and Governance meeting in July a request was made for training data to incorporate the number of Contract Managers who have undertaken training. Out of 210 contract managers registered on CMA, 100 have undertaken training in the last 12 months. The table below summarises the training sessions delivered in the past 12 months including the number of CMA Contract Managers.





**Table 5: Summary training courses and attendance 01 January 23 to 31 December 23 including no. of Contract Managers (CMA)**

- 7.3 Prior to a Procurement exercise taking place a check is made to ensure that contract manager training is up to date. Going forward the procurement team are developing the training offer so that there is a clear requirement about the training that is required through the probation/induction/promotion period for new starters or first time management roles where they are a contract manager and the on going training, where people will need to demonstrate their continued compliance.

## **8. Procurement Legislation Changes**

### **The new Procurement Act is expected to go live in October 2024**

- 8.1 Any procurement activity that commences after Go Live will follow the new regime. We are already monitoring the Councils projects and will be engaging with contract managers to consider the impact of this change to the required procurement approach for new contracts and re-procurement activities.
- 8.2 The Procurement Team have developed an implementation plan to respond to the changes included in the Act. The implementation of the plan is reliant to a certain degree on the outputs from the secondary legislation and guidance, which will set out the detailed requirements of the new Act.
- 8.3 There will be updates to the procurement courses offered by the Procurement team between April and October and these will be mandatory for all contract managers. This is an opportunity also to establish mandatory refresher training for all contract managers with regular monitoring to ensure that training is up to date.

### **Changes to commissioning of health and care services in England.**

- 8.4 From January 2024, the Department of Health and Social Care (DHSC) introduced a new provider selection regime (PSR) for the commissioning of health and care services in England.
- 8.5 The PSR will replace the current procurement rules that are based on the Public Contracts Regulations 2015 (PCR 2015). The new regime aims to simplify and streamline the process of selecting providers, reduce bureaucracy and legal challenges, and promote collaboration and integration among service providers.
- 8.6 Commissioners will have more flexibility and discretion to decide whether to use a competitive or a non-competitive process, depending on the circumstances and the best interests of service users.
- 8.7 The Integrated Commissioning team are reviewing their contracts to establish which contracts coming to an end will need to be procured using the new regime. The PSR

regulations apply to those contracts with a health service provision to them, but social care contracts will still need to use the procurement regulations.

## **9. Next steps and review**

9.1 This report will be going to Audit & Governance Committee on 6<sup>th</sup> March 2024.

## **10. Background papers**

10.1 None

## **11. Your questions and views (for key decisions)**

11.1 If you have any questions about the matters contained in this report, please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider, please inform the democratic services team. This can be done by email to [democracy@buckinghamshire.gov.uk](mailto:democracy@buckinghamshire.gov.uk)

