



Doncaster Council

Report

Date: 24th October 2019

To the Chair and Members of the
AUDIT COMMITTEE

BREACHES AND WAIVERS TO THE COUNCIL'S CONTRACT PROCEDURE RULES

Relevant Cabinet Member(s)	Wards Affected	Key Decision
		No

EXECUTIVE SUMMARY

1. This Report provides Members with details of all the waivers and breaches to the Contract Procedure Rules (CPR's) for the period **1st March 2019** to the **31st August 2019**.
2. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in **April 2019**. It also provides a comparison to April's Audit Committee. The details of each waiver and breach are summarised in the appendices to this report.

Directorate	1 st March 19 to the 31 st August 19		1 st September 18 to the 28 th February 19	
	Breaches	Waivers	Breaches	Waivers
Adults, Health & Wellbeing	0	16	1	10
Learning & Opportunities: Children & Young People	1	2	0	3
Corporate Resources	0	1	0	3
Economy & Environment	3	8	3	9
GRAND TOTAL	4	27	4	25

EXEMPT REPORT

3. This report is not exempt.

RECOMMENDATIONS

4. To note the information and actions contained in this report regarding waivers and breaches in relation to the CPR's.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

5. There are no specific implications within this report.

BACKGROUND

6. The Chief Financial Officer (CFO) monitored compliance with the CPR's for the period covered by this report. From the 1st October 2019 the responsibility for the monitoring of the CPR's will be held by the Monitoring Officer (MO), as the Strategic Procurement Team (SPT) have moved within the Corporate Resources structure to the Legal and Democratic Services.

CONTRACT PROCEDURE RULES (CPR'S)

7. The Council's CPR's state the following thresholds where commensurate competition should be undertaken by officers to ensure value for money:-
 - **Up to £25,000** - use of an in-house supplier, council wide contract, third party framework agreement or direct award where possible to a Doncaster based organisation.
 - **Between £25,000 and £181,302** – use of an in-house supplier, council wide contract, third party framework agreement or obtain three formal quotes one of which should be from a Doncaster based organisation
 - **Between £181,302 and £615,278 (Light Touch Regime (LTR) Services) or £4,551,413 (works)** - use of an in-house supplier, council wide contract, third party framework agreement or obtain a minimum of three tenders one of which should be from a Doncaster based organisation
 - **Over £181,302 (Goods/Services) or £615,278 (LTR Services) or £4,551,413 (Works)** - use of an in-house supplier, council wide contract, third party framework agreement or carry out a public contract regulations compliant tender process.
8. Whilst the EU thresholds are set within the legislation and, therefore, cannot be waivered, it is recognised that from time to time discretionary thresholds within the CPR's may be a barrier to the delivery of the service and, therefore, council officers can request that the CPR's are waived in specific instances via a CPR waiver report, which is approved by the CFO, in accordance with the following permissible exemptions.

- a) Where the Director is able to demonstrate that only one specialist firm is able to meet the requirement
- b) A contract to be placed as an emergency solution only where the Director is able to demonstrate immediate risk to persons or property or serious disruption to Council Services
- c) To allow for the safe exit from a contract or to decommission
- d) Forms part of a wider strategic programme of works

Breaches to CPR's

- 9. Breaches arise from either the aggregation of spend going over pre-prescribed limits, a complete absence of any identifiable contract, a failure to comply with requirements to obtain adequate competition or an extension of contract beyond its agreed term or lifetime.
- 10. It is therefore important that steps are taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position.
- 11. There have been **four** new breaches, as well as updates on **two** existing unresolved breaches and **six** resolved breaches.
- 12. **Appendix 1** shows the details of the new, unresolved and resolved breaches for this period.

Update to Breaches previously reported

- 13. In **April 2019**, there were **four** new breaches of the CPR's reported to Audit Committee as well as updates on **four** existing unresolved breaches and **five** resolved breaches.

Waivers to CPR's

- 14. **Twenty-five** waivers to CPR's have been approved this period (see Appendix 2 for the detail of each waiver) equal to the **twenty-five** reported in April 2019.
- 15. The waivers detailed in this report have been reviewed and agreed either by the CFO or the MO (for waivers linked to the Finance Department).
- 16. Changes to the CPR's were approved on the 17th May 19 which will result in a decrease in waivers due to the lower threshold limit for direct award increasing from £5,000 to £25,000.

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £25,000

- 17. SPT continue to work closely with all Directorates to improve procurement practices and provide assurance that arrangements are robust and compliant with the CPR's. Where waivers and breaches are identified, they are recorded and added to the SPT Category Plan and actions agreed and monitored.

18. A structured CPR Training Programme is available to book through the HR Portal. This is designed to increase awareness on best practice procurement and required governance when officers contract on behalf of the Council. This training is being delivered up to February 2020 and then it will be offered as an e learn package with face to face training being offered as and when required. The training has received good feedback from officers who have attended and there has been a diverse cross section of departments attending.

OPTIONS CONSIDERED

19. Every waiver is examined and, where appropriate, challenged for alternative options prior to approval.

REASONS FOR RECOMMENDED OPTION

20. It is important that the council's CPR's are adhered to. Where breaches are identified, a corrective plan is in place to protect the council.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

21.

Outcomes	Implications
<p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none">• Better access to good fulfilling work• Doncaster businesses are supported to flourish• Inward Investment	The CPR's state that quotations/tenders should be sought from at least one Doncaster based company. This is to encourage local spend where possible. SPT work closely with Business Doncaster.
<p>Doncaster Living: Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none">• The town centres are the beating heart of Doncaster• More people can live in a good quality, affordable home• Healthy and Vibrant Communities through Physical Activity and Sport• Everyone takes responsibility for keeping Doncaster Clean• Building on our cultural, artistic and sporting heritage	Effective procurement governance ensures best value is achieved from the budgets available.
<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none">• Every child has life-changing learning	Social value is considered in contracting activity. The CPRs state that for any procurement above

	<p>experiences within and beyond school</p> <ul style="list-style-type: none"> • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	£181,302 there must be a minimum of 10% factored into the evaluation criteria.
	<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own home 	Effective procurement mitigates the risks posed by contracting and ensures robust contracts are procured.
	<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance 	Effective procurement ensures best value, effective partnership working and robust specifications to attain the best from the markets.

RISKS AND ASSUMPTIONS

22. Contractual arrangements with suppliers and breaches to the CPR's expose the Council to reputational, financial, legal and commercial risks. Compliance monitoring of the CPR's seek to counter these risks.

LEGAL IMPLICATIONS [Officer Initials...NJD... Date.....27/09/19.....]

23. There are no specific legal implications arising from this report. Legal advice has been provided on the individual contracts and waivers detailed within the report and continued legal support will be provided to the Service areas in relation to these matters.

FINANCIAL IMPLICATIONS [Officer Initials...AT..... Date...25/09/19.....]

24. There are no specific financial implications attached to this report. Each individual breach and waiver will consider the specific implications for that action. It is important to note that breaches to Contract Procedure Rules risk the Council overspending as checks for sufficient budget being available is not guaranteed to take place.

HUMAN RESOURCES IMPLICATIONS [Officer Initials KG Date 23/09/19.....]

25. There are no specific HR implications arising from this report.

TECHNOLOGY IMPLICATIONS [Officer Initials... PW Date 20/09/19.....]

26. There are no specific technology implications in relation to this report. Corporate Procurement continues to consult with ICT in relation to CPR waivers involving the procurement of technology to ensure that these have been considered by the Technology Governance Board (TGB), where applicable.

HEALTH IMPLICATIONS [Officer Initials... VJDate ...20/09/19.....]

27. There is no direct health implication of this report. The health implications will need to be addressed within each individual contract area identified in the breaches and waivers.

EQUALITY IMPLICATIONS [Officer Initials HW Date 20/09/19]

28. There are no direct equality implications associated with this report and a Due Regards Statement is not required.

CONSULTATION

29. There has been consultation with the various directorates and applicable officers.

BACKGROUND PAPERS

30. None.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Contract Procedure Rules (CPR's)
Chief Financial Officer (CFO)
Monitoring Officer (MO)
Strategic Procurement Team (SPT)
Light Touch Regime (LTR)
EU (European Union)

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APPENDIX 1

BREACHES

Appendix 1 details the:

- **New** CPR breaches that have been identified between the **1st March 2019 and the 31st August 2019**;
- **Unresolved** breaches, reported to the Audit Committee previously and;
- **Resolved** breaches reported previously

With a brief explanation of the reasons for the breach and their current status:

Directorate	Status New Unresolved Resolved	Date Reported to Audit Committee	Contract Description	Annual Value	Contract End Date	Reason for breach	Proposed action to be / has been taken in relation to the breach	Timescale for resolution
Adults, Health and Wellbeing	Resolved		Solar Centre	£746,000	No contract in place	A consultant has been employed, working to the current Assistant Director Adult Social Care and a Plan is now in place, ending in the procurement of new services by Jun 18. This milestone has moved to the 30 May 19.	Oct19 Note - Agreement from Cabinet on the 4 June 2019 to enter into a Section 76 with Doncaster Clinical Commissioning Group from the 1 January 2020. Apr 19 Note - Report on the Solar Centre commissioning intentions going to the Cabinet on the 4 June 19.	30 Jun 18 Revised 30 May 19 Revised Revised 1 Jan 2020
Adults, Health and Wellbeing	Unresolved	Apr 17	YMCA Goodall House	£170,000	Contract expired	Looking to review with the Doncaster Children's Trust.	Oct 19 Note - Decision over the future of the service put on hold until the approval of the Homelessness and Rough Sleeping Strategy to be presented at cabinet on the 5 th November 2019 The service will be considered as a part of the overall commissioning plan for the implementation of the Homelessness and Rough Sleeping Strategy Apr 19 Note - report written but still to be agreed – recommendation to decommission the contract – if agreed in April 19 then contract will require six months exit strategy period. Oct 18 Note - Review and potentially redesign.	Mar 19 Revised: Sept 19 Subject to Cabinet Report 5th Nov 19

Adults, Health and Wellbeing	Resolved	Apr 17	Sheffield YWCA – Yorkshire Green Gables	£81,000	Contract expired	This work is planned for Year 2 of the Commissioning and Procurement Plan in Adults Commissioning.	Oct 19 Note - New contract awarded June 2019 Apr 19 Note - Currently out to tender, tender submission date 20 March 19, should be awarded by June 19 subject to submissions. Re-commission.	Mar 19 Revised: Jun 19
Economy and Environment	Resolved	Oct 17	Digital energy software for energy management functions.	£18,000	No contract in place	Provision of software for energy management functions including consumption data on gas, electricity, water and other fuels. Reporting features enables the Council and schools to meet statutory functions.	Oct 19 Note – contract awarded April 19 Apr 19 Note – tender out to market week commencing 11 Mar 19. Open Tender for a 7 yrs. contract, with a value of c. £126,000. Oct 18 Note – Original date delayed. Tender documentation is part complete and due to go out to market by the 10 Oct 18	30 Jun 18 Revised Jan 2019 Revised: 27 Mar 19 (award date) TBC if awarded Apr 19 – Contract awarded
Economy and Environment	Resolved	April 19	Provision of cleaning chemicals from ACE Janitorial	£54,254	No contract	Aggregated spend, no contract in place. Lack of understanding around calculating total contract value and aggregated spend.	Oct 19 Note - Provided service area with extra training regarding Contract Procedure Rules (CPRs). Conducted procurement and awarded contract via a compliant third party framework (NOECPC).	May 19
Economy and Environment	Resolved	Apr 19	Provision of security	£25,000	No contract	Emergency provision following the fire at Bentley Training Centre and an urgent requirement for onsite security due to members of the public entering site. A waiver should have been completed.	Oct 19 Note - Provided service area with extra training regarding Contract Procedure Rules (CPRs). Apr 19 Note - Will end once security provision no longer required.	Feb 19
Economy and Environment	Unresolved	Apr 19	Direct purchase with a Glass and Glazing supplier for the supply & install for doors, windows and board ups	£102,000	No contract	PBM unaware of the scope of the corporate contract in place related to the 'Provision of Building Materials and Associated Products' and that it does not cover the requirements of doors, windows and board ups and have been using it for that supply.	Oct 19 Note - SPT are working with the Service Area on completing a tender. Procurement exercise to be completed.	Apr 20

Economy and Environment	New	Oct 19	Consultancy Fee for Traded Services	£180,672	No Contract	Direct purchase albeit a compliant framework was available but was not used, lack of knowledge.	Oct 19 Note – SPT have worked with the area to ensure they comply with the CPRs in the future. Contract has now ended.	n/a - ended
Economy and Environment	New	Oct 19	Restoration works with Stone Edge	£16,330	No Contract	Direct purchase for the refurbish works at Priory Place. Contract Procedure Rules not followed.	Oct 19 Note - Spoken with service area to ensure that CPRs are complied with in future, under the new CPRs this would be allowed.	May 19
Economy and Environment	New	Oct 19	Provision of Flags, Kerbs, Edgings and Other Associated Highway Products	£108,000	Contract Expired	Continuation of purchase following contract expiry	Oct 19 Note - SPT are working with the Service Area on completing a compliant procurement process.	Dec 19
Adults, Health and Wellbeing	Resolved	Apr 19	Disabled adaptations	£9,298	One off purchase	Direct Award of contract without competition	Oct 19 Note - Service area procuring in compliance with CPRs Apr 19 Note – SPT worked with the service area to ensure that CPRs are complied with in future	Jan 19
Learning Opportunities and Young People (LOCYP)	New	Oct 19	Books to under 5's	£122,696	Contract Expired	Continuation of service following contract expiry in February 2019 with contract expenditure exceeding what that approved under the waiver CPR/16/01/ 005 dated 5 February 2016	Oct 19 Note - Service cessation as of September 19	Sept 19

APPENDIX 2

WAIVERS

Appendix 2 details the CPR waivers that have been agreed covering the period **1st March 2019 to the 31st August 2019**, together with an explanation of the reasons for the waiver. The proposed action will need to be concluded in advance of the expiry of the waiver end date to prevent the occurrence of a breach (i.e. unless it is proposed that the arrangements will end).

Directorate	Title	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Waiver Category	Reason for the Waiver (brief description)
Economy & Environment	Johnston Sweepers	£130,000	01/09/2018	31/08/2020	1. Sole Provider/Niche Market	Johnston are the sole supplier and manufacturer of their vehicle sweeper's parts and repairs of which the authority has several. There are no other providers on the market able to compete to any procurement exercise to procure this equipment from.
Economy & Environment	Cusworth Hall Roof Repairs	£5,000	12/12/2018	01/03/2019	4. Emergency Situation	Vandal stripped lead off the roof of Cusworth Hall, Grade 1 listed building that houses valuable assets, urgent repairs needed as it leaves the building open to further vandalism and increases the risk for the building in fabric damage due to rain gaining access to the substructure and possible damage to building contents.
Economy & Environment	Annual NHT Public Satisfaction Survey	£15,000	01/04/2019	31/03/2022	1. Sole Provider/Niche Market	This is an annual survey undertaken by Local Authorities nationally. It is a requirement of DFT Level 3 Self-Assessment Funding, and without conducting these surveys the Council would not receive the level of funding it currently receives. These surveys are a requirement for DFT funding and there are no other providers on the market who can deliver this provision.
Economy & Environment	Mechanical & Electrical Maintenance of the CCQ Building	£31,114	01/04/2019	31/05/2019	3. Continuity of Existing Work	Direct award to the incumbent provider to allow time for completion of the procurement process which has taken longer than anticipated due to a high amount of clarifications. Tender submissions have been received with a varied and detailed amount of pricing clarifications which have been explored and clarified at length. Due to the complexity and intricate nature of the varied, maintenance services that are to be provided as part of this contract, every aspect of the requirements could not be detailed meticulously, with this in mind, further due diligence on the received bids is needed to further clarify with the tenderers.
Economy & Environment	5.194 Jubilee Bridge Strengthening Repair	£183,597	17/06/2019	14/10/2019	1. Sole Provider/Niche Market	There are no other providers within the UK or EU and therefore no call for competition can be completed. This pultruded system is not available from any other manufacturer or distributor in the sizes and load carrying capacity required.

Economy & Environment	Weather Station Upgrade	£32,000	01/05/2019	31/08/2019	1. Sole Provider/Niche Market	There are no other providers on the market able to upgrade this equipment. After researching the market, research shows that the supplier is the only provider able to deliver the upgrade. From undertaking market cost analysis the cost to replace the units, which is available from other supplier's would not be best value at a cost of £25k+ per unit (£50k total) as opposed to £32k to upgrade the existing units.
Economy & Environment	St Sepulchre Gate West – Peninsula Canopy	£161,163	09/05/2019	31/03/2020	4. Forms Part of a Strategic Plan/Review	The Peninsula Canopy is part of the wider Station Forecourt Improvements works. LNER having a 99 year lease on the property and the need to have a canopy covering the walk way to be identical to the station canopy they have in appearance, design, material, and construction. LNER have procured the whole canopy and DBC are part paying this amount.
Adults, Health & Wellbeing	First Aid Services UCI 19 / TDY 2019 / DCF 19	£8,000	08/10/2018	08/10/2019	5. Forms Part of a Strategic Plan/Review	Yorkshire Ambulance Service (YAS) are the only ambulance service provider that is able to integrate into bronze command for events and offer a blue light service.
Adults, Health & Wellbeing	Doncaster 1914-18	£9,643	01/01/2019	31/07/2019	3. Continuity of Existing Work	Hired to complete the Archaeological part of our project, this activity is paid for by the HLF grant.
Adults, Health & Wellbeing	Extra Care Housing	£624,413	01/04/2019	30/09/2019	5. Forms Part of a Strategic Plan/Review	Extension of the current contract requested to ensure continuity of service to enable a strategic review of the service to be conducted. Continuation of service imperative with the existing provider.
Adults, Health & Wellbeing	Domestic Abuse Victims Service	£36,247	01/04/2019	12/05/2019	3. Continuity of Existing Work	The tender timeline for this service proposes that a new contract will be in place with the successful provider by 13 May 2019. This includes a period of mobilisation should there be a change of provider as TUPE will apply. As a result, the timescales extend beyond the current contract end date. To prevent a contract breach, a short extension of the existing arrangement is required whilst the new contract is mobilised.
Adults, Health & Wellbeing	Homelessness Accommodation and Support	£52,466	29/04/2019	28/04/2020	3. Continuity of Existing Work	In 18/19 two full time outreach workers were funded by Better Care Fund (BCF) for 12 months to support an increase in rough sleepers. Further funding have again been secured for a further 12 months to aid in the continuation of improvements.
Adults, Health & Wellbeing	Homelessness Accommodation and Support - Backfill	£11,502	08/04/2019	30/06/2019	6. Other	Waiver requested for a term variation of the contract to cover the backfill costs for the continuation of two full-time additional Assertive Outreach Workers for a period of up to 12 weeks to enable existing staff to be seconded into the councils Complex Lives Team
Adults, Health & Wellbeing	Managed Accounts	£12,000	30-Apr-19	31/07/2019	3. Continuity of Existing Work	The waiver request is to extend the current contract with the incumbent Managed Accounts provider for up to three months to ensure that we fully adhere to legal guidance and meet our GDPR responsibilities upon transfer to the newly awarded provider.
Adults, Health & Wellbeing	Generalist Advice	£8,600	01/04/2019	31/03/2020	3. Continuity of Existing Work	This waiver is being requested to extend the current contract with the CAB Mexborough to ensure continuity of the generalist advice service within Well North pilot area.

Adults, Health & Wellbeing	Well North Enterprises	£11,000	24/04/2019	31/03/2020	3. Continuity of Existing Work	Waiver requested to extend the current contract with Well North for a further year to support additional work required with local people in Edlington, Balby, Bentley and Stainforth to create wellbeing and protect health.
Adults, Health & Wellbeing	Get Doncaster Moving Sponsorship Agreement	£10,500	01/05/2019	01/05/2020	1. Sole Provider/Niche Market	This waiver is being requested to enter into a sponsorship agreement with Club Doncaster Foundation to improve the presence of the Get Doncaster Moving Brand. Separating the elements and procuring them that way would not have the positive exposure that this method will provide, nor would it be as easily achievable.
Adults, Health & Wellbeing	Well Doncaster Pilot	£10,000	01/05/2019	30/04/2020	3. Continuity of Existing Work	Waiver requested to extend the current contract to enable the provider develop their current peer support group network to cater for adults of all ages with a focus on the older population as part of the Well North Pilot programme.
Adults, Health & Wellbeing	Making Space Static Day Centres	£215,250	01/07/2019	31/03/2020	4. Forms Part of a Strategic Plan/Review	This waiver is being requested to 1. Allow further time to develop the revised service and undertake a recommission of the services on a revised offer. 2. Allow a full Condition of Buildings Survey to be undertaken. 3. To include the grant funded mobile day service provided by Age UK
Adults, Health & Wellbeing	Changing Lives Multi-Agency Hub	£124,000	17/06/2019	21/03/2021	1. Sole Provider/Niche Market	This waiver is being requested to enable the creation of bespoke consolidated service to vulnerable women with complex lives as part of multi-agency support hub and Team Doncaster Strategic Partnership.
Adults, Health & Wellbeing	Trauma Informed Worker	£50,000	01/04/2019	31/03/2021	1. Sole Provider/Niche Market	Waiver requested to enable the current provider to provide additional specialist support to the Complex Lives Team and Team Doncaster Strategic Partnership to manage the impact of childhood and adult trauma. Specialist role.
Adults, Health & Wellbeing	Cycle Circuit Concession / Lease Agreement	£207,000	05/08/2019	31/03/2036	4. Forms Part of a Strategic Plan/Review	Waiver requested to enter into a 17 year concession contract for the running of new cycle circuit ensuring this new agreement run co-terminus to the current concession agreement with DCLT for the running of its leisure centres.
LOCYP	Health mentors	£93,000	01/09/2019	31/08/2020	1. Sole Provider/Niche Market	This waiver is being requested as the provider offers a unique and sustainable mentoring model to promote health in schools and is the only provider able to be funded through schools' apprenticeship levy to train mentors who then become directly employed by schools. On this basis it is sustainable in a way competing offers would not be.
LOCYP	Capita One Extension	£159,046	01/04/2019	31/03/2020	3. Continuity of Existing Work	The current contract expires on 31st March 2019. Given the new Doncaster Integrated People Solution (DIPS) the education system will not be fully implemented until March 2020 there is a need to extend the contract to ensure provision and it would not be in the council's interests to re-procure and implement a system for such a short period of time.
Corporate Resources	Chamber Voting and Conference System	£65,363	01/04/2019	31/12/2022	1. Sole Provider/Niche Market	To ensure the necessary equipment can be purchased and installed in time for Annual Council on 17th May 2019. Only the current provider can provide this refresh and choosing to upgrade the current installed system offers significant discounts on the alternative of purchasing and installing an entirely new system.