



Doncaster Council

Report

Date 17 June 2020

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
		Yes/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 September 2019** to the **29th February 2020**.
2. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in **October 2019**. It also provides a comparison to October's Audit Committee. The details of each waiver and breach are summarised in the appendices to this report.

Directorate	1 st Sept 19 to 29 th Feb 20		1 st Mar 19 to 31 st Aug 19		1 st Sept 18 to 28 th Feb 19	
	Breaches	Waivers	Breaches	Waivers	Breaches	Waivers
AHW	0	5	0	16	1	10
LOCYP	0	2	1	2	0	3
CR	1	2	0	1	0	3
E&E	1	1	3	8	3	9
GRAND TOTAL	2	10	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 Monitoring Officer (MO) monitored compliance with the CPR's for the period covered by this report.

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 (£189,330 as of the 1st Jan 20)** – 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 (£189,330 as of the 1st Jan 20) and £615,278 (£663,540 as of the 1st Jan 20) (Light Touch Regime (LTR) Services) or £4,551,413 (£4,733,252 as of the 1st Jan 20) (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 (£663,540 as of the 1st Jan 20) (LTR Services) or £4,551,413 (£4,733,252 as of the 1st Jan 20) (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 waived, 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.

Category	Description
1	Where the Director is able to demonstrate that only one specialist firm is able to meet the requirement
2	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
3	To allow for the safe exit from a contract or to decommission
4	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 **two** new breaches, as well as updates on **four** existing unresolved breaches and **four** 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 **October 2019**, there were **four** new breaches of the CPR's reported to Audit Committee as well as updates on **two** existing unresolved breaches and **six** resolved breaches.

Waivers to CPR's

14. **Ten** waivers to CPR's have been approved this period (see Appendix 2 for the detail of each waiver) compared to the **twenty-five** reported in October 2019.
15. The waivers detailed in this report have been reviewed and agreed either by the MO or the CFO (for waivers linked to the Legal and Democratic Services Department).

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £25,000

16. 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.
17. SPT operate a spend analysis system to track all transactions that go to providers. This system can pick up where spend is not linked to contracted spend and this is reported to each Directorates senior management teams.
18. A structured CPR Training Programme has been delivered to officers across the authority. This is designed to increase awareness on best practice procurement and required governance when officers contract on behalf of the council. This training will continue through a classroom based approach periodically and there will be the launch of an E Learn package in 20/21.
19. Appendix 3 shows the context of the figures given.

OPTIONS CONSIDERED

20. Every waiver is examined and, where appropriate, challenged for alternative options prior to approval. A robust process monitors CPRs and a SPT officer is assigned as per there category areas to each waiver. Each waiver is approved for escalation for authorisation by the Head of Strategic Procurement. Ones that fail to meet one of the four reasons for non-compliance to the CPR's are rejected.

REASONS FOR RECOMMENDED OPTION

21. It is important that the council's CPR's are adhered to. Where breaches are identified, a corrective plan is formed and monitored by a SPT Officer in liaison with the service area.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

22.

	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 	<p>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>
	<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>	<p>Effective procurement governance ensures best value is achieved from the budgets available.</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 	
	<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 experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	<p>Social value is considered in contracting activity. The CPRs state that for any procurement above £189,330 and there must be a minimum of 10% weighting factored into the overall evaluation criteria.</p>
	<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 	<p>Effective procurement mitigates the risks posed by contracting and ensures robust contracts.</p>
	<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 	<p>Effective procurement ensures best value, effective partnership working and robust specifications to attain the best from the markets.</p>

RISKS AND ASSUMPTIONS

23. 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...SRF... Date.....16/03/20.....]

24. 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 the Service areas in relation to these matters.

FINANCIAL IMPLICATIONS [Officer Initials...AT..... Date...12/03/20.....]

25. 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 10/03/20.....]

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

TECHNOLOGY IMPLICATIONS [Officer Initials... PW Date 06/03/20.....]

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

HEALTH IMPLICATIONS [Officer Initials... VJDate ...12/03/20.....]

28. 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]

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

CONSULTATION

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

BACKGROUND PAPERS

31. 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)
Learning & Opportunities: Children & Young People (LOCYP)
Adults, Health & Wellbeing (AH&W)
Economy & Environment (E&E)
Corporate Resources (CR)

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BREACHES

Appendix 1 details the:

- **New** CPR breaches that have been identified between the **1st September 2019 to the 29th February 2020**;
- **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:

No.	Directorate	Status New Unresolved Resolved	Date Reported to Audit Committee	Contract Description	Annual Value	Reason for breach	Proposed action to be / has been taken in relation to the breach	Timescale for resolution
1.0	AH&W	Resolved		Solar Centre	£746,000	Failure to re-commission. Contract expired.	<p>March 20 Note Resolved Section 76 entered into with the CCG</p> <p>Oct19 Note - Agreement from Cabinet on the 4 June 2019 to enter into a Section 76 with Doncaster Clinical Commissioning Group from the 1 Jan 20.</p> <p>Apr 19 Note - Report on the Solar Centre commissioning intentions going to the Cabinet on the 4 Jun 19.</p>	<p>Revised 1 Jan 2020</p> <p>Revised 30 May 19</p> <p>30 Jun 18</p>
1.1	AH&W	Unresolved	Apr 17	YMCA Goodall House	£170,000	Contract expired. Looking to review with the Doncaster Children's Trust.	<p>March 20 Note Service included in the review of the Homelessness Strategy approved by Cabinet on 5th Nov 19. Awaiting service area decision end Sept 20.</p> <p>Oct 19 Note - Decision over the future of the service put on hold until the approval of the Homelessness and Rough Sleeping Strategy presented at cabinet on the 5th Nov 19 The service will be considered as a part of the overall commissioning plan for the implementation of the Strategy.</p> <p>Apr 19 Note - report written but still to be agreed - recommendation to decommission the contract – if agreed in Apr 19 then contract will require 6 months exit strategy period.</p> <p>Oct 18 Note - Review and potentially redesign.</p>	<p>Mar 19</p> <p>Revised: Sept 19</p> <p>Subject to Cabinet Report 5th Nov 19</p>

No.	Directorate	Status New Unresolved Resolved	Date Reported to Audit Committee	Contract Description	Annual Value	Reason for breach	Proposed action to be / has been taken in relation to the breach	Timescale for resolution
2.0	LOCYP	Resolved	Oct 19	Books to under 5's	£122,696	Continuation of service following contract expiry Feb 19 with contract expenditure exceeding what that approved under the waiver CPR/16/01/005 dated 5 Feb 16	Mar 20 Note Service Ceased Oct 19 Note - Service cessation as of September 19	Mar 20 Sept 19
3.0	E&E	Unresolved	Apr 19	Glass and Glazing supplier for the supply & install of doors, windows and board ups	£102,000	Area unaware of the scope of the corporate contract for the 'Building Materials and Associated Products' and that it does not cover their requirements and have been using it for that supply. No contract.	Mar 20 Note – Procurement are currently drafting specification with a view to award June 20 Oct 19 Note - SPT are working with the Service Area on completing a tender. Procurement exercise to be completed.	Revised Jun 20 Apr 20
3.1	E&E	Resolved	Oct 19	Consultancy Fee for Traded Services	£180,672	Direct purchase albeit a compliant framework was available but was not used, lack of knowledge.	Mar 20 Note - Service Area are now engaging with Procurement and complying with CPRS 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
3.2	E&E	Resolved	Oct 19	Restoration works with Stone Edge	£16,330	Direct purchase for the refurbish works at Priory Place. Contract Procedure Rules not followed.	Mar 20 Note - Service Area are now engaging with Procurement and complying with CPRS 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
3.3	E&E	Unresolved	Oct 19	Provision of Flags, Kerbs, Edgings and Highway Products	£108,000	Continuation of purchase following contract expiry	Mar 19 Note – Due to run a further completion using Barnsley Council's Framework with a view to awarding July 20. Oct 19 Note - SPT are working with the Service Area on completing a compliant procurement process.	Revised: Jul 20 Dec 19
3.4	E&E	New	Apr 20	Autocad Software Licences	£32,000	CPR waiver rejected Continuation of service for a further one year following contract expiry	CPR waiver submitted Direct award for an annual license subscription. Declined as other licence resellers have been identified. Project to commence April 2020 to seek competitive quotes for a longer-term agreement.	Nov 20
3.5	CR	New	Apr 20	Grave Digging	£90,000	Continuation of service following contract expiry	Project on-going to procure service via YPO framework. Awaiting T&C's and information from service area.	May 20

APPENDIX 2

WAIVERS

Appendix 2 details the CPR waivers that have been agreed covering the period **1st September 2019 to the 29th February 2020**, 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).

No.	Directorate	Title	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Waiver Category	Reason for the Waiver (brief description)
1.0	LOCYP	Oversight and management of curriculum peer reviews	£72,000	01/09/2019	31/07/2020	1. Sole Provider/Niche Market	To improve the quality of teaching, the Doncaster OA commissioned curriculum peer reviews in the three core subjects. The supplier used operates in a niche market and had already delivered complimentary works. Use of this supplier ensured continuity of delivery for schools and engagement.
1.1	LOCYP	Nexus Package Contract Renewal	£33,000	01/11/2019	31/10/2022	1. Sole Provider/Niche Market	There are no alternatives on the market, the Nexus system and its additional components are a fundamental part of our statutory services around education data.
2.0	AH&W	Extra Care Housing	£681,392	01/10/2019	31/03/2020	4. Forms Part of a Strategic Plan/Review	The current contractual arrangements were established following a tender in 2015. Extended to allow for re-commissioning of the services. A full procurement exercise is taking place and it is due to be awarded Feb 20.
2.1	AH&W	Archives Specialist Cleaning & Restoration	£262,778	01/10/2019	30/09/2020	2. Emergency Situation	The archives premises on King Edward Road, Balby, has severe structural problems and the situation is continuing to deteriorate at a rate more rapid than previously anticipated. The archives collections on site therefore need to be moved as soon as possible, and alternative interim storage found.
2.2	AH&W	Archives Specialist removal	£82,740	07/10/2019	30/03/2020	2. Emergency Situation	The archives premises on King Edward Road, Balby, has severe structural problems and the situation is continuing to deteriorate at a rate more rapid than previously anticipated. The archives collections on site therefore need to be moved as soon as possible, and alternative interim storage found.
2.3	AH&W	Archives Specialist storage	£81,975	07/10/2019	31/03/2020	2. Emergency Situation	The archives premises on King Edward Road, Balby, has severe structural problems and the situation is continuing to deteriorate at a rate more rapid than previously anticipated. The archives collections on site therefore need to be moved as soon as possible, and alternative interim storage found.

No.	Directorate	Title	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Waiver Category	Reason for the Waiver (brief description)
2.4	AH&W	Capita One	£71,105	01/04/2020	31/03/2021	1. Sole Provider/Niche Market	Given the new Doncaster Integrated People Solution (DIPS) education system will not be fully implemented until Jul 20 there is a need to extend the contract to ensure continuation of services until the new system goes live.
2.5	E&E	Active Travel Officers in Schools (STAF funded programme)	£250,000	01/04/2020	31/03/2021	4. Forms Part of a Strategic Plan/Review	DMBC currently manage the Sustainable Transport Access funding (STAF) provided by the Department for Transport (DfT) across the 4 Sheffield City Region areas of Barnsley, Doncaster, Rotherham and Sheffield. The initial funding window was Apr 17 – Mar 20. This funding has been extended by 12 months so to ensure continuity of services and value for money the contract has been extended by 12 months. It would not be feasible to tender a 12 months contract.
2.6	CR	Sophos UTM and Antivirus	£56,000	01/02/2020	31/03/2021	2. Emergency Situation	Waiver is to extend the education Contract for a further 13 months to bring this in line with the Corporate contract with the same expiry date and ensure continuity of services. This will allow the ICT department to complete a full procurement exercise in 2020 with one software vendor, which in turn will save the council money and offer a better service.
2.7	CR	Sparc Enterprise Server including Solaris 10	£14,445	06/03/2020	05/09/2020	3. Safe Exit from a contract	Support and maintenance contract for supporting the Solaris 10 environment on which OLM- Care First resides. Systems will be replaced by the new DIPS implementation in March 2020, however the go live date for Adults is now forecast to be mid July 2020 and therefore there is a need to extend the support for the existing legacy systems.

Breaches and Waivers to the Contract Procedure Rules (CPRs)

Directorate	No.of Live Contracts	No. of Contracts Awarded 1 st Mar 19 to 29 th Feb 20	Breaches 1 st Mar 19 to 29 th February 20	Waivers 1 st Mar 19 to 29 th February 20
AH&W	446	86	0	21
LOCYP	197	55	1	4
CR	309	86	1	3
E&E	250	242	4	9
Total	1202	469	6	37

Breaches accounted for **1.3%** the total contracts awarded 1st Mar 19 to 29th February 20

Waivers accounted for **7.9%** of the total contracts awarded 1st Mar 19 to 29th February 20