



Doncaster Council

Report

19th October 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
		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 2 month period **1st July 2020** to the **31st August 2020**.
2. This report covers a shorter period than is usual due to the report presented to the Audit Committee in July 2020 which was by exception and gave an overview in relation to contracting, procurement and governance activity over the COVID-19 situation.
3. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in **July 2020**. The details of each waiver and breach are summarised in the appendices to this report.

Directorate	1 st Jul 20 to 31 st Aug 20 (2 months)		1 st Mar 20 to 30 th Jun 20 (4 months)		1 st Sept 19 to 29 th Feb 20 (6 months)	
	Breaches	Waivers	Breaches	Waivers	Breaches	Waivers
AHW	0	4	0	8	0	5
LOCYP	0	0	0	0	0	2
CR	0	2	0	7	1	2
E&E	0	2	0	8	1	1
GRAND TOTAL	0	8	0	23	2	10

EXEMPT REPORT

- This report is not exempt.

RECOMMENDATIONS

- To note the information and actions contained in this report regarding waivers and breaches in relation to the CPR's.
- To note any new procurement and contracting activity matters linked to COVID-19.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

- There are no specific implications within this report.

BACKGROUND

- The Monitoring Officer (MO) monitored compliance with the CPR's for the period covered by this report.
- The Head of Procurement and the team are still involved in COVID-19 related activity and continue to ensure correct governance where necessary.

CONTRACT PROCEDURE RULES (CPR'S)

- 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 £189,330** – 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 £189,330 and £663,540 (Light Touch Regime (LTR) Services) or £4,733,252 (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 £189,330 (Goods/Services) or £663,540 (LTR Services) or £4,733,252 (Works)** - use of an in-house supplier, council wide contract, third party framework agreement or carry out a public contract regulations compliant tender process.

11. It is therefore important that steps are taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position.
12. There have been **zero** new breaches, as well as updates on **four** existing unresolved breaches and **zero** resolved breaches.
13. **Appendix 1** shows the details of the new, unresolved and resolved breaches for this period.
14. 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 Monitoring Officer or Chief Financial Officer (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

15. 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.

Update to Breaches previously reported

16. In **July 2020**, there were **zero** new breaches of the CPR's reported to Audit Committee as well as updates on **four** existing unresolved breaches and **one** resolved breach.

Waivers to CPR's

17. **Eight** waivers to CPR's have been approved for this 2 month period, which has decreased but is still high for the time frame but much less compared to the **twenty-three** reported in July 2020 for the 4 months initial COVID-19 period. There were **ten** reported in February 2020 and this was for a 6 months period. The percentage of waivers granted against the amount of contracts awarded for this period is shown in **Appendix 3**.
18. 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).
19. The waivers granted, as shown in **Appendix 2**, continue to be heavily reliant on category 2 of the permissible exemptions to the CPR's which is '*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*'.

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £25,000

20. SPT (Strategic Procurement Team) 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.
21. 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.
22. 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 has been drafted onto the Council's E Learn platform and is set to be launched.

COVID-19 Related Activity

23. SPT continue to lead of the sourcing of PPE through the regional collaborative agreement with the other South Yorkshire Local Authorities. The Head of Procurement represents the Council on the monthly Local Resilience Forum (LRF) meetings to ensure the Council mitigate any further risks associated with the lack of PPE nationally and coordinate the distribution of central government stocks.
24. The Council have had communication from the Department for Health and Social Care (DHSC) that free stocks will be made available to the Council and to not enter into further contractual agreements. The DHSC are still to advise on dates, quantities, type of products and distribution methodologies.
25. The Cabinet Office released Procurement Policy Note (PPN) 04/2020 in June

2020 titled 'Recovery and Transition from COVID-19'. This note was a follow on to PPN 02/2020 and is an advisory note to public bodies on dealing with their supply chains up to the 31st October 2020. This note was distributed across the Council with a practical guidance note for Council Officers in working with their providers and any continued issues that may exist. This has been implemented across the Council on a contract by contract basis to the extent that some contracts may be exited from. The Council has continued to pay providers immediately as opposed to the usual 30 days payment terms, to try and help provider's cash flow. This is a changeable situation and the Council continue to monitor, relay and implement any necessary actions.

OPTIONS CONSIDERED

26. Each waiver is examined through the robust waiver process and, where appropriate, challenged for alternative options prior to approval. Each waiver is approved by the Head of Procurement for escalation for authorisation by the MO or CFO.

REASONS FOR RECOMMENDED OPTION

27. 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

28.

	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>The Supplier Relief Scheme, that was part of the Council's response to COVID-19, has been designed to sustain businesses that the Council contract with, many being Doncaster based.</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> <ul style="list-style-type: none"> • The town centres are the beating heart of 	<p>Effective procurement governance ensures best value is achieved from the budgets available.</p>

	<p>Doncaster</p> <ul style="list-style-type: none"> • 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>SPT continuing to manage the PPE supply in response to COVID-19 has insured that the citizens of Doncaster are protected.</p>
	<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 project above £189,330 must have a minimum of 10% weighting factored into the overall evaluation award 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>SPT continue to work across the authority and regionally to ensure adequate availability of PPE and continue to do so.</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> <p>SPT continue to drive adherence to governance.</p>

RISKS AND ASSUMPTIONS

29. 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.

30. The risks to the Council have been mitigated by ensuring additional governance has been put in place and facilitated throughout the COVID-19

pandemic.

31. There is a need for the Council to continually review and monitor the COVID-19 impacts on the authority from a contracting perspective to ensure continued adherence to the governance. Failure to do so could result in bad practices. The Council is currently in recovery phase and the full extent of the evolving situation on contracting will not be fully known until this is over.

LEGAL IMPLICATIONS [Officer Initials...NJD... Date.....24/09/20.....]

32. 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. It is accepted that many of the waivers detailed in the appendices are as a result of the current Covid-19 pandemic. Action should be taken to regularize these matters as soon as possible in order that the Council may compliance with its obligations under procurement regulations

FINANCIAL IMPLICATIONS [Officer Initials...AT..... Date...23/09/20.....]

33. 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 22/09/20.....]

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

TECHNOLOGY IMPLICATIONS [Officer Initials... PW Date 22/09/20.....]

35. 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... RSDate ...21/09/20.....]

36. 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]

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

CONSULTATION

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

BACKGROUND PAPERS

39. 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)
Public Procurement Note (PPN)
Strategic Procurement Team (SPT)
Purchase to Pay Team (P2P)
Information Communications Team (ICT)
Technology Governance Board (TGB)

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BREACHES

Appendix 1 details the:

- **New** CPR breaches that have been identified between the **1st July 2020 to the 31st August 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	AHW	Unresolved	Apr 17	YMCA Goodall House	£170,000	Contract expired.	<p>Sept 2020 Note – agreed exit strategy, ODR signed for the contract to run up to the 31st Mar 2022. This will remain breach until the contract ceases.</p> <p>June 2020 Note – agreed exit strategy through liaison with legal, procurement and provider. Tapered funding arrangement to minimise service disruption to young people coinciding with an alternative funding model secured by the provider. ODR drafted and submission being progressed.</p> <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>March 2022</p> <p>Subject to Cabinet Report 5th Nov 19</p> <p>Revised: Sept 19</p> <p>Mar 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	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.	<p>Sept 20 Note – Following COVID-19 SPT are working with the service area on procurement exercise. Due to award Jan 21</p> <p>June 20 Note – Delayed due to COVID-19. New award date Jan 21.</p> <p>Mar 20 Note – Procurement are currently drafting specification with a view to award June 20</p> <p>Oct 19 Note - SPT are working with the Service Area on completing a tender. Procurement exercise to be completed.</p>	Revised Jan 21 Jun 20 Apr 20
2.1	E&E	Unresolved	Oct 19	Provision of Flags, Kerbs, Edgings and Highway Products	£108,000	Continuation of purchase following contract expiry	<p>Sept 20 Note – Following COVID-19 SPT are working with Service area on procurement exercise. Due to award Jan 21</p> <p>June 20 Note – Delayed due to COVID 19. New award date Jan 21.</p> <p>Mar 20 Note – Due to run a further completion using Barnsley Council's Framework with a view to awarding July 20.</p> <p>Oct 19 Note - SPT are working with the Service Area on completing a compliant procurement process.</p>	Revised: Jan 21 Jul 20 Dec 19
2.2	E&E	Unresolved	Apr 20	Autocad Software Licences	£32,000	CPR waiver rejected Continuation of service for a further one year following contract expiry	<p>Sept 20 Note – Following COVID-19 SPT are working with Service area on procurement exercise. Due to award Jan 21</p> <p>June 20 Note – Procurement exercise slightly delayed due to COVID19 but aim to award in Nov 20 still.</p> <p>Mar 20 Note - CPR waiver declined. Project to commence April 2020 to seek competitive quotes for a longer-term agreement.</p>	Jan 21 Nov 20

WAIVERS

Appendix 2 details the CPR waivers that have been agreed covering the period 1st July 2020 to the 31st August 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	AHW	Carers Reach Out Service	£90,000	01/04/2021	31/03/2022	2. Emergency Situation	The COVID-19 pandemic has resulted in unprecedented pressures on providers of local government services. Anticipated recovery phase of 6-12 months. To conduct a procurement exercise during the public health crisis, with the expectation that providers will be mobilised for a contract start date of 1 April 2021, is unfeasible at this time.
1.1	AHW	Community Integrated Equipment Service	£4,200,000	06/09/2021	05/09/2022	2. Emergency Situation	The commissioning work needed to be undertaken within a planned timescale due to the complexity of the service to mobilise for a start date of 6 September 2021 cannot be completed as there was no Occupational Therapy staff capacity to carry out this work, a successful Better Care Fund application on the 18 March 2020 secured funding for two years to fund a Partnership Manager post who will conduct the work but recruitment has been delayed due to COVID-19.
1.2	AHW	SLA Online - traded services software	£22,430	01/08/2020	31/07/2021	2. Emergency Situation	Due to the contract coming to an end it was the services intention to conduct a full procurement exercise for the platform. However, since March the team have been occupied working on COVID-19 related activities (i.e. arrangement of PPE to schools/early years, health and safety infection training, signage for re-opening).
1.3	AHW	Strategic Advisory and Development Support for Locality Working Reform Project	£35,100	01/07/2020	31/10/2020	2. Emergency Situation	The COVID-19 pandemic has resulted in unprecedented pressures on providers of local government services as well as partner services. We are now moving into the recovery phase as well as management of emergency outbreaks and to exit from the current contract would be unsafe and could jeopardise the strategic locality planning work. To conduct a procurement exercise and expect new providers to be mobilised to pick up this work during this time is unfeasible.
2.0	E&E	Supply of Emergency PPE	£218,920	22/04/2020	16/05/2020	2. Emergency Situation	Supply of emergency PPE for use during the pandemic is outside the remit of the corporate contract and the incumbents could not supply due to national shortages. The Procurement Team ensured that best value was obtained where practicable and standards adhered to.

No.	Directorate	Title	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Waiver Category	Reason for the Waiver (brief description)
2.1	E&E	Transforming Cities Consultancy Support	£50,000	24/08/2020	24/01/2021	2. Emergency Situation	The Transforming Cities Fund programme is highly ambitious, with a £35million spend required by March 2023. Due to the COVID-19 pandemic resources have been diverted elsewhere and the programme has fallen behind schedule. Therefore a waiver was granted to bring in consultancy support to develop business cases for the programme.
3.0	CR	Technology Forge Extension	£83,500	01/08/2020	31/07/2022	2. Emergency Situation	It is most efficient to continue with the same application until DiCaps is procured and implemented. To commission and implement an alternative system until DiCaps is implemented would involve transferring all data currently held within the TF Cloud system.
3.1	CR	Digital Autopsy	£98,000	14/10/2020	13/04/2021	1. Sole Provider/ Niche	There is a national shortage of pathologists who are able to undertake post mortems and this resulted in delays to the Coroner being informed of cause of death. This is a niche provider and the Council, due to the benefits obtained, wish to continue to provide digital autopsies.

Appendix 3

Total Contracts Award 1st July 2020 to the 31st August 2020 versus the number of waivers

Directorate	Total Contracts Awarded July/Aug 2020	Number of Waivers	% Overall
E&E	19	2	11%
AHW	8	4	50%
LOCYP	14	0	0%
CR	11	2	18%
Total	52	8	15%

The % overall for the period 1st July 20 to the 31st August 20 of waivers granted against contract awarded was **15%** which is a slight decrease on the previous period between the 1st March 20 to the 30th June 20 of which was **16%**.