



Doncaster Council

Report

Date: 29th April 2021

To the Chair and Members of the
AUDIT COMMITTEE

BREACHES AND WAIVERS TO THE COUNCIL'S CONTRACT PROCEDURE RULES

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 2020 to the 28th February 2021**.
2. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in October 2020 and the one before that in July 2020. The details of each waiver and breach are summarised in the appendices to this report.

Directorate	1 st Sep 20 to 28 th Feb 21 (6 months)		1 st Jul 20 to 31 st Aug 20 (2 months)		1 st Mar 20 to 30 th Jun 20 (4 months)	
	Breaches	Waivers	Breaches	Waivers	Breaches	Waivers
AHW	0	3	0	4	0	8
LOCYP	2	2	0	0	0	0
CR	0	4	0	2	0	7
E&E	0	6	0	2	0	8
GRAND TOTAL	2	15	0	8	0	23

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.
5. To note any new procurement and contracting activity matters.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

6. There are no specific implications within this report.

BACKGROUND

7. The Monitoring Officer (MO) monitored compliance with the CPR's for the period covered by this report.

CONTRACT PROCEDURE RULES (CPR'S)

8. 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.
9. It is therefore important that steps are taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position.
10. There have been **two** new breaches, as well as updates on **three** existing unresolved breaches and **one** resolved breach.
11. **Appendix 1** shows the details of the new, unresolved and resolved breaches for this period.
12. Whilst the public procurement law 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

13. 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

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

Waivers to CPR's

15. **Fifteen** waivers to CPR's have been approved for this **6** month period, which has decreased from the huge increase over the pandemic period but still higher than the same 6 months period in 2019/20, reported in February 2020, which was **ten**. The percentage of waivers granted against the amount of contracts awarded for this period is shown in **Appendix 3**.

16. 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

17. 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.

18. 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.
19. A CPR Training Programme has been drafted onto the Council's E Learn platform and is set to be launched April 2021.

OPTIONS CONSIDERED

20. 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 and escalated for authorisation to the MO or CFO.

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	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	Effective procurement governance ensures best value is achieved from the budgets available.

	<ul style="list-style-type: none"> • 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 	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>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.
	<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

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.
24. 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. The Council is in recovery phase and the Procurement Team are working with service areas to ensure projects are conducted in line with the CPR's. The pandemic has resulted in a delay in contracting activity and has increased the pressure on resource. Currently there is a low risk to fulfilling the needs of the authority but this is being monitored closely. There has been successful recruitment within the Procurement Team which is facilitating the increased demand in workloads.

LEGAL IMPLICATIONS [Officer Initials...NJD... Date.....12/04/21.....]

25. 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 comply with its obligations under procurement regulations

FINANCIAL IMPLICATIONS [Officer Initials...PH..... Date...07/04/21.....]

26. 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 RH Date 09/04/21.....]

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

TECHNOLOGY IMPLICATIONS [Officer Initials... PW Date 08/04/21....]

28. 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 ...08/04/2021.....]

29. There are no direct health implications 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 07/04/21]

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

CONSULTATION

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

BACKGROUND PAPERS

32. None.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Contract Procedure Rules (CPR's)
Chief Financial Officer (CFO)
Monitoring Officer (MO)
Light Touch Regime (LTR)
Learning & Opportunities: Children & Young People (LOCYP)
Adults, Health & Wellbeing (AH&W)
Economy & Environment (E&E)
Corporate Resources (CR)
Strategic Procurement Team (SPT)
Information Communications Team (ICT)
Technology Governance Board (TGB)

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APPENDIX 1

BREACHES

- **New** CPR breaches that have been identified between the **1st September 2020 to the 28th February 2021**
- **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	LOCYP	New	Apr 21	Archive Offsite Storage	£39,700	Contract expired	April 2021 Note – Movement of archives into the old museum site. Retrospective waiver requested and rejected. Project plan agreed with the service area to enable a route to compliance. Capital investment underway.	Oct 2021
1.1	LOCYP	New	Apr 21	Archive Offsite Storage	£83,814	Contract expired	April 2021 Note – Movement of archives into the old museum site. Retrospective waiver requested and rejected. Project plan agreed with the service area to enable a route to compliance. Capital investment underway.	Oct 2021
2.0	AHW	Unresolved	Apr 17	YMCA Goodall House	£170,000	Contract expired.	Apr 2021 Note – as per the note from Sept 2020. In addition there is contractual coverage to mitigate risks to the Council. Sept 2020 Note – agreed exit strategy, ODR signed for the contract to run up to the 31 st Mar 2022. This will remain breach until the contract ceases. 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. March 20 Note Service included in the review of the Homelessness Strategy approved by Cabinet on 5 th Nov 19. Awaiting service area decision end Sept 20. 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 5 th Nov 19. The service will be considered as a part of the overall commissioning plan for the implementation of the Strategy.	March 2022 Subject to Cabinet Report 5 th Nov 19 Revised: Sept 19 Mar 19

						<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>		
3.0	E&E	Unresolved	Apr 19	Glass and Glazing supplier for the supply & install of doors, windows and board ups	£102,000	Scope of the corporate contract for the 'Building Materials and Associated Products' does not cover areas requirements and have been using it for that supply. No contract.	<p>Apr 21 – Procurement delayed, currently mitigating the risk by getting quotes for each job. Procurement project started to cover the aggregated contract value and is due to complete Aug 21.</p> <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 Aug 21 Jan 21 Jun 20 Apr 20
3.1	E&E	Unresolved	Oct 19	Provision of Flags, Kerbs, Edgings and Highway Products	£108,000	Continuation of purchase following contract expiry	<p>March 21 Note – Due to be tendered via YPO framework w/c 22/03/21 with an anticipated contract award date of May 2021. Delayed contracting due to service area resource but procurement now underway.</p> <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: May 21 Jan 21 Jul 20 Dec 19
3.2	E&E	Resolved	Apr 20	Autocad Software Licences	£32,000	CPR waiver rejected. Continuation of service for a further one year following contract expiry	<p>March 21 Note – Contract awarded to Softcat PLC (via HealthTrust Europe LLP Framework Agreement) until 12/11/21</p> <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

APPENDIX 2

WAIVERS

CPR waivers that have been agreed covering the period **1st September 2020 to the 28th February 2021**, together with an explanation of the reasons for the waiver.

No.	Directorate	Title	Waiver Category	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Reason for the Waiver (brief description)
1.0	AHW	GP Positive Step waiver	4. Forms Part of a Strategic Plan/Review	£40,000	07/03/2021	06/03/2022	The service provides a weekly GP ward round to service users who have been discharged from acute settings into the Positive Steps service and seeks to optimise their independence once they leave hospital. The Covid 19 situation has resulted in delays to the Intermediate Care Review and subsequently the council needs to ensure this provision is maintained to allow for Covid recovery phases to pass and resource be made available to continue pre Covid works.
1.1	AHW	Test and Trace Communications Support	2. Emergency Situation	£110,000	01/08/2020	31/12/2021	Emergency requirement in response to Covid 19, support required in delivering essential Covid 19 specific communications across the borough.
1.2	AHW	Practice With Impact	1. Sole Provider/Niche Market	£50,000	01/02/2021	31/07/2021	The requirement is for niche provision to work in a credible way with adult social care practitioners and improve workflow in specified ways following the implementation of the DIPS programme. This requires specialist input, ensuring both strong understanding of applicable legislation, practical grip on social care processes and credibility with practitioners.
2.0	CR	Children's social care system	2. Emergency Situation	£91,816	01/11/2020	31/10/2021	The Council is implementing a new Integrated People Solution that encompasses adult and children social care with associated portals and financial and education management. The support contract for this contract ends 31st October 2020 but the current go-live date of the replacement solution has had to be moved to 23rd November 2020. There has been slippage in the project caused by the Covid situation impacting on resources and data quality and migration issues. This is a very critical business system serving our most vulnerable young people and it must be maintained and there are no alternatives.

2.1	CR	Counselling Services	2. Emergency Situation	£30,000	10/02/2021	09/02/2022	Due to the current Covid-19 pandemic an extension has been granted between all suppliers on the Counselling Framework to ensure continued provision of this vital service to meet the needs of staff. Resource in this department has been redirected on dealing with increased need. The risk is too high in not having this provision for staff and the continuation of providers working with existing clients is essential.
2.2	CR	Mortuary Service	1. Sole Provider/Niche Market	£33,000	01/04/2021	31/08/2021	The sector for this provision is limited and due to the Covid19 market testing of the market has been delayed due to the inability for the incumbent provider and any other unknown potential providers to tender due to the increased pressures they face. The contract will be market tested to ensure the niche viewpoint of the market and a long-term contract put in place as a result of this exercise, this will be completed and in place once the CPR Waiver ends.
2.3	CR	Doncaster IDCR Migration from CareFirst to Mosaic	1. Sole Provider/Niche Market	£30,030	22/02/2021	31/03/2021	This CPR waiver is granted to the provider to allow the necessary Integrated Digital Care Record (IDCR) consultancy services to support the migration from one system to the other. As the provider of the IDCR for Doncaster Clinical Commissioning Group (CCG) the provider directly awarded to are the only specialist firm able to meet this requirement.
3.0	LOCYP	Big Leadership	1. Sole Provider/Niche Market	£36,000	10/09/2020	14/09/2022	This is the only provider in the market who can offer this specific form of place-based leadership CPD for school leaders. Senior Leadership within Learning and Opportunities appraised the market in this sector closely and have concluded that the provider awarded are only provider in the market who have both the expertise to deliver and the capacity to mobilise such an ambitious programme of work. Furthermore, the Opportunity Area Programme Board's commitment of funding to the development of this project is contingent upon the selection of this specific provider to deliver this project.
3.1	LOCYP	Consultant Advisor Education & Skills Strategy 2030/G.E.L.P 21	1. Sole Provider/Niche Market	£32,000	01/11/2020	31/07/2021	This provider is niche and has provided leadership and advisory services in the development of the Education and Skills Strategy 2030 as follows and has built up significant relationships, networks and specific local knowledge as a result of this.
4.0	E&E	A18 Railway Bridge, Thorne – BKS/66 – Network Rail design reviews and construction work costs	1. Sole Provider/Niche Market	£321,115	06/09/2020	31/10/2020	The works needed must be conducted by the asset owner to enable the programme of full works to be delivered. There is no alternative provider.
4.1	E&E	Supply of Permanent Traffic Signs	2. Emergency Situation	£50,000	01/04/2020	31/03/2021	This sector was affected by Covid19 and unable to tender, this waiver is granted to allow providers time to recover and for suppliers to ascertain their ability to support any new tender, thus giving Doncaster the benefit of increased bids for works.
4.2	E&E	Winter Service Route Navigation and Management Software for Winter Gritting	1. Sole Provider/Niche Market	£64,155	09/11/2020	10/11/2021	There is only one supplier / partner company who is approved and compatible with ECON machinery to supply voice activated driver navigation and automated spreading systems that connect directly to the ECON SPARGO control box.

4.3	E&E	Type IIR Masks	2. Emergency Situation	£45,000	01/12/2020	31/03/2021	Due to Covid-19 the Council has an ongoing requirement to purchase Type IIR Masks. The DHSC provide free PPE to certain sectors but some do fall outside this. The council are working with a Doncaster manufacturer of Type IIR masks and have set up an agreement to purchase as and when required. This waiver covers the anticipated demand that may be needed.
4.4	E&E	Minor Highways Works	2. Emergency Situation	£60,000	01/09/2020	31/03/2021	The works supplied under this contract are necessary for the Council to carry out and maintain works as part of the statutory duty to maintain the public highway under Section 41 of the Highways Act 1980. We are requesting this Waiver to allow the market time to recover from COVID-19 shut down and for suppliers to ascertain their ability to support any new tender, thus giving Doncaster the benefit of the full market on re-opening including any E.U Transitioning factors which need to be considered.
4.5	E&E	Temporary Traffic Management Works	2. Emergency Situation	£180,000	01/04/2020	31/03/2021	The works supplied under this contract are necessary for the Council to carry out maintenance works as part of the statutory duty to maintain the public highway under Section 41 of the Highways Act 1980. A 12 months extension was taken with the existing contracted supplier to ensure the continuation of service delivery during the COVID 19 pandemic. This supplier was awarded the initial contract after a competitive process in 2016 and rates have been agreed for the extension period.

Appendix 3

Total Contracts Award 1st September 2020 to the 28th February 2021 versus the number of waivers

Directorate	Total Contracts Awarded 1 st Sept 20 to 28 th Feb 21	Number of Waivers	% Overall
E&E	58	6	10%
AHW	22	3	14%
LOCYP	68	2	3%
CR	48	4	8%
Total	196	15	8%

The % overall for the period **1st September 2020 to the 28th February 2021** of waivers granted against contract awarded was **8%** which is a decrease on the previous period between the **1st July 20 to the 31st August 20** of which was **15%**.