



Doncaster Council

Report

Date: 28th October 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 March 2021** to the **31st August 2021**.
2. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in April 2021 and the one before that in October 2020. The details of each waiver and breach are summarised in the appendices to this report.

Directorate	1 st Mar 21 to 31 st Aug 21 (6 months)		1 st Sep 20 to 28 th Feb 21 (6 months)		1 st Jul 20 to 31 st Aug 20 (2 months)	
	Breaches	Waivers	Breaches	Waivers	Breaches	Waivers
AHW	0	11	0	3	0	4
LOCYP	2	2	2	2	0	0
CR	0	1	0	4	0	2
E&E	1	4	0	6	0	2
GRAND TOTAL	3	18	2	15	0	8

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.
8. The impact of Covid-19 continues to cause challenges for the procurement and contracting of goods and services. There have been significant impacts across many sectors who the Council contract with such as issues with suppliers ability to tender, inflated pricing and supply chain disruption. There have also been delays to internal reviews especially within social care commissioning, staff have been, and continue to be, redirected in dealing with Covid-19 related pressures. Subsequently waivers continue to be higher than pre Covid-19, although this is not ideal it does show good governance with an adherence to the CPR's, as this is transparent and formalised decision-making. Alternatively breaches do not comply with the CPR's and spend has occurred outside the rules of the CPR's. SPT continue to be proactive and support departments to help alleviate increased pressures with regular reporting and attendance at key stakeholder meetings.

CONTRACT PROCEDURE RULES (CPR'S)

9. 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.

10. It is therefore important that steps be taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position.
11. There have been **three** new breaches, as well as updates on **three** existing unresolved breaches and **one** resolved breach.
12. **Appendix 1** shows the details of the **new, unresolved and resolved** breaches for this period.
13. 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, 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

14. 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

15. In **April 2021**, there were **two** new breaches of the CPR's reported to Audit Committee as well as updates on **three** existing unresolved breaches and **one** resolved breach.

Waivers to CPR's

16. **Eighteen** waivers to CPR's have been approved for this **6** months period, which has increased from the last report in April 21 where there were **fifteen**. The number and value of waivers granted against the amount of contracts awarded for this period are shown in **Appendix 3**.

17. The waivers detailed in this report have been reviewed and agreed by either the MO or the CFO (for waivers linked to the Legal and Democratic Services Department).

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £25,000

18. 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. Officers provide regular updates to stakeholders on contract registers, procurement plans and spend analysis to ensure transparency and movement to ensure delivery of projects within timescales. Procurement Forward Planning Reports, for a period of 18 months, are currently being presented to departments across the Council.

19. A CPR Training Programme has been reactivated and, in the first instance, being targeted at areas of non-compliance and new officers into the Council.

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 	<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> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster 	<p>Effective procurement governance ensures best value is achieved from the budgets available.</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>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>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. The Council is still in recovery phase and SPT are working with service areas to ensure projects are in accordance with the CPR's. The pandemic has resulted in a delay in commissioning and procurement activity that has continued to affect the amount of waivers granted.

LEGAL IMPLICATIONS [Officer Initials...NJD... Date.....08/10/21.....]

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 compliance with its obligations under procurement regulations

FINANCIAL IMPLICATIONS [Officer Initials...PH..... Date...01/10/21.....]

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 SH Date 04/10/21.....]

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

TECHNOLOGY IMPLICATIONS [Officer Initials... PW Date 01/10/21.....]

28. There are no specific technology implications in relation to this report. SPT continues to consult with Digital Strategy & Solutions 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 ...01/10/2021.....]

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 16/09/21]

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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BREACHES

- **New** CPR breaches that have been identified between the **1st March 2021 to the 31st August 2021**
- **Unresolved** breaches, reported to the Audit Committee previously and;
- **Resolved** breaches reported previously

No.	Directorate	Status New Unresolved Resolved	Initial Date Reported	Contract Description	Value	Reason for breach	Proposed action to be / has been taken in relation to the breach	Timescale for resolution
1.0	LOCYP	New	Oct 21	Education System	£53,000	Contract expired	Oct 2021 Note – Initially the service area believed the system was to be replaced with an alternative as part of a larger project. Once confirmation that this system was out of scope of the larger project, the correct governance route for ICT extensions was conducted, via the Technology Governance Board (TGB), where the service area was advised that they would need to put forward a waiver to allow a review and re-procurement, if necessary. There was a misinterpretation of this advice and officers concluded after conversations that one was not required although a contract with the provider was formalised. SPT are now working with the project lead in the responsible area to put something in place to rectify this breach when the breached contract ends on the 31 Mar 22.	Apr 22
1.1	LOCYP	New	Oct 21	Conservation Contract	£31,000	Exceeded allowable direct award threshold	Oct 2021 Note – Spend analysis has shown aggregated spend with the same supplier above the allowable direct award threshold of £25k. The department exceeded due to emergency additional works and failed to put in a CPR Waiver Report under the 'emergency category'. This contract is set to end and the continued provision be through a compliant route to market. Training is being given to officers involved.	Oct 21
1.2	LOCYP	Unresolved	Apr 21	Archive Offsite Storage	£39,700	Contract expired	Oct 2021 Note – The movement of the archives are dependent on the development of the old museum site. There have been delays in moving this project forward because of complexities linked to the site. 1. Enquiries by Heritage England as to the historical importance of the site 2. Issues with the fabric of the building resulting in significant works and milestones to be achieved before movement can be commenced 3. Review of the allocated budget due to rising material costs – resulting in a need to redesign to bring costs down 4. The need to ensure the building meets the National Archives Standards The Internal Audit Team have been involved in the project group.	Revised: Apr 22 Oct 21

							<p>The plan is due to be finalised for moving the archives back and signed off by the 18th October, with the date for completion being the 28th March 22.</p> <p>Due to the above, the existing breached contracts (1.2 and 1.3) will need to be extended to continue to stores the archives until the building is developed to the required standard. This will continue as a breach to ensure close monitoring to obtain the resolution.</p> <p>Apr 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.</p>	
1.3	LOCYP	Unresolved	Apr 21	Archive Offsite Storage	£83,814	Contract expired	<p>Oct 2021 Note – As per 1.2 – these breaches are interdependent.</p> <p>Apr 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.</p>	<p>Revised: Apr 2022</p> <p>Oct 2021</p>
2.0	AHW	Unresolved	Apr 17	YMCA Goodall House	£170,000	Contract expired.	<p>Oct 2021 Note – This is a long standing unresolved breached contract where the risks of contractual coverage have been mitigated but until resolved this will remain, for transparency reasons, on this report to ensure the Audit Committee have sight once resolved.</p> <p>Apr 2021 Note – as per the note from Sept 2020. In addition, there is contractual coverage to mitigate risks to the Council.</p> <p>Sept 2020 Note – agreed exit strategy, ODR signed 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</p>	<p>Mar 2022</p> <p>Subject to Cabinet Report 5th Nov 19</p> <p>Revised: Sept 19</p> <p>Mar 19</p>

							implementation of the Strategy. 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. Oct 18 Note - Review and potentially redesign.	
3.0	E&E	New	Oct 21	Seed Order	£66,630	One off order out of contract	Oct 21 – Transaction of £60k picked up to a supplier that was no longer in contract and a non-compliant order in accordance with the CPR's. A Grounds Maintenance and Associated Equipment Framework is currently being set up that encompasses this category of spend and will be in place by November 21 to counter the risk of this occurring in the future. Training by SPT Officers is taking place with 25 members of the team where the breach occurred.	Nov 21
3.1	E&E	Resolved	Apr 19	Glass and Glazing supplier for the supply & install of doors, windows and board ups	£102,000	No contract. Out of scope of contract being used	Oct 21 Note – Resolved contracts awarded 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. Sept 20 Note – Following COVID-19 SPT are working with the service area on procurement exercise. Due to award Jan 21 June 20 Note – Delayed due to COVID-19. New award date Jan 21. 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 Aug 21 Jan 21 Jun 20 Apr 20

APPENDIX 2

WAIVERS

CPR waivers that have been agreed covering the period **1st March 2021 to the 31st August 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
1.00	AHW	Public health lead Well Doncaster	1. Sole Provider/Niche Market	£48,000	01/03/2021	28/02/2022	The provider is a Doncaster based charity that has been providing support and care to cancer patients across Doncaster and Bassetlaw for over 20 years. The Covid pandemic has emphasised the bewilderment and isolation that so many cancer patients suffer from the earliest signs of their disease. This charity have been awarded this contract as they are a niche provider based in Doncaster and have deep understanding of the challenges faced by the disease; the proposal builds on the belief that supporting and empowering patients in the community puts the patient at the centre of their care.
2.00	AHW	Dance On	1. Sole Provider/Niche Market	£110,078	22/03/2021	31/03/2023	The provider is a local provider who have been commissioned as they are uniquely located and have the ability to deliver this contract.
3.00	AHW	Harrogate Court	2. Emergency Situation	£26,250	01/04/2021	01/01/2022	The extension of 9 months to this contract will allow additional time for recovery of services, especially in light of developments such as the vaccination programme, thus providing a degree of resilience in the event of changes resulting from a procurement exercise.
4.00	AHW	Extra Care Housing	2. Emergency Situation	£781,500	01/07/2021	01/01/2022	The schemes covered by the waiver have experienced COVID-19 outbreaks, and the operating environment remains challenging in ensuring the staffing and safe delivery of care to Residents of the services. These 6 months will provide additional time for recovery of services, especially in light of developments such as the vaccination programme, thus providing a degree of resilience in the event of changes resulting from a procurement exercise. This contract has been procured and awarded and will meet the contract start date of the 1 st January 22.
5.00	AHW	Supported Lettings Service for the Rapid Rehousing Project	4. Forms Part of a Strategic Plan/Review	£7,500	01/04/2021	30/06/2021	This waiver is seeking approval to award the funding directly to this provider by way of extending the existing arrangement for a further 3 months to support continued delivery of the Tenancy Sustainment Worker. This will enable to Council to submit its proposal for the new funding round, and enable to requisite contractual arrangements to be made.
6.00	AHW	Supported Accommodation and Support Service for Vulnerable People with Multiple Complex Needs- Rapid Rehousing Services Variation	4. Forms Part of a Strategic Plan/Review	£15,000	01/04/2021	30/06/2021	This waiver is for a period of 3 months under their existing agreement to support continued delivery of two Tenancy Sustainment Workers. This will enable to Council to submit its proposal for the new funding round, and enable to requisite contractual arrangements to be made.
7.00	AHW	Supported Accommodation and Support Service for Vulnerable People with Multiple Complex Needs- Rapid Rehousing Services Variation	4. Forms Part of a Strategic Plan/Review	£22,500	01/07/2021	31/03/2022	This waiver awarded funding directly to the provider by way of extending the existing Contract for a further nine months to ensure continued delivery of the Tenancy Sustainment Worker. The funding was received and short-term. The Aggregated value of the initial term, extension, and that under waiver CPR/21/03/008 is £57,625.

8.00	AHW	Public Health Nursing service for 5-19 year olds - School Nursing	3. Safe Exit from a contract	£398,264	01/04/2022	31/07/2022	Waiver to integrate the School Nursing and Project 3 services into one delivery model, with one provider overseeing provision of public health services for 5-19 years olds across Doncaster. The short extension of 4 months to the current agreements are to minimise potential disruption of ending the contacts during the school year.
9.00	AHW	Young People's Health and Wellbeing service – Project 3	3. Safe Exit from a contract	£232,691	01/04/2022	31/07/2022	As above point 8.00, integration of 2 contracts into 1.
10.00	AHW	Homelessness Accommodation and Support Service	4. Forms Part of a Strategic Plan/Review	£743,000	10/09/2021	09/09/2022	The current contract is due to expire in September 2021 (with no further extensions available) following a previous waiver to extend granted in 2020 due to the impact of the COVID pandemic and the former Commissioning and Contracts team being deployed and solely focussed on COVID response (essentially supporting contracted providers and the wider market through daily contact to maintain service provision, manage outbreaks and provide a range of support to ensure continued service delivery/viability).
11.00	AHW	Mortuary Service	2. Emergency Situation	£30,000	01/09/2021	30/11/2021	The current contract held with Doncaster and Bassetlaw Hospitals NHS Foundation Trust will end on the 31st August 2021.
12.00	AHW	Accommodation for Ex-Offenders	4. Forms Part of a Strategic Plan/Review	£68,000	01/11/2021	31/10/2021	Approval of additional funding to an existing supported housing contract with Target Housing to provide 2 x Tenancy Sustainment workers with a value of £68,000 pa.
13.00	E&E	Partnership agreement for sponsorship and bowling green maintenance	4. Forms Part of a Strategic Plan/Review	£43,155	01/04/2021	31/03/2022	As part of an alternative way to sustain and improve standards and support a long-term future for bowling throughout Doncaster borough an agreement was entered into with Doncaster & District Bowling Association (DDBA) in 2017.
14.00	E&E	Shopappy	1. Sole Provider/Niche Market	£24,000	05/03/2021	31/03/2022	After the lifting of the Covid lockdown restrictions, it is important to encourage residents and visitors back into Doncaster retail, leisure and hospitality venues across the town centre and the outlying shopping areas in the borough. This app is a unique platform to deliver the objectives. The spend figure is below the need for a CPR waiver but if successful the contract may be extended into a second year hence the waiver
15.00	E&E	Ecologist Planner	1. Sole Provider/Niche Market	£230,899	01/04/2022	30/03/2032	Co-dependent award to adjacent landowner of the contract for fencing for council land relating to a bio-diversity project.
16.00	E&E	Green Waste Communications	2. Emergency Situation	£53,000	25/08/2021	05/09/2021	Waiver for the mailing to every household in the borough to inform residents about interim changes to Green Waste collection days to facilitate re-introduction of the service on 7th September 2021 – Green Waste collection services have been suspended since 26th July 2021.
17.00	LOCYP	Transport for Education and Social Services related contracts	2. Emergency Situation	£9,500	12/04/2021	31/07/2021	Due to the Coronavirus Pandemic The Ridge Employability college have been undertaking their own transport in order to transport their students within bubbles and at staggered times to meet their needs.
18.00	LOCYP	Partnership Improvement Board - Chair	4. Forms Part of a Strategic Plan/Review	£15,000	21/05/2021	31/12/2021	The purpose of the contract is for the Chair to work closely with partners to drive the improvement of services for children and shape the development of the Improvement Board. In addition to leading the board, the Chair is key in setting the agenda, overseeing and challenging the performance of partners, and representing the board with major stakeholders and customers where required to ensure that the overarching roles and responsibilities of the Board are achieved.

Total Contracts Award 1st March 2021 to the 31st August 2021 versus the number of waivers

Directorate	Total Contracts Awarded 1 st Mar 21 to 31 st Aug 21	Value of Contracts Awarded	Number of Waivers	% Overall Number of Waivers	Value of Waivers	% Value of Waivers against Total Awarded
E&E	114	£32,928,814.31	4	3.51%	£351,054	1.1%
AHW inc. Public Health	28	£62,533,685.08	11 (3 Public Health)	39.2%	£2,452,783 (£556,362 Public Health)	3.9%
LOCYP	31	£47,425,842.47	2	6.5%	£24,500	0.1%
CR	48	£4,968,616.00	1	2.1%	£30,000	0.6%
Total	221	£147,856,957.86	18	8.1%	£2,858,337	1.9%

The % overall for the period **1st March 2021 to the 31st August 2021** of waivers granted against contract awarded was **8.1%** which is sustained on the previous period between the **1st September 2020 to the 28th February 2021** of which was **8%**.