



Report

Date: 27th April
2023

To: AUDIT COMMITTEE

Report Title: BREACHES AND WAIVERS TO THE COUNCIL'S CONTRACT
PROCEDURE RULES (CPRs)

Relevant Cabinet Member(s)	Wards Affected	Key Decision?
		No

EXECUTIVE SUMMARY

1. This report provides Members with details of all the waivers and breaches to the Contract Procedure Rules (CPR's) for the period 1st September 2022 to the 28th February 2023.
2. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in October 2022 and the one before that in April 2022. The details of each waiver and breach are summarised in the appendices to this report.

Directorate	1 st Sep 22 to 28 th Feb 23		1 st Mar 22 to 31 st Aug 22		1 st Sep 21 to 28 th Feb 22	
	Breaches	Waivers	Breaches	Waivers	Breaches	Waivers
AHW	0	5	0	4	0	6
CYPF	0	2	0	2	1	2
CR	0	5	4	5	0	4
E&E	4	4	2	6	1	2
GRAND TOTAL	4	16	6	17	2	14
% Waivers versus Contracts Awarded	4.92%		5.57%		2.22%	
% Value of Waivers versus Value Contracts Awarded	2.16%		2.52%		4.75%	

EXEMPT REPORT

3. This report is not exempt.



RECOMMENDATIONS

4. To note the waivers and breaches recorded for the period between the **1st September 2022 and the 28th February 2023**.
5. To note work undertaken by the Strategic Procurement Team (SPT) to ensure compliance and deliver services.

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 CPRs for the period covered by this report.
8. Waivers are only granted when the rationale for a direct award is clearly demonstrated and in accordance with the CPR's.
9. Breaches are detected through periodic reporting via the Council's spend analysis system and through direct contact with stakeholders.
10. The Strategic Procurement Team (SPT) continue to have significant workloads because of multiple factors such as the economic climate and supply chain issues.
11. The number of approved waivers for this period has decreased from 17, as reported in October 2022, to 16.
12. There are still high levels of compliance to the CPR's and SPT continue to be proactive and supportive to help alleviate increased pressures with regular reporting and attendance at key stakeholder meetings.

OPTIONS CONSIDERED

13. 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 £177,898** – use of an in-house supplier, Council wide contract, third party framework agreement or obtain a minimum of three formal quotes one of which should be from a Doncaster based organisation.
 - **Between £177,898 and £552,950 (Light Touch Regime (LTR) Services) or £4,447,488 (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 £177,898 (Goods/Services) or £552,950 (LTR Services) or £4,447,488 (Works)** - use of an in-house supplier, council wide contract, third party framework agreement or carry out a public contract regulations compliant tender process.

14. There have been **four** new breaches and **five** resolved breaches. There is **one** unresolved breach.
15. **Appendix 1** shows the details of the **new, unresolved, and resolved** breaches for this period.
16. Public procurement law thresholds are set and can only be waived if the award meets strict criteria set out in the legislation. In addition to this the Council recognise that discretionary thresholds within the CPR's may be a barrier to the delivery of services 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
5	Constitutes a trial purchase

Breaches to the CPR's

17. 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

18. In **October 2022**, there were **six** new breaches reported to Audit Committee, **no** unresolved breaches and **four** resolved breaches.

Waivers to CPR's

19. **Sixteen** waivers have been approved for this six-month period, which has slightly decreased from the last report in October 2022 where there were **seventeen**. The number and contract value of waivers granted against the number of contracts awarded for this period are shown in **Appendix 3**.
20. The waivers detailed in this report have been reviewed and agreed by either the MO or the CFO (Chief Financial Officer) (for waivers linked to the Legal and Democratic Services Department).

REVIEW OF PROCUREMENT ARRANGEMENTS

21. SPT (Strategic Procurement Team) continue to work closely with all Directorates to improve procurement practices and provide assurance that arrangements are robust and compliant.
22. On the 1st of December 2022 SPT started operating under a Category Management model. This operational model is a movement away from directorate-based procurement responsibility to specific category responsibility for the sub-teams within SPT i.e., having all ICT procurement going via a specific sub-team as opposed to being devolved across SPT. This gives benefits in increasing expertise in certain category spend areas, having a more strategic approach, increased involvement with contract management and releasing associated efficiencies. The embedment of this approach continues but the new structure is in place and vacancies populated except for one which is currently out to recruitment. Senior Category Managers still have specific responsibility for certain Assistant Directors and Heads of Service to ensure lines of communication remain.
23. SPT officers provide periodic updates to Heads of Service and/or Assistant Directors on their contracts, procurement plans and spend analysis to ensure transparency and delivery of projects within timescales. The frequency of these reports is dependent on the amount of procurement activity that occurs in the respective areas but commonly this is done quarterly or bi-annually. Any other procurement specific information is also shared.
24. A monthly CPR Training Programme continues to be delivered across the Council and officers can book this via the HR Portal. This is being actively promoted internally. This will continue indefinitely due to new staff and changes to staff roles.
25. Procurement System developments continue, the main objectives are to improve data quality, sustain and improve compliance and deliver procedural efficiencies. The new Procurement Planning module, part of the YorTender (e-tendering system), has gone live. Procurement projects are currently being uploaded into this system from the Excel Category Plans that were used previously and cumbersome. This system will allow for better planning and visibility on procurement projects. This will be fully implemented by the 30th of April 2023.
26. SPT are working with P2P (Purchase to Pay) to improve compliance and contract mapping into the Spend Analysis System (Atamis) through improvements to ordering practices such as referencing contract numbers, ensuring suppliers that should not be used are archived and increased use of catalogues with correct pricing. These enhancements should be completed by the 31st of May 2023.
27. The new Purchasing Card Policy has been released and staff involved in processing purchasing cards are involved in a workshop week commencing the 24th of April 2023 to understand the updated version. Subsequently all existing cardholders and approvers will be communicated to with the new policy to ensure a clear understanding of their responsibilities. The number of cardholders has increased since the Doncaster Children's Services Trust (DCST) transferred into the Council and to ensure there is no ambiguity on responsibilities this refresh will ensure compliance.

OPTIONS CONSIDERED





28. Each waiver is examined through a robust process and, where appropriate, challenged for alternative options prior to approval. This can be at various stages of the process. Each waiver is approved by the Head of Procurement and escalated for authorisation to the MO or CFO.





REASONS FOR RECOMMENDED OPTION

29. It is important that the Council's CPRs are adhered to and, where breaches are identified, a corrective plan is formed and monitored by SPT.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

30.

Great 8 Priority	Positive Overall	Mix of Positive & Negative	Trade-offs to consider – Negative overall	Neutral or No implications
 Tackling Climate Change	✓			
Comments: This is considered when procuring and forms part of the social value deliverables obtained through contracting.				
 Developing the skills to thrive in life and in work	✓			
Comments: Social value is included in all public procurement above threshold contracting as a minimum of 10% weighting in the evaluation criteria. Part of the social value targets are associated with opportunities to develop skills.				
 Making Doncaster the best place to do business and create good jobs	✓			
Comments: Social value is included in all public procurement above threshold contracting as a minimum of 10% weighting in the evaluation criteria. Part of the social value targets are associated with opportunities to create opportunities for local people.				
 Building opportunities for	✓			X

healthier, happier and longer lives for all				
Comments:				
 Creating safer, stronger, greener and cleaner communities where everyone belongs	✓			X
Comments:				
 Nurturing a child and family-friendly borough	✓			X
Comments:				
 Building Transport and digital connections fit for the future	✓			X
Comments:				
 Promoting the borough and its cultural, sporting, and heritage opportunities	✓			X
Comments:				
Fair & Inclusive	✓			
Comments: This is covered as part of the social value delivered through contracting at the Council.				

31. Legal Implications [Officer Initials: NJD | Date: 27/3/23]

There are no specific legal implications arising from this report. Legal advice has been provided on the individual waivers and continued legal support will be provided

to the service areas in relation to these matters.

32. Financial Implications [Officer Initials: PH | Date: 24/03/23]

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.

33. Human Resources Implications [Officer Initials: SH | Date: 27/03/23]

There are no specific HR implications arising from this report.

34. Technology Implications [Officer Initials: PW | Date: 24/03/23]

There are no specific technology implications in relation to this report. SPT continues to consult with Digital & 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.

RISKS AND ASSUMPTIONS

35. 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 and address these risks.

CONSULTATION

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

BACKGROUND PAPERS

37. None

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

38.

Adults, Health & Wellbeing (AHW)
Contract Procedure Rules (CPR's)
Chief Financial Officer (CFO)
Corporate Resources (CR)
Doncaster Children's Services Trust (DCST)
Economy & Environment (E&E)
Information Communications Team (ICT)
Light Touch Regime (LTR)

Children, Young People & Families (CYPF)
Monitoring Officer (MO)
Strategic Procurement Team (SPT)
Public Health (PH)
Purchase to Pay (P2P)
Technology Governance Board (TGB)

REPORT AUTHOR & CONTRIBUTORS

Holly Wilson, Head of Procurement

01302 737664 | holly.wilson@doncaster.gov.uk

**Scott Fawcus, Assistant Director of Legal & Democratic Services and
Monitoring Officer**

01302 734640 | scott.fawcus@doncaster.gov.uk

APPENDIX 1

BREACHES

- **New** CPR breaches that have been identified between the **1st September 2022 to the 28th February 2023**
- **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	CR	Resolved	Oct 22	Catering Equipment	£88,295	Contract expired	<p>Apr 2023 Note – Contract awarded</p> <p>Oct 2022 Note – Oversight and contract expired but continued use. SPT currently working with the service area to complete a re-procurement exercise, and this is due for award November 2022. A further mitigation is that a new contract pipeline module, that is part of the e Tendering system, is currently being implemented and this will give full visibility on all procurement projects linked to the contracts register.</p>	<p>Apr 2023</p> <p>Nov 2022</p>
1.1	CR	Unresolved	Oct 22	Meat & Meat Products Contract	£90,310	Contract expired	<p>Apr 2023 Note – Currently out to market, anticipated contract award date 1st May 2023.</p> <p>Oct 2022 Note – Oversight and contract expired but continued use. SPT currently working with the service area to complete a re-procurement exercise, and this is due for award November 2022. A further mitigation is that a new contract pipeline module, that is part of the e Tendering system, is currently being implemented and this will give full visibility on all procurement projects linked to the contracts register.</p>	<p>May 2023</p> <p>Nov 2022</p>
1.2	CR	Resolved	Oct 22	Fresh Milk & Dairy	£37,208	Contract expired	<p>Apr 2023 Note – Contract awarded.</p> <p>Oct 2022 Note – Oversight and contract expired but continued use. SPT currently working with the service area to complete a re-procurement exercise, and this is due for award November 2022. A further mitigation is that a new contract pipeline module, that is part of the e Tendering system, is currently being implemented and this will give full visibility on all procurement projects linked to the contracts register.</p>	<p>Nov 2022</p>
1.3	CR	Resolved	Oct 22	Frozen Food	£239,666	Contract Expired	<p>Apr 2023 Note – Contract awarded</p> <p>Oct 2022 Note – Oversight and contract expired but continued use. SPT currently working with the service area to complete a re-procurement exercise, and this is due for award November 2022. A further mitigation is that a new contract pipeline module, that is part of the e Tendering system, is currently being implemented and this will give full visibility on all procurement projects linked to the contracts register.</p>	<p>Mar 2023</p> <p>Nov 2022</p>

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
1.8	E&E	Resolved	Oct 22	Supply of Sandbags	£27,506	Off-contract from corporate contract	<p>Apr 2023 Note – Contract awarded.</p> <p>Oct 2022 Note – Emergency purchase of sandbags, with a value that exceeded the direct award amount and not via the corporate contract. 3 quotations should have been sought or due to the emergency need, a CPR waiver should have been requested. Subsequently there is a need for a long-term solution, as the corporate contract could not satisfy requirements. Procurement exercise underway.</p>	Mar 2023
1.9	E&E	Resolved	Oct 22	Electrical Cables & Accessories	£125,894	Contract expired & new corporate contract not used	<p>Apr 2023 Note – New contracts in place</p> <p>Oct 2022 Note – New contract procured but continued use of the old contract. Communication issues that are now resolved and service area aware of the requirement to use the new contract. New approach established to ensure this does not occur again on materials contracts.</p>	Mar 2023
2.0	E&E	New	Apr 23	Building Materials – Timber	£51,570	Contract expired	<p>Apr 23 – The contract expired, and a new contract has not been re-procured in time. This is due to multiple reasons. Firstly, a straightforward re-procurement project, as would happen normally, is not sufficient due to the economic challenges on the materials sector i.e., unprecedented inflation that requires the need for a whole system review with necessary amendments to specifications, contract particulars and procedural obligations on merchants. In addition to this the required resource to complete the enhanced contracting works has been a challenge due to capacity issues across the Council. We have secured and formalised pricing with the incumbent until we can secure a new robust contract. Capacity has been allocated from SPT and they are working with Stores and a new contract should be in place November 23.</p>	Nov 2023
2.1	E&E	New	Apr 23	Kitchens	£39,520	No contract	<p>Apr 23 – Traditionally kitchen spend was below the direct award threshold. Aggregated spend analysis has shown this has exceeded the £25k threshold. This has been picked up by SPT. A contract will be put in place, and this will be aligned with the SLHD contract.</p>	Jun 2023
2.3	E&E	New	Apr 23	Ventilation Supplies	£71,450	No contract	<p>Apr 23 – Aggregated spend analysis has established that a contract should be formed for the supply of these products. New contract is currently being tendered (due back 23rd Mar) and will be awarded April 2023</p>	Apr 2023
2.4	E&E	New	Apr 23	Building Materials	£87,225	Contract expired	<p>Apr 23 – As per the Breach 2.0 (above) narrative.</p>	Nov 2023

APPENDIX 2

WAIVERS

- CPR waivers that have been agreed covering the period **1st September 2022 to the 28th February 2023**, 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	Supported Accommodation for Multiple Complex Needs	3. Safe Exit from a contract	£682,044	18/11/2022	17/11/2024	Extend the current contractual arrangement for 12 months with the option to extend for a further 12 months. The extension allows for the varying of the contract to build in the necessary contractual levers to allow exit from the contract safely in the future to protect vulnerable customers and support a safe and smooth transition should the intended future procurement exercise during the period of extension result in a change of provider. A tender exercise would be too high risk from an existing customer perspective given the constraints of the transition arrangements proposed by the incumbent provider and allowable within the existing contract should a tender exercise result in the award of a contract to a new provider. Conversely, a tender exercise at this stage could result in potential challenge from the market for the same reasons.
1.1	AHW - PH	Adult substance misuse treatment and recovery system	4. Forms Part of a Strategic Plan/Review	£116,406	01/07/2022	31/03/2023	Requirement to distribute 22 23 OHID rough sleeping drug and alcohol treatment grant. This additional funding was added to an existing contract delivering these services that is advisable from a strategic perspective rather than market test.
1.2	AHW - PH	Supplement substance misuse grant	4. Forms Part of a Strategic Plan/Review	£595,417	01/07/2022	31/03/2023	Further monies 22 23 OHID supplemental grant allocated to an existing service provider as part of a wider strategic programme for delivery of these services and permissible under Regulation 72 of the Public Contract Regulations 2015.
1.3	AHW	Homelessness	3. Safe Exit from a contract	£1,921,027	10/09/2022	09/09/2024	A tender exercise compliant with the CPR's was undertaken but resulted in no bids albeit market engagement took place, and this was unexpected. This contract must continue until works, that are part of a larger programme, are completed to ensure the contract can be either procured successfully after redesign or decommissioned. The continued delivery of these services is legally permissible under Regulation 72 of the Public Contract Regulations 2015.
1.4	AHW	Supported Accommodation for Multiple Complex Needs	3. Safe Exit from a contract	£64,104	18/11/2022	17/11/2024	This addition to an existing contract to support the delivery of the wider contract due to cost pressures. This cannot be market tested due to it being part of a wider contract.
2.0	CR	Markets Design Works	1. Sole Provider/Niche Market	£87,026	01/09/2022	31/03/2024	Award to a niche supplier in the design of Markets and have previously worked with the council to help secure funding via the Levelling Up Fund (LUF) up to RIBA (Royal Institute of British Architects) Stage 3. This contract is required to enable the council to go out to tender for construction works to the Corn Exchange in Doncaster City Centre. In addition to this an award is required quickly to ensure LUF monies are spent in accordance with the grant funding conditions, specifically that the construction project is completed by March 2024.
2.1	CR	Specialist Legal Support	2. Emergency Situation	100000	01/11/2023	01/01/2023	Waiver required to enable the Council to receive urgent specialist legal advice in relation to the Doncaster Sheffield Airport (DSA). The notice given has been short and it is essential that the Council have access to specialist legal advice to advise it of all future options immediately.

No.	Directorate	Title	Waiver Category	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Reason for the Waiver (brief description)
2.2	CR	Children's Histopathology	1. Sole Provider/Niche Market	£67,500	01/04/2022	01/04/2025	The Coroner is an independent judicial officer who has a legal duty to investigate and report on violent or unnatural deaths, sudden deaths of unknown causes and deaths in custody. The Coroners jurisdiction is South Yorkshire (East) which covers the boroughs of Doncaster and Rotherham. This supplier is the closest to Doncaster that offers this service; this service must be local to avoid anxiety and stress to the bereaved.
2.3	CR	Chamber Maintenance Addendum	1. Sole Provider/Niche Market	£5,225	01/01/2023	31/12/2023	Whilst maintenance arrangements are satisfactory, there have been issues with reliability of the equipment. Further options will be explored during this year to identify if any improvements can be made including upgrades. Extending the maintenance contract for a further 12 months provides the opportunity to undertake this work and identify a more sustained solution moving forwards.
2.4	CR	Document Storage	3. Safe Exit from a contract	£72,535	06/01/2023	06/01/2024	To exit from the contract with the incumbent safely we require a suitable building to move records into. We have been working with Assets to try to identify a building to use for this service for several years. This was delayed due to lockdown then there have been many staff moves as part of the YWOW project. Several buildings were identified but then turned out not to be suitable due to sprinkler systems, fire safety regulations and floor loadings (to support racking).
3.0	CYPF	16+ Group Living and Supported Tenancies Accommodation Framework	2. Emergency Situation	£384,000	26/01/2023	25/07/2023	This framework was put in place by the Children's Trust in January 2018, and it currently ends on 26th January 2023. Due to the transfer of the Children's Trust to the Council in September 2022, work on going out to tender for a replacement framework was delayed. The waiver seeks to extend the contract for a further 6 months, until 25th July 2023, whilst a new framework is put in place by the Council.
3.1	CYPF	Rethinking Assessment	1. Sole Provider/Niche Market	£50,000	01/10/2022	21/10/2023	Award this contract to a provider who is niche in this area, after market research alternatives cannot be established.
4.0	E&E	Local Authority Treescapes Fund – Tiny Forest programme	1. Sole Provider/Niche Market	£60,547	12/10/2022	01/06/2023	Tiny Forest is a specific tree planting model that is owned as a brand by a specific provider. There are no other alternative providers.
4.1	E&E	Smart Bin and Sensor Trial throughout the Borough	5. Trial Purchase	£32,000	01/11/2022	31/03/2023	To enable the purchase for 5 smart bins and 34 sensors with City Smart software to undertake a comprehensive trial of these products. The trial will be monitored for the effectiveness and efficiency of the need to cleanse bins in both rural and high footfall areas at times when the bins require and need cleansing and not when scheduled.
4.2	E&E	Woodland Creation Accelerator Fund	1. Sole Provider/Niche Market	£62,400	01/12/2022	12/10/2024	Treeconomics Ltd are the sole provider in the UK of I-Trees Eco reporting following extensive market research.
4.3	E&E	Drain Bridge, Kirk Bramwith - Parapet Repairs	2. Emergency Situation	£39,000	24/01/2023	30/04/2023	Drain Bridge, Kirk Bramwith was hit by a vehicle on 11th December 2022 demolishing 18m of stone parapet. As Drain Bridge is Grade 2 listed it requires a registered Stone Mason, approved by our Conservation Officer, to undertake the work. As this is an urgent repair a waiver is required to direct award these works to a specialist provider.

APPENDIX 3

Total contracts awarded versus the number and value of waivers: 1st September 2022 to the 28th February 2023

Directorate	Number of Waivers	Value of Waivers	Total Contracts Awarded	Value of Contracts Awarded	% Number of Waivers against total contracts awarded	% Value of Waivers against total contracts awarded
E&E	4	£193,947	168	£23,742,749	2.38%	0.82%
AHW	3	£2,667,175	42	£7,669,735	7.14%	34.78%
Public Health	2	£711.823	2	£4,486,793	66.67%	15.86%
CYPF	2	£434,000	71	£157,049,759	2.82%	0.28%
CR	5	£332,286	41	£7,900,205	13.51%	4.21%
Total	16	£4,339,231	324	£200,849,240	4.92%	2.16%

The % total number of waivers granted against contracts awarded was **4.92%**, which is a decrease on the previous period between the **1st March 2022 to the 31st August 2022** of which was **5.57%**. This average is significantly higher but distorted due to the 66.67% Public Health figure.

The % total value of waivers granted against total value of contracts awarded was **2.16%**, which is a decrease from the previous period between the **1st March 2022 to the 31st August 2022** of which was **2.52%**. This is a positive shift from the previously reported period.