



Report

Date: 23rd
November 2023

To: AUDIT COMMITTEE

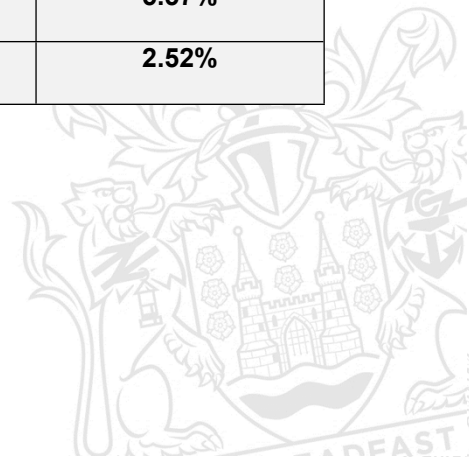
Report Title: BREACHES AND WAIVERS TO THE COUNCIL'S CONTRACT
PROCEDURE RULES (CPRs)

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 (CPRs) for the period **1st March 2023** to the **31st August 2023**.
2. The table below summarises the number of new waivers and breaches recorded for each Directorate since the last audit report presented in April 2023 and the one before in October 2022. The details of each waiver and breach are summarised in the appendices to this report. Please note due to the realignment of directorates the CEX directorate has been added to the table, the majority of spend was previously incorporated in the Corporate Resources directorate. This will keep statistics relative.

Directorate	1 st Mar 23 to 31 st Aug 23		1 st Sep 22 to 28 th Feb 23		1 st Mar 22 to 31 st Aug 22	
	Breaches	Waivers	Breaches	Waivers	Breaches	Waivers
AHW	1	4	0	5	0	4
CYPF	0	0	0	2	0	2
CR/CEX	0	4	0	5	4	5
PLACE (was E&E)	2	3	4	4	2	6
GRAND TOTAL	3	11	4	16	6	17
% Waivers versus No. Contracts Awarded	2.57%		4.92%		5.57%	
% Value of Waivers versus Value Contracts Awarded	2.74%		2.16%		2.52%	



EXEMPT REPORT

3. This report is not exempt.

RECOMMENDATIONS

4. To note the waivers and breaches recorded for the period between the **1st March 2023 to the 31st August 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 is clearly demonstrated and in accordance with the CPRs.
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, this is being managed closely to ensure the high levels of compliance continue.
11. The number of approved waivers for this period has decreased from **16**, as reported in April 2023, to **11**.
12. There are still high levels of compliance to the CPRs and SPT continue to be proactive and supportive to help alleviate increased pressures with regular reporting and attendance at key stakeholder meetings.
13. The CPRs were approved by Council in September 2023. The changes have been communicated with the Audit Committee. The new rules are being embedded across the Council and will be applicable to the Audit Committee Report in April 2024.
14. The Department of Health and Social Care (DHSC) intends the Provider Selection Regime (PSR), this is a regulation under the Health and Social Care Act 2022, to come into force on the 1st January 2024. This will introduce a new set of rules for procuring health care services in England and Local Authorities are captured by this. The CPRs will be amended to reflect these technical changes on the 1st January 2024.
15. New procurement thresholds relating to public procurement have been announced and technical changes will be made to the CPRs, these are very small changes. The new threshold for supplies/services is £214,904 (inc. VAT), it remains the same for the Light Touch Regime Services is £663,540 (inc. VAT) and for works it has slightly changed to £5,372,609 (inc. VAT).

OPTIONS CONSIDERED

16. The Council's CPRs 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 (£213,477 inc. VAT)** – 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 (£663,540 inc. VAT) (Light Touch Regime (LTR) Services) or £4,447,488 (£5,336,937 inc. VAT) (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.
17. The above thresholds will be amended to reflect the new CPRs in the April 2024 Audit Committee Report.
18. There have been **three** new breaches and **two** resolved breaches. There are **three** unresolved breaches.
19. **Appendix 1** shows the details of the **new, unresolved,** and **resolved** breaches for this period.
20. 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

21. 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

22. In **April 2023**, there were **four** new breaches reported to Audit Committee, **one** unresolved breach and **five** resolved breaches.

Waivers to CPR's

23. **Eleven** waivers have been approved for this six-month period, which has decreased from the last report in April 2023 where there was **sixteen**. The number and contract value of waivers granted against the number of contracts awarded for this period are shown in **Appendix 3**.

24. 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

25. SPT (Strategic Procurement Team) continue to work closely with all Directorates to improve procurement practices and provide assurance that arrangements are robust and compliant.

26. The embedment of the Category Management approach continues. Senior Category Managers still have specific responsibility for certain Assistant Directors and Heads of Service to ensure lines of communication remain.

27. 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.

28. A monthly CPR Training Programme continues to be delivered across the Council and officers can book this via the HR Portal. An eLearn module is currently in construction based on the newly approved CPR's, this will be mandatory for all budget holders. Budget holders will be asked to nominate officers in their teams who have some level of responsibility for contracting and procurement. It was not deemed appropriate for all staff to have this mandatory training as a high proportion do not have responsibility for contracting and procurement.

29. 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 have been 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.

30. SPT work with P2P (Purchase to Pay) to ensure compliance against the new Purchase Card Policy. This is low level spend but should adhere to the policy, to

note this policy is to ensure correct use of purchase cards, mitigate risks and ensure probity it is not there to control how budgets are spent by budget holders, this is undertaken by budget management practices. An internal audit was undertaken on Purchase Cards and all actions resulting from this audit have been implemented. SPT complete quarterly checks on purchase card spend to ensure compliance and this is signed off, spend is currently compliant. The last quarter review was undertaken, and no anomalies found. Purchase Card transactions are published quarterly on the Council's webpage in accordance with the Local Government Transparency Code.

OPTIONS CONSIDERED




31. 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

32. 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

33.

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 £100k 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 healthier, happier and longer lives for all



X

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.

34. Legal Implications [Officer Initials: SRF | Date: 3/11/23]

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.

35. Financial Implications [Officer Initials: PH | Date: 02/11/23]

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.

36. Human Resources Implications [Officer Initials: SH | Date: 02/11/23]

There are no specific HR implications arising from this report.

37. Technology Implications [Officer Initials: PW | Date: 01/11/23]

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

38. Breaches to the CPRs can expose the Council to reputational, financial, legal, and commercial risks. Contracting can be high risk if done incorrectly. Compliance monitoring of the CPRs seek to counter and address these risks.

CONSULTATION

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

BACKGROUND PAPERS

40. None

GLOSSARY OF ACRONYMS AND ABBREVIATIONS

41.

Adults, Health & Wellbeing (AHW)
CEX – Chief Executive Directorate
Contract Procedure Rules (CPRs)
Chief Financial Officer (CFO)
Corporate Resources (CR)
Doncaster Children's Services Trust (DCST)

Economy & Environment (E&E)
Information Communications Team (ICT)
Invitation to Tender (ITT)
Light Touch Regime (LTR)
Children, Young People & Families (CYPF)
Monitoring Officer (MO)
Strategic Procurement Team (SPT)
Public Health (PH)
Purchase to Pay (P2P)
Place – previously E&E
Technology Governance Board (TGB)

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APPENDIX 1

BREACHES

- **New** CPR breaches that have been identified between the **1st March 2023 to the 31st August 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/CEX	Resolved	Oct 22	Meat & Meat Products Contract	£90,310	Contract expired	<p>Nov 2023 Note: This contract has been awarded.</p> <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>	May 2023 Nov 2022
2.0	PLACE (was E&E)	Resolved	Apr 23	Ventilation Supplies	£71,450	No contract	<p>Nov 23 Note: Encompassed in wider recently re-procured contract for Plumbing and Heating Supplies.</p> <p>Apr 23 Note: 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
2.1	PLACE (was E&E)	Unresolved	Apr 23	Building Materials – Timber	£51,570	Contract expired	<p>Nov 23 Note: Procurement works underway, redesign of the contract and the way it is delivered has added in additional time to resolve.</p> <p>Apr 23 Note: 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>	Jan 2024 Nov 2023

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
2.2	PLACE (was E&E)	Unresolved	Apr 23	Kitchens	£39,520	No contract	<p>Nov 23 Note: Contract in draft, plan to award November 2023. Low value contract, decision taken to prioritise other works.</p> <p>Apr 23 Note: 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>	Nov 2023 Jun 2023
2.3	PLACE (was E&E)	Unresolved	Apr 23	Building Materials	£87,225	Contract expired	<p>Nov 23 Note: ITT currently out to market, subject to the process – award should be made Nov 23.</p> <p>Apr 23 Note: As per the Breach 2.0 (above) narrative.</p>	Nov 2023
2.4	PLACE (was E&E)	New	Nov 23	Modular Buildings	£213,000	Not obtained quotes/ tenders	<p>Nov 23 Note: Shown via off contract spend analysis, service area and applicable officers spoken with – only one quotation obtained in breach of the CPR's. Senior Category Manager worked with applicable officers; training undertaken.</p>	Jul 2023
2.5	PLACE (was E&E)	New	Nov 23	Modular Buildings	£37,486	Not obtained quotes/ tenders	<p>Nov 23 Note: Shown via off contract spend analysis, service area and applicable officers spoken with – only one quotation obtained in breach of the CPR's. Senior Category Manager worked with applicable officers; training undertaken.</p>	Jul 2023
3.0	AHW	New	Nov 23	Supported Accommodation and Floating Support Services for Young Families & Parents to be	£392,000	CPR Waiver rejected	<p>Nov 23 Note: A CPR Waiver was rejected for an additional year on this ongoing contract. Subsequently the timescale was too short to re-procure after rejection of the waiver. To protect the council the breach is being managed, the contract has been formalised albeit not in compliance with the CPR's.</p>	May 2024

APPENDIX 2

WAIVERS

CPR waivers agreed covering the period **1st March 2023 to the 31st August 2023**, 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	CR/CEX	Local Assistance Scheme Awards Fulfilment Service	3. Safe Exit from a contract	£5,000	01/04/2023	30/06/2023	The contract is due to end on 31/03/23, the 3-month extension will allow full procurement to be completed, so a direct award variation agreed to allow for this. Included as a waiver due to aggregated spend amounts.
1.1	CR/CEX	Ad Hoc Invasive Autopsy Service	1. Sole Provider/Niche Market	£50,000	01/04/2023	31/03/2025	Contract required for invasive autopsies. Due to the sensitivity of an invasive autopsy, when a digital autopsy cannot determine a cause of death, a local provision is required to limit distress and to expedite the process. Due to this the delivery of this contract is conducted in South Yorkshire.
1.2	CR/CEX	CaseCentre E Bundling	1. Sole Provider/Niche Market	£73,402	13/05/2023	12/05/2026	No other system to deliver this service can support the Council systems to produce court bundles. This contract creates e-bundles that are more efficient than manually producing bundles thus saving costs to the Council.
1.3	CR/CEX	Ubricity On-Street Residential Electric Vehicle Charging Pilot Scheme	1. Sole Provider/Niche Market	£2,026,600 <i>(concession value not included in Appendix 3)</i>	01/08/2023	31/07/2038	This is a concession agreement; this waiver value is the estimated income over the period for the supplier and will not be paid by the Council. –
2.0	PLACE (was E&E)	Highways Maintenance and Street Works System	3. Safe Exit from a contract	£35,000	01/01/2023	21/05/2023	Facilitate the safe exist from the current system (internally hosted) to an externally hosted system sustaining service delivery and minimise disruption throughout.
2.1	PLACE (was E&E)	Environmental Enforcement	4. Forms Part of a Strategic Plan/Review	£116,000	01/07/2023	30/11/2023	Extend the incumbent contract to align shared service agreements with Rotherham Council, North Lincolnshire Council and North East Lincolnshire Council.
2.2	PLACE (was E&E)	Corn Exchange Dilapidation Works	2. Emergency Situation	£112,742	01/03/2023	31/06/2023	Emergency works to a contractor to carry out repair works to the smoke ventilation system in the Corn Exchange Building in the Doncaster Marketplace.
3.0	AHW	Self-Management Support System for Adults with Mental Health and Learning Disabilities	1. Sole Provider/Niche Market	£34,925	30/04/2023	29/04/2024	Bespoke system to support adults who have eligible Care Act needs.

No.	Directorate	Title	Waiver Category	Waiver Value (£)	Waiver Period Start Date	Waiver Period End Date	Reason for the Waiver (brief description)
3.1	AHW	Doncaster Domestic Abuse Service	3. Safe Exit from a contract	£250,000	13/05/2023	12/05/2024	Need to continue with the incumbent service as the re-procurement failed to attract any suitable bidders. The service will need to be redesigned to ensure that the market can meet the contract requirements.
3.2	AHW	AskSARA System	1. Sole Provider/Niche Market	£100,163	01/08/2023	31/12/2025	Bespoke system available in the market that meets the service specification, allowing self-assessment linking to an online e marketplace to enable self-purchase of Assistive Technology (AT)
3.3	AHW	Doncaster Supported Living Service	3. Safe Exit from a contract	£8,429,500 (x3 Providers)	01/09/2023	03/03/2024	Continuation of incumbent contracts that were market tested in 2018. Significant market engagement and analysis of the market has established that a new contract methodology needs to be established (Flexible Purchasing System). This is an open framework agreement; additional procurement time is required to set up the overarching framework and then further compete the packages that sit below this. Additional time required to ensure transfer of contracts (if applicable) and minimal disruption to service users – who are involved in commissioning decisions.

APPENDIX 3

Total contracts awarded versus the number and value of waivers: 1st March 2023 to the 31st August 2023.

Directorate	No. of Waivers	Value of Waivers	Total Contracts Awarded	Value of Contracts Awarded	% No. of Waivers against No. Total Contracts Awarded	% Value of Waivers against Total Contracts Awarded
AHW	4	£8,814,588	33	£173,050,037	12.12%	5.09%
CYPF	0	£0	218	£52,321,876	0%	0%
CR/CEX	4	£128,402	40	£8,469,641	10%	1.52%
PLACE (was E&E)	3	£263,742	137	£102,624,513	2.19%	0.26%
Total	11	£9,206,732	428	£336,466,068.	2.57%	2.74%

The % total number of waivers granted, for this period, against contracts awarded was **2.57%**, which is a decrease on the previous period between the **1st September 2022 to the 28th February 2023** of which was **4.92%**.

The % total value of waivers granted, for this period, against total value of contracts awarded was **2.74%**, which is a slight increase from the previous period between the **1st September 2022 to the 28th February 2023** of which was **2.16%**.