

**To the Chair and Members of the
AUDIT COMMITTEE**

FINANCIAL AND PURCHASING & CONTRACT PROCEDURE RULES

EXECUTIVE SUMMARY

1. This Report provides Members with details of Waivers and Breaches to Contract Procedure Rules (C.P.R's) for the period 1st April 2015 – 30th September 2015.
2. The table below identifies the number of new waivers and breaches recorded, for each Directorate since the last audit report presented in April. The details of each waiver and breach are summarised in the appendices of this report.

Period 1st April 2015 – 30th September 2015	Breaches	Waivers
Adults, Health & Wellbeing	2	7
Learning & Opportunities: Children & Young People	0	3
Finance & Corporate Services	0	9
Regeneration & Environment	0	10
GRAND TOTAL	2	29

RECOMMENDATION

3. To note the information and actions contained in this report, regarding waivers and breaches of C.P.R's

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

5. There are no specific implications within this report, with regards to waivers or breaches.

BACKGROUND

6. The Director of Finance and Corporate Services monitors compliance with

Contract Procedure Rules (C.P.R.s) via an update from the Corporate Procurement team, detailing any reported waivers of C.P.R.s and instances of breach

Contract Procedure Rules (C.P.R's)

7. C.P.R.s set various value thresholds (detailed in paragraph 8 below) where commensurate competition should be undertaken by officers to ensure that value for money is being achieved and that all tender opportunities are fairly and appropriately advertised to suppliers.
8. The thresholds within C.P.R.s are set at the Council's discretion as:
 - Under £30,000 – use of an in-house supplier, Council wide contract (these have been established centrally or nationally for everyone to use), framework agreement or approved list or obtain **three verbal** quotes one of which must be from a Doncaster firm where the above is not available and record these quotes in writing as evidence;
 - Between £30,000 and EU threshold currently £172,514 (for goods and services) and £4,332,012m (for works) – use of an in house supplier, council wide contract, framework agreement or approved list or obtain **three written** quotes one of which must be from a Doncaster firm where the above is not available;
 - Over EU £172,514 (for goods and services) or £4,332,012m (for works) – use of an In-house supplier, Council wide Contract, framework agreement or carry out an Open, Restricted or Competitive Dialogue Tender procedure. This includes services under the light touch regime, which generally covers many of the care based services, where the OJEU regulations are less stringent allowing for more flexibility in approach.
9. Whilst the EU thresholds are set within the legislation and, therefore, cannot be waived, it is recognised that from time to time discretionary thresholds within C.P.R's may be a barrier to the delivery of the service and, therefore, Council officers can request that the C.P.R's are waived in specific instances via a C.P.R waiver report, which is approved by the Director of Finance and Corporate Services in accordance with the following permissible exemptions.
 - a. the goods, services or works are proprietary in nature (i.e. where only one supplier can supply the product or services);
 - b. the contract is for goods, services or works that are required in circumstances of extreme urgency;
 - c. the circumstances of the proposed procurement are covered by legislative exemptions (whether under EU or UK. law);
 - d. there are other circumstances that are genuinely exceptional.

Breaches to CPR's

10. Breaches arise from either the aggregation of spend with one supplier 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.
11. It is therefore important that steps are taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position. A summary report is produced for each breach and detail actions required to be taken, including where necessary the decommissioning of contracts.
12. Two breaches to CPR's has been reported this period (see detail at appendix 1).

Update to Breaches previously reported to Audit Committee in April

13. In April 2015, there were nine breaches of CPR's reported to Audit Committee.
14. Four of these breaches have been remedied and contracts awarded in respect of the Charles Court extra care housing, two Keyring schemes, Symology and Record Management.
15. The remaining five breaches remain unresolved as set out below:-
 - *Mortuary Services*. A tender process has been undertaken to rectify the breach, however, the tender process failed to identify a new supplier. We are currently in the process of re-specifying the contract to be re-tendered shortly with the aim of having a satisfactory solution in place by end March 2016.
 - *Doncaster Mind & Changing Lives* – A project brief has been prepared to undertake a full review of mental health services ie to understand the requirements for a relevant and effective social work and care service to those with mental ill-health and their carers. This model may be integrated with RDaSH, to deliver a joint health and social care service; together with a service that is as integrated as far as possible with Rotherham and North Lincs Councils, NHS commissioning and provision and other stakeholders and resources. In addition, the budget preparation for 2016/17, has meant increased focus is needed regarding service modernisation to deliver efficiencies. It is anticipated that the review will be concluded at the end of March 2016.
 - *Older Peoples alarm scheme* with various suppliers – A review of this service is ongoing. It is not known at this stage when the review will be concluded.
 - *Springwell Lane and Lanark Drive* – Discussions are ongoing with the Clinical Commissioning Group (CCG), to finalise ongoing funding responsibility for this service.
 - *Autism Family Practitioners* – To be insourced to the Council.

Waivers to CPR's

16. Twenty nine waivers to CPR's have been approved this period (see appendix 2 for the detail of each waiver).
17. The waivers detailed in this report have been reviewed and agreed either by the Assistant Director of Finance and Performance, the Director of Finance and Corporate Services or the Chief Executive (for Finance and Corporate Services Directorate).

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £30,000

18. The Corporate Procurement Team continues to work closely with all Directorates to improve procurement generally, but to also provide assurance that arrangements are robust and compliant with CPR's. Where waivers and breaches are identified, they are recorded and appropriate procurement plans are agreed and developed if/where appropriate.

OPTIONS CONSIDERED

19. Each waiver is examined and where appropriate challenged for alternative options prior to approval.

REASONS FOR RECOMMENDED OPTION

20. It is clearly important that the Council's Contract Procedure Rules are adhered to and that from a governance and procurement perspective, where breaches are identified a robust corrective plan is put in place to protect the council's commercial interests through contracts.

IMPACT ON THE COUNCIL'S KEY OBJECTIVES

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none">• <i>Mayoral Priority: Creating Jobs and Housing</i>• <i>Mayoral Priority: Be a strong voice for our veterans</i>• <i>Mayoral Priority: Protecting Doncaster's vital services</i>	<p><i>Please see Appendix 1 for an explanation of each waiver.</i></p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none">• <i>Mayoral Priority: Safeguarding our Communities</i>	

	<ul style="list-style-type: none"> • <i>Mayoral Priority: Bringing down the cost of living</i> 	
	<p>People in Doncaster benefit from a high quality built and natural environment.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	
	<p>All families thrive.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	
	<p>Council services are modern and value for money.</p>	
	<p>Working with our partners we will provide strong leadership and governance.</p>	

RISKS AND ASSUMPTIONS

21. With regards to the ongoing review of commercial arrangements with suppliers the risks of breach of CPR'S potentially exposes the Council to reputational, legal and commercial risk. The review and plans arising from its aim to remedy this and mitigate any remaining open risk.

LEGAL IMPLICATIONS

22. There are no specific legal implications arising from this report. However, Legal Services provide advice and assistance on the specific context of CPR breaches and waivers and reviewing existing commercial arrangements.

FINANCIAL IMPLICATIONS

23. There are no specific implications within this report, as each waiver or breach is considered on its own merits. Where financial implications arise from the wider review of commercial arrangements with suppliers these will be reviewed on a case by case basis.

EQUALITY IMPLICATIONS

24. The author of each waiver would need to consider all equality implications.

CONSULTATION

25. This report has significant implications in terms of the following:

Procurement	✓	Crime & Disorder	
Human Resources		Human Rights & Equalities	
Buildings, Land and Occupiers		Environment & Sustainability	
ICT		Capital Programme	

BACKGROUND PAPERS

26. None

REPORT AUTHOR & CONTRIBUTORS

Steve Mawson:
Assistant Director Finance & Performance
01302 737650

Simon Wiles
Director of Finance and Corporate Services
01302 736907

BREACHES

This appendix details the C.P.R. breaches that have been identified to the end of September 2015, together with a brief explanation of the reasons for the breach and their current status

Directorate & Responsible Officer	Description	Annual Breach Value	Contract End Date	Reason for breach	Proposed action	Timescale for resolution
Adults and Health and Wellbeing	Solar Centre Day Service - RDaSH	£742,000	Contract end date 31.3.13 Contract waiver requested March 2013 Contract waived until 31.3.14	These services formed part of a larger block contract with RDaSH which included day care at the Solar Centre and other learning disability services. This contract expired on the 31 st March 2013. The contract was extended via a waiver until the 31 st March 2014. The breach was not remedied, due to a number of factors predominantly the investigations and subsequent court case relating to the Solar Centre which meant that a formal tender process was delayed, the difficulties in resourcing the individual reviews of service users and ensuring robust Personal Budget arrangements, working with Providers to reduce the budget for this service from £972K in 2012/13 to £742K and the transfer of the RDaSH supported living service to the independent sector	To review each service user and provide them with a personal budget with which they may either continue to purchase these services or seek alternative provision. Consideration has also been given to a time limited tender process whilst this individualised provision is arranged. This option has been rejected due to the complexities around the use of buildings based services currently owned and operated by RDASH.	Scoping work is underway to understand the implications of financial assessments on this group of service users. Discussion re resourcing a review team or using current resources is underway. This will affect the timing of the process. However, of the 73 service users, 20 individuals have been reviewed.

<p>Adults, Health and Wellbeing –</p> <p>Bill Hotchkiss Head of Services – Community Safety) Janice Jones – ARC Manager</p>	<p>Service and Maintenance for public realm CCTV, Concierge/Door Entry and Building Security</p>	<p>£105,000</p>	<p>30/09/15</p>	<p>Due to DMBC needing to consolidate a number of contracts (to achieve best value) for security and the complex nature of the service requirements i.e. CCTV, Concierge/Door Entry and Fire/Intruder Alarms for example together with the supply and maintenance of goods and services a great deal of works has been undertaken to put in place a Frame Work Agreement - the specification and tender documentation were ready to go live onto YORtender in time to meet the deadlines, however it was determined that due to the complexities of the contract/s further measures needed to be put in place with regards to the Legal Agreement in order to protect the interests of the Council, hence the delay and subsequent breach.</p>	<p>Review of the tender documentation is being undertaken before the tender is published on YORtender to ensure the Council's interests are protected.</p> <p>The tender is now due to be published at the end of March 2016.</p>	<p>Frame Work Agreement Tender to be published at the end of March 2016 which will have the necessary legal agreement to protect the Council's interests moving forward.</p>
---	--	-----------------	-----------------	--	---	--

APPENDIX 2

WAIVERS

This appendix details the C.P.R. waivers that have been agreed since the last report covering the period 1st April 2015 to the end of September 2015, together with a brief explanation of the reasons for the waiver.

Department	Value	Reason
Finance and Corporate Services CPR/15/03/0004	£11,530	Waiver request granted to extend the current contract for 6 months with Civica due to a delay in Go Live for the new website.
Finance and Corporate Services CPR/15/03/0001	£12,555	Waiver requested to pay subscription fees for 3 years to IDOX to enable the Programme team to search out external funding opportunities. The waiver request was granted on the basis that there is no comparable software available on the UK market.
Finance and Corporate Services CPR/15/03/0007	£72,000	Waiver granted to continue the current arrangements for a further 2 year period, with Rotherham Borough Council to manage the Councils Internal audit function as the current arrangement continues to offer best value for money.
Finance and Corporate Services CPR/14/12/0004	£36,667	Waiver granted to directly award a contract to Xexec for 22 months with an option to extend for a further 10 months to supply mobile devices as part of the Councils new salary sacrifice scheme, due to mobile devices not being covered under the Framework Agreement the Council accessed to implement the salary sacrifice scheme.
Finance and Corporate Services CPR/15/06/004	£3,650	<p>Waiver requested to extend the current contract with Nuway Audio Visual to incorporate the necessary equipment for the audio visual recording of Council meetings.</p> <p>Waiver granted on the basis the original contract included options for audio visual recording which were not taken up at the time of contract award and the system in use, is propriety to Nuway Audio visual.</p>
Finance and Corporate Services CPR/15/07/002	£11,530	Waiver granted for a further 12 months on the basis that Mosiac Public Sector is propriety software belonging to Experian. It is a socio geo-demographic segmentation tool that is utilised by approximately 70% of local authorities within the UK.
Finance and Corporate Services CPR/15/07/003	£70,000	<p>Waiver request to award a contract to the Valuations Office Agency for 5 years to undertake housing dwelling stock valuations.</p> <p>Waiver granted on the basis that the Valuation Office Agency is the only firm able to provide a comprehensive local valuation service and is therefore a proprietary item.</p>

Finance and Corporate Services CPR/15/08/0003	£7,050	Waiver granted to extend the current contract with Hornbill for the provision of the IT Service Management Desk for a further 6 months to identified requirements and tender for a new system.
Finance and Corporate Services CPR/15/09/0001	£27,145	<p>Waiver requested to award a one year contract to Janet (UK) to enable continuation of Internet access to educational establishments using the Internet Connection provided by JANET (UK), while allowing ICT to conduct proof of concept to deliver internet access using an alternative method to our educational establishments to deliver best value and further drive down cost.</p> <p>Waiver granted to allow ICT time to conduct their proof of concept trial.</p>
Regeneration and Environment CPR/15/05/0003	£5,000	<p>Waiver requested to award a contract for 1 month to Lightman Ltd to refurbish two MUGA ends designed and made by Lightman Ltd.</p> <p>Waiver granted due to the propriety nature of the designs used in this particular MUGA.</p>
Regeneration and Environment CPR/15/05/004	£10,000	<p>Waiver requested to directly award a 2 week contract to Westmoreland Plant Hire Ltd to carry out urgent works due demolition works.</p> <p>The waiver was granted due to the urgent nature of the works and health and safety issues to the general public.</p>
Regeneration and Environment CPR/15/06/0002	£5,000	<p>Waiver requested to award a 1 month contract to XP solutions to provide training on their drainage design software.</p> <p>Waiver granted on the basis that the Micro drainage software package is a propriety item of XP solutions.</p>
Regeneration and Environment CPR/15/08/0001	£140,000	<p>Waiver requested to award a 6 month contract to AOne+ for the design and execution of construction works to build a complete package of FARRRS related direction signing on the M18, due to limitations within the current Highways England (HE) contract.</p> <p>The waiver was granted on the basis that the HE had met it EU cap on the value of work it can give to contractors and as AOne+ is a HE appointed contractor the HE gave permission to the Council to directly appoint AOne+ to carry out this work i.e. until such time HE can retender and put in place a new contract.</p>
Regeneration and	£2,160	Waiver granted to extend the current contract with Design by Human for the Doncaster Business website for six months prior

Environment CPR/15/08/0002		to bringing the service in-house.
Regeneration and Environment CPR/15/02/0001	£11,730	<p>Waiver requested to purchase of Operational Materials necessary for the Provision of Duke of Edinburgh's Award, ASDAN Awards and Youth Achievement Awards to DMBC Award Centres.</p> <p>Waiver granted on the basis that these materials can only be purchased from Governing Bodies.</p>
Regeneration and Environment CPR/15/04/0001	£1,000	Waiver granted to award a contract to Leec Ltd to provide an automated Cremator Coffin Charger for a period of one month to Rose Hill Crematorium to enable the Cremator Technicians to trial the charger.
Regeneration and Environment CPR/15/03/0011	Landlord charged circa £300 over a 5 year period	<p>Waiver requested to directly award a contract to The Home Safe Scheme Limited to develop a scheme of co – regulation to be part of a selective licensing scheme in Hexthorpe.</p> <p>Waiver granted on the basis that the selective licencing scheme will effectively allow for privately managed licenses as part of a Council run selective licensing scheme in Hexthorpe.</p>
Regeneration and Environment CPR/15/01/0003	£28,700	<p>Waiver requested to appointment GVA Grimley for 1 month to provide specialist valuation advice and building condition advisory services in preparation for the tender of 7 of the Council's care homes.</p> <p>Waiver granted on the basis that GVA Grimley are specialists in this area of work and were able to meet the Councils procurement timescales</p>
Regeneration and Environment CPR/15/05/0001	£5,000	<p>Waiver requested to engage Edge Analytics to produce a report using the POPGROUP Model to enable the Council to identify housing needs for the next Local Plan period (17years).</p> <p>The waiver was granted on the basis that the POPGROUP model is operated only by Edge Analytics.</p>
Children and Young People's Services CPR/15/01/0006	£30,000	<p>Waiver requested to enter in to a contract for 24 months with Arbour Education Partners which will enable schools to access reports relating to Budget, Attainment and Performance as well as an analysis of their Pupil groups ie to improve performance.</p> <p>Waiver has been granted on the basis that this is a proprietary item.</p>
Children and	£490	Waiver granted to purchase software provided by Pillcreek

Young People's Services CPR/15/01/0005		publishing on the basis that the software is a propriety item.
Children and Young People's Services CPR/15/03/0005	£49,000	Waiver requested to recruit for 10 months an Interim Senior Education Standards and Effectiveness Officer from Veredus for Early Years following the transfer of Early Years Team into Education. Waiver granted on the basis that the Councils current agency contract was unable to supply a person (at that time) with the required specialist skills.
Adults Health and Wellbeing CPR-15-03-0010	£71,272 to a maximum £142,546 Dependent upon the length of the new tender process	Waiver granted to directly award a 6 month contract with the option to extend for a further two, three month periods to Doncaster and Bassetlaw Hospitals NHS Foundation Trust for the continuation of obesity prevention and weight management services (pending a re-tender of the service). The extension became necessary as the previous tender exercise resulted in the successful bidder identified, withdrawing from the process 5 weeks prior to the end of the existing contract.
Adults Health and Wellbeing CPR/15/03/0009	£167,700.00 (Initiatec Limited) £60,000 (Minder Security)	Waiver granted to extend the current contracts for Service and Maintenance for Public realm CCTV, Concierge / Door Entry and Building Security for a period of 6 months, to enable a new Framework contract to be put in place to consolidate and streamline the service and to prevent service disruption
Adults Health and Wellbeing CPR/15/04/0003	£50,000	Waiver requested to extend for a further 6 months the existing contract with Francis Street Medical Centre to provide GP Support into the Adult Social Care Assessment Unit – Positive Step and to prevent unnecessary re-admissions to hospital.
Adults Health and Wellbeing CPR/15/07/0001	£87,000	Waiver granted to extend the current contract with Activist Group Limited for 6 months to include a review of commissioning and programme management to build upon the work already carried out during the PPPR2.
Adults Health and Wellbeing CPR/15/09/0002	£10,000	Waiver requested to provide match funding to Donmentia to manage the development of a dementia friendly community garden on behalf of the Doncaster Dementia Strategic Partnership.
Adults Health and Wellbeing CPR/15/07/004	£22,500	Waiver request to award a three year contract to Warwickshire County Council to commence on 1st April 2016, for the provision of Respect Yourself, a dual platform online sex and relationships

		<p>education resource tailored for Doncaster.</p> <p>Waiver granted on the basis that the website and mobile app to be provided by Warwickshire County Council is propriety in nature.</p>
<p>Adults Health and Wellbeing CPR/15/06/0003</p>	<p>£12,000</p>	<p>Waiver requested to award a 4 month contract to FutureGov to provide consultancy support for the development of new models of working that will seek to make citizens more empowered and engaged in finding advice and support.</p> <p>Waiver granted on the basis that FurtureGov have the necessary, consultancy skills and experience to deliver the required piece of work.</p>