
Waivers and Breaches Update 2024/25 Quarter 2 and Quarter 3

Chair of Committee: Councillor Mike Hewitson

Executive Member(s): Councillor Liz Leyshon, Deputy Leader of the Council and Lead Member for Finance, Procurement and Performance

Local Member(s) and Division(s) affected: None

Executive Director: Maria G Christofi, Interim Chief Finance Officer (Section 151 Officer)

Executive Summary

1. This report is a summary of reported Waivers and Breaches reported by Procurement for Quarter 2 and Quarter 3 of 2024/25
2. These represent permitted waivers and notified breaches of the Council's Contract Procedure Rules & Standing Orders and/or Public Contract Regulations 2015.

Recommendations

3. That the Committee

(i) review this report and attached report, seek further information where necessary from Procurement, and identify any matters where the Committee would wish to seek further assurance the relevant Officer regarding the Waiver/Breach and for them to attend a future Committee to explain and justify the action taken in consideration of any risks posed to the Council.

(ii) agrees the case for applying exemption information provision as set out in the Local Government Act 1972, Schedule 12A and therefore treat appendix A to this report in confidence, as it contains commercially sensitive information, and as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

(ii) agrees to exclude the press and public from the meeting where there is any discussion at the meeting regarding Appendix A (to be treated as exempt information).

Reasons for Proposals

4. This follows the annual Waivers and Breaches Report presented to the Audit Committee on 12 November 2024. It was agreed that a regular report on such waivers and breaches should be brought to the committee. This an update on new items reported in Q2 and Q3 of 2024/25.

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Main report and supporting information



Background and purpose of report

5. The council produces an annual report on non-adherence to the rules and legislation covering the award of contracts (contract Procedure Rules & Standing orders and Public Contract Regulations 2015).
6. This report was presented to the Audit Committee on 12 November and it was agreed that more regular updates should be provided to allow the Committee to identify particular areas of concern or risk where the Officer committing the breach/waiver may be required to attend future meetings to fully explain and justify the action taken
7. As a reminder, the definition of a Waiver and a Breach is as follows:
 - Waiver – is non-adherence to Public Contract Regulations 2015 and/or Contract Procedure Rules and Standing Orders but an accepted reason justifies this.
 - Breach – is non-adherence to Public Contract Regulations 2015 and/or Contract Procedure Rules and Standing Orders but the reason quoted is not accepted as a justification. Retrospective waiver requests are automatically recorded as a breach.
8. Members of the Committee are reminded that these are breaches under the current Rules and Legislation which will be amended from 24 February when Public Contract Regulations 2015 is replaced by the Procurement Act 2023.

Links to Council Plan and Medium-Term Financial Plan

9. Direct Awards of contracts are made without a formal approach to market and as such usually lack assurance that this represents best value.

Other options considered

10. Not applicable

Key considerations for the Council

Scrutiny comments / recommendations:

11. Not Applicable

Consultation and feedback

12. Not applicable

Financial and Risk Implications

13. The direct awarding of contracts lack a formal competitive approach to the market and as such usually risks the ability to ensure best value for public money.

Breaches to the Public Contract Regulations are liable to formal legal challenge from external suppliers. This may result in legal fees/damages/cessation of the awarded contract and reputational damage to the Council. The likelihood of such a challenge will defer in every instance.

Current Risk Score:

| | | | | | |
|-------------------|----------|---------------|----------|-------------------|----------|
| Likelihood | 3 | Impact | 3 | Risk Score | 9 |
|-------------------|----------|---------------|----------|-------------------|----------|

Projected risk score if recommended actions are agreed and delivered:

| | | | | | |
|-------------------|----------|---------------|----------|-------------------|----------|
| Likelihood | 3 | Impact | 3 | Risk Score | 9 |
|-------------------|----------|---------------|----------|-------------------|----------|

Legal and Procurement Implications

14. As stated in the Risks, non adherence to the legislation may result in a formal challenge to the award decision resulting in costs, claims for damages or cessation of the contract awarded.

HR / Workforce Implications

15. None

Equalities Implications

16. None

Community Safety Implications

17. None

Climate Change and Sustainability Implications

18. None

Health and Safety Implications

19. None

Health and Wellbeing Implications

20. None

Social Value

21. Not applicable

Background Papers

22. None

Appendices

- Report attached as Appendix A

Report assurance checklist ahead of report publication (for Audit, Executive, Full Council and Scrutiny Committees)

| | Officer Name | Date Completed |
|---------------------------------|------------------------------|----------------|
| Legal & Governance Implications | Jill Byron / Scott Woolridge | 23/01/25 |
| Finance & Procurement | Nicola Hix | 22/01/25 |
| Workforce (*) | Dawn Bettridge | n/a |
| Asset Management (*) | Simon Lewis | n/a |
| Executive Director | Maria G. Christofi | 22/01/25 |
| Executive Lead Member | Cllr Liz Leyshon | 23/01/25 |
| Consulted: | Councillor Name | |
| Local Division Members | List local members | N/a |
| Opposition Spokesperson(s) | Cllr Diogo Rodrigues | |
| Relevant Scrutiny Chair(s) | Relevant Chair | n/a |

Note:

Directors may nominate additional officers to act on their behalf

(*) – these areas only need to be consulted on proposals if the proposals have workforce or asset management implications

Reports will not be published if assurance checklist has not been adequately completed – report author to liaise with Democratic Services well ahead of publication deadlines