

CHESHIRE EAST COUNCIL

REPORT TO: Audit and Governance Committee

Date of meeting: 17 March 2016
Report of: Chief Operating Officer
Title: Waivers and Non Adherences (WARNs)
Portfolio Holder: Councillor Paul Findlow

1.0 Report Summary

1.1 The purpose of the report is to:

- i) update the Audit and Governance Committee on the quantity and reasons for Waiver and Non Adherences (WARNs) which have been approved since December 2015.
- ii) update the Audit and Governance Committee on the total number of WARNs for 2015/16.
- iii) present the approved WARNs to the committee for review.

2.0 Recommendation

2.1 That the Committee:

- i) note the quantity and reason of WARNs
- ii) note the approved WARNs since December 2015

3.0 Reasons for Recommendation

3.1 The Audit and Governance Committee has a key role in overseeing governance arrangements and ensuring the Council has appropriate policies and mechanisms to safeguard resources in place.

3.2 It is a requirement of the Audit and Governance Committee to review all approved WARNs since December 2015.

4.0 Wards Affected

4.1 All wards.

5.0 Local Wards Affected

5.1 Not applicable.

6.0 Policy Implications

6.1 Not applicable.

7.0 Financial Implications (Authorised by the Chief Operating Officer)

7.1 As per the Council's Constitution (Finance Procedure Rule B25), Management Group Board are responsible for working within their respective budget limits and to utilise resources allocated to them, and further to allocate resources in the most efficient, effective and economic way.

7.2 Along with comments from Procurement and Legal Officers, Finance Officer's are invited to make comments in respect of each WARN, to help ensure Finance Procedure Rules are adhered to in this regard (e.g. that the relevant Service has identified sufficient existing budget to cover the proposal; and also that the Service has considered how to achieve best value for money via this particular recommended course of action). Finance Officers will also advise if other actions are required (e.g. transfer of budget from one area to another, to meet any further expenditure requirements) again to comply with and utilise the provisions in the Finance Procedure Rules.

8.0 Legal Implications (Authorised by the Director of Legal Services)

8.1 All employees must ensure that they use any Council or other public funds entrusted to them through their job role in a responsible and lawful manner.

8.2 Employees must also seek to ensure value for money and take care to avoid the risk of legal challenge to the Council in relation to the use of its financial resources. The Council's Officer Delegations, Finance and Contract Procedure Rules and Operating Procedures must, therefore, be followed at all times. This report sets out compliance with Contract Procedure Rules.

9.0 Risk Assessment

9.1 Item 18 on the Council's Corporate Risk Register considers Governance. The focus is the risk that processes are not complied with, which increases the likelihood of legal challenge causing significant financial and reputational risk to the Council. This includes procurement processes.

9.2 The corporate risk is owned by the Chief Operating Officer and at the last review was rated as a nine (where 0 is the lowest rating and 16 is the maximum level).

10.0 Background

10.1 During 2015 a number of concerns were raised regarding WARNs which has resulted in the revised procedure to bring all approved WARNs before the Audit and Governance Committee.

- 10.2 All WARNs approved in the period between the Audit and Governance Committee will be presented to the following Committee. However the cut off period for reporting the WARNs will be the end of the month previous to writing the report. The cut off period for this report is the 31st of January 2016.
- 10.3 All WARNs will be presented to the Audit and Governance Committee without any information being redacted. However they will be presented in part 2 of the Committee as they may contain commercially sensitive information or Officer details below the salary grade Cheshire East release under FOI. The main report will be presented in part 1. Procurement is taking advice on how to present these.
- 10.4 Previously WARNs were referred to as Delegated Decisions under the Finance and Contract Procedure Rules and were the responsibility of Services to complete and obtain the relevant authorisation.

In 2014 a review of the procurement function was commissioned. The key findings were

1. Procurement was fragmented and should centralise to become a cross Council strategic function
2. Contract Procedure Rules need to be re-written
3. A new procurement strategy drafted and implemented
4. Adopt a risk based approach for below EU Threshold procurement
5. Spend data needs improving
6. Contracts register needs improvement.

As part of this review and in accordance with the revised Contract Procedure Rule the responsibility for WARNs became part of the Procurement role. The procurement team review, administer and critique, obtain comments from the relevant enabling services, ensure the Head of Service has signed and takes responsibility for the actions and presents the WARNs to the Chief Operating Officer and Director of Legal and Monitoring Officer.

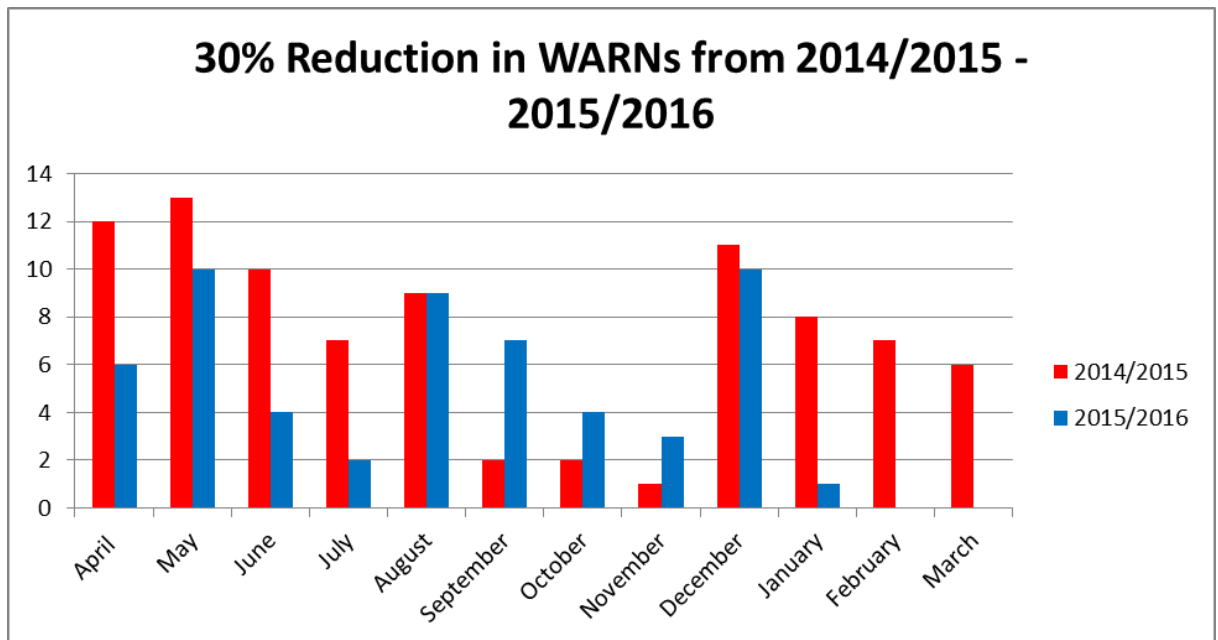
All WARNs are then recorded on a log along with a final signed copy of the WARN and actions are monitored and recorded once completed. These are actively chased by the procurement team.

- 10.5 All WARNs are analysed and presented to the Procurement Board where trends are identified and solutions put in place for repeat WARNs in category areas. The most recent example of this is a new contract for consultancy. The number of WARNs for consultants in 2014-2015 was 33 totalling £2 million and for 2015-2016 is 35 totalling £4.4 million. A new contract has now been approved with NEPRO using the NEPO (North East Purchasing Organisation) framework which should reduce or eliminate WARNs for consultancy.
- 10.6 The WARN process records the following;
- Waivers to the Contract Procedure Rules – These are agreed waivers in accordance with 5.2.1 of the Contract Procedure Rules.

- Non Adherence to the Contract Procedure Rules – This is a breach of the Contract Procedure Rules in accordance with 5.3.1.

10.7 A summary of WARN's for the period 2014-2015 and 2015-2016 is set out below:

WARNs	2014-2015	2015-2016
Non Adherence to CPRs	20	22
Waiver to the CPR's	62	34
Grand Total	82	56



The number of WARNs for the period April 2015 to January 2016 has reduced by 30% compared to the same period the previous year. This is due to forward planning using the contracts register to drive procurement activity.

The number of WARNs per service area and the reasons is detailed below.

Row Labels	Non Adherence to CPRs	Waiver to Requirements of Competition	Total
Children's	8	6	14
Strategic & Economic Planning	3	8	11
Adults	3	3	6
Safer and Stronger Communities	2	3	5
ICT Strategy	2	3	5
Public Health		3	3
HR Strategy	1	2	3
Revs & Bens	1	1	2
Democratic Services	1		1
Environmental Health		1	1

Communication team		1	1
Tatton Park	1		1
Life Long Learning		1	1
Planning		1	1
Finance		1	1
Grand Total	22	34	56

A	Genuine Emergency – which warrant an exception to the requirements
B	Specialist Education or Social Care Requirements
C	Genuine Unique Provider – e.g. from one source or contractor, where no reasonably satisfactory alternative is available.
D	Compatibility with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure
E	In-depth Knowledge, skills and capability of project/services already in existence with consultants/providers carrying out related activity – therefore procuring new consultants/skills would be uneconomic given the investment in previous, related work.
F	No valid tender bids received, therefore direct award can be substantiated
G	Lack of Planning
H	Other – Any other valid general circumstances up to the EU threshold

Row Labels	Non Adherence to CPRs	Waiver to Requirements of Competition	
Children's	8	6	14
B	1	3	4
E	1	1	2
G	3	1	4
H	3	1	4
Strategic & Economic Planning	3	8	11
E	3	4	7
H		2	2
J		1	1
(blank)		1	1
Adults	3	3	6
D	1		1
E		2	2
G		1	1
H	2		2
Safer and Stronger Communities	2	3	5
D		1	1

E	1	2	3
G	1		1
ICT Strategy	2	3	5
D	2		2
G		3	3
Public Health		3	3
C		1	1
D		1	1
H		1	1
HR Strategy	1	2	3
D		1	1
E	1	1	2
Revs & Bens	1	1	2
H	1	1	2
Democratic Services	1		1
H	1		1
Environmental Health		1	1
D		1	1
Communication team		1	1
G		1	1
Tatton Park	1		1
H	1		1
Life Long Learning		1	1
H		1	1
Planning		1	1
G		1	1
Finance		1	1
H		1	1
Grand Total	22	34	56

10.8 There are currently 14 WARNs in progress, 8 non adherences and 6 waivers and of these 3 have been unresolved since 2015. Procurement is actively chasing these WARNs and have escalated to the relevant Chief Officers.

10.9 It is anticipated that WARNs will increase during 2016 – 2017 due to the transfer of CoSocius ICT to Cheshire East on the 1st of April.

11.0 Access to information

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