

CHESHIRE EAST COUNCIL

REPORT TO: Audit and Governance Committee

Date of meeting: 30th June 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 between February to May 2016.
- ii) present the approved WARNs to the committee for review.

2.0 Recommendation

2.1 That the Committee:

- i) note the quantity and reasons for the WARNs
- ii) note the approved WARNs between 1st February 2016 and 31st May 2016

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 from February to May 2016.

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. When commissioning goods or services employees must comply with both the Public Contracts Regulations 2015 and the Councils Contract Procedure Rules (the Rules).
- 8.2 It is strongly expected that the Rules will be followed in all cases with very limited exceptions, however, in the event that a Commissioning Officer believes a waiver to these Rules is essential to the efficient running of the Service they must seek a waiver by producing a report that must be approved by the Chief Operating Officer and the Director of Legal Services and Monitoring Officer. The report must be in accordance with the prescribed format. The format of the report shall be determined by the Procurement Manager, and must be used in line with any associated guidance published.
- 8.3 Advice and guidance must be sought from the Procurement Manager prior to submission of the waiver form to the Chief Operating Officer and Director of Legal Services and Monitoring Officer. If approval is granted, it is still required that an appropriate contract be entered into prior to any requirements being provided by the provider. The waiver of these Rules and the reason(s) for the waiver shall be clearly recorded and reported to the Procurement Board.

The only exception to the above is for instances of extreme urgency, where there is an immediate risk to life, property or an individual's safety and wellbeing, and any inaction by the Authority (related to risks to safety and wellbeing) would be a breach of our statutory duty and obligations. The agreement of the Procurement Manager must be sought prior to any action being taken except where the nature of the urgency and risk renders this impractical. Such instances must be reported at the earliest opportunity, retrospectively, to the Chief Operating Officer, Director of Legal Services and Monitoring Officer and the relevant Chief Officer following the incident.

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

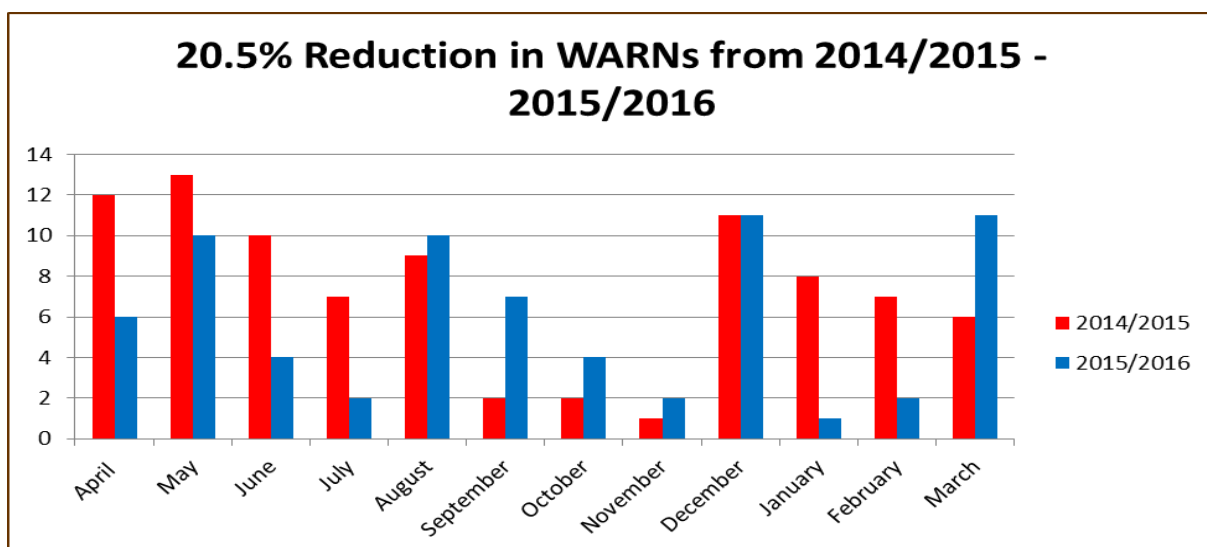
- 10.1 All WARNs approved in the period between the Audit and Governance Committee will be presented to the following Committee. However the cut off period for reporting the WARNs will be the end of the month previous to writing the report. The cut off period for this report is the 31st May 2016.
- 10.2 The number of WARNs being presented to the June Audit and Governance Committee is 25, 20 waivers to the Contract Procedure Rules and 5 non adherence.
- 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 will be presented in part 1.
- 10.4 All WARNs are analysed and presented to the Procurement Board where trends are identified and solutions put in place for repeat WARNs is category areas. The most recent example of this is a new contract for consultancy, which has been approved with NEPRO using the NEPO (North East Purchasing Organisation) framework which will help the Council to achieve better value for money and also improve transparency and control of consultancy activity. Procurement has been trialling the NEPRO contract since March 2016 and have already seen some significant benefits. These include
1. Increased compliance by ensuring business cases are completed for new consultancy requirements focussing on the key activities and outputs.
 2. The use of a compliant procurement approach for consultancy and a significant reduction in the need for WARNs. Only one approved so far for 2016/17.
 3. £130,000 saving for the three projects awarded against a budget of £520,000 (25%).
 4. Positive user feedback from the services who have procured using NEPRO.
 5. Efficiency savings in time and resources. Projects are able to be procured within 2 weeks rather than the average time of 3 months plus.

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	2016 -17 e.g. April 16 to end May
Non Adherence to CPRs	20	25	4
Waiver to the CPR's	62	45	8
Grand Total	88	70	12



The number of WARNs for the period April 2015 to March 2016 has reduced by 20.5% 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.

April 2015 – March 2016 WARNs Per Service

Row Labels	Waiver to Requirements of Competition	Non Adherence to CPRs	Grand Total
Children's	8	8	16
Strategic & Economic Planning	9	3	12
Adults	3	5	8

Strategic Housing	5		5
ICT Strategy	3	2	5
HR Strategy	3	1	4
Safer and Stronger Communities	2	2	4
Public Health	3		3
Revs & Bens	1	1	2
Environmental Health	2		2
Planning	2		2
Democratic Services		2	2
Tatton Park		1	1
Finance	1		1
Communication team	1		1
Regeneration	1		1
Life Long Learning	1		1
Grand Total	45	25	70

April 2016 – May 2016 WARNs Per Service

Row Labels	Waiver to Requirements of Competition	Non Adherence to CPRs	Grand Total
Children's	2	1	3
Safer and Stronger Communities	1	1	2
ICT Strategy	2		2
Planning	1	1	2
Public Health	1		1
Tatton Park	1		1
HR Strategy		1	1
Grand Total	8	4	12

10.8 There are currently 20 WARNs in progress, 15 non adherences and 5 waivers and of these 3 have been unresolved since 2015. Procurement is actively chasing these WARNs and has 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 2016. There are currently 5 WARNs which are in process for ICT Service.

11.0 Access to information

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