

# CHESHIRE EAST COUNCIL

## REPORT TO: Audit and Governance Committee

---

**Date of meeting:** 29<sup>th</sup> September 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 1st June 2016 to 31<sup>st</sup> August 2016.
- ii) 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 between 1<sup>st</sup> June 2016 and 31<sup>st</sup> August 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 June to August 2016.

The WARN process forms part of our Contract Procedure Rules (CPRs), which are intended to promote good Procurement and Commissioning practice, transparency and clear public accountability. The CPRs are designed to deliver open and transparent procurement processes and ensures compliance with relevant Public Procurement Legislation which in turn leads to better value for money and gives confidence to all concerned that the Council is fulfilling its fiduciary responsibilities. This process is seen as sector leading as very few Authorities have procedures in place with the robustness that is provided from our approach.

#### **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 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 31<sup>st</sup> August 2016.

10.2 The number of WARNs being presented to the September Audit and Governance Committee is 22, 10 waivers to the Contract Procedure Rules and 12 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.

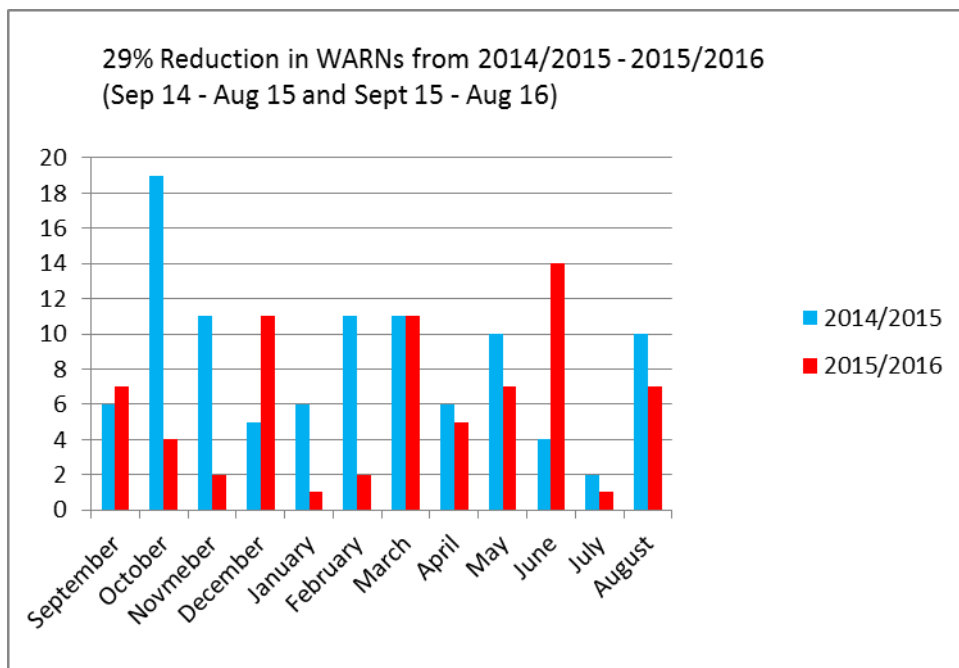
10.4 All WARNs are analysed and presented to the Procurement Board where trends are identified and solutions put in place for repeat WARNs in category areas.

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 Apr 16 – Aug 16
Non Adherence to CPRs	20	25	16
Waiver to the CPR's	62	45	18
<b>Grand Total</b>	<b>82</b>	<b>70</b>	<b>34</b>



The number of WARNs for the period September 2015 to August 2016 has reduced by 29% 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 2016 – August 2016 WARNs Per Service

Row Labels	Waiver to Requirements of Competition	Non Adherence to CPRs	Grand Total
Adults	3	4	7
Strategic Economic Planning	0	1	1
Public Rights of Way	1	0	1
Democratic Services	0	1	1
Children's	3	2	5
Safer and Stronger Communities	1	1	2
ICT Services	5	0	5
Planning	1	1	2
Public Health	1	2	3
Tatton Park	1	1	2
HR Strategy	0	2	2
Life Long Learning	1	0	1
Assets	0	1	1
Legal Services	1	0	1
<b>Grand Total</b>	<b>18</b>	<b>16</b>	<b>34</b>

Code	Description of Category/code
<b>A</b>	Genuine Emergency – which warrant an exception to the requirements
<b>B</b>	Specialist Education or Social Care Requirements
<b>C</b>	Genuine Unique Provider – e.g. from one source or contractor, where no reasonably satisfactory alternative is available.
<b>D</b>	Compatibility with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure
<b>E</b>	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.
<b>F</b>	No valid tender bids received, therefore direct award can be substantiated
<b>G</b>	Lack of Planning
<b>H</b>	Other – Any other valid general circumstances up to the EU threshold
<b>I</b>	No time to undertake a tendering exercise, therefore extension necessary to avoid non-provision of deliverables
<b>J</b>	Procurement from any other source would be uneconomic at this time
<b>K</b>	Added value being offered by the Provider(s)
<b>L</b>	Extension is best option as highlighted in request form

Row Labels	Non Adherence to CPRs	Waiver to Requirements of Competition	
<b>Adults</b>	<b>4</b>	<b>3</b>	<b>7</b>
G	4	2	6
J		1	1
<b>Strategic &amp; Economic Planning</b>	<b>1</b>	<b>0</b>	<b>1</b>
J	1		1
<b>Public Rights of Way</b>	<b>0</b>	<b>1</b>	<b>1</b>
C		1	1
<b>Democratic Services</b>	<b>1</b>	<b>0</b>	<b>1</b>
G	1		1
<b>Children's</b>	<b>2</b>	<b>3</b>	<b>5</b>
B	2		2
C		1	1
G	2		2
<b>Safer and Stronger Communities</b>	<b>1</b>	<b>1</b>	<b>2</b>
C		1	1
D	1		1
<b>ICT Services</b>	<b>0</b>	<b>5</b>	<b>5</b>
C		1	1
D		2	2
E		1	1
G		1	1
<b>Planning</b>	<b>1</b>	<b>1</b>	<b>2</b>
E		1	1
J	1		1
<b>Public Health</b>	<b>2</b>	<b>1</b>	<b>3</b>
B		1	1
G	2		2
<b>Tatton Park</b>	<b>1</b>	<b>1</b>	<b>1</b>
D		1	1
G	1		1
<b>HR Strategy</b>	<b>2</b>	<b>0</b>	<b>2</b>
C	1		1
G	1		1
<b>Life Long Learning</b>	<b>0</b>	<b>1</b>	<b>1</b>
B		1	1
<b>Assets</b>	<b>1</b>	<b>0</b>	<b>1</b>
E	1		1
<b>Legal Services</b>	<b>0</b>	<b>1</b>	<b>1</b>
E		1	1
<b>Grand Total</b>	<b>16</b>	<b>18</b>	<b>34</b>

10.8 There are currently 17 WARNs in progress, 9 non adherences and 8 waivers. Procurement is actively chasing these WARNs to ensure that they are processed in a timely manner.

10.9 It is anticipated that WARNs will increase during 2016 – 2017 due to the transfer of CoSocius ICT to Cheshire East on the 1<sup>st</sup> of April 2016. Out of the 17 WARNs referred to above, 7 are currently in progress for ICT Services.

#### **11.0 Access to information**

Name: Janet Ellison-Jones/Steve Mellor

Designation: Category Manager

Tel No: 01270 686456/686439

Email: [janet.ellison-jones@cheshireeast.gov.uk](mailto:janet.ellison-jones@cheshireeast.gov.uk) [steve.mellor@cheshireeast.gov.uk](mailto:steve.mellor@cheshireeast.gov.uk)