

CHESHIRE EAST COUNCIL

REPORT TO: Audit and Governance Committee

Date of meeting: 16th March 2017
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 November 2016 to 31st January 2017.
- 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 1st November 2016 and 31st January 2017

3.0 Reasons for Recommendation

3.1 The Audit and Governance Committee has a key role in overseeing governance arrangements and requirement to review all approved WARNs from November 2016 to January 2017. 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. 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 The Council's Constitution (Finance Procedure Rule B25) explains that the Corporate Leadership Team (CLT) are responsible for working within their respective budget limits and to utilise resources allocated to them 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).

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 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.

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 January 2017.

10.2 The number of WARNs being presented to the March Audit and Governance Committee is 8, 4 waivers to the Contract Procedure Rules and 4 non adherences.

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.

10.5 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.

10.6 A summary of WARNs for the reporting periods 2014-2015 and 2015-2016 is set out below, also providing the total number of WARNs for the period April 2016 – January 2017:

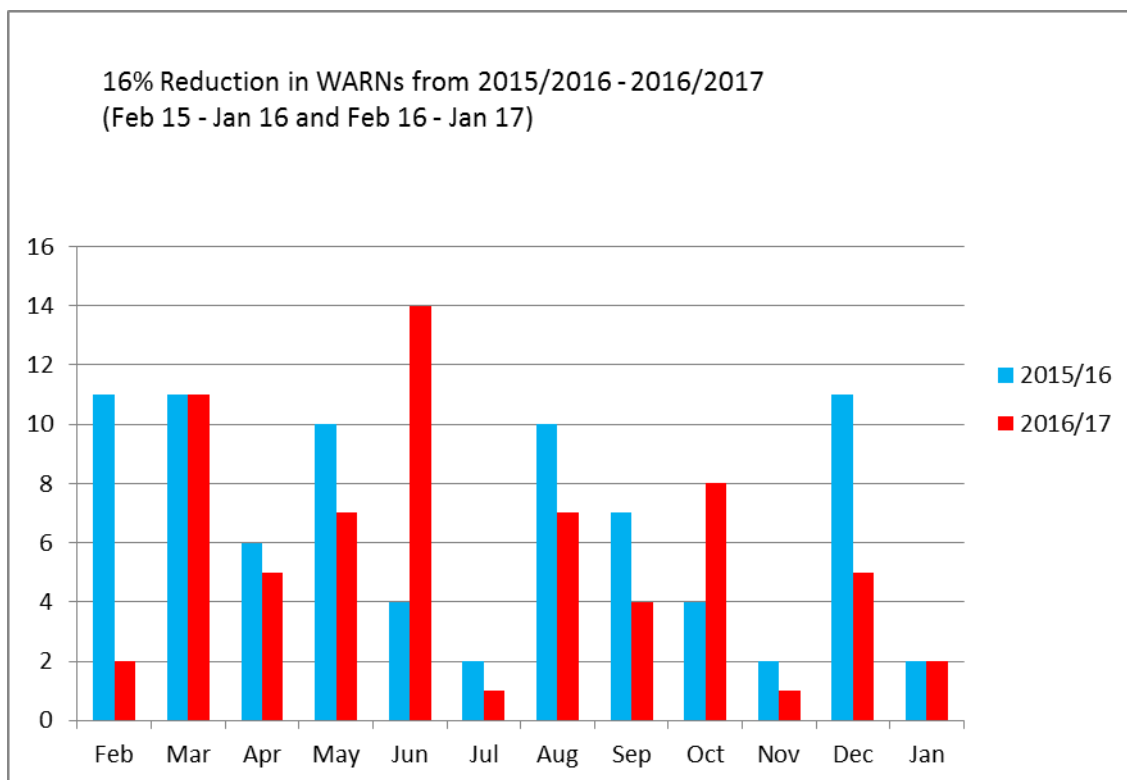
WARNs	2014-2015	2015-2016	2016-17 Apr 16 – Jan 17
Non Adherence to CPRs	20	25	28
Waiver to the CPR's	62	45	26
Grand Total	82	70	54

As you can see from the above the number of non-adherences has increased, this is due to the control mechanisms that are now in place within our procedures which enables the procurement function to capture non compliance within services i.e. the workflow threshold has decreased from £10k to £5k.

However the number of waivers has decreased – this is largely due to the new contract for consultancy NEPRO using the NEPO (North East Purchasing Organisation) framework.

The number of waivers for consultants in 2015-2016 was 13. The total amount of waivers for Consultancy in 2016 to date is 4. This illustrates that the NEPRO contract has already had a significant positive impact.

The training that the Corporate Procurement Unit has provided to services can also be attributed to the reduction in waivers as officers now have a much greater knowledge and awareness of the Contract Procedure Rules.



The number of WARNs for the period February 2016 to January 2017 has reduced by 16% 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 for this reporting period 1st November 2016 – 31st January 2017 per service area and the reasons is detailed below.

The ICT WARNs are related to the review and recommissioning of services following the changed management structure and inheriting the shared services arrangements for both Councils. There are approximately 300 contracts that are to be reviewed, recommissioned and then procured. The work is starting to resolve previous issues, hence the requirement for a limited number of Non Adherence's mentioned below.

November 2016 – January 2017 WARNs Per Service

Row Labels	Waiver to Requirements of Competition	Non Adherence to CPRs	Grand Total
Partnerships & Communities	1	0	1
Revenues & Benefits	0	1	1
Spatial Planning	0	1	1
Children's	1	0	1
ICT Services	2	2	4
Grand Total	4	4	8

Table 1:

Code	Description of Category/code
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
I	No time to undertake a tendering exercise, therefore extension necessary to avoid non-provision of deliverables
J	Procurement from any other source would be uneconomic at this time
K	Added value being offered by the Provider(s)
L	Extension is best option as highlighted in request form

Table 2:

Row Labels	Waiver to Requirements of Competition	Non Adherence to CPRs	
Partnerships & Communities	1	0	1
E	1	0	1
Revenues & Benefits	0	1	1
G	0	1	1
Spatial Planning	0	1	1
G	0	1	1
Children's	1	0	1
G	1	0	1
ICT Services	2	2	4
D	0	1	1
C	1	0	1
G	1	1	2
Grand Total	4	4	8

10.7 A summary of Non-Adherences for the reporting periods 2015-2016 and April 2016 to January 2017 is set out below, highlighting the services where non-compliance has increased/decreased.

April 2015 – March 2016 Non-Adherences Per Service

Row Labels	Non Adherence to CPRs
Adults	4
Childrens	8
Democratic Services	2
HR Strategy	2
ICT Services	2
Revenues & Benefits	1
Safer & Stronger Communities	2
Strategic & Economic Planning	3
Tatton Park	1
Grand Total	25

April 2016 – January 2017 Non-Adherences Per Service

Row Labels	Non Adherence to CPRs
Adults	4
Childrens	3
Democratic Services	2
HR Strategy	2
ICT Services	5
Public Health	2
Safer & Stronger Communities	1
Regeneration	1
Revenues & Benefits	1
ANSA	2
Assets	1
Planning	1
Spatial Planning	1
Strategic & Economic Planning	1
Tatton Park	1
Grand Total	28

10.8 There is currently 1 WARN in progress, which is a waiver.

11.0 Access to information

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