

## **Audit & Governance Committee**

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**Date of Meeting:** 05 December 2019

**Report Title:** Waivers and Non-Adherences (WARNs)

**Senior Officer:** Alex Thompson – Director of Finance and Customer Services - S151 Officer

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### **1. Report Summary**

- 1.1. The purpose of this report is to provide an update to the Audit and Governance Committee on the number of cases where, and reasons why, procurement activity has required the use of waivers and/or non-adherences (WARNs). The report covers approved cases between the 1<sup>st</sup> September 2019 and the 31<sup>st</sup> October 2019.
- 1.2. The approved WARNs are published retrospectively for information on the next appropriate Audit and Governance Committee. The total number of WARNs to be presented to the July Audit and Governance Committee is 2 (consisting of 2 Waivers and 0 Non adherences).
- 1.3. All WARNs will be presented to the Audit and Governance Committee without any information redacted. However, they will be presented in Part 2 of the Committee as they may contain commercially sensitive information and/or Officer Details.

### **2. Recommendation**

That the Audit and Governance Committee:

- 2.1. Notes the number and reason for 2 further waivers approved between 1<sup>st</sup> September 2019 and 31<sup>st</sup> October 2019 (11 in total).

### **3. Reasons for Recommendation**

- 3.1. The Audit and Governance Committee has a key role in overseeing governance arrangements within the Council and has a requirement to retrospectively review all approved WARNs. The WARN process forms part of the Councils Contract Procedure Rules (CPRs), which are intended to

promote good procurement and commissioning practice, transparency and clear public accountability.

#### 4. Other Options Considered

4.1. N/A

#### 5. Background

5.1. All WARNs approved in the period between Audit and Governance Committees will be presented to the next Committee meeting. This report contains all WARNs approved from the 1<sup>st</sup> September 2019 to the 31<sup>st</sup> October 2019 (2 in total).

The WARN process records the following;

- Waivers to the Contract Procedure Rules – These are agreed waivers in accordance with the Contract Procedure Rules, Part 5. Section 7.1-7.3.
- Non Adherence to the Contract Procedure Rules – This is a breach of the Contract Procedure Rules in accordance with Part 5. Section 7.4-7.10.

Waivers are a compliant part of the Contract Procedure Rules and are used where there is a genuine business case to direct award without the need for competition.

**Table 1: WARNs have reduced in the last three years**

<b>WARNs</b>	<b>2016-2017</b>	<b>2017- 2018</b>	<b>2018-2019</b>	<b>April - Oct 2019</b>
Non Adherence	33	10	5	0
Waiver	40	20	16	11
<b>Grand Total</b>	<b>73</b>	<b>30</b>	<b>21</b>	<b>11</b>

5.2. The total number of WARN's for 2018-2019, at 21, was a further reduction of 30% from the previous year. This reduction in waivers and non adherences is the result of improved forward planning, better information such as enhanced contracts register and Council pipeline/workplan of procurements and proactively working with services to inform better outcomes and ensuring compliant contracts are in place.

## **6. Implications of the Recommendations**

### **6.1. Legal Implications**

6.1.1. 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.

6.1.2. 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.

### **6.2. Finance Implications**

6.2.1. The Council's Constitution Finance Procedure Rule 2.30; Chapter 3 - Part 4: Section 2 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. This is supported by effective commissioning, procurement processes and appropriate contract management.

6.2.2. Along with comments from Procurement and Legal Officers, Finance Officers are invited to make comments in respect of each WARN, to help ensure Finance Procedure Rules are adhered to in this regard. Comments focus on the Service having identified sufficient existing budget to cover the proposal, and has considered how to achieve best value for money via this particular recommended course of action.

### **6.3. Policy Implications**

6.3.1. N/A

### **6.4. Equality Implications**

6.4.1. N/A

### **6.5. Human Resources Implications**

6.5.1. N/A

### **6.6. Risk Management Implications**

6.6.1. The focus is the risk that processes are not complied with, which increases the likelihood of legal challenge causing financial and reputational risk to the Council. This includes procurement processes.

## **6.7. Rural Communities Implications**

6.7.1. There are no direct implications for rural communities.

## **6.8. Implications for Children & Young People/Cared for Children**

6.8.1. There are no direct implications for children and young people.

## **6.9. Public Health Implications**

6.9.1. There are no direct implications for public health.

## **6.10. Climate Change Implications**

6.10.1. There are no direct implications for public health.

## **7. Ward Members Affected**

7.1. N/A

## **8. Consultation & Engagement**

8.1. N/A

## **9. Access to Information**

9.1. The background papers relating to this report can be inspected by contacting the report writer.

## **10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

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## Appendix 1

### CPR WAIVERS – CATEGORIES FOR INTERNAL REPORTING

<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