

Audit & Governance Committee

Date of Meeting: 28 May 2020

Report Title: Waivers and Non Adherences (WARNs)

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

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 1st February 2020 and the 31st March 2020.
- 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 May Audit and Governance Committee is 3 (consisting of 3 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.
- 1.4. This report will also provide an update on the Councils approach to procurement activity during the current coronavirus, COVID-19, outbreak.

2. Recommendation/s

That the Audit and Governance Committee:

- 2.1. Notes the number and reason for 3 further WARNs approved between 1st February 2020 and 31st March 2020 (18 in total).

3. Reasons for Recommendation/s

- 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 1st February 2020 to the 31st March 2020 (3 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

WARNs	2016-2017	2017- 2018	2018-2019	2019 - 2020
Non Adherence	33	10	5	1
Waiver	40	20	16	17
Grand Total	73	30	21	18

5.2 Following the outbreak of COVID-19 the Cabinet Office issued two Procurement Policy Notes (PPNs). PPNs are issued by central government to help public sector organisations deliver best practice in procurement.

[Procurement Policy Note 01/20: Responding to COVID-19](#)

(published 18 March 2020)

This PPN recognises that public sector organisations may need to procure goods, services and works with extreme urgency and permits authorities to do this using regulation 32(2)(c) under the Public Contract Regulations 2015.

The PPN covers options that may be considered in relation to procurements under the Public Contract Regulations 2015, including:

- direct award due to extreme urgency (regulation 32(2)(c))
- direct award due to absence of competition or protection of exclusive rights
- call off from an existing framework agreement or dynamic purchasing system
- call for competition using a standard procedure with accelerated timescales
- extending or modifying a contract during its term

Procurement Policy Note 02/20: Supplier relief due to COVID-19

(published 20 March 2020)

The PPN sets out information and guidance for public bodies on payment of their suppliers to ensure service continuity during and after the current coronavirus, COVID-19, outbreak. It states that contracting authorities must act quickly to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over.

The PPN states that all contracting authorities should:

- Urgently review their contract portfolio and inform suppliers who they believe are at risk that they will continue to be paid as normal (even if service delivery is disrupted or temporarily suspended) until at least the end of June.
- Put in place the most appropriate payment measures to support supplier cash flow; this might include a range of approaches such as forward ordering, payment in advance/prepayment, interim payments and payment on order (not receipt).
- If the contract involves payment by results then payment should be on the basis of previous invoices, for example the average monthly payment over the previous three months.
- To qualify, suppliers should agree to act on an open book basis and make cost data available to the contracting authorities during this period. They should continue to pay employees and flow down funding to their subcontractors.
- Ensure invoices submitted by suppliers are paid immediately on receipt (reconciliation can take place in slower time) in order to maintain cash flow in the supply chain and protect jobs.

Procurement Policy Note 03/20: Use of Procurement Cards

This PPN sets out information and guidance to central government departments, their executive agencies and non-departmental public bodies on the use of procurement cards. The aim is to accelerate payments to suppliers to support and improve cash flow. This will help support the economy, jobs and infrastructure.

In scope organisation's should:

- Increase the single transaction limit to £20,000 for key card holders
- Raise the monthly limit on spending with procurement cards to £100,000 for key card holders.
- Ensure an appropriate number of staff have the authority to use these cards;
- Open all relevant categories of spend to enable these cards to be used more widely.

5.3 The Council has needed to utilise Regulation 32 of the Public Contract Regulations 2015 (negotiated procedure without prior publication) and to directly award contracts due to extreme urgency. The Council has procured a number of products and services using these provisions (these products and services will be reported back to the Committee individually) but currently include personal protective equipment (PPE), ICT equipment and care and housing services.

5.4 Now the Council has secured stock of PPE a competitive procurement will be undertaken to ensure the long term supply.

5.5 The Council has also issued letters to all contracted suppliers regarding PPN 02/20 supplier relief. This details what they need to do if they require relief and the conditions that they need to follow. Where relief has been requested and approved, contracts have been amended and payment terms adjusted.

5.6 The Council has also increased single transaction limits, monthly limits and opened up all categories of spend for purchasing cards for key users. This was completed prior to the PPN being released.

5.7 The Council has now extended its use of prepaid cards to help Childrens' and Families and Communities support local people with food parcels. These cards are pre loaded to enable volunteers to shop for vulnerable people to ensure they have essential items.

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.

6.1.3. Advice should be sought from Legal Services on the application of the Public Contracts Regulations 2015. Guidance has been issued to contract managers on the content of PPN 02/20 Supplier Relief and advice should be sought from Legal Services on the contractual terms and conditions of current contracts and how they may be varied to reflect any relief given to suppliers.

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.

6.2.3. With regard to procurement activity relating to Covid-19, the Council is closely monitoring all additional expenditure in respect of responding to the pandemic and – as required for all local authorities – is reporting summary financial information to the Ministry of Housing, Communities & Local Government on a monthly basis, in terms of Covid-19-related spending and loss of income. On 19 March 2020 the Government announced £1.6bn of additional funding to support local authorities in responding to the Covid-19 pandemic; this funding is un-ringfenced and is intended to help local authorities address any pressures they are facing in response the Covid-19 pandemic, across all service areas. The Council's share of the funding was £9.15m. On 18 April the Government announced a further £1.6bn in additional funding for councils, though has not yet notified authorities of their particular allocations. The Council will continue to monitor and report on the financial effects of Covid-19 and the sufficiency of additional funding support provided by the Government, as part of its financial planning and forecasting through the year.

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

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