

Audit & Governance Committee

Date of Meeting: 30 July 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 April 2020 and the 30th June 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 July Audit and Governance Committee is 11 (consisting of 10 Waivers and 1 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 11 further WARNs approved between 1st April 2020 and 30th June 2020 (11 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 April 2020 to the 30th June 2020 (11 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 increased during the first quarter of 2020 due to the coronavirus outbreak

WARNs	2016-2017	2017- 2018	2018-2019	2019 - 2020	Apr 2020- June 2020
Non Adherence	33	10	5	1	1
Waiver	40	20	16	17	10
Grand Total	73	30	21	18	11

5.2 Following the outbreak of COVID-19 the Cabinet Office issued three 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)

[Procurement Policy Note 02/20: Supplier relief due to COVID-19](#)

(published 20 March 2020)

[Procurement Policy Note 03/20: Use of Procurement Cards](#)

- 5.3 The Council has needed to utilise Regulation 32 of the Public Contract Regulations 2015 (negotiated procedure without prior publication) and directly award contracts due to extreme urgency. The Council has procured a number of products and services using these provisions which will be presented to the committee in part 2.
- 5.4 The Cabinet Office have released a fourth PPN [Procurement Policy Note 04/20 – Recovery and Transition from COVID-19](#) which sets out information and guidance for public bodies on the payment of their suppliers to ensure services continue during the current outbreak. It updates and builds on the provisions contained in PPN 02/20.

All contracting authorities should:

- Review their contract portfolio, including where they are providing any contractual relief due to COVID-19 and, if appropriate to maintain delivery of critical services, continue or commence measures in line with PPN 02/20.
- Work in partnership with their suppliers and develop transition plans to exit from any relief as soon as reasonably possible. This should include agreeing contract variations if operational requirements have changed significantly.
- Work in partnership with their suppliers, openly and pragmatically, during this transition to ensure contracts are still relevant and sustainable and deliver value for money over the medium to long term.
- Continue to pay suppliers as quickly as possible, on receipt of invoices or in accordance with pre-agreed milestone dates, to maintain cash flow and protect jobs.

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. The comments of Finance Officers focus on whether the Service: has identified sufficient existing budget to cover the proposal; and has also considered how to achieve best value for money via the 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; the Council's share of this funding was £10.54m, bringing the total un-ringfenced support received to date to £19.69m. 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:

Name: Lianne Halliday

Job Title: Senior Manager - Procurement

Email: lianne.halliday@cheshireeast.gov.uk

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