

## Agenda Item

**REPORT OF**    **Service Improvement Officer**

**To:**                **Audit & Governance Committee**

**Subject:**        **Non Compliance with Procedure Rules and Waivers**

**Date:**            **12<sup>th</sup> June 2018**

**Reference:**

**PURPOSE OF REPORT:** To provide an update on any matters of non-compliance with the Contract and Financial Procedure Rules and on the Waivers approved by the Head of Paid Service and Section 151 Officer.

### 1.    **INTRODUCTION**

The Section 151 Officer is responsible for the overall financial arrangements of the Council. Under the Financial Procedure Rules (FPR) and Contract Procedure Rules (CPR) he and the Head of Paid Service are able to authorise waivers when, as may happen from time to time, it is not possible or practical to follow the FPR or CPR. Those waivers approved since June 2017 are reported on.

### 2.    **REPORT**

The process for waiving the Contract and Financial Procedure Rules was introduced in February 2011. It enables any of the rules to be waived provided the reason meets one of the four clear principles. The process was adopted in line with several other Councils.

The FPR (and similarly the CPR) state: “Where officers consider that the Financial Procedure Rules cannot be followed then reasoned, considered and sensible solutions to everyday problems that may arise shall be applied.

If the answer to one or more of the following questions is ‘Yes’, the waiving of the Financial Procedure Rules may be considered: If the Financial Procedure Rules were to be followed to the letter.....

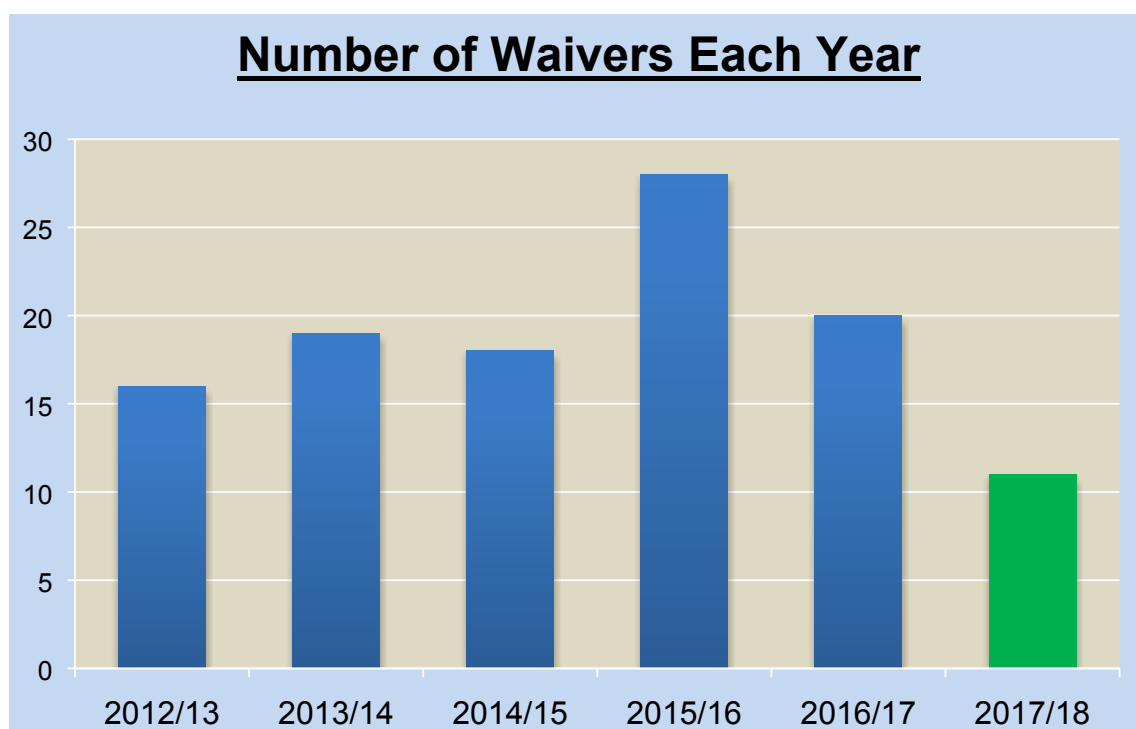
- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
- **Increased Costs/Loss of Income** - Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses (or a select list is recommended by Central Government)?
- **Embarrassment** – Would the Council be criticised for failing to act promptly?”

There is a comprehensive procedure for obtaining a waiver which includes a standardised application form, the support of the relevant Senior Manager, challenge and verification by the Governance Team and final approval by either the Section 151 Officer or Head of Paid Service. See Appendix A for an overview of the waiver process.

The waivers approved up to June 2017 (up to waiver number 110) were reported to this Committee in July 2017. Those approved since then are set out in Appendix B (2017-18 Waivers, numbered 111 – 121).

We analysed the waiver data for the past 6 years to determine whether there were any trends/areas for concern.

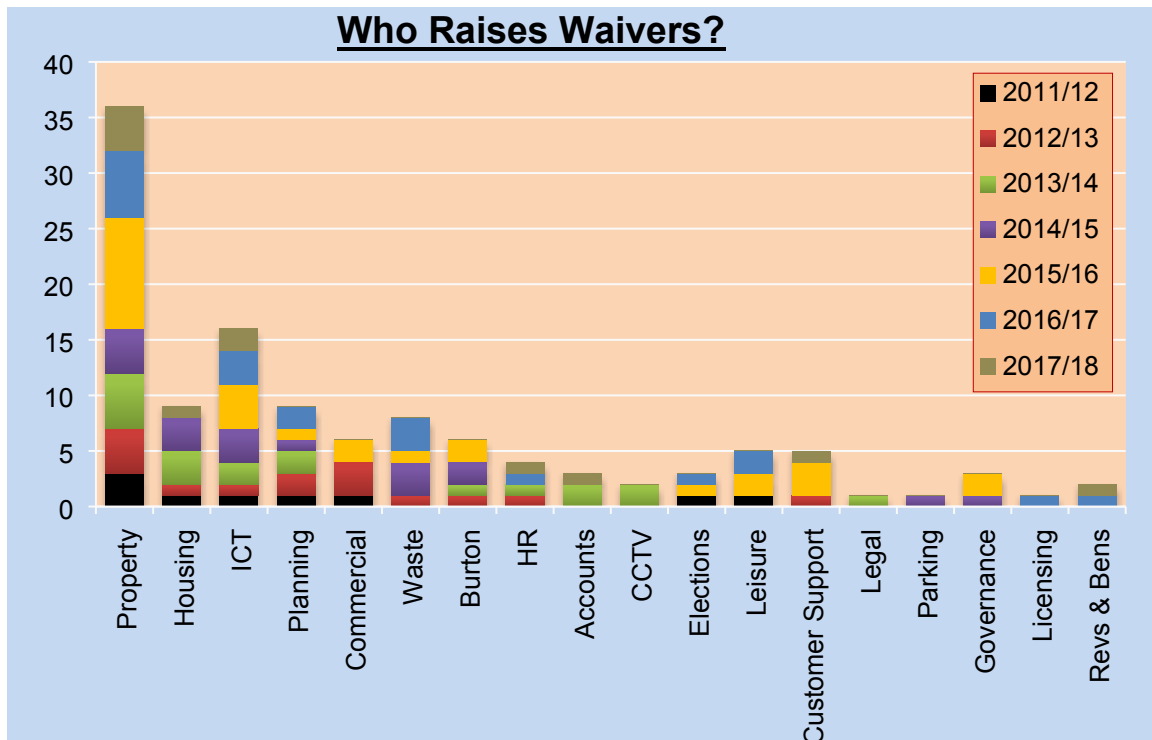
The following graph shows that for the first 3 years there was a typical annual pattern, but this changed in 2015/16, with an overall increase of 10 waivers in 2015/16 over the previous year, but 8 of these waivers related directly to the Transforming Torridge Programme. The subsequent reduction of the number of waivers in 2016/17 and again in 2017/18 confirms that waiver activity in 2015/16 was distorted by the Transforming Torridge Programme and the number of waivers approved is being managed effectively.



Focusing on 2017/18, the 11 waivers were raised for the following reasons:

Reason for Waiver	Number
Improving Community Facilities	3
Telephony/Network	2
ICT Software	2
Recycling	1
Housing Insurance	1
Apprenticeship Provision	1
Homelessness Prevention	1
Total	11

The following graph shows that the services which raised the most waivers are the Property Team (30% of all waivers raised), IT (13%), Planning (7.5%), Housing (7.5%) and Waste (7%). As the Property Team manages the majority of the Council's external contracts, the IT Team have been moving the Council on to common IT platforms, Housing allocates grant monies, Planning have been commissioning surveys as part of the Local Plan, and there are ongoing changes to the delivery of the Council's Waste & Recycling Services, this is as should be expected.



Waiver requests are reviewed independently and challenged before being passed for approval. In addition to this process, we also review waivers to the FPR/CPR on a quarterly basis and report on any areas of concern to the Head of Paid Service and Section 151 Officer.

### 3. **IMPLICATIONS**

#### Legal Implications

None

#### Financial Implications

As set out above and in appendix B

#### Human Resources Implications

Agency appointments as set out in the report

#### Sustainability Implications

None

#### Equality/Diversity

None

#### Risk Management

Adequate controls are in place to ensure efficient application of the Financial and Contract Procedure Rules.

#### Compliance with Policies and Strategies

This report complies with the FPR and CPR as set out in the Constitution.

#### Ward Member and Leader Member Views

Councillor Philip Hackett, Chair of Audit & Governance Committee, commented “Waivers are independently scrutinised and also come under scrutiny from respective Lead Members to ensure they were raised for legitimate business reasons, as set out in the Financial Procedure Rules. I am satisfied that in all instances the Council has tried to achieve a best value approach.”

#### **4. CONCLUSIONS**

The Council’s arrangements allow for efficient approval of waivers for all of the Procedure Rules provided they meet at least one of the four stipulated criteria. The Governance Team maintains a record of waiver requests together with any transactions which are required to be noted and any matters of non-compliance with the Procedure Rules.

#### **5. RECOMMENDATIONS**

Committee are asked to note that since July 2017 there were:

- 11 waivers approved by the Head of Paid Service and Section 151 Officer

#### **SUPPORTING INFORMATION**

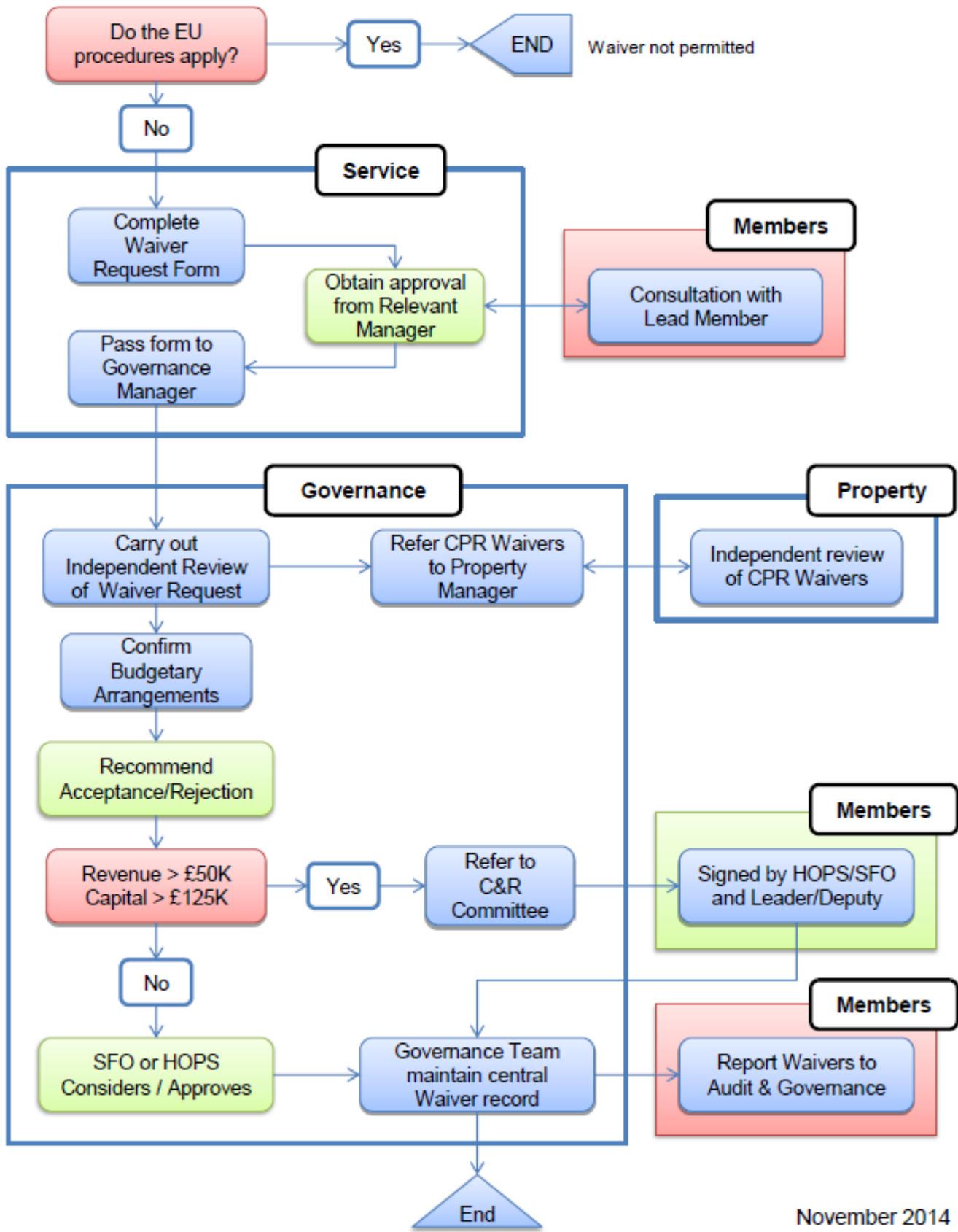
Consultations: Jenny Wallace  
Steve Hearse  
Cllr Philip Hackett

Contact Officer: Chris Dobbs

Background Papers: Audit files; Waiver records

# Appendix A

## FPR & CPR Waiver Process



## APPENDIX B - WAIVERS OF FINANCIAL AND CONTRACT PROCEDURE RULES - 2017/18

A précis of the details of each waiver request received are listed below together with dates of approval.

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property & Procurement Manager	Internal Audit	HOPS Section 151 Officer
111	<p><b>Telephony Replacement</b>                      With the Existing Telephony service current Unify contract ending 31 August 2017, a replacement service is required for continuation of service. Unify contract was part of a Devon Wide solution that Devon County Council put in place, this platform required a significant investment (£200k+) to upgrade and conform to PSN compliancy. Devon County Council have now moved away leaving a massive investment to continue with this platform.</p> <p>An alternate, standalone telephony platform is needed to cover existing requirements, but also adding some future proofing for developments. Alternative solutions have been considered but an investment of 20-30K from replacement phones would be required. By utilizing a Unify licence partner (Datasharp, based in Truro), This allows us to retain and re-use our existing installed base of handsets, and gives more flexibility with a platform using technology that is familiar to both Torridge and Devon County Council. This Platform is flexible and resilient and can be mirrored to the DR site.</p> <p>Devon County Council have also had a waiver approve for the same system / Company for delivering Telephony for Partner access (500+ users). Cost for hardware and licences including setup £30,315 (One off), 24/7 Support £6,428 per year</p>								
	F	Kevin Salter	Increased Costs / Loss of Income/ Limited Markets/Embarrassment	5.1.8	N/A	SH 21/7/2017	n/a	CD 21/7/2017	JW 24/7/2017
112	<p><b>Changing Rooms Refurb</b>                      Emergency repairs works are required to the Bideford Sports Ground changing rooms in order for the facilities to be ready and useable for the start of the season. Due to time restrictions and the urgent nature of these works time does not allow for obtaining 3 written quotations. Alternative companies were considered / approached, but were unable to price and deliver the works in the time available. Quotation was for £31,599.59.</p> <p>This waiver has been produced to authorise the acceptance of the quotation from Westcountry Maintenance Services.</p>								
	F	Adrian Redwood	Embarrassment	5.1.7	N/A	SH 26/6/2017	n/a	CD 27/6/2017	JW 25/7/2017

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property Manager	Internal Audit	HOPS Section 151 Officer
113	<p><b>Wide Area Network</b>  Our current Wide Area network (WAN) contract with Unify will expire mid-August, but we have since taken steps to extend to August 31st 2017 for both Voice and Data services, this was required for continuation of service as the new WAN provider (Udata) contract DCC has in place start 1st September 2017. Unify contract was part of a Devon Wide WAN solution that Devon County Council (DCC) put in place, since this contract has been in place share services with North Devon District Council has taken place over this network.</p> <p>DCC released an ITT to CCS RM1045 framework to meet the requirements; this was for a 12-month contract, plus an optional 12-month extension. DCC deliberately chose a short-term contract as it wants to investigate all the options moving forward and look at making more use of the BDUK roll-out of Superfast services. Since this award DCC has signed a two-year contract so Districts can get value for money as this new service requires upfront installation charges to meet PSN requirements.</p> <p>During the last couple of Months multiple meeting has taken place to make sure all districts join the same network to be able to continue with shared services. I can now confirm all the previous districts will now produce a Waiver for joining the new Udata DCC service. This service will be PSN compliant, allow for shared services, with a future proof network allowing for expansion if required.  Cost for hardware, installation £10,236 (One off)  Support / line rental £11,775 Year one  Support / line rental £11,541 Year two</p>								
	F	Kevin Salter	Increased Costs / Loss of Income/ Limited Markets/Embarrassment	5.1.8	N/A	SH 26/7/2017	n/a	CD 26/7/2017	JW 26/7/2017
114	<p><b>Annual Billing Contract</b>  This procurement opportunity was sent to three suppliers who were all contacted prior to the start of the quotation period and who showed keen interest in providing a quote. Despite this only two suppliers returned quotes and therefore this waiver is required in order to comply with FPR's.</p> <p>The winning quote was provided by the current supplier and there is a risk that re-tendering would push timescales back to an unacceptable level with no likelihood of reducing costs.</p>								
	F	Simon Toon	Increased Costs / Loss of Income/ Limited Markets	5.1.7	N/A	JH 17/8/2017	n/a	CD 17/8/2017	JW 17/8/2017

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property & Procurement Manager	Internal Audit	HOPS Section 151 Officer
115	<b>Apprenticeship Training Provider</b> The apprenticeship levy came into effect in April 2017 and places certain conditions on larger employers to recruit and train apprentices. The public sector have an additional target to support the initiative with an expectation that we will take on 2.3% of our workforce as apprentices. The Council has taken on apprentices since 2012 and has always used Petroc as the training provider, given the practicalities of travel for students - particularly bearing in mind the majority of our apprentices have been aged under 20. Initial research in 2012 found that there were no other training providers locally and recent conversations with both Mid and North Devon confirm that this remains - with both those employers also using Petroc as their training provider. We have an on going relationship with Petroc regarding training for other staff and assistance with other projects (for example the HR recruitment microsite). This has ensured a strong relationship with the ability to negotiate around cost and specific criteria covered in the training provided. Based on TDC salary bill our levy is approximately £11,500. We pay this levy on a monthly basis and can then use this towards our training costs. Until we know the exact age profile of our apprentices we will not know whether we need to pay any additional (although this is unlikely)								
	F	Sarah Ayres	Limited Markets	5.1.7	N/A	JH 9/8/2017	n/a	CD 21/8/2017	JW 21/8/2017
116	<b>Recycling / Environmental Centre Professional Fees</b> The TDC Environmental Centre (waste & recycling depot) project is proposed on a site that had previously been advanced for development by a third party. Substantial survey & design work had already been carried out by Steven Sherry Consultants as part of the original planning application for the site. The work involved site investigations, on site surveys and considerable time in compiling design information for the site. To reduce the lead time and benefit from the work already completed, we intend to buy the design data that already exists.  The total cost of the entire design for the Environmental Centre amounts to £19,600.00 exc VAT. The fees involved are in line with current market expectations and are competitive, but more significantly enable an immediate start with the detailed design of the new facility.								
	F	Adrian Redwood	Limited Markets	5.1.7	N/A	SH 3/10/2017	n/a	CD 3/10/2017	JW 4/10/2017



No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property & Procurement Manager	Internal Audit	Section 151 Officer
117	<b>Environmental Insurance</b>								
	<p>Environment Insurance for the housing stock transferred to Tarka Housing in 2007, needs to be renewed (current policy runs to 10<sup>th</sup> December 2017) for an additional 8 years. In order to go out to the market, detailed information, of the housing stock would need to be provided, this information was provided in 2007 to the original insurer, the information required would include an updated detailed breakdown of the housing stock by type and location, this information is not held by Torridge District Council.</p> <p>AON (insurance broker) have obtained a renewal quote for £50K + IPT (£56K total). This compares well to the original 10 year premium of £63K + IPT (£66K total). There are only three insurers in the UK who offer this type of insurance, the original broker quoted £5K + £650 per additional day in order to obtain quotes from the market (effectively the other two insurers), other quotes are unlikely to be significantly lower than the renewal quote, and significant costs are required to run this exercise. Therefore tendering is likely to take more time than what is available, require information that we do not hold, and result in an increased cost to the Council.</p>								
	C	Peter Hudson	Limited Markets	3.2	N/A	SH 6/11/2017	n/a	CD 6/11/2017	JW 6/11/2017
118	<b>Corporate Payment Solution</b>								
	<p>The Councils corporate payment solution provided by Capita expires on 31 March 2018. This is a core piece of software used to take and manage payments over multiple channels and is fundamental to the ongoing effective operation of the Council. The rationale for seeking this waiver is based on limited markets, the high level of integration that exists between this software and other software solutions used by the Council and the lack of time to successfully procure and integrate an alternative solution by 31 March 2018. Furthermore, integration in to the Councils recently procured CMS software solution is also at a critical stage and as such any changes to the corporate payment solution will cause additional costs to be incurred and a delay to the project which is not an option. The cost to renew the payment software is £39,995 based on a perpetual agreement. The Council currently has £10,000 per year credit with Capita as a result of a previous procurement exercise (Enforcement Service) therefore it is proposed that the 2017/18 credit is used to further reduce the cost of the software to the Council to £29,995.</p>								
	F	Simon Toon	Increased Costs / Loss of Income/ Limited Markets	5.1.7	N/A	SH 14/12/2017	n/a	CD 14/12/2017	JW 14/12/2017

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property & Procurement Manager	Internal Audit	Section 151 Officer
119	<b>Homeless Prevention</b> This service has been in existence for a number of years and provides the Council with an outreach worker to engage with and help prevent homelessness of young persons. The post is jointly funded between DCC and the Council (£20K and £10K respectively). Historically the service was procured by DCC but 2 years ago DCC advised they were no longer able to procure the service on behalf of the Council although the same funding commitments would remain. Working jointly with NDDC during early 2016 a two-year contract was awarded to Encompass for the Young Persons Homelessness Prevention Service. A further joint procurement exercise was due to take place again this year but at the eleventh hour NDDC have decided to directly employ an officer to undertake this type of work. Given that the current contract expires at the end of March 2018 there is now insufficient time to conduct a full procurement exercise. It is therefore requested that this waiver is granted on the basis that the provision of a young persons homeless prevention officer is a critical requirement in preventing homelessness, there are limited markets for this type of service provision and the funding as stated above is available.  On 2 March 2018 Councillor Simmons confirmed her support for this waiver.								
	F	Simon Toon	Limited Markets	5.1.7	N/A	SH 9/3/2018	n/a	J Walter 9/3/2018	JW 12/3/2018
120	<b>Remedial Works of BMX Track, Pollyfield</b> Red Rock Geoscience Ltd have been previously appointed by TDC to undertake the initial professional consultancy works to aid TDC in establishing the extent of remedial works to Pollyfield BMX track and also the Strongbox site. They have previously provided good value for money. In this instance having already established what is required on site. By going to further consultants would likely result in higher quotes being received by TDC for the same work and also keeping Red Rock would be beneficial from a consultancy point of view. Red Rock have quoted £9,100 + VAT to undertake the remaining consultancy work in support of a planning application and on site works.								
	F	Andy Champion	Increased Cost/Loss of Income/ Limited Markets	5.1.8	N/A	SK 10/5/2018	n/a	CD 10/5/2018	JW 10/5/2018
121	<b>Northam Burrows Coastal Defence works</b> Specialist design input for two separate projects: Revetment Improvement Works and Appledore Gate Bridge Work (by grouping the two projects together we are realising some economies of scale). This waiver has been produced to authorise acceptance of the only fee proposal received from Black & Veatch Ltd (B&V). B&V were approached due to their involvement with very similar coastal defence works procured as recently as 2014. The same members of that team will be utilised to take advantage of their local knowledge and expertise. There are very few other specialist design consultancies capable of undertaking work of this nature and there is now insufficient time to find alternatives. With the autumn tides approaching the design phase needs to start immediately to have any prospect of project completion before the end of October 21018.  The overall estimate is for £34,751 which allows for full B&V involvement from inception to completion covering all phases including design, tendering, construction, supervision and project management etc. The intention is to place orders on B&V in a phased way with the hope that aspects covered in their fees can be undertaken in-house by TDC for the latter phases of the project, thereby realising a saving in the overall estimate.								
	F		F		F		F		F