

**REPORT OF Section 151**

**To: Audit & Governance Committee**

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

**Date: 27<sup>th</sup> July 2021**

**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 Chief Executive 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 Chief Executive 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 2020 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?”

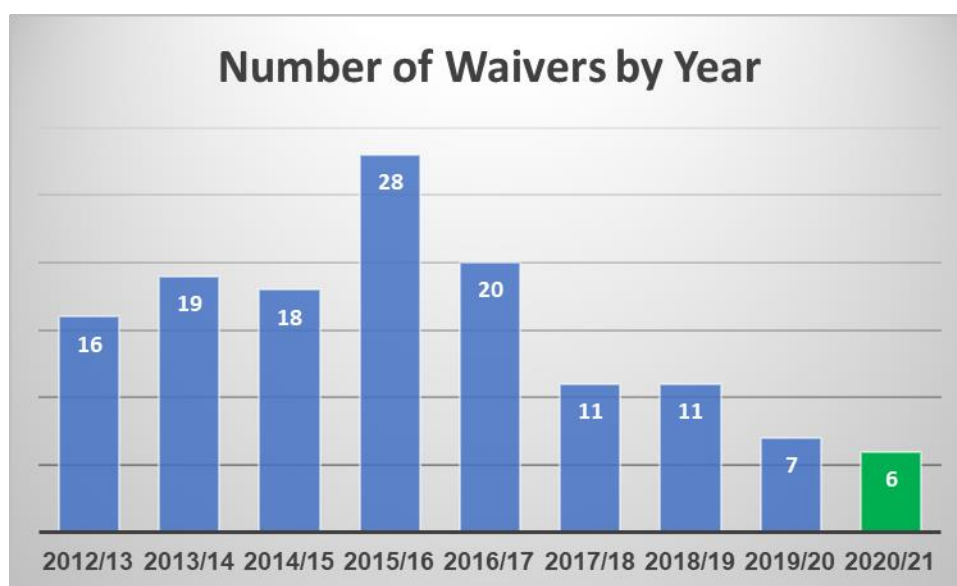
There is a comprehensive procedure for obtaining a waiver which includes a standardised application form, the support of the relevant Senior Manager, challenge and verification by the Governance Team and final approval by either the Section 151 Officer or Chief Executive. See Appendix A for an overview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

The waivers approved up to June 2020 (up to waiver number 139) were reported to this Committee in July 2020. Those approved since then are set out in Appendix B (2020-21 Waivers, numbered 140 – 145).

We analysed the waiver data for the past 8 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 confirms that waiver activity in 2015/16 was distorted by the Transforming Torridge Programme.

The lower numbers of waivers approved in the past 3 years indicates that instances of non compliance with the procedure rules are being minimised and the waiver process is being utilised only when necessary.



Focusing on 2020/21, the 6 waivers were raised for the following reasons:

Reason for Waiver	Number
Rough Sleepers Initiative	1
Re-opening the High Street	1
Street Wardens – Summer Safe Scheme	1
Summer Bedding Plants	1
Accommodation Review	1
Support for Leisure Options	1
Total	6

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 Chief Executive and Section 151 Officer.

### 3. IMPLICATIONS

#### Legal Implications

None

Financial Implications

As set out above and in appendix B

Human Resources Implications

none

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 June 2019 there were:

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

**SUPPORTING INFORMATION**

Consultations: Steve Hearse  
David Heyes  
Cllr Philip Hackett

Contact Officer: Chris Dobbs

Background Papers: Waiver records



## APPENDIX A - WAIVERS OF FINANCIAL AND CONTRACT PROCEDURE RULES - 2020/21

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				
						Senior Manager	Property Manager	Governance Team	HOPS or Section 151 Officer	
140	F	Helen Page	Increased Cost/Limited Markets/Embarrassment	5.1.7	N/A	SD 06/7/20	n/a	CD 06/07/20	DH 06/07/20	

### Rough Sleeper Initiative Funding

Torrige successfully bid for £78,011 of RSI funding for 2020/21. This funding enables the Council to provide specialist support to those who are rough sleeping or at risk of rough sleeping and, with support from DCC, had included £28,688 for a 0.5 FTE Social Worker to work with rough sleepers across northern Devon. However, as part of its response to Covid-19 DCC has had to reallocate resource within adult social care and can no longer deliver these hours this financial year.

In consultation with our Homelessness Advisor from MHCLG, we recently submitted an initial plan to MHCLG outlining the next steps for those we accommodated in response to Covid-19 and for our wider rough sleeper service. We had the opportunity to set out how we could repurpose RSI funding for services that could no longer be delivered. MHCLG notified us on 3 July that they agreed to our plan for repurposing £28,688 for:

- 0.4 FTE 'in-reach' accommodation support- £11,760
- 0.4 FTE Housing First case worker- £10,920

A further £6,008 for temporary accommodation, bringing the total RSI funded budget for temporary accommodation to £15,508 (this funding is specifically for those not owed a statutory accommodation duty)

Encompass Southwest have the skills and expertise to deliver the support hours detailed above, and subject to Torrige acting promptly, are able to start delivering with relatively little delay. A waiver is being sought on the basis that the Council needs to act promptly to repurpose funds because delivery is time critical both in respect of there being an immediate need for the support, and there being a requirement to spend funds before the end of March 2021. A competitive process would delay delivery and limit the impact of this funding. Additionally, there is a limited market. Encompass Southwest are the only agency delivering the Housing First model across northern Devon and are the only agency currently delivering outreach to those who are rough sleeping or at risk of rough sleeping within Torrige. There is just one other supported housing provider operating in Torrige who could, potentially, develop outreach to this cohort but they would need to revise their business model.

It should be noted that Encompass Southwest are already receiving £32,323 of RSI funding to deliver rough sleeper outreach this year. Also, a waiver was agreed in January 2020 for Encompass Southwest to deliver Streetwise for the next two years, which is the Council's homelessness prevention service for 16 and 17 year olds and care leavers. Streetwise is jointly funded by DCC and Torrige and the contract value is £32k per annum.

No.	EPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Senior Manager	Property Manager	Governance Team	HOPS or Section 151 Officer
141		<p><i>Re-Opening High Street Safety Fund Town Action Plan</i></p> <p>Ben Stephenson's (BAS Consultancy Ltd) proposal is focussed on two key elements;</p> <ul style="list-style-type: none"> <li>Liaison with T.D.C. on the recovery plan currently being developed to develop context for Town Action Plans and understand overarching strategy for Torrington. This is useful as a precursor to developing the action plans for individual towns because these action plans will relate to each other under this broader context as well as playing to their individual and unique strengths. This element would draw upon: T.D.C. Recovery Plan; The IPM recovery framework and related guidance; IPM Vital and viable reports; Other economic and social data supplied by the council; Discussion with key Councillors and officers</li> <li>Engagement with the business and resident communities on the T.D.C. recovery plan and production of Action Plan for each town focusing on both immediate recovery and longer-term transformation. The work will include (for each place): <ul style="list-style-type: none"> <li>Interactive online workshop for up to 500 participants via Zoom</li> <li>A smaller online focus group with invited stakeholders (or in-person where social distancing arrangements can be made by T.D.C.)</li> <li>An in-situ analysis of recovery and potential for transformation</li> </ul> </li> </ul> <p>This work will pick up where the Vital and Viable work left off and develop a set of deliverable recommendations and actions. It will not cover any old ground and will be focused on the future of your towns. It is recognised that proposals need to focus on low cost intervention and developing local buy-in rather than local infrastructure.</p> <p>Ben's association with the Institute for Place Management, including as a High Streets Task Force Expert, means he has been developing guidance for local authorities and would enable us to tap in to wider recovery planning. This also allows any work he does in our towns to have opportunities to be flagged up nationally as an area looking to support positive change and create great publicity for our areas. Having co-delivered the Vital and Viable workshops in Torrington, Bideford and Holsworthy and spent time in the towns and speaking to businesses, Ben has a clear understanding of the challenges facing each of the towns.</p> <p>We have already made significant steps out of lock down with the re-opening of the high streets and we are about to see significant changes in the coming weeks. The speed at which these significant milestones in our recovery are taking place highlights the importance of getting this expert action-planning process underway to ensure we can maximise the benefits of the funding and opportunities this creates for our area. We have approached Bideford, Holsworthy, Great Torrington and Northam Town councils with the initial offer of this consultancy work and the response to this opportunity has been positive from all bar Northam, whose town centres would probably be too small for this work to be effective.</p>							
	F	Chris Fuller	Embarrassment	5.1.7	N/A	SK 16/7/20	n/a	CD 20/7/20	DH 20/7/20

### OPCC Safer Summer Scheme

The Safer Summer Scheme was developed peninsula wide by the Office for the Police and Crime Commissioner for Devon & Cornwall (OPCC). At the time, general lockdown was easing and as a consequence there had been high profile issues in coastal resorts such as Brighton where mass influxes of tourists had caused severe community issues such as antisocial behaviour, traffic congestion, fly tipping, littering and concerns regarding social distancing and covid transmission. The OPCC responded to this by quickly making available a funding scheme, which, as a Community Safety Partnership we felt would allay concerns in our 'high risk' areas which for TDC was Westward Ho and Bideford.

The turnaround between the fund being made available, its closing date and the expected operation of the scheme was extremely tight. Notification of the scheme – 30<sup>th</sup> June with a request for expressions of interest to be submitted by the 2<sup>nd</sup> July; Deadline for bids 7<sup>th</sup> July; Approval of bid w/c 13<sup>th</sup> July (formally confirmed 20<sup>th</sup> July); Scheme start 20<sup>th</sup> July. Due to the short timescales and pressure to deliver the project, a single company – Red Elephant, were approached to provide costings for the bid and gauge availability for staffing over the summer. Red Elephant is an established local company providing a range of accredited staff for festivals, events and premises. They work a number of local events such as Ocean Fest and Bideford NYE, and provide SIA accredited staff to local premises such as Morrisons, and Pig on the Beach. As part of this they regularly work with the local authority and police.

The Marshalls were given the summer scheme contract, to engage and educate the public regarding the Government's COVID-19 guidance and restrictions and were also in place to reduce, prevent and detect anti-social behaviour within our community. The total amount provided by the OPCC covering Croyde, Woolacombe, WWH! and Bideford amounted to £53,342. The scheme ran until the end of September and has been positively received by the communities and agencies involved. The costs from Red Elephant in the end will be in the region of £40,000.00. Due to the time pressures during the formulation of the bid we were unable to follow normal financial procedure rules – there was an expectation from the OPCC and the police that we would apply for funding and if successful, that the marshalls would be in place in short order, and there would have been wider community impacts in failure to take timely advantage of the scheme which would have led to the council being criticised for failing to act promptly.

A waiver was not sought sooner as some confusion arose over whether TDC or ND would administer the funds and payment to Red Elephant. It has only been recently agreed that we'll be receiving the funding from the OPCC and arranging payments. Transfer of funds from the OPCC is currently being arranged. Apologies for any confusion or breach of process.

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F	Janet Williams	Embarrassment	5.1.7	N/ A	JWi 1/10/20	n/a	CD 2/10/20	DH 2/10/20
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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	
143	<b>Summer Bedding for 2021</b>									
	Due to issues with the current Contract and Covid we need to ensure that the plugs for the Summer Bedding are ordered asap as they will not be ready in time for next Summer. The summer bedding for our parks is vital for the health & wellbeing of the local community. The value of this order will be £7926.62 + VAT with free delivery and has been heavily discounted									
	F	Helen Bond	Embarrassment	5.1.7	N/A	SK 19/11/20	Yes	CD 19/11/20	DH 19/11/20	

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	
144	<b>Riverbank House Accommodation Review</b>									
	<p><b>Background.</b></p> <p>As part of the post-Covid assessment and the Accommodation Review of the premises, (and taking account the feedback from the staff survey) works have been identified that will involve some remodelling of the parts of Riverbank House that were previously completed in the 2018 Refurbishment. Much of the work involved will require input from the specialist contractors and consultants involved in the original refurbishment scheme. It will be advantageous to utilise the companies with the knowledge from the previous design and installation work. Fee proposals have therefore been obtained from the two main consultants involved – Highway Field Associates and W T Hills. The designs and schedules will then be used to negotiate prices with the specialist installers involved and obtain competitive tenders for the general works.</p> <p><b>Economic &amp; Environmental Considerations.</b></p> <p>There is a need to press on with these works to enable the schedules of work to be progressed and prices obtained. The fee proposal from the architect is very competitive because of the tacit knowledge and electronic files that they will utilise for the design development. The costs associated with an alternative design company would be considerably greater. The fees from the cost consultant are competitive, but significantly higher than the architect, but represent the extent of work involved. The brief for the cost consultant included for the preparation of</p>									



<p>a full cost plan for all works identified so that this can then be utilised as a menu to select the actual works required within the budget available. Should the scope of works be reduced W T Hills have confirmed that their fee will be reduced accordingly.</p> <p>The project team are unable to deliver the full scope of services in-house due to other post-Covid pressures.</p>								
F	Adrian Redwood	Limited Markets	5.1.7	N/A	SH 16/1/20	Yes	CD 16/1/20	JW 16/1/20

No.	EPR 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	
145										
<p><b>Appointment of specialist support for undertaking management options appraisal for provision of leisure</b></p> <p>Members have instructed Officers to provide an options report for the future delivery of Leisure Services. To support the Council, a leisure management specialist named Gary Farnham had been contracted but he has recently informed the Council that he is no longer available to provide the required support.</p> <p>Following discussions with other Councils that have commissioned similar expertise, a company named Sport, Leisure and Culture Consultancy (SLC) has been approached to assist TDC</p> <p>The initial brief discussed with SLC focuses on the development of two core options:</p> <p>1: Management through a Local Authority Trading company (LATC) 2: In-House Management.</p> <p>The TDC Requirement</p> <p>The Council needs consultancy support to assist the Council in fulfilling the following:</p> <p>1: To understand the financial implications of the two management models. This includes identifying whole life costs using the information from recently commissioned asset condition surveys</p> <p>2: To highlight the potential financial impact of Covid recovery for each management model.</p> <p>3: To identify non-financial implications of the different management models</p>										

4: Provide an independent report to the Council to enable elected Members to understand the implications of the two management models and subsequently decide on the preferred management option from April 2022.

It is recognised that the Council needs this project completing by middle of July 2021, thus there is no time for a formal procurement process.

In designing their approach, SLC have considered the need to spend focused time on the study. The total fixed fee (excluding VAT) is £11,640 including expenses based on 15.75 days of consultant time.

Given the immediate requirement to progress the development of options to report to Members in July or August 2021, it is requested that authority is given to contract with SLC to provide support described above at the quoted price

F	Sean Kearney	Increased costs/embarrassment	5.1.7	Int O& S	SK 15/06/21	n/a	CD 15/6/21	DH 30/06/21
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