

## Agenda Item

**REPORT OF Section 151 Officer**

**To: Audit & Governance Committee**

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

**Date: 4th April 2023**

**Reference:**

**PURPOSE OF REPORT:** To provide an update on any matters of non-compliance with the Contract and Financial Procedure Rules and 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 1<sup>st</sup> April 2022 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 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 where the 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?"

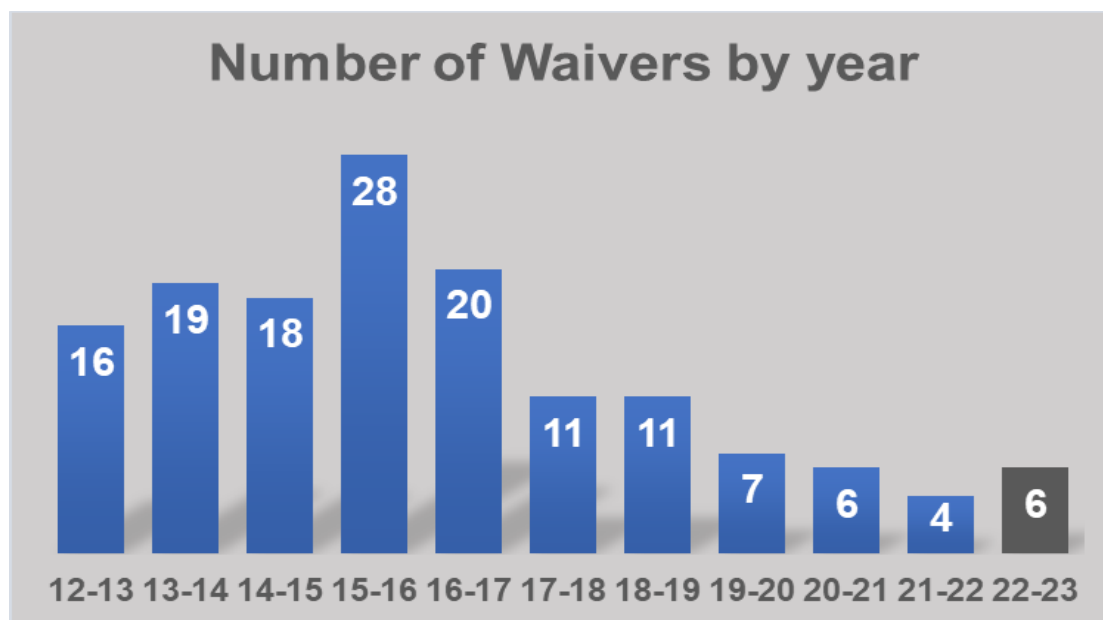
There is a comprehensive procedure for obtaining a waiver which includes a standardised application form, the support of the relevant Senior Manager, and final approval by either the Section 151 Officer or Chief Executive.

Waiver data for the past 10 years is shown 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 2022/23, the 6 waivers were raised for the following reasons:

Reason for Waiver	Number
Licensing Taxi Demand Survey	1
Temporary extension of Cleaning Contract	1
Rough Sleeper Initiative	1
Grounds Maintenance Equipment	1
Trade Waste	1
Disabled Facility Grants - consultancy	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 in the report

#### 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 April 2022 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 - 2022/23

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
150	<p><b>Taxi Licensing Demand Survey</b></p> <p>There is a requirement to undertake a demand study to allow the Council to maintain its taxi plate restriction. Failure to do so may result in legal action against the Council. There is only one company with the necessary knowledge and expertise to undertake a demand study which can be defended in court if challenged. The cost of the survey is £8,970 these costs are recovered from the hackney carriage fees paid by the trade.</p>								
	F	Chris Parkhouse	Limited Markets	5.1.7	N/A	SD 06/4/22	n/a		DH 06/04/22
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
151	<p><b>Extension of cleaning contract to facilitate full tender</b></p> <p>Extension of current Cleaning Contract from 1<sup>st</sup> April 2022 to the end of September 2022 to allow for tender process to start in June 22 and given the complex nature of this contract, we cannot obtain 3 quotes within this short time period. There will be a transition period required if the current supplier is not awarded the new contract therefore, we are hoping to start the new contract from 1<sup>st</sup> October 2022.</p> <p>It is requested that a purchase order is raised to Bowdens Cleaning (subject to tender review) to cover the cleaning of a number of our properties for £40,500.</p>								
	F	Rachael Gulwel	Embarrassment	5.1.7	N/A	SK 23/05/22	n/a		DH 24/05/22

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	
152	F	Helen Page	Limited Market	5.1.7	N/A	SD 07/06/22	Yes		DH 07/06/22	

### Rough Sleeper Initiative

DHLUC invites LA's to bid for Rough Sleeper Initiative (RSI) funding, usually on a year on year basis. In a change to the norm, in February we had to submit a bid for 3 years funding for 2022-25. Our bid was co-produced with current delivery partners and our Rough Sleeper Advisor and in Year (22/23) we mainly sought funding for the continuation of existing rough sleeper services.

DHLUC's announcement on funding allocations was delayed, and we were only notified of our allocation on 20 May by which time, to ensure the continued delivery of existing services from 1<sup>st</sup> April, we had already had to give some degree of assurance to our current delivery partners.

Given that we are now well into Year 1, a waiver is being sought to continue working with our current delivery partners without interruption through 2022/23, as current arrangements are effective and within budget. The services, delivery partners and costs are:

- £60,895 – 56 hours per week in-reach/outreach support to rough sleepers, former rough sleepers, and those at risk of rough sleeping, including 14 hours per week money/debt advice. Generic support hours provided by Encompass Southwest and specialist money advice provided by Navigate.
- £19,742 -- Housing First -- 21 hours per week support to 3 individuals with complex needs. Provided by Encompass Southwest.
- £17,122 -- Gender informed support -- 14 hours per week support to survivors of domestic abuse and women at risk of domestic where there is also a risk of or history of rough sleeping. Provided by North Devon Against Domestic Abuse (NDADA).

We intend to test the market and consider going out to tender for Year 2 and Year 3, although we expect there to be limited markets.

Cllr Clarke has been consulted and is supportive of this request.

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						Head of Service	Property Manager	Internal Audit	HOPS Section 151 Officer	
153	F	Richard Haste	Limited Markets	5.1.7	N/A	SK 10/02/23	Yes		DH 10/02/23	
<p><b>Grounds Maintenance Equipment</b></p> <p>An order was raised in November 2021 through the Yorkshire Purchasing Organisation for a Ransomes HM600 machine for the sum of £57,896, The delivery date has been delayed a number of times with an anticipated arrival date now of November 2023, if at all.</p> <p>Since the original order was raised there has been a significant uplift in the price, with quotes being estimated depending of the date of order in the region of £72-£77,000. This exceeds the capital budget set for this item.</p> <p>An equivalent ex demo machine has been sourced from a reputable supplier, the specification is 2021 model with 68 hrs, 2 years warranty for the sum of £58,500. This machine is required to enable the Grounds Maintenance team to provide a high standard of service and maintain our parks and open spaces. Purchasing this machine ensures we are providing value for money in the current limited market and within the existing capital budget .</p>										

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154										
<p><b>Trade Waste Services</b></p> <p>The authority has a statutory obligation to collect commercial waste from businesses within the Torridge area. This responsibility has been fulfilled by North Devon District Council (NDC) for the last 15 years. Notice has been given that from the 1st April 2023 NDC will no longer be collecting commercial waste in the Torridge District.</p> <p>Due to the short notice, there is limited time to tender for a supplier to fulfil our obligation. This waiver is to enter into a service level agreement with Coastal Recycling for a 12-month period starting from the 1st of April 2023. There is no financial advantage or disadvantage to Torridge</p>										

District Council entering into an agreement with Coastal Recycling. This agreement will not adversely affect businesses and organisations within Torridge, as there is an active market from alternative service providers.								
If agreed all requests received from the 1 <sup>st</sup> April will be forwarded to Coastal Recycling to provide a quote.								
F	Richard Haste	Limited Market	5.1.7	n/a	SK 13/02/23	n/a		DH 13/02/23

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	
155			<p><b>Disabled Facilities – defective works</b></p> <p>DFG were undertaken whilst the grants were being administered by South Hams District Council. It has proved difficult to obtain any details from South Hams (e.g. which company undertook the works in the first instance), however it is clear the works undertaken are defective. Wheelchair user left with unlevel access to property. The Council is concerned re danger if works aren't rectified asap. Could lead to lady falling into road..</p> <p>A builder commissioned by the Council examined the works previously undertaken and identified a pressing need to get the works rectified as soon as possible.</p>							
F		Staci Dorey	Life or death/ Embarrassment	5.1.7	n/a	SK 05/01/23	n/a		DH 05/01/23	

