

Agenda Item

REPORT OF Section 151 Officer

To: Audit & Governance Committee

Subject: Non Compliance with Procedure Rules and Waivers

Date: 2nd April 2024

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 30th March 2023 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.

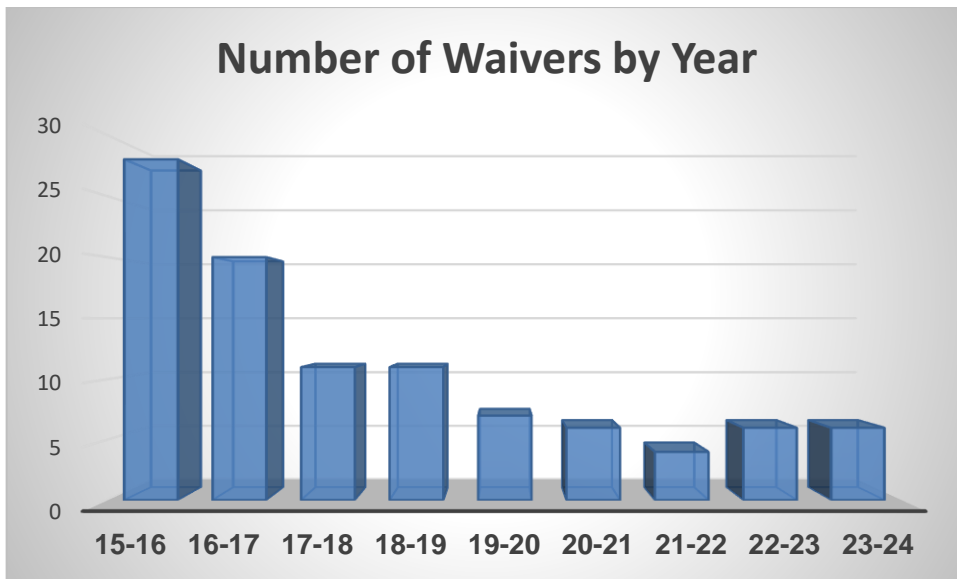
The FPR (and similarly the CPR) state: "Where officers consider that the Financial Procedure Rules cannot be followed then reasoned, considered and sensible solutions to everyday problems that may arise shall be applied.

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.

The following graph shows a declining use of waivers. 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 2023/24, the 6 waivers were raised for the following reasons:

Reason for Waiver	Number
Occupational Health Provision	1
Young Person Homelessness Prevention Service	1
ACMIC – Property Agent Retainer	1
HABC Project Manager Appointment	1
Bank Tender	1
Condition Surveys	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 2023 there were:

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

SUPPORTING INFORMATION

Consultations:	Steve Hearse Gordon Bryant Cllr Philip Hackett
Contact Officer:	Luan Stapley
Background Papers:	Waiver records

APPENDIX A - WAIVERS OF FINANCIAL AND CONTRACT PROCEDURE RULES - 2023/24

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
156	<p>Occupational Health Provision Research continues to show that there are a very limited number of providers that cover the Bideford area and other providers that do, primarily offer a telephone service rather than face to face. Many large local employers, including schools and colleges, use Torridge Occupational Medical for this reason. It is essential to TDC's recruitment process and the ongoing management of staff wellbeing, including sickness absence management, that we have access to a local provider who can provide an efficient service.</p> <p>The service provided by TOMS over the past 9 years has been excellent, with the team having a good understanding of the roles at the Council, enabling them to provide in-depth consultations and advice. Our current budget for occupational health provision is £12,525 pa</p>								
	F	Sarah Ayres	Limited Markets	5.1.7	N/A	SA 30/03/23	n/a		DH 30/03/23
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
157	<p>Young Person Homelessness Prevention Service Devon County Council pays each of the districts a Homelessness Prevention Grant towards a Homelessness Prevention Service or worker (often referred to as HPW's) to work with young people (including care leavers) to prevent and relieve homelessness. Grants are awarded on a year-by-year basis. TDC has been granted £21,363 in 23/24 and this being used to part fund our Streetwise service, which is currently costing £35,521 per annum.</p> <p>For many years, TDC has commissioned Encompass Southwest to deliver the Streetwise service, with the last competitive tendering exercise taking place in 2016.</p> <p>In 2020 DCC's Children's service was rated as inadequate and, with partners, DCC has been working on reorganising and improving how it works with families and looked after children to improve this rating. Although progress has been made, an Ofsted monitoring visit in autumn 2023 confirmed that issues around accommodation and education for care leavers are still to be resolved.</p>								

	<p>In an email to district Housing Leads on 2 January 2024, Vikki Hearn, Head of Service Children’s Commissioning and Resources, advised that the Care for Me Corporate Parent Subgroup, which has both district and DCC representation, will be overseeing a review of the Homelessness Prevention Grant to ensure that we are all getting the best values and outcomes from the funding. It is hoped that a future approach will be agreed by June 2023, with changes taking effect from 1 April 2025.</p> <p>Given the proposed review and the current uncertainty over ongoing funding from DCC, I am seeking a waiver for Encompass Southwest to continue delivering the Streetwise service during 24/25.</p>									
	F	Helen Page	Increased Cost/Loss of Income	5.1.7	N/A	HP 03/01/24	n/a		GB 03/01/24	
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	
158		<p>ACMIC – Property Agent Retainer</p> <p>Context:</p> <ul style="list-style-type: none"> • ACMIC project is subject to pressured delivery timescales set out by DLUHC / LUF. • JLL provided input on ACMIC through to RIBA Stage 3 on layout, lease marketing and occupational structuring. <p>Reasoning For Waiver:</p> <ul style="list-style-type: none"> • JLL have a pre-existing engagement on the ACMIC project and have already been subject to an assessment of their capability from within a limited professional market. • Running a procurement process is not anticipated to yield any financial gain (limited market). <p>Agreement / Fee Summary:</p> <ul style="list-style-type: none"> • Covers commercial input to design and speculative lease negotiation activities. • Fee is based on period of 3 years (i.e., to PC+1) and billed at £1,500 pcm (total to £54k). • Terminable on 28 days' notice. • Fees net of but subject to VAT 								
	F	Jon Wynne	Limited Market	5.1.7	N/A	SK 15/12/23			GB 15/12/23	

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						Head of Service	Property Manager	Internal Audit	HOPS Section 151 Officer	
159										
<p>Appointment of Project Manager and Project Team Context:</p> <ul style="list-style-type: none"> The Council owns a landed asset including and surrounding the Holsworthy Agri Business Centre. The asset presents an opportunity for the Council to realise an underlying value for its ownership and to pre-inform a project for the Levelling Up Partnership discussion (due Q1 2024). There are several potential outcomes to the project; aside from crystallising a residual land value - noting potential land transactions/development and supporting LUP activities. A high-level budget Consultancy Structure & Costs Overall Project Manager oversight from Price Consulting (c.£8k) Sub-discipline Project Team comprising expertise for architect/planning/etc (£35k-£50k - depending on usefulness of current information), cost consultant (<£5k) and viability/commercial consultant (£1-£15k). <p>Reasoning For Waiver</p> <ul style="list-style-type: none"> Limited resources within TDC to deliver this piece of work and attain progress on other activities. Obtain delivery expertise to support onward land transactions and activities (referred to above). Desire for progress ahead of the LUP timeline (referred to above). Backdrop of litigation with Kivells (as existing tenant and potential counter party to a land transaction). Pressure from the Leader of Council and the MP to achieve progress 										
	F	Jon Wynne	Increased Cost & Embarrassment	5.1.7	N/A	SK 23/11/23				GB 23/11/23

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
160			<p>Bank Tender</p> <p>Reason for Urgency: Banking for the Council is currently provided by Lloyds. The Council chose Lloyds after a tender exercise in 2015 after the Co-op bank withdrew from the municipal market. The current "contract" with Lloyds expires on the 31 December 2025. Working back from this date should the Council wish to undertake a tender exercise for provision of banking it will have to begin the process in the 1^o quarter of 2024.</p> <p>It is deb</p> <p>A full tender exercise this would involve significant officer input from across the Council but particularly within the Finance team. A retender for banking service is not recommended for a variety of reasons</p> <ul style="list-style-type: none"> • With the departure of the S151 officer on the 4th July and the Senior Accountant Revenue at the end of July 2023 the Finance department, which is already stretched, will have to embed new staff into these roles who lack prior local government experience. • A tender of this scale will impact across the Council, ICT, Revenues and Benefits, Customer Services, Procurement etc at a time when the Council is struggling to recruit and retain staff. • Should a decision be made to go out to tender there is a possibility that the new terms will be less advantageous than the Council currently enjoys. The Council automatically receives interest of 0.1 % below the Bank of England on its current account balances. This offer would appear to date back to 2014/15 when Lloyds were keen to increase their presence within the Local Authority Sector. <p>For example, Active Torridge does not receive interest on the balances it holds in its reserve account, in order to earn interest, officers of the Council are required to be placed surplus balances into call accounts.</p> <p>Similarly North Devon Plus do not automatically receive interest on their current account balances. Officers of the Council are required to placed surplus monies from North Devon Plus on short term deposits in order to obtain interest, currently rates are significantly below what the Council receives on its current accounts.</p> <p>For 2022/23 the Council earned £159k from monies held within current account there is a risk that some of this income will be at risk if the Council was to go through a formal tender exercise.</p> <ul style="list-style-type: none"> • The Council is also due to retender for its insurance services within the same timeframe, which represents a significant burden upon the Council's Finance Team. 						

<ul style="list-style-type: none"> Should the Council retender of its banking services and the current provider is unsuccessful there will be potentially a loss of integration as currently the Council uses Lloyds purchase card portal for uploading expenditure into the Council's financial ledger incurred in the first instance on company credit cards. The Council has several key systems which its utilising in the course of its businesses such as the Revenues and Benefit system provided by Capita, the Finance system provided by One Advanced which are not subject to periodic retendering. With hindsight the tender for banking services undertaken in 2015 should not have been open ended rather than having a fixed renewal date <p>Since 2015 the Council has incurred an average of £38k per year in bank charges.</p> <p>In conclusion there is a real risk that the Council could incur very significant expenditure of officer resource in undertaking a retender exercise and arrive at a contract that was significantly less advantageous</p>									
	F	Peter Hudson	Increased Cost & Limited Market	5.1.7	n/a	SD 27/06/23			SH 27/06/23
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
161						<p>Condition Surveys</p> <ul style="list-style-type: none"> Condition surveys are a cornerstone of good estate management and have been neglected for several years. The outputs from condition surveys are also a key requirement for the adopted TDC Strategic Asset Plan, support audit assurance, assist with managing risk (statutory and commercial) and providing greater certainty in budget profiling / record management / resources deployment. A trial survey on Manor Offices has been carried out by NovaSurveyors on a single TDC asset, which has provided a good outcome to support the above objectives. The proposal to engage NovaSurveyors immediately on further TDC assets is based on: <ul style="list-style-type: none"> The results of the trial survey and seeking a consistent approach. Their availability -- experience supports good resources not being always available. Given the historic approach to condition surveys, many elements of condition now require urgent formal inspection. The timing of a tendered procurement would add c.2 months to the timeline (all tendering parties would need to inspect the buildings), delaying connected activities. <p>Estimated Value: £16,500</p>			
	F	Jon Wynne	Increased Cost, Limited Markets & Embarrassment	5.1.7	n/a	SK 23/11/23			GB 23/11/23

