

REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of Meeting:

Report of: Strategic Director of Corporate Resources

Title: Quarterly Procurement Waiver and Breach Transparency Report

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

The report provides an overview of the procurement waivers granted in the last two quarters to ensure transparency and accountability in internal decision-making processes and compliance with the Council's Procurement and Contract Procedures and procurement legislation. The report also provides an update on the development of a procedure to identify and report on procurement breaches which will enable members to improve monitoring of compliance with council Procurement and Contract Procedures and procurement legislation.

2. Recommendations:

That members note the waivers and breaches of the Procurement and Contract Procedures for quarter 4 2024/25 and Q1 2025/2026.

3. Reasons for the recommendation:

To comply with the Contract and Procurement Procedures Rules and external audit report (Year Ended 31st March 2024) recommendation that waivers and breaches should be reported to and considered by Audit and Governance Committee.

4. What are the resource implications including non-financial resources

There are no new financial implications as this report is for information.

5. Section 151 Officer comments:

The information in the report has previously been part of the Members Information Bulletin, but will now be reported to Audit & Governance on a quarterly basis. This is a welcome step forward in informing Councillors of issues within Procurement.

6. What are the legal aspects?

A transparent governance process to identify where breaches/waivers have taken place maximises compliance with the Procurement Act 2023 and the Council's Procurement and Contract Procedures which form part of the Council's Constitution.

Section 6 of the Council's Procurement and Contract Procedure Rules sets out the procurement requirements at various thresholds. In particular, all purchases over £25k

(excluding VAT) must be subject to some kind of competition process as detailed in Table 1 below.

Table 1 - Internal Thresholds – All thresholds exclusive of VAT

Value of Contract (exc VAT)	How to procure
Up to £25k	Min 1 Quotation (3 preferred)
Between £25k and £100k	Min 3 Quotations
Between £100k and the UK Procurement threshold	Formal tenders
Over UK Procurement threshold	Formal tenders

Rules 2.4 – 2.6 of the Council's Procedures allow a "waiver" to the requirement for competition and allows a contract to be awarded by direct negotiation with one supplier. This must be agreed and documented in advance. The Council's Procedures do not permit the granting of waivers where they are over the relevant legal UK procurement thresholds shown in Table 2 below.

Table 2 – Relevant UK Legal Procurement Thresholds effective January 2024 – January 2026 (inclusive of VAT)

Goods and Services Threshold	£214,904 (inc VAT)
Works Threshold	£5,372,609 (inc VAT)

If a direct award is made which is above the relevant procurement threshold (and a legally compliant alternative such as a Framework Agreement is not used) or a contract continues after its end date, then a breach of the rules has occurred. Paragraph 2.8 of the Procedures requires the procurement team to record non-compliance with the Procedures and report this to the Monitoring Officer.

In exceptional circumstances, the legislation allows some legally permitted direct awards, for instance to cover emergency provisions.

7. Monitoring Officer's comments:

Members will note that a number of waivers and breaches have been identified. Members will note at paragraph 8.2.3 the steps that are being taken in order to increase compliance with the legislation and the Council's own procedures. The Audit and Governance Committee will now receive regular updates so that compliance can be monitored.

8. Report details:

8.1 Background

It was a key recommendation of the External Audit Report for the year ended 31st March 2024 that the council review spend to suppliers to identify where spend has not been in accordance with Procurement and Contract Procedures or procurement legislation. The report also recommended that the council should take appropriate action to ensure that breaches are identified and appropriate action taken.

Waivers to the Procurement and Contract Procedures for Q1-Q3 2024/2025 were reported to members via the Councillor's Information Bulletin on 10th January 2025. In future waivers and breaches will be reported to the Audit and Governance Committee quarterly in line with audit recommendations.

8.2 Report

8.2.1 Waivers

The Procurement and Contract Procedures form part of the Council's Constitution and set out the process that must be followed if, in exceptional circumstances, there are legitimate reasons where it may not be possible for an officer to comply with a specific part of the Procedures and/or run a competitive process. Where the Procedures cannot be followed, a Waiver must be applied for.

Where expenditure is under £100k ex VAT, a Head of Service or SMB member must approve a Waiver to the Procedures and provide a copy of the written approval (Waiver Application Form) to the procurement team to be added to the Waivers Register. In addition, the Procurement Manager is required to review and comment on waiver requests over £100k ex VAT. As a general rule, Waivers are not approved for expenditure beyond 1 year in duration.

In circumstances where a waiver is valued over the relevant UK procurement threshold, procurement/legal advice is required to assess the application of Section 41 and Schedule 5 of the Procurement Act 2023 which provides for direct awards in special cases, that is, where a contract is awarded without undergoing a competitive process.

During the period 1 January 2025 – 31st March 2025, a total of 7 requests were approved and recorded as summarised in the table below (further details are set out in Appendix A):

Waiver (Exemption) Primary Reason:	Total (Q4 2024/25)	Value of Waiver (ex VAT)
Increased Cost/Loss of Income	5	£259,982.47
Limited Markets	1	£165,000.00
Reputational Damage (the Council would be criticised for failing to act promptly)	0	-
Compliant Direct Award via Framework	1	£113,000

Total	7	£537,982.47
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During the period 1 April 2025 – 30th June 2025, a total of 3 waiver applications were approved and recorded as summarised in the table below (further detail can be found in Appendix B):

Waiver (Exemption) Primary Reason:	Total (Q1 2025/26)	Value of Waiver (ex VAT)
Increased Cost/Loss of Income	1	£43,243
Limited Markets	0	-
Reputational Damage (the Council would be criticised for failing to act promptly)	1	£44,430
Compliant Direct Award via Framework	1	£48,000
Total	3	£87,673

Additional waiver requests from the housing team have been received and are under review by the legal and procurement teams.

8.2.2 Breaches

A procurement breach may be as a result of either a failure to follow Council's Procurement and Contract Procedures and/or a failure to comply with Procurement Legislation. Breaches over the UK legal thresholds expose the Council to the greatest risk.

Weaknesses in current compliance controls were proactively identified by the procurement team and as a result, Internal Audit was specifically asked during Q1 2025/26 to audit the extent to which Directorates comply with the Procurement and Contract Procedures. The report identifies a number of areas for improvement and up to 35 potential breaches of internal rules and/or legislation.

As this internal audit has only recently been completed, the procurement team are working through the list of potential breaches to establish whether they are actual breaches. If they are, the matter will be escalated to the Head of Service and/or Director for review.

The following are known breaches which have not previously been reported to the Audit and Governance Committee.

Service	Detail of Breach	Over/under UK Legal Procurement threshold	Action being taken to address
Leisure and Culture	Failure to serve notice on an auto renewing contract for the leisure management system in time to re-procure.	Over threshold	Procurement is working with the leisure team to re-procure via G-Cloud in quarter 2 (2025/2026).
Leisure and Culture	Food and Beverage purchases at Leisure Centres	Over threshold	A suitable framework has been identified and procurement are supporting the service to re-procure compliantly in quarter 2.
Leisure and Culture	Cleaning of leisure centres	Over threshold	A project team has been formed by procurement and there is a plan to reprocure cleaning services corporately to include the leisure contract subject to Director approval. The aim is to reprocure prior to end of September 2025.
Operations	Procurement of Play area repairs/installations. Aggregated spend indicates that a tender process should be followed.	Over threshold	The procurement team are meeting with the Operations team every two weeks to develop tender documentation
Housing	Security Services	Over threshold	As soon as capacity allows, the procurement team will form a cross-service project team to look at the provision of security services corporately to address the disaggregation of spend in this area.

8.2.3 Steps being taken to reduce the risk of Non-Compliance

The following actions are being taking to reduce the risks of the Council breaching its own rules and procurement legislation in line with Internal Audit recommendations:

- Training was provided to all Heads of Service covering the basic requirements of the Procurement and Contract Procedures in May 2025. Training has also been provided to the Leisure Management and Asset Maintenance teams and further training will be offered to around 100 key members of staff.

- A draft Breach Procedure Note has been presented to SMB outlining how the team will introduce and record monthly random sampling of spend and escalate instances where non-compliance is suspected.
- Terms of Reference are being drafted for creation of a new Procurement and Contract Board. These will be presented to SMB for consideration in due course. The Board will support the monitoring of spend across the council to help ensure value for money and procurement compliance.
- Monthly spend reports are now being used to create a spend monitoring dashboard which will be used to help track spend on key contracts and identify off contract spend and opportunities to aggregate spend and achieve value for money.

9. How does the decision contribute to the Council's Corporate Plan?

Effective governance, transparency and delivering value for money contributes to the Council's purpose of leading a well-run Council.

10. What risks are there and how can they be reduced?

Failure to have appropriate controls in place to monitor and manage non-compliance with the Contract Procurement Rules and procurement legislation may expose the council to legal challenge, reputational harm, and failure to achieve value for money.

Steps being taken to reduce the risks are detailed in 8.2.3 above.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because: because the report is for information only

12. Carbon Footprint (Environmental) Implications:

12.1 No direct carbon/environmental impacts arising from the recommendations.

13. Are there any other options?

13.1 Not Applicable

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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Appendix A – Waivers to the Contract and Procurement Procedures Recorded Q4 2024/2025

Waiver Reference	Project / Contract Title	Directorate / Service	Signed by Corp Manager / SMB Member	Supplier	Waiver Start Date	Waiver End Date	Reason it is longer than a year if applicable	Waiver Value £	Primary Reason for Waiver
EXMP0041	Corn Exchange To provide urgent professional consultancy services for the full design and contract management for the windows and conc sub frame replacement works contract	Operations/ Asset Maintenance	Strategic Director - Operations	South West Norse	28/11/2024	TBC	N/A	£58,000.00	Increased cost
EXMP0042	Trews Weir Repairs Study – Phase 1	Operations/ Engineering	Head of Operations	Faithful & Gould/Atkins Group	23/01/2024	31/12/2025	TBC	£113,000.00	Legally compliant Direct Award Via Framework
EXMP0044	Building Services PPM Term Contract to Corporate Property Sites	Operations/Asset Maintenance	Strategic Director - Operations	WEMco	01/04/2025	31/03/2026	to allow for Leisure sites to be incorporated into new long term PPM contract	£36,000.00	Increased cost
EXMP0045	Door Maintenance Services PPM Term Contract to Corporate Property Sites	Operations/Asset Maintenance	Strategic Director - Operations	Five Star Maintenance	01/04/2025	31/03/2026	N/A	£28,000.00	Increased Cost
EXMP0046	Purchase of workboat port Constructor	Operations/Waterways	Head of Operations	Exmouth Mussels	18/11/2024	18/11/2024	N/A	£165,000.00	Limited Markets
EXPM0047	Laings Project – Project Manager/Cost Consultant/Contract Administrator/Designer	Operations/ Housing Assets	Head of Asset Maintenance	Kendall Kingscott	01/02/2025	31/08/2026	nature of works	£95,000.00	Increased cost
WA00001	28 South Street - Urgent refurb works	Corporate Resources/ Commercial Assets	Head of Commercial Assets	Mercury Construction	19/03/2025	20/07/2025	N/A	£42,982.47	Increased cost

Appendix B – Waivers to the Contract and Procurement Procedures Recorded Q1 2025/2026

Waiver Reference	Project / Contract Title	Directorate / Service	Signed by Corp Manager / SMB Member	Supplier	Waiver Start Date	Waiver End Date	Reason it is longer than a year if applicable	Waiver Value £	Primary Reason for Waiver
WA00002	Vaughan Road (The Gardens Whipton) Development - Landscaping	Operations/ Public and Greenspace	Head of Operations	Greentech Ltd	28/04/2025	28/05/2025	N/A	43,243.00	Increased Cost/Loss of Income
WA00003	Bill Payment Solutions	Corporate Resources/ Finance	Strategic Director Corporate Resources	Allpay Ltd	01/05/2025	30/04/2026	One 12 month extension within contract to allow for sufficient time to procure and view options	44,430.00	Legally Compliant Direct Award via Framework
WA00004	Emergency & Contingency Support Processing comingled materials	Operations/ Environment & Waste	Strategic Director Operations	GAE Smith Holdings (casepak, part of Reconomy)	1/04/2025	31/03/2026	n/a	48,000.00	Reputational Damage