

REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 27th November 2025

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 and breaches in the last quarter to ensure transparency and accountability in internal decision-making processes and compliance with the Council's Procurement and Contract Procedures and procurement legislation.

2. Recommendations:

That members note the waivers and breaches of the Procurement and Contract Procedures for quarter Q2 2025/2026.

3. Reasons for the recommendation:

To ensure transparency in relation to third party expenditure and to comply with an Audit recommendation that waivers and breaches should be reported quarterly to 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. 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 8.2.4 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 receive regular quarterly updates so that the Audit and Governance Committee can monitor compliance.

8. Report details:

8.1 Background

External Audit previously recommended that waivers and breaches are reported to Audit and Governance Committee on a quarterly basis for review. This is the second quarterly report to this committee and covers Q2 2025/2026.

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.

Direct Awards of contracts via a framework are compliant with procurement legislation but require a waiver under the Council's Procurement and Contract Procedure Rules so there is a formal review of whether such an approach represents best value for public funds.

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, 1st July 2025 – 30th September 2025, a total of 10 waiver applications were approved and recorded as summarised in the table below (further detail can be found in Appendix A):

Table 2 Waivers by reason reported in Q2:

Waiver (Exemption) Primary Reason:	Total (Q2 2025/26)	Value of Waiver £ (ex VAT)
Increased Cost/Loss of Income	1	32,400
Limited Markets	7	763,796
Reputational Damage (the Council would be criticised for failing to act promptly)	0	-
Compliant Direct Award via Framework	2	6,210,000
Total	10	7,006.196

Table 2 Waivers by Directorate reported in Q2

Directorate	No. Waivers in Q2	Value of Waivers £
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Chief Executive	0	0
Corporate Resources	1	210,000
Operations	3	6,167,416
People and Communities	5	609,780
Place	1	19,000
Totals	10	7,006,196

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.

The table below summarises the number of breaches by Directorate recorded in Quarter 2 2025/2026. Further details on individual breaches can be found in Appendix B.

Table 3 – Breaches by Directorate Reported in Q2

Directorate	No. of below threshold breaches reported in Q2	Approximate value of breaches £
Chief Executive	0	0
Corporate Resources	1	100,000
Operations	9	1,085,300
People and Communities	6	360,000
Place	1	770,000
Total number of breaches in Q2		2,315,300

It is not uncommon for breaches to occur within contracting authorities, and they are normally unintentional. Of the breaches identified in Appendix B, several relate to granted funded schemes where procurement can prove difficult where there are constrained timeframes in which to spend funding. No evidence deliberate wrongdoing has been identified in relation to any of the breaches listed in this report.

8.2.3 Progress on addressing breaches reported in Q1

Progress has been made on addressing all breaches reported last quarter. However, security services provision for housing requires a broader corporate review and currently, detailed information is being gathered on spend and future requirements with a view to considering the most appropriate procurement strategy to adopt. A procurement exercised is expected to be run in 2026.

8.2.4 Steps being taken to reduce the risk of Non-Compliance/breaches

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:

- Between May 2025 and October 2025, training on Exeter City Council's procurement rules and procurement legislation has been provided by the procurement team to over 142 staff directly involved in procurement processes (including all Heads of Service) with considerable positive feedback received from those attending. Staff who attended were nominated by Heads of Service as being those who lead on tenders.
- A draft Breach Procedure Note, initially reported on at the July meeting of this committee, has now been approved and will be incorporated into the Council constitution in the coming weeks.
- Terms of Reference have been drafted for creation of a new Procurement and Contract Assurance Board have now been approved by SMB. The Board will support the monitoring of spend across the council to help ensure value for money and procurement compliance and will initially be chaired by the Strategic Director for Corporate Resources. The first meeting of this board is expected to take place in the coming quarter.

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 8.2.4 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

Director: Dave Hodgson, Strategic Director of Corporate Resources

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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 Q2 2025/2026

Waiver/ Direct award Reference	Project / Contract Title	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
WA00005	Trew Weir Repairs	Operations	Strategic Director - Operations	Faithful & Gold/ Atkins and Kiers	01/06/2025	30/06/2027	n/a	6 million	Compliant Direct Award via Framework
WA00006	Edwards Court, Building Services Maintenance	Asset Maintenance	Head of Asset Maintenance	Whitehead Building Services UK	01/02/2024	31/01/2026	Specialist compliance/s ervicing works	135,016	Limited Markets
WA00008	Dynamic Energy Management and System Maintenance Improvement Project - RAMM	Leisure & Culture (RAMM)	Head of Culture and Leisure	Mclaren Design	01/06/2025	30/05/2026	N/A	19,000	Limited Markets
WA00009	Guildhall & John Lewis Car Parks – Replacing Payment & Associated Equipment Procurement	Commercial Property	Strategic Director Corporate Resources	Scheidt & Bachmann	01/09/2025	31/12/2025	Compliant award via framework	210,000	Compliant Direct Award via Framework
WA00010	Emergency & Contingency support processing comingled materials	Environment & Waste	Head of Environment & Waste	Nicholas Rowell Haulage Ltd	01/04/2025	31/03/2025	N/A	32,400	Increased cost/Loss of Income
DAJ00001	MHCLG Supported Accommodation Project	Housing	Strategic Director People & Communities	Exeter City Community Trust	01/08/2025	31/03/2026	N/A	158,000	Procurement Act 2023 Direct Award in Special Cases – Limited markets
DAJ00002	PR 20 2025 SH - MHCLG Prospect House Support Services	Housing	Strategic Director People & Communities	Home Group	01/08/2025	31/03/2026	N/A	164,000	Procurement Act 2023 Direct Award in Special Cases – Limited markets
DAJ00003	PR 21 2025 SH - MHCLG Julian House Supported Accommodation	Housing	Strategic Director People & Communities	Julian House	01/08/2025	31/03/2026	N/A	108,800	Procurement Act 2023 Direct Award Direct Award in Special Cases – Limited markets

DAJ00004	PR 22 2025 SH - MHCLG Howell Road Supported Accommodation project	Housing	Strategic Director People & Communities	Sanctuary Supported Living	01/08/2025	31/03/2026	N/A	42,000	Procurement Act 2023 Direct Award in Special Cases – Limited markets
DAJ00005	PR 13 2025 SH - MHCLG Morwenna Support Services	Housing	Strategic Director People & Communities	Bournemo uth Churches Housing Associatio n (BCHA)	01/08/2025	31/03/2026	N/A	136,980	Procurement Act 2023 Direct Award in Special Cases – Limited markets

Appendix B – Breach of Contract and Procurement Procedures Recorded Q2 2025/2026

Contract/Project Description	Service Area	Directorate	Nature of Breach	Breach Specifics	Breach Value £	Actions Taken
MHCLG Morwenna Support Services	Housing	People & Communities	Non Compliance with Legislation	<p>Failure to run a competitive process.</p> <p>In this instance, a government grant was awarded at short notice with insufficient time to run a tender process and comply with spending deadlines. as well as meeting spending deadlines. Therefore, from 1st April 2025 to 31st July 2025 this was off-contract spend, and a direct award was put in place from 1st Aug 25 to 31st March 26 and transparency notice published.</p>	£68,490.00	<p>Breach acknowledged and recorded. Direct Award Justification contract entered into, and new tender process will be undertaken.</p> <p>Relevant staff have now attended procurement training.</p>
MHCLG Supported Accommodation Project	Housing	People & Communities	Non Compliance with Legislation	<p>Failure to run a competitive process.</p> <p>In this instance, a government grant was awarded at short notice with insufficient time to run a tender process and comply with spending deadlines. Therefore, from 1st April 2025 to 31st July 2025 this was off-contract spend, and a direct award was put in place from 1st Aug 25 to 31st March 26 and transparency notice published.</p>	£79,000.00	<p>Breach acknowledged and recorded. Direct Award Justification contract entered into, and new tender process will be undertaken.</p> <p>Relevant staff have now attended procurement training.</p>

MHCLG Prospect House Support Services	Housing	People & Communities	Non Compliance with Legislation	<p>Failure to run a competitive process.</p> <p>In this instance, a government grant was awarded at short notice with insufficient time to run a tender process and comply with spending deadlines. Therefore, from 1st April 2025 to 31st July 2025 this was off-contract spend, and a direct award was put in place from 1st Aug 25 to 31st March 26 and transparency notice published.</p>	£82,000.00	<p>Breach acknowledged and recorded. Direct Award Justification contract entered into, and new tender process will be undertaken.</p> <p>Relevant staff have now attended procurement training.</p>
MHCLG Support Accommodation Services	Housing	People & Communities	Non Compliance with Legislation	<p>Failure to run a competitive process</p> <p>In this instance, a government grant was awarded at short notice with insufficient time to run a tender process and comply with spending deadlines. Therefore, from 1st April 2025 to 31st July 2025 this was off-contract spend, and a direct award was put in place from 1st Aug 25 to 31st March 26 and transparency notice published.</p>	£54,400.00	<p>Breach acknowledged and recorded. Direct Award Justification contract entered into, and new tender process will be undertaken.</p> <p>Relevant staff have now attended procurement training.</p>
MHCLG Howell Road Support Services	Housing	People & Communities	Non Compliance with Legislation	<p>Failure to run a competitive process.</p> <p>In this instance, a government grant was awarded at short notice with insufficient time to run a</p>	£21,000.00	<p>Breach acknowledged and recorded. Direct Award Justification contract entered into, and new tender process will be undertaken.</p> <p>Relevant staff have now attended procurement training.</p>

				tender process and comply with spending deadlines. Therefore, from 1 st April 2025 to 31 st July 2025 this was off-contract spend, and a direct award was put in place from 1 st Aug 25 to 31 st March 26 and transparency notice published.		
Vaughan Road (The Gardens Whipton) Development - Landscaping	Operations	Operations	Non Compliance with Exeter City Council (ECC) Rules	Retrospective Waiver (waiver reported in Q1)	£43,243.00	Advice given by Procurement on correct process
Skyguard Lone working devices	Housing (main service area)	People & Communities	Non Compliance with ECC Rules	Failure to run a competitive process and no evidence of an existing contract.	In excess of £100K	Advice given by Procurement on correct process. Service may be reprocured via STRATA in future.
Commercial Property Valuation Advice	Commercial Property	Corporate Resources	Non Compliance with ECC Rules & potential non-compliance with legislation is spend aggregated.	Aggregated spend exceeds limit at which a tender should be run & evidence of a contract/compliant procurement process not identified.	In excess of £100k	Advice given by Procurement on options to procure valuation services in general.
Domestic Gas Inspections	Asset Maintenance	Operations	Non Compliance with ECC Rules	Out of contract	£24,474.40	Breach acknowledged. New procurement process underway (early stages).Procurement resource was not available immediately to provide service support. Retrospective waiver to be completed to ensure compliance.
Domestic Electric Inspections	Asset Maintenance	Operations	Non Compliance with ECC Rules	Out of contract	£7,200.00	Breach acknowledged. New procurement process underway (early stages) Procurement resource was not available immediately to provide service support. Retrospective waiver to be completed to ensure compliance.

Topsham Museum Repairs	Asset Maintenance	Operations	Non Compliance with Legislation	Spend is over recorded contract value and varied by more than 15% as permitted by legislation.	£428,430.00	Breach acknowledged. Waiver put in place.
CCTV Cameras	City Centre & Net Zero	Place	Non Compliance with Legislation	Spend is over recorded contract value and varied by more than 10% as permitted by legislation.	Circa £770,000	Breach acknowledged. New procurement process underway
Lift Maintenance and repair services	Asset Maintenance	Operations	Non Compliance with Legislation	Spend has gone over recorded contract value.	£418,694.79	Breach acknowledged and requirement. New procurement to be run in 2026.
Emergency & contingency support processing comingled materials.	Environment and Waste	Operations	Non Compliance with Exeter City Council Rules	Retrospective Waiver to be completed.	£48,000.00	Advice given by procurement on the correct approach.
Emergency & contingency support processing comingled materials.	Environment and Waste	Operations	Non Compliance with Exeter City Council Rules	Retrospective Waiver to be completed	£32,400.00	Advice given by procurement on the correct approach.