

## REPORT TO AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 26<sup>th</sup> March 2026

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 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 Q3 2025/2026.

#### 3. Reasons for the recommendation:

To ensure transparency in relation to third party expenditure and to comply with Internal/External Audit recommendation that waivers and breaches should be reported to and reviewed 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 significant breaches being reported are in the same service as the previous quarter. They are historic and are a result of the significant work being undertaken in that area to address the issue.

#### 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**

<b>Value of Contract (exc VAT)</b>	<b>How to procure</b>
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.** New thresholds came into effect on 1<sup>st</sup> January 2026, but the rates below are the relevant rates for Q3 reporting.

<b>Goods and Services Threshold</b>	£214,904 (inc VAT)
<b>Works Threshold</b>	£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:**

7.1 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**

Waivers and breaches are reported to Audit and Governance Committee quarterly in line with previous audit recommendations.

### **8.2 Report**

In relation to third party expenditure, the default position of contracting authorities should be to run a competitive procurement exercise to achieve value for money for the public purse where practical.

This report provides details of all waivers authorised in the last quarter, where the Council opted not to carry out a competitive procurement process and the reasons for that decision. It also highlights instances of third-party expenditure where a competitive process should have been followed but no waiver was approved, in other words, breaches of the Council's procurement requirements.

### 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<sup>st</sup> October 2025 – 31<sup>st</sup> December 2025, a total of 13 waiver applications were approved and recorded as summarised in the table below (further detail can be found in Appendix A):

**Table 3 Waivers by reason reported in Q3:**

<b>Waiver (Exemption) Primary Reason:</b>	<b>Total (Q3 2025/26)</b>	<b>Value of Waiver (ex VAT)</b>
Increased Cost/Loss of Income	4	£573,805
Limited Markets	4	£445,495
Reputational Damage (the Council would be criticised for failing to act promptly)	1	£25,193
<u>Compliant Direct Award</u> via Framework	4	£786,489
<b>Total</b>	<b>13</b>	<b>£1,830,982</b>

**Table 4 Waivers by Directorate reported in Q3**

Directorate	No. Waivers in Q3	Value of Waivers £
Executive Office	1	160,000
Corporate Resources	2	214,181
Operations	8	755,680
People and Communities	1	206,121
Place	1	495,000
<b>Totals</b>	<b>13</b>	<b>1,830,982</b>

**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.

Breaches are often unintentional and can arise as a result of aggregated spend with a third-party supplier outside a formal contract.

The table below summarises the number of breaches by service area recorded in Quarter 3 2025/2026. Further details on individual breaches can be found in Appendix B.

**Table 5 – Breaches by Directorate Reported in Q3**

Directorate	No of breaches recorded in Q3	Approximate value of breaches £
Chief Executive	0	0
Corporate Resources	0	0
Operations	1	£24,065
People and Communities	4	£9,697,917
Place	0	0
<b>Total number of breaches in Q3</b>	<b>5</b>	<b>£9,721,982</b>

It is not uncommon for breaches to occur within contracting authorities, and they are normally unintentional. 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 Q2**

Significant progress has been made to address the historical breaches relating to housing reported

in Q2 and this work will also address the majority of housing related breaches listed in Appendix B below. The relevant officers are working with procurement to establish a procurement framework and expect to complete that tender exercise in the autumn of 2026.

#### **8.2.4 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:

- Between May 2025 and October 2025 extensive training provided to c150 key procurers within the organisation.
- A Breach Procedure Note has been incorporated withing the Council's Constitution following consultation with the Portfolio Holder for Procurement Policy.
- A Procurement and Contract Assurance Board has been established and met for the first time in January 2026. The Board will also scrutinise off-contract spending, aiming to reduce costs by identifying opportunities to utilise existing contracts and aggregate spend by category across services. The Board will oversee the delivery, compliance, and effectiveness of procurement and contract management.

South West Audit Partnership (SWAP) worked with procurement to undertake a Contracts Register audit in February 2026. SWAP assessed:

- The council's contract and procurement policies, procedures and forms are complete, kept up to date and clearly identify areas of responsibility.
- The council's contract register is accurate and contains complete and current information to comply with legislation.
- The council maintains accurate and complete records of the contracts it holds at directorate/service level.
- The council has provided appropriate training to officers responsible for maintaining the contract register.

The outcome was one of Substantial Assurance sample testing confirmed that in most instances the contract register is accurate. Similarly, SWAP's benchmarking with partner councils indicated that the Council's processes are equivalent to or more comprehensive than responding councils. The procurement team are of the opinion that this latest audit indicates that procurement compliance is significantly improving within the Council.

### **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

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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 Q3 2025/2026

Waiver/ Direct award 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
WA00011	Food Waste Caddies	Operations/ Environment & Waste	Head of Service – Environment & Waste	Peter Ridley Waste Systems	30/09/2025	30/04/2026	N/A	£106,488.52	<b>Compliant Direct Award via Framework</b>
WA00012	Direct Award – Integrated Provision of Financial Transaction Services across ECC's Car Park Estate	Corporate Resources/ Commercial Assets	Strategic Director, Corporate Resources	Planet Merchant Services Ltd	01/11/2025	30/04/2027	A short-term contract will cover the urgent car park equipment installation without exceeding the UK services threshold, with a competitive process to follow for the long-term payment solution.	£175,000.00	Limited Markets
WA00013	Topsham Museum – Re Rendering and Associated Repairs Works Contract, Consultancy Services, Fees and Temporary Protection Works	Operations/Asset Maintenance	Strategic Director, Operations	Mercury Construction , Norse South West	13/10/2025	28/02/2026	A further waiver is now required to enable substantial and essential additional identified works previously unforeseen	£428,430.00	Increased cost/Loss of Income
WA00014	Bowling Green Marsh Consultancy	Operations/ Engineering & Assets	Head of Service, Operations	RSK Environment Ltd, T/A Binnies UK	27/10/2025	27/03/2026	N/A	£25,000.00	<b>Compliant Direct Award via Framework</b>
WA00015	Housing First and Homelessness Prevention Project	People & Communities/ Housing Needs	Strategic Director, People	Bournemouth Churches Housing Association (BCHA)	01/04/2025	31/03/2026	N/A	£206,121.00	Limited Markets
WA00016	To procure 2 years support for annual billing process (26/27 and 27/28)	Corporate Resources/ Finance	Head of Service, Finance	MRI (formerly Capita One Limited)	01/04/2026	31/03/2027	A 10% discount has been offered for a 2 year instruction, which equates to a saving of £4,353	£39,181.00	Limited Markets

<b>WA00017</b>	Mary Arches MSCP, Exeter – Ongoing hire and inspections of health and safety protection scaffolding	Operations/Asset Maintenance	Strategic Director, Operations	Apex Scaffolding	01/01/2024	31/03/2026	Ongoing hire and inspections of protection scaffolding, removing the requirement to obtain new quotes which if the successful bidder is not the incumbent supplier would require the removal of existing scaffold and re installation by new supplier with the reputational damage and additional costs to the Council	£31,375.00	Increased Cost/Loss of Income
<b>WA00018</b>	Electrical Audits	Operations/Asset Maintenance	Head of Service, Asset Maintenance	GCS Compliance Ltd	01/04/2025	31/03/2026	N/A	£25,193.01	Limited Markets
<b>WA00019</b>	Gas Audits	Operations/Asset Maintenance	Head of Service, Asset Maintenance	GCS Compliance Ltd	01/04/2025	31/03/2026	N/A	£25,193.01	Reputational Damane
<b>WA00020</b>	The Corn Exchange, Exeter – Ongoing hire and inspections of health and safety protection scaffolding and including scaffold removal costs	Operations/Asset Maintenance	Strategic Director, Operations	Mercury Construction, Norse South West?		31/03/2026	Ongoing hire and inspections of protection scaffolding, removing the requirement to obtain new quotes which if the successful bidder is not the incumbent supplier would require the removal of existing scaffold and re installation by new supplier with the reputational damage and additional costs to the Council	£79,000.00	Increased Cost/Loss of Income
<b>WA00021</b>	Procurement of a refurbished baler for plastics	Operations/ Environment & Waste	Strategic Director, Operations	South West Compactor Services	01/01/2026	31/01/2026	N/A	£35,000.00	Increased Cost/Loss of Income

<b>WA00026</b>	Design Consultant for Riverside Leisure Centre Decarbonisation Project	Place/ City Centre & Net Zero	Strategic Director, Place	Atkins Realis	01/10/2025	31/03/2028	To assist in the procurement and design assessment of all stages of the design build and installation work for 3 years	£495,000.00	<b>Compliant Direct Award via Framework</b>
<b>WA00023</b>	Wonford Community Wellbeing Hub – Lead Architect and Designer	Executive Office	Executive Office Manager	SPACE & PLACE AFLSP LTD	02/01/2026	30/09/2026	N/a	£160,000.00	<b>Compliant Direct Award via Framework</b>

**Appendix B – Breach of Contract and Procurement Procedures Recorded Q3 2025/2026**

Contract/Project Description	Directorate/Service Responsible	Nature of Breach	Breach Specifics	Breach Value	Actions Taken
10 rooms Supported Temporary Accommodation Housing Management & Support provided in-house.	People & Communities/ Housing Needs	Non-compliance with legislation	<p>Failure to run a competition process</p> <p>This is an historical breach that officers have identified through improved understanding of procurement rules and are actively working to address the matter.</p>	£3,728,123.00	Procurement being progressed. Pre-market engagement currently being undertaken.
16 rooms Housing Management Breakfast provided	People & Communities/ Housing Needs	Non-compliance with legislation	<p>Failure to run a competition process.</p> <p>This is an historical breach that officers have identified through improved understanding of procurement rules and are actively working to address the matter.</p>	£2,667,007.78	Procurement being progressed. Pre-market engagement currently being undertaken.
5 rooms Young person's accommodation, housing management and support services	People & Communities/ Housing Needs	Non-compliance with legislation	<p>Failure to run a competition process</p> <p>This is an historical breach that officers have identified through improved understanding of procurement rules and are actively working to address the matter.</p>	£1,189,063.84	Procurement being progressed. Pre-market engagement currently being undertaken.

<p>Sydney Place &amp; Pennsylvania Road accommodation with housing management</p>	<p>People &amp; Communities/ Housing Needs</p>	<p>Non-compliance with legislation</p>	<p>Failure to run a competition process.</p> <p>This is an historical breach that officers have identified through improved understanding of procurement rules and are actively working to address the matter.</p>	<p>£2,113,722.02</p>	<p>Procurement being progressed. Pre-market engagement currently being undertaken.</p>
<p>Corn Exchange. Installation of emergency scaffolding</p>	<p>Operations/Asset Maintenance</p>	<p>Non Compliance with Exeter City Council Rules</p>	<p>Exemption(s)/waiver(s) have expired &amp; value exceeded</p>	<p>£24,064.56</p>	<p>Waiver(s) have been requested</p>