

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Annual Breaches, Waivers & Exemptions Report 2019/20																								
Meeting date	30 July 2020																								
Status	Public Report																								
Executive summary	<p>This report sets out the breaches, waivers and exemptions of Financial Regulations which have occurred during the 2019/20 financial year and highlights the following:</p> <table border="1"> <thead> <tr> <th></th> <th colspan="2">2019/20 BCP Council</th> <th colspan="2">2018/19 (legacy Councils)</th> </tr> <tr> <th></th> <th>Breaches</th> <th>Waivers & Exemptions</th> <th>Breaches</th> <th>Waivers & Exemptions</th> </tr> </thead> <tbody> <tr> <td>Total (count)</td> <td>8</td> <td>66</td> <td>4</td> <td>93</td> </tr> <tr> <td>Total (£ value)</td> <td>£171,625</td> <td>£13.8M</td> <td>£3,083</td> <td>£8.5M</td> </tr> </tbody> </table> <p>The relatively low number of breaches and lower level of waivers compared to previous years (from legacy Councils) indicate that there was generally a good level of understanding of the Regulations.</p> <p>The Chief Finance Officer, or formally delegated representative, agreed 66 waivers/exemptions totalling £13.8M.</p> <p>Whilst full compliance can never be guaranteed and 'under-reporting' is an inherent possibility, arrangements were in place to detect instances of non-compliance.</p> <p>An effective and transparent breaches / waivers / exemptions governance process maximises the chances of the Council achieving value for money and complying with UK law (Public Contract Regulations 2015) when procuring goods, services or works.</p>						2019/20 BCP Council		2018/19 (legacy Councils)			Breaches	Waivers & Exemptions	Breaches	Waivers & Exemptions	Total (count)	8	66	4	93	Total (£ value)	£171,625	£13.8M	£3,083	£8.5M
	2019/20 BCP Council		2018/19 (legacy Councils)																						
	Breaches	Waivers & Exemptions	Breaches	Waivers & Exemptions																					
Total (count)	8	66	4	93																					
Total (£ value)	£171,625	£13.8M	£3,083	£8.5M																					
Recommendations	<p>It is RECOMMENDED that:</p> <p>The Audit & Governance Committee note the breaches, waivers and exemptions of Financial Regulations that occurred during 2019/20.</p>																								
Reason for recommendations	To comply with Financial Regulations which require that all breaches, waivers and exemptions are considered annually by the Audit & Governance Committee.																								

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Corporate Director:	Julian Osgathorpe, Corporate Director of Resources
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Wards:	Council-wide
Classification:	For Information

Background

1. Financial Regulations set out the procedures and standards for financial management and control, and specifically:
 - the purpose of each section in the relevant Part of the Regulations (why it is important);
 - the standards and controls that must be observed (how the Regulations serve to facilitate the good governance and the proper administration of the Council's financial affairs);
 - the specific roles and responsibilities of Councillors, the Chief Executive, the Chief Financial Officer (CFO) / S151 Officer, the Monitoring Officer and other named Officers in relation to doing so (the accountability framework); and
 - detailed procedure notes and relevant financial thresholds where these apply (what must be done and in what way).
2. The Regulations require that all breaches, waivers and exemptions of financial regulations are reported to the CFO / S151 Officer or their delegated officer along with details of any management action to address the issues arising. A combination of Internal Audit and the Strategic Procurement Teams maintained a record of all Breaches, Waivers and Exemptions to enable full, transparent and accurate reporting to Audit & Governance Committee.

Breaches of Financial Regulations

3. During the 2019/20 financial year eight breaches of Financial Regulations were identified, totalling £171,625 (compared to 4 breaches, totalling £3,083 in 2018/19 legacy Councils), and as summarised in the table below:

Breach Ref.	Service	Detail of Breach	Value
Br1	St Edwards School	Failure to obtain 3 quotes for air conditioning work.	£14,974
Br2	Environment	Failure to obtain formal written tenders for material supplies on two occasions.	£126,000 (£88,000 + £38,000)
Br3	Destination & Culture	Failure to obtain formal written tender for delivery of Adult Learning brochure.	£30,000

Br4	Environment	Failure to issue receipts for Hengistbury Head Land Train income for a temporary period. Note value of individual transactions very low.	N/A
Br5	Environment	Failure to bank income promptly and in full for Hengistbury Head. Note low value of income retained (coins for change)	N/A
Br6	Destination & Culture (Seafront Income)	Failure to ensure cash holdings do not exceed insurance limit for Seafront Income.	£500
Br7	Organisational Development	Failure to issue receipts for Blue Badge cash income.	£151
Br8	Destination & Culture (Libraries)	Failure to issue receipts and also failure to ensure separation of duties for cashing up for Library Income. Note value of individual transactions very low).	N/A
		Total	£171,625

4. Further explanations on some of the more significant breaches (by £ value) are outlined below:

➤ Br2, Environment, £126,000

As part of an Internal Audit review the Oracle Financial System was interrogated to identify where expenditure with Material Suppliers was above the £30,000 threshold at which the Financial Regulation and Procurement Rules require formal written tendering to take place. It was found that in two cases (Gibbs & Dandy Ltd £88k, and New Milton Sand & Ballast £38k) the suppliers had been selected on the basis that they were considered, by officers within the service, to be the only practical suppliers due to their location, rather than via a fully compliant tendering process. The officers within the service should have obtained a CFO/Sec151 officer waiver approval.

The Service Director has taken steps to ensure that all officers involved in the procurement of works, goods and services understand the requirements placed upon them by the Council's Financial Regulations & Procurement Rules and by the Public Contract Regulations 2015.

➤ Br3, Destination & Culture, £30,000

As part of an Internal Audit review it was identified that Adult Learning had used Royal Mail for the delivery of the 2019/20 Adult Learning brochure due to problems with the previous supplier. The officers within the service should have obtained a CFO/Sec151 officer waiver approval.

Adult Learning and Procurement Services confirmed they are working together to ensure that future procurement activities associated with the production and distribution of the Adult Learning brochure is undertaken in line with Financial Regulations.

5. This low level of breaches suggests a good level of understanding of the requirements amongst managers and officers and has resulted in good compliance with the Regulations.
6. While it is not possible to say that there have been no further breaches, at the current time none have been brought to the attention of, or have been identified by, the Head of Audit & Management Assurance or the Head of Strategic Procurement for the reporting period considered here.

Waivers and Exemptions of Financial Regulations

7. Sometimes circumstances mean that it may not be possible for Senior Responsible Officers to comply with a specific part of the Regulations. For example:
 - technical issues where despite a full tendering process being undertaken the number of valid tender returns did not match the requirement in the Regulations; or
 - accelerated procurement because of the necessity to deal with an urgent business need.

As a result, the Regulations allowed for a request to be made to the CFO / S151 Officer (or formally delegated representative) to waive or exempt normal practice requirements. The ability of the CFO to approve waiver or exemption requests was limited at all times to the specific requirements of UK legislation and/or directives. Consequently, some requests were declined, and the Regulations were followed in full.

8. During the period 1 April 2019 to 31 March 2020, a total of 66 requests were approved by the CFO. The contract value of these waivers totalled £13.8M (this is a rounded figure).
9. A summary by classification type of waivers/exemptions approved by the CFO is set out in the table below and more details of each waiver is set out in Appendix 1.

Waiver Type	Total (19/20) BCP	Total (18/19) Legacy Councils
Limited suppliers (did not invite or obtain 3 quotes or tenders)	48	81
Urgency	9	7
Other *	9	5
Total (Count)	66	93
Total (£ value in £M)	£13.8	£8.5

*examples include payments in advance greater than £10,000 or six months, or not using an available corporate contract or use of framework agreement/specialist list.

10. The lower level of total waivers for BCP Council (66) compared to combined legacy Councils (93) indicate a good level of understanding of the Regulations. It is recognised that there may have been a higher than average level of waivers for legacy Councils (in 18/19) as they prepared for transition to the new organisation in 2019/20.

11. The total value of waivers for BCP Council (£13.8m) has increased compared to legacy Councils (£8.5m). Comparing total waiver values year on year is of limited value because of the differing nature and type of each contract being waived.
12. If a member of this Committee has a question pertaining to any specific waiver in the Appendix, then it may be necessary to answer the question outside of the committee meeting as the Head of Audit & Management Assurance may not have detailed explanations to hand for all 66 records. However, further explanations on some of the more significant waivers (by £ value) are outlined below:

- Record 4, waiver reference 146, Provision of building and community based day opportunities, £2,847,867

There are limited providers of this type of service in the area and the majority of clients have been receiving services from current providers for a number of years. Commissioning services from outside the area would result in higher costs and disruption to clients. The intention is to review the arrangements over these three years. A 3 year waiver was requested to allow sufficient time to review the contractual arrangements as well as maintaining consistency of provision to clients across BCP Council.

- Record 43, waiver reference W00499, Housing Related Support Single Homeless Pathway, £1,389,358

The Housing Related Support Single Homeless Pathway is made up of six contracts delivering Housing Related Support to help clients to learn and/or maintain life skills including budgeting, menu planning, cooking, guidance on personal hygiene and taking medication. The providers also support clients to access services to help them with substance misuse, alcohol problems and mental health problems and support for clients to access employment, training and education and attend medical appointments. The primary objective is to enable the clients to sustain a tenancy and eventually move on to independent living. Within the second stage of Single Homeless Pathway, the provider also offers transitional support following move on.

The provider is required to submit Quarterly KPI's to evidence outcomes, throughput and utilisation. The services are also monitored annually using the QAF (Quality Assessment Framework).

These are contracts that were transferred to housing services from adult social services, due to the short notice in transfer and future design and development of services, it has not been possible to carry out procurement procedures. The key reason for requesting this Waiver is to enable the contracts to be extended for a period of 24 months to provide sufficient time for Housing to carry out a strategic review with their current contracts and to assess future BCP Council requirements, tender and implement.

The waiver also covers off the fact payments have been paid four weeks in advance since the start of the Supporting People programme.

- Record 62, waiver reference 149, Herbert Avenue temporary accommodation, £2,443,399

Planned work to construct new accommodation for temporary housing for the homeless. The units are to be energy efficient and have low running costs and be fully self-contained. Following an open tender process, the tender bid by Talo Build required the use of an Escrow account as a method of making advance payments. Therefore, a waiver of Financial Regulations was required to agree the schedule of advanced payments.

- Record 65, exemption reference E00035, Care and Support for Adults with a Learning Disability and/or Autism – Not commissioning care from a framework providers, £2,600,000

This exemption is in place for those individual packages, where a framework supplier, for the Care and Support for Adults with a Learning Disability and/or Autism, cannot be used in the following scenarios:

1. The brokerage Team are unable to source care due to supplier capacity from the framework – This course of action will only be considered when there is a pressing need.
2. Where in exceptional circumstances the specialist nature of the care is not possible to source from the framework suppliers.
3. Where care may be required outside of area not covered by framework suppliers.
4. Where packages of care and support are to be provided by DHUFT as the provider of last resort.

Packages are under constant review and transferred back to framework providers if possible. All off contract providers placements would be individually agreed through the brokerage team.

The Framework for Care and Support for Adults with a Learning Disability and/or Autism value is circa £13m p.a. The value of suppliers covered by this exemption equates between £260,000 and £650,000 p.a., this is estimated at between 2% and 5% of the total framework value for 4 years from April 2019.

Options Appraisal

13. An options appraisal is not applicable for this report.

Summary of financial implications

14. An effective and transparent breaches/waivers/exemptions governance process maximises the chances of achieving value for money when procuring goods, services or works.

Summary of legal implications

15. An effective and transparent breaches/waivers/exemptions governance process maximises the chances of complying with Public Contracts Regulations 2015 (UK law).

Summary of human resources implications

16. There are no direct human resource implications arising from this report.

Summary of sustainability impact

17. There are no direct sustainability impact implications from this report.

Summary of public health implications

18. There are no direct public health implications from this report.

Summary of equality implications

19. There are no direct equality implications from this report

Summary of risk assessment

20. Failure to have appropriate financial regulations and procurement rules which ensures accountable and transparent processes are in place puts the Council at risk of challenge.

Background papers

None

Appendices

Appendix 1 - Waivers & Exemptions of Financial Regulations 2019/20