

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Annual Breaches & approved Waivers of Financial Regulations Report for 2022/23																																	
Meeting date	27 July 2023																																	
Status	Public Report																																	
Executive summary	<p>This report sets out the breaches and waivers of Financial Regulations (the Regulations) which have occurred during the 2022/23 financial year and highlights the following:</p> <table><tr><th></th><th colspan="2">2022/23</th><th colspan="2">2021/22</th><th colspan="2">2020/21</th></tr><tr><th></th><th>Breaches</th><th>Waivers</th><th>Breaches</th><th>Waivers</th><th>Breaches</th><th>Waivers</th></tr><tr><td>Total (count)</td><td>11</td><td>47</td><td>4</td><td>77</td><td>5</td><td>116</td></tr><tr><td>Total (£ value)</td><td>£1,172,738</td><td>£3.2m</td><td>£1,347,429</td><td>£6.3m</td><td>£870,561</td><td>£12.6m</td></tr></table> <p>Whilst no breaches of Financial Regulations is the preferable position, the relatively low number of breaches suggests a good level of understanding of the requirements amongst managers and officers in the majority of service directorates and has resulted in general compliance with the Regulations.</p> <p>Whilst full compliance can never be guaranteed and ‘under-reporting’ of breaches, in particular, is an inherent possibility, arrangements were in place to detect instances of non-compliance</p> <p>The Chief Finance Officer, or formally delegated representatives, have agreed 47 waivers totalling £3.2m.</p> <p>For 2022/23, the lower number (47) of approved waivers shows a reassuring drop from the exceptional covid19 impacted 2020/21 year (116) and the partially covid impacted 2021/22 year (77). The comparison by £ value is more reassuring again as significantly less Council expenditure is now subject to an approved waiver, this means that a greater proportion of the Council's total expenditure is subject to the full requirements set out in the Council's Financial Regulations.</p> <p>An effective and transparent breaches and waiver governance process maximises the chances of the Council achieving value for money and complying with UK Procurement Legislation (Public Contract Regulations 2015 (PCR15)) principles when procuring goods, services or works under PCR15 thresholds.</p>							2022/23		2021/22		2020/21			Breaches	Waivers	Breaches	Waivers	Breaches	Waivers	Total (count)	11	47	4	77	5	116	Total (£ value)	£1,172,738	£3.2m	£1,347,429	£6.3m	£870,561	£12.6m
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Recommendations	It is RECOMMENDED that: The Audit & Governance Committee note the breaches & waivers of Financial Regulations that occurred during 2022/23.
Reason for recommendations	To comply with Financial Regulations which requires that all breaches & waivers are considered annually by the Audit & Governance Committee.
Portfolio Holder(s):	Cllr Mike Cox, Portfolio Holder for Finance
Corporate Director	Ian O'Donnell, Corporate Director for Resources
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Wards	Council-wide
Classification	For Information

Background

1. Financial Regulations (the 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 Councils 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 and waivers 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 the Internal Audit and Strategic Procurement Teams maintained a record of all breaches and waivers to enable full, transparent and accurate reporting to Audit & Governance Committee.
3. It should be noted the details of breaches and waivers in this report are all recorded under the named service directorates operating at the commencement of the 2022/23 financial year. Several service directorate name changes have occurred, due to corporate restructuring, at the end of 2022/23 for example the Destination & Culture service directorate has been replaced predominantly with the new Commercial Operations service directorate.

Breaches of Financial Regulations

4. During the 2022/23 financial year eleven breaches of Financial Regulations have been identified, totalling £1,172,738 (compared to four breaches, totalling £1,347,429 in 2021/22). Details of the eleven breaches are outlined below:

➤ Br1, Destination & Culture, £94,444

A museum roof project was carried out, which was expected to exceed £25,000 (£10k for design and £84k for building works), without involving the Strategic Procurement Team.

A waiver for the works under the 'limited suppliers in the market' category was not obtained.

Financial Regulation training has been provided to all relevant staff to prevent a recurrence and the Strategic Procurement Team will be involved on all projects expected to exceed £25,000.

➤ Br2, Growth & Infrastructure, £13,473

Waivers were in place to continue with existing planning software systems whilst a new consolidated planning software contract for BCP was being procured.

However, the procurement process was delayed and a further waiver to cover the extended period was not sought.

The Officer who undertook the extension is now aware of necessity to complete waiver form for all contract extensions and a waiver was completed to cover all remaining payments for the legacy system software until the new system is in place.

➤ Br3, Communities, £39,125

A wellbeing experience project funded by European Regional Development Funding (ERDF) was carried out without involving the Strategic Procurement Team.

A waiver to cover the project was not sought as the officer involved believed that procurement rules had been followed through the ERDF funding process.

The officer has been reminded of Financial Regulations requirements and to involve the Strategic Procurement Team for any contracts exceeding £25k.

➤ Br4, Housing, £30,939

As part of an Internal Audit review it was identified that a purchase order was raised for a contract covering 'quality control gas audit inspection and report' for which the contractor was understood to be the only available supplier at the time.

There was no waiver sought, nor had there been any Strategic Procurement Team involvement as required by Financial Regulations.

Management have issued reminders to the team to ensure that waivers/procurement decision records are completed under the guidance of the Strategic Procurement Team.

➤ Br5, Housing, £118,000

As part of an Internal Audit review it was identified that more than £118k has been paid to an external consultant for carrying out fire risk assessments and inspections.

There was no evidence of a contract or waiver on file, nor had there been any Strategic Procurement Team involvement as required by Financial Regulations.

Management have agreed to work with Strategic Procurement Team to ensure that appropriate arrangements are put in place to manage this type of work and this should prevent a recurrence.

➤ Br6, Housing, £89,000

As part of an Internal Audit review it was identified that a purchase order was raised for £89k to carry out annual water hygiene inspections and testing.

Although a contract was previously in place with the supplier, this had expired and no formal extension had been agreed with the Strategic Procurement Team.

The service has now been brought in-house for Housing assets. Options are being explored to put a corporate water quality contract in place in liaison with the Strategic Procurement Team.

➤ Br7, Housing and other service directorates, £250,000

As part of an Internal Audit review it was identified that payments totalling approximately £250k have been made across the Council to an asbestos services supplier.

This amount largely comprised of many small-scale asbestos removal jobs and individual property surveys commissioned by officers across various Housing teams, however no waiver or extension was put in place following the expiry of the contract in 2021. The absence of a single point of oversight for this arrangement meant that procurement thresholds were breached when considered in aggregate terms.

A 'Centre of Property Excellence' is being defined including the planned implementation of Corporate Landlord model. This will help to coordinate activities / spend with individual suppliers across all compliance functions.

➤ Br8, Housing, £34,557

As part of an Internal Audit review it was identified that a purchase order was raised in respect of an asbestos surveying programme.

However there was no current contract in place with the supplier nor did the Strategic Procurement Team have involvement in this case in contravention of Financial Regulations. Officers believed that the procurement was part of a framework agreement which was later found to be incorrect.

A Centre of Property Excellence is being defined including implementation of a 'Corporate Landlord model' which will help to improve procurement arrangements across all compliance functions. Officers will be reminded of the need to confirm individual contractors' participation in frameworks prior to purchase.

➤ Br9, Destination & Culture, £43,200

A process was undertaken to procure interpretation services for a museum project.

An administrative oversight meant that procurement approval documents (i.e. waiver /PDR) were prepared but not signed before the contract was awarded.

A checklist has been created to ensure paperwork has been completed in advance of proceeding, following tender exercises.

➤ Br10, Communities, £35,000

A formal extension letter was issued to the existing supplier for the operation of Christchurch Street Market. However the Strategic Procurement Team were not involved and formal approval records (waiver/PDR) were not completed.

Management will work together with the Strategic Procurement Team to ensure the full re-tender is completed.

Staff training will be put in place to ensure this does not happen in future.

➤ Br11, Destination & Culture, £425,000 (rounded)

A Procurement Decision Record (PDR) was appropriately created for an initial £25,000 to commission a strategy and action plan for the project. A commissioning officer wrongly assumed this PDR then covered further work associated with delivering the strategy and action plan, and further purchase orders were raised over a period of about 9 months.

The Head of Service is currently investigating the detail of this breach, supported by the new Director of Commercial Operations.

A further update will be presented to the A&G Committee when this investigation has been concluded and the outcomes are clear. In the interim the Head of Audit & Management Assurance was asked by the Director, and has delivered, a training and awareness session covering BCP Council Financial Regulations and Public Contract Regulations 2015 requirements for commissioners within the new Commercial Operations Directorate.

5. The five breaches that occurred in the Housing service directorate (BR4,5,6,7&8) were all identified as a result of an Internal Audit review on Housing Assets – Health & Safety Compliance 2021/22. Management have agreed to work with the Strategic Procurement Team to ensure future compliance with Financial Regulations.
6. Whilst no breaches of Financial Regulations is the preferable position, the relatively low number of breaches in overall context, although higher than last year, suggests a good level of understanding of the requirements amongst managers and officers in the majority of service directorates and has resulted in general compliance with the Regulations.
7. 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. Should previous period ‘breaches’ be identified, they will always be reported to the Audit & Governance Committee during the next available reporting period.

Waivers of Financial Regulations

8. Sometimes circumstances mean that it may not be possible for Senior Responsible Officers to comply with a specific part of the Council's Financial Regulations.
9. As a result, the Regulations allow for a request to be made to the CFO / S151 Officer (or formally delegated representative) to waive normal practice requirements. The ability of the CFO to approve waiver 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.

10. The CFO (or formally delegated representative) may approve a waiver in the following procurement circumstances:
- Accelerated procurement (in the case of urgency for example) where the Council would suffer significant negative impact if the full operational or strategic procurement approach is applied.
 - Limited suppliers in the market (did not invite or could not obtain 3 quotes or tenders).
 - Propose not to use an available Corporate Contract or available and existing in-house service.
 - Payments in advance for goods and services exceeding £25,000 or six months (and also over £1,000) ((except where T&C's approved by Legal Services apply).
 - Any payment in advance for works (except where T&C's approved by Legal Services apply).
11. During the period 1 April 2022 to 31 March 2023, a total of 47 waiver requests were approved by the CFO. The contract value of these waivers totalled £3.2M (this is a rounded figure).
12. A summary by classification type of waivers 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 2022/23	Total 2021/22	Total 2020/21
a) Accelerated procurement including urgency	19	27	34
b) Limited supplier- could not invite 3 quotes	19	50	81
Limited supplier - did not invite 3 quotes	9		
c) Not use an available Corporate Contract	0	0	0
d) Payments in advance for works, goods or services	4*	0	1
Total	47*	77	116
Total (£ value in £M)	£3.2	£6.3	£12.6

*The payment in advance waivers are not included in the total as they were additional elements to waivers already counted in lines a, b or c.

It was reported this time last year, for years 2020/21 and 2021/22, that a significant number of waivers were materially due to the impact of the covid19 pandemic. During the pandemic, particularly the early stages in the spring and summer of 2020, the number of 'Limited supplier' waivers (did not invite or could not obtain 3 quotes or tenders) increased because a significant number of suppliers were asked but could not supply a quote, or supply the goods, services or works to the Council. Some suppliers closed completely as a result of the Government's 'furlough' scheme whilst others were running at reduced capacity.

13. For 2022/23, the lower number (47) of approved waivers shows a reassuring drop from the exceptional covid19 impacted 2020/21 year (116) and the partially covid impacted 2021/22 year (77). The comparison by £ value is more reassuring again as significantly less Council expenditure is now subject to an approved waiver, this means that a greater proportion of the Council's total expenditure is subject to the full requirements set out in the Council's Financial Regulations.
14. There continues to be an impact on waiver numbers caused by 'Transformation Programme' activity where some incumbent supplier contracts have been extended to allow time for redesign, for new procurement processes to take place and to align the end date of legacy Council contracts to the same date. Where incumbent suppliers have been awarded extended contracts, these are shown in the 'Limited suppliers – Could not invite 3 quotes' category.
15. If a member of this Committee has a question pertaining to any specific waiver in the Appendix 1, 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 47 records.

Procurement Decision Records (PDRs)

16. Various different Procurement Decision Records are necessary at set 'gateways' to document the approach and decisions taken in the stages of the procurement process for contracts exceeding £5,000. There is a more complex formal process for contracts exceeding £25,000.
17. PDRs are completed by officers responsible for the procurement process and authorised by the senior responsible officer, normally the director and the Head of Strategic Procurement.
18. A copy of the PDR is sent to the Strategic Procurement Team to arrange for the details therein to be uploaded to the Council's Contract Register.

Options Appraisal

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

Summary of financial implications

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

Summary of legal implications

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

Summary of human resources implications

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

Summary of sustainability impact

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

Summary of public health implications

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

Summary of equality implications

25. There are no direct equality implications from this report

Summary of risk assessment

26. 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 of Financial Regulations 2022/23