

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Annual Breaches & approved Waivers of Financial Regulations Report for 2023/24																																	
Meeting date	25 July 2024																																	
Status	Public Report																																	
Executive summary	<p>This report sets out the breaches and waivers of Financial Regulations (the Regulations) which have occurred during the 2023/24 financial year and highlights the following:</p> <table border="1"> <thead> <tr> <th></th><th colspan="2">2023/24</th><th colspan="2">2022/23</th><th colspan="2">2021/22</th></tr> <tr> <th></th><th>Breaches</th><th>Waivers</th><th>Breaches</th><th>Waivers</th><th>Breaches</th><th>Waivers</th></tr> </thead> <tbody> <tr> <td>Total (count)</td><td>7</td><td>35*</td><td>11</td><td>47</td><td>4</td><td>77</td></tr> <tr> <td>Total (£)</td><td>£15,417,745</td><td>£0.7m*</td><td>£1,172,738</td><td>£3.2m</td><td>£1,347,429</td><td>£6.3m</td></tr> </tbody> </table> <p>* direct comparison to previous years cannot be made due to changes in waiver categories as explained in paragraph 9.</p> <p>Whilst no breaches of Financial Regulations is the preferable position, the relatively low number of breaches again 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 Director of Finance, or their formally delegated representative, has agreed 35 waivers totalling £0.7m.</p> <p>For 2023/24, the lower number (35) of approved waivers compared to 2022/23 represents changes in waivers categories (in particular waivers could only be applied for <£25k) but also shows that 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>							2023/24		2022/23		2021/22			Breaches	Waivers	Breaches	Waivers	Breaches	Waivers	Total (count)	7	35*	11	47	4	77	Total (£)	£15,417,745	£0.7m*	£1,172,738	£3.2m	£1,347,429	£6.3m
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Recommendations	It is RECOMMENDED that: The Audit & Governance Committee note the breaches & waivers of Financial Regulations that occurred during 2023/24.
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	Graham Farrant, Chief Executive
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Wards	Council-wide
Classification	For Information

Background

- 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), 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).
- The Regulations require that all breaches and waivers of Financial Regulations are reported to the CFO or their delegated representative 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.

Breaches of Financial Regulations

- During the 2023/24 financial year seven breaches of Financial Regulations have been identified, totalling £15,417,745 (compared to eleven breaches, totalling £1,172,738 in 2022/23). Details of the seven breaches are outlined below:

➤ Br1, Infrastructure, Passenger Transport, approximately £10m

The Council's passenger transport service was originally commissioned using a framework contract and extended for a year as allowed by the contract. However, due to ongoing disruption and capacity issues in the service, the update of the contract specification and terms and conditions were not finalised in time to enable tendering to take place before this revised end date.

In the interim, the Passenger Transport Manager was instructed by Strategic Procurement to develop new off-contract arrangements together with re-negotiation of some critical routes with existing suppliers. However, a waiver or PDR to formalise the arrangements was not put in place. This process was allowable under Public Contracts Regulations 2015, however did not follow required internal processes to document the procurement process.

This breach was identified during an audit of the service in 2023/24 but related to the contact period September 2021 to September 2023 with an approximate value of £10m. A new contract has subsequently been put in place and no further breaches have occurred.

➤ Br2, Housing, deep cleaning Service for housing stock, £392,625

A total value of £392,625 cumulative spend with a single supplier for the cleaning services for BCP Housing stock was identified by the Head of BCP Homes which had not been subject to a tendering process or a waiver sought.

It was noted that not all of the identified expenditure was initiated by BCP Homes, but also by other services that procure services through the Housing Revenue Account.

The following recommendation was agreed with the Head of BCP Homes and progress is contained at the end of each area:

(a) Undertake a full tendering exercise for those activities identified in the breach and agree a contract in accordance with BCP Financial Regulations - *Complete*.

(b) BCP Homes reviews all supplier spend data for 2022/23 to confirm whether appropriate contracts are in place in accordance with Financial Regulations. Where contracts are duplicated, coming to end of term or otherwise considered redundant, a value for money review of alternatives should be undertaken accordingly - *Progress has been made with reviewing expenditure by supplier and developing an associated action plan which is due for completion by end of Sept 2024.*

(c) The above is included as a specific entry in the applicable Delivery and Alignment Plans to ensure that defined responsibility and timeframes for completing the review are in place and monitored – *Complete*.

➤ Br3, Environment, Bereavement services, Value N/A

Several areas of Financial Regulations regarding income controls were not complied with:

- No record kept of cash and cheque receipts
- No record of what goes into or out of the safe
- The safe key was not securely stored and was readily available to all staff
- Unable to confirm that two members of staff were present for post opening
- A delay in issuing official receipts for all cash and cheque income

The service has updated their procedures and associated fee booklet to show acceptable methods of payment. Cash and cheque payments have been minimised through the use of card and BACS payments. The service has also developed procedures for use of their safes to ensure compliance with the Financial Regulations control areas listed above.

➤ Br4, Environment, Bereavement Services, Value N/A

Customer debtor invoices were being raised outside of the corporate debtor invoicing system (Academy). Financial Regulations require that the CFO formally approves where corporate systems are not going to be used. No such approval was gained in this instance.

An interface between the new PlotBox system and Academy has now been developed. Officers have been reminded of the need to ensure CFO approval of financial systems and appropriate interfacing to corporate systems.

➤ Br5, Housing, Aspire Project, £9,120

A breach from 2022-23 (BR3) occurred after an additional £9,120 was spent with the same supplier for a project under the ASPIRE grant project.

Following advice from HR, the employee was formally issued with written management advice and guidance regarding the Council's Financial Regulations.

➤ Br6, Commissioning, Homecare Framework, approximately £5m

A waiver was produced to cover the use of 23 homecare suppliers over and above the Council's original agreed Homecare framework contract. A total of 45 suppliers were identified as providing off framework homecare services. This amounts to a further 22 suppliers over the agreed waiver number.

Soon after this issue was identified it was agreed by senior management that no further commissioning of homecare services from any off framework contacts would occur which ceased the non-compliance with the agreed procurement process.

➤ Br7, Environment, Green Space, £16,000

A commissioning officer was unaware of the requirement to obtain three quotes or a waiver for a project involving the thatching of a roof at Hengistbury Head.

Formal written management advice was given to the commissioning officer and their line manager.

4. Whilst no breaches of Financial Regulations is the preferable position, the relatively low number of breaches in overall context, which is also lower in terms of number of occurrences 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 Financial Regulations.
5. 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 be reported to Audit & Governance Committee during the next available reporting period.

Waivers of Financial Regulations

6. 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.
7. As a result, the Financial Regulations allow for a request to be made to the CFO (or their 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 Financial Regulations were followed in full.
8. The CFO (or formally delegated representative) may approve a waiver in the following procurement circumstances:
 - For procurements valued at under £25,000:
 - Accelerated procurement where the Council would suffer significant negative impact if the full operational or strategic procurement approach is applied.
 - Unable to invite or obtain 3 bids or competition absent for technical reasons.
 - For all procurements irrespective of value:
 - Payments in advance for goods, services or works.
 - Propose not to use an available Corporate Contract.
9. It should be noted that 2023/24 was a 'transitional' year for Waivers whereby changes were made to only allow waivers under further limited circumstances (as listed above). Further changes have been made in the 2024/25 Financial Regulations whereby reference to waivers throughout have been removed and replaced with the requirement for those decisions to be signed off as part of the existing Procurement Decision Records (PDRs) approval process. This change has clarified any ambiguity and will remove duplication of processes. The existing reporting requirements to Audit & Governance Committee will remain – the annual report that was Waivers and Breaches of Financial Regulations will now be PDR's and Breaches of Financial Regulations for reporting in July 2025.
10. During the period 1 April 2023 to 31 March 2024, a total of 35 waiver requests were approved by the CFO. The contract value of these waivers totalled £0.7m (this is a rounded figure).
11. A summary by classification type of waivers approved by the CFO is set out in the table below and more detail of each waiver is set out in Appendix 1.

Waiver Type		Total 2023/24
Waivers for procurements under £25,000	i) Accelerated procurement where the Council would suffer significant negative impact if the full operational or strategic procurement approach is applied.	0
	ii) Unable to invite or obtain 3 bids or competition absent for technical reasons	21
Waivers for all contract values	iii) Payments in advance for goods, services or works	12
	iv) Propose not to use an available Corporate Contract	2
Total		35
Total value		£0.7m

For reference only (direct comparison cannot be made in all cases due to changes in waiver categories as explained in paragraph 9 above) a summary of previous year waivers are listed in the table below.

Waiver Type	Total 2022/23	Total 2021/22
a) Accelerated procurement including urgency	19	27
b) Limited supplier- could not invite 3 quotes	19	50
Limited supplier - did not invite 3 quotes	9	
c) Not use an available Corporate Contract	0	0
d) Payments in advance for works, goods or services	4*	0
Total	47*	77
Total value	£3.2m	£6.3m

*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.

12. For 2023/24, the lower number (35) of approved waivers compared to 2023/23 represents changes in waivers categories (in particular waivers could only be applied for only <£25k) but also shows that 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.

13. 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 35 records.

Procurement Decision Records (PDRs)

14. Various PDRs 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.

15. 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.

16. 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.

17. As explained in paragraph 9 above, reference to waivers in the 2024/25 Financial Regulations have been removed and replaced with the requirement for those decisions to be signed off as part of the existing PDR approval process and for an annual report on PDRs and Breaches of Financial Regulations to be reported to Audit & Governance Committee in the future (first report July 2025).

Options Appraisal

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

Summary of financial implications

19. 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

20. 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

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

Summary of sustainability impact

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

Summary of public health implications

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

Summary of equality implications

24. There are no direct equality implications from this report

Summary of risk assessment

25. 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 2023/24