

Annual Report on Exceptions and Exemptions (Waivers) to Procedure Rules

Councillor CJ Spruce

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Agenda Item: 7

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Key Decision? NO

Local Ward Members Full Council

Lichfield
district council
www.lichfielddc.gov.uk

**AUDIT &
MEMBER
STANDARDS
COMMITTEE**

1. Executive Summary

- 1.1 To detail the Exception and Exemption (Waiver) process that was approved as part of the Contract Procedure Rules and applicable from the 2017/18 financial year.
- 1.2 To report on the number of Exceptions and Exemptions (Waivers) made to the Chief Executive for the financial year 2017/18 under the Contract Procedure Rules.

2. Recommendations

- 2.1 The Committee is asked to review the Exceptions (Waivers) set out within **APPENDIX A**.

3. Background

Procedure Rules and the role of Exceptions and Exemptions (Waivers)

- 3.1 Compliance with Procedure Rules is essential in order to demonstrate sound financial management of the Council's affairs. There are, however, occasions when an Exception or Exemption (Waiver) may be granted.
- 3.2 The process for granting an Exception or Exemption (Waiver) forms part of the approved Procedure Rules.
- 3.3 However, significant levels of Exception or Exemption (Waiver), without justifiable reasons, could potentially give rise to concerns that the Council was not achieving value for money. To ensure financial standards and probity in this process of granting Exceptions and Exemptions (Waivers) are maintained, an annual report is produced for Audit Committee.

Exceptions and Exemptions (Waivers) from 2017/18 under the Procedure Rules

- 3.4 To improve and simplify the Procedure Rules, all procurement requirements are now contained solely in the Contract Procedure Rules. The following actions are required in relation to the procurement of goods and services:

Transaction value	Procedure Rules
Up to £1000	A framework agreement if there is one, unless best value can be achieved through other procurement routes. For transactions valued below £1,000, you can use a purchasing card.
Between £1000 and £4,999	A framework agreement if there is one, unless best value can be achieved through other procurement routes. Three written quotations invited.

Transaction value	Procedure Rules
Between £5,000 and £24,999	<p>If no framework option—decide whether a bespoke contract is needed or whether the Council s standard terms and conditions will suffice.</p> <p>A framework agreement if there is one, unless best value can be achieved through other procurement routes.</p> <p>Three written quotations invited.</p> <p>If no framework option—decide whether a bespoke contract is needed or whether the Council s standard terms and conditions will suffice.</p> <p>·</p> <p>Must be entered on the Council s Contract Register.</p>
Between £25,000 and £74,999	<p>A framework agreement if there is one, unless best value can be achieved through other procurement routes.</p> <p>Three written quotations invited.</p> <p>If no framework option—decide whether a bespoke contract is needed or whether the Council s standard terms and conditions will suffice</p> <p>·</p> <p>Must be entered on the Council s Contract Register, the Tenders and Contracts part of the website and the Government Contract Finder website</p> <p>·</p> <p>Carry out a financial check in line with the supplier financial appraisal strategy.</p>
Any exception of £75,000 or above (Key Decision) requires a report to Cabinet	
Above £75,000 and up to the European Union prescribed limits	<p>A framework agreement if there is one unless best value can be achieved through other procurement routes and is agreed by the Monitoring Officer.</p> <p>Placed on the Tenders and Contracts part of the website and the Governments Contracts Finder Website.</p> <p>Three written tenders or quotations invited.</p> <p>If no framework option—decide whether a bespoke contract is needed or whether the Council s standard terms and conditions will suffice</p>
<p>EU Prescribed Limits</p> <p>Goods and Services Over £181,302</p> <p>Works £4,551,413</p>	<p>Special rules apply – see guidance from the Monitoring Officer.</p>

3.5 In addition, the Exception (Waiver) process contained in the Contract Procedure Rules has been updated and improved. The relevant paragraphs are extracted below for information:

- An exception to these rules means we give permission to agree a contract without keeping to one or more of these rules. We may grant an exception under conditions set out below. We cannot grant an exception if to do so would mean breaking any laws on public procurement or other relevant legislation.
- An exemption will automatically apply where we decide to use a framework agreement or to jointly contract with another public authority acting as the lead authority.
- The Chief Executive may grant an exception to these rules as detailed below. If you want an exception (other than those automatically covered which are listed below at paragraph U7 or at A14), you must apply in

writing using the request for waiver form and send it to the Solicitor and Monitoring Officer. Please include the exception you want and your reasons for it.

- The Solicitor and Monitoring Officer will keep a register of all exceptions to these Rules.
- We will not agree an application for an exception unless you have a good reason. We do not consider a lack of time caused by poor forward planning as a good reason and so will not allow it.

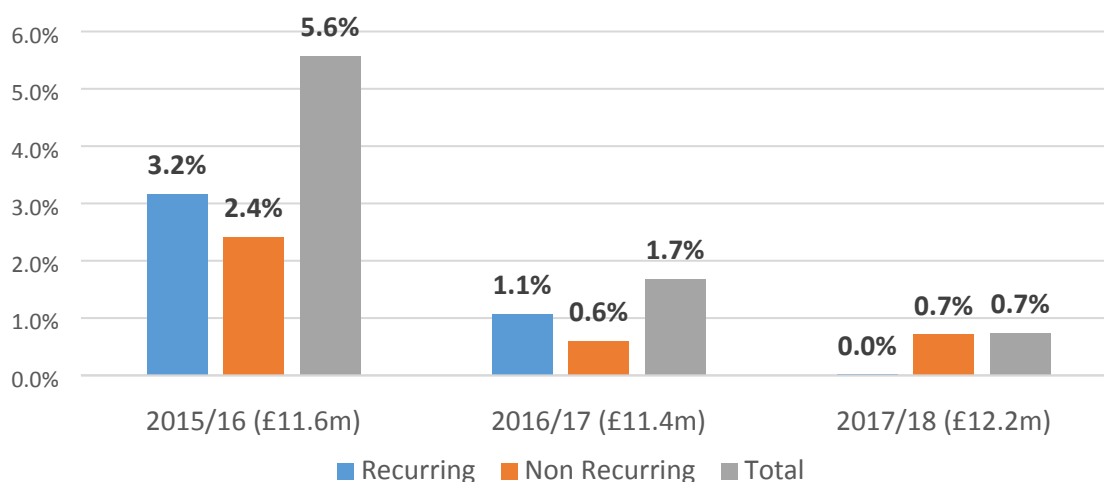
3.6 Exceptions which involve the request for waiver form related to General contracts and where an exception may be granted in the following circumstances are:

- If there is an unexpected emergency involving danger to life or health or serious damage to property, if the goods, work or services are needed more urgently than would be possible if we followed the tender or quotation procedure;
- If, for technical reasons, the goods, work or services can be bought from only one provider and this can be justified;
- If the proposed contract is an extension or change to the scope of an existing contract with a value (including the change or extension) that is below the relevant EU limit. However, this does not apply if the existing contract provides for an extension;
- If we can achieve value for money by buying used vehicles, equipment or materials; and
- To deliver our aims to develop the local economy, without breaking public procurement rules.

3.7 The level of Exceptions and Exemptions (Waivers) granted during 2017/18 and the previous two financial years is shown in summary in the financial implications section and in detail at **APPENDIX A** of this report.

Alternative Options	None.
Consultation	Any issues are considered at the time the Waiver is granted.
Financial Implications	<p>The Council procured goods and services during 2017/18 with a total value of £12.2m (2016/17 £11.4m). The majority of this procurement activity 99.3% (2016/17 98.3%) has been procured using procurement routes where a Director, Head of Service or Manager has determined that they are compliant with the requirements of the Procedure Rules.</p> <p>However, where a Director, Head of Service or Manager has determined that full compliance with the Procedure Rules cannot be achieved, an Exception or Exemption (Waiver) has been requested for approval based on the <u>estimated</u> level of spend.</p> <p>The <u>total</u> number of Waivers received in the last three years categorised¹ into recurring (where the same exception appears in multiple years) and non-recurring is summarised in the chart and table below:</p>

Recurring and Non Recurring Exceptions as a % of Procurement Spend



Type	2015/16		2016/17		2017/18	
	No.	£	No.	£	No.	£
Recurring Exceptions	18	£366,684	4	£121,784	1	£3,000
Non-Recurring Exceptions	44	£280,220	11	£68,976	6	£86,776
Total	62	£646,904	15	£190,760	7	£89,776
Exceptions as a % of procurement spend				1.7%		0.7%

The total Exceptions by the range of transaction value are shown in the table below:

Value	2015/16		2016/17		2017/18	
	No.	£	No.	£	No.	£
Unknown					1	
Between £501 and £4,999	33	78,323	7	23,656	2	£7,800
Between £5,000 and £9,999	12	106,047	4	26,180		
Between £10,000 and £49,999	16	372,534	3	50,924	4	£81,976
Above £50,000 and up to the European Union prescribed limit	1	90,000	1	90,000		
Total	62	£646,904	15	£190,760	7	£89,776

The number of Exceptions classified as recurring that have been received in the last three years by Service Area is summarised in the table below:

Service	2015/16		2016/17		2017/18	
	No.	£	No.	£	No.	£
Economic Growth	3	£69,000				
Corporate Services	1	£90,000	1	£90,000		
Finance & Procurement	2	£17,784	2	£18,784	1	£3,000
Leisure & Operational Services	10	£147,700	1	£13,000		
Joint Waste	2	£42,200				
Total	18	£366,684	4	£121,784	1	£3,000

Contribution to the Delivery of the Strategic Plan

The Procedure Rules are a significant contributor towards the demonstration of best value, and ensuring competition in the awards of contracts. Any significant level of expenditure not within the Procedure Rules could potentially be construed as not having demonstrated best value.

Equality, Diversity and Human Rights Implications

Any issues are considered at the time the Waiver is granted.

Crime & Safety Issues	Any issues are considered at the time the Waiver is granted.
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GDPR/Privacy Impact Assessment	None however we do ask all contractors to comply with the Data Protection Act 2018.
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	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Adherence to Procedure Rules is needed to show achievement of value for money and the sound use of public funds. Non adherence, without justifiable reasons, potentially exposes the Council to inefficient use of public funds and accusations of improper actions.	An arrangement with Wolverhampton City Council is being negotiated to provide specialist procurement advice to Directors, Heads of Service and Managers. Internal Audit Review.	Green – Tolerable
B	Breach of EU procurement regulations	An arrangement with Wolverhampton City Council is being negotiated to provide specialist procurement advice to Directors, Heads of Service and Managers. Internal Audit Review.	Yellow – Material

Background documents Financial Procedure Rules Contract Procedure Rules
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Relevant web links

APPENDIX A

Recurring Waivers

Recurring Exceptions	Supplier	Estimated Spend 2015/16	Estimated Spend 2016/17	Planned Actions in 2017/18 related to recurring exceptions granted in 2016/17	Estimated Spend 2017/18	Planned Actions in 2018/19 related to recurring exceptions granted in 2017/18	
		£	£		£		
<u>Economic Growth</u>							
CCTV Repairs & Maintenance	ADT PLC	£10,000		Staffordshire authorities are aware of different costs for essentially the same service so as a group Councils are attempting to negotiate a joint deal with Metric for the whole County but this is still a work in progress.			
Car Park Ticket machines, repairs and maintenance	Metric Group Ltd	£45,000					
CIL Viability Assessment	Peter Brett Associates Ltd	£14,000					
<u>Corporate Services</u>							
Print Contract	Walsall Metropolitan Borough Council	£90,000	£90,000	The print contract was formally approved by Cabinet in October 2016 and is for a 3 year period with an option to extend for a further two years.		A waiver for a full taxation helpline has been requested and granted for 2018/19. This is because of the relatively small annual value for the contract and the value for money it provides.	
<u>Finance & Procurement</u>							
Multi Tax Helpline	PWC	£2,000	£3,000	An exception for a full taxation helpline has been requested and granted for 2017/18. This is because of the relatively small annual value for the contract and the value for money it provides.	£3,000		
Council's Main Banking Arrangement	NatWest	£15,784	£15,784	No change planned until 2018/19			
<u>Leisure & Operational Services</u>							
Burntwood Parks - Locking	Chaseland Security Services	£13,200	£13,000	Competitive quote process completed. No longer an exception for 2017-18. But same supplier.			
Depot fire alarm maintenance and servicing	Lyrico Systems Ltd	£2,000		The fire alarm system at the Depot is a Lyrico system and only Lyrico have the software to			

APPENDIX A

Recurring Exceptions	Supplier	Estimated Spend 2015/16	Estimated Spend 2016/17	Planned Actions in 2017/18 related to recurring exceptions granted in 2016/17	Estimated Spend 2017/18	Planned Actions in 2018/19 related to recurring exceptions granted in 2017/18
		£	£		£	
Hedge cutting	Len Horton	£2,500		<p>maintain it. However the spend is significantly below the threshold limit. No exception required.</p> <p>Quotes obtained from two contractors for this service, No exception required.</p> <p>These contractors need to be approved by Staffs County Council. They are used for the collection and disposal of Hazardous waste fly tipped in our district. These are used in conjunction with the County Council. Quotes have been obtained from both contractors for this service, No exception required</p> <p>Focus Security are used as and when required to carry out repairs and maintenance. They also provide an alarm monitoring service for the Depot. The value of this is significantly lower than the threshold limit. Therefore, No exception required</p> <p>This is a local tyre company who are used to supply tyres and carry out repairs on our Streetscene plant and equipment. The spend is lower than the threshold limit. Therefore , No exception is required</p> <p>Quotes obtained from three suppliers for service and maintenance work to our plant and equipment. Therefore, No exception required.</p> <p>Quotes obtained from three suppliers for service and maintenance work to our plant and equipment. Therefore, No exception required.</p> <p>A formal EU tender was carried out for this service in 2016. Therefore, No exception required.</p>		
Asbestos Contractor	Aqua Force Special Waste and Watling waste	£3,500				
Depot alarm system Maintenance and service.	Focus Security and Surveillance Ltd	£2,500				
Vehicle Tyres, repairs and maintenance	Chase Tyres	£4,000				
Repairs and Maintenance of mowers, plant and equipment	C & G Mowers	£15,000				
Maintenance of ransomes and ride on mowers	Burrows GM Ltd	£15,000				
Highway sweeping	Burntwood Road Sweepers	£45,000				
Cesspool emptying	Burntwood Road Sweepers	£45,000				

APPENDIX A

Recurring Exceptions	Supplier	Estimated Spend 2015/16	Estimated Spend 2016/17	Planned Actions in 2017/18 related to recurring exceptions granted in 2016/17	Estimated Spend 2017/18	Planned Actions in 2018/19 related to recurring exceptions granted in 2017/18
		£	£		£	
<u>Joint Waste</u> Refuse Vehicles, Tracking and data collection Vehicle Parking-Rent Agreement	Bartec Audio ID Ltd Alan Wilmore Builders Ltd	£35,000 £7,200				
Total Recurring Exceptions Total Number of Recurring Exceptions		£366,684 18	£121,784 4		£3,000 1	

APPENDIX B

Non-Recurring Waivers in 2017/2018

Non Recurring Exceptions		2017/18 £
Chief Executive Commercial Learning and Development	Staffordshire Chambers of Commerce	16,680
Regulatory, Housing and Wellbeing Service Level Agreement	Warmer Homes, Greener District energy efficiency initiative	10,440
Service Level Agreement	Bromford for Homes Direct	22,500 7,500 per annum
Economic Growth High Speed 2 Phase 2a – Provision of Services	Sharpe Pritchard – Solicitors and Parliamentary Agents	Unknown as based on time spent on case by legal professionals
Visit Lichfield Website Replacement and Support	Adaptive Web Ltd	32,355.63
Finance & Procurement Provision of IT Audit Services	E-tec Business Services	4,800
Total Single Year Exceptions		£86,775.63
Number of Non-Recurring Exceptions		6

APPENDIX C

Non-Recurring Waivers in 2018/2019

Non Recurring Exceptions		2018/19 £
Corporate Services Civica data export and disposal modules	Civica	59,985
Regulatory, Housing and Wellbeing Office of the Police & Crime Commissioner Service Level Agreement: Space Programme	Liberty	7,410
Leisure & Operational Services Filter – Mechanical & Engineering Essential Modifications	Sterling Hydotech Ltd	9,904
Legal, Property & Democratic Services Be a Councillor Event	LGA	2,000
Economic Growth Commissioning of project management and quantity surveying support – Birmingham Road site, Lichfield	Greenwood Projects	12,700
Consultancy assistance with Local Plan hearing statements	Land Use Consultants	1,957.50
Consultancy assistance with Sequential Test production	JBA consulting	1,250
Friarsgate Lessons learned Review	Local Partnerships	12,000 (5k contribution from LGA)
Development Services Press Notices with local papers with Reach Publishing Services Ltd (previously was known as Local World)	Statutory requirement Press Notices for Planning & Listed Building Applications	28,000
Total Single Year Exceptions		£135,201.50
Number of Non-Recurring Exceptions		9