

COMMITTEE REVIEW PROCESS STAGE 3

INVESTIGATION REPORT: PROCUREMENT COMPLIANCE

1 Background

1.1 Referral

A scrutiny referral was made by Audit Committee following consideration of compliance issues in Audit Report (Rep2127 Procurement Compliance August 2021) which was considered by Business Services Committee on 11 November 2021, where members agreed to initiate the Committee Review Process.

Exert from Audit Committee Minute (16 September 2021):

In respect of Audit No. 2127, the Interim Chief Internal Auditor advised that whilst 16 of 20 procurements reviewed had been procured appropriately in general, areas of non-compliance with the Council's Scheme of Governance were identified, including procurements which had been awarded without adequate planning or advertisement or had been undertaken by officers who had not completed the necessary training.

The Committee heard from the Head of Commercial and Procurement that Services were working with the Commercial and Procurement Shared Service (C&PSS) to ensure training was undertaken by Procuring Officers and purchase order approvers and to work to adequately plan procurements and develop systems of control. Services had also agreed to remind Procuring Officers of the requirements to maintain the Contract Register system with accurate contract data and related documentation.

A one-off exercise to review all existing contract entries and documentation was being undertaken with a completion date of 31 December 2021. Discussion took place on procurement training requirements, the need for compliance with the Council's Scheme of Governance and Financial Regulations, and the need to consider improvements which could be made to ensure that non-compliance issues were addressed.

1.2 Stage One Report

Business Services committee then received a Stage 1 scrutiny report on 24 February 2022 relating to Procurement Compliance and requested that, in terms of the Committee Review process, a Stage 2 Workshop be held allowing for further exploration of the issue and identification of potential actions.

Exert from Business Services Committee Minute (24 February 2022):

With reference to the Minute of Meeting of the Committee of 11 November, 2021 (Item 8) consideration was given to the report dated 31 January, 2022 by the Director of Business Services which was a response to the decision of the Committee at that meeting to conduct the Committee Review Process (CRP) into Procurement Compliance (with reference to Internal Audit Report No. 2127 Procurement Compliance) and for a Stage One report to be submitted to the Committee meeting on 24 February, 2022. The report included proposals for

moving forward with a plan as to how improvements would be achieved. The report reminded members that in respect of Internal Audit Report No. 2127, it was found that whilst 16 of 20 procurements reviewed across the Council had been procured appropriately in general, areas of non-compliance with the Council's Scheme of Governance were identified, including procurements which had been awarded without adequate planning or advertisement or had been undertaken by officers who had not completed the necessary training. Reasons for failing to comply with the Scheme of Governance varied but generally it was due to a lack of understanding of the requirements of the Scheme of Governance and the processes to follow to ensure Best Value and compliance with Procurement Legislation. The report highlighted that the Commercial and Procurement Service would consider improvements which could be made to support increased understanding of the requirements to ensure compliance and would also review processes to identify process improvements with a view to simplifying processes where this was possible; and a review of the Procurement Manual would be conducted to ensure that guidance and templates were considered from the point of view of not only ensuring compliance but ease of following the processes.

Following discussion, the Committee agreed: -

*(1) that the report did not provide sufficient assurance on actions to be taken with regard to Procurement Compliance; and
(2) to a Stage Two Workshop of the Committee Review Process being arranged.*

1.3 Stage Two Workshop

A Stage 2 workshop was scheduled for 26 April 2022, but this was postponed due to the availability of members on that date. A workshop took place on 18 August 2022 and brought together key officers and elected members from the Business Services Committee to consider improvement actions already implemented and consider planned actions in relation to Procurement Compliance.

1.4 Stage Two Report

Members decided following consideration of the Stage 2 report on 15 September 2022 to consider a further report on progress on planned actions after a period of 6 months.

*Exert from Business Services Committee Minute (15 September 2022)
With reference to the Minute of Meeting of the Committee of 24 February, 2022 (Item 10), when it had been agreed to arrange a Stage Two Workshop of the Committee Review Process for further exploration of the issue and identification of potential actions, there was circulated a report dated 19 August, 2022 by the Director of Business Services, which (1) presented a detailed assessment of Procurement Compliance and an overview of the information presented at the workshop held on 18 August, 2022, and (2) sought Members' consideration and agreement of future improvement actions.*

It was reported that the workshop had offered an overview of the background and issues relating to procurement compliance, actions implemented and

scrutiny to date. It had allowed Members to consider the planned actions and how the planned actions would be implemented through collaborative working across Services. The information presented had been intended to provide assurance to Members that the effectiveness and the robustness of procedures were in place to ensure procurement compliance.

The Committee agreed: -

(1) to note the information presented during the Workshop, as detailed in Appendix 1 to the report;

(2) to defer consideration of the next stage of the Committee Review Process to obtain further information and assurance;

(3) that a report would be brought back to the Committee in 6 months with additional information; and

(4) that a report would be presented to the next meeting of the Audit Committee to advise the decision made in respect of the Committee Review Process.

1.5 Stage Two Update Report

Members following consideration of a report updating on the progress of planned actions and future actions determined at the Business Services committee on 20 April 2023 to progress to Stage 3 of the Committee Review Process.

Exert from Business Services Committee Minute (20 April 2023):

With reference to the Minute of Meeting of the Business Services Committee of 28 September 2023 (Item 10), when it was agreed that a report would be brought back to the Committee in 6 months with additional information, there was circulated a report dated 20 March 2023, by the Director of Business Services, which provided an Page 8 Item 3 update on progress on actions to improve procurement compliance and detailed future planned actions.

Members were informed that procurement compliance trends from Quarter 1 to Quarter 3 of the last financial year had improved. On-contract spend across the Council had been consistent with an average of 88% compliance, which was significantly above targets. There were reductions in other compliance issues such as contract award notices not being published, and contract register date gaps. Members raised concerns that 4 of the 7 actions outlined in the report were still in progress and had been delayed. Members commented that the report lacked sufficient evidence and data for complete assurance and that the implications for the Council were too high.

After due consideration, the Committee agreed: -

(1) to note the progress made on actions and the further actions to be implemented over the next 6 months;

(2) that the Committee was not assured by the progress update and that there was a requirement to proceed to Stage 3 of the Committee Review Process;

(3) that a report be presented to the next meeting of the Audit Committee to update on the Committee Review Process; and

(4) to delegate to the Director of Business Services to develop the Stage 3 investigation process and procedure, following consultation with the Chair, Vice Chair, and Opposition Spokesperson.

1.6 Stage 3 Process

The development of the Stage 3 Process was delegated to the Director of Business Services, following consultation with the Chair, Vice Chair, and Opposition Spokesperson. The Stage 3 process was agreed in June 2023, with the information gathering commencing in August following summer recess.

1.7 Evidence Gathering Session

The evidence gathering session was held on 16 November 2023 with the agenda structured as per below:

1. Introduction/Background
2. Sources of Assurance
3. Causes of Breaches (Feedback)
4. Actions taken/Impact
5. Further Actions
6. Witnesses & Investigation Group Questions
7. Outcome/Next Steps

During the evidence gathering session the Strategic Commercial Manager provided members with detail around sources of assurance for procurement activities, information on measurement against other local authorities (best practice), feedback on sources of assurance, an update on action taken and an update on further actions. Members were then provided the opportunity to ask questions of the Service and witnesses in attendance.

Service Representatives/Witnesses in attendance for the evidence gathering session were the Head of Commercial & Procurement, the Head of Finance, the Chief Internal Auditor, the Head of Property & Facilities Management and Strategic Commercial Manager (Commercial & Procurement).

Members agreed after consideration of the presentation and responses to questions during the evidence gathering session confirmed that sufficient assurance had been provided to conclude the Committee Review Process, the Chair confirmed that the next step would be a report to the next meeting of Business Services committee on the 11th of January 2024.

2 Discussion

2.1 Procurement Strategy, Policy, Guidance and Training

Procurement across the Council is overseen by the Commercial & Procurement Shared Service (C&PSS) with C&PSS having responsibility for developing strategy, policy, guidance and training for procurement establishing the framework within the Council to ensure compliance with relevant procurement legislation. The policies and procedures set out within this framework provides the assurance over the standards set for compliance across all procurement activity and currently comprised of the below:

- Joint Procurement Strategy (covering the three partner Councils) incorporating Strategic outcomes for each Council to meet national and local priorities and Public Procurement priorities as set by the Scottish Government (refreshed strategy went live 01 October 2023)
- Scheme of Governance Part 3 - Financial Regulations (specifically Section 5)
- Procurement Policy i.e., Commercial Sponsorship, Sustainable Procurement
- Procurement Manual and template documentation for procurements across thresholds/types
- Delegated Procurer Training (E-Learning Modules)

2.2 Delegated Procurement Authority

Responsibility for individual procurements is delegated to Services and specifically officers within each Service who are designated as a delegated procurer (DPA). This approach is consistent with other local authorities and other areas of the Council i.e. Finance/Risk Management. Delegated Procurement Authority provides the authority to procure and manage contracts for goods, services and works on behalf of the Council. A Delegated Procurer will oversee the process leading up to and including the procurement or award of a contract, as well as having the responsibility for managing elements of any resulting contract. This also applies to the raising of purchase orders, any member of staff who will purchase goods, works or services on behalf of the Council must undertake Procurement training and receive DPA approval prior to any purchase order being raised. The only exception to this is in respect of Social Care where a dedicated team within C&PSS manage around two hundred contracts with a total value of more than £300M (over £80M annually).

Levels of Delegated Procurement Authority with applicable thresholds and training modules are as shown below. All DPA forms received requesting authority are checked against training records on ALDO prior to the form being authorised and DPA being added to the register held/maintained by C&PSS. DPA training is required to be refreshed once every three years and reminders are issued by C&PSS to this effect.

Delegated Procurement Authority (DPA) Levels	
Level 1	Goods, Services & Works: < £10k Training for Completion: Module 1 - Level 1 DPA
Level 2	Goods, Services & Works: £10k - £50k Training for Completion: Module 1 - Level 1 DPA Module 2 - Level 2 DPA Module 4 - Sustainable procurement Module 5 - Introduction to contract and supplier management Module 7 – Evaluation & Award

Level 3	<p>Goods, Services & Works: £> £50k</p> <p>Training for Completion:</p> <p>Module 1 - Level 1 DPA</p> <p>Module 2 - Level 2 DPA</p> <p>Module 3 - Level 3 DPA</p> <p>Module 4 - Sustainable procurement</p> <p>Module 5 - Introduction to contract and supplier management</p> <p>Module 6 - Advanced contract and supplier management</p> <p>Module 7 – Evaluation & Award</p>
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All DPA's when registered are sent a document containing sources of information/guidance to support carrying out procurement activity this includes (this was introduced in financial year 2022/23 to provide DPA's with further guidance):

- Contact information for C&PSS to seek support
- Link for C&PSS intranet page and details of what can be found via the page for example Procurement Manual/Contract Register System User Guides/Contracted Supplier List
- Information on Procurement Manual/Scheme of Governance
- Information on how to access Public Contracts Scotland to access contract notices
- Information on how to access the Contract Register system (with details on when a DPA should record and update contracts)
- Information on framework agreements
- Purpose of Contract Management and role of Contract Manager
- Information on Data Protection and Information Security (highlight importance of DPIA particularly in procuring software of IT system)

C&PSS have also introduced a Communication Planner with a plan for each financial year with key communications for DPA's, the plan will be updated throughout the year as we are made aware of any national guidance or legislation changes, see links to examples of recent communications below (when any news item is published the link is also e-mailed to DPA's directly).

[C&PSS Procurement Blog – Update for Delegated Procurers on the Use of the Single Procurement Document \(SPD\) \(sharepoint.com\)](#)

[C&PSS PROCUREMENT BLOG - Procurement Threshold Update \(Effective 1.1.24\) \(sharepoint.com\)](#)

2.3 Feedback/Causes of Compliance Issues

As part of the Information Gathering stage to prepare for the Evidence Gathering Session feedback has been analysed from a questionnaire issued on Financial Regulations/Procurement Guidance to identify any key points which may be causes of non-compliance. Many respondents to the questionnaire identified complexities in the Scheme of Governance, Financial Regulations and Procurement Processes, some examples are below. The

complexity of the processes and paperwork required (particularly for procurement below legislative thresholds) would be a significant factor in non-compliance.

- “Remove the need for PAF and award reports for under £50K for goods, services and works. Also PAF threshold for Works should be much higher. There should also not be a need to complete a PAF for Hard FM or minor works. Values have been approved at committee as part of the procurement, why do we then need to complete another procurement approval form, should be a simpler way, e.g. IT purchases that have workflow approval from the budget holder, can this not be put in place. Causes a lot of unnecessary extra work for all involved”.
- “Much of the process is unnecessarily complex and could be simplified significantly”.
- “The governance requirements for £10-£50K procurements is overly bureaucratic. A streamlined process would ease the burden on staff when gaining approvals for what are often routine purchases which 'nudge' over the £10K threshold. The PAF is too complex for an unregulated procurement and a simplified form could be used to gain CO approval”.
- “The requirement to obtain a minimum number of quotes for a level 2 procurement is onerous and the need for exemption forms basically stating 'not enough suppliers submitted a bid' adds to staff workload unnecessarily. A requirement to request (rather than obtain) a minimum number of quotes may streamline this process, and where the minimum number of quotes cannot be requested (for example from a niche or small market) then the exemption form could be required to justify this and prove Best Value is still being obtained”.

The feedback given will be considered in finalising the review of the financial regulations and the refresh of Procurement Guidance to ensure that the requirements and the processes behind these requirements are simplified but still ensure compliance with legislative requirements.

2.4 Best Practice (Measurement against other Local Authorities)

Internal Audit supported the information gathering stage by issuing a request through the Chief Internal Auditor's group, the purpose of the request was to identify whether other Councils had similar issues around non-compliance. Several responses were received with some just giving a general update and others sharing audit reports across a range of areas the reports shared included some with negatives and some with positives around procurement compliance issues. The overall view of Aberdeenshire in comparison to other Council's it was felt that the issues raised in reports in relation to Procurement Compliance were not dissimilar to other local authorities, however whilst the position of other councils has been sought, the priority internally has not been diminished.

Most responses were shared in confidence, so comments have been anonymised and a sample shared below:

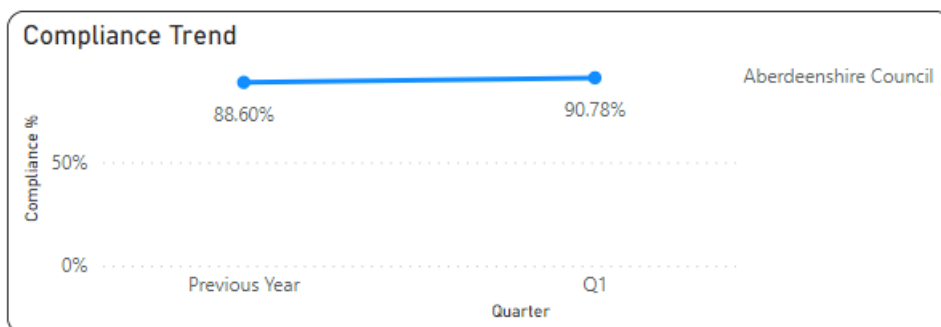
- “We haven’t carried out any specific audits in this area recently, but we have identified similar issues when completing audits in other areas. I think there appears to be a general lack of proper understanding of the Financial Regulations by some Services, perhaps because most officers have multiple responsibilities and finance/procurement tasks are just seen as a small add on to their main operational role or they are promoted/given additional duties without proper training (although this is just my opinion)”.
- “From an audit report shared on the exemption process to Financial Regulations -Internal Audit has completed a review of the processes and arrangements in place for the authorisation of contract exemptions to comply with the Council’s Financial Regulations and in terms of legal compliance. The overall level of assurance given for this report is ‘Limited’. The level of assurance will be reviewed and redefined once the plans to improve the exemptions process are in place”.
- “Generally, though I have been highlighting to my Chief Exec that there is a distinct downward dip in controls and the compliance with controls, I think it’s a lot to do with the loss of some very experienced people over the last few years and new people in posts, recent promotions and a bit of covid fall out”.
- “There have been some issues within specific services in the past. This related to using companies who were on a framework and in accordance with that framework. There were also training and awareness issues in that service. I understand these issues have been addressed but further audit work later this financial year will hopefully confirm this”.

2.5 Compliance Data/Processes

Monitoring compliance is linked to Key Performance Indicators for Procurement, the data is analysed quarterly across all Council services and reported to the Strategic Procurement Board (board comprising Senior Leaders across the three partner Councils and currently chaired by the Chief Executive for Aberdeenshire Council). Key compliance metrics and performance against these is as shown below:

On Contract Spend

Shown below is the trend for the percentage of on contract spend, the target figure for on contract is 80% where 88.6% was achieved in the last full financial year, with performance in Q1 2023-24 at over 90%.



Contract Register Issues

Each month the contract register is checked for any omissions in contract records primarily where contract start date, contract end date, supplier name or value has been omitted.

Where any omission has been found a member of C&PSS will e-mail the listed contract owner to highlight the omission and request that they update the contract record.

It has been identified that there is an issue in contacts not being updated in the Contract Register system BOrganised, services are to be asked to identify key contacts with responsibility for Contract Management who can support rectification of future issues. An action is contained within the planned actions at Appendix 2 of this report relating to future improvements to the Contract Register system which includes the system having improved functionality to mandate entry of key pieces of information in future.

Publication of Award Notices on Public Contracts Scotland

Public Contracts Scotland is the online portal used by all Public Sector bodies in Scotland to advertise procurement opportunities. Each month any outstanding awards (still showing as live on website) are noted and e-mails sent to the owner of each contract to enquire as to status.

Responses are received, via email, from contract owners either advising of delays or that they are about to publish accordingly. A link to guidance on the process for them to publish is outlined in the e-mail sent. The contact(s) for contract management (to be identified for each Service) will also be asked to support this process in future.

2.6 Actions (Completed/Planned)

At the time of the last update there were 7 actions in total with 3 having been completed and 4 at planning stage. Further improvements have been identified in the period since the last update to a total of 13 of which 8 are complete and 5 are at planning stage.

The actions are a combination of improvements identified through the audit process and incorporation of best practice/changes to statutory legislation and guidance.

Appendix 1 shows the completed actions and **Appendix 2** shows the planned actions.

3 Outcome/Next Steps

Members agreed after consideration of the presentation and responses to questions during the evidence gathering session confirmed that sufficient assurance had been provided to conclude the Committee Review Process, the Chair confirmed that the next step would be a report to the next meeting of Business Services committee on the 11th of January 2024.

Following consideration of the report by Business Services Committee a report will be prepared for Audit Committee.

Rob Simpson
Director of Business Services

Report prepared by Mel Mackenzie, Strategic Commercial Manager
11 December 2023

Appendix 1 – Completed Actions

No.	Action	Status	Update
1	Further Review of DPA's (Delegated Procurers) with Services	Complete	Further review concluded by end January 2023, the purpose of the review was to ensure that all employees involved in either purchasing or procurement activity have completed the required training and are listed on the register of Delegated Procurers. Any users on iProcurement system who did not appear on the DPA register had system access removed following issue of several communications advising of the process to complete training and be registered as a delegated procurer. System access will only then be reactivated after completion of the required training and submission of the signed DPA form.
2	Ongoing consultation with Services (Procurement Planning)	Complete	Planned reviews are now ongoing with Chief Officers/Service Managers with the last review completed at the beginning of March, the review focussed on both on contract and off contract spend. The review allowed for identification of potential saving opportunity areas and looking at longer term contract needs. Reviews will be scheduled in April for next financial year, this will ensure ongoing consultation with Services/Procurement on current contracts and future needs and ensure procurement is appropriately planned for.
3	C&PSS and Internal Audit ("IA") Collaboration on Compliance Improvement	Ongoing	IA engaged to support procurement compliance reporting on a quarterly basis, sample of suppliers to be assessed for compliance in each quarter and results on the sample included in the reports circulated to Chief Officers. Where breaches occur and are identified through compliance processes these will continue to be raised both within the report and with delegated procurers directly and data retained to allow for identification of patterns and escalation as required.
4	Interim Updates to Procurement Manual	Complete	<p>Whilst the revision of the Procurement Manual is in progress there have been several changes made to ensure that available guidance is up to date and fosters compliance, updated guidance has been made available via the Intranet on the Procurement and Governance pages:</p> <ul style="list-style-type: none"> a) Procurement Approval Form updated to include: <ul style="list-style-type: none"> i. Requirement to conduct a Procurement Fraud Risk Assessment ii. Requirement to conduct a DPIA Assessment (if required) iii. Reference to consideration of Fair Work Practices, Environmental Outcomes in Procurement Activity iv. Additional requirements on consideration of contract management b) IR35 Guidance added to the Procurement Manual

			<p>c) Software Cost Analysis Tool added to the Procurement Manual</p> <p>d) Revised Terms & Conditions for Goods and Services added to the Procurement Manual</p> <p>e) Delegated Procurer Guidance document drafted to ensure clarity on responsibilities with links to relevant guidance, this was shared with all current DPA's in February 2023 and going forward will be sent to any new DPA registered.</p>
5	Review of Contract Register Platform (Phase 1)	Complete	<p>A review of the Contract Register system has been undertaken with key considerations including ensuring the system is user friendly and easy to use and feedback has been sought/collated from current users to inform the review.</p> <p>The provider of our current system (Brodies) has developed a new platform based on feedback provided by Aberdeenshire Council and other clients (Amelior), a review of the platform has identified that it would resolve a number of the issues previously identified in audits and would provide improved reporting capability through inclusion of dashboards within the platform.</p> <p>In addition we have looked at reducing the number of fields that users are required to complete with a number of fields being made mandatory to ensure compliance in terms of the contract register and information that we must publish to comply with legislation.</p>
6	C&PSS Communication Planner	Complete	<p>A series of news items on procurement are planned to be published in each financial year, the items will be aimed at increasing awareness of need for compliance with information on how to ensure compliance or to advise on changes to reflect procurement best practice and how to incorporate into procurement activity. It is planned that news items will be published monthly via the intranet, with a communication sent to DPA's to highlight and yammer will be utilised to ensure items are widely circulated (where appropriate).</p>
7	Updates to Framework Adoption Process	Complete	<p>A register of frameworks is now maintained by the C&PSS team and the framework adoption report has been updated to include a section on contract management and a revised version added to the Procurement Manual. This is intended to ensure that roles & responsibilities for Contract Management are considered at the adoption stage of any framework agreement.</p>
8	Review of Joint Procurement Strategy	Complete	<p>The Joint Procurement Strategy has recently been refreshed (live 01 October), adherence to this strategy with strong engagement and robust governance arrangements pre-procurement coupled with effective contract and supplier management throughout the duration of any contract will ensure the Councils deliver innovative, consistent, compliant and collaborative market solutions demonstrating value for money and return on investment to meet or exceed challenging commercial performance targets.</p>

9	Compliance Reporting & Processes	Complete	Compliance reporting in place each quarter to Strategic Procurement Board, compliance processes established for Contract Register and Public Contracts Scotland Award Notices.
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Appendix 2 – Planned Actions

No.	Action	Status	Update
1	Review of Procurement Manual and Guidance	In Progress	The refresh of the guidance and templates is near completion, expected date for completion end of the calendar year with roll out early new year.
2	Review of DPA E-Learning	In Progress	DPA E-Learning will be refreshed upon completion of the Procurement Manual review and incorporation of changes to reflect the update to the guidance and templates, this will include any best practice/changes identified through the contract management audit, it is anticipated that this will be complete by end September 2024.
3	Further Contract Management Training	In Progress	Additional Contract Management training sessions to be offered to delegated procurers following the relaunch of the guidance, this will include information on changes to guidance and templates and include any best practice/changes identified through the contract management audit.
4	Review of Financial Regulations	In Progress	Financial Regulations review group with representation from across services established, work commenced on review of breaches and feedback sought from across each service to feed into the process. Due to the need for a focus on budget setting further work was put on hold but technical input has been sought in the review of the regulations by C&PSS, the technical review has been concluded and the group will be reconvened to progress this work estimated to be completed by end June 2024.
5	Review of Contract Register Platform (Phase 2)	In Progress	The migration to the new Contract Register Platform is planned to be complete by end Dec 2023. Training sessions will be held with users and the Contract Register guidance will be refreshed.