
Audit and Governance Committee

24 September 2008

Report of the Assistant Director of Resources (Audit and Risk Management)

Annual Monitoring Report: Breaches and Waivers of Financial Regulations 2007/08

Summary

1. The purpose of this report is to inform members about unauthorised breaches of the council's Financial Regulations during the 2007/08 financial year and any waivers of Financial Regulations approved by the S151 Officer during the year. The requirement to report on these matters is specified within the Constitution and Financial Regulations.

Background

2. The council's Financial Regulations set out the procedures and standards for financial management and control that must be followed by officers and members. Compliance with the Regulations helps to ensure that:
 - there are robust systems of financial management and control
 - the finances of the council are safeguarded from unnecessary risk
 - the council achieves value for money in its procurement of goods and services.
3. As part of its role, Internal Audit is responsible for preparing an annual report to members detailing any known breaches of the Regulations along with any waivers from the Regulations approved by the S151 officer. Breaches are identified through various means including direct notification to the Director of Resources by officers, and routine audit work. In addition, a separate audit review is carried out to identify procurement related breaches. This review compares payments made to suppliers against contract details held by departments.

Consultation

4. Details of the breaches of Financial Regulations set out below and in the annexes have been forwarded to chief officers and other relevant officers for comment, prior to inclusion in the report.

Breaches of Financial Regulations

5. Figure 1 below shows the number of breaches of Financial Regulations reported in 2006/07 and 2007/08.

Figure 1 – Numbers of breaches of Financial Regulations 2006/07 and 2007/08

	2006/07	2007/08	Change	
			No.	%
Total number of breaches reported	20	14	-6	-30%
Newly reported breaches	9	5	-4	-44%
No. brought forward from previous year	11	9	-2	-18%

6. The total numbers of breaches of Financial Regulations identified have fallen for a number of years and this trend has continued in 2007/08. In addition, the majority of the new breaches now being identified are of a technical nature rather than due to ignorance of the correct procedures or any deliberate failure to follow them. Details of the new breaches identified are included in annex 1.
7. Good progress has also been made by departments in addressing breaches of Financial Regulations from previous years. Of the 20 breaches reported for 2006/07 eleven had already been addressed at the time of the last annual report (or were not recurring issues) and a further six have subsequently been resolved. Work is underway to resolve the remaining three issues. The results of the follow up of previous breaches is summarised in figure 2 below.

Figure 2 – Follow Up of previously reported breaches of Financial Regulations

Result of Follow Up	No	Notes
Resolved after the last annual report	6	<ul style="list-style-type: none"> City Walls Maintenance Contract – a formal decision not to tender was made by members Taxi contracts – new contracts let from September 2007 3 Breaches in relation to materials for building maintenance – new contract let from September 2007 Agency Staff – new contract let from October 2007
In the process of being resolved	3	<ul style="list-style-type: none"> Tendered bus services are part of a comprehensive report being prepared by officers that will advise on the future procurement and delivery of bus services in York. It is expected that this report will be considered toward the end of the year with new arrangements coming into effect in 2009 Lift maintenance – this contract is in the process of being re-tendered – an OJEU notice was placed in August 2008 Decoration allowance vouchers – the service is working with the Corporate Procurement Team to resolve this issue – it is expected that an OJEU notice will be placed in September

		2008
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Waivers

8. A total of 41 applications for waivers of Financial Regulations were received by the S151 officer in 2007/08. This compares to 42 applications for waivers in 2006/07. All of the applications received were approved.
9. Each approved waiver is detailed in annex 2 to this report for members to note and question the S151 officer on any of the decisions taken by him in respect of these matters under the council's scheme of delegation.

Conclusions

10. The number of new breaches of Financial Regulations has continued to fall in 2007/08. In addition, departments have continued to make good progress in addressing outstanding breaches from previous years. The numbers of waivers requested also remains relatively high (41 in 2007/08 compared to 42 in 2006/07 and 28 in 2005/06). The figures indicate that overall awareness of the Financial Regulations and EU procurement rules continues to increase and that departments are taking action to address issues that arise.

Options

11. Not relevant for the purpose of the report.

Analysis

12. Not relevant for the purpose of the report.

Corporate Priorities

13. This report contributes to the overall effectiveness of the council's governance and assurance arrangements, and to the corporate priority of improving efficiency and reducing waste so as to free up more resources.

Implications

14. The implications are:
 - **Financial** – while there are no specific implications arising from this report, the breaches set out in annex 1 do give rise to financial risks to the council. Although it is not possible to quantify the risks arising from any individual breach identified by Internal Audit, for the purposes of this report a summary of the typical kinds of risks arising are included in the section on risk management below, for information. In addition, an indication of the possible implications of each breach is included in annex 1.

- **Human Resources (HR)** – there are no HR implications to this report.
- **Equalities** - there are no equalities implications to this report.
- **Legal** - while there are no specific implications arising from this report, the breaches set out in annex 1 do give rise to legal risks to the council. Although it is not possible to quantify the risks arising from any individual breach identified by Internal Audit, for the purposes of this report a summary of the typical kinds of risks arising are included in the section on risk management below, for information. In addition, an indication of the possible implications of each breach is included in annex 1.
- **Crime and Disorder** - there are no crime and disorder implications to this report.
- **Information Technology (IT)** - there are no IT implications to this report.
- **Property** - there are no property implications to this report.

Risk Management

15. There are a number of risks that arise as a result of breaches of Financial Regulations and EU procurement rules, which are detailed in paragraphs 16 to 21 below.
16. The council may be subject to scrutiny from central government and may have grant funding withdrawn if it is found to have breached EU purchasing regulations.
17. Third parties may claim to have been disadvantaged by unfair tendering processes and could raise legal challenges to the award of contracts. There is a risk of financial loss if compensation is subsequently awarded or if contracts are overturned. In this case there is also a threat to the provision of services and the reputation of the council.
18. Any damage to the reputation of the council caused by inappropriate tendering processes may compromise relationships with existing suppliers and make it more difficult to attract new suppliers in the future. Such a situation could hinder the provision of services and may lead to increased costs.
19. There is an increased risk that the council will not achieve value for money in its procurement of goods and services.
20. Poor tendering procedures also increase the risk that fraud or other inappropriate actions may occur.
21. External Audit may challenge the legality of the council's activities, which in turn may result in the publication of reports in the public interest under section eight of the Audit Commission Act (1998).

Recommendations

22. Members of the Audit and Governance Committee are asked to:

- note the breaches of Financial Regulations identified or otherwise notified to the S151 officer during 2007/08.

Reason

To fulfil their role in considering the council's compliance with its own and other relevant published regulations, controls, operational standards and codes of practice.

- consider the actions taken to address outstanding breaches of Financial Regulations and express a view about further action necessary on those matters that remain outstanding.

Reason

To fulfil their role in considering the council's compliance with its own and other relevant published regulations, controls, operational standards and codes of practice.

- note the waivers of Financial Regulations approved by the S151 officer under the council's scheme of delegation.

Reason

To fulfil their role in considering the council's compliance with its own and other relevant published regulations, controls, operational standards and codes of practice.

Contact Details

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Report Approved

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Specialist Implications Officers

Not applicable

Wards Affected: Not applicable

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex 1 – Newly Identified Breaches of Financial Regulations for 2007/08

Annex 2 - Applications for Waivers of Financial Regulations 2007/08