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## **Audit and Governance Committee**

24 September 2007

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

### **Annual Monitoring Report: Breaches and Waivers of Financial Regulations 2006/07**

#### **Summary**

1. The purpose of this report is to inform Members about unauthorised breaches of the Council's Financial Regulations during the 2006/07 financial year and any waivers of Financial Regulations approved by the S151 Officer during the year. The report also includes a summary of progress made in addressing breaches of Financial Regulations identified and reported in earlier years. 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 findings 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 2005/06 and 2006/07.

Figure 1

Number of breaches of Financial Regulations 2005/06 and 2006/07	2005/06	2006/07	Change	
			No.	%
Total number of breaches reported	40	20	-20	-50%
Newly reported breaches	13	9	-4	-31%
No. brought forward from previous year	27	11	-16	-59%

6. The total number of breaches of Financial Regulations reported for 2006/07 is 20 – a reduction of 50% on the total number reported for 2005/06. This is largely due to the resolution of a large number of ongoing breaches reported in previous years, through the development of procurement arrangements that comply with Financial and EU procurement Regulations.
7. Annex 1 lists breaches of Financial Regulations newly identified for 2006/07. There were 9 new breaches for 2006/07, compared to 13 in 2005/06 and 22 in 2004/05. Based on the review carried out in preparing this report, it appears that the majority of the new breaches have been caused by administrative oversight or a lack of awareness of the correct procedures. Eight of these breaches have either been resolved, are in the process of being resolved, or are not recurring issues.
8. Of the 40 breaches of regulations reported in 2005/06, 27 had been resolved by the time of the follow up report to Audit and Governance Committee on 3 April 2007. These issues have not been reported on again as part of the current report. In addition, two of the outstanding issues are no longer being treated as breaches – details of these are included in paragraph 10. Of the remaining 11 breaches, three have now been resolved and work is underway to address a further seven. Time has been allocated as part of the 2007/08 Corporate Procurement Team workplan to support officers in the development of contract arrangements for the remaining area. A summary of the results of this follow up is included in Figure 2 below. Details of the breaches are included in annex 2.

Figure 2 – Follow Up of Outstanding 2005/06 Breaches

Result of Follow Up	No	Notes
Resolved	3	New compliant procurement arrangements are in place for these areas.
In the process of being resolved	7	Action is being taken to resolve these breaches, although there are ongoing issues with tendered bus services (see paragraph 9).
Still outstanding	1	This breach relates to lifts and lift maintenance. Time has been allocated as part of the 2007/08 Corporate Procurement Team Workplan to support the relevant client officers in the development of appropriate contract arrangements.
No longer treated as breaches	2	See paragraph 10.

9. Based on the details reported by departments, it is expected that six of the seven breaches that are in the process of being resolved will be addressed by October 2007. However, the tendering of subsidised bus services remains an issue. Although there is a rolling programme in place to re-tender services, this process will not be complete until 2009.
10. There are a number of cross directorate issues where expenditure is incurred across departments (sometimes with a large number of companies) on related types of supply. In many cases, Financial Regulations have been followed by individual departments in placing contracts. However, the lack of a corporate approach means that it is possible that there have been breaches of the regulations based on aggregation rules. Examples of areas previously reported include non-recruitment advertising and security services. As it is not possible to clearly define the breaches that may have occurred, or what the extent of these may be, the issues have no longer been included in the list of breaches reported to Members. There is however a need for the Council to review these issues to identify what corporate arrangements, if any, are required. The issues have therefore been referred to the Corporate Procurement Team for inclusion in their workplan. Other new areas identified that should be considered for review include telecommunications (expenditure outside of current corporate arrangements), minor building repairs and maintenance work, and catering.

## Waivers

11. A total of 42 applications for waivers of Financial Regulations were received by the S151 officer in 2006/07. This compares to 28 applications for waivers in 2005/06.
12. Of the applications received, 38 were approved and two were ultimately not required. A further two were rejected. Each approved waiver is detailed in

annex 3 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

13. The number of new breaches of Financial Regulations has continued to fall in 2006/07 (down from 13 in 2005/06 and 22 in 2004/05). In addition, departments have made good progress in addressing outstanding breaches from previous years. There has also been an increase in the number of waiver requests in 2006/07 (42 compared to 28 in 2005/06). The figures confirm that overall awareness of Financial Regulations, and EU procurement rules is increasing, and that departments are taking action to address any issues that arise.

## Options

14. Not relevant for the purpose of the report.

## Analysis

15. Not relevant for the purpose of the report.

## Corporate Priorities

16. 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

17. The implications are:
  - **Financial** – while there are no specific implications arising from this report, the breaches set out in annex 1 and annex 2 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 the annexes.
  - **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 and annex 2 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 the annexes.

- **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**

18. 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 19 to 24 below.
19. 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.
20. 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.
21. 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.
22. There is an increased risk that the Council will not achieve value for money in its procurement of goods and services.
23. Poor tendering procedures also increase the risk that fraud or other inappropriate actions may occur.
24. 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**

25. 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 2006/07 (paragraph 7 and annex 1 attached).

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 (paragraphs 8 - 10 and annex 2 attached).

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 (paragraphs 11 - 12 and annex 3 attached).

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.*

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**Report Approved**

**Date** 12 September 2007

**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 2006/07 (Confidential)  
Annex 2 – Follow Up of Breaches of Financial Regulations from Prior Years (Confidential)  
Annex 3 - Applications for Waivers of Financial Regulations 2006/07 (Confidential)