

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Audit Committee
Report of:	Strategic Director CMD/s.151 & Monitoring Officer
Date of Meeting:	28th September 2022
Subject:	Progress on non-compliance with the Constitution
1. Purpose of Report	
1.1	To update Members of the Audit Committee on areas of procurement non-conformity with governance process and procedure as identified by Internal Audit and Statutory Officers. In addition, set out mitigations and/or future steps to prevent recurrence of non-conformity.
2. Recommendation	
2.1	That the Audit Committee: i) note the content of this report.
3. Background	
3.1	The Constitution governs how the Council operates, how decisions are made, and the procedures which are followed to ensure efficiency, transparency and accountability to citizens. This includes Part D – Financial Regulations, and Part E – Schedule of Delegations, rules on how decisions are delegated to officers.
3.2	Each Directorate has a schedule of sub-delegations and approval limits relevant to the activities performed.
3.3	Budget Holders must be aware of the Financial Regulations set out in section D1.1 of the Constitution. This includes the key rules for the management of Council finances that must be observed by all employees, members or anyone acting for the Council.
3.4	The Financial Procedures set out key actions as part of the Financial Regulations and the Financial Accountability Framework. The Chief Finance Officer (Section 151) is responsible for establishing and regularly reviewing these procedures.

- 3.5 Lack of compliance with the Constitution can have consequences in terms of reputation, potential legal challenge and external audit challenge.
- 3.6 Despite the overwhelming majority of Council commissioning and procurement not representing any issues, some instances of non-conformity with process and procedure have been identified – for example; spend where no contract is place, extension of contracts due to insufficient time to re-procure, lack of auditable documentation to demonstrate robust decision making.

4. Summary highlights of process non-conformity

- 4.1 Insufficient data held locally by Day Centres (ASC) to corroborate appropriate financial controls;
- 4.2 Insufficient data corroborating IT Procurement & Commercial Management (CMD) with procurement requirements; and
- 4.3 Casual workers – insufficient data to corroborate appropriate checks on casual workers working within the Council.

Non-conformity	Approx. value	Mitigation(s)
Spending with no contract in place – 4 reports issued	£1m+ p.a.	Cease supplier use and/or initiate procurement. Follow-up audits done or in 22/23 plan. Additional resources identified within CPS
Not following Public Contract Regulations re allocating work off a framework	N/A	Follow Public Contract Regulations. Advice and guidance issued by CPS
Not following Public Contract Regulations re Modification Notices	N/A	Publication of Modification Notices. Planned training and category managements arrangements to be put in place.
Continuation of spend post contract expiry	£1m+	Initiate procurement with transparent reporting. Strengthened contract management training for contract managers.
Delegated Decision Reports incomplete/not done	£650k	Retrospective approvals requested.

Contracts varied out of process	£1.6m	<p>'Gateway' approvals as a 'check-and-balance' with AD's, Director and MO.</p> <p>System and process alerts to designated contract manager(s).</p> <p>Effective contract management training where required. Planned training and category management arrangements to be in place.</p>
Committed spend outside of Procurement Governance Arrangements	Not quantified	<ul style="list-style-type: none"> • Improved controls in Oracle • Incorporation of "breach" process within the Constitutions Procurement Governance Arrangements • Improved performance reporting • Strengthened guidance for the Procurement Governance Arrangements/training
Weakness in process around signing off/corporate clearance of reports	N/A	Ensure compliance with HR, Finance and Legal Business Partner and s.151 and MO/City Solicitor 'sign-off' process with clear and accountable controls in place. Formal Corporate Clearance meetings in place.
Lack of visibility or reporting in respect of off - contract spend	N/A	Introduction of breach process within Procurement Governance Arrangement and reporting processes to Cabinet where relevant. Increased Oracle reporting to be developed.
Spend outside of Scheme of Delegation	Not quantified	Clearly communicate Scheme of Delegation levels and review if appropriate. Build in Governance and Scheme of Delegations into on boarding process for

		senior managers and Chief and Deputy Chief Officers.
<p>5. Appendices</p> <p>5.1 Appendix 1 summarises the above identified non-conformity as highlighted by Internal Audit along with specific mitigations.</p>		

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APPENDIX 1

April 2022

Day 6 Provision

Education & Skills
RAG 

High

Level 4

An Audit confirmed management concerns that there are weaknesses in the current arrangements for commissioning day 6 provision for permanently excluded pupils from a regular supplier and in managing and paying that supplier. There is a lack of clarity around how the supplier were commissioned and no contract has been found to be in place. Given the level of spend (over £4.5m in the last three years) a tendering exercise should have been undertaken in line with Public Contracts Regulations 2015 (PCR 2015). **Mitigation: Management assurance received that supplier immediately ceased provision of the service with current ongoing audit and cross referencing of services provided and Invoices submitted. Consideration to be given to retrospective approval for spend following outcome of services supplied and Invoice submission cross-check.**

Day Centres

Adults Social Care
RAG 

High

Level 3

We were unable to provide assurance on the effectiveness of financial controls and operational processes at eight Council operated Day Centres reviewed. Although and based on available documentation, fraud or misappropriation has not been identified, most records were found to be insufficient calling into question the ability to detect any future fraud or misappropriation. **Mitigation: ongoing support and training provided to the Day Centres in relation to more effective financial and operational processes.**

IT Procurement and Commercial Management

Council Management
RAG 

High

Level 3

We were unable to obtain sufficient evidence to demonstrate full compliance with procurement governance arrangements and legislation as data/information was not easily available. **Mitigation: since the completion of the relevant Audit work, it has been agreed that IT Procurement would be aligned with the Corporate Procurement Service (CPS) with procurement activity over EU threshold undertaken by CPS. A follow-up review will be undertaken to assess the impact of this change and formalisation of processes where it is anticipated that this RAG rating will reduce.**

March 2022

Recruitment and Selection - Casual Workers

City Wide
RAG 

High

Level 4

Concerns over the lack of recruitment documentation held within employee Digital Personnel Files (DPFs). From a sample of 20 casual workers 65% had no or very few employment supporting documents. Whilst this does not mean that the appropriate checks were not completed by managers, we are unable to procure sufficient evidence to confirm that they were. **Mitigation: HR have put place arrangements in place to strengthen the casual workers onboarding process.**