

Internal Audit Report

Non-Contracted Spend and Waivers

1 October 2024

CD2402

Overall Assessment	Reasonable Assurance
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This Internal Audit review is conducted for the City of Edinburgh Council under the auspices of the 2024/25 internal audit plan approved by the Governance, Risk and Best Value Committee in March 2024. The review is designed to help the City of Edinburgh Council assess and refine its internal control environment. It is not designed or intended to be suitable for any other purpose and should not be relied upon for any other purpose. The City of Edinburgh Council accepts no responsibility for any such reliance and disclaims all liability in relation thereto.

The internal audit work and reporting has been performed in line with the requirements of the Public Sector Internal Audit Standards (PSIAS) and as a result is not designed or intended to comply with any other auditing standards.

Although there are specific recommendations included in this report to strengthen internal control, it is management’s responsibility to design, implement and maintain an effective control framework, and for the prevention and detection of irregularities and fraud. This is an essential part of the efficient management of the City of Edinburgh Council. Communication of the issues and weaknesses arising from this audit does not absolve management of this responsibility. High and Critical risk findings will be raised with senior management and elected members as appropriate.

Executive Summary

Overall Assessment

Reasonable Assurance

Overall opinion and summary of findings

There is a generally sound system of governance, risk management and control in place for non-contracted spend and waivers. Some scope for improvement has been identified which, if not addressed, may put at risk the achievement of objectives in the area audited.

The following improvement actions were identified:

- directorate-level implementation plans would help to provide a clear direction and align directorates with Business Plan objectives and Council goals
- there should be improved reporting on non-contracted spend and waivers
- a process to monitor individuals persistently raising retrospective waivers and further investigation of the rationale, would support active management and reduction in waiver usage

- increased management oversight and monitoring of feeder systems is required to provide assurance that spend within these areas is within contract and budgets.

Areas of good practice identified

- four-monthly compliance reporting is issued by Commercial and Procurement Services (CPS) to directorates to provide an overview of non-contracted spend, new waivers and waivers set to expire in 18-months' time
- the Place directorate use a Microsoft Teams rooms to provide CPS reports and other non-contracted spend information to service managers
- the CPS Waiver guidance document is well-written, and easy to find on the Orb, the Council's intranet, providing a clear, simple explanation of the process and lists acceptable reasons for waivers to be requested.

Audit Assessment

Audit Area	Control Design	Control Operation	Findings	Priority Rating
1. Policies and Guidance			See Finding 1	Medium Priority
2 & 3. Non-Contracted Spend and Waivers			Finding 1 – Directorate-Level Plans to Manage Non-Contracted Spend and Use of Waivers	Medium Priority
			Finding 2 – Oversight and Management of Retrospective Waivers	Medium Priority
			Finding 3 – Oversight and Management of Directorate Feeder Systems	Medium Priority
4. Governance and Council-Level Controls			Finding 4 – Reporting and Scrutiny of Non-Contracted Spend and Waivers	Low Priority
5. Risk Management			See Finding 4	Medium Priority

Background and scope

The 2023/24 Internal Audit plan included a review of [Supplier and Contract Management](#) which highlighted concerns related to the levels of 'non-contracted spend' and compliance with the Council's [Contract Standing Orders](#) (CSOs) requirements.

Non-contracted spend occurs when the purchase of goods, services or works has not followed Council CSOs. As a result, there is a risk that purchases/contracts are not compliant with Procurement legislation, subsequent increased risk of legal challenge, Best Value not achieved (with a consequent financial impact on budgets and ability to control these) and a heightened risk of fraud.

Non-contracted spend arises primarily when contracts are not recorded on the Council's contract register. In addition, the use of feeder systems (such as Swift or Tranman) for purchases in some divisions across the Council is not subject to oversight by Commercial and Procurement Services (CPS). This means that compliance with CSOs and procurement legislation cannot be enforced by CPS as the governance for this purchasing is the responsibility of services and sits within the approval hierarchy within each feeder system. A certain level of non-contracted spend is expected because of low value purchasing and aggregation where the financial value of the contract/purchase is below the threshold for recording on the Council's contract register (£5,000 for goods and services and £10,000 for works contracts).

The Council's CSOs state that Executive Directors have responsibility to ensure that for contracts of a value greater than £5,000 for goods and services and £10,000 for works, the [Contract Register](#) record is updated within 5 working days following issue of contract award and in any event prior to start date of contract. The total spend on the top 100 non-contracted spend suppliers during 2022/23 was £91m, with total non-contracted spend in 2022/23 being £134m, and the total non-contract spend in 2023/24 was estimated to be approximately £176m, of which £158m related the Edinburgh Health and Social Care Partnership.

[Waivers](#) of CSOs are required as an auditable trail for approval (subject to being 'in the Council's best interests') when a service or department purchase from a supplier where they consider circumstances prevent them following the Council's CSOs. Per the Council's CSOs and [waiver guidance](#) document, waivers should only be granted in exceptional circumstances. This can happen when there is only a single suitable supplier available, or during emergency situations when a contract must be put in place quickly, such as for PPE during the [recent Covid-19 pandemic](#). Whilst waivers are required to be authorised in advance of any contract or instruction being placed or entered into with a supplier, currently 70% of Council waivers are submitted for review by CPS and subsequently 'authorisation' by Service/Executive Directors after the contract commenced and, in some circumstances, spend already incurred.

Scope

The objective of this review was to assess the adequacy of design and operating effectiveness of the key controls established to ensure the Council effectively manages and limits non-contracted spend and waivers.

Alignment to Risks and Business Plan Outcomes

The review also provided assurance in relation to the following Corporate Leadership Team (CLT) risks:

- Strategic Delivery
- Financial and Budget Management
- Programme and Project Delivery
- Supplier, Contractor, and Partnership Management
- Governance and Decision Making
- Service Delivery
- Regulatory and Legislative Compliance
- Reputational Risk

- Fraud and Serious Organised Crime.

Business Plan Outcomes:

The Council has the capacity, skills, and resources to deliver our priorities efficiently, effectively and at lower cost.

Reporting Date

Testing was undertaken between 4 June and 20 August 2024.

Our audit work concluded on 20 August, and our findings and opinion are based on the conclusion of our work as at that date.

Findings and Management Action Plan

Finding 1 – Directorate-Level Plans to Manage Non-Contracted Spend and Use of Waivers

Finding Rating	Medium Priority
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The Council’s Contract Standing Orders (CSOs) set out the requirements for procurement work in the Council, and therefore form the basis of the Council’s overall procurement approach. This includes the need to ensure spend is under contract and waivers are used only in appropriate circumstances.

Whilst Children, Education and Justice Services (CEJS) have processes in place to review and manage Directorate spend in line with CSOs, the other Directorates have not advised of any formal plans to reduce their usage of waivers and control the amount of non-contracted spend. The Edinburgh Health and Social Care Partnership (EHSCP) has had persistently high levels of non-contracted spend since April 2021 – being between 40-60% of total spend between April 2021 and April 2024. Non-contracted spend for the other three Council directorates has varied between 1-7% in the same period. Commercial and Procurement Services (CPS) has advised that the HSCP figure is now improving due to collaborative working between CPS and the EHSCP to add care contract frameworks to the contract register, and this is reflected in the most recent information, where EHSCP non-contracted spend is down to 18-20% of total spend for the period April – July 2024.

In addition, the Council’s [Procurement Handbook](#) supplements the [Contract Standing Orders](#) (CSOs). While the CSOs set out the legal framework for procurement, the Handbook provides direction and guidance on the procurement process, and the requirements for each step in the process. The handbook was last updated in 2017 and was noted to include out-of-date information: for example, it includes references to EU law which is no longer applicable to the UK. Procurement advise that the legislation continues to be based on EU law and the Reform Act which has not materially changed and so the direction and guidance principles still apply.

Risks

- **Financial and Budget Management** – the Council may be spending more than required on suppliers who represent poor value for money
- **Regulatory and Legislative compliance** – non-contracted spend is spend that has may not undergone the standard procurement process, and therefore is open to greater legal challenge, and risk that legislation is not being complied with. In addition, an outdated handbook can result in failure of alignment by users to Council processes and best practice.

Recommendations and Management Action Plan: Directorate-Level Plans to Manage Non-Contracted Spend and Use of Waivers

Ref.	Recommendation	Agreed Management Action	Action Owner	Lead Officers	Timeframe
1.1	Place, HSCP, and Corporate Services should develop their individual plans to ensure they are adhering to the Council’s Contract Standing	Place: This will be discussed with Commercial and Procurement Services (CPS) alongside a review of Contract	Executive Directors of Place, HSCP	Operations Managers of Place, HSCP and	Place: 31/03/2025

	<p>Orders in order to manage / reduce non-contracted spend and use of waivers. This should include clear links to directorate monitoring and reporting arrangements, escalation arrangements to the Budget and Accountability Board for persistent high usage and an action tracker to capture improvement actions to reduce spend/usage in areas where required with responsible officers, and implementation dates.</p>	<p>Standing Orders to identify any improvements necessary to improve compliance and to manage/reduce non-contracted spend and waiver usage.</p> <p>HSCP: A process will be put in place to review, manage and reduce non-contracted spend and use of waivers and will include a process for escalation for persistent waivers and action plans will be put in place for areas of non-compliant spend and waivers, moving to compliance with standing orders.</p> <p>Corporate Services: The Corporate Services Directorate will continue to regularly review compliance reports provided by the Procurement Team to allow for identification and action/escalation where non-contracted spend and inappropriate waiver usage has been advised. Where there are ongoing issues identified the Directorate will work with the relevant service areas to formulate and track improvement actions.</p>	and Corporate Services	Corporate Services	<p>HSCP: 31/03/2025</p> <p>Corporate Services: 31/05/2025</p>
1.2	<p>The Procurement Handbook should be reviewed and any out-of-date information removed to ensure that officers have access to clear and up-to-date information and guidance on procurement.</p>	<p>CPS will review and update The Procurement Handbook accordingly.</p>	Executive Director, Corporate Services	Head of Commercial and Procurement Services	31/03/2025

Finding 2 – Oversight and Management of Retrospective Waivers

Finding
Rating

Medium
Priority

Retrospective waivers are when Council colleagues have agreed to purchase goods or services from a supplier before the waiver has been reviewed by CPS and subsequently authorised by Service/Executive Directors. This presents an increased risk that the Council’s [Contract Standing Orders](#) (CSOs) are not being complied with, and that the Council may be subject to legal challenge if the decision to award the contract was unfair. Retrospective waivers made up 66% of all waivers made by the Council in the 2023/24 financial year with a total value of £20.3m.

Prior to 1 April 2024, there was no process in place to report the names of colleagues who made retrospective waivers to the relevant Directorates, but as of September 2024 (for the period April-July 2024), this information is now being shared with Directorates, including the name of the officer raising the waiver, the value of the waiver, and a summary of the requirement. Directorates have not yet established any processes to ensure this information is used to identify colleagues who are repeatedly making retrospective waivers with the aim of reducing usage.

Risks

- **Financial and Budget Management** – waivers may indicate that value for money is not being achieved by the Council, as they often continue a contract in lieu of re-tendering for a more competitive bid, and could reduce the ability of Directors to manage and control their budgets
- **Regulatory and Legislative Compliance** – increased risk of legal challenge for retrospective waivers.

Recommendations and Management Action Plan: Oversight and Management of Retrospective Waivers

Ref.	Recommendation	Agreed Management Action	Action Owner	Lead Officers	Timeframe
2.1	Directorates should implement a process to review the information on retrospective waivers provided by CPS in order to identify trends and engage with colleagues repeatedly making retrospective waivers to understand the reasons for this and take action to reduce usage.	CEJS: The Commissioning Team in CE&JS will continue to work very closely with the HoS and the Directors to tackle concerning patterns of non-compliance, to prevent submission of waiver requests. However, the names of individuals will not be stated in directorate reporting but, instead, the titles of individual teams will be stated. In addition, any persistent issues will be raised with the line managers.	All Directorate Executive Directors	All Directorate Operations Managers	CEJS: 30/11/2024 Place: 30/09/2025 HSCP: 31/03/2025 Corporate Services: 31/05/2025

		<p>Place: Information on retrospective waivers has been provided for the first time in September 2024. This will be monitored over the next 12 months to identify trends. Where necessary, engagement with colleagues will be undertaken to understand the reasons for retrospective waivers/trends and advice from CPS sought if required.</p> <p>HSCP: A process will be developed to ensure that appropriate scrutiny of non-contracted spend and waiver usage is in place and that it manages/ reduces non-compliance with standing orders.</p> <p>Corporate Services: The regular (4 monthly) compliance reports provided by Procurement will continue to be reviewed for any retrospective waivers; all such waivers will be followed up with the respective Service Directors/ Heads of Service for investigation with relevant teams to ensure satisfactory evidence is in place to justify the use of a waiver. All officers responsible will be reminded that retrospective waivers are not acceptable unless extenuating circumstances can be evidenced. Where there is evidence of a pattern or continue usage of inappropriate waivers full investigation will take place to understand why, with follow up to provide support to prevent ongoing usage.</p>			
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Finding 3 – Oversight and Management of Directorate Feeder Systems

Directorate feeder systems (for example Tranman and Swift) are systems set up for purposes other than procurement, but which can also be used to purchase goods or services. In 2023/24 feeder systems made purchases of £293.5m, the majority of which were in the Edinburgh Health and Social Care Partnership (£221m).

Although CPS has control over goods and services purchased through the Council's central purchasing system (Oracle), which enables them to block any spending which is not compliant with Council CSOs, they have no such control over feeder systems. This means that contracts can be entered into by services, which will go unnoticed by CPS until after the expenditure has been incurred.

While these feeder systems have approval hierarchies in place, there is no overarching oversight within the services responsible for these systems to review expenditure against the Council's CSOs, which would enable the services to prevent or detect off-contract and excessive contract spend in a timely manner. As a result of this lack of control, purchases could be made that do not comply with Council CSOs or procurement legislation.

Risks

- **Financial and Budget Management** – the Council may be spending more than required on suppliers who represent poor value for money
- **Regulatory and Legislative compliance** – spend that has not followed the standard procurement process, and therefore is open to greater legal challenge, and risk that legislation is not being complied with
- **Supplier, Contractor, and Partnership Management** – non-contracted expenditure may reduce value for money.

Recommendations and Management Action Plan: Oversight and Management of Directorate Feeder Systems

Ref.	Recommendation	Agreed Management Action	Action Owner	Lead Officers	Timeframe
3.1	Services with feeder systems should introduce regular reviews of expenditure made through these systems to ensure compliance with Contract Standing Orders. In particular the reviews should ensure that expenditure is not exceeding contract or waiver financial limits, and that the	<p>CEJS: CE&JS will ensure that groups working on the implementation of Mosaic capture this recommendation as part of their actions.</p> <p>Place: This will be discussed with Commercial and Procurement</p>	Directorate Executive Directors	Directorate Operations Managers	<p>CEJS: 30/06/2025</p> <p>Place: 31/03/2025</p> <p>HSCP: 30/08/2025</p> <p>Corporate Services: N/A</p>

	<p>expenditure is not for off-contract goods or services. The approach to managing and reviewing spend on feeder systems should also be clearly set out in the directorate approach to managing and reducing non-contracted spend recommended at 1.1.</p>	<p>Services (CPS) in the first instance to identify areas where better communication with CPS can improve assurance over the use of feeder systems.</p> <p>HSCP: The contracts team and transactions team will put in arrangements to review on a regular basis, expenditure through the systems and expenditure is in line with contract and waiver financial limits.</p> <p>Corporate Services: The Corporate Services Directorate does not currently make use of any feeder systems and therefore this recommendation is not applicable.</p>			
3.2	<p>Services with feeder systems should add identify, assess, and record risks associated with the continued use of the feeder system from a procurement perspective to their risk register. The risk register should also include information on mitigating controls to address the risk with further actions required and should be reviewed regularly to provide assurance that the risks are being adequately managed.</p>	<p>CEJS: CE&JS will add this risk to the relevant risk registers</p> <p>Place: The risk(s) associated with the use of feeder systems will be discussed with CPS and any relevant risks will be added to the service area risk registers.</p> <p>HSCP: The Partnership will review the use of any Feeder systems. Where feeder systems are used for the Partnership, risks will be identified and recorded on relevant risk registers.</p>			<p>CEJS: 31/12/2024</p> <p>Place: 31/03/2025</p> <p>HSCP: 31/03/2025</p> <p>Corporate Services: N/A</p>

		Corporate Services: As noted in 3.1, this action is not relevant to Corporate Services			
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Finding 4 – Reporting and Scrutiny of Non-Contracted Spend and Waivers

Finding Rating	Low Priority
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The Council’s Finance and Resources Committee do not receive any regular reports on non-contracted spend levels for the Council as a whole or on a Directorate basis, although they do receive a bi-annual report on new contracts awarded in the period, including new contracts awarded under waivers across the whole Council. This means that the Committee does not have information to enable them to provide effective scrutiny over the levels of non-contracted spend and ensure best value is being achieved.

In addition, reports for waivers and non-contracted spend are provided to the Corporate Leadership Team on an ad-hoc basis, with the last report being provided on 9 August 2023.





Risks

- **Financial and Budget Management** – if there is insufficient scrutiny of non-contracted spend and waivers then there is a greater likelihood that the Council is not achieving value for money.

Recommendations and Management Action Plan: Reporting and Scrutiny of Non-Contracted Spend and Waivers

Ref.	Recommendation	Agreed Management Action	Action Owner	Lead Officers	Timeframe
4.1	<p>CPS should provide the Finance and Resources Committee (FRC) and Council Leadership Team (CLT) regular reports on non-contracted spend and waivers.</p> <p>In addition, CPS should consider aligning the reporting frequency for non-contracted spend and waivers information going to both CLT and the FRC.</p>	<p>CPS will provide contract/non-contract spend information to Finance & Resources (F & R) Committee on an annual basis. Reporting in relation to waivers will also continue to be reported in the bi-annual Contract Award Report to F & R Committee.</p> <p>CPS will report non-contract spend and waiver information to CLT through the new Budget Accountability Board on a bi-annual basis.</p>	Executive Director, Corporate Services	Head of Commercial and Procurement Services	31/10/2025

Appendix 1 – Control Assessment and Assurance Definitions

Control Assessment Rating		Control Design Adequacy	Control Operation Effectiveness
Well managed		Well-structured design efficiently achieves fit-for purpose control objectives	Controls consistently applied and operating at optimum level of effectiveness.
Generally Satisfactory		Sound design achieves control objectives	Controls consistently applied
Some Improvement Opportunity		Design is generally sound, with some opportunity to introduce control improvements	Conformance generally sound, with some opportunity to enhance level of conformance
Major Improvement Opportunity		Design is not optimum and may put control objectives at risk	Non-conformance may put control objectives at risk
Control Not Tested	N/A	Not applicable for control design assessments	Control not tested, either due to ineffective design or due to design only audit

Overall Assurance Ratings	
Substantial Assurance	A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited.
Reasonable Assurance	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.
Limited Assurance	Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited.
No Assurance	Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited.

Finding Priority Ratings	
Advisory	A finding that does not have a risk impact but has been raised to highlight areas of inefficiencies or good practice.
Low Priority	An issue that results in a small impact to the achievement of objectives in the area audited.
Medium Priority	An issue that results in a moderate impact to the achievement of objectives in the area audited.
High Priority	An issue that results in a severe impact to the achievement of objectives in the area audited.
Critical Priority	An issue that results in a critical impact to the achievement of objectives in the area audited. The issue needs to be resolved as a matter of urgency.

Appendix 2 – Areas of Audit Focus and Control Objectives

Audit Areas	Control Objectives
Policies and Guidance	<ul style="list-style-type: none"> • Clear policies, guidance, and procedures aligned to relevant regulatory requirements are in place for procurement of goods, services and works across the Council • Directorates are contacted when non-contracted spend/ retrospective waivers occur to ensure they are aware of non-compliance issues and the reasons, to prevent repeat occurrences where possible.
Non-Contracted Spend	<ul style="list-style-type: none"> • Directorate-level controls are in place to actively identify, record, monitor, and reduce non-contracted spend • Directorate-level controls are in place to ensure purchases are compliant with Council CSOs and procurement legislation to mitigate the risk of legal challenge, fraud, and ensure Best Value • Non-contracted spend is regularly reported to directorate management teams, and sufficient challenge is provided by senior management to ensure that non-contracted spend is reduced, and effectively managed, in line with Council policy • directorate management review non-contracted spend on a regular basis to consider why compliant procurement process was not followed to ensure compliance with CSOs and to ensure the Council can address this and demonstrate value for money moving forward • Services are aware of and have considered and documented the risks of continued use of feeder systems with consideration of which systems are necessary and where use of these could be replaced through introduction of central purchasing via the Oracle system.
Waivers	<ul style="list-style-type: none"> • Directorate-level controls are in place to identify, record, monitor, and reduce the use of waivers • Controls are in place to report waivers to Directorate SMTs, and sufficient challenge is provided by senior management to ensure waivers are only used when necessary, and in line with Council guidance • Directorate management are taking steps to ensure that waivers are requested and approved in advance of spend occurring • Directorate management are actively taking steps to support officers with any training needs relating to purchasing, and where required, hold officers to account where CSOs are not being followed and mitigate/reduce the volume of waivers occurring.
Governance and Council-level Controls	<ul style="list-style-type: none"> • There is a Council wide approach to reducing non-contracted spend and waiver usage across the Council with information on non-contracted spend and waivers reported to CLT on a regular basis and a requirement for directorates to take appropriate action • Information relating to procurement spend, contract awards, and waivers of CSOs is regularly reported to Council Committee • Sufficient challenge is provided by CLT and Council committees to ensure that non-contracted spend and waiver usage is reduced and effectively managed

	<ul style="list-style-type: none">• Each Directorate has developed a strategy to reduce non-contracted spend and the use of waivers in their area, with an associated implementation plan and oversight arrangements.
Risk Management	<ul style="list-style-type: none">• Risks related to non-contracted spend and waivers are identified, recorded, and managed within service risk registers, and regularly reviewed to ensure appropriate mitigating actions are in place and remain effective, with escalation to divisional and directorate level risk committees where required.