

21 June 2017		ITEM: 12 (Decision 01104431)
Cabinet		
Contracted Environmental Enforcement Services		
Wards and communities affected: All	Key Decision: Yes	
Report of: Councillor Pauline Tolson, Portfolio Holder for Environment		
Accountable Head of Service: Julie Rogers, Head of Environmental Services		
Accountable Director: Steve Cox, Corporate Director Environment & Place		
This report is Public		

Executive Summary

In December 2016 the Council entered into a pilot project to determine the viability of contracted Environmental Enforcement Services. The Council has a small internal team of Environmental Enforcement Officers who respond to a large number of service requests each year, the volume of service requests is such that a reactive service model only resolving priority cases, has been put in place. The objective of the pilot project was to determine whether a contracted enforcement service could offer a proactive service offering littering and dog fouling enforcement on a cost neutral basis. This report provides an update on the performance of the pilot to date and requests permission to progress the report's recommendations to Cabinet. Feedback from the pilot has been taken into account to request amendments to the range of services, level of fines levied and the publication of successful prosecutions.

1. Recommendation(s)

1.1 To delegate authority for the tender and subsequent award of a contract for enforcement services on a payment by results basis to the Corporate Director of Environment and Place in consultation with the Cabinet Member for Environment for a period of up to 4 years, to the value of approximately £960,000.

1.1(a) Cleaner, Greener and Safer Overview and Scrutiny Committee on 11 May 2017 recommended to Cabinet that the following amendments are inserted into recommendation 1.1;

- a. That the enforcement activities will be across the entire borough according to need,**

- b. That the contract is structured in such a way to not expose the Authority to undue financial risk, and**
 - c. That an adequate break clause or other means of exiting the contract be included in the agreement.**
- 1.2 To remove early repayment discounts for fixed penalty notices issued for environmental crime offences as detailed in 4.3.**
- 1.3 To set the value of fixed penalty notices to the maximum permissible amount for environmental crime offences as detailed in 4.3.**
- 1.4 To set the minimum age that formal enforcement action, including Fixed Penalty Notices, will be taken for offences to 16 years of age as detailed in 4.2.**
- 1.5 To publicise the successful prosecution of those who are prosecuted for committing environmental crime in the borough and to use media outlets to appeal for information pertaining to the identity of those persons committing environmental crime where identities are unknown.**
- 1.6 To approve the pursuit of and adoption of delegated authority from the DVLA for the removal, impounding and potential destruction of untaxed vehicles in line within the provisions of the vehicle excise duty (immobilisation, removal and disposal of vehicles) regulations 1997 (as amended).**

2. Introduction and Background

- 2.1** The cleanliness of the environment has a significant impact on the quality of life, enjoyment and perception of those who live, visit and work in the borough. The Council has committed to taking a zero tolerance approach to those who commit environmental crime in the borough with formal enforcement action being taken where appropriate.
- 2.2** Legislation provides the Council with the powers to take formal enforcement action including the issue of fixed penalty notices (FPN's) and prosecution of those who commit environmental crime. The Council has a small internal Environmental Enforcement Team consisting of two officers that are responsible for responding and taking appropriate action for the 5,000 service requests received each year. The size of the team restricts activity to being a purely reactive service, prioritising larger complex casework. In order to deliver a highly effective service to complement the existing in house service there is a need for a proactive enforcement solution resolving simple high volume cases.
- 2.3** In order to deliver this resource in December 2016 the Council entered into a pilot project to determine the viability of contracting external enforcement resources to support the proactive enforcement of environmental offences. The scope of the pilot project which was initially limited to Littering and Dog

Fouling Offences were recently extended with the enforcement of the Grays Town Centre Public Space Protection Order (PSPO) which came on line in April 2017.

- 2.4 In the pilot period to date 07/12/2016 to 07/05/2017 there have been 1,208 FPNs issued. The breakdown of statistics relating to the pilot performance to date is as follows:

Number of FPNs Issued	1,208
Number of FPNs Paid	830
FPN Payment Rate	68%
Income from FPNs	£62,250
Cost of issuing FPNs	£51,340
Net Position of Pilot	(£10,910)
Number of FPN's in the prosecution and prosecution evaluation stage	276
Number of FPN's in the administration process	102

At present the pilot is reporting a small financial surplus, in the first instance any surplus will be used to fund the prosecution of non-payers with any remaining income supporting additional enforcement activity. The initial objective of the Council's pilot was to deploy enforcement officers on the ground to enforce against those committing environmental crime and to dissuade others from committing environmental offences on a cost neutral basis, income is not a priority. Prevention is a priority; a reduction in the number of environmental crimes committed will reduce the burden on cleansing and wider environmental services as well as improving the appearance of the borough.

- 2.5 The current payment rate at 68% is resulting in a positive financial position. Should the payment rate drop below 60% this will result in a net cost to the authority. To prevent a drop in payments this Council is committed to prosecuting non payers and publicising those cases that result in a successful prosecution against offenders. As a first tranche the Council has passed 15 cases of non-payment for prosecution, these are scheduled to be heard in May. The intention is to pass all appropriate cases for prosecution to the Magistrate's court. As cases are tried and successful, prosecutions will then be publicised with an expectation that payment rates will subsequently increase. This position represents best practice as identified in the Government's new 2017 Littering Strategy for England *'Promote transparency and accurate reporting of enforcement action against littering, so that offenders know they will be fined for environmental offences'*¹

¹ HM Government; Litter Strategy for England April 2017, page 48.

3. Issues, Options and Analysis of Options

3.1 Option 1: Do Nothing

The current in-house environmental enforcement service consists of two officers. The level of environmental crime in the borough including the increase in large scale fly-tipping means that the service, as-is, is only resourced to deliver a reactive service prioritising the most high profile cases. There is a requirement to deliver a proactive enforcement offer dealing with simple high volume environmental offences such as littering and dog fouling. To do nothing would represent a step backwards with an increase in levels of litter in the borough and the perception of the Council being weak on environmental crime, leading to an escalation in the number of more serious offences. The pilot as-is has been delivered on a cost neutral basis and with the issue of over a 1000 FPNs in the first 4 months has proven to be a success with a visible impact on the local environment.

3.2 Option 2: Deliver an in-house proactive high volume Enforcement Service

The estimated cost of delivering an in-house comparative service per annum is £210,000 per year.

Employees	£187,000
PPE	£5,000
Transport	£8,000
Supplies and Services	£10,000
	£210,000

In order to achieve a financial break even position, based on the current payment rate the number of FPNs that the service would need to issue is 4,400 per year. Although potentially achievable this represents a significant financial risk to the authority. The payment by results model trialled in the pilot represents minimal risk to the Authority. In addition, investment in handheld systems and sophisticated automated systems would also be required. The Council could take steps to specify, procure and implement comparable software however this would come at a time and financial cost, not included in the calculation above. A suitable ICT solution is unlikely to be in place by the end of the pilot in December.

3.3 Option 3: Procure a Contracted Environmental Enforcement Service on a payment by results basis. ***The recommended option***

With over a 1,000 FPNs issued in the first 4 months the contracted Environmental Enforcement Pilot has proven to be a success in enforcing against those who commit environmental crime. The pilot has been delivered on a cost neutral basis and has demonstrated that, providing that it is closely managed, it can deliver results at minimal financial risk to the Council.

It is recommended that the Council enters into a formal EU compliant process to procure a contracted Environmental Enforcement Service on a payment by results basis similar to that employed for the pilot. The service will invite bids from experienced, suitably qualified contractors for the provision of high volume simple enforcement functions.

The contract is intended to complement the existing in-house team who will continue to focus on resolving complex serious environmental offences. The Council will invite bids for a range of simple enforcement functions such as fly posting and graffiti that complement the current littering and dog fouling enforcement, the proposed range of services is detailed in 5.1.

4. Proposed Contracted Environmental Enforcement Service

4.1 Scope of Contracted Environmental Enforcement Service

The proposed scope of the Contracted Environmental Enforcement Service is as follows:

Enforcement Activity	Description of Service
Littering	Pro active patrols across the borough enforcing against those committing littering offences.
Dog Fouling	Pro active patrols across the borough enforcing against those committing littering offences.
Fly Posting	Pro active patrols across the borough enforcing against those committing littering offences.
Graffiti	Pro active patrols across the borough enforcing against those committing littering offences.
PSPO Enforcement	Pro active patrols enforcing against those breaching the Grays Town Centre PSPO.
Commercial Waste Duty of Care Enforcement	Enforcement of duty of care compliance on a scheduled basis to support the in-house enforcement service.
Fly-tipping	Enforcement against fly tipping offenders on an ad-hoc basis to support the in-house enforcement service.
Other Environmental Offences	Enforcement in the case of Environmental Crime for offences in scope of the Environmental Protection Act 1990.

The contract will require the contractor to complete the end to end process for all enforcement actions including Fixed Penalty Notice issues, collecting payment, administering representations, issuing reminder notices and compiling prosecution files.

4.2 The Proposed age of FPN issue for those committing Littering and Dog Fouling offences.

At present officers deployed on the contracted Environmental Enforcement Service are not authorised to issue FPNs to those under 18. The pilot has made great strides to prevent littering in the areas where officers are

deployed. Anecdotal feedback from Councillors and residents, as well as formal feedback in the Grays Town Centre PSPO consultation, suggests that the appearance of high footfall patrolled areas (Grays Town centre in particular) as having improved markedly.

There is however an ongoing issue surrounding littering by those between the ages of 16 and 18. This is a particular issue around educational establishments and transport hubs. In order to address this issue and provide Officers with the tools to take formal action, it is recommended that the age that officers can issue FPNs for littering and dog fouling be reduced to 16 years of age. In line with the recently published litter strategy for England officers are exploring the opportunities for alternatives to the issue of a FPNs or prosecution for offenders below 18.

Proposals for alternative sanctions such as education and litter picking will be explored with a proposal to be brought back to committee as best practice following the publication of the Litter Strategy for England. Consultation will be undertaken with South Essex College to explore the options for sanctions towards students issued with Fixed Penalty Notices.

4.3 **Proposed charge for FPNs and the suspension of the early repayment discount for Fixed Penalty Notices relating to Environmental Crime as enforced by internal and contracted Environmental Enforcement Services.**

The recommendation is that all FPNs for Environmental Crime and related offences are set at the maximum permissible level and that charges are increased as legislation is amended to uplift maximum permissible levels, for example the proposed increase in the Littering FPN. This will act as a deterrent to those who commit environmental crime, contribute towards the contracted enforcement service breaking even and will support the Council's zero tolerance approach to Environmental Crime.

Offence	Current FPN charge	Current early repayment FPN charge	Proposed FPN charge	Proposed early repayment FPN charge
Littering	£75	No discount	£80* Maximum Permissible	None.
Dog Fouling	£75	No discount	£80 Maximum Permissible	None.
Fly Posting	£75	£60	£80 Maximum Permissible	None.
Graffiti	£75	£60	£80 Maximum Permissible	None.
Fly Tipping	£400	No discount	£400	None.

			Maximum Permissible	
Commercial Waste Duty of Care	£300	£180	£300 Maximum Permissible	None.
Commercial Waste Receptacle Offences	Not currently used.	Not currently used.	£110 Maximum Permissible	None.
Domestic Waste Receptacle Offences	Not currently used.	Not currently used.	£80 Maximum Permissible	None.
Breach of Public Space Protection Order (PSPO)	£100	No discount	£100 Maximum Permissible	None.
Breach of CPN	£100	No discount	£100 Maximum Permissible	None.

*This will increase in line with the revised maximum penalty for littering of £150 that has been proposed in the Litter Strategy for England 2017. Due for implementation in 2017/18.

4.4 **Publicising information relating to those who are successfully prosecuted for committing Environmental Crime or to aid in obtaining identification of offenders.**

In order to prevent and dissuade potential offenders from committing environmental crime, the Council intend to publicise the outcome of successful prosecutions through the Council's communication channels and in the local press. By releasing the details of offenders and the crimes that they have committed the Council will demonstrate its commitment to taking action against offenders and reassure the local community that action is being taken against those who choose to spoil the environment.

The Council are proposing the use of communication channels and local press outlets to obtain information that could lead to the identification of those committing environmental crime. In cases where the identity is unknown or where false details are given, information including pictures will be published in order to appeal for information pertaining to the identity of the offender. Section 29 of The Data Protection Act allows for 'data to be used for prevention and detection of crime, or, apprehension or prosecution of offenders' are exempt from the first data protection principle (principle 1 – data shall be processed fairly and lawfully).

The current payment rate of 68% is enough to break even and provide a small surplus however, the authority should be aiming for a payment rate of 75% in line with DEFRA best practice. Key to achieving an improved payment rate will be to ensure that prosecutions take place in the event of non-payment and that successful prosecutions are communicated to the public.

4.5 Proposed Contract Value

The contract will be let in line with the payment by results method as trialed in the pilot project. Potential contractors will be required to enter a formal bid into the tender process detailing the amount that they will charge for the issue of fixed penalty notices. All income deriving from FPN payment and awarded to the Council as a result of the prosecution will be retained by the Council. To date the pilot has demonstrated that this model is cost neutral. Based on the data gathered from the pilot, the proposed contract value per annum will over the 4 year period be £177,480. At a payment rate of 60% the expected income will be £200,400 resulting in a net income to the Council of £22,920 per annum.

<i>Assumed Expenditure</i>	
<i>Number of working days</i>	261
<i>Number of Issuing Officers</i>	4
Number of tickets issued per officer per day	4
Total number of tickets issued per day	16
Total number of FPNs Issued per year	4176
Estimated contract cost per ticket	£42.50
<u>Contract Value PA</u>	= 4176*£42.50 = <u>£177,480</u>

<i>Assumed Income</i>	
Total Number of FPNs Issued per year	4176
Payment rate	60%
Number of FPNs Paid	2505
FPN Level	£80
<u>Contract Income PA</u>	= 2505 @£80 = <u>£200,400</u>

The pilot was restricted to littering and dog fouling offences. This report is requesting an extension in the scope of activities offered as per paragraph 5.1 these services will be ancillary to the littering and dog fouling work and are reflected in the assumed figures as above. The value of a number of these FPNs is higher than that of the standard £80 for lower level offences. To allow for these additional services additional headroom of £50,000 will be built into the per annum contract value on the assumption that 100 higher value FPNs

will be issued per year for fly-tipping or duty of care offences. The revised contract value is therefore estimated to be £240,000 or £960,000 over the 4 year lifespan of the contract.

5. Abandoned Vehicles

- 5.1 The Council has a duty to remove abandoned vehicles from the public highway and land in the open air. Vehicles identified as abandoned must meet the abandoned vehicle criteria. That the vehicle is; only fit to be destroyed, that the vehicle has no number plates and is not taxed or where the owner cannot be found or fails to comply with a collection notice. In the last financial year 2016/17 the council received 1,800 abandoned vehicle reports.
- 5.2 In order to effect the removal, impounding and potential destruction of abandoned vehicles the Council employs a private contractor which has access to the specialist machinery and impounding facilities. At present the Council does not have a long term formal arrangement in place with the contractor and this means that each interaction is managed on an ad hoc basis. Taking into account the small size of the Environmental Enforcement Team and the large volumes of reported vehicles in the borough each year this is an unwieldy process. Additionally, the lack of a formal contract means that service levels vary with limited defined guarantees around vehicle removals.
- 5.3 The cost to the Council of delivering the service is 0.5 FTE which equates to £17,500 PA. The contractors collecting and disposing of abandoned vehicles is cost neutral. The income received from vehicle disposal is offset by the cost of the removal itself as well as the destruction of burnt out vehicles that have no residual value. The value of the contract is such that it can be let using existing delegated authority, Officers intend to commence procurement of a formal abandoned vehicle contract in September 2017 with a new fit for purpose contract in place by December 2017.
- 5.4 The DVLA are responsible for enforcing the removal and potential destruction of untaxed vehicles that are not on the curtilage of a domestic property. The vehicle excise duty (immobilisation, removal and disposal of vehicles) regulations 1997 allow the Council to apply to the DVLA for delegated authority to enforce this function. The Council intend to apply to the DVLA to gain delegated authority to remove and impound or destroy as appropriate untaxed vehicles. This function would be overseen by officers with removal actions being directed by the Council's contracted removal agent. Adoption of these delegated authority powers will ensure that untaxed vehicles are removed from the boroughs roads at a point at or before they fall into disrepair.

6. Reasons for Recommendation

- 6.1 Enforcing against those who commit environmental crime reduces offending rates and improves the appearance and standard of cleanliness of the

borough. A cleaner borough contributes towards the public's pride in the borough and creates a positive perception of the area for investors and visitors.

7. Consultation (including Overview and Scrutiny, if applicable)

7.1 Cleaner, Greener and Safer Overview and Scrutiny Committee, May 2017.

- The Committee considered and agreed the report requesting the inclusion of an additional recommendation as set out in paragraph 1.1(a).

7.2 Community Safety Partnership, May 2017.

7.3 Trade Union Pay and Reward Board, May 2017

7.4 South Essex College, May 2017.

8. Impact on corporate policies, priorities, performance and community impact

8.1 This report supports the Councils priority to "Promote and Protect our Clean and Green Environment.

9. Implications

9.1 Financial

Implications verified by: **Carl Tomlinson**
Finance Manager

The Pilot Environmental Enforcement Project demonstrated that the service can be delivered on a cost neutral basis. The proposed four year contract is structured on a payment by results basis that should be cost neutral with the potential for a small amount of income that will be used to fund prosecutions and support related Environmental Enforcement Services. The measures proposed including setting fixed penalty notices at the maximum allowable amount should increase the likelihood of the service delivering on a cost neutral basis.

9.2 Legal

Implications verified by: **Dianne Woode**
Solicitor – Contracts and Procurement
Adam Rulewski
Barrister - Litigation and Prosecutions

This report is seeking approval from Cabinet to go out to tender and subsequently award a contract for the provision of environmental enforcement services. The proposed payment model for this contract shall be based on a payment by results basis, and the proposed contract period is four years.

The value of the contract is over the EU threshold of £164,176 for services contracts, which means that it falls squarely within the full scope of the Public Contract Regulations 2015 (the “2015 Regulations”) requirements, and as such a full and compliant EU procurement process must be followed.

Thurrock Council has the legislative power to take formal enforcement action against perpetrators of environmental crime; this includes the power to issue fixed penalty notices and commence formal prosecutions.

It is noted that the report refers to an intention by the Council to increase the amount payable of the fixed penalty notice for a range of the environmental crime offences. The Local Authority has the power to treat a fixed penalty as paid, if a lesser amount is paid within a specified period. However, there is no obligation on a Local Authority to offer a discounted payment period. The Local Authority may set the maximum amount to that prescribed in the relevant statutory provisions.

It is also noted that there is a proposal to lower the minimum age that formal enforcement action against an individual can be taken, to under the age of 18 years. The minimum age of criminal responsibility is 10 years old. FPNs may be issued to those aged 16 or above as proposed, however enforcement officers should use special procedures for offenders aged under 18 and work with both the youth offending team and children’s services. Enforcement Officers should familiarise themselves with government guidance on these issues. The Local Authority should develop an enforcement strategy for dealing with juveniles if it does not already operate such a strategy.

In order to be able to legally remove and impound untaxed vehicles, as proposed in the report, the Council will need to obtain delegated authority from the DVLA, pursuant to The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997. It is noted that some contact has already been established with the DVLA in that regard, and that progress is being made to effect this proposal.

In consideration of all of the points made above pertaining to the 2015 Regulations, there is sufficient reason for it to be deemed that the proposed

procurement strategy shall comply with the 2015 Regulations, as well as the Council's Contract Rules, which sit within the Council's Constitution.

The report author and responsible directorate are advised to keep Legal Services fully informed at every stage of the proposed tender exercise. Legal Services are on hand and available to assist and answer any questions that may arise.

9.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**
Community Development & Equalities Manager

The proposed enforcement activity is an extension of the current pilot project. The zero tolerance approach taken will ensure that all offenders who commit offences will be penalised uniformly. Concessions are made for young people under 16 and those who are classified as vulnerable including those who suffer from relevant mental health conditions. A Community Equality Impact Assessment will inform any further actions required to ensure fair enforcement.

9.4 **Other implications** (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

The Contracted Enforcement Service will involve officers enforcing the Grays Town Centre Public Space Protection Order.

10. **Background papers used in preparing the report**

- Cabinet December 2016 'Environmental Enforcement'
<http://democracy.thurrock.gov.uk/documents/s10776/Environmental%20Enforcement.pdf>
- HM Government: Litter Strategy for England April 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607747/litter-strategy-for-england-2017.pdf

11. **Appendices to the report**

- NA

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