

10 March 2021		ITEM: 14 Decision: 110561
Cabinet		
Contract Renewal for Litter Enforcement		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Rob Gledhill, Cabinet Member for Public Protection and Anti-Social Behaviour		
Accountable Assistant Director: David Kleinberg, Assistant Director for Counter Fraud, Investigation & Enforcement		
Accountable Director: Julie Rogers, Director of Environment, Highways & Counter Fraud		
This report is Public		

Executive Summary

In December 2016, the Council entered into a pilot scheme to determine the viability of using contracted Environmental Enforcement Services. This pilot was a proven success, and in December 2017, the Council entered into a 4-year contract with the current supplier for the provision of Environmental Enforcement Services on a cost neutral model.

The Council has a small internal team of Environmental Enforcement Officers who respond to a large number of service requests from the public and Councillor Enquiries each year for suspected environmental crime and some aspects of Anti-social behaviour. The purpose of that team is to manage large complex environmental crime issues and respond to the volume of service requests.

The objective of the contracted-out Environmental Enforcement Service is to support and deliver a proactive visible uniform service offering littering and dog fouling enforcement on a cost neutral basis.

Feedback from the initial pilot was taken into account and amendments to the range of services; level of fines levied and the publication of successful prosecutions was implemented and supported upon the commencement of the contract.

The Environmental Enforcement Services contract expires in December 2021.

This report provides an update on the performance of the contract to date and details future projections based on known comparatives and requests permission to progress the report's recommendations with Cabinet's agreement.

1. Recommendation(s)

Cabinet is recommended to:

- 1.1 Note the content contained within the report; and**
- 1.2 Agree to delegate the authority for the tender and subsequent award of a new contract for Environmental Enforcement Services on a payment by results basis to the Director of Environment, Highways and Counter Fraud in conjunction with the Director of Finance, Governance & Property and the Cabinet Member for Public Protection and Anti-Social Behaviour, based on Option 3 (3.3 of the report) as recommended by Cleaner, Greener and Safer O&S Committee.**

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 and some aspects of Anti-social behaviour.
- 2.3 The Council has a small internal Environmental Enforcement Team consisting of 4-day shift officers that are responsible for responding and taking appropriate action for the 4,000 service requests, 50 complaints and 450+ Councillor Enquiries received on average each year.
- 2.4 The Council have recently expanded and introduced a Twilight Enforcement Team comprising of 3 Environmental Enforcement Officers on a 2 year fixed term contract. The objective of the twilight team is to focus on environmental offences and some aspects of Anti-social behaviour occurring during the night-time economy
- 2.5 The size of the day team restricts activity to being a purely reactive service, prioritising larger complex investigative 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.
- 2.6 In order to deliver this resource; in December 2017, the Council entered into a contract providing external enforcement resources to support the proactive

enforcement of environmental offences. The scope of the contract was initially limited to Littering and Dog Fouling Offences; however, this was extended to include the enforcement of the Grays Town Centre Public Space Protection Order (PSPO), which came on-line in April 2017.

- 2.7 Since the commencement of the contract, period covering 06/12/2017 to 30/11/2020 there have been 10,877 FPNs issued. All FPN data from the commencement of the contract to date has been provided below, along with a breakdown of the annual FPN and income data.

2.7.1 **Total for Contract Life: 06/12/2017 to 30/11/2020**

Number of FPNs Issued	10,877
Number of FPNs Paid	6,946
FPN Payment Rate	64%
Overall Income from FPNs	£997,545
Income to Current Supplier	£458,750
Income to Thurrock Borough Council	£538,794
Total FPN's in the prosecution stage	1,343
Number of FPN's in the administration process	469

2.7.2 **Year 1: 06/12/2017 – 30/11/2018**

Number of FPNs Issued	3,563
Number of FPNs Paid	2,391
Refunds	24
FPN Payment Rate	68.7%
Overall Income from FPNs	£309,345
Income to Current supplier	£151,427
Income to Thurrock Borough Council	£157,917
Number of FPN's in the prosecution and prosecution evaluation stage	338

2.7.3 **Year 2: 01/12/2018 – 30/11/2019**

Number of FPNs Issued	3,792
Number of FPNs Paid	2,413
Refunds	21
FPN Payment Rate	70.3%
Overall Income from FPNs	£363,820
Income to Current supplier	£161,160
Income to Thurrock Borough Council	£202,660
Number of FPN's in the prosecution and prosecution evaluation stage	457

2.7.4 **Year 3: 01/12/2019 – 30/11/2020**

Number of FPNs Issued	3,522
Number of FPNs Paid	2,142
Refunds	1
FPN Payment Rate	61.3%

Overall Income from FPNs	£324,380
Income to Current supplier	£146,163
Income to Thurrock Borough Council	£178,217
Number of FPN's in the prosecution and prosecution evaluation stage	548
Number of FPN's in the administration process	194

2.8 The tables are all based on 3 years of actual FPN data, since the commencement of the contract. The term of the contract is 4 years. The average annual FPN data has been detailed in the table below along with the projected income for the full term of the contract (4 years).

2.8.1

Average FPNs Issued per year	3,625
Average FPNs paid per year	2,315
Average overall Income from FPNs per	£332,515
Average annual Income to Current supplier	£152,916
Average annual Income to Thurrock Council	£179,598
Projected overall income from FPNs over 4 years (term of contract)	£1.3m
Projected overall income to Current supplier over 4 years (term of contract)	£611,664
Projected overall income to Thurrock over 4 years (term of contract)	£179,598 x 4 = £718,392

2.9 At present the contract is reporting a surplus. This is 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.

2.10 The current payment rate at **64%** is resulting in a positive financial position. If the payment rate dropped below **40%**, this would mean the contract was making a loss. 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. The Council have an effective prosecution process in place and have passed over 1200 cases of non-payment for prosecution, resulting in an increase in the estimated 60% payment rate and a successful prosecution rate.

2.11 The intention is to continue 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.

- 2.12 The approach follows best practice identified in the Government’s 2017 Littering Strategy for England to *‘Promote transparency and accurate reporting of enforcement action against littering, so that offenders know they will be fined for environmental offences.’*

3. Issues, Options and Analysis of Options

3.1 Option 1: Do not continue with a Litter Enforcement service

3.1.1 The current in-house environmental enforcement service consists of four permanent day shift officers and 3 twilight shift officers on a 2 year fixed term contract. The level of environmental crime in the borough including the increase in large scale fly-tipping means that the service, in its current form is resourced to deliver a reactive service prioritising investigations concerning the most high-harm incidents. The additional contracted-out service supports the council’s intention to provide targeted proactive enforcement, dealing with simple high volume environmental offences such as littering and dog fouling.

3.1.2 To withdraw the additional proactive service would increase the levels of litter in the borough. The council was recognised for environmental excellence following independent review in keep Britain Tidy inspections. To stop further enforcement in this area would likely to damage the council’s strong reputation in providing a safe and clean environment to our residents and visitors, leading to an escalation in the number of more serious waste crime offences. The current contract has been delivered on a cost neutral basis and with the issue of over 10,000 FPNs in the first 3 years has proven to be a success with a visible positive impact on the local environment.

3.2 Option 2: Deliver an in-house proactive high volume enforcement service

3.2.1 The estimated cost of delivering an in-house comparative service per annum is **£236,648** per year. The below table details the staffing costs inclusive of salary, on costs, equipment and transport.

Staffing Budget				
Resource	Scale (midpoint)	PPE/ Equipment	Salary	Total cost
Supervisor	Band F	£1500	£52,426	£53,926
Enforcement Officers	Band E	£4500	£126,990	£131,490
Admin Officer	Band D	N/a	£35,232	£35,232
Vehicle	N/A	N/A	£16,000	£16,000
Total			£230,648	£236,648

3.2.2 In-house comparative

Assumed Expenditure	
Number of working days	222
Number of Issuing Enforcement Officers	4
Total number of FPNs Issued per year	$222 \times 16 = 3,552$
Projected service costs	236,648
Projected income	(340,950)

Assumed Income	
Total Number of FPNs Issued per year	$3,552 \times £150 = £532,800$
Payment rate	64%
Number of FPNs Paid	2,273
FPN Level	£150
Contract Income PA	$2,273 \times £150 = £340,950$

	£
Annual Service Expenditure	236,648
Annual FPN Income	(340,950)
	(104,302)

3.2.3 A payment rate of 64% values a £150 FPN at £96. In order to achieve a financial break even position, based on a 64% payment rate the number of FPNs that the service would need to consistently issue per year is 2,466 ($2466 \times £96 = £236,736$).

3.2.4 Although potentially achievable, this represents a financial risk to the authority. Should the payment rate drop below **64%** or the FPN figures fall below 2,466 this service would make a loss for the Council.

3.2.5 In house risks to consider:

- Increased financial risk
- Resilience and management of staff sickness, absence, conduct, capability and appraisals
- Covid-19 Pandemic restrictions
- Training and equipment maintenance costs
- Staff retention
- Redundancy costs
- Responsible for the day to day supervision and deployment
- No resilience provided either within an in-house team or elsewhere in the council to cover any in-house staff member being absent
- There would be no default process therefore loss of revenue through officer error or contractor faults

- 3.2.6 The payment by results model during the current 4 year contract has demonstrated no financial risk to the Authority.
- 3.2.7 In addition, investment in handheld computer systems and back-office automated systems would also be required. The Council would need to research, specify, procure and implement comparable software during a period the council is facing significant financial pressure. Those figures are unknown therefore are not included in the calculation above. A suitable and effective ICT solution is unlikely to be in place by the end of the contract in December 2021.
- 3.3 **Option 3: Procure a Contracted Environmental Enforcement Service on a payment by results basis. *The recommended option***

3.3.1 ***Current external enforcement services supplier contract***

<i>Assumed Annual Expenditure</i>	
<i>Number of working days</i>	232
<i>Number of Issuing Officers</i>	4
Total number of FPNs Issued per year	$232 \times 16 = 3,712$
Estimated Contract costs	$3712 \times \pounds 42.50 = \pounds 157,760$

<i>Assumed Income</i>	
Total Number of FPNs Issued per year	$3,712 \times \pounds 150 = \pounds 556,800$
Payment rate	64%
Number of FPNs Paid	2,375
FPN Level	£150
<u>Contract Income PA</u>	$2,375 \times \pounds 150 = \pounds 356,250$

	£
Annual Service Expenditure	157,760
Annual FPN Income	(356,250)
	(198,490)

- 3.3.2 In April 2018, the council increased the value of the littering FPN from £80 to the maximum £150. The current supplier did not increase their charge from £42.50, therefore the council currently receive £107.50 per paid FPN. This equates to 71.6% of the overall FPN value.
- 3.3.3 The current supplier have confirmed they do not have any other contract offering a return rate over 70% in favour of the local authority. Therefore they would be looking to negotiate the shared values in any future contract bids in line with the procurement specification and in line with other existing contracts.

- 3.3.4 A benchmarking and soft market testing exercise has concluded the option for the council to secure any similar contract is no longer viable. The soft market testing exercise was unable to identify another contract consistent to the council. It is clear all councils have bespoke contracts in support of their own specific needs, demographics, delegated powers and priorities.
- 3.3.5 The tender process will deliver the most competitive value from the market place and assist the council to scope the alternatives available across the whole market.
- 3.3.6 Whilst a new contract would continue to provide an income stream to the authority, any change to the percentage in favour of the contractor would make it more challenging for Enforcement to meet the budgeted income target, which forms part of their budget.
- 3.3.7 The projected net income based on the current contractor income is £198,490 per annum and the projected net income for an in house contract based on an identical enforcement model is £104,302 per annum. A breakdown of the comparative annual income and estimated contract value is provided below:

Comparison	Annual income from FPNs	Annual Net income to TBC	Annual Expenditure	Estimated contract value (over 4 years)	Risk
Current Contractor (£107:50 per FPN) (See 3.8)	£356,250	£198,490	£157,760	£1,425,000	No cost – No risk’ financial mode
In House (£150:00 per FPN)	£340,950	£104,302	£236,648	£1,363,800	<i>Potential financial risk *</i>

- 3.3.8 With over 10,000 FPNs issued in the first 3 years of the contract with the current supplier, it has proven to be a success in enforcing against those who commit environmental crime.
- 3.3.9 The contract has been delivered on a **‘No cost – No risk’ financial model** and has demonstrated that, providing that it is closely managed, it can deliver excellent results and generate significant income for the council at minimal financial risk to the authority.
- 3.3.10 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 previous contract. The service will invite bids from experienced, suitably qualified contractors for the provision of high volume simple enforcement functions.

3.3.11 The contract is intended to complement the existing in-house team who will continue to focus on resolving complex serious environmental offences.

3.3.12 The Council will invite bids for a range of simple enforcement functions including non-investigation offences such as witnessed graffiti, flyposting and fly tipping that complement the current littering and PSPO enforcement. The proposed range of services is detailed in 4.1.

3.3.13 The contract is intended to deliver a professional and consistent enforcement approach, which meets the standards expected of a Council Environmental Enforcement Officer.

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 dog fouling offences.
Fly Posting	Pro active patrols across the borough enforcing against those committing fly posting offences.
Graffiti	Pro active patrols across the borough enforcing against those committing graffiti 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 / Anti-social behaviour offences	Enforcement in the case of Environmental Crime/Anti-social behaviour, which will also include any new powers which come into force as appropriate

4.2 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.

5 Proposed charge for FPNs relating to Environmental Crime and some aspects of ASB as enforced by internal and contracted Environmental Enforcement Services.

5.1 All FPNs for Environmental Crime and some aspects of ASB and related offences are set at the maximum permissible level and that charges are increased as legislation is amended to uplift the maximum permissible level. This will act as a deterrent to those who commit environmental crime, contribute towards the contracted enforcement service and will support the Council's zero tolerance approach to Environmental Crime and ASB.

Offence	Current FPN charge	Early repayment FPN charge
Littering	£150	No discount
Dog Fouling	£80	No discount
Fly Posting	£150	No discount
Graffiti	£150	No discount
Fly Tipping	£400	No discount
Commercial Waste Duty of Care	£300	No discount
Commercial Waste Receptacle Offences	£110	No discount
Domestic Waste Receptacle Offences	Not currently used.	Not discount
Breach of Public Space Protection Order (PSPO)	£100	No discount
Breach of CPN	£100	No discount

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

6.1 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.

6.2 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).

- 6.3 The current payment rate of 64% is enough to provide an operating surplus to fund the prosecution phase 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.

7. Proposed Contract Value

- 7.1 The contract will be let in line with the payment by results method similar to the existing contract. 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.
- 7.2 To date the contract has demonstrated that this model is cost neutral, which also generates funding for increased operational activity and any additional prosecution costs. Based on the data gathered from the contract, the proposed contract value over the 4 year period be £1.3 - £1.4 million. The approach already taken in the management of the budget would continue. All surplus monies will continue to be ring-fenced to deal with the on-costs including co-ordinated multi-agency operations and criminal litigation in contested cases.
- 7.3 At a payment rate of 64% the expected income per annum will be £340,000-£360,000 resulting in a net income to the Council of £104,000 - £198,000 per annum dependant on the agreed terms of contract.

8. Reasons for Recommendation

- 8.1 Enforcing against those who commit environmental crime reduces offending rates and improves the appearance and standard of cleanliness of the borough. A cleaner environment contributes towards the public's pride in the borough and creates a positive quality of life for our residents, businesses and visitors.

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

- 9.1 This report was presented at the Cleaner, Greener and Safer Overview and Scrutiny Committee on 4 February 2021.
- 9.2 The report shared the proposal for the Council to re-tender for the brought-in support services that assist the Council in meeting the objectives to improve the environment and neighbourhoods for Thurrock residents.

9.3 An overview on the performance and required standards of the contract to date and the detailed future projections based on known comparatives were discussed and consulted with O&S, with the agreement to progress the report's recommendations to Cabinet.

9.4 The Cleaner, Greener and Safer Overview and Scrutiny Committee:

1. Noted the content contained within the report; and
2. Recommended that Cabinet delegate the authority for the tender and subsequent award of a new contract to the Director of Environment, Highways and Counter Fraud in conjunction with the Director of Finance, Governance & Property and the Cabinet Member for Public Protection and Ant-Social Behaviour, on a payment by results basis.

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

10.1 N/A

11. Implications

11.1 Financial

Implications verified by: **Laura Last**
Senior Management Accountant

This is an options report and there are no direct financial implications arising from it.

11.2 Legal

Implications verified by: **Courage Emovon**
Principal Lawyer / Manager- Contracts Team

The Council have a duty with regards to ensuring a clean Environment for the Health and wellbeing of its residents and This duty extends to protection of the Environment and Prosecution of offenders who flout environmental laws and regulations. As this report is an update report seeking Cabinet approval for its recommendation, there are no direct legal implications, however any tender for the contract must comply with the Public Contracts Regulations 2015 and the Council's Contract Procedure rules. Legal Services will be on hand to advice on any issue arising from this report as and when required.

11.3 Diversity and Equality

Implications verified by: **Natalie Smith**

Strategic Lead, Community Development and Equalities

There are no diversity and equality implications arising from this report.

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

N/A

- 13. Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

N/A

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Environment Highways and Counter Fraud