

Title of report: Outsourcing of Litter and Dog Fouling Enforcement

Decision maker: Cabinet Member housing, regulatory services and community

Decision date:

Report by: Trading standards service manager

Classification

Open

Decision type

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

To procure an outside organisation to provide littering and dog fouling enforcement within the county of Herefordshire for a trial period of 12 months with an option to extend for up to 5 years.

Recommendation(s)

That:

- a) to agree for the procurement of an outside organisation to provide littering and dog fouling enforcement within the county of Herefordshire for a trial period of 12 months with an option to extend for up to 5 years; and**

- b) **To delegate authority to the corporate director of economy and environment in consultation with the cabinet member to award the contract operational decision related to implementation of the contract. for a trial period of 12 months with an option to extend for a up to further 5 years on a 3 year plus 1 year plus one year contract extension basis**

Alternative options

1. Remain as per the current status with the community protection team carrying out the enforcement on an intelligence led basis. This is not recommended because the contract will enable the enforcement capacity to be increased without this cost being passed to the council.
2. Remain as per the current status with the community protection team carrying out the enforcement on an intelligence led basis and develop the volunteer parish officer scheme. This is not recommended because the contract will enable the enforcement capacity to be increased without this cost being passed to the council and the volunteer parish officer scheme can still be pursued with or without the contract.

Key considerations

3. Currently the community protection team consists of 0.8 FTE team leader and 4.2 FTE enforcement officers to tackle dog fouling and littering along with fly tipping, duty of care (waste) enforcement, abandoned vehicles, stray dogs and antisocial behaviour. One of these posts is funded by Hereford City Council and this officer will be tackling environmental crime including dog fouling and littering within the city boundary. The council and Hereford City Council have a service agreement to fund this post up to 6 years.
4. Dog fouling and littering enforcement is currently carried out on an intelligence led basis, looking at complaints and trends so that these areas can be targeted to tackle the problem. No routine patrols of officers are carried out.
5. In 2021/22 there were 127 complaints of dog fouling and 5 complaints for littering with 23 fixed penalty notices being issued in 2021. In 2022/23 to end of February there were 132 complaints of dog fouling and 1 complaint for littering with 12 fixed penalty notices issued.
6. Work is ongoing to explore and develop a parish officer scheme where volunteers in this community carry out walkabouts and advise dog walkers regarding the need to pick up dog waste, offer dog poo bags and then, if the person still persists, to refer the information to the community protection team for appropriate enforcement. Once the pilot in the is completed, the service is looking to roll out similar initiatives across other parishes in the county.
7. Enquiries made with potential contractors that can provide this service show they provide a no cost solution to the council. This is achieved by raising their revenue through the issuing of fixed penalty notices with their costs and profit being taken from that revenue and an agreed surplus returned to the council.
8. Should the decision be approved to procure external contractors the procurement and subsequent contract management will be undertaken in accordance with the council's contract procedure rules.
9. There is a risk that if there are insufficient offences being committed there will be less income so the contractors income could decrease and the council share of the revenue (which would cover any council legal processing costs) could also reduce to the point that the contractor would not

be able to cover their costs, making their proposition non-viable. This is the reason for a 12 month trial, as it suits both the council and the potential contractor.

10. Other potential strengths are a perceived improvement in the reputation of the council's effectiveness in regulation, an improvement in local member and parish council relations, a compatible paperless system which the Council will have access to, the preparation of prosecution files compliant with the Council's legal process and the enforcement of Public Space Protection Orders (PSPOs). Likewise, the potential contractor will have to accept all the risk and running costs, including non fee collection, HR, travel and staff training.
11. Potential weaknesses are that there could be insufficient work for the contractor to continue the contract (only 5 litter complaints last year). Also, if Fixed Penalty Notices are not possible (e.g. underage) the contractor is unlikely to engage in any campaign or interaction / education, unless there is an income associated with this. Similarly the community protection team would still need to manage the contract and the contractor would still need a base to work from. Based on the Council's experience, likewise the contractor may also find that the recruitment of enforcement staff difficult.
12. If the potential number of fixed penalty notices issued is realised, it follows from the Council's experience that there will be a corresponding number of offenders not paying the fine. If this happens the offender would have to be investigated with a view to prosecution. The companies approached through soft market testing have all stated that they will carry out this legal activity, following our legal process. However, and as a likely example, if 10% of fines are not paid this would put a large strain on the council's internal legal process which in turn would effectively reduce any income that is returned to the council. At present the process requires input from legal services, the service manager and head of service.
13. Potential opportunities include the expansion of this initiative to other areas of regulation, with the team contracting or increasing in size depending on and the outcome of the 12 month trial. For example, a potential contractor could also undertake out-of-hours investigation of illegal traveller encampments and carry out other PSPO enforcement and even parking enforcement.
14. Potential threats are that the community protection team could be reduced in size, if the new scheme is so successful that the permanent staff are seen to be surplus. Another real risk experienced by other local authorities is that overzealous enforcement encouraged for income generation reasons by the contractor can result in negative local/national publicity.
15. On the matter of overzealous enforcement, a letter dated 16 June 2022 to all councils from Jo Churchill MP minister (Department for Environment, Food and Rural Affairs) raises the Government's concern that the outsourcing of litter enforcement should not be used for income generation and that any perception of this would undermine the legitimacy of the enforcement regime. The letter therefore encourages local authorities to reduce littering through communications and the provision of regularly emptied bins.

Community impact

16. The Herefordshire Council County plan 2020-2024 - Protect and enhance the county's environmental standards

Environmental Impact

17. The community protection team are only a small team currently carrying out a wide range of environmental crime enforcement such as fly tipping, abandoned vehicles, stray dogs, anti-social behaviour along with littering and dog fouling. All these impact on the environment.

18. Enforcement of littering and dog fouling contributes to reducing its impact on the environment.

Equality duty

19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

21. There are no costs arising from this decision. If the issue of fixed penalty notices provides the contractor with a surplus a percentage will be paid to the council. A further cost would be the officer costs of carrying out the internal legal process involving legal services and public protection managers if there is a high number of offenders failing to pay the fixed penalty notice.
22. Guidance from government states that outsourcing of enforcement should not be done to provide an income stream.

Legal implications

23. The current team within Legal Services that process the prosecutions for non-payment of FPNs is a small team. Any increase in these prosecutions will have an impact on the level of resources available to process these types of prosecutions as well as the other environmental and fraud prosecutions within the team. There may therefore be a need to reconsider the resourcing available and potentially increase it, which will in turn have an impact on expenditure and budgets.
24. The procurement of a third party provider will be undertaken with the council's contract procedure rules and the Public Contract Regulations 2015.
25. Once appointed officers of the third party service provider will need to be authorised to issue Fixed Penalty Notices under the Environmental Protection Act 1990 and the Anti social behaviour crime and policing act 2014 in accordance with line 70 of the Economy and Environmental Scheme of Delegation.

Risk management

26.

Risk	Mitigation
Damage to reputation - due to what the public perceive as harsh or overzealous enforcement and perceived income generation.	Ensure that both education is used alongside enforcement and the code of practice is followed.
Resilience – Insufficient capacity to carry out internal legal process to progress prosecutions due to high number non payment of fines which also affects other more serious criminal prosecutions	Increase in funding required to ensure sufficient staff.

Consultees

A political group consultation was carried out and the comments were General

Broad agreement that the trial should take place to determine the scale and impact etc.
Belief that the number of complaints is no measure of the demand
Consider using Street control notices (ceased to be legal in 2014)
Would be supportive if went down this route.

Concerns

Concerns about extra workload for managers and legal services for prosecution authorisations and that an answer needs to be sort.
Query in regard to what happens if the FPN's reduce to less than 4 per officer per day. (Advised that is what the trial is to determine).
Capacity issues of the team raised
Better signage to be used with the eye.
Issues would be company target those throwing down cigarette butts and missing the wider picture.
Creating a huge rod for our own backs

Areas that should be in contract

Dog fouling is an issue in the rural areas therefore rural areas should be included in contract
Need to consider littering from vehicles as part of contract
Education needed as part of contract.

Appendices

Appendix 1 Letter from Minister Defra
Appendix 2 enforcement guidance on litter and refuse
Appendix 3 Fly tipping toolkit

Background papers

None identified

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	John Coleman	Date 01/03/2023
Finance	Louise Devlin	Date 20/02/2023
Legal	Lorna Lucas and Alice McAlpine	Date 08/11/2022
Communications	Luenne Featherstone	Date 20/02/2023
Equality Duty	Harriet Yellin	Date 18/10/2022
Procurement	Lee Robertson	Date 28/02/2023
Risk	Kevin Lloyd	Date 25/10/2022
Approved by	Ross Cook	Date 13/03/2023

[Note: Please remember to overwrite or delete the guidance highlighted in grey]

Please include a glossary of terms, abbreviations and acronyms used in this report.