

26 July 2021

**Wards:** All

Litter Enforcement Concession

**Report of the** Assistant Director – Streetscene Services

This item is not exempt  
Therefore exempt reasons are not applicable

This is a key decision. The matter is in the Forward Plan  
0029/21

1. Purpose of the Report and Summary

1.1 A Litter Enforcement Pilot Concession was procured and awarded to L A Support Limited in 2019 who have provided the service since January 2020. The current concession expires on 30 November 2021. This report considers options for future litter enforcement action and makes recommendations for the re-procurement with an external provider to continue this service.

2. Recommendations

- 2.1 That approval is given to procure a contract for the grant of a concession to provide litter enforcement services on behalf of the Council through a below-EU threshold open tender process.
- 2.2 That authority to award the concession contract is delegated to the Assistant Director for Streetscene in consultation with the Director of Legal Services and Partnerships and the Portfolio Holder for Environmental Services.
- 2.3 Subject to appropriate contractual safeguards and early termination provisions, the concession contract be for 36 months with an option to extend for a further period of up to 24 months,
- 2.4 That option 1 as outlined at paragraph 7.2 forms the basis of the concession agreement as there is no financial risk to the Council.
- 2.5 That tenders are evaluated based on a price: quality split of 40:60.
- 2.6 That the value of FPNs issued by or on behalf of the Council remain at the current level of £100 reduced to £80 for early

payment.

- 2.7 That the contract specification requires the concessionaire to provide enforcement patrols across all wards and has flexibility to respond to local ward priorities.

### 3. Reasons for Recommendations

- 3.1 The provision of a dedicated litter enforcement resource on a pilot basis has been provided by L A Support Limited since 6 January 2020. This pilot project has allowed sufficient time to evaluate the benefit and inform the future longer term provision or alternative service arrangement for this activity.
- 3.2 The outcome of the public consultation exercise conducted during August 2017 indicated that a significant majority of residents were in favour of issuing Fixed Penalty Notices (FPNs) for littering.
- 3.3 A concession agreement offers an efficient way of maintaining an operational litter enforcement service and utilises the knowledge and skills of an experienced service provider.
- 3.4 The current concession has been well received and has provided a financially risk free solution for the Council.
- 3.5 The levels at which the value of FPNs are set for Hull should be sufficiently high to act as a deterrent and increasing the level may adversely impact on FPN payment rates.

### 4. Impact on other Executive Committees (including Area Committees)

- 4.1 The focus of future litter enforcement activity will continue to be in the city centre and in the busier areas across the city. However the concession agreement will require visible enforcement patrols in all wards across the city on a regular basis.

### 5. Background

- 5.1 Environmental crime can affect the quality of the local environment and can have an impact on how places look and are perceived. It can also influence how attractive areas are to residents, workers, visitors and investors such as businesses and their trade. With the recent and continued investment in the City's public realm, consideration to maintain our enforcement activity to protect this investment is prudent.
- 5.2 With more visitors returning to the city there is greater footfall and increased levels of food consumption which may also contribute to increased levels of birds feeding and the associated problem of bird faeces which both detract from the environment and increases cleaning costs. The Council spends over £2m on street cleaning, fly-tip removal

and litter bin emptying every year collecting over 4,000 tonnes of rubbish in the process. Departmentally, responsibility for waste enforcement moved to Streetscene Services from June 2017 alongside the responsibility for street cleaning and waste management.

- 5.3 The current waste enforcement team now comprises one team leader and seven enforcement officers. This is a reduction of five posts since 2011 but an increase of one officer since the pilot scheme commenced in 2019 that has helped to target fly-tipping. The core work of this team continues to manage and address reports of neighbourhood nuisance involving environmental issues and anti-social behaviour. This involves using the full range of tools and powers available to the Council. Environmental issues include those referred to in Tables 1 and 2 below.
- 5.4 The powers provided by the following Acts are used to tackle fly tipping, untidy land and littering: - Environment Protection Act 1990, Control of Pollution (amendment) Act 1989, Clean Neighbourhoods and Environment Act 2005, Highways Act 1980, Anti-Social Behaviour, Crime and Policing Act 2014, Water Resources Act 1991, Clean Air Act 1993, Town & Country Planning Act 1990 (As Amended), Anti-Social Behaviour Act 2014, Public Health Act 1936, Public Health (Amendments) Act 1907 & Scrap Metal Dealers Act 2013.
- 5.5 The level of demand for service and historic enforcement activity undertaken by the Council's enforcement team is outlined in Tables 1 and 2 below.

**Table 1 - Enforcement interventions**

	<b>Year 18/19</b>	<b>Year 19/20</b>	<b>Year 20/21</b>
Calls for service	4,603	4,723	4,778
Informal Actions e.g. advice letters/guidance/information requests	815	880	990
Inspections/ audits	559	627	156
Informal/Formal warnings e.g. written/verbal	2,456	2,325	2,209
Enforcement Notices	918	996	729
Fixed penalty notices	176	970	4,076
Prosecutions submitted for prosecution	170	122	89

**Table 2 – Enforcement demand by category**

	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>
Cable burning	2	3	6
Damage to verges	5	13	5
Dog fouling	99	88	144
Fly Tipping	1,448	1,623	1,798
Graffiti	10	10	106
Littering	218	105	138
Nuisance vehicles [sales/repair]	24	21	49
Shopping and luggage trolleys	2	0	1
Street litter	7	11	16

Unlawful advertisements	37	23	8
Untaxed/Abandoned vehicles	346	493	574
Untidy Land	2,136	2,094	1,660
Waste Burning - businesses	17	19	17
Waste burning - households	1	4	17
Waste Carriers	53	63	59
Waste Collection Problems	198	153	180
	4,603	4,723	4,778

- 5.6 It should be noted that the number of prosecutions has been impacted by the amount of available court time during the Covid pandemic. It is worth noting that a large percentage of the work undertaken by the waste enforcement team is pursuant to the statutory duties of the Council, such as untidy land, the enforcement of provisions against cable burning and waste burning, and the removal of abandoned vehicles. Work relating to the Council's statutory duties equates to around 49% of service demand whilst circa 38% of demand is related to fly tipping. Services relating to fly tipping are both more labour intensive and more time consuming, but the enforcement of fly tipping is not a statutory duty.
- 5.7 With current service demand, the relatively small team can't undertake regular litter enforcement patrols, which is why the number of Fixed Penalty Notices (FPNs) issued by the Council's own officers is relatively low prior to the introduction of the pilot project in early 2020. In terms of the Council's overall approach to street cleansing, education and preventing litter, the continuation of an external litter enforcement arm is an important element of the Council's stance demonstrating a zero tolerance approach to environmental crime and nuisance. The significant rise in FPNs issued in 19/20 and then again in 20/21 is largely due to the introduction of the litter enforcement concession.
- 5.8 In 2018, in preparation for a procurement exercise to expand our litter enforcement activity a pre-market consultation exercise was conducted to help inform the development of a specification and procurement route for undertaking a tender. At the same time, a consultation exercise was conducted to assess the level of public support for litter enforcement. The consultation showed that a significant majority of residents were in favour of enforcement action against littering.
- 5.9 In response to the last tender, there were three bids from contractors to provide the concession. Following evaluation the concession was awarded to L A Support Limited. The specification of the concession was based on the outcome of that consultation with the strategy focussed on littering with a particular focus on the busier areas across the city. Evenings and events could also be covered. Whilst the main focus of enforcement was on littering including chewing gum and cigarette ends there was the potential to extend the scope to other issues such as graffiti, spitting and dog fouling for example.

- 5.10 The concession agreement commenced on 1 December 2019 for an initial period of 12 months and after a short mobilisation and recruitment drive, enforcement patrols commenced in early January 2020. The concession agreement was subsequently extended for a further 12 months and is due to expire on 30 November 2021. It is not possible to extend this agreement any further.
- 5.11 A summary of the key outputs from the pilot enforcement project can be found at Appendix 1 to this report.
- 5.12 The Council let the concession agreement through which the supplier had a right to a proportion of the income received through Fixed Penalty Notices so that no direct costs fell to the Council. To achieve this, the focus was initially in the busiest areas (city centre) to demonstrate the viability of a concession contract. The service specification ensured the potential for inappropriate or disproportionate enforcement action was minimised. For example where littering may be accidental, placed next to a full bin or where a young child has dropped litter without their parents' knowledge.
- 5.13 The specification also stipulated the age below which no FPNs should be issued. FPNs can legally be issued to people aged 10 or above but there is different guidance for issuing an FPN for juveniles aged 10-15 and for ages 16-17. There is also the potential to vary the level of the penalty linked to age. It was agreed with the contractor that no FPNs would be issued to anyone under the age of 18.
- 5.14 The government currently prescribe a minimum, maximum and default level for litter FPNs. These are currently set at £65, £100 and £150 respectively. In Hull, FPNs are currently issued at the default level of £100, reduced to £80 for prompt payment within 14 days.
- 5.15 It was estimated that based on a team leader and 4/5 enforcement officers that between 3,500 and 5,500 FPNs would be issued in 1 year. The actual number issued by L A Support was 911 between January 2020 and the end of March 2020 and then 4,004 for financial year 2020/21. Although footfall has continued to be impacted by Covid-19, the average number of FPNs issued in April and May 2021 was 291. Clearly, Covid-19 has been a significant issue. This combined with staff retention and performance issues mean that it is difficult to predict an annual estimate but the original assessment of between 3,500 and 5,500 annually looks reasonable.

## 6. Issues for Consideration

Author: D. Sharp

Status: Final report to Cabinet & P&C Overview and Scrutiny Commission

Date: 16/07/2021

- 6.1 The most significant issue for consideration is whether the Council is minded to continue its litter enforcement activity and to do this through the grant of a concession agreement to an external organisation.
- 6.2 In addition, there are important considerations about the sharing of risk within any contract, the ability to limit the Council's exposure to cost, the scope of services and the contract specification.
- 6.3 It is clear from the Pilot Project that on the whole, the introduction of enforcement via a concession agreement has resulted in a significant increase in the number of FPNs issued and paid.
- 6.4 Since the start of the project, 5,641 FPNs have been issued of which 2,631 have been paid, 647 are awaiting payment and 485 have been referred for prosecution. 1,878 have been written off as proof of address couldn't be confirmed or there were either no or limited slots available at the Magistrate's Court. All of the prosecution files collated and submitted for littering in Hull were considered in batches under the Single Justice Procedure at Sheffield Magistrate's Court. Court availability remains an ongoing issue in relation to litter and other prosecutions in general. If litter enforcement is to continue, options to improve FPN payment rates need to be considered although comparison to other areas of the country show that the rates in Hull are slightly above average. The financial impact of Covid-19 is thought to have impacted on some litterer's ability to pay.
- 6.5 The ultimate aim is to reduce the amount of littering that takes place. This is very difficult to assess and the cleanliness of an area can be linked to the cleansing regime along with the amount of litter that's being dropped. The lockdowns and various restrictions have made an objective assessment impossible especially with resources redeployed to address the pandemic.
- 6.6 In terms of the positives from the pilot, what we can say is that an enforcement service has been successfully introduced in Hull at zero cost. In addition, the revenue share arrangement (income from 20% of all FPNs paid comes to the Council) generated £43,038 in income over the period for the Council which has been ring fenced to fund the Love Your Street project moving forward. If litter enforcement didn't continue at a similar scale this would represent a revenue pressure for the Love Your Street project. This income **does not** include any costs awarded and received in relation to successful prosecutions through the courts.
- 6.7 The enforcement service also provides a potential deterrent and the associated publicity around the service, including the experience of those people that have received an FPN should contribute to a potential reduction in littering, but it is very difficult to quantify. An important element though is that the service is a demonstration of the

Council's stance on littering, and commitment to protecting the environment.

- 6.8 Prior to commissioning the service there was concern that an external provider may be over zealous or issue FPNs in circumstances where they shouldn't e.g. accidental littering. Up until mid-June 2021 the contractor had received 1 formal complaint and 331 informal representations in response to 5,641 FPNs issued. The enforcement process allows for these representations such that each FPN issued can be reviewed where the recipient feels that it was unfair. Of the 331 representations 280 were declined and 51 upheld. Of the 51 upheld 16 of these were on the grounds of mental health and 16 for being underage (as FPN's are issued where ID is not provided and people appear aged +18yrs) with the remainder related to miscellaneous reasons in response to information provided e.g. family bereavements, serious ill health where the contractor has exercised discretion. Maintaining a robust contract management process, complaint handling and review of informal representations process is an important element of the service provision that must remain in place to provide safeguards. The contract drafting, relationship with the contractor and operational delivery have all contributed to ensuring any reputational risk has been minimised and where FPNs have been issued incorrectly or inappropriately, they have been cancelled as per the 51 identified above.
- 6.9 There was also concern that the service would be city centre focussed and that all wards of the city should benefit from patrols. The contract specification was drafted to emphasise these points and a minimum requirement for patrolling outside of the city centre and busier arterial routes was included. The specification also allowed flexibility for the contractor to adapt based on need and in practice, more FPNs were being issued in Central ward than in the city centre over recent months. The impact of Covid-19 definitely played its part in moving shopping habits from the city centre to local neighbourhood shopping at times during the pandemic. This resulted in a need to cease enforcement activity between late March and late June 2020 but also to redeploy resources as shopping habits changed. It is clear that to provide an effective enforcement regime, the resource, predominantly needs to be deployed in the busier areas but with flexibility to adapt. However, income generated in these busier areas helps to fund patrols in less productive areas of the city.
- 6.10 The issue of litter enforcement and geographic deployment of resource was considered at a meeting of the full Council on 18 March 2021. The outcome of the meeting required that officers progress with a review of the enforcement provision by December 2021 which is the purpose of this report. It also resolved that the geographic deployment remained unchanged but required consultation with area committees to identify where litter is most prevalent to help direct the resources. An online portal is already set up with direct access for waste

management and area team staff to submit requests for patrols. Any future concession will be drafted to allow flexibility for patrol requests and to retain the current requirements to patrol outside of the city centre.

- 6.11 The maps provided at Appendix 1 to this report show the visual distribution of the locations where FPNs have been issued but also where the offenders live. In terms of impact, the busier areas of the city have seen the highest numbers of FPNs issued but it is clear that the offenders live across all areas of the city, the East Riding and residents from across the United Kingdom.
- 6.12 An alternative to external service provision is to provide the service in house. In this scenario front line enforcement officers would likely be covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). However further enquiries would need to be made in relation to administrative activities such as collecting payments, dealing with representations and producing legal documents for court.
- 6.13 The benefit of an externally provided service is the economies of scale they can bring. The incumbent contractor provides all back office support, IT portal, administration, complaints handling, recruitment, personnel supply to cover sickness absence and staff management through a central resource. This resource supports a national network of enforcement and security contracts. To internalise this service would require replicating all back office functions, IT and staff management in accordance with Council policies. This would all need to be assessed if internalisation were to be considered but given the specialist and confrontational nature of the service and the lack of financial risk, continued provision through an experienced, external specialist organisation is recommended.
- 6.14 Working with an external organisation since 1 December 2019 has allowed the Council to monitor performance, assess the suitability of the specification and gauge public feedback to inform future plans. Although the service has been significantly disrupted by Covid-19, on the whole it has operated remarkably well. The key lessons learned have been that:
- Staff turnover is high and retention can be difficult given the nature of the role so investment in training and recruitment is high;
  - FPN Payment rates have been lower than anticipated. It is unclear what the short term impact of Covid-19 has been but it is thought that this has contributed nationwide to lower payment rates;
  - A higher proportion of litterers can't be progressed to the prosecution stage than anticipated as proof of address can't be confirmed through ID checks;

- The courts have been unable to manage our required prosecution file case load;
  - Smoking related litter forms the majority of littering cases;
  - More than two thirds of FPNs are issued to men and the proportion of people caught littering declines with age.
- 6.15 In any future enforcement service we must consider how the Council or any future service provider can address some of the lessons learned. They also provide information to support potential campaigns relating to health or targeted communications towards younger males.
- 6.16 Although we are only aware of three companies operating this kind of service outside of London, any contract will be open to tender by any other suitable providers.
- 6.17 In terms of the overall scope of services, it is recommended that the core focus remains on littering but by adopting a partnership approach with the concessionaire it may be possible to expand service provision where appropriate.
- 6.18 There are other key considerations which include:
- The level of an FPN – At present in Hull the value is set at £100 which is the national default level. The Council can set the level anywhere between £65 and £150.
  - The age above which an FPN can be issued. Legally an FPN can be issued to people aged 10 and over. It is recommended that FPNs are issued to anyone 18 and over but that the specification allows for FPNs to be issued to under 18s where proposals from any provider are agreed with the Council. From the pilot project, the number of under 18s observed and recorded littering were very low.
- 6.19 Discussions with potential suppliers have indicated that the preferred duration for any agreement would be to have an initial contract period of 36 months. This allows for the retention of staff and an extension period allows for extension where the service is working well.
- 6.20 Assuming a Cabinet decision in July 2021, taking into account the procurement process and mobilisation period for the successful contractor, a new enforcement service could be operational from 1 December 2021 to follow on immediately from the existing arrangement without interruption.

## 7. Options and Risk Assessment

- 7.1 In the discussions with external organisations in 2019 we discussed many options for sharing financial risk between the parties. Several options are outlined below for consideration.
- 7.2 **Option 1 – Zero cost to the Council with a 20% revenue share arrangement on all FPNs paid.**
- 7.3 **Option 2 – Zero cost to the Council with a revenue share arrangement on FPNs after costs are covered.**
- 7.4 **Option 3 – Payment to the contractor for every FPN issued with all revenue from FPNs received by the Council.**
- 7.5 **Option 4 – Payment to the contractor based on an hourly rate per person with all revenue from FPNs received by the Council.**
- 7.6 **Option 5 – Do not pursue the continuation of litter enforcement resource.**
- 7.7 **Option 6 – In house service delivery.**
- 7.8 With option 1 the Council has no financial risk and during the pilot project delivered an income of £43,038 to the Council (up to June 2021) so this option is proven to have worked with the incumbent contractor.
- 7.9 Option 2 is also low risk but there is a need to accurately assess the contractor's costs which may not be straight forward and is an additional administrative burden.
- 7.10 Options 3 and 4 may provide more potential revenue upside but there is more risk as there is no guarantee that income will exceed costs.
- 7.11 Option 5 will remove a service that has clear public support and Option 6 would require significant further work to consider and holds the same financial uncertainties of options 3 and 4 and may not be cost neutral. The benefit of an experienced and specialist partner would also be lost with Option 6.
- 7.12 Based on this assessment of risk Option 1 is the recommended approach as this provides a guarantee that costs will not be incurred with a small revenue stream to support environmental improvement.
- 7.13 An estimation of potential income to the Council based on an annual range of 3,500 to 5,500 FPNs per year is set out in the table below.

No of FPNs	FPN level		
	Minimum (£65)	Default (£100)	Maximum (£150)
3500	£23k	£35k	£53k
4500	£29k	£45k	£68k
5500	£36k	£55k	£83k

7.14 The above table assumes a payment rate of 50% for all FPNs issued and a 20% share of all revenue to the Council and is provided for indicative purposes only.

7.15 Given the need to focus on the service delivery proposals from tenderers and the relative importance of quality and service provision over potential income, it is recommended that a price: quality split of 40: 60 is adopted.

## 8. Risk Assessment

8.1 In terms of overall approach, pursuing a medium term (3 years plus option to extend by up to a further 2 years) concession contract is the quickest option available and based on feedback from potential suppliers this could be operational within 8 weeks of contract award and be delivered with a net income to the Council with no financial risk.

8.2 Although there may be better financial options these come with greater financial risk which can only be properly assessed following a period of operation. The current pilot agreement has demonstrated good value for the Council with the financial risk being borne by Contractor.

8.3 In addition to the financial risk, there will also be some public opposition to enforcement with the potential for this to be perceived as a revenue generating operation. Clearly, this is not the case but it will be important to carefully manage the contract to ensure that any reputational risk is minimised. Conversely, given the public support for litter enforcement, a decision not to progress plans would be counter to the majority public view. The current pilot agreement has demonstrated public support for the enforcement of littering offences with relatively few complaints given the high profile nature of the activity.

## 9. Consultation

- 9.1 To inform the initial decision to increase the Council's litter enforcement resource a public consultation exercise was conducted during August 2017. The outcome of the consultation was that 88.7% of respondents supported the proposal.
10. Comments of the Director of Legal Services and Partnerships (Monitoring Officer)
- 10.1 The decision to procure the contract via an open procurement is compliant with the Concessionary Contract Regulations 2016 and the Council's Contract Procedure Rules. The tender shall be awarded to the most economically advantageous tender which shall ensure that the Council receives best value. The Council has the power to issue fixed penalty notice under section 87 of the Environmental Protection Act 1990 and the code of practice for litter and refuse states that the default penalty for littering will be £100 which is in line with the recommendations in this report. (PG)
11. Comments of the Section 151 Officer
- 11.1 The recommendation to retender for this concession at a nil cost , reducing financial risk to the authority and a share of the fine income can be supported.(JM)
12. Comments of Assistant Director HR & OD and compliance with the Equality Duty
- 12.1 There are no staffing or equality issues arising for the Council.
13. Comments of Overview and Scrutiny
- 13.1 The Forward Plan entry related to this decision will be considered by the Overview and Scrutiny Management Committee at its meeting of Monday, 5 July, 2021. The Committee will decide if the decision should be subject to further scrutiny, and if so which Scrutiny Commission will carry out that work. (Ref. Sc6340 (FH))
14. Comments of the Portfolio Holder for Environmental Services (Councillor Nicola)
- 14.1 The public are clearly in favour of enforcement action against litterers. The pilot project has allowed us to trial the service and has been effective in significantly increasing the number of FPNs issued. It sends a clear message that the Council are serious about tackling the problem. The PFH supports the recommendations

Head of Waste Management – Streetscene Services

Contact Officer: Doug Sharp Telephone No.: 612744

Officer Interests: None

Background Documents: - Cabinet Report – 28 January 2019

Government guidance on issuing Fixed Penalty Notices which can be found at: <https://www.gov.uk/guidance/fixed-penalty-notice-issuing-and-enforcement-by-councils>

### Implications Matrix

**This section must be completed and you must ensure that you have fully considered all potential implications**

This matrix provides a simple check list for the things you need to have considered within your report

If there are no implications please state

I have informed and sought advice from HR, Legal, Finance, Overview and Scrutiny and the Climate Change Advisor and any other key stakeholders i.e. Portfolio Holder, relevant Ward Members etc prior to submitting this report for official comments	Yes
I have considered whether this report requests a decision that is outside the Budget and Policy Framework approved by Council	Yes
Value for money considerations have been accounted for within the report	Yes
The report is approved by the relevant City Manager	Yes
I have included any procurement/commercial issues/implications within the report	Yes
I have considered the potential media interest in this report and liaised with the Media Team to ensure that they are briefed to respond to media interest.	Yes

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Status: Final report to Cabinet & P&C Overview and Scrutiny Commission

Date: 16/07/2021

I have included any equalities and diversity implications within the report and where necessary I have completed an Equalities Impact Assessment and the outcomes are included within the report	Yes
Any Health and Safety implications are included within the report	Yes
Any human rights implications are included within the report	Yes
I have included any community safety implications and paid regard to Section 17 of the Crime and Disorder Act within the report	Yes
I have liaised with the Climate Change Advisor and any environmental and climate change issues/sustainability implications are included within the report	Yes
I have included information about how this report contributes to the City Plan/ Area priorities within the report	Yes