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**REPORT FOR: CABINET**

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<b>Date of Meeting:</b>	7 December 2017
<b>Subject:</b>	Extension of 3 <sup>rd</sup> Party Enforcement of Low Level Environmental Issues
<b>Key Decision:</b>	Yes
<b>Responsible Officer:</b>	Simon Baxter, Divisional Director of Environment and Culture
<b>Portfolio Holder:</b>	Councillor Graham Henson, Portfolio Holder for Environment
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	None
<b>Enclosures:</b>	None

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## **Section 1 – Summary and Recommendations**

This report seeks approval of (i) an extension of the current pilot contract with Kingdom Security and (ii) initiate a procurement process thereafter in relation to third party on street enforcement of low level environmental issues.

### **Recommendations:**

Cabinet is requested to:

1. Note the extension of the contract for environmental enforcement with Kingdom Security until September 2018.
2. Approve the exploration of a procurement process in relation to environmental enforcement including the option of a multi-borough approach
3. Approve for Harrow to carry out its own procurement process should the multi-borough approach not be feasible

### **Reason: (For recommendation)**

Kingdom Security have been carrying out a two year pilot of on street low level enforcement, covering areas such as littering and spitting. This pilot has now ended. Harrow is in talks with Ealing and Barnet to explore a multi-borough contract that provides better efficiencies and a more extensive range of enforcement areas.

## **Section 2 – Report**

### **1. Introduction**

- 1.1 Harrow Council approved the use of FPNs for 9 different environmental offences in September 2014, with amendments and policy and procedure approved in February 2015. Approval was given on the basis of meeting the administrations priorities of addressing street environmental issues by the introduction of fixed penalty notices.
- 1.2 Initial enforcement rests with the Environmental Compliance Team within the Public Protection Service, who are responsible for the enforcement of highway activity (street trading, licensing, obstructions, driving over verges, etc) and enviro-crime (fly tipping, commercial duty of care). Cabinet approved the use of a 3rd party company to lead on the aspect of littering enforcement due to the time commitment that would be needed for this aspect alone, especially to affect change in culture and educate the populace.
- 1.3 This was a pilot scheme and as such provision was made to award a one year contract with potential to extend. The one year extension option was utilised and the extension arrangement ended on 19 July 2017.
- 1.4 An interim contract arrangement has been put in place to facilitate continuance of service pending a multi-borough Ealing-led procurement to include Harrow and Barnet with the option for other Boroughs to join retrospectively.
- 1.5 The contractor Kingdom Security has agreed to keep all current staff engaged on the contract in place until the procurement process is concluded under the same terms and conditions.
- 1.6 Following soft market testing it is expected that the new procurement will deliver better terms than currently would otherwise be achieved if Harrow were to procure non-collaboratively. The indicative timeline for joint OJEU procurement is to go live in August 2018. A contingency period has been built into this current gateway agreement to allow for any potential delays.
- 1.7 Total contract turnover to date since July 2015 based on total net income received is £752k – paid FPN's set against an operating cost of £663k which has generated an operating surplus of £89k. An average income turnover of £35k per month has been received in 16/17 so for the purpose of calculating contract value this figure has been used. Overall contract turnover will remain below the £4.1m OJEU threshold that applies to this concessionary contract.

### **2. Multi Borough Approach**

- 2.1 As part of the West London Alliance work, Harrow is currently exploring a joint enforcement service with London partners Ealing, Barnet, Hammersmith & Fulham and Hounslow who favour the delivery of an environmental enforcement service by an external provider. It is intended that the contract will be designed to allow participation by further boroughs at a later date. Any interested boroughs must be named in contract documents. By joining together, there is the potential to achieve economies of scale in a single contract; to share services such as legal and contract management to reduce costs further; and to take a common approach,

messaging and collective action to enforcement across a wider area. Ealing is the lead authority for this project.

2.2 Participating boroughs have agreed that a few specific principles should support contract specification development, including but not limited to:-

- At least no cost to the Council
- Contract payment made against value of **paid** FPNs
- Contractor responsible for all admin/case file preparation
- Contractor responsible for all representations where applicable (moving to FPN's paid and contract quality provisions linked to payment will ensure robust management in this respect)
- Contractor responsible for collecting the Fixed Penalty Notice fine on behalf of the Council

Ealing and Barnet Councils are committed to the joint approach, with Hounslow and Hammersmith & Fulham expressing an interest. Existing contract arrangements are at different stages, so it is likely that there will either be a need to extend arrangements where possible to ensure contracts are co-terminous or provide for access to the joint contract at a later date.

In anticipation of agreement to the joint procurement approach, an operational specification is being drafted which will provide for enforcement across a wide range of environmental enforcement. The aim is to provide all services on, at least, a cost neutral basis. The contract will provide enforcement support based on FPNs associated with offences under but not restricted to:

- Environmental Protection Act 1990;
- Clean Neighbourhoods and Environment Act 2005;
- Dogs (Fouling of Land) Act 1990 and 1996;
- Anti-Social Behaviour Act 2003;
- Refuse Disposal (Amenity) Act 1978 and 1987
- Anti-social behaviour, Crime and Policing Act 2014;
- Highways Act 1980
- London Local Authorities and Transport for London Act 2003
- Town and Country Planning Act 1990

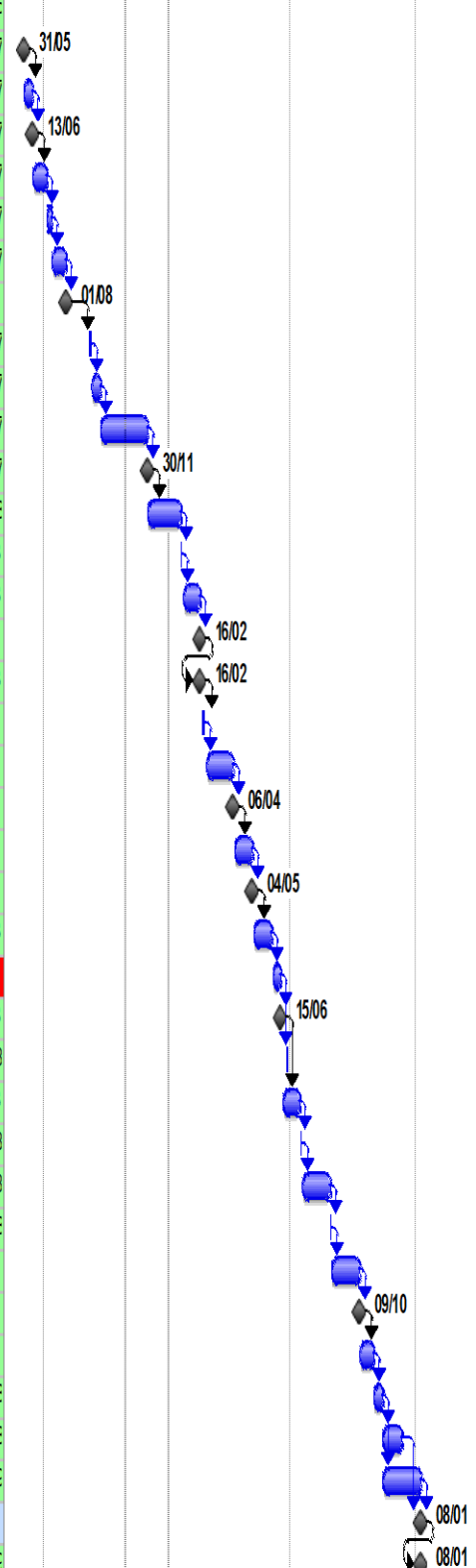
2.3 The legislation above covers all highways control areas such as obstructions, damage, skips etc and all waste and streets related enforcement. Additionally, ASB related legislation provides for the enforcement of Public Space Protection Orders and Community Protection Notices. This routine enforcement by FPN will allow in-house resources to focus on more detailed, proactive environmental management and demand management work.

2.4 The current business model operated by Kingdom Security across local authority contracts is based on payment for all FPNs properly issued. However Kingdom Security have indicated that payment against **paid** FPNs can be accommodated with some adjustments to their business model. This would of course impact on the income percentage split but calculations have shown that there may be little difference to the Council in terms of net income. The validity of the Kingdom Security proposal, alternative pricing and payment mechanisms and the viability of specification content can only be tested through discussions with other potential suppliers. Soft market testing will therefore be an important part of the procurement process. With a small number of likely suppliers and the need for innovation in terms of service delivery and payment mechanism, it has been suggested that a negotiated process might derive best value from a

market that is not yet mature. There is also a view that rigorous soft market testing followed by an open, restricted process might deliver the same and shorten the procurement timeline that might further shorten the timeline. The procurement approach will be finalised over the next few weeks, giving due consideration to all options and after soft market testing (date to be agreed).

2.5 The indicative timetable for the multi-borough procurement is below:

ID	Task Name	Duration	Start	Finish	Timeline																	
					Half 2, 2017					Half 1, 2018				Half 2, 2018				Half 1, 2019				
					M	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N
1	Joint waste CPWN option v2 30th October 2017	0 days	Thu 25/02/16	Thu 25/02/16																		
2	Universal start date	0 days	Wed 31/05/17	Wed 31/05/17																		
3	Pin and prospectus prep	10 days	Wed 31/05/17	Tue 13/06/17																		
4	PIN published	0 days	Tue 13/06/17	Tue 13/06/17																		
5	Reasonable response time	15 days	Wed 14/06/17	Tue 04/07/17																		
6	Consideration of responses	5 days	Wed 05/07/17	Tue 11/07/17																		
7	Invitation to Soft market test on pre- arranged dates	15 days	Wed 12/07/17	Tue 01/08/17																		
8	Board meeting	0 days	Tue 01/08/17	Tue 01/08/17																		
9	Soft market test	3 days	Tue 05/09/17	Thu 07/09/17																		
10	Further analysis of findings	10 days	Fri 08/09/17	Thu 21/09/17																		
11	Document preparation and governance	50 days	Fri 22/09/17	Thu 30/11/17																		
12	QUEJ issued	0 days	Thu 30/11/17	Thu 30/11/17																		
13	Response time	35 days	Fri 01/12/17	Thu 18/01/18																		
14	PQQs returned	1 day	Fri 19/01/18	Fri 19/01/18																		
15	PQQ evaluation	20 days	Mbn 22/01/18	Fri 16/02/18																		
16	Contingency	0 days	Fri 16/02/18	Fri 16/02/18																		
17	Firms selected	0 days	Fri 16/02/18	Fri 16/02/18																		
18	Feedback period- standstill to be at the end	5 days	Mon 19/02/18	Fri 23/02/18																		
19	Firms preparing initial tenders	30 days	Mon 26/02/18	Fri 06/04/18																		
20	Initial tenders submitted	0 days	Fri 06/04/18	Fri 06/04/18																		
21	Councils consider initial tenders	20 days	Mon 09/04/18	Fri 04/05/18																		
22	Invitation to negotiation on pre- published elements on pre- advised hours	0 days	Fri 04/05/18	Fri 04/05/18																		
23	Firm preparation period	20 days	Mbn 07/05/18	Fri 01/06/18																		
24	<b>Negotiation</b>	<b>10 days</b>	<b>Mon 04/06/18</b>	<b>Fri 15/06/18</b>																		
25	Negotiation ends	0 days	Fri 15/06/18	Fri 15/06/18																		
26	Board meeting approx	1 day	Mbn 25/06/18	Mon 25/06/18																		
27	Firms revising tenders	20 days	Mbn 18/06/18	Fri 13/07/18																		
28	Tenders received	1 day	Mbn 16/07/18	Mon 16/07/18																		
29	Tender evaluation	30 days	Tue 17/07/18	Mon 27/08/18																		
30	Draft result	1 day	Tue 28/08/18	Tue 28/08/18																		
31	Cabinet report preparation (Ealing)	30 days	Wed 29/08/18	Tue 09/10/18																		
32	Cabinet meeting (Ealing)[approx]	0 days	Tue 09/10/18	Tue 09/10/18																		
33	End of call in/ implementation	15 days	Wed 10/10/18	Tue 30/10/18																		
34	Standstill	10 days	Wed 31/10/18	Tue 13/11/18																		
35	Contracts engrossed and sealed	20 days	Wed 14/11/18	Tue 11/12/18																		
36	Mobilisation	40 days	Wed 14/11/18	Tue 08/01/19																		
37	Contingency	0 days	Tue 08/01/19	Tue 08/01/19																		
38	New contract live	0 days	Tue 08/01/19	Tue 08/01/19																		



### 3. Options considered

3.1 This report seeks approval for the extension of the current pilot contract until such time as the multi-borough contract is in place, as well as approval for the multi-borough procurement process itself.

## **Do Nothing**

- 3.2 This would result in the current procurement gateway 2 document running its course until 30<sup>th</sup> September 2018, and then third party enforcement would stop and a new procurement process would need to be put in place should a decision be made to continue.
- 3.3 This option has limited value and does not realise the full potential of working collaboratively across a number of boroughs. It would also lead to potential future costs of either bringing the service in-house at the end of the contract, procuring as a single borough or paying to join the multi-borough contract which will seek payment for late entrants.
- 3.4 This is not a recommended option.

## **End the Contract and Bring In-House**

- 3.5 While a waiver has been put in place through a procurement gateway 2 until the end of September 2018, to ensure continuation of the service, an option is to bring this to an end and bring the service in-house.
- 3.6 This would involve current teams picking up the service. There would be initial high costs through having to set up the necessary technology to replicate that provided by Kingdom Security in terms of on street issuing of tickets as well as the back office system and payment options. Additionally, all the administration currently carried out by Kingdom Security without cost to the service, including prosecution packs, will have to be covered in-house.
- 3.7 With the current IT in place within the Community and Public Protection Service, this would require an overhaul of the system, the introduction of a new system that allows on street issuing and on line payments, or a very manual system involving issuing of tickets from the office.
- 3.8 Discussions have taken place with all necessary internal IT persons to discuss the required system, which would allow the payment system (online) to communicate with the service database to ensure that those that pay are updated on the system. This will be at cost to the service and is not currently a simple, viable option.
- 3.9 If the service is to be brought in-house, this would require a fundamental update of the system as well as a clear, costed plan which currently is not an option.

## **Seek procurement on an Individual Authority Basis**

- 3.10 This option was how the original pilot contract was procured, leading to Kingdom Security being put in place to cover littering and spitting.
- 3.11 Whilst being viable, it will not likely deliver better terms than currently and that which could be achieved if Harrow were to procure collaboratively. Additionally, Harrow would be restricted to the resources allocated specifically to the Borough, rather than allow cross border working.
- 3.12 Therefore this option is not recommended at this time.

## **Agree the extension of contract and agree the authority to procure**

- 3.13 The contract has been extended via a Procurement Gateway 2 waiver to cover up to September 2018. The contract has shown that it delivers a payment rate that covers costs of the service as well as a small surplus that contributes to reducing the overall costs of running the service.
- 3.14 Therefore there is no detriment to the Council in carrying this on while a decision is made regarding the future contract.
- 3.15 This allows the continuance of the service pending a multi-borough Ealing-led procurement.
- 3.16 The benefits of a multi-borough approach would be reduced overhead costs, better pooling of resources that can work across borders, a more consistent joined up approach to low level enforcement, and being more cost effective.
- 3.17 A report will be going to Cabinet following the procurement process taking this matter forward.
- 3.19 Therefore the option to extend the pilot and grant approval to the multi-borough procurement process is recommended.

## **4. Implications of the Recommendation**

### **Resources**

- 4.1 The Kingdom Security contract is already in place, and they provide six on street officers, a Team Leader and an administration person. Kingdom Security provides the IT behind the issuing of the tickets on street, the administration behind it, payment systems and the prosecution packs. Therefore the continuation of the current contract will have no impact on the current resourcing.
- 4.2 A multi-borough approach will provide better flexibility of the 3<sup>rd</sup> party enforcement contractor as staff can be used across a number of boroughs, and also allow better targeted action

### **Risk Management Implications**

- 4.3 Any risks related to the service will be mitigated by the necessary operational and financial contractual conditions

## **5. Legal Implications**

- 5.1 The current contract between Kingdom Security Limited and Harrow Council was entered into in accordance with the Concession Contract Regulations 2016 and the Council's Contract Procedure Rules. There is no scope within the contract to extend its duration however officers have demonstrated the necessity to extend the contract term by way of a waiver to allow them to undertake an appropriate tender process during the next fourteen months.



- 5.2 The extension of the contract period by way of a Deed of Variation still brings the overall value of the contract below the Concession Contract threshold of £4.1m and Legal are satisfied that any future procurement process will adhere to the required principles of equal treatment, non-discrimination and transparency.
- 5.3 The potential for legal services collaboration / shared services referred to in paragraph 2.1 requires scoping, further validation and detailed consideration.
- 5.4 A fixed penalty notice provides an offender with the opportunity to discharge their liability to conviction by payment of a prescribed sum. The Council has the ability to authorise non-council staff to issue FPNs on its behalf, as approved under Cabinet Report of September 2014 and February 2015. All staff will be appropriately trained and will comply with the Councils Enforcement Policy.

## 6. Financial Implications

- 6.1 Financial implications are considered throughout this report. It is anticipated that, as the success of any FPN regime is publicised, the public will become more compliant and fewer offences are committed and less fine received.
- 6.2 The business model typically associated with environmental enforcement contracts is based on income received from the serving of fixed penalty notices (FPN). The contractor retains a percentage of receipts in line with cost recovery, profit and risk share, with no charges to the Council in addition to this. The aim is to provide a cost neutral service that supplements and strengthens in-house resource effectiveness

## 7. Equalities implications / Public Sector Equality Duty

- 7.1 Pursuant to section 149 of the Equality Act 2010 (“the Act”), the council, in the exercise of its functions, has to have ‘due regard’ to (i) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; (ii) advancing equality of opportunity between those with a relevant protected characteristic and those without; and (iii) fostering good relations between those who have a relevant protected characteristic and those without.
- 7.2 The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent.
- 7.3 In line with this, an Equalities Impact Assessment (EqIA) has been conducted and took into account the consultation feedback. The EqIA can be found in **Appendix B** and to summarise, found that no group would be adversely impacted by the introduction of this scheme.
- 7.4 Additionally, the policies and procedures governing how the third party contractor operates ensure a fair, balanced approach in line with statutory requirements and guidance.

## 8. Council Priorities

**Making a difference to communities:**

Fundamentally, links into this priority, by addressing environmental and highway crime, and improving an area for its residents, visitors and businesses especially in terms of litter and ASB.

**Making a difference to businesses:**

The tackling of environmental and highway crime fits in with supporting businesses, ensuring a vibrant business environment.

### Section 3 - Statutory Officer Clearance

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 27 November 2017		
Name: Isha Prince	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 16 November 2017		

<b>Ward Councillors notified:</b>	<b>YES</b>
<b>EqIA carried out:</b>	<b>YES</b> (previously on introduction of FPNs)
<b>EqIA cleared by:</b>	Dave Corby (DETG Chair, Community Directorate)

### Section 4 - Contact Details and Background Papers

**Contact:** Richard Le-Brun, Head of Community and Public Protection, 020 8424 6267, Richard.lebrun@harrow.gov.uk

**Background Papers:**

Department of Culture and Local Government: Selective Licensing in the private rented sector – a guide for local authorities

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418551/150327\\_Guidance\\_on\\_selective\\_licensing\\_applications\\_FINAL\\_updated\\_isbn.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418551/150327_Guidance_on_selective_licensing_applications_FINAL_updated_isbn.pdf)

**Call-In Waived by the  
Chairman of Overview and  
Scrutiny Committee**

**NOT APPLICABLE**

*[Call-in applies]*