
REPORT FOR: CABINET

Date of Meeting:	15 November 2018
Subject:	Environmental Enforcement: Award of Contract – Fixed Penalty Notices
Key Decision:	Yes
Responsible Officer:	Paul Walker, Corporate Director of Community
Portfolio Holder:	Councillor Varsha Parmar, Portfolio Holder for Environment
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix 1 – Tender Evaluation Appendix 2 – Schedule of Fines

Section 1 – Summary and Recommendations

This report seeks approval to award a multi-borough contract for third party on-street enforcement in relation to low level environmental issues. This follows an Ealing-led collaborative procurement in which Harrow and Barnet Councils participated.

Recommendations:

Cabinet is requested to:

1. Grant approval to select the provider for the third party on-street enforcement contract.
2. Delegate authority to the Corporate Director, Community, following consultation with the Portfolio Holder for Environment and the Portfolio Holder Finance and Resources, to finalise the award of the contract.
3. Agree the levels of fines as shown in Appendix 2 in line with other partner councils to ensure a consistent approach, and delegate authority to the Corporate Director of Community, following consultation with the Portfolio Holder for Environment and the Portfolio Holder Finance and Resources, to set future levels of fines in line with statutory guidance or other requirements.
4. Note and agree the extension of the current contract for environmental enforcement with the incumbent provider until the proposed contract commences.

Reason: (for recommendations)

Following a successful three-year pilot of on-street low level enforcement, covering areas such as littering and spitting, Harrow wishes to continue its active enforcement of these issues which affect the quality of life of its residents and visitors.

Harrow has participated in a collaborative procurement, with West London Alliance (WLA) councils Ealing and Barnet that will deliver improved, beneficial contract performance and benefit local environmental outcomes. It will also provide a consistent approach across the three neighbouring boroughs, and allow better collaboration around such matters as communications and targeted work.

Section 2 – Report

Introductory paragraph

Harrow Council approved the use of Fixed Penalty Notices (FPNs) for nine 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 Council's priorities of addressing street environmental issues by the introduction of FPNs.

Initial enforcement rests with the Environmental Compliance Team within the Community and 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 third party company to lead on the aspect of littering enforcement in December 2017 due to the time commitment that would be needed for this aspect alone, especially to affect change in culture and educate the population.

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.

Following Cabinet approval in December 2017, an interim contract arrangement has been in place to facilitate continuance of the service pending an Ealing-led multi-borough procurement to include Harrow and Barnet with the option for other boroughs to join retrospectively.

The Harrow Environmental Compliance Team has actively engaged and collaborated in the procurement exercise with the participating boroughs, who have agreed in principle, to award a single provider contract for a term of two years with an option to extend for three additional terms of one year each.

The collaborative procurement will deliver better terms than currently and than would otherwise be achieved if Harrow were to procure non-collaboratively.

By joining together with Ealing and Barnet, Harrow benefits from:

1. Single contract economies of scale that have been achieved through the sharing of legal and procurement services; It also allows us to take a common approach in messaging and collective action to enforce across a wider area;
2. Increased enforcement presence in the Borough through contract provision to ensure there are a minimum of six officers on Harrow streets. This number of officers is not currently achieved;
3. Further reduced low level enviro-crime levels through increased preventative enforcement action;

4. An increased operating surplus arising from the collaborative economies of scale that can be invested in further enviro-crime reduction initiatives;
5. Greater operational, staffing and management versatility created through the operation of contracts across three boroughs in the WLA geographical area;
6. Employees under the contract will earn a minimum of the London Living Wage;

The indicative contract commencement date, subject to approval, is 1 January 2019.

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

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

Options considered

This report seeks approval to award the contract to the winning bidder as well as approval to sign up to the multi-borough collaborative contract with Ealing and Barnet Councils.

These options were considered in the December 2017 Cabinet report:

A. Do Nothing

The current third party enforcement arrangement ends in December 2018; thereafter, we would have to stop the service as there would no longer be a contract in place. By not joining in the multi-borough contract, a new procurement process would mean considerable time, cost and resources would need to be put in place should a decision be made to recommence third party environmental enforcement.

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 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.

This is not a recommended option.

B. End the Pilot and Bring the Service In-House

Another option would be to bring the incumbent provider contract to an end and bring the service in-house. This would involve current teams picking up the service. There would initially be high costs through having to set up the necessary technology to replicate the service provided by the incumbent provider 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 the incumbent provider without cost to the Council, including prosecution packs, would have to be paid for in-house.

With the current IT in place within the Community and Public Protection Service, this would require an overhaul of the system and the introduction of a new system that will allow on-street issuing and on line payments, or a very manual system involving issuing of tickets from the office.

Discussions have taken place with all relevant internal IT personnel to ascertain what the required system would entail. For example, it would need to allow for the online payment system to communicate with the service database to ensure that those members of the public that pay are automatically updated on the system. This would be at a cost to the service and is not currently a simple, viable option.

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.

C. Seek Procurement on an Individual Authority Basis

The original pilot contract was procured, leading to the incumbent provider being put in place to cover littering and spitting activities. A re-procurement, whilst being viable, would likely deliver less favourable terms than the proposed multi-borough contract. Harrow would be restricted to the resources allocated specifically to the Borough, rather than allow cross-border working.

Additionally, this would adversely affect the outcome for the other collaborative procurement participants and in all likelihood lead to the withdrawal of offer from the proposed provider.

Therefore this option is not recommended at this time.

D. Agree the Award of the Collaborative Contract with Ealing and Barnet Councils

The current 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, although this surplus is diminishing.

The proposed contract takes advantage of the further developed market and the economies of scale achieved by a multi-borough approach that has enabled the contractor to improve their tendered bid.

The procurement process undertaken has been extensive, with initial soft market testing to appraise market options and to inform a commercially sustainable tender. The contract specification has been collaboratively developed to support a single approach to on-street enforcement.

The benefits of a multi-borough approach will be reduced overhead costs, better pooling of resources that can work across borders, a more consistent joined up approach to low level enforcement and be more cost effective. Therefore, the option to award the contract and agree to sign up to a multi-borough contract with Ealing and Barnet Councils is recommended.

Background

In developing the contract a few specific principles were followed to support the achievement of beneficial outcomes including but not limited to:

- At least no cost / cost neutral to the Council;
- Contract payment made against value of **paid** FPNs;
- The contractor being responsible for all admin/case file preparation;
- The contractor being 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);
- The contractor being responsible for collecting the Fixed Penalty Notice fines on behalf of the Council;
- A common operational specification to provide for enforcement across a wide range of environmental enforcement;
- The requirement for a minimum of six on-street enforcement officers for each of the participating boroughs.

Current situation

The current business model operated by the incumbent provider at Harrow is based on payments for all FPNs properly issued. However, under the new contract with the highest scoring bidder, payment will be made against paid FPNs. This approach will drive an increase in the quality of FPNs issued and an increase in the proportion of FPNs paid versus those issued. This assumption is supported by other council models where payment to the contractor is already made against paid FPNs at a high conversion rate.

There are currently issues with contractor recruitment and retention of enforcement officers resulting in insufficient numbers of on-street officers. The proposed contract will pay officers at a minimum rate of the London Living Wage and there will be a contractual requirement to have a minimum of six officers operational at all times resulting in increased enforcement levels.

Implications of the Recommendation

The incumbent provider contract is already in place, and they aim to provide six on-street officers, a Team Leader and an administration person. The incumbent provider provides the IT for the issuing of on-street tickets, the administration behind it, payment systems and the prosecution packs.

Therefore, the award of the new contract will have no adverse impact on current resources.

A multi-borough approach will provide better flexibility of the 3rd party enforcement contractor as staff can be used across a number of boroughs, and also allow better targeted action.

It should be noted that under the proposed contract the winning bidder will be contractually obliged to provide a minimum of six on-street officers at all times which will ensure appropriate cover and presence is provided to Harrow and that there is no dilution of resources across borough boundaries from the multi-borough relationship.

Risk Management Implications

Risk included on Directorate risk register? No
Separate risk register in place? Yes

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

Adverse publicity risk: Contracts operating in other areas of the UK have received criticism from the media due to the alleged misconduct of some on-street enforcement officers and their overly officious issue of FPNs. It has also been alleged that on-street officers are paid a performance bonus based on the quantity of FPN's they issue.

The current pilot has been operational in Harrow for three years and during this time there has been minimum adverse publicity. For the new contract, operational guidance has been built in that sets out in detail how, when and to whom FPNs should be issued. There are comprehensive performance management processes that penalise the contractor for misconduct and incorrect issuing and it is clear from the proposed contractor's tendered bid that no bonus schemes are operational.

Financial risk: The aim of the contract is carry out low-level on-street enforcement on an at least cost neutral basis. The multi-borough contract provides the proposed contractor with the ability to pay its on-street enforcement officers the London Living Wage which will assist in the recruitment and retention of experienced personnel to operate a quality service. The requirement under the contract to deploy a minimum of six on-street enforcement officers will ensure that sufficient FPN's are issued to cover the cost of contract operation. The contract will be financially monitored and any emerging financial risks will be escalated with appropriate remedial action taken.

Procurement Implications

This procurement process was led by Ealing Council with participation from Harrow and Barnet.

The contract notice was published in the Official Journal of the European Union on the 16th February 2018 under notice reference 2018/S 035- 076395. The contract period advertised was an initial term of 3 years with 3 individual one-year subsequent extension periods available to the Councils.

13 bidders expressed an interest, of which 4 returned a compliant Selection Questionnaire (SQ) by the deadline of the 6th April 2018.

Of the 4 bidders which submitted an SQ, 3 were invited to tender on the 17th August 2018.

Initial tenders were due on the 21st September 2018 and 2 tenders were received.

Tender evaluation was completed on the 2nd October 2018 the scores are shown in Appendix 1.

Following a stringent review of the economic sustainability of the tenders by the finance officers, senior officers took the view that the delays resulting from a round of negotiation and the evaluation of revised tenders were unnecessary. An agreement between participating councils was reached that it would be more beneficial to commence the contract under the new improved terms in comparison to any minor gain that may be achieved through negotiation.

Consequently, on completion of the tender process, the most economically advantageous tender was successful and the highest scoring bidder is recommended for the award of this contract, please see Appendix 1.

Legal Implications

Sections 87 and 88 of the Environmental Protection Act 1990 provides for local authorities to issue Fixed Penalty Notices for a littering offence. There must be suitable and adequate evidence to substantiate the necessary standard of proof obtained by the enforcement officer which can lead to a criminal prosecution in the magistrates court obtained by the enforcement officer if the fixed penalty notice is not paid.

There is also provision available to local authorities under the Clean Neighbourhoods and Environment Act 2005 to rely on if a person fails to give their correct details to an enforcement officer when asked to do so.

Financial Implications

The use of Fixed Penalty Notices (FPNs) for environmental enforcement is not intended as an additional source of income for local authorities. Any income generated from fines will initially be used to fund the cost of the proposed contract. As the payment mechanism under the proposed contract is that the contractor will only charge the Council for FPNs that are paid, the financial risk rests with the contractor and therefore the arrangement will be at no cost to the Council as a minimum.

The financial viability of the proposals submitted by bidders has been reviewed by finance officers of the participating Councils as part of due diligence. It is of the view that the proposed offer from the preferred bidder is financially viable as this contractor is already operating a similar financial model in other councils.

The Public Protection Service has a net budget of £816k in 2018/19. Any income surplus from this enforcement contract may be reinvested in environmental campaigns to increase education and compliance, and hence reduce the cost of running the service.

In general, as the success of the FPN contract is advertised, the public will become more compliant and fewer offences will be committed leading to less fines being received.

Equalities implications / Public Sector Equality Duty

The highest scoring bidder has demonstrated in their bid submission that their approach to Environmental Enforcement does not disproportionately impact upon any protected characteristic group.

Council Priorities

Making a difference for 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 for local 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: 19 October 2018		
Name: Sarah Inverary	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 05 November 2018		

Section 3 - Procurement Officer Clearance

Name: ...Jessica Covey.....	<input checked="" type="checkbox"/>	on behalf of the * Head of Procurement
Date:18 October 2018.....		

Ward Councillors notified:	NO - impacts on all wards
EqIA carried out:	Yes (previously on introduction of FPNs)

EqIA cleared by:

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

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

NO – CALL IN APPLIES