

Chichester District Council

ENVIRONMENT PANEL

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Environmental Enforcement Contract Tender Invite and Fixed Penalty Rates

1. Contacts

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2. Recommendation

2.1 That Environment Panel recommends to Cabinet to:

- (a) Approve a tender process for the provision of a range of environmental enforcement functions as a commercial concession contract; and
- (b) Approve raising the Fixed Penalty Notice charge for a littering offence and Public Space Protection Order Dog Control offence to £150, reduced to £100 where the offence is discharged within 14 days, and other Fixed Penalty Notice and Penalty Charge Notice charges as listed at Appendix 1.

3. Background

- 3.1 The Council is a Principal Litter Authority and has a duty to keep relevant land in the open air, to which the public have access, clear of litter and debris (as per the Environmental Protection Act 1990). Litter includes cigarette butts, chewing gum, dog fouling and dog poo bags.
- 3.2 Between 2018 and February 2024 the Council had an inter-authority agency agreement (a 'Section 101 Agreement') with East Hampshire District Council (EHDC) for the enforcement of litter and Public Space Protection Order Dog Control (PSPO) offences. EHDC no longer offers this service and there is no equivalent market offer and so if the Council wishes to continue with this work, it must find an alternative provider, which may be tendering to appoint a contractor.
- 3.3 Whilst inviting tender submissions it is timely to expand the scope of offences for which the contractor would enforce (see Appendix) although it is intended that the contract will predominantly remain a litter enforcement contract in relation to Fixed Penalty Notices (FPN's) issued. The intention is that the contractor will also investigate fly-tips and duty of care for waste on the Council's behalf.

- 3.4 It would also be timely to revise the Council's FPN rates for littering in line with the Government's 2023 amended Environmental Offences Regulations which allow for the upper limit of FPN's for littering to increase to up to £500. At the same time, we would take the opportunity to increase FPN rates for PSPO offences and to publish FPN rates for offences not included in the previous arrangement (see Appendix). The increase in FPN rates would assist in attracting a commercial provider and establishing a sustainable service.
- 3.5 The intention is that the contract will provide for a team of trained, uniformed enforcement officers, working in pairs, to carry out enforcement in Chichester District seven days/week between the hours of 09:00 and 17:30 (or daylight hours whichever are shorter) every day of the year except for Christmas day. The contractor would provide transport for the officers, body-worn cameras to record their interactions with the public, technology to enable the issue of FPNs, back-office systems, handle all complaints and related legal work, money handling services and pay across a fixed percentage of FPN revenue to the Council on a monthly basis. The contract would be at zero-cost to the Council which would authorise the contractor's officers to issue FPN's on its behalf.
- 3.6 Whilst the emphasis of the contract would be on the provision of enforcement within office hours there would be flexibility to request out of hours work and to target specific locations both in a programmed way and real-time on a day-to-day basis by instruction from the Council on the basis of intelligence received. This arrangement would provide 'directable' enforcement when required. Officers could also be deployed from time to time to deliver awareness type interventions.
- 3.7 Litter and PSPO Dog Control Enforcement would not be applied to persons under the age of 18 and persons who may be judged to lack capacity. Exemptions also apply for dog fouling and dog exclusion zone offences, for persons registered as blind and/or with assistance dogs and/or disabilities. The Council will have access to body-worn-camera footage in order to be able to audit the quality of officer interactions especially, but not solely, on receipt of complaints.
- 3.8 Other authorities in West Sussex and across the UK are using commercial providers for environmental enforcement services. These services are reported to provide a modest revenue stream for those authorities. Recently published Government regulations ring-fence revenues received from the payment of fines related to certain offences to paying for defined activities such as picking up fly-tipped waste.
- 3.9 The Council will establish the market offer from potential environmental enforcement service providers through the issue of a Prior Indication Notice (PIN). The final list of environmental offences to be included in the contract will be subject to the responses received.
- 3.10 The contract term is proposed as 3 + 3 years. This is based on securing a contract term that will provide the right balance between managing the risks to the Council (for example the market offer may change during contract period) and providing a contract term that provides reasonable certainty to a provider to enable them to invest, set-up and run the service in the Chichester district and have a viable business. In any case the contract is intended to have clauses that provide the usual protections to the Council should the contract performance not be satisfactory.

4. Outcomes to be Achieved

- 4.1 Following a tender exercise, to provide an effective extension of the Council's environmental enforcement resource thereby seeking to maintain and improve the environment in line with our statutory responsibilities.
- 4.2 This work supports the Corporate Plan priority that 'waste is reduced, recycled, reused or disposed of responsibly' and the Council's aim to maintain a balanced revenue position.

5. Proposal

- 5.1 It is proposed to invite tenders for the provision of environmental enforcement services as a concession contract and to increase FPN rates for littering and PSPO Dog Control offences to £150 reduced to £100 where payment is made within 14 days and to publish a list of environmental offences and related FPN rates (see Appendix). The preferred contractor will be reported back to Environment Panel and Cabinet before appointment. The intention is for a 3 + 3 year contract term.

6. Alternatives Considered

- 6.1 An alternative would be for the Council not to invite tenders for the provision of environmental enforcement services. This is likely to lead to very significantly lower levels of litter and dog fouling enforcement and might predicate increased levels of littering and dog fouling in the district.
- 6.2 A further alternative would be to seek to bring the service in-house. However, due to economy of scale, such a service provision model would be high cost and carry with it financial and administrative risk and so this model of provision is not recommended.

7. Resource and Legal Implications

- 7.1 The tender process can be carried out within existing officer and legal resources. Officers are taking advice from Hampshire County Council Procurement Services (HCC) for the design of the tender documents and tender exercise. This is within the existing arrangement with HCC.
- 7.2 The intention is that the contract will deal with all legal aspects of issuing notices and prosecutions related to any offences. This offers a lower burden on the Council's Legal Services team than was the case with the now terminated EHDC arrangement.

8. Consultation

- 8.1 No public consultation is proposed.

9. Community Impact and Corporate Risks

- 9.1 To not provide adequate litter enforcement is a reputational and financial risk to the Council. Enforcement is key to tackling environmental offences and to not deliver effective enforcement is to risk higher rates of environmental crime and an accompanying negative narrative in the community and press. When the original

Agreement was originally entered into there was a substantial national and local evidence base to support the rationale for the service.

- 9.2 Informal discussions with Councils who already have such commercial concession contracts has provided some insight into likely risks associated with such an approach: The start-up year can be challenging for the provider to recruit, train and maintain a sufficient staffing base to run the service. In the first-year staff turnover can be high and formal complaints about the service from the public can be significant until the contract's staffing base stabilises and the enforcement officers mature into their role.
- 9.3 Increasing FPN rates may be seen as insensitive to the pressures on household finances in the current cost of living crisis. Nevertheless, littering and fly tipping is avoidable, the Council has an adopted policy position of 'zero-tolerance' to littering and dog fouling offences. Increasing the FPN rates will assist in attracting a provider and securing a sustainable environmental enforcement service over the intended contract term. Removing litter from the district is done at considerable cost to Council tax payers and the proposed service is designed to send a strong 'against litter' message with any income surplus used to offset the cost of clearing up litter and fly-tips.

10. Other Implications

	Yes	No
Crime and Disorder Effective litter, dog control and other environmental enforcement and enforcement presence help to keep Chichester District a low litter environment, where dogs are well managed by their owners and environmental offences are known to risk formal action by the authority.	✓	
Climate Change and Biodiversity Littering has an impact on ecosystems through the physical nature of litter harming animals (by ingestion and entrapment) and the ecotoxicity of litter and its breakdown products/chemicals some of which are becoming ever more ubiquitous in the wider environment.	✓	
Human Rights and Equality Impact		✓
Safeguarding and Early Help		✓
General Data Protection Regulations (GDPR)		✓
Health and Wellbeing		✓
Other		✓

11. Appendices

11.1 Appendix

12. Background papers.

12.1 None.

Appendix: Proposed Fixed Penalty Notices, Civil Penalty Notice Rates and offence definitions:

Table 1:

Offence (‘new’ offences for the Council publishing FPN rates are indicated by ^N)	Legislation	FPN proposed (current FPN)	Discounted FPN¹ for payment within 14 days (current FPN)
Depositing Litter	EPA ¹ Section 88	£150 (£100)	£100 (£75)
Graffiti & Flyposting ^N	ASB ² 2003 Section 43	£150	£135
Commercial waste receptacles ^N	EPA Section 47	£110	£100
Duty of care (waste)	EPA Section 34	£400 Maximum ⁵	£200
Deposit of waste	EPA Section 33	£400 Maximum ⁵	£200
Nuisance Parking ^N	CNEA ⁴ Section 6	£100	£90
PSPO Dog Control non-compliance	ASB ⁵ 2014 Section 68	£150 (£100)	£100 (£75)
A-Boards/tables and chairs etc	Highways Act 1980 Section 115E	£150	£100
The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 ^N	EPA Section 88A	£150	£100 (CPN)

¹ Environmental Protection Act 1990.

² Anti-social Behaviour Act 2003.

³ Clean Neighbourhoods and Environment Act 2005.

⁴ Anti-social Behaviour Crime and Policing Act 2014.

⁵ Subject to officer’s assessment using the Environmental Offences Definitive Guideline.

¹ Except Littering From Vehicles etc which is a Civil offence.

Table 2:

Offence	Description of offence
Depositing Litter	To throw down, drop or deposit litter.
Graffiti & Flyposting	The display of advertising material on buildings and street furniture without the owners consent.
Commercial waste receptacles	Not storing waste in receptacles such that the waste may cause a nuisance or be detrimental to public health.
Duty of care (waste)	Originators of controlled waste must take all reasonable steps to prevent the waste becoming illegally deposited.
Deposit of waste	Depositing controlled waste on land without a permit (fly-tipping).
Nuisance Parking	Vehicles for sale on the highway and/or vehicle repairs on the highway.
PSPO Dog Control non-compliance	Three offences defined in the Council's Public Space Protection Order Dog Control, not picking up after your dog (dog fouling, dog exclusion areas and failure to put a dog on a lead when instructed to do so by an authorised officer.
The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018	To throw down, drop or deposit litter from a vehicle.