



# Cabinet (Resources) Panel

## 30 June 2015

<b>Report title</b>	Alternative Environmental Enforcement Trial	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Steve Evans City Environment	
<b>Key decision</b>	No	
<b>In forward plan</b>	No	
<b>Wards affected</b>	All	
<b>Accountable director</b>	Nick Alderman, City Environment	
<b>Originating service</b>	Regulatory Services	
<b>Accountable employee(s)</b>	Andy Jervis	Head of Regulatory Services
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<b>Report to be/has been considered by</b>	Place Leadership Team: 11 May 2015 Strategic Executive Board: 19 May 2015	

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### Recommendation(s) for action or decision:

Cabinet (Resources) Panel is recommended to:

1. Approve the proposals for a 12 month trial of a new environmental enforcement arrangement in partnership with Kingdom Security Ltd Commencing 01/08/15
2. Endorse the waiving of the contract procedure rules to allow the trial arrangement to commence.
3. Approve the proposed service specification as set out in section 4.
4. Agree to an increase in the penalty charge in respect to the offences of dropping litter and smoking in a workplace from £50 to £75 and the removal of the early payment option for the smoking offence.

5. Endorse a change to the existing policy concerning the issuing of fixed penalties to young persons to allow the enforcement personnel to exercise discretion in the case of 16 / 17 year olds.
6. Endorse the delegation of authority to the Head of Regulatory Services to determine prosecution cases in respect to non-paid fixed penalties in line with existing agreed policy.
7. Approve direct access to Council Tax data to assist enforcement staff in the tracing of offenders.
8. Agree to a review of the implementation of the arrangements after 3 months by the Service Director City Environment in conjunction with the Cabinet Member City Environment and, if the review supports the on-going provision of the service, the commencement of a tendering process in accordance with Official Journal of the European Union (OJEU) rules.
9. Delegate authority to the Service Director for City Environment in conjunction with the Cabinet Member; City Environment to award the contract to the successful tender.

## **1.0 Purpose**

1.1 The purpose of this report is to:

- Advise Cabinet of proposals to enter into a 12 month trial of a new environmental enforcement arrangement in partnership with Kingdom Security Ltd. The trial to commence on 01/08/15
- Obtain endorsement for the waiving of the contract procedure rules to allow the trial arrangement to commence.
- Obtain approval for the proposed service specification.
- Obtain endorsement for an increase in the penalty charge in respect to the offences of dropping litter and smoking in a workplace from £50 to £75 and the removal of the early payment option for the smoking offence.
- Obtain endorsement for a change to the existing policy concerning the issuing of fixed penalties to young persons to allow the enforcement personnel to exercise discretion in the case of 16 / 17 year olds instead of issuing an FPN as the norm.
- Obtain endorsement for the delegation of authority to the Head of Regulatory Services to determine prosecution cases in respect to non-paid fixed penalties in line with existing agreed policy.
- Approve direct access to Council Tax data to assist enforcement staff in the tracing of offenders.
- Secure approval for the commencement of a tendering process in accordance with OJEU rules to secure the on-going provision of a bespoke service following the trial period.
- Obtain endorsement for the delegation of authority to the Service Director for City Environment in conjunction with the Cabinet Member; City Environment to award the contract to the successful tender.

## **2.0 Background**

2.1 The Council has strategic and operational responsibility for the delivery of services that aim to protect the local environmental quality (LEQ) of the public realm. These services are predominantly delivered by the Place Directorate and include Public Realm Services, Waste Services, Regulatory Services, Planning Services etc.

2.2 Within the delivery of these services, the Council also has responsibility for enforcement and legal decisions relating to associated environmental offences affecting both the public realm and the privately owned land and sites within the city. One of the enforcement decisions made by the Council concerns the use of fixed penalty notices (FPN) to deal quickly and effectively with low level environmental offending. The payment of a fixed penalty by the offender discharges their liability for the offence. It is current policy to institute legal proceedings where penalty notices are not paid.

2.3 Income from fixed penalty receipts statutorily has to be utilised to support the delivery of the service / activities the notice relates to. In this case, receipts would be used in combatting environmental crime through the funding of mainline posts in Regulatory Services.

2.4 In previous years, based on the outcomes of National Indicator monitoring (NI 195) and more recent performance monitoring and satisfaction surveys, environmental standards within the city have been very high when compared to neighbouring and peer authorities. However, the current economic climate and associated austerity measures have dictated that savings have needed to be made from the majority of council services including those which either directly or indirectly impact on the city's LEQ.

2.5 Clearly, the maintenance of a good LEQ in the city, which is prioritised within the Cleaner Greener part of the Corporate Plan, will have many significant benefits including:-

- Positive perception of the City
- Positive perception of the Council and **all** Council services
- Suppression of 'broken window syndrome' type issues
- Incentive to remain resident in the city
- Incentive to invest in the city
- Incentive to relocate to the city
- Positive message for children and young people

And equally clearly, these benefits each have associated knock-on benefits linked to the economic recovery of the city.

2.6 One of the services that indirectly impacts on LEQ in a positive way is the street scene enforcement activities delivered by Regulatory Services. These services were provided at a moderate level up to around 2012/13 but savings made in 2014/15 have resulted in a reduction to street scene patrols and associated enforcement activity. There is therefore a possibility that the previously good record on LEQ performance will start to fall as a result.

2.7 The street scene enforcement activities carried out by Regulatory Services are many and varied including but not exclusively:-

- Litter enforcement (from pedestrians and vehicles)
- Fly-tipping enforcement
- Graffiti enforcement
- Dog fouling enforcement
- Abandoned vehicle enforcement
- Nuisance (e.g. noise, deposits, condition of property, odours etc)
- Anti-social behaviour breaches (e.g. condition of land and property)
- Highways Act breaches (e.g. obstruction of footway, damage / deposits on highway)
- Town and Country Planning Act breaches (e.g. S215 'tidy up notices')

2.8 The number of fixed penalty notices issued in 2014/15 was 25 a fall of 85% compared to the 2009 to 2013 average of 161. In 2006/7/8 around 300 notices were issued annually. It is against this background that recent comment in the media, regarding a perceived need to increase environmental enforcement levels and sanctions, stands out.

- 2.9 The current penalty charge for the offence of dropping litter is £50. This was reduced from £70 in 2010 in order to remove the two tier penalty which was previously £70 but reduced to £50 for early payment. It is now considered that the additional deterrent effect of a single tier higher penalty (£75) would be beneficial. The higher penalty would also generate additional revenue to support the delivery of the service. The maximum penalty permissible for the offence of littering is £80 however there is a balance to be achieved between deterrent effect and payment levels which could decrease if the penalty was considered too high.
- 2.10 In order for Council employees to issue fixed penalties for some of the above offences, it is essential to secure the support of a uniformed police officer or PCSO. Unfortunately, the police are unable to support these patrols to the level they previously have in recent years.
- 2.11 The only two of the services identified in section 2.7 that can be considered fully statutory (i.e. the local authority **must** deliver to a legal standard) are the legal requirement to provide services to identify and deal with Statutory Nuisances and the requirement to keep the area free from pests. Suitable and appropriate powers are available to enable Regulatory Service to deal with both Statutory Nuisances and pests without the need to rely on fixed penalties. These services, being statutory, are currently prioritised by Regulatory Services.

### 3.0 Alternative Options

- 3.1 In view of the decline in enforcement activity, the potential adverse impact that decline would have on LEQ and the knock-on adverse impact of a fall in LEQ on the benefits set out in section 2.4 above, alternative ways of maintaining a high profile in the area of environmental enforcement have been explored.
- 3.2 There are not a large number of alternative options for continued service delivery without increasing costs. A brief appraisal of the main options is set out below:

- ***Option 1: Increase the number of FPNs issued in-house and use receipts to fund additional enforcement activity***

This would require support from the Police and would divert the focus of the employees issuing the notices away from other important and statutory activity. However, the Council would retain control over the general approach in particular the following specific elements:-

- Penalty charged for offences
- Early payment reductions
- Young offender policy
- Uniform worn / equipment used
- Areas covered
- Enforcement approach
- Priority focus

- **Option 2: Outsource the service completely**

The Council would retain a reduced level of control of the key elements of the service and there would be some contract monitoring costs to be considered in ensuring service standards. Also, the Council would lose the opportunity to generate revenue.

- **Option 3: Partnership arrangement with a private sector provider**

The Council would retain a high level of control of the key elements of the service and would be able to adjust / fine-tune the service in real time by trading off revenue against the ability to redirect environmental protection staff to deal with important but non income generating activity. E.g a street presence in a fly-tipping /dog fouling hot spot to serve as a deterrent. The core and statutory activities of the Regulatory Services teams would not be distracted.

3.3 In view of the above considerations, **Option 3 is the preferred option.**

#### **4.0 Proposed Service Specification**

4.1 The proposed trial partner, Kingdom, are able to accommodate a wide range of local variations to their 'standard' service offer.

4.2 Based on detailed discussions between Kingdom, Regulatory Services and Legal Services and separate consideration by the Cabinet Member for City Environment, the Service Director for City Environment, Place Leadership Team, SEB and colleagues in Waste Services and Public Realm Services; a suggested City of Wolverhampton service specification has been developed:

##### **Specification:-**

- Two teams of two 'Environmental Protection' personnel.
- One team deployed to the wider city centre area e.g. Molinieux to Train Station to St Johns to Sainsburys
- Second team to cover Bilston, Wednesfield and hotspot parades and residential areas.
- Both teams can be redirected to respond to immediate, on-going issues.
- Administrative officer to be embedded and integrated within Regulatory Services.
- Team Leader to be available and integrated within Regulatory Services where possible.
- Employees to be recruited locally by Kingdom.
- Focus to be issuing FPNs for litter offences in accordance with Council policy, however policy will be relaxed to allow discretion in relation to 16 and 17 year olds.
- Other offences to be prioritised will be dog-fouling, graffiti, fly-tipping, fly-posting, community/public space protection and smoking in workplaces.
- Maximise deterrent effect of physical presence in hotspot areas by engaging with local people.

- Personnel to engage with city centre ambassadors, and other city centre / public realm partners.
- Normal operating hours will be between 7.00 am and 6.00 pm. Occasional evening or night time or weekend activity will be required.
- Anticipated number of FPNs per day is in the region of 10 - 15 notices issued 'on the spot'.
- Hand held devices record all details including offender details, images, GPS location and link to back office systems.
- Kingdom to invoice the Council £45 **per notice issued** on monthly basis. The Council retain £30 **per notice paid** (estimated 75% of notices paid).
- Embedded Admin Officer to issue reminder letters, final letters, prepare case files etc.
- A variety of payment methods including on-line will be available.
- Team Leader will cover for vacancies and deliver value-added activity in conjunction with core Regulatory Services teams.
- Personnel to wear uniform bearing City of Wolverhampton logo.
- Managed and funded "Bin it to win it" competitions to be held to complement enforcement activity.
- Kingdom to process non-paid FPNs and provide case report files to the Council to determine and pursue non paid FPNs and to retain all costs awarded in successful cases.
- The service is fully flexible and can be adjusted to meet changing demand and new requirements at short notice.
- Kingdom to handle all initial phone enquiries and complaints regarding conduct (not many are anticipated)

4.3 Subject to consideration and endorsement by Cabinet Resources Panel the earliest date the new service could commence is early August 2015.

4.4 It is envisaged that during the first two to three weeks of provision, the company would operate a 'soft launch' approach whereby the majority of engagements and interventions would be advisory. Exceptions to this rule would be in cases of flagrant disregard, and the presence of other aggravating factors such as provocation and abusive behaviour etc.

4.5 During the period covered by the trial, Regulatory Services, acting on behalf of the Council, would meet with the company on an initial weekly and subsequently a regular monthly basis to monitor performance, consider progress, adjust service specification and resolve issues encountered. A 28 day 'walk away' agreement will be built in to the contract.

## 5.0 Communications

5.1 Following approval by Cabinet (Resources) Panel, a communications plan will be implemented to ensure that relevant stakeholders, partners, Councillors, residents groups etc are advised of the new service prior to its launch.

5.2 Key groups will be targeted by a combination of direct media releases, targeted provision of verbal and written information, use of social media. Key external groups to reach are considered to be:

- Police
- City Centre / Bilston / Wednesfield businesses
- University
- Other educational institutions
- Safer Wolverhampton Partnership

## **6.0 Financial implications**

- 6.1 Currently very few, if any, fixed penalty notices are issued generating a modest income. However, Regulatory Services budgets contain a higher income target based on the levels of fixed penalty income in 2006 when larger numbers of notices were issued following implementation of the Clean Neighbourhoods and Environment Act 2005. Successive restructures and legislative changes have combined to reduce this number to present day levels and create a current budget deficit.
- 6.2 The proposal set out in section 4.0 above provides an indicative estimated minimum figure from fixed penalty receipts over a twelve month period sufficient to meet the income target. **[TK/05052015/D]**

## **7.0 Legal implications**

- 7.1 The Environmental Protection personnel undertaking the enforcement activity will require authorisation in accordance with the Council's constitution and scheme of delegation. The Director of Place is delegated to undertake the authorisation.
- 7.2 The Regulation of Investigatory Powers Act will apply to some of the offences within the scope of the new service, for example fly-tipping. In these cases, corporate policy and procedure will be observed in respect to any surveillance undertaken.
- 7.3 It is anticipated that the payment rate for fixed penalties issued will be in the region of 75% - 80%. Current policy is to consider the instigation of legal proceedings in relation to unpaid penalties. Some cases will not be pursued and some will be settled by late payment. Also, Kingdom will undertake a significant proportion of the case preparation, however the trial will clearly result in a marked increase in workload for the legal team. It is considered the team should be able to accommodate this anticipated increase.
- 7.4 Following the proposed 3/6 month review as set out in paragraph 1.1 any tendering and contract for the provision of the service will need to comply with the Council's Contract Procedure Rules and the Official Journal of the European Union (OJEU) Rules.  
**KR/11052015/U**

## **8.0 Equalities implications**

- 8.1 This report has minimal equalities implications in that all formal enforcement action and decisions will be based on the application of pre-existing Cabinet approved policy which bases decisions on risk, evidence and public safety.



8.2 The contents of the report detail measures aimed at preventing and/or mitigating the occurrence of environmental offences which will be of benefit to all groups of persons within Wolverhampton.

8.3 An initial equalities screening process has been completed for this revision to the service and no adverse impact has been identified.

## **9.0 Environmental implications**

9.1 There are a number of related environmental implications arising from this report.

9.2 The proposed service is aimed at reducing the incidence of certain 'environmental crime' types including littering, flyposting, dog-fouling and graffiti. This will have a positive impact on Local Environmental Quality.

## **10.0 Schedule of background papers**

10.1 This issue has been subject to a recent update report to Place Leadership Team and to SEB.

10.2 Cabinet Resources Panel considered a report on Fixed Penalty Charges on 17 December 2013.