

Supplementary Papers for Overview and Scrutiny Board

Date: Monday, 17 May 2021 6.00pm



9. Urgent Item Scrutiny of Fly-tipping and Fly-posting Enforcement Pilot Cabinet Report

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To consider the Fly-tipping and Fly-posting Enforcement Pilot Cabinet Report scheduled for Cabinet consideration on 26 May 2021 as an urgent item with the agreement of the Chairman.

The O&S Board is asked to scrutinise the reports and make recommendations to Cabinet as appropriate.

Cabinet members invited to attend for this item: Councillor May Haines, Portfolio Holder for Community Safety and Councillor Mark Anderson, Portfolio Holder for Environment, Cleansing and Waste.

The Cabinet report for this item is included with the supplementary agenda for consideration by the Overview and Scrutiny Board.

The Chairman has agreed to include this as an urgent item of business as members of Board have specifically requested to scrutinise this matter. It would not be possible to defer the item until the next meeting of the Overview and Scrutiny Board as this would result in a decision being taken by Cabinet that had not received prior scrutiny as requested by Board members.

Published: 13 May 2021

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CABINET



Report subject	Fly-tipping and Fly-posting Enforcement Pilot
Meeting date	26 May 2021
Status	Public Report
Executive summary	<p>Fly-tipping and fly-posting cause significant environmental issues and adversely impact the street scene in the BCP Council area. Both have increased in past years, replicating the national picture.</p> <p>Investigations of incidents in legacy authorities were limited due to resource constraints, with penalties for offenders of fly-tipping and fly-posting few in number. Regulatory Services are seeking to adopt a consistent and robust approach to tackling offenders, whilst minimising additional resource requirements.</p> <p>The Council has powers under the Environmental Protection Act 1990 to deal with incidents of fly-tipping and littering. Householders also have a duty of care to ensure their waste is collected by a reputable company with the relevant waste transfer permissions. Businesses also have a duty to ensure sufficient measures are in place to manage their commercial waste.</p> <p>Fly-posting, the displaying of promotional materials or adverts without permission on public furniture, is enforced through the Anti-Social Behaviour Act 2003.</p> <p>A private company with 10 years of experience in the Environmental Crime Industry and working with numerous Local Authorities have outlined their ability to investigate and enforce the above on behalf of BCP Council.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none"> (a) Cabinet approves the commencement of a 12-month pilot scheme to deploy a suitable qualified contractor to undertake investigations and prosecutions of fly-tipping and fly-posting incidents. (b) Cabinet agrees to receive a further report following 8 months of this pilot, which will include recommendations for the future of this service. (c) Cabinet approves the levels of fines for relevant offences as per paragraph 11.

Reason for recommendations	<p>The responsibility for enforcing against enviro-crime issues such as those in scope for this pilot were carried out by different departments in legacy BCP authorities with limited resources. Poole and Christchurch issued fines for a minimal number of incidents, however no prosecutions were undertaken from 2017 to 2019 according to returns submitted to National Government.</p> <p>Since Local Government Re-organisation, officers within Regulatory Services have only been able to carry out limited investigations due to lack of available resources and the need to prioritise other statutory demands. This proposal will allow the Council to access additional resource and should facilitate a more consistent, robust and thorough response to all relevant incidents.</p> <p>The cost of the proposed pilot is to be paid for by the Council out of fines received and will therefore be undertaken at no additional cost to the Council.</p> <p>If the pilot is approved by Cabinet, the company will be ready to start in July 2021 providing the contract can be signed off within that time.</p>
Portfolio Holder(s):	Councillor Mark Anderson and Councillor May Haines
Corporate Director	Kate Ryan
Report Authors	<p>Kelly Ansell, Service Director - Communities</p> <p>Peter Haikin, Head of Regulation</p> <p>Matthew King, Regulation Team Manager</p> <p>Stuart Best, Waste and Cleansing Team Manager</p>
Wards	Council-wide
Classification	For Decision

Background

1. It is widely accepted that environmental offences can adversely impact on the local environment and can also influence how attractive areas are to residents, workers, visitors, local businesses and their trade. It can affect how safe and happy people feel about living in an area.
2. Fly-tipping is different to littering in terms of scale. Litter is usually classed as a single or small number of items dropped by an individual, whereas fly-tipping is often large items or more than one sack of waste. Littering is not within the scope of this report.

3. The approach to legacy authority enforcement services for fly-tipping and fly-posting investigations varied between authorities. The approach must therefore be harmonised across BCP and a consistent means of effective operation identified.

Existing Arrangements

4. Since the creation of BCP Council, fly-tipping incidents have been investigated where capacity allows. This means that only the most severe issues are pursued. When cases do go forward, various enforcement tools are utilised and invariably investigations are complex with a high burden of proof required and witnesses willing to attend Court or provide statements. Given capacity issues within Regulatory services, exacerbated by Covid 19, as well as the challenges and reluctance of witnesses, a consistent service cannot currently be achieved.
5. Cleansing and Waste Services are currently clearing most fly-tips of any scale on public land. This costs the Council a significant amount of officer time and money and the action of simply clearing does not deter offenders from repeating the act. In Bournemouth alone, costs to clear and dispose of fly-tips were approximately £303,800 from April 2018 to March 2020.
6. On private land, fly-tips that adversely affect the amenity of the area present a health risk or attract vermin are dealt with by Community Enforcement and Environmental Protection officers through engagement and/or enforcement against the landowner to remove the matter.
7. Current service capacity is therefore unable to meet the level of demand and does not permit adequate investigation of all fly-tipping and fly-posting reports. Clearer reporting and investigation processes can be implemented, however the threshold for reports that lead to investigations is likely to be high and would still be reduced at peak times of other statutory demands, such as Spring, Summer and start of student terms.

Proposed Pilot Operating Model

8. Due to the current lack of available resource to support this activity, the Council has undertaken a review of services offered by private enforcement companies to explore options for a possible supported operating model.
9. A zero-cost option was identified and is now recommended. The provider has significant experience in the environmental crime industry. It has also worked with many Local Authorities across the UK and currently works in partnership with numerous councils undertaking similar work.
10. The proposal is to commission the provider to provide a pilot service for 12 months. During this time, they would be authorised by BCP Council to undertake aspects of environmental enforcement. Whilst the authority and responsibility for such action will always remain with BCP Council, the company will undertake the delivery of the following:
 - Staffing, uniforms and IT
 - Equipment (Handheld Device, body worn cameras and mobile phones)
 - Company vehicle
 - Patrols and hotspot identification

- Issue of Fixed Penalty Notices (FPNs) and subsequent prosecution if unpaid
 - Correspondence relating to non-payment
 - Witness statements and the provision of evidence
 - Call handling and complaint management
 - Collecting and reconciling FPN payments
 - Prosecution files compilation and management
 - Freedom of Information requests concerning FPN figures and revenue generated
 - Performance report management
11. The provider has confirmed that all costs incurred in the delivery of this pilot will be recovered through income from Fixed Penalty Notices. Appendix 3 sets out the operating procedure and complaints process in more detail.

Summary of financial implications

12. Fees for Fixed Penalty Notices (FPNs) for relevant offences covered by the pilot can be set by the Council within certain levels and for this pilot the following amounts will be charged for the relevant offences in line with the Legislation limits:

Fly-tipping:

- £200 within 14 days, £400 within 28 days

Fly-posting:

- £75 within 14 days, £150 within 28 days

Household duty of care:

- £200 within 14 days, £400 with 28 days

Failing to provide Waste Transfer Notes:

- £180 within 14 days, £300 within 28 days

Commercial Waste Receptacles:

- £75 within 14 days, £110 within 28 days

13. The higher penalty will remain for each FPN served until the case is referred to Court at which point, if the perpetrator is found guilty of the offence, fines, victim surcharge and costs may be awarded. There is no further increase in the FPN amount at anytime.
14. The provider will be responsible for the collection of all payments on behalf of BCP Council. The company will retain 95% of the revenue and pay BCP Council 5% of all income generated at the end of each financial quarter.
15. In order to comply with VAT regulations, the provider will issue a VAT-only invoice to the Council in relation to the 95% revenue they will retain. Any VAT charged will be fully recoverable by the Authority through the VAT return process.

The service and finance will put processes in place to ensure all tax regulations are adhered to for both the Council and the provider so that neither party is put at any risk.

16. The Council will not be liable should the provider not meet the expectations indicated. The agreement is based on zero cost to the Council and should BCP Council terminate the contract on grounds set out in the terms and conditions of the contract and with consideration of the provider's agreed code of conduct, there will be no cost applied.
17. Following the pilot any ongoing contract would be subject to a formal procurement exercise.
18. Based on the providers projections for 12 months across the BCP area, the following financial information is forecast:

Offence	Number of FPNs (served/paid)	Amount Recovered through FPN payment
Fly-tipping (including option of enforcing through Littering offences)	888/622	£106,640
Householders Duty of Care	45/32	£5,100
Business Duty of Care	153/108	£20,160
		£131,900

*These figures are based on the experience of the provider with other urban Local Authorities where this work has been carried out and in addition to the national returns provided on fly-tipping by the legacy Authorities.

19. Unfortunately, there can be no accurate projections for fly-posting and officers expect the numbers to be low for this aspect of the pilot.
20. From the recovered fines, the provider will pay their operational and staffing costs and undertake prosecutions against perpetrators who have not paid, keeping any costs awarded at Court. The Council will receive 5% of the total recovered payments, which at the projected rate will be **£6,595**, based on the assumptions outlined. This will support the management of the pilot by Council officers.

Summary of legal implications

21. Officers carrying out these duties will be authorised to act under the relevant Legislation by the Council.
22. The Council has powers to deal with fly-tipping pursuant to:
 - a. section 33 of the Environmental Protection Act 1990
23. The Council has powers to deal with duty of care and commercial waste receptacles pursuant to:

- a. section 34 of the Environmental Protection Act 1990
 - b. section 47 of the Environmental Protection Act 1990
24. The Council has powers to deal with fly-posting pursuant to:
- a. section 43 of the Anti-Social Behaviour Act 2003
25. The Council would appoint the provider under a contract for services for a fixed period of 12 months with a right to terminate on 30 days' notice at any time and 60 days' notice prior to the end of the contract. Legal Services advice will be sought in connection with preparation of the contract.
26. Where any fixed penalty notice is not paid, the decision to issue legal proceedings will remain with the Council's Monitoring Officer, although the company would provide the Council with full information and a clear recommendation as to the merits of proceeding with a prosecution and would undertake the proceedings.
27. Legal proceedings would be taken at expense to the provider and they would keep any costs awarded by the Courts. The provider will instruct and pay for their own legal representatives, agreed in advance with the Council. Where costs are awarded by the Courts, on receiving these monies, the Council will pay this and any VAT due to the company, recovering the VAT through the returns process as set out above.
28. Officers will use bodyworn cameras during any engagements with alleged offenders to help ensure accuracy and transparency. The Regulation of Investigatory Powers Act (RIPA) 2000 has been considered during this review of services provided by private enforcement companies. It is deemed that the required work will not require authorisation under RIPA, with no covert or directed surveillance required to achieve the aims of the pilot.
29. Data sharing to enable the company to investigate all reported incidents, as well as any found proactively on patrol, will be permitted through the contract for the pilot. BCP would be the data controller and the private company the processor. The company would be carrying out actions on behalf of the Council as they do not have the power to enforce in their own right and can only use information obtained to carry out their obligation under the contract.
30. On the basis of the sums anticipated to be collected (as set out in paragraph 16) above, the Council's Procurement team has advised that a 12-month pilot may be progressed providing a detailed waiver is signed off at the relevant levels to outline how the pilot represents value for money and ensure due diligence has been completed on the intended provider.

Summary of environmental implications

31. The impact of a successful project will be positive for the environment with fewer incidents of fly-tipping and fly-posting as well as greater prevention of the issue.
32. At present the Council have limited ability to try to deter perpetrators and a press release at the start of the project and updates on successful prosecutions will take place to let residents know that this will not be tolerated in our communities.

Summary of public health implications

33. Fly-tipping and fly-posting has a detrimental impact on public perception of the quality of affected environments, including publicly accessible greenspaces. Public use of greenspaces, and the degree of health & wellbeing benefit derived from that use, is partly determined by greenspace quality. The anticipated reduction in fly-tipping and fly-posting will contribute to wider efforts to maintain and enhance the quality of public greenspace (and the wider public realm) and associated benefits for public health and wellbeing.

Summary of equality implications

34. There are no adverse effects on protected groups and all communities should benefit long term from reduced environmental crime with the success of this pilot. A full equality impact assessment has been included at Appendix 2.

Summary of risk assessment

35. There is a risk to the reputation of BCP Council if the proposed pilot receives adverse commentary or complaints are received regarding the officers carrying out these duties. To mitigate this risk, a robust training plan for any newly employed officers and a complaints procedure will be in place and oversight by officers from the Council will occur regularly and when allegations of poor practice are made. All interactions between officers and suspects will be captured on bodyworn cameras ensuring a fair and impartial investigation of any complaints can be carried out. Where poor practice is identified, the Council will meet with the company's management team to discuss in detail and help to reduce repeat occurrences. The Council can instruct the company to withdraw any FPN if it so decides.
36. A Communications Strategy will be developed to support this pilot. Any publicity work will reinforce the key Council values that any such enforcement activity is not undertaken lightly, or to generate income, but as a necessary driver to make and keep our communities clean. Initially, if this recommendation is approved, a press release to announce the launch of the service will be issued and will set out rules that residents and businesses should be adhering to in an effort to educate without the need for enforcement. Updates via local press and social media will be released at regular points during the pilot to illustrate the impact of the service and further highlight the need for individuals to manage and dispose their waste lawfully.
37. As part of the Communications Strategy, the rationale behind the decision to start this pilot and why the Council opted for the recommended company will be provided.
38. There is a risk that this pilot will not be successful. While this is not the experience of other Councils who have worked with the provider, it remains a risk if the forecasted penalty and recovery amounts are significantly inaccurate. The Council would then need to consider how to move forward with providing the service, which would remain unlikely within existing resources and budgets.
39. As set out above in paragraph 24 the Council can issue 30 days' notice to the company at any time within the 12 month pilot. There is a reputational risk to the Council if the pilot does not succeed and Council officers will continually explore

alternative arrangements throughout and in time for the review to be reported to Cabinet after 8 months.

Background papers

Fly tipping incidents and actions taken in England from Gov.uk

<https://www.gov.uk/government/statistical-data-sets/env24-fly-tipping-incidents-and-actions-taken-in-england>

Appendices

Appendix 1: Legacy Authority Information and Data

Appendix 2: Equality Impact Assessment Summary

Appendix 3: Operating Procedure and Complaints Process
Appendix 4: Restricted
Summary of Proposal and Recommended Provider

Fly-tipping and Fly-posting Enforcement

Legacy Authority Arrangements and Data

Legacy arrangements for enforcement of environmental crime, such as fly-tipping and fly-posting, varied across the 3 legacy Councils and accurate data is difficult to establish. Having undertaken research, engagement with current and previous colleagues and annual figures reported to Central Government, it is possible to better understand the previous service arrangements and it further highlights the need for a consistent and robust response to these harmful activities.

Bournemouth

1. No officer resource has been in place for some time, and therefore very limited enforcement action has taken place during the last five years. Reports have invariably resulted with the Waste teams clearing items from the highways and public areas only. Fly-tipping reports have been pursued only if a public health issue was present, or the issue led to untidy site complaints. Action has been limited to engaging and enforcement against the owner of the land to clear.

This does not deter an offender and causes discontent with landowners feeling they are being punished for having been victims of a crime. While this is understandable, individuals are responsible for protecting their own buildings or land as much as possible and deterrent measures are discussed in all cases.

Christchurch

2. Reports were passed to Dorset Waste Partnership for investigation and clearance whether on public or private land. Between 2018 and 2019, Government Data illustrates that 212 incidents were logged, leading to 42 investigations and 3 fixed penalty notices.

Poole

3. Whilst a process existed within legacy Poole, it was not always possible to pursue investigations into all fly-tipping offences due to other statutory demands including public health matters, nuisance from noise, smoke, light and odour, hoarding, pests, drainage and accumulations of waste. Returns submitted to Government for 2018-19 illustrate 623 incidents were logged, resulting in 45 investigations. However, no fixed penalty notices were issued, or prosecutions undertaken.

Summary

4. The logging of fly-tipping reports varies across the legacy authorities and paints a confused picture as to the severity of the issue. In Bournemouth where reporting seems to reflect the most accurate picture, 50 fly-tip incidents were logged in 2019 and 130 for the year of 2020. A true picture of the scale of the issue across BCP is therefore difficult to establish and a benefit of a pilot scheme as recommended will ensure a more accurate picture is available when considering future service plans.
5. Fly-posting reports or incidents do not appear to have been captured accurately in any of the legacy authorities and no formal enforcement has taken place. Anecdotally, the area has seen increases and ward members and the wider community have become frustrated that no resource exists to enforce against perpetrators. The Events teams

often engage parties where they can be identified from the literature posted, to advise that this should not be happening but beyond that nothing else can currently proceed and this has seen little or no positive impact.

Equality Impact Assessment: conversation screening tool

[Use this form to prompt an EIA conversation and capture the output between officers, stakeholders and interested groups. This completed form or a full EIA report will be published as part of the decision-making process]

Policy/Service under development/review:	Fly-tipping and Fly-Posting Enforcement
What changes are being made to the policy/service?	Harmonisation of response to fly-tipping and fly-posting offences across BCP Council through use of private company at nil cost to Council
Service Unit:	Communities
Persons present in the conversation and their role/experience in the service:	Matthew King, Community Enforcement & Environmental Protection Manager Jeff Morley, Regulatory Team Manager Peter Haikin, Head of Regulatory Services Stuart Best, Waste & Cleansing Manager Rebecca Lawry, Regulatory Services Equality Champion
Conversation dates:	26/1/21-15/2/21
Do you know your current or potential client base? Who are the key stakeholders?	Residents and community groups of BCP Council Businesses operating in the BCP Council area Members of BCP Council Officers within BCP Council in the Regulation, Waste, Parks, Events and Seafront teams Residents and community groups within the BCP Council area Dorset Police Environment Agency
Do different groups have different needs or experiences in relation to the policy/service?	All groups have a need for a consistent Council response to offenders of fly-tipping and fly-posting. Some groups may not understand duty of care rules for waste and communication and education forms part of the policy change.
Will the policy or service change affect any of these service users?	Yes, predominantly in a positive manner, with the aim of the change to policy resulting in less money and resource being spent on clearances of waste and fly-posting and more being spent in other priority areas.
[If the answer to any of the questions above is 'don't know' then you need to gather more evidence and do a full EIA. The best way to do this is to use the Capturing Evidence form]	
What are the benefits or positive impacts of the policy/service change on current or potential service users?	Money and resource spent on dealing with the results of fly-tipping adversely affect all residents and businesses of the Council and if this reduces as is hoped, this is a benefit and positive impact for all groups.
What are the negative impacts of the policy/service change on current or potential service users?	There is a potential impact on residents who may not fully understand duty of care for waste. Each case will be considered fully to understand if someone has been exploited due to a protected characteristic by a rogue individual or trader before considering formal action.
Will the policy or service change affect employees?	Yes, to a limited degree, with employees within Communities having to learn more about enforcement measures against offenders of fly-tipping and fly-posting. It should also be a positive change for employees of Cleansing and Waste who spend some of their time clearing waste dumped by offenders, which adds to

	existing heavy workloads. They will be pleased to see offenders are held to account.
Will the policy or service change affect the wider community?	Yes, as above in a positive manner, except for offenders who do not accept education or knowingly act in an unlawful way
What mitigating actions are planned or already in place for those negatively affected by the policy/service change?	A communications strategy to help increase knowledge of rules around waste management and fly-posting will be implemented prior to the launch of the new service and each case will be considered fully to understand if someone has been exploited due to a protected characteristic by a rogue individual or trader before considering formal action.
Summary of Equality Implications:	There are no adverse effects on protected groups and all communities should benefit long term from reduced environmental crime with the success of this pilot.

For any questions on this, please contact the Policy and Performance Team by emailing performance@bcpcouncil.gov.uk

Fly-tipping and Fly-posting Enforcement

Operating Procedure and Complaints Process

The officers of this company will be acting as agents of BCP council and are required to adhere to this operating procedure. Part of their role will be to raise awareness of the environmental and amenity impact of unlawful waste disposal in the community and to encourage a change in approach by those who may not acknowledge the adverse consequences of fly-tipping. They will approach each case in a fair and balanced way, engaging with the parties concerned, before formal enforcement action is taken.

A standard investigation would progress as follows:

1. Investigating Officer will receive dumped waste complaint.
2. Investigating officer will complete a waste inspection in an attempt to establish evidence of the person who either deposited the waste, knowingly caused the waste to be deposited or transferred the waste.
3. Complete door to door enquiries if further evidence is needed.
4. Complete a doorstep interview with witnesses or alleged offender.
5. If a significant statement is made during a doorstep interview, the investigating officer will caution the alleged offender and clarify the points to prove.
6. If the investigating officer has enough evidence to prosecute the alleged offender for an offence then an "on the spot" Fixed Penalty Notice will be issued as an alternative to being prosecuted. The full process is explained to the alleged offender and details on how to make a representation or appeal regarding the issued FPN.
7. If the FPN has not been paid within 14 days, we will send a reminder letter to the alleged offender seeking payment or the case may be referred to the legal team to instigate prosecution proceedings.
8. If the FPN has not been paid within 28 days, we will send a final reminder letter to the alleged offender seeking payment or the case may be referred to the legal team to instigate prosecution proceedings.
9. If the FPN has not been paid within 40 days, we will compile a prosecution file and follow the prosecution process agreed with BCP Council.

The provider's relationship with any members of the public shall be conducted in a professional, courteous, and helpful manner with due care and consideration given to different situations and circumstances. The provider will ensure its staff employed on the contract wear their agreed ID at all times. In the event of a complaint or dispute arising as to the officer's conduct, it will be investigated by the provider and a report produced to the council in accordance with the following procedure.

1. On receipt of a complaint to the Council relating to an officer's behaviour or conduct, the Council will:
 - Acknowledge receipt in writing to the complainant

- Inform the complainant that the provider will formally investigate their complaint
 - Inform the complainant that they can expect a written response within 10 working days from the date it was recorded
 - Forward details of the complaint, relevant Fixed Penalty Notice, acknowledgement correspondence to the complainant and any other relevant information directly to the provider.
2. On receipt of a complaint to the provider relating to an officer's behaviour or conduct, they will:
- Immediately acknowledge receipt of complaint and confirm deadline to both the complainant and Council.
 - The Managing Director will fully investigate the complaint which may include interviewing the complainant and the relevant officer.
 - Respond directly to the complainant within 10 working days of receipt of complaint.
 - Provide the Council with a written copy of the response and outcome of the investigation. This is to include any disciplinary action against the officer and organisational learning for the contractor and/or the council.
 - The council and the provider will meet and discuss complaints to improve Service Delivery every quarter.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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