

Report subject	<b>Fly-tipping and Fly-posting Enforcement Pilot</b>
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><b>It is RECOMMENDED that:</b></p> <ul style="list-style-type: none"> <li><b>(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></li> <li><b>(b) Cabinet agrees to receive a further report following 8 months of this pilot, which will include recommendations for the future of this service.</b></li> <li><b>(c) Cabinet approves the levels of fines for relevant offences as per paragraph 11.</b></li> </ul>

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>
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Corporate Director	Kate Ryan
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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
		<b>£131,900</b>

\*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