

Report subject	Fly-tipping and Fly-Posting Enforcement Pilot Review
Meeting date	25 May 2022
Status	Public Report
Executive summary	<p>On 26 May 2021 Cabinet considered the report Fly-tipping and Fly-posting Enforcement Pilot and resolved that:</p> <p>(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;</p> <p>(b) Cabinet agrees to receive a further report following 6 months of this pilot, which will include recommendations for the future of this service; and</p> <p>(c) Cabinet approves the levels of fines for relevant offences as per paragraph 10.</p> <p>This report provides a review of the first 6 months of the pilot which, from September 2021 has been delivered by Waste Investigations Support and Enforcement Ltd (WISE), together with recommendations for the future of the service. WISE have been contracted on a cost-neutral basis to investigate and enforce against offenders of fly-tipping and fly-posting and ensure businesses meet legal requirements to manage waste lawfully and responsibly.</p>
Recommendations	<p>It is RECOMMENDED that:-</p> <p>(a) Cabinet approves an extension to the fly-tipping and fly-posting pilot with WISE until November 2022, with additional emphasis on:</p> <ul style="list-style-type: none"> i. effective and increased communications with public and businesses ii. enhanced joint working with the Council's Waste Compliance Officers iii. consideration of learning from best practice in other Councils <p>(b) A further Cabinet report be brought in November 2022 with recommendations for the service long-term</p>

Reason for recommendations	<p>Prior to this Pilot, the Council did not investigate all reports of fly-tipping and had limited data on the scale of the problem in the area. The Pilot has delivered its original objectives to investigate all reports of fly-tipping and fly-posting, to take enforcement action where an offence has been committed and fundamentally supports the Council's Cleaner, Greener, Safer campaign.</p> <p>The initial pilot period presents too short a timescale for the data collected by WISE to date to fully illustrate the challenges these environmental crimes cause BCP Council. Extending the pilot will provide further understanding to help enable officers and Members make the best decision for how the service operates longer term.</p> <p>A more effective communications campaign will help mitigate some of the adverse reactions by those found to have committed an offence and closer working with the Council's Waste Compliance Officers will ensure better co-ordination of efforts and improve the public's understanding of the impact that fly-tipping and fly-posting has on the environment.</p> <p>Further time with the Pilot will enable officers to speak to other Councils who are exhibiting best practice with regards to deterrents against fly-tipping and other environmental crimes and this information and subsequent recommendations will be provided at the further Cabinet meeting in November 2022.</p>
Portfolio Holder(s):	Councillor Mark Anderson, Councillor Bobbie Dove and Councillor Nicola Greene
Corporate Director	Jess Gibbons, Chief Operations Officer
Report Authors	Matthew King, Regulation Team Manager
Wards	Council-wide
Classification	For Decision

Background

1. The Council has powers under the Environmental Protection Act 1990 to deal with incidents of fly-tipping and littering. Householders and businesses have a duty of care to ensure their waste is collected by a licensed waste carrier, and businesses also have a duty to ensure sufficient measures are in place to manage their commercial waste. Waste management is essential for both our residential and business communities to prevent complaints about the street scene and to prevent public health issues arising from rotting waste.
2. The Council has powers under the Anti-Social Behaviour Act 2003 to deal with fly-posting, the displaying of promotional materials or adverts without permission on public furniture.

3. Enforcement of fly-tipping and fly-posting varied between legacy authorities, and the pilot aims to harmonise the approach and ensure a consistency.
4. Since commencement of the service in September 2021, WISE has investigated all reported incidents of fly-tipping and fly-posting and has taken enforcement action where an offence has been committed. This has mostly been through issuing of fixed penalty notices (FPNs) on individuals.
5. One of the recommendations from the Cabinet decision in May 2021 was to present a report of the pilot's first six months of operation (Sept – March) and to include further recommendations for the future of the service.

Findings of Review

6. WISE has delivered significant outcomes as outlined in Appendices 1 and 2, including 1,538 fly-tipping investigations and service of 198 FPNs. There is now a consequence for the actions of offenders, and the pilot has addressed the frustration of residents and businesses who previously reported incidents that would either not be actioned or would be limited to education and engagement only.
7. Commercial waste management has improved significantly since the start of this pilot with additional contracts in place in many areas of BCP Council, particularly Bournemouth Town Centre. Previously efforts relied upon engagement only, but with limited success. Officers from the Council's Environment teams have commented that the pilot has made a positive impact on areas where problems were prevalent. In total, 249 businesses have been inspected to ensure compliance with waste requirements for commercial premises and 189 have been found to have had inadequate measures. Photographs in Appendix 3 illustrate some of the improvements to problematic areas.
8. All incidents of fly-tipping and fly-posting can now be investigated in a timely manner and there is capacity for WISE officers to investigate the hard-to-evidence cases that are otherwise challenging for Council officers to investigate amongst other competing demands.
9. The FPN payment rate at 67.5% is comparable to the industry average of 70%. Efforts will be made to improve through increase messaging that payment of a fine will avoid the Court action that could result in heavier fines and a criminal record. The Council is able to utilise 10% of the recovered monies for this service-related work.
10. Appendix 1 details the challenges and setbacks raised during the pilot to date. Challenges around enforcement were inevitable and predicted, although learning from a number of cases has aided the improvement of procedures. The complaint rate is considered low, with just 7 escalated to Council officers out of 1,797 investigations that WISE have achieved (0.38%). Officers will continue to work with the contractor to ensure this remains the case. Whilst there is no formal appeal process to an FPN, 2 have been withdrawn and cautions issued in their place.

Options Appraisal

11. Several options have been considered for the continuance of this pilot, taking account of the outcomes and experience of delivery to date;

Option 1 - Maintain the contract in the current format

12. The pilot has delivered its objectives to date within a short space of time, although not without challenges in some areas. Managers and officers have learned lessons from various cases, in particular from those where potential offenders have claimed to be leaving items for charitable reasons. Accordingly, some operational procedures have been altered, albeit there are other challenges identified in this report that have yet to be addressed.
13. The contract in its current format is cost-effective and the Council is able to reinvest 10% of the fines WISE recover into public engagement and legal support for more serious cases, or where offenders have failed to pay their fine.
14. The 10% recovery to the Council enabled full engagement work to be carried out over the Christmas and New Year period, in view of the likely excessive waste at this time of year. There are also 2 cases being considered for prosecution. An assessment on whether the legal costs can be covered by the 10% fine recovery will be provided following the conclusion of these cases. It is important to note that only cases in the public interest, whereby the fine is not paid, will proceed through legal proceedings.
15. The system used by WISE captures the most accurate picture of how much demand is generated by fly-tipping across BCP Council areas. Due to the nature of how reports reach the Council and the multiple systems that these are logged, this is an important feature of the contract and was one of the initial aims of the pilot. However, 7 months is a comparatively short amount of time to fully consider the true impact of this pilot, and hence further data will be collated over the coming months.
16. There could be a reputational risk to the Council where enforcement actions are misrepresented in the media, although to some degree this is inevitable with any enforcement-related activity. There is of course a reputational risk of failing to investigate fly-tipping.
17. Significant engagement with members of the public who may inadvertently mismanage their waste has taken place, although many people choose not to engage, or accept any fault, which consequently leads to enforcement action. Nevertheless, should there be a move to reduce the level of enforcement and move to an approach of engagement and education, the Council would need to find additional resource to compensate WISE for the reduction in FPN income.
18. This option will necessitate increased public messaging about the rules regarding waste and the work that WISE are undertaking. There is limited capacity in the Comms team to undertake this, and hence there may be a cost implication, although Community Engagement Officers could help deliver some of the messaging.

Option 2 - Maintain the contract with enhanced engagement from Environmental Health and Community Engagement

19. There is some scope to maintain the contract as it is currently operating whilst increasing the input from two Waste Compliance Officers from the

Environmental Health team. This would likely result in more face-to-face education with businesses and members of the public, potentially reducing the inadvertent breach of legislation and consequent fines.

20. Engagement and education have taken place for a number of years in legacy authorities. Such engagement appears to have been unsuccessful due to continued increases in mismanagement of business waste and fly-tipping. With WISE now available for escalation where engagement fails, the pilot could help deliver more favourable outcomes.
21. This option could create some operational challenges, particularly with businesses where additional engagement has been carried out. Any instruction to refrain from service of FPNs on businesses who have recently arranged a new waste contract will likely mean the pilot cannot be run on a cost-neutral basis. The costs to the Council would be circa £400 per day. The input required by the two Waste Compliance Officers would also take these officers away from their current role of dealing with waste enforcement work that falls outside the WISE contract.

Option 3 - Maintain the contract and introduce issuing of formal warnings for many first offences

22. WISE could be instructed to issue formal warnings to individuals who have not been found guilty of a previous offence. While it is not possible to prove that many people who have been fined through the pilot have likely mismanaged waste for a significant period of time, it is a reasonable conclusion that people having historically seen little or no consequence for mismanagement of waste. They have therefore become accustomed to placing waste beside overflowing bins or on the pavement for someone else to pick up, the costs for clearance for which will have fallen to the Council.
23. Warnings can be issued to anyone who is found guilty of an offence for the first time, but this would create significant operational challenges and result in a requirement to provide funding to WISE. This would potentially cause further frustration to residents already aggrieved by ongoing waste issues in their community.
24. This option, alongside a reduction in income from fines to businesses without proof of a suitable waste contract, would cost the Council approximately £26,000 for the remainder of the contract from 1 June 2022 to 31 August 2022 and would reduce the income from fines to reinvest in the service by an estimated £6,000.

Option 4 - Cease the WISE contract and revert to in-house service provision

25. The Council could give WISE 30 days' notice to end the contract at any time and revert to in-house service provision.
26. Current capacity within teams would not result in an effective service without further investment and it would take a significant time to implement. A better system for logging all fly-tipping incidents would also be required to help ensure officers understand the true demand of fly-tipping investigations in the area. Based on the limited data in the first 7 months of the contract, at least 2 full-time posts, administration support and resources would be required at circa £100,000 per annum with on-costs. Additional funding for legal costs to pursue offenders who have committed a serious offence or have not paid their fine

would also be required at an estimated £13,000, this matching the forecast 10% of income currently due to be received from paid fines to WISE.

Option 5 - Mobile CCTV facility in addition to all options

27. The Council has a finite resource for CCTV and there are significant demands on the current service. CCTV cameras will deter some individuals from committing fly-tipping offences; however, this does not necessarily mean that enforcement action can be taken when images are captured, although it would greatly assist in identification of any vehicles involved if the registration is captured within the footage.
28. Deployable cameras that can be moved to various locations are currently used by the Council's CCTV Team, but there must be a suitable post and power point for installation, and in some hotspot areas this is not achievable. Surveys are required prior to consideration of relocating a camera and significant engagement with residents and businesses in the proposed locality is required, as well as additional signage and compliance with Surveillance Camera Code. The Council's existing team would be required to carry out this work.
29. A mobile CCTV solution is available on the market and can be rented or purchased. A portable tower with a generator or battery can potentially provide a short-term solution and depending on the unit, can be moved to other locations either by Council officers, or the camera providers.
30. A large generator-run portable tower and CCTV unit, moveable by a provider, can provide a maximum of 10 weeks continuous coverage in an area, but can only be considered where a van can access the desired location. This can be hired for £550 per week, with an initial set-up cost of £700 and a cost each time of £700 to relocate. Alternatively, it can be bought for approximately £30,000, including 5 relocations a year if a lengthy contract was signed with the provider. Additional relocations would be £700 each time.
31. A smaller battery-operated unit with an extendable tower and CCTV unit can provide 2 weeks of coverage before recharging is required. The addition of solar panels may extend this if the unit is placed in a suitable area to benefit from this. This is moveable by towing and additional security measures would be required to help protect against theft or damage. This can be purchased for £25,000.
32. Any additional CCTV, and particularly mobile units, will also require significant additional officer time to set-up, manage and ensure compliance. It would likely work to the benefit of the service in some cases but not in others, although may act as a deterrent in some hotspot locations. There is a high risk of displacement of high-volume fly tipping sites to those not covered by CCTV.

Option 6 - Major comms campaign in addition to all options

33. Additional engagement and comms is desirable for any option moving forward to help people understand the harm that mismanagement of waste, fly-tipping and fly-posting can do the environment. It is also necessary to educate as many people as possible what the law is, and what the potential penalties are.
34. The Council's Communications Team are struggling to meet current demands, although conversations have taken place with a view to launching a campaign.

35. It is likely a contractor would need to be commissioned to provide a successful comms campaign that may make a real difference to BCP streets in relation to the service covered by this pilot. It is also acknowledged that demand for the service will increase shorter term with more residents being aware of how to report fly-tipping and having confidence action will be taken. This would cost an estimated £10,000 based on the previous 'Sort **it Out' campaign last year.

Summary of Options

36. It is recommended that the Pilot is extended to November 2022 with an additional emphasis on effective and increased communications with public and businesses, enhanced joint working with the Council's Waste Compliance Officers, and to allow for consideration of learning from best practice in other Council's. Additional time will also allow for consideration of accompanying initiatives such as mobile CCTV options.
37. During this extension, Waste Compliance Officers will be tasked to engage with and educate residents and businesses on their legal obligations prior to a visit by the WISE contractors. The focus of the Waste Compliance Officers would be to target areas with high frequency and high-volume waste complaints. This would result in greater understanding by residents of waste crime and possibly fewer complaints or concerns about the nature of the WISE contract. It could also reduce the amount of time and money spent on clearing side waste.
38. With the introduction of Waste Compliance Officers to areas identified as experiencing high waste mismanagement, education and warnings would be issued prior to, or at time of first offence, and WISE officers can then focus their efforts on those ignoring these rules. This would provide a fair service to residents in BCP that genuinely are unaware of the law and minimise the reputational risk to the Council.
39. It is acknowledged that some businesses or residents have genuinely not known the rules around waste management or appreciated the negative impact, so a more comprehensive Comms campaign will help address this. It is apparent that many individuals do know that leaving waste on streets or outside of bins, or failure to have a contract in place for business waste breaches regulations. Officers are clear that to make a real difference to our streets, fly-tipping and mismanagement of waste should be dealt with as a crime in accordance with the relevant Legislation. Where mitigating circumstances are apparent, FPNs will not be served at first call, although residents and businesses must positively engage with the investigating officers to help reach this understanding.
40. Lead officers in this Pilot, alongside Communications colleagues will seek best practice from other Councils where the response to the challenges of fly-tipping appears to be more seamless and publicising cases where residents have supported action is commonplace.
41. To date, significant improvements have been made in understanding the level of fly-tipping and waste issues, but the pilot has presented a short window of opportunity to gather sufficient data to make informed decisions for the long term. Extending the Pilot to November 2022 will help ensure officers are in the best position to make the necessary recommendations for the service, while giving further time to assess and understand possible areas for improvement.

Summary of financial implications

42. If the demand, levels of fines and payments continue at the current rate, the projected income received by the Council will be £8930 as of 1 September 2022.
43. There are no budget implications for the communications campaign proposed as the funding of approximately £10,000 is available from the approved Cleaner, Greener, Safer programme.

Summary of legal implications

44. The recommendations have minimal additional legal implications from those in the Cabinet report from May 2021. The contract will be extended in its current form to cover from 1 September 2022 to 30 November 2022 and the Council's Procurement Team will be consulted.
45. Should the recommendation not be agreed, the contract may require alterations with the provider, which may take some time to achieve with capacity limited in Legal Services.

Summary of human resources implications

46. The additional tasks recommended for the Council's Waste Compliance Officers fit with the current role profile and are commensurate with the current grading.

Summary of sustainability impact

47. The comms campaign together with continued enforcement should result in less fly-tipping incidents and associated negative environmental impacts.
48. Less litter from ripped bags of fly-tipped waste will result in less potential harm to wildlife, less waste going down drains and reduced costs for Council services to clear.

Summary of public health implications

49. 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

50. 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 was carried out prior to the agreement of Cabinet to commence the pilot in May 2021 and this has been reviewed. There is no change.

Summary of risk assessment

51. There is a continuing 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. As outlined, these have been small in number but

have created additional pressures from various parties during the course of the pilot.

52. A more effective Communications Strategy will be developed to support this ongoing 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 and support the Council's Cleaner, Greener, Safer campaign.

Appendices

Appendix 1: Review of Outcomes

Appendix 2: Performance and Data

Appendix 3: Photographs

Appendix 4: Equality Impact Assessment Summary