

Report subject	WISE Fly Tipping Enforcement Review
Meeting date	23 November 2022
Status	Public Report
Executive summary	<p>On 25 May 2022 Cabinet considered the report Fly-tipping and Fly Posting Enforcement Pilot Review and resolved that the pilot be extended and a further report be presented in November 2022 with recommendations for the service long-term.</p> <p>This report outlines the work carried out since May 2022 with the Councils Communications Team and Waste Compliance Officers in line with recommendations made to Cabinet, it summarises some of the learning from other Local Authorities and provides an update on the performance and data of the pilot.</p> <p>The report considers the long-term plans to meet the challenges facing the Council with regards to environmental crimes and makes recommendations with regard to the way forward.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none"> a) Cabinet approves the end of the existing pilot in March 2023. b) Cabinet approves Option 2, the extension of the scope of the service, to include investigation and issuing of fines for littering, fly-tipping and fly-posting offences to be provided by a contractor, subject to Tender process. c) Cabinet approves the level of fines for littering at £150 with an early repayment level within 14 days of issue at £75.
Reason for recommendations	<p>The Fly Tipping and Fly Posting Enforcement pilot over the last 14 months has delivered a robust response. It is therefore recommended that this continues.</p> <p>In addition, a similar extended model to include littering enforcement is now recommended to tackle the environmental damage of this behaviour and to improve the quality of the environment across Bournemouth, Christchurch and Poole. The costs of this service will be covered by the revenue collected from payments of fines, of which 17.5% will be paid to the Council by the</p>

	contractor to be reinvested in the service.
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Wards	Council-wide
Classification	For Recommendation

Background

1. On 26 May 2021, Cabinet approved a pilot model of commissioning a contractor to undertake investigations and enforcement of fly-tipping and fly-posting incidents. The contractor employed is Waste Investigations Support and Enforcement (WISE) Ltd. The contract commenced on 31 August 2021 and has continued since that date.
2. On 25 May 2022 Cabinet approved the extension of the pilot for a further 6 months, subject to improvements in effective and increased communications, enhancement of working with the Council's Waste Compliance Officers and consideration of models applied by other Councils. This extension also allowed for a longer pilot period to assess performance against objectives.
3. It was resolved that a further Cabinet report be brought in November 2022 with recommendations for the service in the longer term.

Summary of Pilot

4. A detailed summary of the work carried out since May 2022 and the performance and data from the commencement date of 31 August 2021 is available in Appendix 1.
5. Officers met with two other Local Authorities identified as delivering best practice and exploring their approach has helped to inform recommendations for future service delivery and understand the significant investment of resources required over a long period of time to enable an effective in-house provision.
6. A media campaign, Your Waste, Your Duty, was launched in July 2022 alongside a press release and supported through messaging issued to 35,000 e-newsletter subscribers. In addition, the online reporting system and website has been updated to assist effective messaging to residents and businesses.
7. The joint working between WISE and Waste Compliance Officers has been increased and strong working relationships have been developed leading to improvements in waste management in many areas of BCP affected by uncontrolled waste.

8. In conclusion, the pilot has delivered its strategic and operational aims and evidenced the ongoing need and benefit of continuation of the service.

Assessment of Outcomes

9. Research by the Jill Dando Institute indicates that there are several reasons why people fly tip. Main factors include ease, reward, and risk. The research also notes that to successfully tackle the problem, interventions should focus on increasing effort, increasing risk, reducing rewards and reducing provocations, as well as removing excuses.
10. The pilot enforcement project has focused on two of these key areas;
 - i) increasing the risk to the offender through investigation and enforcement
 - ii) removing the excuses that offenders can use to rationalise the crime. A strong communication strategy has focused on educating residents and business and highlighting the harm of fly tipping and unacceptable waste management.
11. Data on fly tipping is collected nationally and reported annually by the Department for Environment Food and Rural Affairs (DEFRA). Prior to the pilot, there was a gap in being able to accurately provide data relating to fly tipping. The pilot has resolved this issue and enabled improved capture of detailed information on location, type and volume. This has resulted in the ability to quantify the problem and facilitate an improved, targeted response.
12. 2,271 investigations have been carried out from end of August 2021 to 23 September 2022, clearly demonstrating that the pilot has enabled investigation of all reports as well as proactive visits and enforcement where businesses are failing to meet their duty of care. From this perspective, the pilot has been very successful in its aims of increasing the risk to offenders by ensuring that investigations are undertaken, penalties are issued where offences have been evidenced, and ensuring that waste from businesses is correctly disposed of where otherwise it may have been fly-tipped.
13. The payment rate for Fixed Penalty Notice's (FPN's) has remained comparable to the previous review in May 2022 at 67.2% and the Council has received a total of £9,053.50 from the agreed 10% proportion of recovered fines. This has been reinvested into the service, funding prosecutions which are awaiting a trial date, and will fund future printed communications including signage, posters, leaflets and bin tags publicising the service. Unpaid fines are reviewed and referred to Legal Services for prosecution.
14. Throughout the duration of the pilot the rate of complaints has remained extremely low, at 0.016% of cases where a fine has been issued. Of the 12 cases escalated to the Council during the pilot, one has been upheld, one partially upheld and 10 not upheld. On review of these cases, it has been clear that the conduct of officers has met strong professional standards, supported by a requirement to work to the Council's Code of Conduct and wear body worn cameras that are viewed periodically or when complaints are received.
15. Feedback from colleagues in Waste Services and Environmental Health has been consistently positive throughout the pilot, with officers reporting better outcomes now that engagement and education for non-compliance can be followed up with appropriate enforcement action for offenders.

16. Throughout the pilot, communications have been improved through the website and online mapping system to ensure residents are aware their report has been received and is being investigated prior to any clearance. Some reports do not warrant an investigation and a triage system is being planned for those occasions where there is obviously no evidence to locate offenders, for example where the item is a piece of furniture and no witnesses are forthcoming. Clearance can then be undertaken in a timely manner by Waste teams.

Litter Enforcement

17. The Council experiences issues of littering across Bournemouth, Christchurch and Poole. These issues increase significantly during seasonal peaks, impacting in particular on our parks and open spaces such as the seafront. During peak periods of high temperatures, BCP sees record numbers of people visiting local beaches and regrettably, a significant amount of litter left behind. This year in the two heat waves in July and August, approximately 50 tonnes and 30 tonnes of litter respectively were collected from the beaches.
18. While Council officers with other duties made every effort to educate visitors, many had to litter pick after each day to ensure the beaches were safe and presentable for the next morning. Pressure on waste and cleansing services is increased at these peak times and public concern about the impact of these behaviours is heightened. Improved communications challenging poor behaviour has had a positive impact although much detritus was left by members of the public with no penalty.
19. In other areas of BCP, evidence of littering can be found. Resourcing littering enforcement in a proactive manner has been a challenge to BCP Council. It is therefore recommended that a similar model to the pilot for fly-tipping should be applied to maximise the benefit of any contractual arrangement and to ensure that there are consequences to offenders in relation to a broader set of environmentally damaging behaviours.

In July 2019, the Council declared a climate and ecological emergency and committed to taking a number of actions including educating and engaging with residents and businesses to reduce waste. Dropped waste has a significant adverse impact on the environment as it can be blown or washed into rivers, waterways, parks, woods and oceans taking years to degrade, as illustrated in the table below, and polluting our ecosystems as it does. Whilst the Council will continue to provide education many of these behaviours will only change if there are consequences to littering through enforcement.

Type of Waste	Time to Biodegrade
Paper bag	Up to 1 month
Fruit peels	Up to 2 years
Cigarette butt	Up to 12 years
Plastic bag	Up to 20 years
Plastic including bottles and can ring holders	Up to 450 years
Chewing gum	Never
Glass bottle	Never

NB. Data traced from various sources including Keep Britain Tidy and Zero Waste Scotland. Times are dependent on where litter is dropped and the conditions there

Options Appraisal

20. With the pilot due to end shortly, a tendering process will be required if a private contractor is to continue delivering this service. Accordingly, the following options have been considered:

Option 1 – Subsidise a contract for fly-tipping enforcement

21. The existing contractual arrangement cannot continue as WISE has advised it is not commercially viable to enforce only fly-tipping and fly-posting. This is in line with the findings of wider market testing.
22. If the Council were to seek to pursue a fly tipping/fly posting only contract, market testing suggests that either no providers will come forward, or there will be a requirement for the Council to pay a minimum of £200 per day for each investigating officer employed. These costs would also cover the back-office management of the service, an essential element of any service moving forward.
23. Under this arrangement, the Council would retain 100% of fines that were paid. Taking account of typical collection rates, a reasonable level of income generated by one enforcement officer (the minimum resource required for BCP) would be circa £70,000 per annum, with costs of circa £50,000 (including on-costs, back-office support, and 50 weeks coverage). The Council would therefore secure a net revenue of circa £20,000 per annum which could then be reinvested into the service. However, the financial risks would be transferred from the contractor to the Council; such risks include failure to secure the anticipated level of fines, sickness absence, and staff-turnover.

Option 2 – Tender a contract at cost-neutral to include littering enforcement

24. This option addresses the commercial constraints outlined in option 1 as well as the identified need outlined regarding litter enforcement.
25. Projections based on the size of the population suggest a team of 4 officers and a team leader would be required to adequately patrol and respond to a broader scope of littering offences, fly-tipping and fly-posting. The Council can set the proportion of revenue received from fines within the terms of any tender.
26. The business model would require a zero-tolerance approach to littering but would provide scope to warn offenders where they may have inadvertently fly-tipped, for example by leaving a bag or item next to their bin. These scenarios have been most apparent in press coverage during the pilot, therefore this approach would reduce that risk significantly.
27. Research of national data alongside projections provided by the current contractor, which reflects contracts with other Local Authorities, suggest that £298,500 total revenue would be collected from paid FPNs each year within this model. The typical littering payment rate is approximately 75%, slightly above the payment rate of other waste-related offences.
28. With the suggested fine levels set as below, the Council would require through tendering, that a minimum of 17.5% collected revenue is returned to the Council and ring-fenced for reinvestment to our enviro-crime response. This would result in a projected £52,000 revenue back to the Council per annum for reinvestment.

29. The fine levels would remain the same for fly-tipping and fly-posting, while littering offences would be the maximum level permitted at £150 with a reduced level of £75 if paid within 14 days. Criteria would be set by the council to make allowances for special circumstances with payment so that the lower rate could be extended if required.
30. A communications plan will be required which will be funded by revenue from the contract and would utilise resource from previous comms relating to litter, particularly on the seafront. Any model will necessitate a zero-tolerance policy to littering and public signage advising of penalties for all littering will be introduced.

Option 3 – Revert to in-house service provision

31. Current capacity within Council teams would not result in an effective service without further investment and it would take significant time to implement. A better system for logging all offences would also be required to help ensure officers understand the true demand of investigations in the area.
32. Based on the data of the pilot to date and projections for required littering enforcement, administration support and resources would be required at circa £200,000 per annum with on-costs.
33. Additional funding for legal costs to pursue offenders who have committed a serious offence or have not paid their fine would also be required.
34. Training existing staff, who have other responsibilities, to fine for littering and other waste offences, has been considered. Experience of other Councils suggests this is not effective and dilutes existing roles with no obvious success. This is supported with local experience of littering enforcement being passed to CSAS officers in previous years but zero fines being issued, due to competing demands from other areas of their responsibility.
35. On the spot issuing of fines is a unique skill and differs from the issuing of parking fines for example, where often the offender is not present when a fine is issued. For this reason, a new team of externally recruited officers would be required, and external training sourced at cost to the Council.
36. Significant investment into a suitable IT system would be required before the commencement of the service and while this spend maybe recovered from collected fines, the risk to the Council of this expenditure prior to income being available is significant.
37. Capacity would need to be released for at least 6 months to set up an in-house service and, due to current pressures on existing officers, this would mean temporary employment of an officer at a suitable managerial grade estimated at £25,000 plus on-costs.

Summary of Options

38. It is recommended that the Council adopt option 2 and openly tender a contract for the service provision of enforcement of littering, fly-tipping, fly-posting and failure to meet business duty of care.
39. The Council requires a more focused approach to the challenges it faces with many aspects of enviro-crime, and an experienced contractor with existing skills, systems and knowledge can provide a suitable solution that will benefit responsible businesses and residents, while helping to protect the environment.

40. To ensure continuity of existing service, the current provider will be contracted with existing terms for fly-tipping and fly-posting enforcement until March 2023. This is in line with advice from Procurement and the new contract, to include littering, will then commence and ensure there is adequate time prior to Summer 2023 to address any challenges.
41. The contract will be managed robustly through the Environmental Protection Leadership Team who are well placed to ensure this is managed effectively. This includes reviewing complaints to respond to concerns and provide reassurance that a proportionate response is being applied, consistent with the Council's values.
42. The fine levels set by the Council for littering will be £75 within 14 days of service and £150 thereafter, although the contract terms will seek to ensure anyone experiencing hardship are given consideration for an extension at the lower payment rate. It is predicted that a higher rate after 14 days will encourage more offenders to pay the lower rate. The existing fines for fly-tipping, fly-posting and other waste offences will remain as illustrated in paragraph 63.
43. It is recommended the Council requires 17.5% of collected revenue to be paid at the end of each 3-month period. Predictions based on conversations with the existing contractor suggest this should be approximately £52,000 per annum. This revenue will be ring-fenced for enviro-crime related activities, including support for communications, publicity, education, and prosecutions of offenders who do not pay the fines.
44. The required enforcement model for littering and most other offences will be zero-tolerance, although officers will build in allowance for first-time offenders of one item of waste left by bins or just outside driveways. Offenders would be given one-day warning to remove waste before a fine is issued.
45. A communications plan to help educate the public on what constitutes a littering offence and the damage it can do to the environment will be undertaken.
46. The contract will be procured for 2 years initially, with the option of extension for a further 3 years.

Summary of financial implications

47. Fees for Fixed Penalty Notices (FPNs) for relevant offences covered by the contract can be set by the Council within certain levels and it is proposed the following amounts will be charged for the relevant offences in line with the statutory limits:

Littering:

£75 within 14 days, £150 within 28 days

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

48. 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.
49. The provider will be responsible for the collection of all payments on behalf of BCP Council. The contractor will retain 82.5% of the revenue and pay BCP Council 17.5% of all income generated at the end of each quarter.
50. To comply with VAT regulations, the provider will issue a VAT-only invoice to the Council in relation to the 82.5% 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.
51. 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.
52. Based on experience to date, discussions with the existing contractor and available national data, projections for 12 months across the BCP area and the following financial information is forecast:

Offence	Number of FPNs (served/paid)	Amount Recovered through FPN payment
Fly-tipping, Duty of Care and Fly-posting	771/517	£84,000
Littering	3,848/2,860	£214,500
		£298,500

53. From the recovered fines, the provider will pay their operational and staffing costs. The Council will receive 17.5% of the total recovered payments, which at the projected rate will be **£52,237.50**, based on the assumptions outlined. This will support prosecutions, communications and the management of the contract by Council officers.
54. There is a risk that the forecasted penalty and recovery amounts are inaccurate, and revenues fall short of expectation. However, the recommended option leaves the financial risks in relation to employment and support costs with the service provider, and there will be an option within the contract for the Council to terminate the contract with 90 days' notice.

Summary of legal implications

55. The Council is the enforcement authority in relation to the offences relating to this report as set out below. Officers carrying out these duties and investigating and enforcing matters will be authorised to act for and on behalf of the Council in relation to the following:
- i) Section 87 of the Environmental Protection Act 1990 deals with the offence of littering. Section 88 of the Environmental Protection Act 1990 permits the issuing of a fixed penalty notice for an offence of this type.
 - ii) Section 33 of the Environmental Protection Act 1990 deals with the offence of fly tipping and permits the issuing of a fixed penalty notice for an offence of this type
 - iii) Section 34 of the Environmental Protection Act 1990 deals with offences relating to failing to comply with the duty of care in relation to handling commercial waste permits the issuing of a fixed penalty notice for an offence of this type
 - iv) Section 47 of the Environmental Protection Act 1990 deals with offences relating to failing to comply with notices served in relation to requirements to provide receptacles for commercial and industrial waste. Section 48 of the Environmental Protection Act 1990 permits the issuing of a fixed penalty notice for an offence of this type
 - v) Section 132 of the Highways Act 1980 deals with offences relating to fly-posting. Section 43 of the Anti-Social Behaviour Act 2003 permits the issuing of a fixed penalty notice for an offence of this type.
56. The Council would appoint the provider under a contract for services for a fixed period of 24 months with a right to terminate on 60 days' notice at any time of the contract. Legal Services advice will be sought in connection with preparation of the contract.
57. Where any fixed penalty notice is not paid, the decision to issue legal proceedings will remain with the Council's Monitoring Officer while the company would provide the Council with full information and a clear recommendation as to the merits of proceeding with a prosecution. As part of any contract, we will seek to ensure officers are available to give evidence at any trial including where the contract or service may have come to an end.
58. Officers will use body worn 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 service.
59. Data sharing to enable the contractor to investigate all reported incidents, as well as any found proactively on patrol, will be permitted through the contract for the service. The Council 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.

60. Based on the sums anticipated to be collected, the Council's Procurement team has advised that the contract be openly tendered with a planned start date of March 2023.

Summary of human resources implications

61. There are no adverse implications for human resources. The collected revenue will help ensure adequate capacity is in place for management of the contract.

Summary of sustainability impact

62. The environment will benefit from less litter on the street which if successful, this contract should deliver.
63. More people being educated through communications and officer engagements that littering, fly-tipping and fly-posting is a crime and will be penalised, while understanding that it has a hugely negative impact on the environment, should result in less incidents and an improved environment.
64. Less litter 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

65. Littering and fly-tipping 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 littering, 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

66. There are no adverse effects on protected groups and all communities should benefit long term from reduced environmental crime with the success of this service. An equality impact screening tool has been included at Appendix 3.

Summary of risk assessment

67. There is a risk to the reputation of BCP Council if the service 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 body worn 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.
68. A Communications Strategy will be developed to reinforce the key Council values that enforcement activity is not undertaken lightly or to generate income but is a necessary driver to make and keep our communities clean. The launch of the service will set out rules that residents and businesses should be adhering to and updates via local press and social media will be released at regular times to illustrate

the impact of the service and further highlight the need for individuals to manage and dispose their waste lawfully.

Background papers

UCL Jill Dando Institute of Crime Science: Fly-tipping: Causes, Incentives and Solutions

<https://tacklingflytipping.com/Documents/NFTPG-Files/Jill-Dando-report-flytipping-research-report.pdf>

Appendices

Appendix 1: Summary, Performance and Data

Appendix 2: Communications

Appendix 3: EIA Screening Tool