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**Report to:** Cabinet

**Date of Meetings:** 16 January, 2014

**Subject:** Additional Provision of Litter and Dog Fouling Enforcement

**Report of:** Director of Built Environment

**Wards Affected:** All

**Is this a Key Decision?** Yes

**Is it included in the Forward Plan?** Yes

**Exempt/Confidential** No

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## **Purpose**

To consider the potential for utilising an external provider to supplement existing enforcement capacity for littering and dog fouling and to advise of the potential impact of such an approach.

Seek approval to proceed with procurement of a contractor to provide additional enforcement capacity for littering and dog fouling.

## **Recommendations that:**

Cabinet:

- (1) acknowledges the potential impact of appointing an external provider to undertake additional littering and dog fouling enforcement across the Borough including; improvements to enforcement service capacity provision, reputational impact and potential additional costs to the Council;
- (2) Subject to foreseeable costs being able to be contained within the Environmental Public Health Enforcement budget:
  - (i) agrees to the procurement by open competition of additional litter & dog fouling enforcement services to commence 1<sup>st</sup> April 2014 for a period of 12 months, with a preference towards seeking contractual arrangements built around the business model outlined in option 4 of the report;
  - (ii) support exploration of joint procurement of this service with other Merseyside Authorities subject to compliance with the timescale set out in recommendation (2) (i) above; and
  - (iii) approve delegated authority to the Director of Built Environment to sign off and award the contract on the basis of the offer which is most economically advantageous to the Council to be evaluated on quality as well as price.

## How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity	√		
3	Environmental Sustainability	√		
4	Health and Well-Being	√		
5	Children and Young People		√	
6	Creating Safe Communities	√		
7	Creating Inclusive Communities	√		
8	Improving the Quality of Council Services and Strengthening Local Democracy	√		

### Reasons for the Recommendation:

This will allow the council to provide additional enforcement capacity for the enforcement and prevention of litter and dog fouling.

### What will it cost and how will it be financed?

#### (A) Revenue Costs

The revenue costs will be dependent upon the option chosen. Option 1 (based on the payment model described in Paragraph 10 of the report) would result in a payment to a contractor of £45 per FPN. If it were to be assumed that 3,000 FPNs were issued annually then this payment would amount to £135,000. If payment rates from offenders were to be in the region of 60-70% then (based on a full charge of £75) this would generate income of £135,000 - £157,500 or (based on a reduced charge of £50) income of £90,000 - £105,000. Given that most paid FPNs are expected to be at the reduced rate, the income collected could fall short of the payment to the contractor by at least £30,000. There is no specific budget provision for any net cost arising from such a scheme.

Option 4 would involve a proportion of this income being paid to the contractor which, on the basis of the figures quoted above, would limit the capacity of the contractor to employ additional staff. The contractor would probably seek to focus available resources on areas where FPNs are maximised (eg discarded cigarette ends in busy town centre locations). The aim of the service is to be cost neutral or at minimum cost. However this is a new service and therefore income levels and net cost to the Council are difficult to predict. A twelve month contract is proposed to allow evaluation of the service and an assessment of its financial viability. Any additional costs would have to be accommodated within the existing budget for the time being, but in the absence of a specific budget for the purpose this may be at the expense of other planned activity.

#### (B) Capital Costs

N/A

## Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<b>Legal</b>	
<b>Human Resources</b>	
<b>Equality</b>	
1. No Equality Implication	<input type="checkbox"/>
2. Equality Implications identified and mitigated	<input checked="" type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

## Impact on Service Delivery:

This proposal will increase the capacity of the Council to take action against offenders that litter or allow their dogs to foul. It is anticipated that the profile of this service will be raised and that as a consequence residents and visitors behaviour will positively change.

## What consultations have taken place on the proposals and when?

The Head of Corporate Finance & ICT (FD 2601) comments that business model Option 4 presents the least financial cost risk to the Council when compared to the other options because the Council will retain an element of the income generated from it which can be used to cover any costs arising from unsuccessful prosecutions. However, this service would only be cost neutral if all issued FPN were paid (either immediately or after successful pursuit through the courts).

Options 1 and 2 have a distinct financial risk because the contractor would be paid upfront at a level that would probably exceed the income generated from the issued FPNs. There would therefore be a cost to the Council for which no specific budget provision exists. This risk extends to Option 3 which combines Options 1 and 2.

Head of Corporate Legal Services has been consulted and comments have been incorporated into the report (LD 1906)

**Are there any other options available for consideration?** None.

**Implementation Date for the Decision** - Following the expiry of the "call-in" period of the Cabinet decision

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## Background Papers

None

## **Background**

1. The Environment (Regulatory) Service is responsible for enforcing a wide range of legislation designed to tackle environmental crimes including littering and dog fouling. Historically the level of dedicated resources to meet this demand has reduced from a period when additional funding such as Neighbourhood Renewal Fund provided resources for 7 Enforcement Officers to the current level of 5 officers covering the whole of the Borough. In addition since 2011 Environmental Enforcement Officers have been required, as part of the budget driven transformation programme, to undertake additional enforcement activity relating to offences under the Highway Act. These officers also provide holiday and sickness cover for the dog warden, following a reduction of that service from 5 to 1 warden. Coastal and Park Rangers, Police Community Support Officers (PCSO's) are also authorised to issue fixed penalty notices (FPN's) for littering and dog fouling, unfortunately this delivery model has proved ineffective largely due to reductions in resource and requirement to focus upon service priorities.
2. Under Section 87 of the Environmental Protection Act 1990 it is an offence to throw down, drop or otherwise deposit and then leave litter. The Clean Neighbourhoods and Environment Act 2005 give the Council the power to utilise FPN's for litter. Although what constitutes litter is not defined by legislation it is most commonly assumed (and supported by the courts) that litter includes materials associated with smoking, eating and drinking that are improperly discarded and left by members of the public or are spilt during business operations. Discarded smoking related materials (cigarette ends etc) and discarded chewing gum and the remains of other products designed for chewing are specifically stated to be items of litter.
3. Anecdotally the level of concern regarding littering and dog fouling remains high with residents and is an issue frequently raised with local Councillors. Changes to smoking legislation in recent years, banning smoking in enclosed public spaces, has seen an increase in cigarette litter. Despite undertaking proactive projects such as "operation collar" which has seen many hundreds of dog owners approached over responsible dog ownership and encouraging residents to report the details of observed / known offenders via the Council website or Council Contact Centre for targeted enforcement, dog fouling remains a concern.
4. As a result investigations have been made to explore alternative methods of proactive enforcement and to improve the ability to effectively enforce by increasing the number of Officers on the ground. This has resulted in exploring the potential to utilise an external provider at limited or no cost the Council to supplement the existing provision.

## **Alternative Service Provision.**

5. Officers have met with officers at Knowsley Council and spoken to a number of other Local Authorities who currently employ an external provider to undertake enforcement patrols and serve FPN's in relation to environmental crimes, specifically litter and dog fouling.
6. These services generally take the format of patrols in targeted areas in accordance with an agreed deployment plan, with the appointed officers wearing high visibility clothing and body cameras to record the contact with the offender. In some circumstances "plain clothing" is worn particularly when trying to identify offenders who allow their dog to foul.

Officers can be deployed on varying work patterns including early mornings, evenings and weekends.

7. Enforcement officers will in almost all circumstances issue a FPN immediately where littering / fouling offences are observed. Data obtained from the Council's operating the service indicate that almost all of the offences identified are for littering (in excess of 90%) and that by far the majority of these (in excess of 85%) are for cigarette litter. Comparatively only a very small number of FPN's are issued for dog fouling and although high visibility patrols may deter dog owners from allowing their dog to foul, actually catching an offender in the course of the offence remains very infrequent. The age profile of the majority of offenders is evenly split between 18 – 60 year olds.
8. Two authorities contacted have indicated that there have been a large number of fixed penalties issued since they have introduced this type of service (1,656 in 8 months in one case and 4,000 over 12 months in another). Payment rates following issue vary but would appear to range between 60 -70% although there is no information available to indicate whether this might be applicable to Sefton. Non payment would result in prosecution and it is here where the additional costs of increased enforcement activity are likely to be incurred, depending on the success or otherwise of the Courts granting of and then subsequent payment of awarded costs.
9. Contractual arrangements vary, however it is not unusual that the contractor will have access to Council facilities, offices and data bases. They will also undertake some administration in relation to sending warning letters for non payment and producing a basic prosecution file or statements to support the Council's prosecution. In some cases Councils have chosen to retain all "administration" in house.

## **Business models.**

10. There are several potential options these include:

Option 1: The most common model appears to be where the Contractor is paid for each FPN correctly issued. This is regardless of whether the offender pays the FPN or a successful prosecution is obtained. Most Council's have a structured payment method for FPN's i.e. £75 reduced to £50 if paid within 14 days. (Most FPN's are paid at the reduced rate) Commonly the contractor receives a payment per fixed penalty issued, equivalent to 90% of this reduced rate. The monies received from paid FPN's and any prosecution costs awarded by the court offset the payment to the contractor and any monies in excess of this payment are retained by the Council.

This option provides an incentive for the contractor to correctly issue as many fixed penalty notices as possible as this determines the income they receive. However, the potential for the service to be cost neutral to the Council is dependent upon the payment rate and successful prosecution of non payers. If either of these is low then there is the potential that payments to the contractor will be greater than the income received.

"Hidden costs" such as client management, provision of accommodation and equipment, administration and legal support are difficult to quantify and are often not allowed for in this equation.

Option 2: The contractor is paid an hourly rate to undertake patrols at times and locations determined by the Council. This provides a presence in areas that would not be possible

within existing resources. The Council retains the receipts from any paid FPN's or prosecution costs which it uses to offset the cost of patrols. Since the contractor is not paid directly for issuing FPN's there is less incentive for these to be issued. It is likely that the numbers of FPN's would be lower than option 1 and therefore that income to the Council would not meet the cost of payments to the contractor. Again the "hidden" costs would need to be considered.

Option3: A combination of Option 1 & 2 above. Option 1 is used for litter enforcement and option 2 for dog fouling enforcement, which figures show has a significantly lower rate for the issue of FPN's. This model is reliant upon the numbers of litter FPN issued and paid to offset the cost of hourly patrols and is unlikely to be a cost neutral service.

Option 4: The contractor is paid an agreed percentage of the total income received from FPN's and costs awarded by the court. This continues to provide an incentive for the contractor to issue FPN's but addresses some of the "hidden cost" concerns identified in option 1. However, it is unclear whether contractors will be willing to enter such an arrangement since low payment rates or prosecutions will impact upon their income. If it is agreed to proceed to invitation to tender the appetite for this option could be tested at that point.

Option 4 provides the approach with the least financial risk to the Council for incurring additional costs. It is recommended that the market is tested for interest to engage under this model. However, it should be noted that the potential costs of this option will depend on the level of payment of FPNs by the public and the number of successful prosecutions for none payment made which cannot be predicted. Where a prosecution is taken, an application for the full costs will be made to the court. The Council may incur unrecoverable costs depending on the Courts consideration of each cost application and the timeliness and completeness of payment. There will be additional resource demands involved in contract management and inevitable complaint handling. It is anticipated that the likely net cost of the additional activity can be managed within existing resources. The position will be formally reviewed after 12 months.

11. Discussions have been undertaken with Knowlsey Council who have extended their current contract for provision of enforcement services for a few months. There is therefore a potential for joint procurement with this authority (or wider within Merseyside). A joint procurement approach could bring some economies of scale which would potentially help offset some of the hidden costs and other service delivery issues, but could also potentially compromise Sefton Council's direct control over such a contract.

## **Financial Implications**

12. The revenue costs will be dependent upon the option chosen. Option 1 (based on the payment model described in Paragraph 10) would result in a payment to a contractor of £45 per FPN. If it were to be assumed that 3,000 FPNs were issued annually then this payment would amount to £135,000. If payment rates from offenders were to be in the region of 60-70% then (based on a full charge of £75) this would generate income of £135,000 - £157,500 or (based on a reduced charge of £50) income of £90,000 - £105,000. Given that most paid FPNs are expected to be at the reduced rate, the income collected could fall short of the payment to the contractor by at least £30,000. There is no specific budget provision for any net cost arising from such a scheme.

13. Option 4 would involve a proportion of this income being paid to the contractor which, on the basis of the figures quoted above, would limit the capacity of the contractor to employ additional staff. The contractor would probably seek to focus available resources on areas where FPNs are maximised (eg discarded cigarette ends in busy town centre locations).
14. The aim of the service is to be cost neutral or at minimum cost. However this is a new approach to service delivery and income levels and net cost to the Council are difficult to predict.
15. A twelve month contract is proposed to allow evaluation of the service and an assessment of its financial viability. Procurement will be progressed via the most advantageous and viable option following the feedback from soft market testing. Any additional costs will be accommodated from the existing Environmental Public Health enforcement budget, but in the absence of a specific budget for this purpose this may be at the expense of other environmental enforcement activity during the period of the trial.
16. Should the procurement process result in foreseeable costs being beyond the existing non committed Environmental Public Health enforcement budgetary provision, the matter will be referred to Cabinet for review.

### **Issues for Sefton / Risk management**

17. Strong support for increased enforcement against litter and dog fouling has been shown by residents and local councillors. However, fixed penalties are often negatively seen by some as just a means of increasing revenue. There is a potential for reputational damage and negative impact particularly on tourist areas, night time economy and visitors to the borough if the enforcement regime is perceived as too rigorous.
18. Dependant on the procurement model adopted there is the potential that the service would not be cost neutral. In addition as residents become more familiar with patrols there is the potential for the number of FPN's issued to decline. This would indicate a positive change in behaviour but would also potentially affect the long term viability for the contractor. Awarding a short term contract (12 months) commencing 1<sup>st</sup> April 2014 would allow a full assessment and evaluation of this approach.
19. Experience from other Councils would suggest that catching offenders allowing their dog to foul is problematic and that whilst high visibility patrols may well deter offenders, it is not necessarily reflected in a significant increase in the number of FPN's issued.
20. As part of the preparation for this report, Personnel have been consulted and have confirmed that there are no TUPE implications for proceeding with this proposal. In addition Corporate Legal Services have confirmed that they would be in a position to manage the anticipated increase in prosecutions within their existing resources.

### **Conclusions**

21. Utilising an external Contractor to undertake patrols will increase the Councils enforcement capacity. Data would confirm a potential for issuing significant numbers of FPN's for litter particularly cigarette litter, although numbers for dog fouling are significantly less.

22. Street cleansing activity remains a significant element of the Council's budget. Proposals to increase enforcement capacity have the potential to reduce the amount of litter discarded upon Sefton highways.
23. There is potential impact upon the reputation of the Council if there is a perception that it is merely an income generator or the approach is considered as overzealous.
24. A process of Invitation to Tender should be commenced to establish the most efficient and cost effective approach to delivering additional litter and dog fouling enforcement capacity. This should include the potential for joint procurement with other Merseyside Authorities.