

BRIEFING PAPER

SUBJECT: PROVISION OF AN ENVIRONMENTAL ENFORCEMENT SERVICE
DATE: 6 FEBRUARY 2020
RECIPIENT: OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE

THIS IS NOT A DECISION PAPER

SUMMARY:

At the 11 February meeting Cabinet will consider a proposal to introduce the provision of an Environmental Enforcement Service to tackle littering within the City Boundary. If approved the service would be authorised to issue and process Fixed Penalty Notices (FPNs) (within agreed terms and conditions and meet the Code for Crown Prosecutor's requirements) to members of the public who drop litter and cigarette ends on the ground.

It is proposed that we authorise East Hampshire District Council (EHDC) to provide this service on our behalf using the powers of delegation set out in the Local Government Act 1972.

They will provide the trained officers who will patrol agreed hot spot areas within the City and issue an on the spot FPN to a member of the public who is seen to discard litter inappropriately. It is proposed that each FPN will cost the offender £75.00 unless it is paid within 10 days from the issuing date of the FPN when it will be reduced to £55.00.

SCC shall pay EHDC a flat rate of £55.00 per correctly issued FPN. This fee will cover EHDC being responsible for the provision of suitably qualified staff, the processing of all FPNs including final reminders, representations, preparation of court packs, and phone calls. EHDC will provide the single justice procedure processing service free of charge to SCC recovering its costs from the courts.

SCC will collect the penalties payable pursuant to the issue of FPNs in the course of performance of their functions. EHDC shall invoice SCC in respect of the FPNs following the end of each calendar month.

EHDC will provide the enforcement officers with their training, uniforms and IT equipment.

BACKGROUND and BRIEFING DETAILS:

1. An Inter Authority Deed of Delegation between Southampton City Council and East Hampshire District Council will be drawn up and signed by both parties. This Deed of Delegation is currently in draft format but if the proposal is approved it will be presented to legal for final checking and signing.
2. The Deed of Delegation provides specific details of what will be carried out:
 - Schedule 1 Part A- provided details of the specification for provision of service and enforcement

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- Schedule 1 part B- provides details of the specification for prosecutions if agreed
 - Schedule 2 part B- provides details of fees
 - Schedule 3 part B- provides details of when a FPN would be subject to cancellation. There are eleven reasons when this would occur
 - Schedule 4 part B- provides details of the Exit Management plan from the deed of delegation
 - Schedule 5 part B- provides details of Variation notices.
3. It is proposed that EHDC will use its own staff or those of its wholly owned company, EH Commercial Services (company number 09990286) to perform the delegated functions.
 4. EHDC shall provide an average of 4 enforcement officers to patrol 4 days per week including weekends to patrol SCCs area (save for any weeks during which EHDC is closed for the Christmas break).
 5. EHDC will not issue FPNs to offenders who appear to the reasonable satisfaction of the enforcement officers to be under 18, lack capacity to understand the offence due to mental illness, learning difficulties or other condition.
 6. Areas to be patrolled will be identified and agreed by both parties. These areas will be within SCC's administrative area and will be reviewed and changed as required to respond to changing trends in offences.

RESOURCE/POLICY/FINANCIAL/LEGAL IMPLICATIONS:

Capital/Revenue

7. SCC would be expected to either pay upfront £5,000.00 to cover the procurement and setup of the IT equipment required to be provided to carry out the issuing of FPNs, or alternatively, to recover this cost from the first 250 higher rate PCNs. It is proposed to pay this up front and this has been incorporated into the budget proposals for 2020/21.
8. Lower rate fines have been set to cover EHDC's fees. Income of £20 per fine is receivable at the higher rate. However, SCC bears the risk for non-payment of correctly issued fines, and a default rate of 15% is assumed in the costings. This will mean that income generated from the higher rate fines would effectively ensure EHDC continues to be paid without impacting on SCC's financial position. Therefore no income assumption has been made in the budget and this will be reviewed once we have 12 months experience under our belt.
9. SCC would be required to provide Enforcement Officers with a permit to park in one of our MSCPs, at a cost of £4,080.00 per year. This cost has also been incorporated into the 2020/21 budget proposals.
10. SCC income will be limited to those cases where payment is not made within 10 days. That would amount to a small income stream of £20.00 per FPN. SCC shall be responsible for collecting payments in full for FPNs.

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Property / Other

11. SCC will provide a photographic Identity card of authority for each individual enforcement officer employed by EHDC to issue FPNs on behalf of SCC. SCC will provide car park season tickets to park within the MSCPs that falls within the agreed patrol period. SCC will provide access to an interview room on an as requested occasional basis for showing of CCTV/BWC footage to offenders. SCC will provide an area where documentation can be stored securely and an area where electronic equipment can be charged.

Legal Implications – Statutory power to undertake proposals in the report:

12. The proposals will be delivered via an Inter Authority Deed of Delegation relating to the provision of Environmental Enforcement Services by East Hants District Council in the administration area of Southampton City Council under section 101-103, 111 and 113 of the Local Government Act 1972 and sections 9EA, 19 and 20 of the Local Government Act 2000 together with Regulation 5 of the Local Authorities (arrangements for the discharge of functions) (England) Regulations 2012.

Other Legal Implications:

13. At the cessation of the service it is expected that East Hants will redeploy staff to other contracts or service uses, however there is a small risk that the Council will become liable under TUPE legislation to employ those staff in the event that SCC chooses to bring the service in house for delivery in the same or similar form. It is not legally possible to 'contract out' of TUPE legislation and this consideration will be reviewed throughout the delegation period and through any decisions relating to the future of the service in due course.

Risk Management Implications:

14. The charge is based on a fee for each correctly issued FPN. Therefore SCC will carry the risk for non-payment. However based on the other Local Authority areas where this is currently being implemented the average payment rate is running at 84% so it is expected that the payment rate here would be around that level.

There could be potential reputational risk for SCC if best endeavours are not used whilst issuing FPNs in situations where issuing FPNs is likely to generate significant negative publicity. There are safeguards built into the Deed of Delegation to minimise this risk. These safeguards measures are listed at appendix 1 (attached) which set out our expectations of when FPNs will and will not be issued. Further, there is a complaints and appeals procedure that will ensure that those FPNs issued correctly are upheld and payments pursued.

Policy Framework Implications:

15. The provision of an Environmental Enforcement Service to tackle littering supports the delivery of the Health and Wellbeing Strategy 2017-2025 outcomes "People in

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Southampton live active, safe and independent lives” and “Inequalities in health outcomes are reduced”.

16. The Green City Charter and associated Delivery Plan is consistent with the principles outlined in the Government’s Environment Strategy, 'A Green Future: Our 25 Year Plan to Improve the Environment' and their Clean Air Strategy.

Appendices/Supporting Information:

1. Cancellation Codes

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