

Appendix 1

DATED

2009

(1) Warwickshire County Council

(2) North Warwickshire Borough Council

(3) Nuneaton and Bedworth Borough Council

(4) Rugby Borough Council

(5) Stratford-on-Avon District Council

(6) Warwick District Council

(7) Warwickshire Police

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made on

2009

BETWEEN

1. **WARWICKSHIRE COUNTY COUNCIL** of **SHIRE HALL, WARWICK, CV34 4SA** (the **WCC**);
2. **NORTH WARWICKSHIRE BOROUGH COUNCIL** of **SOUTH STREET, ATHERSTONE, WARWICKSHIRE, CV9 1DE** (the **NWBC**);
3. **NUNEATON AND BEDWORTH BOROUGH COUNCIL** of **COUNCIL HOUSE, COTON ROAD, NUNEATON, WARWICKSHIRE, CV11 5AA** (the **NBBC**);
4. **RUGBY BOROUGH COUNCIL** of **TOWN HALL, EVREUX WAY, RUGBY, WARWICKSHIRE, CV21 2RR** (the **RBC**);
5. **STRATFORD-ON-AVON DISTRICT COUNCIL** of **ELIZABETH HOUSE, CHURCH STREET, STRATFORD-UPON-AVON, WARWICKSHIRE, CV37 6HX** (the **SDC**);
6. **WARWICK DISTRICT COUNCIL** of **RIVERSIDE HOUSE, MILVERTON, LEAMINGTON SPA, WARWICKSHIRE, CV32 5HZ** (the **WDC**); and
7. **WARWICKSHIRE POLICE** of **PO BOX 4, LEEK WOOTON, WARWICK, CV35 7QB** (the **Police**).

(together, the ***Parties or Partners***)

BACKGROUND

- (A) **Warwickshire County Council** is the Waste Disposal Authority for Warwickshire under section 30(2) of the Environmental Protection Act 1990 (the **EPA 1990**) and the Fire & Rescue Authority for Warwickshire. It is also the lead authority amongst the Parties (the **Lead Authority**).
- (B) **North Warwickshire Borough Council, Nuneaton and Bedworth Borough Council, Rugby Borough Council, Stratford-on-Avon District Council and Warwick District Council** (together the **Local Authorities**) are the Waste Collection Authorities for their respective Districts and/or Boroughs under section 30(3) of the EPA 1990.
- (C) **Warwickshire Police** is the body responsible for local policing and protecting the community of Warwickshire from harm caused by crime and disorder.
- (D) The Parties recognise and endorse the need to address the risks posed to the community of Warwickshire by abandoned vehicles in Warwickshire by participating in the creation of, and entering into, the Warwickshire Abandoned Vehicle Partnership (the **WAVP**). In June 2004, the WAVP developed a scheme to provide for the assessment, removal and disposal of apparently abandoned vehicles in Warwickshire. Publicly, this scheme is known as 'Car Clear'.

(E) The Parties wish to establish a clear and accountable framework in this Memorandum of Understanding (the **MoU**) under which they can continue to work together in delivering a removal and disposal scheme for apparently abandoned vehicles in Warwickshire, thus promoting the economic, environmental and social well-being of their respective areas. They wish to be able to respond in a more effective and co-ordinated way in relation to the implementation and any future development of the scheme and to introduce and promote joint working arrangements that will be in the best interests of the Council Tax payers of the Parties.

1. Definitions And Interpretation

a. Definitions

In this MoU, unless the context otherwise requires the following terms shall have the meanings given to them below:

Commencement Date	means the date of this MoU;
Confidential Information	means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored), whether or not it is marked as proprietary and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, intellectual property rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988;
Contract	means the Contract dated 2009 between WCC and Rowley Auto Services Limited for the provision of vehicle recovery and disposal services;
EIR	means the Environmental Information Regulations 2004;
EPA 1990	means the Environmental Protection Act 1990;
Expiry Date	means when the date on which the Contract is terminated;
Financial Records	means the records maintained by the Lead Authority relating to any costs incurred or income generated in relation to the Contract;
FOI	means Freedom of Information Act 2000;
Lead Authority	means Warwickshire County Council;
Local Authorities	means North Warwickshire Borough Council, Nuneaton and Bedworth Borough Council, Rugby Borough Council, Stratford-on-Avon District Council and

	Warwick District Council;
Mediator	Means a mediator accredited by the Centre of Effective Dispute Resolution and appointed under clause 18.3 of this MoU;
MoU	means this memorandum of understanding (including its schedules);
WAVP	means the Warwickshire Abandoned Vehicles Partnership;

2. **Purpose of this MoU**

2.1. The purpose of this MoU is to: -

- 2.1.1. set out the way that the Partners to the MoU will work together to assess remove and dispose of apparently abandoned vehicles;
- 2.1.2. clarify and record the responsibilities of the Partners to the MoU individually and collectively; and
- 2.1.3. establish guidelines for taking forward joint working.

3. **Status of MoU**

The MoU is an operational document. It is not a legally binding contract except to the extent (if any) specifically set out in its terms.

4. **Commencement and Duration**

4.1 Subject to clause 4.3, this MoU and the rights and obligations of the Parties will take effect on the Commencement Date and will continue until the earlier of the following dates:

4.2.1 The Expiry Date; or

4.2.2 an agreement is reached pursuant to the clause 11.6 below that this MoU should end in respect of one or more or all Parties (in which circumstance it shall be terminated in part in respect of the removed partner and shall continue to have effect in respect of the remaining partners (if any));

4.3 The Parties may agree to extend the term of this MoU for any further period by mutual consent.

5. **The Lead Authority's Responsibilities and Commitments**

The Lead Authority shall comply with the provisions of Schedule 1.

6. **The Local Authorities' Responsibilities and Commitments**

The Local Authorities shall comply with the provisions of Schedule 2.

7. The Police's Responsibilities and Commitments

The Police shall comply with the provisions of Schedule 3.

8. Recovery and Disposal of Abandoned Vehicles

The Partners shall, through the WAVP, work together to develop the WAVP as necessary and appropriate to provide a joint approach to the recovery and disposal of vehicles in Warwickshire.

9. Legislation

9.1 The Parties acknowledge that the recovery and disposal of abandoned vehicles will be carried out pursuant to the following legislation:-

9.1.1 Refuse Disposal (Amenity) Act 1978, Sections 2-5;

9.1.2 The Road Traffic Act – The Removal and Disposal of Vehicles Regulations 1986;

9.1.3 The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 2008;

9.1.4 Clean Neighbourhoods and Environment Act 2005;

9.1.5 Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997 (the **DVLA powers**); and

9.1.6 Any legislation from time to time in force relating to the recovery and disposal of abandoned vehicles and/or re-enacting or amending the legislation detailed in clauses 9.1.1 to 9.1.5 above.

10. Partnership Working

10.1 The Parties shall act at all times in a way that promotes effective partnership working. In particular, each Party will:-

10.1.1 work in good faith with the other Parties towards the mutual advantage of the Parties;

10.1.2 adopt an approach to identifying and resolving problems together rather than taking an adversarial stance;

10.1.3 act reasonably and use their best endeavours to comply with clause 8 above;

10.1.4 provide relevant information to the other Parties. Relevant information shall include, without restriction or limitation:

- (a) details of contractual arrangements (or amendments to existing arrangements) entered into by the Parties associated with their responsibilities under this MoU;
- (b) early warning of potential failure by a Party or its contractor in meeting their obligations under this MoU;
- (c) new initiatives, policies or emerging policies relating to recovery and disposal of abandoned vehicles;
- (d) any other information that could reasonably be expected to impact upon this MoU or the Parties to this MoU;

11. Reports and Review

- 11.1 Meetings of the Parties will be held periodically within the ambit of the WAVP to discuss and implement the provisions of this MoU.
- 11.2 For an initial period of twelve months commencing with the Commencement Date, the Parties shall meet once monthly, meeting virtually if necessary. Following the expiry of the initial twelve month period, the frequency of such meetings may be reviewed.
- 11.3 Without prejudice to Schedule 1, the Lead Authority shall be responsible for convening the meetings detailed in 11.2 above and for inviting the contractor providing the vehicle recovery and disposal services under the Contract to attend at least four of the meetings.
- 11.4 For an initial period of twelve months commencing with the Commencement Date, the Lead Authority will shall send electronic communications to the Parties twice monthly reporting on the performance of the contractor providing the vehicle recovery and disposal services under the Contract and the success of the WAVP. Following the expiry of the initial twelve month period, the frequency of such communications may be reviewed.
- 11.5 The success of the WAVP shall be assessed against the measures of success detailed in Schedule 4.
- 11.6 For the duration of the MoU, any Party or Parties may on reasonable notice convene a meeting of the Parties to review and agree the future involvement of that Party or those Parties in the WAVP.
- 11.7 For the duration of the MoU, the Lead Authority shall maintain accurate records relating to any costs incurred or income generated (the **Financial Records**) in relation to the Contract and shall provide such Financial Records to the Local Authorities and/or the Police on request.

12. Costs and Income Generated

- 12.1 Each party shall be responsible for bearing its own costs in relation to the preparation, execution and performance of this MoU and the preparation of any proposals or Contracts pursuant hereto.
- 12.2 In the event that the vehicle recovery and disposal service generates any income surplus and not absorbed by the costs associated with the management and/or monitoring of the Contract and/or the administration of the WAVP, such income shall be split equally between the Local Authority or the Police responsible for assessing the vehicle concerned and the Lead Authority.

13. Decision Making

The Parties will work together to ensure there is clear accountability for all decisions made and actions taken, that decisions are made and actions taken in the best interests of the people of Warwickshire, that such decisions and actions take into account what is fair and equitable between the Parties.

14. Co-operation, Co-ordination and Information Exchange

- 14.1 The Parties will at all times use their best endeavours, by use of their own resources if necessary, to achieve the outcomes anticipated by this MoU.
- 14.2 At all levels, there will be close and regular contact between the Parties. Each Party agrees to ensure that their respective competencies and skills are pooled where appropriate. Each party agrees to commit resources in terms of staff commitment, to ensure that the decision making of the parties is unimpeded, unhindered or delayed. Each party further agrees to use its power and influence for the positive benefit of the other Parties' scheme to minimise costs, and maximise operational and functional efficiencies of the WAVP.
- 14.3 Each Party will inform the other about changes in their policies and operational practices which are likely to have a bearing on the responsibilities of the other.
- 14.4 The Parties agree to the full exchange of information relevant to the progression of the mutual objectives of the Parties under this MoU and in a manner so as not to disadvantage the other.

15. Confidentiality

- 15.1 Subject to clause 14.2 the Parties shall keep confidential all Confidential Information received by them in connection with this MoU.
- 15.2 Clause 15.1 shall not apply to:
 - 15.2.1 any disclosure of information that is in the public domain at the time of disclosure or the receiving party can show is in, or comes into, the public domain after disclosure otherwise than by a breach of these conditions; or

- 15.2.2 any disclosure of information by a Party to any other department, office or agency of the Government or their respective advisors for the purpose of the examination and certification of the Party's accounts or any examination or investigation; or
- 15.2.3 any disclosure that is required to ensure compliance with the Freedom of Information Act 2000 (**FOI**) and/or the Environmental Information Regulations 2004 (**EIR**).

16. FOI and EIR

16.1 The Parties acknowledge that, as public authorities, each Party is subject to the requirements of the FOI and the EIR and shall facilitate each other Party's compliance with its information disclosure requirements pursuant to the FOI or the EIR in the manner provided for in this MoU.

17. Joint Statements and Publicity

- 17.1 A Party shall not make nor authorise any person on its behalf to make any public statement or issue any press release or publish any other public document purporting to be made or issued on behalf of WAVP without consulting with each of the Parties in respect of its content and the manner of its presentation and publication.
- 17.2 A Party shall use its best endeavours to consult with each of the Parties in relation to the making of any public statements or the issue of any press release or publication of any other public document.

18. Dispute Resolution

- 18.1 Any dispute or difference concerning this MoU shall be first referred to a meeting of each of the Parties involved in the dispute. The Parties agree to discuss and, in good faith, attempt to resolve any such dispute or difference in accordance with the spirit of partnership contained in this MoU.
- 18.2 In the event that the dispute is not resolved by the Parties within one month, the dispute shall be escalated to a meeting of the chief officers of each Party involved, who shall enter into good faith negotiations to resolve this matter.
- 18.3 In the event that the dispute remains unresolved for one month from the date of the referral pursuant to clause 18.2 above, or such longer period as the affected Parties may agree, it shall be referred to a Centre of Effective Dispute Resolution accredited mediator (the **Mediator**).
- 18.4 The Mediator shall determine the rules and procedures pursuant to which the mediation shall be concluded. The Mediator's determination in this respect shall be final save that:
 - 18.4.1 each Party shall be entitled to make a written statement of its case to the Mediator prior to the commencement of the mediation. Such statement shall be provided to the Mediator not less than 14 days or such other period as may be agreed by the Mediator before the mediation is to commence; and
 - 18.4.2 within 14 days of the conclusion of the mediation the Mediator shall provide a written report to the Parties which report shall set out the nature of the dispute and the nature of its resolution if any.
- 18.5 The Parties shall each bear their own costs incurred in relation to any mediation and the Mediator shall be entitled to be paid his reasonable fees, which the Parties shall pay in equal shares.
- 18.6 No Party shall be entitled to commence litigation procedures until the completion of the mediation in accordance with this clause 17. Nothing in this clause 17 (Dispute Resolution) shall prevent any Party at any time from seeking any interim or interlocutory relief from the Court.

19. Amendments

Following the execution of this MoU, no amendment or variation to this MoU shall be effective unless it is in writing and signed by a representative of each Party duly authorised (and notified to each Party) for that purpose.

20. Entire Agreement

- 20.1 Except where expressly provided in this MoU, this MoU together with the Schedules constitutes the entire agreement between the Parties in connection with its subject matter and, in the absence of fraud, supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this MoU.

21. Agency

Nothing in this MoU shall constitute a legal partnership or agency between the Parties.

22. Assignment

This MoU is personal to the Parties and the rights and/or obligations under this MoU shall not be assigned, novated or otherwise transferred to any person other than to a successor body following a reorganisation within government or to a body which substantially performs any of the functions that previously had been performed by the affected Party. The Parties shall enter into such agreement and/or deed as may reasonably be required to give effect to such assignment, novation or transfer.

23. Waiver

Failure by one Party to enforce the provisions of this MoU or to require performance by the other Party of any of the provisions contained in this MoU shall not constitute or be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this MoU or any part thereof or the right of the former Party to enforce any provision in accordance with its terms.

24. Severability

If any term, condition or provision of this MoU shall be held to be invalid, unlawful or unenforceable to any extent by a Court of competent jurisdiction, such term, condition or provision shall be severed and shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this MoU.

25. Rights of Third Parties

The Parties agree that this MoU shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

26. Law and Jurisdiction

This MoU shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to clause 18 (Dispute Resolution), the English courts shall have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this MoU.

Signed for and on behalf of

Warwickshire County Council

Position
Name
Date

North Warwickshire Borough Council

Position
Name
Date

Nuneaton and Bedworth Borough Council

Position
Name
Date

Rugby Borough Council

Position
Name
Date

Stratford-on-Avon District Council

Position
Name
Date

Warwick District Council

Position
Name
Date

Warwickshire Police

Position
Name
Date

Schedule 1 – Lead Authority Responsibilities and Commitments

1. The WCC shall be responsible for the disposal of abandoned vehicles that have been assessed by the Local Authorities.
2. The WCC shall enter into a Contract with Rowley Autos for the provision of vehicle recovery and disposal services across the County of Warwickshire.
3. The WCC shall be responsible for managing and monitoring the Contract.
4. The WCC shall be responsible for the administration of the WAVP.
5. The WCC shall be responsible for monitoring the success of the WAVP.
6. The WCC shall be responsible for reporting to the Local Authorities and the Police.
7. The WCC shall maintain the Financial Records.

Schedule 2 – Local Authorities' Responsibilities and Commitments

Responsibilities

1. Each Local Authority shall be responsible for assessing and authorising the removal of apparently abandoned vehicles from within their respective District or Borough.
2. The Local Authorities shall only authorise the removal of apparently abandoned vehicles where empowered to do so.
3. The Local Authorities shall comply with and, where relevant, accurately complete, the documents attached in Schedule 5 when assessing and authorising the removal of apparently abandoned vehicles.

Commitments

1. Each Local Authority warrants and represents that
 - a. it has the authority to enter into and carry out its responsibilities under the MoU;
 - b. the MoU is signed by a duly authorised representative of the Local Authority;
 - c. it shall discharge its responsibilities hereunder with all due skill, care and diligence and in accordance with its own established internal procedures and with the documentation attached in Schedule 5 below;
 - d. its responsibilities pursuant to this MoU shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care and diligence; and
 - e. it has insured with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in the consequence of the Local Authority's responsibilities and against all actions claims demands costs and expenses in respect thereof.
2. Each Local Authority shall indemnify and keep indemnified the Lead Authority against injury (including death) to any persons or loss of or damage to any property which may arise out of the act default or negligence of the Local Authority, any sub-contractor or their respective employees or agents, and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto arising from its responsibilities detailed above.

Schedule 3 – Police’s Responsibilities & Commitments

Responsibilities

1. The Police shall be responsible for assessing and authorising the removal of apparently abandoned vehicles from within the County of Warwickshire.
2. The Police shall only authorise the removal of apparently abandoned vehicles where they are empowered to do so.
3. The Police shall comply with and, where relevant, accurately complete the documents attached in Schedule 5 when assessing and authorising the removal of apparently abandoned vehicles.

Commitments

1. The Police warrant and represents that
 - a. it has the authority to enter into and carry out its responsibilities under the MoU;
 - b. the MoU is signed by a duly authorised representative of the Police;
 - c. it shall discharge its responsibilities hereunder with all due skill, care and diligence and in accordance with its own established internal procedures and with the documentation attached in Schedule 5 below;
 - d. its responsibilities pursuant to this MoU shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care and diligence; and
 - e. it has insured with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in the consequence of the Police’s responsibilities and against all actions claims demands costs and expenses in respect thereof.
2. The Police shall indemnify and keep indemnified the Lead Authority against injury (including death) to any persons or loss of or damage to any property which may arise out of the act default or negligence of the Police, any sub-contractor or their respective employees or agents, and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto arising from its responsibilities detailed above.

Schedule 4 – Measures of Success

1. The following measures of success will be used to assess the success of the WAVP against the previous arrangements.
 - 1.1. A reduction in the time taken for the contractor to remove the abandoned vehicle on instruction.
 - 1.2. A reduction in the costs associated with the removal of disposal of abandoned vehicles.
 - 1.3. A reduction in the number of abandoned vehicles within Warwickshire.
 - 1.4. A reduction in the number of deliberate vehicle fires within Warwickshire.

Schedule 5 – Related Documents

- 1. WAVP Service Manual**
- 2. WAVP Process Chart**
- 3. Car Clear Policy**