

ENVIRONMENTAL ENFORCEMENT
SHARED SERVICE BETWEEN
WARWICK DISTRICT COUNCIL
&
RUGBY BOROUGH COUNCIL
-
SERVICE ASSESSMENT AND BUSINESS CASE

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1. Purpose

The purpose of this report is to outline the business case for the future delivery of an identified proportion of environmental enforcement within Warwick District.

2. Recommendation

To approve the detail of a shared environmental investigation service between Warwick District Council (WDC) and Rugby Borough Council (RBC)

3. Introduction

On 26 July 2017 a report titled “Environmental Enforcement Service Delivery Options” was approved by Warwick District Council’s Executive Committee. This recommended that WDC enter into a shared service with RBC to undertake a discrete amount of environmental enforcement within Warwick District. The report outlined the benefits of a shared environmental enforcement approach including:-

- Enables service to be drawn down as required
- Enables flexibility on enforcement issues dealt with.
- Utilisation of an experienced and trained resource
- No long term staffing commitments
- Enables enforcement activities to be trialled with minimal risk

4. Scope

4.1. The scope of the shared environmental enforcement includes the following functions.

- Neighbourhood Services, WDC
- Externalised contractors working for the Council, namely, Veolia, Suez and Adverde.
- Regulatory Services, RBC
- Private Sector Housing, WDC
- Safer Communities, WDC
- Warwick University
- Local Landlord Forum.

4.2 The environmental enforcement will concentrate on Fly-Tipping and the Accumulation of Waste and will include, but not necessarily be limited to, the following legislation:-

- **Environmental Protection Act 1990**
Section 33 – Fly-tipping offence
Section 34 – Household Occupiers Duty of Care
Section 46 – Power to specify how household waste is stored and placed for collection

Section 47 – Power to specify how commercial waste is stored and placed for collection.

- **Anti-Social Behaviour Crime and Policing Act 2014**
Part 4, Chapter 1 - Community Protection Notice

5. Objectives and Benefits

The shared environmental enforcement service model will achieve the following outcomes and benefits

- Create a framework that is flexible and locally accountable
- Provide an environmental enforcement resource that will be able to target agreed areas of concern within the confines of the budget available
- Provide WDC with a transparent framework to maintain flexibility and achieve value for money through the service being provided on a “pay as you go” basis
- Provide a framework where decisions can be made on what environmental infringements to concentrate on
- Provide an opportunity for WDC staff to gain experience with environmental enforcement through shadowing and informal training.
- Allow WDC to have the final say on any enforcement decisions.

6. Outputs

In order for the enforcement relationship with RBC to achieve the desired benefits there are various outputs that need to be delivered. The various outputs are described below and summarised in **Table 1**

6.1 Output 1: Delegation of Legislative Powers

6.1.1. The purpose is to obtain approval to delegate environmental enforcement to RBC.

6.1.2. An authority can provide another authority with, among other things, administrative, professional or technical services under the terms of section 1 of the Local Authorities (Goods and Services) Act 1970. Under section 101 (1) (b) of the Local Government Act 1972 a local authority can arrange for discharge of any of its functions by another local authority unless this is expressly prohibited by statute. This is commonly known as an agency arrangement. Neither the Environmental Protection Act 1990 nor the Anti-Social Behaviour Crime and Policing Act 2014 expressly prohibit this.

6.1.3. The delegation is initially until 31 March 2019

6.1.4. There are additional costs (See Output 2 below) in taking a more proactive stance and whilst this cost will not be met by income from fixed penalty notices, it

will offset a little of the cost. In addition, ensuring the delegation is on a pay as you go basis rather than based on a fixed amount this will ensure maximum value for money and targeting of enforcement action.

6.1.5. Through this delegation RBC would investigate on our behalf and make recommendations for decision on action in line with the Regulators Code.

6.1.6. The final “sign-off” of any enforcement action including the issue of CPN’s and FPN’s will be with WDC.

6.1.7. The process of how the delegation will work in practice is described in Section 7 below. It is important to note that all controlling decisions on action will continue to be made by WDC on recommendation from RBC who will consider the Regulators Code, WDC Enforcement Policy and the circumstances of the case. This includes:-

- Advice and guidance
- Informal warning
- Formal enforcement
 - Community Protection Notices
 - Fixed Penalty Notices
 - Prosecution

6.1.8. All contact with alleged perpetrators will be carried out by RBC. All correspondence will contain both councils logos and set out that action is being taken by RBC on behalf of WDC. Interviews under caution (PACE) will be carried out by RBC.

6.1.9. All prosecutions requiring court action will be carried out by WDC and based on the circumstances, likelihood of success and public interest. Any appeal against the issue of a Community Protection Notice will also be dealt with by WDC

6.1.10. Any fixed penalty notices including the level of fine will be managed by RBC through their charging policy and payment system but would need to be agreed by WDC on each occasion. The payment of invoices to clean up illegally deposited waste by alleged perpetrators will also be managed by RBC and payments will be deducted from the charge for the delegation?

6.1.11. If a perpetrator does not pay a FPN, then there is no legal process for recovering that fine other than through the prosecution route.

6.1.12. This delegation is on a full cost recovery and pay as you go basis at a rate of £75 per hour

6.2 Output 2: To set the Fixed Penalty Notices within WDC.

6.2.1. The fines for the following Fixed Penalty Notices need to be agreed:-

Fly-Tipping; Community Protection Notices (CPN’s); Failure to provide a Waste Carrier Licence; Failing to provide a Waste Transfer Note; Failure to comply with a

Waste Receptacles Notice (Commercial); Failure to comply with a Waste Receptacles Notice (Domestic); Failure to comply with a Community Protection Notice (CPN)

6.2.2. The powers to issue fines under the various Fixed Penalty Notices come under various pieces of legislation, including the Clean Neighbourhoods and Environment Act 2005; Anti-Social Behaviour Act 2003 and Environmental Protection Act 1990.

6.2.3. It is recommended that WDC set the Fixed Penalty Notices to align with those of RBC, with the details highlighted in **Table 2**

6.3 Output 3: Agreement to the financial cost of shared enforcement action with RBC

6.3.1. **Table 3** summarizes the financial implications of the shared enforcement partnership with RBC.

6.3.2. The delegation is on a full cost recovery and pay as you go basis at a rate of £75 per hour.

6.3.3. It is considered that £21,000 will be appropriate to the end of March 2018 with a further £41,000 to cover 2018/2019. A report will be brought to the Executive in October 2018 providing an operational and financial breakdown. Indicative costs are summarised in **Table 3**.

6.4 Output 4: The creation of a Service Level Agreement with Rugby Borough Council

6.4.1. Before the shared service is implemented a Service Level Agreement (SLA) will be agreed between WDC and RBC. The expectation is that this will be in place for October 2017 to enable it to reflect any recommendations from the Executive Committee

6.4.2. The SLA will include the Scope, Roles and Responsibilities of both Parties alongside the appropriate data sharing protocols.

6.5 Output 5: The production of an Information Sharing Protocol between RBC & WDC.

6.5.1. During an enforcement investigation RBC may require information held by WDC, therefore to enable the sharing of this information and to support decision making then a protocol needs to be produced

6.5.2. This protocol will cover the following key points: - The information that needs to be shared; the authorities involved; what you need to tell people about the data sharing and how that will be communicated; measures to ensure adequate security is in place to protect the data; agree common retention periods for the data.

6.5.3. This protocol will be in place before the start of the proposed shared service.

7. Approach and Roles and Responsibilities

7.1. Fly-Tipping

The investigation into fly-tipping will be intelligence led. In this approach the problem will be identified, analysed, understood and an appropriate package of control measures designed and applied. This will ensure there will be an effective application of the limited resources on a problem. A summary of the approach can be found in **Table 4**

Warwick District Council will:

Be guided in general by the Government Report entitled “Fly-Tipping: council responsibilities published in June 2016

- 7.1.1.** Upon receipt of fly-tipping reports record the information onto Civica in a consistent and appropriate manner. It will be agreed internally who will respond to the issue
- 7.1.2.** The fly-tip will be investigated and any evidence found will be treated in a manner that maintains the continuity of evidence for any future action. That will include photographing of the scene, “bagging and tagging” of any evidence and the return of the evidence to a secure location at Warwick District offices.
- 7.1.3** Investigation of deposits within the confines of WDC properties will not occur and will be dealt with in the usual manner
- 7.1.4.** WDC will need to prioritise the investigations and will focus mainly on cases with direct evidence. Following that prioritisation, WDC will pass the information to RBC.
- 7.1.5.** Make any final decisions on enforcement, following guidance and information from RBC.
- 7.1.6.** All information and actions will be recorded in a consistent manner on Civica and any communication with RBC will be documented.
- 7.1.7.** Instruct legal services to prosecute in accordance with the WDC Enforcement Policy. A decision to prosecute will be based on the strength of the evidence and whether prosecution is in the public interest.

Rugby Borough Council will:

- 7.1.5.** Act as lead investigators for any fly-tipping incidents that are passed to them from WDC. RBC will regularly communicate with and update WDC on the individual case status and outcome. This communication is to be documented.
- 7.1.6.** In addition to the individual case updates, referred to in 7.1.5. RBC will compile regular statistical reports giving details of reported incidents, investigations and enforcement activity undertaken within WDC. These reports shall be distributed in an appropriate format.

- 7.1.7.** RBC will keep a record of timings with any investigation as various enforcement options are time related and require certain actions within set time periods.
- 7.1.8.** Have all contact with alleged perpetrators. All correspondence will contain both councils logos and set out the action to be taken by RBC on behalf of WDC.
- 7.1.9.** RBC will communicate any enforcement proposals to WDC to enable the latter to agree on the proposals.
- 7.1.10** RBC will provide admissible evidence to enable WDC to prosecute where appropriate and RBC will support any prosecution by providing further evidence (for example witness statements) and attending court to give evidence where required

7.2. Accumulated Waste

Accumulated waste is a generic term to describe domestic and commercial material left in common areas, alleyways, front yards, around litter-bins etc. There is potentially an overlap with what could be described as fly-tipping but it is considered that accumulated waste in general will be dealt using different legislation. A summary of the approach can be found in **Table 5**.

Warwick District Council will:

- 7.2.1.** Gather and record evidence in a consistent and appropriate manner in Civica.
- 7.2.2.** With the limited resources available and an intelligence led approach WDC will consult with RBC, to agree the priorities.
- 7.2.3.** If an issue in a particular area is persistent and could be described as creating loss of amenity, then WDC will write to the alleged perpetrators and educate and inform the recipients of the requirements. This could potentially include a Section 46 or 47 notice, providing clarity as to what the resident or business should be doing with their waste. All communication will be documented consistently.
- 7.2.4.** If the problem continues, and it falls within the priorities described in 7.2.2. WDC will pass the issue to RBC for further action.
- 7.2.5.** All communications with RBC will be recorded.
- 7.2.6.** Make any final decisions on enforcement, following guidance and information from RBC.
- 7.2.7.** Instruct legal services to prosecute in accordance with the WDC Enforcement Policy. A decision to prosecute will be based on the strength of the evidence and whether prosecution is in the public interest.

Rugby Borough Council will:

- 7.2.8.** Agree with WDC the priorities for enforcement action.

- 7.2.9.** Dependant on the specific circumstances will visit and investigate issues identified by WDC.
- 7.2.10.** Act as lead investigators for any incidents that are passed to them from WDC. RBC will regularly communicate with and update WDC on the individual case status and outcome. This communication is to be documented.
- 7.2.11.** RBC will keep a record of timings with any investigation as various enforcement options are time related and require certain actions within set time periods.
- 7.2.12.** Have all contact with alleged perpetrators. All correspondence will contain both council's logos and set out that action is being taken by RBC on behalf of WDC.
- 7.2.13.** RBC will communicate any enforcement proposals to WDC to enable the latter to agree on the proposals.
- 7.2.14.** RBC will provide admissible evidence to enable WDC to defend an appeal against the issue of a CPN or to prosecute where appropriate and RBC will support any court proceedings by providing further evidence (for example witness statements) and attending court to give evidence where required

8. Project Governance

Regular meetings will be held between the relevant management of RBC and WDC throughout the shared agreement and the Service Level Agreement will outline the formal working relationship between the two authorities

Table 1

| No. | Output | Capability | Outcome (as outlined in Section 5 above) | Benefits |
|------------|---|--|---|--|
| 1. | Delegation of Legislative powers | This will allow RBC to undertake enforcement work on behalf of WDC | I; ii; iii, iv. | Allow RBC to undertake enforcement duties on behalf of WDC |
| 2. | To set the Fixed Penalty Notices (FPN's) within WDC | To introduce appropriate levels of FPN's within the constitution of WDC to reflect those of RBC to provide clarity between the two authorities | I, ii. iii | Provide consistency between WDC and RBC |
| 3. | Agreement to the financial cost of shared enforcement action with RBC | Will provide the financial backing to undertake the shared service with RBC | I, ii, iii, iv, v | Provides clarity to the financial implications to the shared service |
| 4. | The creation of a Service Level Agreement with Rugby Borough Council | Provide formal agreement to the shared service | I, ii, iii, iv, v | Forms the basis of the shared service |

Table 2 – Proposed Fixed Penalty Notice (FPN) Fines

| Offence | Legislation | Fixed Penalty | Maximum | Discount |
|---|--|------------------------|----------------|---------------------------|
| Depositing Litter | Section 87/88 - Environmental Protection Act 1990 | £80 | £2,500 | £50 |
| Graffiti & Fly-Posting | Section 43-47 – Anti-Social Behaviour Act 2003 | £80 | £2,500 | £50 |
| Failure to furnish documentation (Waste Carriers Licence) | Section 5B(2) – Control of Pollution (Amendment) Act 1989 | £300 | £5,000 | None |
| Failure to produce authority (Waste Transfer Notes) | Section 34A(2) Environmental Protection Act 1990 | £300 | £5,000 | None |
| Failure to comply with waste receptacle notice | Sections 46 & 47 of Environmental Protection Act 1990 | £100 | £1,000 | £60 |
| CPN's | Section 52 – Anti-Social Behaviour Crime and Policing Act 2014 | £100 14 days to pay | | £75 If paid in 10 days |
| Fly-Tipping | The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 | £400 | | £300 |

Table 3 – Project costs

| Project Costs | Amount (£) |
|---|-------------------|
| 2017/2018 | |
| Delegation Costs Cost of Rugby BC resource at £75 per hour (2 staff & vehicle) Approx. 1 day per week | £13,500 |
| Set Up Costs Veolia RRU Team Equipment i.e. Camera's, note books, head torches etc. Rugby BC resource cost at £75 per hour + | |
| Legal Costs Solicitor - £70 per hour Senior Solicitor - £78 per hour + | £6,500 |
| Membership of Mallard Consultancy | <u>£1,000</u> |
| Total | £21,000 |
| 2018/2019 | |
| Delegation Costs Cost of Rugby BC resource at £75 per hour (2 staff & vehicle) Approx. 1 day per week + | £27,500 |
| Legal Costs Solicitor - £70 per hour Senior Solicitor - £78 per hour + | |
| General operational costs | £12,500 |
| + | |
| Membership of Mallard Consultancy | <u>£1,000</u> |
| Total | £41,000 |

Table 4

Flow Diagram – Fly-Tips

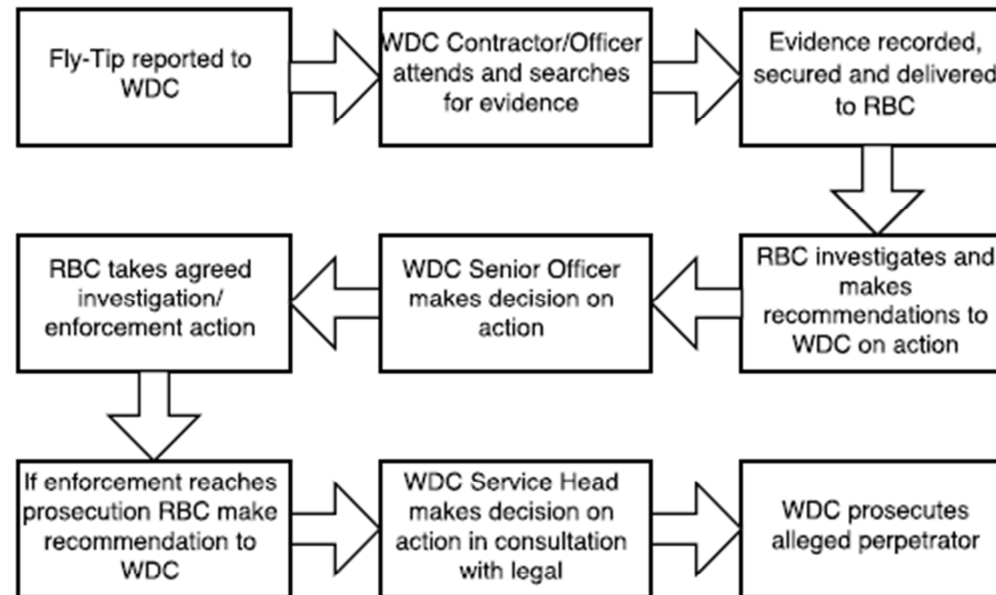


Table 5

Flow Diagram – Accumulated Waste

