



# Doncaster Council

## Report

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Date: 9<sup>th</sup> January 2017

To the Chair and Members of the Cabinet

### **SHARED SERVICE AGREEMENT WITH ROTHERHAM METROPOLITAN BOROUGH COUNCIL TO DELIVER ENVIRONMENTAL CRIME ENFORCEMENT**

<b>Relevant Cabinet Member(s)</b>	<b>Wards Affected</b>	<b>Key Decision</b>
Councillor Chris McGuiness	All wards in Rotherham and all wards in Doncaster	Yes

### **EXECUTIVE SUMMARY**

1. The report sets out a proposal to enter into a shared service arrangement with Rotherham MBC to the benefit of both Authorities.

### **EXEMPT REPORT**

2. This report is not exempt however there are a number of financial and commercial matters contained within exempt Appendix 1 which are commercially sensitive. The appendix is not for publication because it contains exempt information protected by paragraph 3 of part 1 of schedule 12 (a) of the local government act 1972 (as amended) information relating to the financial or business affairs of any particular person (including the authority holding that information).

### **RECOMMENDATIONS**

3. That Cabinet:
  - Approve entering into a shared service agreement with Rotherham Metropolitan Council to deliver on their behalf an enhanced environmental crime and parking enforcement within Rotherham and put in place the operational arrangements necessary to efficiently deliver this service.

- Accept the delegation of relevant and appropriate powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, made by Rotherham MBC on the 11<sup>th</sup> December 2017 in order to deliver the required shared service within Rotherham.
- Approve procurement and award of contract for a private contractor to deliver on street enforcement in Rotherham as part of this shared service and also allow such contract to be used for on street enforcement in Doncaster if this delivers additional financial benefit compared to the current contract extension with Kingdom Security Ltd. The contract would be a 3 year contract with the potential of two 1-year extensions to ensure it delivers best value.

## **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

4. Environmental crime such as littering, dog fouling and fly tipping have negative impact on the quality of life and environment for the residents of Doncaster and can also damage a vibrant local economy and promotion of Doncaster as a destination to visit. Removal and disposal of fly-tipping alone costs the council nearly £500,000 per year. Further substantial cost of cleaning up after environmental crime is also incurred by street cleansing and litter picking. Robust enforcement of environmental crime is an essential tool to reduce this type of behaviour, achieve a cleaner environment for all residents and business to enjoy and reduce Council clean-up costs. Delivery of such enforcement service in a cost neutral way by the use of private contractor ensures a high level of enforcement without placing further pressure on public resource. Creation of a joint service with Rotherham would give further scope to deliver value for money by increasing capacity of the team, creating more efficient working processes through economies of scales. Increasing the size of the service in Doncaster would also contribute to local job opportunities. Environmental Crimes do not differ or stop across authority boundaries, but instead travels with nuisance individuals between authority areas. As a result, increasing knowledge and providing an effective deterrence against these offences amongst members of the public in Rotherham is likely to be beneficial for the environment in Doncaster as well.

## **BACKGROUND**

5. In January 2016 Doncaster Council signed a contract with Kingdom Security to provide additional environmental enforcement borough wide in Doncaster. The contract includes incidents being witnessed within Doncaster's boundary for offences relating to littering, smoking in smokefree place/vehicle, fly tipping, enforcement of Public Space Protection Orders including dog fouling and Parking Enforcement. The contract is for a 2-year fixed period until January 2018 but has the option of two 1-year extensions, potentially maintaining the current arrangements until January 2020. . During the contract extensions it is possible for Doncaster to give notice to stop the service without any penalties. The current contract and requires Kingdom to provide sufficient staff to issue at least 3500 FPN's and about 1000 PCN's (mainly outside Town Centre).

6. Doncaster's contract with Kingdom Security is different from private enforcement contract existing in many other Local Authorities, as Doncaster has retained the task of evaluating evidence, issuing the fines, hearing appeals and taking any case where the FPN is not paid to court. The Council also retained the role of tasking Kingdom staff weekly to ensure patrols are spread across the borough and target the areas where complaints from our residents are received. Kingdom staff has the same level of training as any Council staff issuing fines and wear DMBC uniform and body cameras. The close working relationship between staff from Kingdom Security and the Enforcement Team has delivered a high quality, responsive and seamless service with low levels of complaints. This has safeguarded the Council's reputation of fair, proportionate and transparent enforcement and avoided negative media stories that have faced some other Local Authorities who has not managed their contracts in as stringent manner.
7. Since January 2016 Kingdom staff has patrolled 72 separate areas in the Doncaster ensuring whole borough receives area patrols. Kingdom has submitted evidence resulting in Fixed Penalty for all areas. During this period, Kingdom has on behalf of the Council, gathered evidence to enable the Council to issue over 13,507 Fixed Penalty Notices (FPNs) in respect to littering, 231 for dog fouling, 70 for other PSPO contraventions and 2245 Penalty Charge Notices for parking offences. The contract has been successful in delivering the objectives of increase enforcement resources and additional income earmarked to improve investigation and enforcement outcomes for complex fly tipping within the Enforcement Team. The increased enforcement has also achieved around 20% reduction in complaints about littering and dog fouling received by Customer Services.

Type of complaint	2016 (Quarter 1 & 2)	2017 (Quarter 1 & 2)	Reduction
<b>Dog Fouling</b>	457	349	-24%
<b>Request for anti-dog fouling stencil</b>	105	82	-22%
<b>Littering</b>	1352	1091	-19%

8. Prior to the Kingdom Contract, Doncaster Council issued approximately 2000 FPNs a year. Processing of these fines, managing payments, dealing with appeals and preparing cases for court was managed by 1FTE Fixed Penalty Officer (Grade 7) as well as case preparation by 1 FTE Enforcement Officer (Grade 7). As part of the implementation of the Kingdom Security contract a complete review was conducted of the FPN processing and improvements identified and implemented. This included working with Magistrate Courts to implement Single Justice Procedures, substantially reducing the legal support required for each case. As a result the team is now able to process around 4000 FPNs per 1.5 FTE (Grade 7). Further resources are required to provide effective management and support for these staff members as well as dealing with Corporate Complaints and Freedom of Information requests.
9. On 12<sup>th</sup> September 2016, the Rotherham MBC Cabinet and Commissioners Decision Making Meeting approved a report detailing future options for

enhanced environmental enforcement. The report described the Council's desire to strengthen enforcement activity around environmental crime issues such as littering, dog fouling and fly-tipping. Removal and disposal of fly-tipping alone costs Rotherham MBC in excess of £250,000 per year.

10. In October 2016, Doncaster Council was requested by Rotherham MBC to consider the option of delivery of a shared fixed penalty notice service, using a private contractor for the on street enforcement with processing in-house following the same principles as the contract already successfully implemented in Doncaster.
11. Following this, at the Rotherham MBC Cabinet and Commissioners' Decision Making Meeting of 9th January 2017, it was agreed that a shared service with Doncaster Metropolitan Borough Council was to be progressed, to deliver enhanced environmental crime and parking enforcement within Rotherham.
12. To create a shared FPN service under Rotherham MBC's constitution, they must formally delegate appropriate powers to Doncaster Council to allow officers to undertake enforcement activities across boundaries into Rotherham. This will ensure that officers have authorisation to enforce legislation in Rotherham. Doncaster Council would then need to formally accept these delegated powers to progress the arrangements. A further Service Level Agreement will also be required to detail the operational arrangements and payment mechanism between the two authorities. If a shared service is implemented it is expected that contractors issue at least 8,000 fixed penalty notices on behalf of Rotherham a year to be processed by staff employed by Doncaster Council. To effectively process this many fines would require an additional staff resource of 3 FTE (Grade 7). These staff will be recruited on a 3-years temporary basis for the specific purpose of delivering the Rotherham contract. At the end of the 3 years what happens to these staff would be dependent upon what happens to the contract meaning there is the potential if the service ceases that the Council could be liable to make redundancy payments. Due to contract limitations, it is not possible to utilise the current contract in place between Doncaster Council and Kingdom Security to deliver enforcement in Rotherham. Instead a new specification and contract documentation has been developed jointly with Rotherham to comply with the requirements of European Procurement Regulations. It is expected that the tendering process would be started at the earliest in February 2018, with anticipated completion and award of contract in May or June 2018. At this point Doncaster could either opt to manage two contracts, one in Doncaster for another 18-months and one in Rotherham. Alternatively Doncaster could serve notice to terminate the current contract for FPN/PCN enforcement and transfer the full service to the new contract if this is a better option financially.
13. A further decision is expected at the Rotherham MBC Cabinet and Commissioners' Decision Making Meeting on the 11<sup>th</sup> December 2017 to further progress the 'Time for Action' initiative through engagement into a shared service provision with Doncaster Metropolitan Borough Council. This would include delegating all relevant and appropriate powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social

Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, in order to deliver the required shared service within Rotherham.

## **OPTIONS CONSIDERED**

The recommended option is in paragraph 16.

14. Do Nothing – if the Council does nothing we can continue our current contract arrangements with Kingdom Security for a further 12-month on a contract extension at which point full procurement would be required if we wanted to continue using a private contractor.
15. Other option considered was to procure a new service for both Doncaster and Rotherham allowing the contractor to also process FPNs and prepare case files. This would reduce income for Doncaster Council as we are likely to have to pay the contractor more per FPN issued. This would also remove a safeguard of Doncaster Council having full discretion when to issue FPNs or not. If FPNs would be issued by a contractor in cases where evidence is not sufficient, it would damage the reputation and public perception of the Council. It is important that litter enforcement is conducted in a fair and transparent manner with the overall aim of improving the local environment and not just seen as a method of income generation. Rotherham MBC also favours working with Doncaster Council due to the extra safeguards of fair enforcement created by the Council retaining the processing side of the FPN service.
16. To enter in to a shared service agreement with Rotherham Metropolitan Council to deliver on Rotherham's behalf, enhanced environmental crime and parking enforcement within Rotherham. This would require Doncaster Council to accept the delegation of relevant and appropriate powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, from Rotherham MBC in order to deliver the required shared service within Rotherham. It would also require us to go out for procurement for a private contractor to deliver on street enforcement in Rotherham as part of this shared service. To ensure the new contract is as commercially competitive as possible, it is proposed that it would last for 3 years with the option of two 1-year extensions and cover on street enforcement in both Doncaster and Rotherham or either locality on its own. This would also prevent the need of further procurement in the next 12-month when the current Doncaster Kingdom Contract expires. Doncaster could opt to move over their current enforcement to the new shared service contract at any time before expiry of the current contract extension if this is financially beneficial. This will require a negotiated extension to the current DMBC Kingdom contract as a shorter extension will be required than the 12 months allowed for in the contract.

## REASONS FOR RECOMMENDED OPTION

17. The option of a shared enforcement service (Paragraph 16) would safeguard continuation of cost neutral, high quality environmental and ASB enforcement service in Doncaster and deliver equal benefits in Rotherham. Creation of a joint service with Rotherham would give further scope deliver value for money by increasing capacity of the team and creating more efficient working processes through economies of scales. Increasing the size of the service in Doncaster would also contribute to local job opportunities. Increasing knowledge and providing an effective deterrence against these offences amongst members of the public in Rotherham is also likely to be beneficial for the environment in Doncaster as many people actively travel across the two authority area.

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

18.

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Creating Jobs and Housing</i></li> <li>• <i>Mayoral Priority: Be a strong voice for our veterans</i></li> <li>• <i>Mayoral Priority: Protecting Doncaster's vital services</i></li> </ul>	<p>Environmental crime such as littering, dog fouling and fly tipping have negative impact on a vibrant local economy and promotion of Doncaster as a destination to visit. This proposal would safeguard delivery of an effective environmental crime enforcement service in Doncaster and Rotherham without placing the financial burden of funding such service on either Authority. The proposal would also safeguard current jobs in Doncaster processing Fixed Penalty Notices and generate further job opportunities in this area.</p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Safeguarding our Communities</i></li> <li>• <i>Mayoral Priority: Bringing down the cost of living</i></li> </ul>	<p>The proposal would safeguard high levels of enforcement for Environmental Crime, Public Space Protection Orders. This will assist in providing safe and healthy lives for our residents. Additional provision of parking enforcement outside schools and other areas away from Town Centre ensures safety of residents and protect independent lives of residents reliant on disabled parking by securing effective blue badge parking enforcement.</p>
	<p>People in Doncaster benefit from a high quality built and natural environment.</p>	<p>Environmental crime has negative impact on the quality of life and environment for our residents.</p>

	<ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Creating Jobs and Housing</i></li> <li>• <i>Mayoral Priority: Safeguarding our Communities</i></li> <li>• <i>Mayoral Priority: Bringing down the cost of living</i></li> </ul>	Removal and disposal of fly-tipping alone costs the council nearly £500,000 per year. Further substantial cost of cleaning up after environmental crime is also incurred by street cleansing and litter picking. Robust enforcement of environmental crime is an essential tool to reduce this type of behaviour, achieve a cleaner environment for all residents and to enjoy and reduce council clean-up costs. Delivery of such enforcement service in a cost neutral way by the use of private contractor ensures a high level of enforcement without placing further pressure on public resource.
	<p>All families thrive.</p> <ul style="list-style-type: none"> <li>• <i>Mayoral Priority: Protecting Doncaster's vital services</i></li> </ul>	The proposals include safeguard for young people to ensure we can deliver effective enforcement whilst still supporting families.
	Council services are modern and value for money.	Delivery of cost neutral Environmental Crime enforcement service ensures value for money.
	Working with our partners we will provide strong leadership and governance.	Working in partnership with another local authority through a shared service will promote closer working and sharing of excellence in the Regulation & Enforcement Area which is likely to deliver long term benefits.

## RISKS AND ASSUMPTIONS

19. The shared service model is based on Doncaster managing and paying the private contractor for each correctly issued FPN/PCN. It is therefore essential to ensure Doncaster can recover more money through paid FPNs and court fines, than is paid to the contractor and also fund the resources required to manage this process. Based on current figures for the Doncaster contract it is believed that approximately 60% of fines are likely to be paid without further intervention. A further 25% is likely to result in the court action and it is expected that around 15% of cases has to be closed down as unrecoverable due to inability to trace the individual. As a low payment rates is the largest risk factor from a financial side, it is proposed to pay Rotherham a set price per paid FPN which will be determined based on the results of tender. This is similar to options offered by other private contractors in the market place and will ensure the risk of low payment rates is not carried by Doncaster Council.
20. When setting up any shared services, there will always be a risk of service pressure from one area having an impact on resources available in the other area. To ensure that entering into the shared service has a positive impact on services in Doncaster, it is essential that sufficient additional staff resources are made available.

## **LEGAL IMPLICATIONS**

21. Rotherham Council have agreed to delegate certain enforcement functions to Doncaster Council, namely those functions set out in the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005 and Health Act 2006. Rotherham Council are able to do this in accordance with the provisions of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012, which enable arrangements to be made for the discharge of functions by another local authority.
22. Doncaster Council's Constitution allows Cabinet to accept the delegation of Executive Functions from another Local Authority.
23. The Public Contracts Regulations 2015 and European case law suggest that such arrangements between public bodies for the sharing of functions which are not wholly commercial in nature are not caught by EU Procurement Regulations. Doncaster Council will in any event be following a full EU Procurement process to appoint a contractor to provide the services and thus the guiding principles of EU Procurement – openness, fairness and transparency will be met.
24. S1 of the Localism Act 2011 provides the Council with the general power of competence, meaning that “a local authority has power to do anything that individuals generally may do.”
25. S111 of the Local Government Act 1972 provides that a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions
26. S112 of the Local Government Act 1972, allows a Local Authority to appoint such officers as they think necessary for the proper discharge of their functions.
27. Further legal advice will be required as this project progresses, particularly considering Employment Law matters arising and in completing an appropriate agreement between the two Councils covering this arrangement.
28. As set out in the report, a European tender process will be required to appoint a provider to carry out this work in Doncaster and Rotherham.

## **FINANCIAL IMPLICATIONS**

29. It is not possible to provide detailed costs for this proposal until the procurement exercise, which is proposed has been completed. However, apart from initial set up costs, the operating costs to Doncaster Council for processing fines and managing appeals is on average £11 per FPN. This takes into consideration all processing costs including a proportion of cases requiring legal files. If the tender delivers a similar priced service to what we currently operate, Doncaster would pay the contractor £40 per correctly issued FPN.

30. The additional income generated to Doncaster Council through this scheme is expected to be £40k per annum. This will contribute towards the Regulation and Enforcement efficiency savings which for 18/19 has a target saving of £200k. Further commercially sensitive information regarding the performance of the current contract can be found in Appendix 1.

## **HUMAN RESOURCES IMPLICATIONS**

31. If this proposal is implemented it is expected that Contractors issue at least 8,000 Fixed Penalty Notices in the first 12-month. To effectively process this many fines would require 3 FTE (Grade 7). As this Grade 7 role already exists it has already been through Job Evaluation, checks will need to be undertaken as to whether the additional posts have an effect on the Job Evaluation score of any other existing posts. The additional posts would need to be approved and set up on the HR portal and then recruited to in line with Doncaster Council's Policies and Procedures. Redundancy and associated payments are subject to statutory provisions. Further advice will need to be taken in the event this becomes relevant.

## **TECHNOLOGY IMPLICATIONS**

32. There are no direct ICT implications from implementing the recommendations in this report as processing will be carried out using the same software as the existing service. Procurement of a new software contract for all Parking Fines and Fixed Penalty Notices was approved by the ICT Governance Board in June 2017 and are expected to be in place prior to implementation of any shared service proposal. This contract will be able to adequately cater for any fines issued on behalf of Rotherham without additional cost.

## **EQUALITY IMPLICATIONS**

33. The decision maker must be aware of their obligations under the public sector equality duty (PSED) in s149 of the Equality Act 2010. It requires public authorities when exercising their functions to have due regard to the need to eliminate discrimination, harassment and victimization; advance equality of opportunity; and foster good relations between people who share relevant protected characteristics and those who do not.
34. The relevant protected characteristics under the Equality Act are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination.
35. The decision maker must ensure that they have seen the due regard statement. The duty must be exercised in substance, with rigour, and with an open mind and is not a question of ticking boxes. It is for the decision-maker to decide how much weight should be given to the various factors informing the decision, including how much weight should be given to the PSED itself. The duty is a continuing one and there should be a record/audit trail of how due regard has been shown. It is not sufficient for due regard to be a "rear-guard action" following a concluded decision. The decision maker must also pay regard to any countervailing factors and decide the weight to be given to

these, which it is proper and reasonable to consider; budgetary pressures, economics and practical factors will often be important.

36. National guidance exists for offences committed under the relevant legislation. The guidance provides effective safeguards to ensure disabilities are considered in any enforcement decisions. In addition absolute legal exclusion exists where appropriate, such as for registered blind individuals.
37. Safeguarding children and young people is of the outmost priority for Doncaster Council. Whilst it is important to challenge unlawful behaviours such as environmental crime and Anti-Social Behaviours committed by minors, officers are trained and instructed to follow different procedures when gathering evidence in these cases. Provisions are also in place to ensure we notify parents/guardians as part of any enforcement against a minor. It is also our intention to work with Rotherham to put in place an option for parents to consent to their child taking part in restorative justice, in lieu of paying a monetary fine, similar to what currently is in place in Doncaster.
38. Apart from consideration of disability and children under the age of 18, enforcement of the relevant legislation is carried fair, transparent and proportionate irrespective of any other protective characteristics. All designated officers with the responsibility to enforce the prohibitions and requirements within the order are trained in equality and diversity from induction and this is updated on a regular, if not annual basis.

## **CONSULTATION**

39. Consultation has taken place with Portfolio Holder Cllr Chris McGuinness and Mayor's Political Assistant, Chris Stephenson. Consultation has also taken place throughout the process with legal, procurement and ICT to ensure we consider any relevant duties or legal requirement.

## **BACKGROUND PAPERS**

40. No relevant background papers.

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