



Doncaster Council

Report

Date: 14th August 2018

To the Chair and Members of the
CABINET

SHARED SERVICE AGREEMENT WITH NORTH EAST LINCOLNSHIRE COUNCIL TO DELIVER ENVIRONMENTAL CRIME ENFORCEMENT

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Councillor Chris McGuinness	All wards in North East Lincolnshire and all wards in Doncaster	Yes

EXECUTIVE SUMMARY

1. The report sets out a proposal to enter into a shared service arrangement with North East Lincolnshire Council to the benefit of both Authorities.

EXEMPT REPORT

2. This report is not exempt, however, there are financial and commercially sensitive matters contained within Appendix 1, to the report. Therefore, Appendix 1 is not for publication because it contains exempt information under Paragraph 3, of Part 1 of Schedule 12A of the Local Government Act 1972, as amended, (information relating to the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:
 - Accept entering into a 2-year shared service agreement with North East Lincolnshire Council with the possibility of up to 3 x 1 year extensions, to deliver on their behalf an enhanced environmental crime enforcement within North East Lincolnshire and put in place the operational arrangements necessary to efficiently deliver this service.

- Approve the delegation of relevant and appropriate powers contained within the Environmental Protection Act 1990, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, made by North East Lincolnshire Council on the 1st August 2018 in order to deliver the required shared service.

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.
5. 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.
6. Creation of a joint service with neighbouring authorities 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 North East Lincolnshire Council is likely to be beneficial for the environment in Doncaster as well.

BACKGROUND

7. 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. In March 2018 the Council re-procured the contract for a further five years and added the option for the contract to be used outside the boundaries of Doncaster and allow the Council to manage delivery of Environmental Crime Enforcement on behalf of other nearby Local Authorities. The new contract gives Doncaster the flexibility to commission services in Doncaster only, or also for neighbouring authorities. The number of FPNs issued can be varied during the contract period to cater for demand of services for neighbouring authorities.
8. 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.

9. 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
Dog Fouling	457	349	-24%
Request for anti-dog fouling stencil	105	82	-22%
Littering	1352	1091	-19%

10. 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 6 Processing Officer), with the existing Fixed Penalty Officers (Grade 7) dealing with higher level appeals and any service complaints. 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.
11. We recently received Approval to enter into a shared service agreement with Rotherham Metropolitan Council to deliver on their behalf an enhanced environmental crime and parking enforcement within Rotherham on the

basis of a twelve month pilot, with an initial evaluation after 6 months and put in place the operational arrangements necessary to efficiently deliver this service. The creation of a joint service with Rotherham would give further scope to 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. This also creates capacity for work in other areas.

12. On 14th December 2017, the Cabinet in North East Lincolnshire Council 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 and explore options around use of a private contractor for litter enforcement.
13. In March 2018, after Doncaster published the required OJEU notice for a new larger Environmental Crime Enforcement Contract, the Council was approached by the procurement team serving North East Lincolnshire Council enquiring the options 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.
14. Following tender evaluation a presentation was delivered to Officers and Cabinet Members of North East Lincolnshire Council regarding the option of share service delivery and officers from both Authorities were requested to progress this option.
15. To create a shared FPN service under North East Lincolnshire Council constitution, they must formally delegate appropriate powers to Doncaster Council to allow officers to undertake enforcement activities across boundaries into North East Lincolnshire. 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.
16. To achieve this, North East Lincolnshire Council, will on the 1st August 2018 request their Cabinet to approve delegation of the relevant powers and enter into a 2 year Service Level Agreement to deliver Shared Services from September 2018.
17. If a shared service is implemented it is expected that contractors issue at least 6,000 fixed penalty notices on behalf of North East Lincolnshire Council a year to be processed by staff employed by Doncaster Council. To effectively process this many fines would require an additional staff resource of 2 FTE (Grade 7). These staff would be recruited on a 2-years temporary basis for the specific purpose of delivering the North East Lincolnshire contract.

OPTIONS CONSIDERED

The recommended option is in paragraph 20.

18. Do Nothing – if the Council does nothing we can continue our current contract arrangements with Kingdom Security within Doncaster.
19. To enter in to a 2-year shared service agreement with North East Lincolnshire Council, with the possibility of up to 3 x 1 year extensions, to deliver on their behalf, enhanced environmental crime and parking enforcement within North East Lincolnshire Council. This would require Doncaster Council to accept the delegation of relevant and appropriate powers contained within the Environmental Protection Act 1990, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006, from North East Lincolnshire Council in order to deliver the required shared service.

REASONS FOR RECOMMENDED OPTION

20. The option of a shared enforcement service (Paragraph16) would safeguard continuation of cost neutral, high quality environmental and ASB enforcement service in Doncaster and deliver equal benefits in North East Lincolnshire. Creation of a joint service with North East Lincolnshire 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 North East Lincolnshire 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

21.

Outcomes	Implications
<p>Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"> • Better access to good fulfilling work • Doncaster businesses are supported to flourish • Inward Investment 	<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 North East Lincolnshire 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>Doncaster Living: Our vision is for Doncaster's people to live in a</p>	<p>By sharing a larger contract with neighbouring authorities we are able to</p>

<p>borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"> • The town centres are the beating heart of Doncaster • More people can live in a good quality, affordable home • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage 	<p>provide a more financially viable Environmental Crime Enforcement Service in Doncaster. The proposal would therefore safeguard high levels of enforcement for Environmental Crime, Public Space Protection Orders. This will assist in providing safe and healthy lives for our residents. Our current Kingdom contract has also achieved 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>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	<p>The current fixed penalty and parking processing team are supporting two entry level Modern Apprentices each year. With a larger team there is further scope to continue supporting school leavers to gain essential skills to secure long term employment.</p>
<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust <p>Older people can live well and independently in their own homes</p>	<p>The proposals include safeguard for young and vulnerable people to ensure we can deliver effective enforcement whilst still supporting all residents.</p>
<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and 	<p>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.</p>

<p>self-reliance by connecting community assets and strengths</p> <ul style="list-style-type: none"> • Working with our partners and residents to provide effective leadership and governance 	
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RISKS AND ASSUMPTIONS

22. The shared service model is based on Doncaster managing and paying the private contractor for each correctly issued FPNs. 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 North East Lincolnshire a set price per paid FPN, depending on the level of fine available in North East Lincolnshire Council. 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.
23. 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 [Officer Initials: SRF - Date: 9/7/18]

24. North East Lincolnshire Council have agreed to delegate certain enforcement functions to Doncaster Council, namely those functions set out in the Environmental Protection Act 1990, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005 and Health Act 2006. North East Lincolnshire 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, which are the responsibility of a local authority executive, by another local authority or an executive of another local authority.
25. Doncaster Council's Constitution allows Cabinet to accept the delegation of Executive Functions from another Local Authority.
26. 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 has in any event be followed 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 has been met.

27. 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.”
28. 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.
29. 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.
30. Further legal advice will be required as this project progresses, particularly considering Employment Law matters arising and in completing a legal agreement between the two Councils.

FINANCIAL IMPLICATIONS [Officer Initials RT - Date: 09/07/18]

31. The financial implications as attached at Appendix 1 of the report, are not for publication, as they contain commercially sensitive information, which is exempt Information under Paragraph 3, (information relating to the financial or business affairs of any particular person (including the authority holding that information) of Part 1 of Schedule 12A of the Local Government Act 1972, (as amended).

HUMAN RESOURCES IMPLICATIONS [Officer Initials: AC Date: 06/08/2018]

32. If this proposal is implemented it is expected that Contractors issue at least 6,000 Fixed Penalty Notices in the first 12 months. To effectively process this many fines would require 2 FTE (Grade 6). As this Grade 6 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. These posts should be recruited to in line with Doncaster Council's recruitment policy, giving priority to redeployees in the first instance.
33. Fixed-term employees have the right not to be treated less favourably than comparable permanent employees because they are on a fixed-term contract. This means you must treat fixed-term employees the same as comparable permanent employees unless there are 'objectively justifiable' circumstances for not doing so (ie there is a genuine, necessary and appropriate business reason). This means the same or equivalent (pro-rata) pay and conditions, benefits, pension rights and opportunity to apply for permanent positions within the business.
34. In the event the identity of the provider of the services changes, it is envisaged that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended in 2014) (TUPE) will apply. TUPE legislation protects the rights of employees in a transfer situation enabling them to be protected on the same contractual terms and conditions and their continuity of service is also preserved.

35. The service is discretionary and the shared service arrangement could be ceased. In this event further advice would need to be taken in relation to redundancy, associated costs and other statutory provisions. As the non-renewal of a fixed term contract in this case would constitute a redundancy, every effort would be made to seek to redeploy staff. The Council has a very good track record in deploying staff within the organisation.

TECHNOLOGY IMPLICATIONS [Officer Initials: PW Date: 09.07.18]

36. There are no direct technology implications from implementing the recommendations in this report. The procurement of a new software solution for parking fines and fixed penalty notices was approved by the ICT Governance Board in June 2017, with the new system being implemented in June 2018. The contract for the new system allows for the processing of fines issued on behalf of North East Lincolnshire Council, including the purchase of additional handheld devices that will be needed. It is understood that the Head of Financial Development & Business Support is aware of the new contract including processing for other local authorities and will be able to advise further in relation to any implications on financial systems and processes. The Information Governance Team are also aware and will be able to advise in relation to GDPR and data sharing arrangements.

EQUALITY IMPLICATIONS [Officer Initials TH : Date 06.07.18]

37. 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.
38. 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.
39. 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.
40. 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.

41. 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 North East Lincolnshire Council 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.
42. 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.

HEALTH IMPLICATIONS [Officer Initials: CEH Date; 09.07.18]

43. In general 20% of what contributes to health is due to clinical care, 30% due to behavioural factors, 40% due to socio-economic factors and 10% due to the built environment. Providing safe and attractive environments can positively affect physical and mental wellbeing but also lead to better community cohesion. These proposals implement measures to more effectively tackle Environmental Crime both in Doncaster and North East Lincolnshire which will help reduce the barriers that residents state prevent them from enjoying their community and being more physically active such as pavement parking, dog fouling and littering. Utilising enforcement powers to provide smoke free environments will support Doncaster's work to change social norms to tackle the number of residents that smoke in particular children and young people. In addition second hand smoke represents a substantial public health hazard and therefore the use of powers to reduce this are important.

CONSULTATION

44. Consultation has taken place with Portfolio Holder Cllr Chris McGuinness. 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

45. No relevant background papers.

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