

Rother District Council

Report to:	Cabinet
Date:	28 February 2022
Title:	Enforcement of Environmental Offences
Report of:	Head of Service - Environmental Services, Licensing and Community Safety
Cabinet Member:	Councillor Field
Ward(s):	All
Purpose of Report:	To seek approval to procure a concessionary agreement, as a closed quote with selected providers, to carry out the enforcement of environmental offences.
Decision Type:	Key
Officer Recommendation(s):	It be RESOLVED : That the Deputy Chief Executive be authorised to procure a concessionary agreement as a closed quote with selected providers, to carry out the enforcement of environmental offences.
Reasons for Recommendations:	To increase the level of enforcement for environmental offences, in order to improve the quality of the local environment and the lives of residents impacted by such offences.

Introduction

1. The Council could employ a private company, to carry out the enforcement of certain environmental offences, including dog fouling, littering, fly-tipping (unauthorised disposal of waste) using a concession agreement.
2. Other authorities use contractors, who employ uniformed staff to patrol their districts, identifying offences and issuing fixed penalty notices (FPNs). The service would include the prosecution of offenders who fail to pay an FPN, which is a statutory requirement.
3. The company would also be required to carry out promotional work, for example issuing dog waste bags and portable ashtrays and organising litter picks.

Environmental Offences Reported

4. October 2020 to September 2021

Fly-tipping	997
Littering	135
Dog Fouling	72

Fixed Penalty Notices Issued between January 2019 and December 2021

5.

Fly-tipping	2
Waste-duty of care offence	1
Waste- no permit	1
Non-compliance Community Protection Notice	2
Non-compliance Public Spaces Protection Order	1

Current Provision

6. When the Council receives complaints or reports about fly-tipping (unauthorised disposal of waste), Contract Compliance Officers (Neighbourhood Services) visit and check if there is any evidence, where the waste originated from, before arranging for Biffa to clear the waste. If there is evidence, then the matter is referred to the Environmental Services for investigation. This only happens rarely and there are two possible offences, the duty of care offence by the householder or business (where the waste originated from) or the unauthorised disposal of waste offence by the actual fly-tipper. The first offence is easier to prosecute, the second much more difficult because the householder or business are unable or unwilling to identify the fly-tipper. In addition, on occasions, members of the public identify or film fly-tippers, but they are normally reluctant to provide evidence.
7. The Council works with Sussex Police, Trading Standards and the Environment Agency to carry out vehicle stops to check whether waste carriers have a permit.
8. We do not have the resources to carry out regular patrols to detect littering and dog fouling offences unless there is reliable evidence that the offence occurs at a specific place, regularly at the same time.

Prosecutions

9. It is intended the contract will include the use a private Solicitor to carry out prosecutions, if authorised by the Deputy Chief Executive or Head of Service.

Costs to the Council

10. Using a concessionary agreement, there would be no costs, as these would be met from the income received by the company by issuing FPNs. However, there would be associated management costs associated with monitoring the contract.

Procurement

11. This would be a concession agreement and as the value is under the public procurement threshold, an exemption can be made to the open tender route and the procurement run as a closed quote with a select number of providers. Provision would be made to review the contract at 12-month intervals to determine whether to continue or procure a new contract for a longer period.

Conclusion

12. To increase the number of environmental offences detected and the number of FPNs or prosecutions, the employment of a private company for a one-year concessionary agreement, with the option to extend for another year, to a maximum of three years, should be considered.

Crime and Disorder

13. Effective enforcement of environmental offences supports controlling crime and disorder in the district.

Environmental

14. Effective enforcement of environmental offences should improve the local environment and reduce the negative impact of unauthorised waste disposal (fly-tipping) on land and water.

Financial

15. Contained within existing estimates, provided that the company appointed confirm that there would be no costs to the Council. There may be additional costs associated with the handling and administration of complaints received due to increased enforcement of littering offence, particularly during the initial stages.

Human Rights

16. Article 2: Right to life - not applicable
Article 3: Freedom from torture etc - not applicable
Article 4: Freedom from slavery and forced labour - not applicable
Article 5: Right to liberty and security - not applicable
Article 6: Right to a fair trial - complies
Article 7: No punishment without law - complies
Article 8: Respect for private and family life - not affected
Article 9: Freedom of thought, belief and religion - not affected
Article 10: Freedom of expression - not affected
Article 11: Freedom of assembly and association - not affected
Article 12: Right to marry - not affected
Article 14: Right to be free from discrimination - not affected

Protection of property: not applicable
Right to education: not applicable

Legal

17. A company given a concessionary agreement must abide by all relevant Government guidance and codes of practice. Relevant regulations must be complied with, including GDPR and the Public Contract Regulations 2015. The Council's own procurement rules would be adhered to. Any prosecutions undertaken by the provider must be in accordance with the necessary statutory framework.

Risk Management

18. The Council may be criticised for issuing FPNs for littering through discarding cigarette butts etc. In other authorities, 88% of FPNs issued are for littering, with 75% of those offences being for cigarette butts. Councils who have already adopted this approach, have confirmed an initial high number of complaints. There would therefore be an increase in customer complaints that the Council would have to respond to. This could also create negative publicity in tourist areas, as visitors would be unaware of vigorous enforcement being carried out. This would be mitigated by a communication plan to educate and raise awareness of a more robust approach to the enforcement of environmental offences.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	Yes	Equalities and Diversity	No
Crime and Disorder	Yes	External Consultation	No
Environmental	Yes	Access to Information	No
Risk Management	Yes	Exempt from publication	No
Chief Executive:	Malcolm Johnston		
Report Contact Officer:	Richard Parker-Harding		
Telephone Number:	01424 787551		
e-mail address:	richard.parker-harding@rother.gov.uk		
Appendix:	None		
Background Papers:	None		
Reference Documents:	Code of practice for litter and refuse: Part 1A - effective enforcement (publishing.service.gov.uk)		