

Rother District Council

Report to:	Cabinet
Date:	12 June 2023
Title:	Enforcement of Environmental Offences
Report of:	Richard Parker-Harding, Head of Environmental Services, Licensing and Community Safety and Deborah Kenneally, Head of Neighbourhood Services
Cabinet Member:	Councillor Timpe
Ward(s):	All
Purpose of Report:	To seek approval to continue with the concessionary agreement with NES Ltd, to carry out the enforcement of environmental offences.
Decision Type:	Key
Officer Recommendation(s):	It be RESOLVED : That the concessionary agreement with NES Ltd, to carry out the enforcement of environmental offences be continued.
Reasons for Recommendations:	To maintain the current level of enforcement for environmental offences, to improve the quality of the local environment and the lives of residents impacted by such offences.

Introduction

1. The Council has employed a private company, NES Ltd, to carry out the enforcement of certain environmental offences, including dog fouling, littering, fly-tipping (unauthorised disposal of waste) using a concession agreement, which started at the end of August 2022.
2. NES Ltd employ uniformed staff to patrol the district, authorised by the authority, identifying offences, and issuing fixed penalty notices (FPNs). The service includes the prosecution of offenders who fail to pay an FPN, which is a statutory requirement. The company have recruited residents to work in Rother.
3. The company is contracted by numerous councils, including Canterbury, Malling and Tonbridge in the South East and Torbay, Devon. It also carries out limited promotional work, for example giving out dog waste bags and cigarette butt pouches and supporting litter picks.
4. The Council receives an income from NES Ltd of 30% of the FPNs paid. This money is used to pay for promotional activity, the removal of graffiti, waste and cleaning bus shelters etc.

Enforcement before August 2022

5. When the Council received complaints or reports about fly-tipping (unauthorised disposal of waste), Contract Compliance Officers (Neighbourhood Services) visited and checked if there was any evidence, where the waste originated from, before arranging for Biffa to clear the waste. On the few occasions when evidence was found, the matter is referred to Environmental Services for further investigation.
6. 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 a few times a year, to carry out vehicle stops to check whether waste carriers have a permit – Operation Taurus.
8. Without the NES concessionary agreement, the Council does 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.

Fixed Penalty Notices (FPN)

9. The payment of a FPN for an offence committed means the Council cannot prosecute for that offence. Nobody should pay a FPN if they believe they have not committed an offence.
10. The monetary value of FPNs for each offence was set by the Council. These rates cannot be reduced in any circumstances, they are fixed. If the Council wanted to change the values, then it would have to procure the agreement again, as the procurement and the 30% income received by the Council is dependent on these FPN rates. The Government’s intention is to substantially increase the maximum rate of FPNs.
11. Persons issued by a FPN can make representations to NES if they believe the FPN should not have been issued. NES can cancel the FPN issued, and a small number are cancelled, depending on individual circumstances not known at the time when the FPN was issued.
12. It is not legally possible for FPNs to be paid in instalments. If there are administrative reasons, the time to pay the FPN is often extended by NES Ltd for example if NES Ltd have delayed responding to a representation. In addition, FPNs cannot be reduced in cases of financial hardship, only the Courts have the discretion to do this.

Business Waste

13. The agreement includes NES staff visiting businesses to check if they have waste disposal contracts in place. All businesses should have such contracts. Business waste should not be entering the domestic waste stream, as the collection and disposal of domestic waste is borne by the Council taxpayer.

Officers have been surprised by the number of businesses who were unaware of the law. Businesses that cannot produce waste transfer notes are given seven days to produce the documents and failure to do so results in a FPN being issued. [Business waste – Rother District Council](#)

Bexhill Town Centre

14. The Council provides a daily, Monday to Friday, domestic waste collection service in the early morning. Residents are advised to put their waste out for collection between 06:30 and 07:00 Monday to Friday only. Persons leaving domestic waste on the pavement outside these hours can be issued with a FPN. Since the introduction of NES patrols, domestic and commercial waste is rarely being left on the pavement during the day, which was unsightly and hazardous. Withdrawing these patrols is very likely to result in the return of the practice of people leaving out waste on the pavements all day.

Camber

15. This summer NES staff will be patrolling Camber during busy weekends. Hopefully this will reduce littering, which is a source of annoyance to local residents and costly for the Council to clear.

Complaints about NES staff

16. Some complaints have been received by the Council about the conduct of NES staff, which have all been investigated. NES staff wear bodycams which record video and audio images when they are interacting with the public. When a complaint has been made officers have viewed these recordings. On every occasion we have concluded that the NES employee was assertive but not aggressive or abusive, often in the face of abuse themselves. It may be that members of the public are unused to be confronted by an enforcement officer in person and therefore object to being spoken to and asked their name and address, it is a legal requirement to do so.
17. Given the very high number of FPNs issued since September, it is inevitable that some will have been issued in error, particularly by a new member of staff. In addition, it is an aspect of this type of “on the spot” or immediate enforcement that NES officers are given very limited discretion. This is balanced by the ability of the public to make representations to other NES staff, who can review the case and cancel the FPN if appropriate. In a very few cases, the Council has intervened to ask FPNs to be cancelled, if there are particular local circumstances that made the issuing of a FPN inappropriate, for example bespoke waste collection arrangements.

Prosecutions

18. The agreement with NES Ltd includes the use of a private Solicitor to carry out prosecutions, if authorised by the Council. It is important that people who do not pay a FPN are prosecuted. At the end of March 2023, 16 prosecutions had commenced. We have asked NES to increase the number of prosecutions.

Costs to the Council

19. Using a concessionary agreement, there are no costs to the Council, as these are met from the income received by the company by issuing FPNs. The Council receives an income of 30% of the FPNs paid, which can be used for

the removal of graffiti, waste, cleaning bus shelters etc. There are management costs associated with monitoring the contract and dealing with customer complaints

Procurement

20. Provision was made to review the contract at 12-month intervals to determine whether to continue or procure a new contract for a longer period.

Government Policy

21. Government policy is to reduce anti-social behaviour including a crackdown on littering and fly-tipping: [Action plan to crack down on anti-social behaviour and restore pride in communities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/442222/action-plan-to-crack-down-on-anti-social-behaviour-and-restore-pride-in-communities.pdf):
 - *Increasing the punishment for those who graffiti, litter or fly tip with fines of up to £500 and £1,000– council league tables will be published for fly tipping, and we will work with the Office for Local Government to increase transparency and improve accountability on antisocial behaviour outcomes.*
22. As the Council has already devoted time and resources in tendering and entering into a concessionary agreement (including an income for the Council) it would be premature not to continue with this beneficial agreement for another two years.

Conclusion

23. The employment of a private company has substantially increased the number of environmental offences detected, the number of FPNs issued and prosecutions commenced. This accords with Government policy. High impact enforcement has significantly improved litter and waste being left in Bexhill town centre. The income received by the Council has been used to remove graffiti and waste. There is the option to extend the agreement for another year, to a maximum of three years.

Crime and Disorder

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

Environmental

25. Effective enforcement of environmental offences improves the local environment and reduces the negative impact of unauthorised waste disposal (fly-tipping) on land and water. Income received from FPNs is used to pay for environmental improvements e.g. graffiti removal.

Financial

26. Contained within existing estimates.

Human Rights

27. 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

28. 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

29. As predicted, the Council received negative publicity and criticism for issuing FPNs for littering through discarding cigarette butts and fly-tipping at recycling sites etc. There was an initial high number of complaints. Officers and NES management have adapted the service where possible to minimise negative publicity. Withdrawing the service could also attract a negative response from those residents who want enforcement of environmental offences, particularly dog fouling.

Equalities and Diversity

30. Equality monitoring is undertaken. This shows more men than woman are issued with FPNs. As persons from routine and manual occupations are more likely to smoke cigarettes, it is likely that this group may be issued with more FPNs but no data is collected. FPNs can be issued to persons over the age of criminal responsibility (10 years). NES policy is to only issue FPNs to adults.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	Yes	Equalities and Diversity	Yes
Crime and Disorder	Yes	External Consultation	No
Environmental	Yes	Access to Information	No
Risk Management	Yes	Exempt from publication	No

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Minutes: CB46/06, CB21/88 and CB21/89

Appendix: Appendix A-NES Activity, Past Activity and Expenditure

Background None
Papers:

Reference [Code of practice for litter and refuse: Part 1A - effective enforcement](#)
Documents: [\(publishing.service.gov.uk\)](#)

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2019>

Appendix A

NES Activity 2022/23

	October	November	December	January	February	March	TOTAL
FPNs issued	186	215	182	278	178	229	1268
FPNs cancelled	1	1	19	32	17	29	99
DoC Business	3	6	28	12	5	20	74
DoC-Domestic	0	0	0	0	2	0	2
Fly-tipping Business	3	6	15	10	11	10	55
Fly-tipping-Domestic	7	21	71	49	17	34	199
Littering-black bag-Domestic	0	0	0	0	0	7	7
Littering-black bag-Other	0	0	0	0	0	2	2
Littering-cardboard box	0	0	0	0	0	9	9
Littering-small box	0	0	0	0	0	3	3
Littering-cigar	1	0	0	1	2	2	6
Littering-cigarette butt	149	157	56	149	88	103	702
Littering-coffee cup	0	0	0	0	0	1	1
Littering-other	2	2	0	3	8	2	17
Littering-packaging	0	1	1	6	20	11	39
Littering-printed literature	0	0	0	1	18	2	21
Littering-rolled up cigarette	19	19	10	45	0	15	108
Dog Fouling	2	1	0	2	2	2	9
Dog Exclusion Zone	0	0	1	0	2	3	6
Dogs on leads	0	1	0	0	3	3	7
Issued in Bexhill	63%	73%	59%	81%	89%	83%	75%
Issued to Male	60%	59%	54%	59%	60%	55%	58%
Issued to IC1	87%	85%	59%	82%	86%	84%	81%
Issued to unknown ethnicity	5%	8%	33%	10%	3%	6%	11%
RDC Income received / £	4995	4950	5,754	4767	9009	5760	35235

Fixed Penalty Notices Issued between January 2019 and December 2021

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
TOTAL	7

Expenditure- October to March

	£
Graffiti removal	4865
Waste removal	1600
Bus stop cleaning	1145
Signs	1021
TOTAL	8631