

# Somerset West and Taunton Council

**Executive – 19 January 2022**

## **External Enforcement – Litter**

**This matter is the responsibility of Executive Councillor Sully – Portfolio Holder for Environmental Services**

**Report Author: Vicky Lowman - Specialist (Parking and Enforcement)**

### **1.0 Executive Summary/Purpose of the Report**

- 1.1 To seek approval from the Executive regarding proposed litter enforcement trial operated on behalf of Somerset West and Taunton Council by East Hampshire District Council.
- 1.2 To delegate authority to the Assistant Director – Commercial Services, to enter a contractual arrangement with East Hampshire District Council for the provision of delegated littering enforcement services for an initial 12-month trial period. The contract must include an inter authority deed of delegation between East Hampshire District Council and Somerset and West and Taunton for the enforcement of Littering but separate administration of the scheme for the district to include service of Fixed Penalty Notices (FPNs), recovery of outstanding payments, management of bad debtors, and management of court hearings associated with non-payment.
- 1.3 To delegate authority to the Assistant Director – Commercial Services to make contractual alterations regarding areas covered, number of patrols per week etc to ensure the service is effective during the contracted period.
- 1.4 Approve the expenditure of £5,900 to set up Somerset West and Taunton on East Hampshire Commercial Services Ltd back-office administration system will be funded from an in-year underspend in Commercial Services.
- 1.5 External Operations to report back to committee 12 months into the scheme to ascertain success, and therefore future direction of the contract.

### **2.0 Recommendations**

It is recommended that Executive:

- 2.1 Agrees that Somerset West and Taunton Council enter into an inter-authority agreement with East Hampshire District Council for a 12-month ethical enforcement trial.
- 2.2 Sets the fixed penalty amount to be issued at £100 with a discounted option of £80 if paid within 14 days of the fixed penalty notice being issued.

- 2.3 Delegates authority to the Assistant Director – Commercial Services and S151 Officer in consultation with the Executive member for Environmental Services to make any changes to the arrangement, covered by this report, with East Hampshire District Council for providing a litter enforcement service.
- 2.4 Approves the expenditure of £5,900 in order to set up Somerset West and Taunton on back-office EH Commercial Services Ltd administration system, to be funded from existing budget in 2021/22.
- 2.5 Approves a one-off provision of £60,000 be included within the proposed 2022/23 budget submitted to Full Council on 24 February 2022. This includes a gross income budget of £141,000 and an expenditure budget of £141,000. The one-off provision has been based on a worse case estimate to underwrite the risk of costs not being fully covered by projected income.
- 3.0 **Risk Assessment (if appropriate)**
- 3.1 Failure to comply with the relevant legalisation and carry out required duties may damage the Council's reputation as well as expose it to potential legal action.
- 3.2 Regular assessment of the hazards and risks created during East Hampshire District Council business and our activities undertaken, enabling Emma Matthews, the Partnership Manager to identify significant hazards and plan for their elimination, reduction, and control, with regular reviews of such assessments. Adequate control of the health and safety risks identified are provided, with regular monitoring undertaken, to ensure the effective control. Where hazards exist, these will be brought to the attention of those parties identified as at risk.
- 3.3 The Somerset West and Taunton area is a new enforcement area to East Hampshire District Council, the data and knowledge of the area is limited, the information provided has been applied from experience from other similar authorities.
- 3.4 Recruitment of new local officers to East Hampshire Commercial Services Ltd means it will take time to develop performance. Experience shows initial performance between 3 and 5 fixed penalty notices issued by an enforcement officer per day.
- 3.5 Fixed Penalty Notice payment rates can vary, experience from other authorities show a range of between 72% to 80%. Revenue figures are calculated upon a 72% payment rate.
- 4.0 **Background and Full details of the Report**
- 4.1 In April 2017 Central Government produced a Litter Strategy for England, encouraging action from local authorities and other organisations to improve the environment: using communication campaigns, targeted enforcement, and a review of infrastructure.
- 4.2 Strategies to engage, educate and reward people to reduce, reuse, recycle and remove litter must be reinforced by effective and ethical enforcement. The Litter Strategy for England states that "in order to change behaviour effectively we also need to back up

this social message with appropriate and proportionate enforcement.”. Keep Britain Tidy have also concluded that “as a country, we need a robust mechanism for enforcement. Littering is illegal and antisocial and if people flout the law they should expect to be punished.

- 4.3 Littering consumes considerable council resources in both terms of officers and budget. The aim, therefore, is to undertake various preventative initiatives to change public behaviour through a combination of awareness, education and enforcement to enable these resources to be diverted to deliver other vital services.
- 4.4 As part of The Great British Spring Clean, Somerset West and Taunton encouraged members of the public to get involved and take pride in their neighbourhoods. Throughout April 2021 and May 2021, a staggering three skips were filled with litter collected from residential streets, highway verges and open spaces across the district. A team of three litter pickers visited around 60 open spaces and estates in Taunton, Wellington, and West Somerset. This is on top of the normal work done by the Council’s street cleansing contractor.
- 4.5 Littering is the first sign of social decay; it damages the environment and negatively impacting on residents’ health, sense of safety and wellbeing, and civic pride. Costing the council circa £1million per annum to clean our streets. The down-stream cost of social decay can be reduced by tackling litter at source.
- 4.6 The issuing of fixed penalty notices is a particularly challenging task. Unlike parking, every fixed penalty notice is issued face-to-face, representing a high stakes environment where levels of verbal abuse are high with the occasional risk of physical violence. Office staff processing fixed penalty notices and taking calls face similar levels of verbal abuse. Officers must be well trained and of the right temperament and robust nature to deliver a non-judgmental, ethical service.
- 4.7 Five options for environmental enforcement have been considered:

<b>Option</b>	<b>Description</b>	<b>Conclusion</b>
A	Do nothing	Deemed to be unacceptable.
B	In-house specialist team	The most expensive option.
C	Multi-task existing staff	Experience in other councils, (Havant, East Hampshire, Hart, Arun, Waverley, Adur and Worthing) is that staff preferring to focus on their primary function rather than issue FPNs. With few FPN’s being issued the strategy therefore proves ineffective
D	Alternative Model of Delivery	Create own Local Authority Trading Company to generate scale through partnerships with other authorities, creating financial viability. Requires commercial skills and would take a minimum of 12 months to set up, full business case and investment needed. Risk in acquiring sufficient partners to reduce cost of service.
E	Partnership	Join existing public partnership to acquire skills and experience while minimise costs. East Hampshire

		District Council is established and delivering to 10 partner authorities, most on cost neutral basis. Recommended option.
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- 4.8 The purpose of the company that will be employed by East Hampshire District Council is to create a cleaner, safer environment for communities through public partnerships and ethical enforcement, returning any surplus to the public purse. Almost all the current partner authorities to East Hampshire District Council make a small surplus from the service. Levels of complaints related to officers' behaviours is low, in four years, not a single complaint has been upheld.
- 4.9 Acquisition of the service is quick and simple. Authority to deliver the service is delegated by the Council to East Hampshire District Council under an inter-authority Deed of Delegation. East Hampshire District Council then employ EH Commercial Services Ltd to deliver the service on behalf of Somerset West and Taunton Council. Somerset West and Taunton Council will work directly with EH Commercial Services Ltd in respect to day-to-day operations in line with the inter-authority agreement terms and in order to secure an efficient operating model.
- 4.10 East Hampshire District Council set up a wholly owned company EH Commercial Services Ltd to deliver the service in 2016. This team now delivers ethical enforcement to 10 partner authorities<sup>1</sup>.
- 4.11 The partnership plan aims to balance preventative initiatives that improve awareness, including well-defined and targeted key messages with eye catching publicity material and new infrastructure to targeted enforcement against offenders who litter.
- 4.12 The service provided to Somerset West and Taunton Council will relate to enforcement of littering offences via Fixed Penalty Notices. Two Environmental Enforcement Officers who are employed by EH Commercial Services Ltd with delegated enforcement authorisation will patrol the district 5 days per week on a rota basis.
- 4.13 The service provided by EH Commercial Services Ltd also includes the administration of all tickets, managing representations, the investigation of complaints, body worn camera viewings, the preparation of court packs for the litigation process for the single justice procedure, and attendance and representation at court.
- 4.14 Each enforcement officer will be provided with a body worn camera. The wearing of the cameras will not only protect the safety of the officer it will also provide evidence to support appeals if required. The cameras will protect and provide evidence for the occasions of accidental littering and fixed penalty notices issued to vulnerable adults or individuals under the age of 18 in line with the Equality Impact assessment.
- 4.15 Performance is monitored monthly. The Deed of Delegation is for a 12-month trial period but may be terminated with 3 months' notice. Legally, any surplus made must be spent on littering-based activities such as communications, bins, and litter picks. The agreement

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<sup>1</sup> Partner authorities: Adur & Worthing Councils, Arun District Council, Chichester District Council, East Hampshire District Council, Hart District Council, Havant Borough Council, Rushmoor Borough Council, Salisbury City Council, Southampton City Council

will provide that any surplus is returned to Somerset West and Taunton, which can be deployed locally for such relevant services.

## 5.0 Links to Corporate Strategy

5.1 Priorities within the corporate strategy are our environment and economy, a transparent and customer focused Council, homes and communities, and an enterprising Council. Within the environment and economy framework the Council aim is to provide and maintain green open spaces and parks, enhanced public spaces, as well as additional opportunities to safely walk or cycle in order to encourage active and healthy lifestyles, delivering an enforcement service for littering will assist with upholding this priority.

## 6.0 Finance / Resource Implications

6.1 The core financial relationship will exist between Somerset West and Taunton Council and East Hampshire District Council who will then pay East Hampshire Commercial Services Ltd for services provided. Somerset West and Taunton Council will receive the income from Fixed Penalty Notices. Somerset West and Taunton will be liable for any deficit incurred by East Hampshire District Council and vice versa will receive any surplus under this arrangement.

6.2 The total estimated costs for East Hampshire District Council to deliver this service for a full 12-month period is £141,000. Depending upon the number of fixed penalty notices issued and the payment rate there is a risk the service could cost between £16k and £60k (rounded) per annum. This risk is managed through monthly performance reviews, the use of a 12-month trial, and 3-month notice period. The Council must be satisfied it can afford to underwrite this risk therefore it is recommended to include a net cost contingency of £60k within the 2022/23 Budget, which is subject to approval by Full Council on 24 February 2022.

6.3 The recommended route to procure would be a transfer of responsibility under a single deed of delegation covering both councils and would therefore not require the cost of a full procurement exercise.

6.4 The expenditure of £5,900 is required to set up Somerset West and Taunton Council on the back-office EH Commercial Services Ltd administration system. This system will enable SWTC to view fixed penalty notices issued and monitor the performance of the EH Commercial Services Ltd enforcement officers.

6.5 The aim is for revenue from fixed penalty notices to balance out the expenditure and provide East Hampshire District Council and therefore Somerset West and Taunton a cost neutral service. Experience in similar authority areas provides a prudent planning figure of between 3 to 5 fixed penalties per Environmental Enforcement Officer daily for new officers. As Environmental Enforcement Officers gain experience this may increase to 5 to 7 fixed penalties per Environmental Enforcement Officer daily. It is projected that the service will break even with an average 6 FPNs per officer per day based upon a fixed penalty notice value of £100 and allowing for a majority being reduced to £80 for early payment within 14 days of the issue date. The below table sets out the potential annual revenue and the net service costs which include a £25 admin charge for 4+ fixed

penalty notices based on the fixed penalty notices issued. This income will be used to offset any service costs that are incurred from EH Commercial Services Ltd.

<b>FPN's Issued Per Officer Per Day</b>	<b>Projected Annual Income from FPNs based on a 72% payment rate</b>	<b>Net Service Surplus/cost</b>
0	(£0.00)	£141,000
1	(£27,356)	£113,744
2	(£54,712)	£86,388
3	(£82,069)	£59,031
4	(£109,425)	£31,675
5	(£136,781)	£15,819
6	(£164,137)	(£37)
7	(£191,493)	(£15,893)
8	(£218,850)	(£31,750)
9	(£246,206)	(£47,606)
10	(£273,562)	(£63,462)

6.6 The gross annual expenditure of the model could cost £141,000; however, it is anticipated the majority if not all costs will be offset by income collected. As set out in para 6.2 above it is anticipated a net deficit is unlikely to exceed £60k. Somerset West and Taunton has the facility to limit financial losses at each of the monthly review points where the deed may be terminated giving the 3-month notice period. The operational costs include:

- Environmental Enforcement Officer patrol staff
- Travel
- Processing of fixed penalty notices
- Customer call centre
- Management of representations and complaints
- Preparation of court packs
- Management of Environmental Enforcement Officer and performance
- IT and data management
- Administration including legal notices and reminder letters
- Training and compliance

6.7 An additional charge of £25 per FPN would be made by EH Commercial Services Ltd if the Environmental Enforcement Officers issue on average 4+ fixed penalty notices daily this has been included in the costings above. This is to cover the additional administration and service delivery costs set out below:

- Processing of fixed penalty notices
- Customer call centre
- Management of representations & complaints
- Preparation of court packs
- Management

6.8 The proposal is for a 12-month trial, which provides an opportunity to build experience of the financial model as well as operational delivery. The proposed contingency budget

is for one year only in 2022/23 reflecting the trial period. It is assumed for budget purposes that any extension of the trial or service beyond the trial will either be under a proven cost neutral basis or need a further budget allocation in 2023/24 and be subject to the future Somerset unitary Council's budget and service prioritisation process.

## **7.0 Legal Implications**

- 7.1 Under the litter enforcement trial, the following enforcement functions will be delegated to EH Commercial Services the offence for a person to drop, throw, leave or deposit litter in a public place (s87 & s88 of the Environmental Protection Act 1990)
- 7.2 Authority to deliver the service will be delegated by Somerset West and Taunton to East Hampshire District Council under an inter-authority Deed of Delegation. The Deed is for a 12-month trial and has a 3-month exit clause for both parties.
- 7.3 The deed of delegation is applied under the terms of Section 101 of the Local Government Act 1972 and section 9AE Local Government act 2000 together with regulation 5 of the Local Authorities (Arrangements for the Discharge of Functions) Regulations 2012. These respective Acts and Regulations allow a Local Authority to arrange for the discharge of certain functions to another Local Authority. An Inter Authority Deed of Delegation between Somerset and West Taunton and East Hampshire District Council will be drawn up and signed by both parties.
- 7.4 Littering is a criminal offence with a summary conviction and Level 4 offence fine, currently a maximum of £2,500. Alternatively, as a 'principle littering authority' under the Environmental Enforcement Act 1990 the council may offer offenders and opportunity to discharge their legal liability via a Fixed Penalty Notices. Legislation allows the council to set the level of the fixed penalty notices between £65 and £150, the default is £100.

## **8.0 Climate and Sustainability Implications**

- 8.1 Litter in the streets and parks can clog stormwater drains which result in flooding after heavy rain. Litter and debris are thrown, blown, or washed into rivers, canals and the sea, where it finds its way into the food chain. Litter, in particular plastic, is harming our aquatic ecosystems and blights coastal communities and tourism. Litter is consumed by aquatic animals, damaging their health or they become entangled in it. Litter can smother habitats, resulting in pieces declining or disappearing.<sup>2</sup>
- 8.2 Somerset West and Taunton is a Principal Litter Authority and has a duty to keep relevant land in the open air, to which the public have access, clear of litter and debris (as per the Environmental Protection Act 1990). We are committed to protecting and improving the natural environment in order to safeguard the enormous range of valuable benefits it provides to us all, from clean air and water through to our diverse wildlife, beautiful landscapes, and urban green spaces.

## **9.0 Safeguarding and/or Community Safety Implications**

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<sup>2</sup> Link to Ecological Emergency <https://www.somersetwestandtaunton.gov.uk/news/swt-declares-ecological-emergency/>

9.1 Body worn videos are used by officers to protect the public and the officers. Fixed penalty notices will not be issued to vulnerable adults or individuals under the age of 18. Offenders may make a representation with regard to a fixed penalty notice and where suitable evidence is provided, the fixed penalty notices will be cancelled. Enforcement Officers may attend the Council's safeguarding training.

## 10.0 **Equality and Diversity Implications**

10.1 An EIA (Equality Impact Assessment) has been completed as part of this report appendix A.

10.2 East Hampshire Commercial Services are a wholly owned Local Authority Trading Company and therefore comply with the Public Sector Equality Duty and Equality Act.

## 11.0 **Social Value Implications**

11.1 Social value sits at the core of this service. Littering is the first sign of social decay, it damages the environment and negatively impacts on residents' health, sense of safety and wellbeing, and civic pride. By tackling litter at source this service aims to reduce down-stream costs, financial, social, and environmental.

## 12.0 **Partnership Implications**

12.1 Authority to deliver the service is delegated by the Council to East Hampshire District Council under a Deed of Delegation. East Hampshire District Council then employ EH Commercial Services Ltd to deliver the service on behalf of Somerset West and Taunton Council. Somerset West and Taunton Council will work directly with EH Commercial Services Ltd in respect to day-to-day operations.

## 13.0 **Health and Wellbeing Implications**

There are no health and wellbeing implications for the Council.

## 14.0 **Asset Management Implications**

There are no asset management implications for the Council.

## 15.0 **Data Protection Implications**

15.1 Data protection is covered in detail within the Deed of Delegation. Both Parties agree that they will duly observe and co-operate with each other to ensure the observance of all their obligations under Data Protection legislation which arise in connection with the Deed of Delegation. Both Parties for the purpose of the Deed of Delegation are data controllers and data processors.

## 16.0 **Consultation Implications (if any)**

There are no consultation implications for the Council.

## 17.0 **Scrutiny Recommendation(s)/Comments**

- Scrutiny voted to support the 1 year trial
- Safeguarding training should be mandatory for officers
- Councillors to be given a plan of the areas which will be subject to enforcement.

**Democratic Path:**

- **Informal executive – 7 December 2021**
- **Community Scrutiny Committee – Yes – 6 January 2022**
- **Executive – Yes – 19 January 2022**

**Reporting Frequency: Once only**

**List of Appendices (background papers to the report)**

Appendix A	EIA Assessment
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