

Subject:	Environmental Enforcement		
Date of Meeting:	27 November 2018		
Report of:	Executive Director: Economy, Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report presents a proposed Environmental Enforcement Framework (in Appendix 1) which has been designed to address anti-social and illegal behaviour to improve the environment and minimise waste clean-up and disposal costs within Brighton & Hove. Members are asked to approve this Framework to set the parameters within which the service will operate.
- 1.2 Environmental Enforcement is currently carried out by the council through a contracted service known as 3GS. This service is operated at no cost to the council. A proportion of the income generated from fines is paid to the council. The law requires that income from fixed penalty notices is used for related environmental initiatives and cannot be used to generate income.
- 1.3 The report also presents the outcomes of an options appraisal which considered how the service should be managed in the future.

2. RECOMMENDATIONS:

- 2.1 That the Committee agrees that the environmental enforcement service will be delivered in house from the end of the current contract period.
- 2.2 That the Committee notes that the full and final cost of bringing the service in house cannot be determined until due diligence has been completed under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') and notes that if the costs significantly exceeds the projections outlined in this report, a further report will be brought back to committee.
- 2.3 That the Committee notes that the council's current environmental enforcement contract may need to be extended for a period of up to six months to allow time for the TUPE process and for new ICT systems to be put in place
- 2.4 That the Committee grants delegated authority to the Executive Director Economy, Environment & Culture to extend the existing contract if required, negotiate the terms of that extension and determine the date of the service transfer to the council provided that this date shall not be any later than the 1 September 2019. .

- 2.5 That the Committee approves the Environmental Enforcement Framework which sets out how the service will be delivered from the commencement of the new in house service.
- 2.6 That the Committee notes that future changes to the Environmental Enforcement Framework will be brought back to Committee for approval.

3. CONTEXT / BACKGROUND INFORMATION

- 3.1 Fly-tipping, littering, fly-posting, uncontrolled distribution of leaflets, graffiti, poor containment of trade waste and illegal disposal of commercial waste in communal bins are offences which can have a significant visual impact on the city. They also have a cost implication where Brighton & Hove City Council has to pick up clean up and disposal costs. Minimising these issues requires a strategy of education, engagement and enforcement to make people aware of their responsibilities and where appropriate take enforcement action through the issuing of Fixed Penalty Notices (FPNs) or prosecution.
- 3.2 The purpose of the environmental enforcement service, currently delivered by 3GS, is to:
 - o enforce certain environmental legislation
 - o improve the cleanliness of the city
 - o issue FPNs in the city for the offences detailed in section 5 of the Framework in Appendix 1
 - o enable the council to be more responsive to trade waste offences and to incidents of fly-tipping
 - o encourage behavioural change to reduce environmental crimes
 - o minimise waste clean-up and disposal costs
- 3.3 At Environment, Transport & Sustainability Committee on 13 October 2015, the Committee agreed to procure a concession contract for enforcement activity in Brighton & Hove. This three-year contract was awarded to 3GS and started on 1 February 2016. The contract was agreed at no cost to BHCC with 3GS retaining the majority of the income raised through FPNs, with a proportion of the income paid to BHCC. At ET&S Committee on 11 October 2016, Committee was presented with an update on the procurement and implementation of the contract for waste and litter enforcement.

Current performance

- 3.4 There are a number of performance indicators that can be used to measure the effectiveness of the environmental enforcement service and how it meets its objectives.

	2015/16	2016/17	2017/18
% of people who strongly agree or tend to agree that the council is good at keeping your street clean	71.80	67.20	74.60
% of streets inspected which are found to have widespread or heavy levels of Detritus	5.60	5.00	3.80
% of streets inspected which are found to have	7.30	5.40	4.40

widespread or heavy levels of Fly Posting			
% of streets inspected which are found to have widespread or heavy levels of Graffiti	3.50	3.50	9.80
% of streets inspected which are found to have widespread or heavy levels of litter	4.60	4.10	4.30
Number of reported incidents of fly-tipping per 1,000 households	5.50	3.70	3.67
Littering prosecution cases			
Guilty	3	1	58
Not guilty	0	0	1
Withdrawn	4	0	9
Cautioned	1	0	3

- 3.5 Five out of the six performance indicators have seen an improvement in performance since the current environmental enforcement contract started in February 2016. Before this, there was little resource and expertise in this field and the service was unable to respond to the many requests for enforcement activity around the city. The data demonstrates that having an environmental enforcement service does make an impact on the appearance on the city.
- 3.6 The significant increase in the number of prosecutions in 2017/18 reflects the lack of an environmental enforcement service in the preceding years. BHCC was unable to take any legal action because the resource and evidence was not available.
- 3.7 Appendix 2 provides a heat map of the locations of FPNs issued during 2017/18. The map shows a concentration of fines issued in the city centre. There are higher densities of people living, working and visiting the city centre which may account for this to some degree. However, there may be incidents of fly tipping and poor waste management in the residential areas of the city which are not being addressed through environmental enforcement as frequently as they could be.

Income

- 3.8 The number of FPNs issued over the last three years is:

	2015/16	2016/17	2017/18
FPNs issued	128	2810	4292
FPNs paid	98	1910	3080
BHCC revenue	£9,260	£60,226	£122,643

- 3.9 Income received from FPNs is used for specific environmental purposes. Over the last couple of years this has included:
- #StreetsAhead anti-littering campaign in partnership with environmental charity Hubbub which has deployed ballot-style voting boxes across the city for people to dispose of cigarette butts; colourful vinyl posters on the council's Big Belly bins; artwork around street drains to remind people not to drop their litter there; posters in shops of the businesses supporting the

campaign; and a special art display in New Road of a fish made from waste dumped on the beach.

- Anti-dog fouling “we’re watching you” campaign and promotional materials including posters with luminous eyes which shine in the dark and designed to act as a deterrent to dog owners reminding them to clean up after their pets.
- Silent disco beach cleans to prevent waste being washed into the sea and endangering marine life.
- Community composting for local residents to use and compost their fruit and vegetable peelings.
- Special BBQ bins to dispose safely of BBQs.

The future environmental enforcement service – Environmental Enforcement Framework

- 3.10 The Environment Enforcement Framework at Appendix 1 has been developed to address anti-social and illegal behaviour to improve the environment and minimise waste clean-up and disposal costs. The Framework sets out the standards that will be applied when issuing FPNs for environmental offences and what residents, businesses and visitors can expect from Brighton & Hove City Council.
- 3.11 The Framework has been developed following feedback from a number of stakeholders who state the current approach is not clear or fair. The Framework sets out how the council will take a fair and proportionate approach to issuing fines for environmental offences to ensure that those spoiling the environment for others are made accountable for their actions. It states:
- The circumstances within which a FPN will and will not be issued
 - The FPN fine amounts for each environmental offence
 - The environmental offences for which a resident, visitor or business will be issued with an FPN
 - How offenders can dispute the issuing of a FPN
- 3.12 There are some key changes to current practice within the Environment Enforcement Framework:
- An early payment reduction will be introduced for littering fines. If the FPN is paid within 10 days, the fine reduces from £75 to £55. There are no early payment discounts for other offences because Brighton & Hove City Council is taking a hard stance on these offences with the penalty set accordingly.
 - The Framework makes a clear distinction between intentional and accidental littering. This is to make it clear the circumstances in which a fine will be issued. Intentional littering includes, as an example, when litter is dropped and the offender walks away, including the discarding of cigarettes. Accidental littering includes, for example, when something falls out of someone’s pocket.
 - The Framework provides clarity on how the council will manage FPN disputes.
- 3.13 The Framework makes it clear when a fine will be issued, as per the DEFRA guidelines. While not wanting to discourage a reduce, reuse, recycle approach, methods adopted in the city whereby unwanted goods are left on the pavement

or street on the assumption that someone will pick it up have a significant cost to the council, as well as affecting the environment and its appearance. Therefore, fly-tipping FPNs will be issued for:

- Putting items, including furniture, electrical items and appliances on the public highway and on the pavement for others to pick up and reuse.
- Putting items including furniture, electrical items and appliances by communal refuse or recycling bins, wheelie bins, refuse areas, bring sites or litter bins. If a bin is full, items should be taken to the next nearest bin or taken home until there is capacity in a bin.

- 3.14 The Environmental Enforcement Framework will be regularly reviewed and any proposed changes reported to the Committee for approval. This will include, for example, the outcomes of the consultation on the introduction of an enforcement policy requiring private property owners to remove graffiti within a prescribed amount of time or risk being fined, as proposed in the Graffiti Reduction Strategy on this committee agenda.

The future environmental enforcement service – delivery

- 3.15 The environmental enforcement service is currently delivered by 3GS. The contract started on 1 February 2016 and expires in February 2019. An options appraisal has been completed to identify the best way forward to deliver an environmental enforcement service across Brighton & Hove from March 2019. The options considered were:
- Extend the 3GS contract for up to 12 months
 - Re-procure a new environmental enforcement contract
 - Bring the service in-house
 - Do nothing
- 3.16 The options appraisal identified that the preferred option to meet the environmental enforcement objectives as detailed in section 3.2, is to bring the service in-house to be managed within City Environment. However, because of the time required to plan and implement effectively, the current contract may need to be extended for a period of up to six months from February 2019 to allow for the service to be implemented effectively and for TUPE requirements to be met.
- 3.17 While 3GS are content to extend the contract, they have stated that they would be reluctant to do so on the current terms. Instead, it would be on the basis that 3GS retain all funds generated from the issuing of FPNs. The financial impact of this has been included in the financial modelling. Under the terms of the contract the council could require 3GS to extend the contract on the current terms provided that the council serves notice 3 months before the end of the current term (i.e. by the end of November). This option is not recommended as this would force 3GS to engage in a commercially unattractive contract and it may skew behaviour for the extended period of the contract.
- 3.18 The early payment discount proposed in the Environmental Enforcement Framework will not be applied until the service has been brought in-house. During the period of the contract extension, the existing arrangements apply and all offences still apply and residents, businesses and visitors can expect to receive a FPN if an offence is committed.

- 3.19 Benefits of bringing the service in-house include:
- Improved influence over the service and officer deployment to target particular areas in the city, including a more even spread
 - An improved approach to prevention as a greater focus on fly-tipping across the city is likely to act as a deterrent, reducing the costs of removing fly-tips
 - The appearance and cleanliness of the city driving the service, rather than income
 - All monies generated by the fines will be for the council to use
 - Environmental Enforcement Officers will be more accountable
 - Better link up between environmental enforcement and the operational objectives of City Environment
 - More consistent responses to MPs, Members and complainants
 - Improved resident satisfaction with their neighbourhood
 - Improved oversight of the cases referred to prosecution

3.20 The modelling used in the options appraisal identified a net revenue income of the service over four years:

	Year 1 ¹	Year 2	Year 3	Year 4	Total
Revenue expenditure	£296,428	£298,230	£310,730	£309,230	£1,214,618
Income	£311,244	£311,244	£311,244	£311,244	£1,244,976
Net Income for environmental initiatives	£14,816	£13,014	£514	£2,014	£30,358

- 3.21 A number of assumptions have been made within the model:
- It has been assumed that the in house service will commence from the end of the current contract period which is 28th February 2019.
 - It has been assumed the number of FPNS paid each year will be the same as 2017/18 (the last full year of data available)
 - It has been assumed that a further 20% of FPNs will be paid in 2019/20, due to the early payment discount
 - It has been assumed that 70% of FPNs will be paid within 10 days as offenders are attracted by the early payment discount
 - It has been assumed that while wages will incrementally increase whilst the FPN charge will remain the same. All costs and income are shown as uninflated. Year 3 includes additional costs for refresh training.

3.22 It is anticipated the level of FPNs issued will decrease, along with the overall income generated. Currently, the contractor retains the majority of income raised through FPNs, with a proportion of this income is paid to the council. Within this model, 100% of the income will remain with the council so income generated will be higher than what is currently received. However this income will be required to support the running costs of the service.

¹ Year 1 is the 12 months operational costs from the 1st April 2019/20 financial year. This excludes the costs for the 1 month of March 2019 which is projected to break even..

- 3.23 The capital cost of setting up this service, is estimated at £17,530, and will be funded by the environmental enforcement income reserve. Set up costs will include procurement of new ICT and mobile phone equipment.
- 3.24 From year two onwards income from environmental enforcement is forecast to be achieved. However this income is significantly lower than current levels from environmental enforcement which in 2017/18 was £122,643. This income is ring-fenced to be used for environmental initiatives as detailed in this report. Options for increasing revenue income through environmental enforcement in future years are being explored and include the potential licensing of commercial bins on the highway. This will not only support the Environmental Enforcement Service, but also reduce trade waste containers on the streets to make a cleaner, greener city. If this option is agreed, it will be added to the Environmental Enforcement Framework. Increased enforcement activity associated with the Graffiti Reduction Strategy is also likely to increase enforcement income, if approved. Further to this the new approach to environmental enforcement taking a more strategic city wide approach and a greater focus on tackling fly-tipping, over time, should lead to a reduction in fly tipping and the associated costs of removal and disposal.
- 3.25 In the event that the existing contract were extended for a period of time the income in year one would decrease as, if agreed on the terms preferred by 3GS, there would be a period of nil income to the council. It is projected that should the contract be extended for a period of 6 months on the revised terms proposed by the current contractor the council would forego a share of the income of circa £60,000 to £75,000 at current levels..
- 3.26 There are a number of risks to bringing the service in-house which City Environment will manage carefully as the planning and implementation takes place. Risks identified to date include:
- The financial assumptions are not sound and the income generated from FPNs is not as expected, or costs are more than anticipated
 - Funds will not be available to support additional projects, such as those listed within 3.7

The future environmental enforcement service – communication and engagement

- 3.27 The council recognises that there is more work to do when communicating on environmental enforcement. The publication of the Environmental Enforcement Framework is the first step in this.
- 3.28 As work is completed to bring the service in-house, educational, engagement and communication activities will be planned to ensure residents, businesses and visitors are aware of their responsibilities regarding environmental enforcement and the implications of what may happen if they are found to be committing an offence.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 As detailed in section 3 above, the other options considered and disregarded were:

Option	Reason it was not pursued
Extend the 3GS contract for up to 12 months	The preference is to bring the service in-house. . The current contract does allow an extension of up to 12 months on the current terms but 3GS are reluctant to do this and have stated that they would want to vary the terms to provide the service on a cost neutral basis only. This would mean the council would not be able to generate income for environmental initiatives.
Re-procure a new environmental enforcement contract	A private contractor is unlikely to view the new model within the Environmental Enforcement Framework as a viable financial option. Therefore, there is unlikely to be interest from external providers if a new contract was re-procured. Furthermore, the contract would be drive by revenue from fines, rather than the wider benefits an environmental enforcement service can bring to the whole city. There is a very small market for this service and given the feedback in 4.2 below, it is very unlikely a contractor will be available.
Do nothing	Experience has shown that littering and fly-tipping increases when there is no environmental enforcement service and so this option has not been recommended.

- 4.2 3GS was acquired by the Red Snapper Group (RSG) in April 2018. The RSG completed a root and branch review of the enforcement service structure across the UK and concluded there are inherent contradictions within many of the legacy contracts. These legacy contracts guaranteed cost neutrality and promised proportionate and compassionate enforcement action on the ground, whilst delivering an income to the customer. The RSG believe this is not a model that can be delivered in practice. Consequently, as the market does not have a provider that can deliver a proportionate environmental enforcement service, alongside an income for the council, the service should be managed in-house.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Internal BHCC stakeholders have been consulted on the development of the Framework. The Framework complements the Highways Policy and the Delegated Powers assigned to Field Officers, which both deal with other areas of environmental enforcement.
- 5.2 The Framework has been developed using feedback from Member and MP enquiries and complaints relating to the existing service.
- 5.3 If approved, the campaign detailed in 3.21 will engage with communities. Furthermore, the Framework will be regularly reviewed to take into account stakeholder feedback.

6. CONCLUSION

- 6.1 Brighton & Hove needs an environmental enforcement service to deliver the objectives detailed in 3.2. This will be achieved through the adoption of the Environmental Enforcement Framework and bringing the service in-house from September 2018.
- 5.4 The Framework will achieve this by setting out the standards that will be applied when issuing FPNs for environmental offences and what residents, businesses and visitors can expect from Brighton & Hove City Council. It will help the council address anti-social and illegal behaviour to improve the environment and minimise waste clean-up and disposal costs. Managing the service in-house will result in the additional benefits listed in 3.16.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The net revenue cost of bringing the service in house is estimated to generate a small in year surplus. The cost of the service will be covered from income generated through FPN and the levels of FPN's are based on similar figures to those paid in 2017/18. The cost of the service includes staffing costs plus associated running and operational costs including ICT, training, uniforms and vehicle operating costs. The staff numbers are based on the current level of numbers plus administrative support.
- 7.2 The service is projected to generate a small annual surplus which will support both operational costs and support other specific environmental services. In the event that income levels are lower than projected the service may be operating at a deficit and will impact on the Council's revenue budget. Income levels will be monitored and reported through the Council's Targeted Budget Monitoring process and reported to Policy, Resources and Growth Committee.
- 7.3 The final cost of bringing the service in house is still to be determined and is dependent upon the due diligence process being completed under the TUPE regulations. In the event that costs significantly exceed the projections reported above a further report will be brought back to this committee to consider the financial implications upon the service.
- 7.4 The Fixed Penalty Notice fines are detailed in the Environmental Enforcement Framework (Appendix 1) and includes an incentivised early payment discount for littering fines. The reduction is from £75 to £55 in the event the fine is paid within 10 days.
- 7.5 Surplus income from Fixed Penalty Notices is currently ringfenced to support specific environmental purposes as detailed in the report and this will continue under the proposed new in house service. Any unspent income in year will be allocated to a reserve set aside for future environment purposes. This was approved at Policy, Resources and Growth Committee on 14th June 2018.
- 7.6 The council received income of circa £122,000 which supported reinvestment in bins, education and communication as required by legislation. The list of

investment supported is detailed in paragraph 3.9. The income that the council will receive from the in-house service is projected to be lower than that received in 2017/18 which will mean that there will be less opportunity to reinvest in similar projects.

- 7.7 The cost of capital investment to support the setup of the in house service will be met from the balance held within the reserve plus a small contribution from in the current year's income stream. The capital investment will include the provision of ICT and mobile phone equipment.
- 7.8 The cost of Fixed Penalty Notices will be reviewed annually to ensure that the cost of the service is able to meet inflationary rises and other costs of operating the enforcement service. Any changes to the Penalty Charge Notice will be reported back to this Committee.
- 7.9 Should the contract be extended for a six month period there will be no further costs to the council, however, the council may forego a share of the income of circa £60,000 to £75,000 (based on current income levels) if the terms of the contract are revised so that the operator retains all income..

Finance Officer Consulted: Rob Allen

Date: 15/11/18

Legal Implications:

- 7.10 The council has the power under various pieces of primary legislation issue fixed penalties. The income from those fixed penalties can only be used in relation to the councils "qualifying functions". For example fixed penalty income from litter, graffiti, dog control, fly-posting, and unauthorised distribution of free printed material in a designated area can be spent on: functions relating to litter, dog control, graffiti and flyposting. Defra has consulted on stronger guidance to enforcement authorities and the results of that consultation are pending. It is anticipated that the guidance will make it clear that fixed penalties should only be issued when it is in the public interest and proportionate to do so.
- 7.11 The council has the ability to extend the concession contract with 3GS by a further period of up to one year provided it serves notice by the end of November.
- 7.12 Equipment and IT which the council needs to deliver the service will need to be procured in accordance with the council's Contract Standing Orders and in compliance with the European Public Procurement regime.
- 7.13 Enforcement officers currently wear camera devices whilst carrying out their duties and the council will need to ensure that when it takes over the service that this continues to be carried out lawfully and in compliance with the council's policies.
- 7.14 There will be a transfer as defined within the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE'). The Council's proposal to undertake enforcement services for environmental offences relating to commercial waste and littering instead of re-tendering the contract is a change in service provision and is therefore a legal transfer.

- 7.15 Currently there are eight staff employed by 3GS who have been identified as being assigned to undertake enforcement services on behalf of the Council. They will transfer to the Council's employment on the date of transfer, 1 September 2019. The Council will need to determine the entitlements of each employee both financially and in terms of their employment rights. For example, whether any of the employees are entitled to enhanced redundancy pay; private health insurance; or an extended notice period. The information relating to this will partially inform the employment costs for those staff transferring as well as the value of the service to be insourced.
- 7.16 Although TUPE prevents changes to terms and conditions of those transferring, it will be necessary to assess the extent to which variation or harmonisation of contractual terms may have to be considered following the transfer. Therefore it is important to obtain all personnel information for each employee affected by the transfer to ascertain whether the Council are able to vary the contract of employment and which terms they are able to vary. 3GS are required to provide this information in accordance with the terms of the Concession Agreement as well as the TUPE regulations. Again this will assist with informing the potential costs of insourcing this service.

The Council will require sight of the contract details for those staff transferring as it will need to consider whether there are any potential equal pay claims. If there are any issues in this regard, this would be a reason why the Council may seek to amend terms and conditions of employment. Again, there would be costs associated if there is a discrepancy between terms and conditions enjoyed by the Council's existing staff, to achieve harmonisation and not act contrary to the provisions of the Equality Act 2010.

- 7.17 The Council will undertake due diligence in relation to this transfer as well as obtain all the relevant staffing information as provided for within the TUPE regulations and the Concession Agreement entered into with 3GS. This legal advice may change dependant on the information received in relation to those employees of 3GS who are due to transfer to the Council.

Lawyer Consulted: Carol Haynes

Date: 08/11/18

Equalities Implications:

- 7.18 Two equality impact assessments will be completed:
- one with regards to the transfer of staff to ensure no staff are adversely impacted as the service is brought in-house
 - one with regards bringing the service in-house to ensure individuals with protected characteristics are not unfairly affected by the change to the service
- 7.19 The Equalities Team were consulted during the development of the Environmental Enforcement Framework and confirmed an EIA was not required for the Framework.

Sustainability Implications:

- 7.20 Environmental enforcement activity improves the environment by reducing littering, dog fouling fly-tipping, graffiti, fly-posting and littering associated with flyers. The performance indicators in section 3.6 demonstrate the impact environment enforcement services have on the environment.

Crime & Disorder Implications:

- 7.21 Environmental enforcement addresses illegal and anti-social behaviour and has a beneficial impact on crime and disorder.

Corporate / Citywide Implications

- 7.22 Environmental enforcement activities will make the city a more attractive place for residents and businesses and support the visitor economy.

SUPPORTING DOCUMENTATION

Appendices:

1. Environmental Enforcement Framework
2. Map showing the distribution of fines across the city

Documents in Members' Rooms

1. None

Background Documents

1. Cityclean Service Plan and Priorities Report to Policy & Resources Committee on 9 July 2015
2. Business Case and Proposals for Increased Waste Enforcement Activity Report to Environment, Transport & Sustainability Committee on 13 October 2015
3. Update on Waste & Litter Enforcement Report to Environment, Transport & Sustainability Committee on 11 October 2016