

Decision Maker: Environment Portfolio Holder

**For pre-decision scrutiny by the Environment PDS
Committee on**

Date: 17 April 2012

Decision Type: Non-Urgent Executive Non-Key

Title: PROPOSAL FOR PROVISION OF ENFORCEMENT SERVICES

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Chief Officer: Nigel Davies, Director of Environmental Services

Ward: All

1. Reason for report

This report advises on the proposal for an external agency to provide an enforcement service for serving fixed penalty notices (FPNs) for offences related to littering and dog fouling.

2. **RECOMMENDATIONS**

- 2.1 To note the proposal offered by an external agency for the provision of certain enforcement services.
- 2.2 To waive the requirement for competitive tendering under CPR 13.1 and agree to enter into a six-month trial period with XFOR for the issuing of FPNs, starting 1 June 2012, to determine the suitability and effects of the services being offered.
- 2.3 To remove the early payment discount presently offered to those issued with FPNs to make the proposed service more financially viable.

Corporate Policy

1. Policy Status: New policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: Estimated cost net nil
 2. Ongoing costs: Non-recurring cost.
 3. Budget head/performance centre: Streetscene and Greenspace
 4. Total current budget for this head: £29.8m
 5. Source of funding: Existing revenue budget 2012/13
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Staff

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Non-statutory - Government guidance.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents and visitors
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 On 6 April 2006, powers under the Clean Neighbourhoods and Environment Act 2005 came into effect, allowing the serving of FPNs for litter, waste and various other offences. At the meeting of the Environment and Leisure Portfolio Holder on 27 June 2006 (Report No. ELS06163), the Portfolio Holder approved the introduction of FPNs for dealing with all the offences outlined in the aforementioned legislation.
- 3.2 At the meeting of the Environment & Leisure Portfolio Holder on 8 March 2007 (Report No. ELS07031), the Portfolio Holder approved the adoption of the standard London-wide template for FPNs, as agreed through London Councils, which included the levels of fine, the discount amount and the early payment period. The Portfolio Holder also noted the protocol for issuing FPNs to juveniles.
- 3.3 Since April 2007 the Metropolitan Police, through their PCSOs, have been operating in partnership with Council officers to serve FPNs. In the last year 40 FPNs have been served for littering offences with 5 of these being served by PCSOs. The present level of fine is £80, payable within 14 days and reduced to £50 if paid within 10 days.
- 3.4 The Council has received a proposal from XFOR Local Authority Support Ltd., (XFOR), to provide an enforcement service for the serving of FPNs to offenders who drop litter or allow their dogs to defecate in public places. The uniformed enforcement officers would also be able to advise and educate the public in relation to environmental awareness.
- 3.5 XFOR currently provide a similar service for Enfield Council. The service started in February 2009 with a two-year trial period. A tendering process then followed and only XFOR tendered for the contract as there were no other similar providers. Enfield Council has informed us of the following:-
- i) XFOR currently issue around 4,700 FPNs annually, with very little seasonal variation and 99% of these are for cigarette litter.
 - ii) There is a 60% payment rate with around 60 prosecution cases prepared each month for non-payment of FPNs. If proved successful, the Court fine goes to the Crown, but the £100 costs normally imposed contribute towards the legal costs.
 - iii) The issuing officers have body worn video cameras that record the interaction between the officer and the alleged offender. This not only provides good evidence of the interaction, but also monitors the issuing of FPNs thus avoiding spurious claims of the number of FPNs issued by the contractor.
 - iv) FPNs are not issued to persons under 18 years of age nor to those who may be suffering from a mental disorder. In cases where the person is under age, their details are obtained so that a letter can be sent to their parents or guardian advising of the offence.
 - v) The level of fine is £80 and there is no reduction for early payment.
 - vi) XFOR provide the Enforcement Officers and Administration staff with a supervisor. They will provide the administration and processing of all FPNs. The compilation of prosecution files, reports on all complaints and enquiries from members of the public.
 - vii) The Council is expected to provide; the FPNs, serially numbered Pocket Books, staff facilities at the Council's offices, provision of suitable computing and office equipment for performing administrative duties.

viii) Enfield Council has estimated that management of the contract requires 5% of a full time equivalent Head of Service. This would be in addition to any other services, such as those provided by Legal, Finance, IT and administration of contract monitoring.

3.6 As stated in 3.5(v) above, Enfield Council do not offer the discount for early payment. Our existing policy on FPNs for litter and dog fouling offences has a provision for discounting the fine for early payment as recommended by London Councils. If we were to adopt the Enfield Council model then our policy would need to be amended to remove the early payment discount option.

3.7 Subject to Portfolio Holder approval, XFOR will submit a more formal proposal and draft Service Level Agreement. A trial period of 6 months is proposed, starting 1 June 2012, to enable both parties to determine the effects and suitability of the service. XFOR would provide one team leader and four patrolling enforcement officers operating for 40 hours per week, Monday to Saturday between 8.00am and 6.00pm, with any other days, hours or special projects by agreement. XFOR's fees for providing this service would be £45 + VAT for each FPN issued.

4. POLICY IMPLICATIONS

4.1 To contribute towards a quality environment for Building a Better Bromley and maintain street cleanliness. It is hoped this proposal will provide support to existing Council resources in bringing about an improvement to the borough's street scene through a reduction in the amount of litter on the street.

5. FINANCIAL IMPLICATIONS

5.1 As no other data is available from other Boroughs, an assumption has been made that the same level of FPNs would be issued in Bromley as in Enfield and therefore a total of up to 2,350 FPNs could be issued during the 6 month trial period.

5.2 It is recommended that like Enfield, the level of fine is £80 with no reduction for early payment as the scheme would not breakeven if the discounted rate was available. The deficit could be up to £60k if the discounted rate was continued which would not make the trial scheme a viable option.

5.3 The table below sets out the estimated costs and income based on information supplied by Enfield as mentioned in 3.5 above:-

	£'000
Cost of XFOR (£45 x 2,350)	106
Cost of printing, stationery & postage	7
Total estimated costs	<u>113</u>
Expected income (£80 x 2,350 x 60%)	(113)
Estimated net cost of trial scheme	<u><u>0</u></u>

5.4 There is a risk to the Council that if the 60% recovery rate is not be achieved, there will be a cost to the Council that will be to be funded from the Es Portfolio budget.

5.5 XFOR would refund any monies where a FPN has not been paid as a result of incorrect data supplied by them or if the FPN was served incorrectly.

- 5.6 There will be a requirement for printing of additional FPN pads, pocket books, stationery and postage costs as well as associated costs for publicity of the new service and publishing of Public Notices. There will be a requirement to facilitate the contractor with computing equipment and a work space within the Civic centre. It is anticipated that this cost will be in the region of £7k and will be funded from the estimated income generated.
- 5.7 At this moment in time, it is not known what level of legal support will be available for pursuing outstanding FPNs and whether costs will be fully recovered through successful prosecution.

6. LEGAL IMPLICATIONS

- 6.1 The FPN process operates in accordance with the requirements of The Clean Neighbourhoods and Environment Act 2005. This legislation also enables the Council to enter into an agreement with a contractor for its employees to serve FPNs. The contractor's employees must be individually authorised in writing by the Council to issue FPNs on its behalf.
- 6.2 The estimated income to the contractor XFOR would be over £100K and, as such, the Council would normally expect to get competitive tenders to ensure VFM. Anecdotal evidence suggests there are few if any other private sector providers for this sort of service. Under CPR 13.1 with the support of the Director of Resources and the Finance Director, the Portfolio holder may agree to waive this requirement. In light of the limited trial nature of the service, the information of the effectiveness of XFOR received from LB Enfield and the limited market it is considered reasonable to accept their proposal solely for a 6 month trial.
- 6.3 Whilst an external contractor can effectively decide what level of enforcement it provides, and hence the income it derives, Members will note the marginal financial benefit. The service must therefore be judged on its environmental and social benefits. It should be noted that the current discounted rate option will need to be removed if the service, even on the most optimistic analysis, is to break even. Members will be aware of discounted rates which are offered to motorists who receive Parking Notices and will need to determine whether a different approach is justified with the range of offences subject to FPNs.
- 6.4 It is estimated that some 60% of individuals receiving FPNs pay. This means some 40% in respect of which the Council will have to pay the £45 charge to XFOR will need to be pursued through the courts. At the present time any fine which is issued supplants the FPN and is payable to the Court. The only financial redress which the Council receives would be costs. These may or may not cover the actual costs of preparing the case and attending court and, of course, in some cases defendants do not pay the costs. Whilst the principle purpose of a prosecution is its deterrent effect, the resources of the legal team are limited and the number of cases which may be pursued will need to be limited and prioritised alongside other prosecution work.
- 6.5 Dependent upon the success of the trial the Council may seek to extend the agreement with XFOR on the currently proposed terms or seek to renegotiate those, market the service more widely or consider the use of neighbourhood officers as in other Councils.

7. PERSONNEL IMPLICATIONS

- 7.1 There will be a requirement to manage the agreement with XFOR, which will have an impact on existing services. At this stage it is difficult to gauge the level of impact, but something that could be monitored during the trial period.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	Proposal to introduce Fixed Penalty Notices in respect of litter. Report No. ELS05339. 20 October 2005. An update on Fixed Penalty Notices in respect of litter. Report No. ELS06163. 27 June 2006. Fixed Penalty Notices for Enviro-crime offences. Report No. ELS07031. 8 March 2007.