

Decision Maker: Environment Portfolio Holder

For Pre-Decision Scrutiny by the Environment PDS Committee on

Date: 15th January 2013

Decision Type: Non-Urgent Executive Non-Key

Title: REVIEW OF THE PROVISION OF ENFORCEMENT SERVICES

Contact Officer: Peter Turvey, Head of Street Regulation
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Chief Officer: Nigel Davies, Director of Environmental Services

Ward: (All Wards)

1. Reason for report

This report provides an update on progress made through the use of XFOR, an external agency, to provide an enforcement service serving fixed penalty notices (FPNs) for littering and dog fouling offences.

2. **RECOMMENDATIONS**

- 2.1 To note the progress made during the first 3 months of the 6-month trial period.
- 2.2 To approve the extension of the trial period for a further 6 months to the end of August 2013, which will allow for a more detailed analysis of the scheme over a 12-month period.
- 2.3 To approve the start of the Gateway process to enable the provision of enforcement services to be secured through competitive tender.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: Estimated cost: Net nil as the trial and extension are expected to break-even provided a 60% recovery rate is maintained
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Street Regulation
 4. Total current budget for this head: £577k
 5. Source of funding: Existing controllable 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: 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? N/A
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The Council 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.
- 3.2 Following the meeting of the Environment PDS Committee on 17 April 2012 (report No. ES12066), the Environment Portfolio Holder approved the following: to enter into an agreement with XFOR for a six-month trial period for the issuing of FPNs to determine the suitability and effects of the services being offered; to waive the requirement for competitive tendering under CPR 13.1; and to remove the early payment discount option to make the service more financially viable.
- 3.3 XFOR started on 10 September 2012 and has provided one team leader, four enforcement officers and one administrator. In addition to the monitoring of littering hot-spots and issuing FPNs, they also provide all the administration and processing of the FPNs, preparation of prosecution papers for cases referred to the Magistrates' Court and respond to complaints and enquiries received. The Council has been responsible for the provision of office accommodation, all IT hardware, software and support, stationery and postage.
- 3.4 Offenders, when approached, are offered the option of being issued with a £80 FPN, payable within 28 days, or being prosecuted for the offence in the Magistrates' Court. The offender can only appeal by not paying the FPN and attending the Court hearing to determine the outcome of the case. The enforcement officers wear body-worn video cameras which record the interaction between the officer and the alleged offender, although they cannot record the offence taking place. This not only provides good evidence of the interaction with identification, but also monitors the issuing of FPNs thus avoiding spurious claims on the number of FPNs being issued. The video footage can be viewed by the alleged offender if they request this at a later date. Arrangements have been made with Bromley Magistrates' Court to set aside one afternoon a month to hear those cases brought forward for non-payment of the FPN. The first hearing is to take place in January 2013. Although any fine imposed by the Court will go to the Crown, the £100 costs normally imposed will contribute towards the Council's legal costs.
- 3.5 XFOR have been operating in all parts of the Borough and have been responsive to instructions to monitor specific locations, following reports of high frequency littering and dog fouling. A close working relationship has been established with the Police, mainly through the PCSO teams. This has worked well and joint operations have taken place. A working relationship has also been established with Ward Security, the company that provides security for the Council's parks and open spaces. For the duration of the trial period it has been agreed that any enforcement action required in parks will be left to Ward Security to manage. Informal agreements have also been made with Network Rail, The Glades and The Mall in Bromley, which enables XFOR officers to issue FPNs on open land managed by these bodies.
- 3.6 The table below indicates the results of the trial for the first three month period, 10 September to 30 November 2012. This table also shows that all the FPNs issued have been for littering offences and none for dog fouling offences. About 95% of the littering constitutes cigarette waste. It must also be noted that due to problems experienced with the printing of the new FPN pads, old FPN pads had to be used during the first weeks of the trial; these still provided for the reduced level of £50 if paid within the discount period. As there is a 28-day payment period, full details cannot be provided until after this period has expired; for example, the percentage of fines paid for FPNs issued during December cannot be determined until the end of January 2013.

Month (2012)	Total Issued	For Littering	For dog fouling	Issued to under 18's	Payment made to EXFOR
September (from 10th onwards)	330	330	0	6	£14,850
October	619	619	0	11	£27,855
November	599	599	0	8	£26,955
Total for 3 months	1,548	1,548	0	25	£69,660
Projected totals for 6 months	3,300	3,300	0	50	£148,500

- 3.7 It is proposed to extend the trial period for a further 6 months from the start of March to the end of August 2013. This will enable a more thorough analysis and review to be carried out which would also take into account any seasonal variations. The extended period will be based on the existing terms and conditions currently with XFOR.
- 3.8 For the purposes of the initial trial period, under CPR 13.1 the Portfolio Holder waived the requirement to put this scheme out for competitive tender. It is proposed to continue with this arrangement during the extended period of the trial on the same terms of the Service Level Agreement currently in place. At the present time XFOR can be classified as a specialist service provider as the availability of their services by others is extremely limited. If, during the period of the trial, it is determined to use the services of a contractor to provide enforcement services on a longer term basis, it will then be necessary to follow a competitive tender process, which will need to be conducted in line with the relevant procurement legislative requirements.
- 3.9 In the meantime, to avoid any discontinuation of the service, between the end of the trial period and the start of any contract it is proposed to start the process of preparing the tendering documentation.

4. POLICY IMPLICATIONS

- 4.1 To contribute towards the Building a Better Bromley objective of a Quality Environment, a key aim set out in the Environment Portfolio Plan 2012-15 is to maintain street cleanliness. It is hoped this scheme 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 Based on tickets issued to date, it is estimated that 3,300 FPNs could be issued during the six month trial period, with an expected payment to XFOR of £148,500 based on £45 for every FPN correctly issued.
- 5.2 At the end of December, income received for FPNs issued between 10th September and 30th November totalled £69,705 compared to the payment to EXFOR of £69,660. As mentioned in 3.7 above, problems were experienced with the printing of the FPNs during September and this resulted in 187 payments being received for the discounted rate of £50. If full payment had been received for these tickets, a further £5,610 would have been received.

5.3 Minor costs of less than £3k have been incurred for printing stationery and postage costs. A summary of the costs and income is shown below: -

Trial period 10 September to 30 November	£
<u>Expenditure</u>	
Payments to EXFOR	69,660
Printing/postage	<u>2,800</u>
Total expenditure	72,460
<u>Income</u>	69,705
Net cost during period	<u><u>2,755</u></u>

5.4 Without the printing problems during September, the trial scheme would have produced a small surplus of £2.8k, excluding the effect of legal support for pursuing outstanding FPNs.

5.5 The legal costs associated with taking cases to Court will be monitored during the trial period to assess whether the process can be contained within existing resources and whether it will be cost effective in the long term.

5.6 If a further 6 month extension is agreed, the number of FPNs that could be issued during the 12 month period could be over 6,000. Should the 60% recovery rate be maintained, the trial scheme is expected to break-even. However there is a risk that the recovery rate will fall below 60%, which will result in a cost to the Council that will have to be funded from the ES Portfolio budget.

6. LEGAL IMPLICATIONS

6.1 The FPN process operates in accordance with the requirements of The Clean Neighbourhoods and Environment Act 2005. This legislation enables the Council to enter into an agreement with a contractor for its employees to issue FPNs. XFOR's enforcement officers have been individually authorised in writing by the Council to issue FPNs on its behalf.

6.2 For the purposes of the trial period, under CPR 13.1, the Portfolio Holder waived the requirement to put this scheme out for competitive tender. It is proposed to continue with this arrangement during the extended period of the trial. .

6.3 An agreement has been made with Bromley Magistrates' Court to provide one half day every month to consider prosecution cases for non-payment of FPNs. The first Court hearing has been set for a date in January 2013. The only financial redress that the Council could receive would be by claiming costs. These may or may not cover the actual costs of preparing the case i.e drafting the summons and checking the Statement of Facts and attending Court and in some cases defendants do not pay the costs. The resources of the legal team are limited and the number of cases prepared for the first hearing has been agreed at around fifty and this will be reviewed based on the outcome of the first hearing.

6.4 These proceedings are currently placing additional pressure on legal services. However, the trial period will enable a view to be taken on whether, once the process has bedded in, it can be contained within existing resources. The effective, timely recovery of costs will need to be monitored as recovery cannot be guaranteed even where costs are ordered by the court.

6.5 If it is decided to continue the enforcement service subsequent to this trial period ending August 2013, internal council and procurement procedures in line with a fair and transparent procurement will be followed in obtaining the most suitable provider for this service. Should the decision be made to procure this service on a longer term, the procedure shall commence approximately February/March 2013 in line with the competitive tender process.

7. PERSONNEL IMPLICATIONS

7.1 There is a requirement to manage the arrangement with XFOR, which will need to continue. This impact on existing resources amounts to about 0.3 FTE that is currently being covered by changing priorities in other work areas.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	<p>Proposal to introduce Fixed Penalty Notices in respect of litter. Report No. ELS05339. 20 October 2005.</p> <p>An update on Fixed Penalty Notices in respect of litter. Report No. ELS06163. 27 June 2006.</p> <p>Fixed Penalty Notices for Enviro-crime offences. Report No. ELS07031. 8 March 2007.</p> <p>Proposal for Provision of Enforcement Services. Report No. ES12066. 17 April 2012.</p>