

Decision Maker: Environment Portfolio Holder

**For Pre-Decision Scrutiny by the Environment PDS Committee
on**

Date: 29th January 2014

Decision Type: Non-Urgent Executive Non-Key

Title: **PARKING BAILIFF SERVICES**

Contact Officer: Ben Stephens, Head of Parking Services
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Chief Officer: Nigel Davies, Executive Director of Environment and Community Services

Ward: All

1. Reason for report

The report seeks agreement for the procurement of bailiff services to provide debt recovery for collection of outstanding Penalty Charge Notices (PCNs). The report recommends that parking services use two companies: JBW; and Phoenix.

2. **RECOMMENDATION**

That the Environmental Portfolio Holder:

- 2.1 **Approves the use of JBW and Phoenix for bailiff debt collection services from 1st April 2014 until 31 October 2016.**

Corporate Policy

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

1. Cost of proposal: Not Applicable
 2. Ongoing costs: Estimated income of £200-250k p.a. secured via bailiff companies
 3. Budget head/performance centre: Parking Enforcement
 4. Total current budget for this head: Anticipated £4.1m income p.a. from PCNs
 5. Source of funding: Existing Revenue budget 2013/14
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Staff

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: 1 fte
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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): Approximately 12,000 debtors per year are subject to bailiff action for PCN debt
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable

Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 The Shared Parking Service is responsible for providing the following services: residential and business permits; visitor vouchers; blue badge applications; parking dispensations; and suspensions. The service is also responsible for the issuing of Penalty Charge Notices (PCNs) adjudicating associated appeals, and the collection of payment. An efficient debt collection process is essential to ensure outstanding PCN fines are collected.
- 3.2 Following the Environment PDS Committee on 15th January 2013, the Environment Portfolio Holder agreed the postponement of the tendering process for parking bailiff and debt recovery services until an updated Eastern Shires Purchasing Organisation (ESPO) framework agreement was available (report ES13009). Approval was given for JBW and Swift Credit Services to continue to provide interim parking bailiff services until 31st March 2014. The trial use of Liberata's bailiff partners, Chandlers and Phoenix, for the same period was also given.
- 3.3 Parking Services have continued to use Chandlers, Phoenix, JBW and Swift. All four companies' performance has been satisfactory, although there were some issues initially with Chandlers and Phoenix. Liberata's contract with Chandlers expired October 2013, and accordingly Parking Services have also now ceased issuing new warrants to Chandlers. This interim period has provided an excellent opportunity to test contractor performance.
- 3.4 Liberata now uses JBW and Phoenix for Council tax debt collection. Officers recommend that these two bailiff companies are also retained to provide parking bailiff services until October 2016. October 2016 is the date at which all of the other key contracts managed by the Shared Parking Service are due to expire, and would provide an opportunity to align bailiff services with the main enforcement contract across both Bromley and Bexley. Dealing with more than two companies would increase the complexity of day to day management and communication, and the number of warrants issued to each company would be too few. However, only retaining one company would leave the service vulnerable to the risk of poor performance.
- 3.5 In February 2012 the Ministry of Justice set out its proposals for transforming the enforcement industry and providing more protection against aggressive bailiffs in the consultation paper, (*Transforming Bailiff Action*).
- 3.6 The Government's response to *Transforming Bailiff Action* was published in January 2013 and sets out a series of proposals to strengthen protections from rogue bailiffs who use unsound, unsafe or unfair methods, while at the same time making sure that debts can still be collected fairly. These measures included the implementation of Part 3 of the Tribunals, Courts and Enforcement Act 2007 (the "2007 Act").
- 3.7 Section 25 of the Crime and Courts Act 2013 which came into force on 15th July 2013 amends schedule 12 of the 2007 Act and makes a number of reforms to bailiff law. New bailiff enforcement procedures are now set out under Part 3 of the 2007 Act
- 3.8 The changes will help debtors, creditors and bailiffs understand what their rights and responsibilities are when debts are enforced. The provisions will also codify the existing law and introduce a comprehensive code governing amongst other things: when and how a bailiff can enter somebody's premises; what goods they can and cannot seize and sell; and what costs they can charge.

ESPO framework agreement

3.9 Use of the **ESPO framework agreement** for procurement of bailiff services was originally the Council's preferred option. The ESPO agreement was designed to provide a framework for all types of bailiff services, including commercial, Council Tax, Parking and HMCS debt. However, the process of developing an agreement was abandoned by ESPO in November 2013. This followed bidder challenges against the tendering process. The arguments made by bidders were:

- That the framework did not satisfactorily address the Taking Control of Goods Regulations 2013 (SI 2013/1894), which is due to come into force on 6th April 2014.
- Concerns over aspects of the procurement, evaluation and reward process.

3.10 ESPO decided in the light of these significant issues that it was not appropriate to continue with developing the framework agreement.

Options available to the Council

3.11 Since the last report (ES13009, 15th January 2013), options have been explored into how best to procure bailiff services. As the ESPO agreement will no longer be available, four remaining options were considered:

- Undertaking a full tender process for the Parking bailiff and debt collection services.
- Joining the London Borough of Bexley's existing Bailiff Service Level Agreement through the Shared Service.
- Joining LB Bromley's contract with Liberata for the provision of bailiff services.
- Bailiff Contracting directly with JBW and Phoenix

Full tender process

3.12 The option of a full tendering process would be an expense to the Council that could be avoided.

3.13 The argument for going out to tender:

- A range of companies which provide Parking Bailiff Services could be invited to submit a tender, giving the Council more choice and potentially a better service

3.14 The arguments against going out to Tender:

- Costs to the Council to go to tender
- Cost of officer time involving procurement, finance and parking staff for drafting tender documents and PQQs, and evaluating and scoring the tenders.
- The time to get the contract in place could possibly exceed the expiry date of the existing contracts, which would therefore need to be extended.
- Risk of under performance and loss of budgeted income.

Contracting with JBW

- 3.15 Consideration has been given to join, through the shared service, the existing Service Level Agreement (SLA) the London Borough of Bexley has with JBW. This expires on 31st August 2016. JBW have in the past performed well for both Bromley and Bexley.
- 3.16 As there appears to be no “formal “ contracting arrangement between Bexley and the service provider there is not a regularised contract for the Council to piggy-back on or make use of.
- 3.17 An SLA would be cheaper than a full tendering process. However, the Bexley SLA only has one bailiff company and this could be problematic if the company does not perform. It is considered helpful to have an alternative company available to whom work can be allocated if there is an issue with underperformance.
- 3.18 The Council could instead enter into a direct contract with JBW. If JBW were the main supplier for both boroughs this would help align processes and working practices, and provide the opportunity for additional efficiencies in terms of managing workflow and ICT data transfer.

Contracting with Phoenix

- 3.19 Liberata has an established contract to provide bailiff services for the London Borough of Bromley for Council Tax, Business Rates and sundry debt. The bailiff companies that are used for this contact are now Phoenix and JBW.
- 3.20 The contract with JBW started in January 2013 and will expire, unless extended or renegotiated, in December 2014. The contract with Phoenix dates from 2007 and can be terminated by Liberata by giving notice at any time. The agreement is formally reviewed annually.
- 3.21 Phoenix has performed to a satisfactory standard during the trial. The use of Phoenix will allow continuity and ensure we maintain a close working relationship with Liberia’s preferred Bailiff suppliers. In addition, use of a second bailiff company will allow us to ensure that there is competitive performance by both contractors.
- 3.22 It is recommended that London Borough of Bromley enter into a contract directly with Phoenix, in addition to JBW. This would not be via Liberata’s contract arrangements. The involvement of Liberata in the provision of Bailiff Services would mean the use of a third party which would have no cost, operational or legal benefit to the Council.
- 3.23 These extensions would then take the Bailiff Services into alignment with the expiry of the Management and Enforcement Contract and the Parking ICT Contract. Therefore all contracted services procured by the Shared Parking Services could be included in a coherent tendering process at the same time in 2016.

4 POLICY IMPLICATIONS

- 4.1 Providing excellent service and performance underpins the delivery of the objectives of “Building a Better Bromley”. In particular, the effective management of parking supports the Council’s transport policies, and its aim of ensuring a Quality Environment. The Environment Portfolio Plan 2013/16 includes the objective ‘Continue to improve the effectiveness and fairness of the Council’s parking enforcement activities’.

5 FINANCIAL IMPLICATIONS

- 5.1 The Parking bailiff and debt collection service supports income recovery of between £200k and £250k per year which would otherwise be written off. The service providers recover the cost of their service direct from the debtor.
- 5.2 In Procurement terms there are two values to consider in this matter: the value of income recovered; and the value of the service concession type arrangement being considered to operate in this case. The annual income value is indicated as being between £200k -£250k and the value within the 2.6 year contract period is estimated to be £520k and £650k. The value of the concession is likely to be in the range of 80k to £100k. While Service Concession arrangements are not specifically covered by the EU Procurement Regime, they are considered to be covered by the Treaty itself and need to be placed in line with its overarching requirements.
- 5.3 In this case the division of the requirement between the two providers is specifically designed to stimulate this particular market and encourage participation in the intended tendering process for this service. This will need to be commenced towards the end of 2015, noting that by this date there is likely to be formal legislation in place to include “Concession” type arrangements within the new EU Procurement Regime.

6 LEGAL IMPLICATIONS

- 6.1 LBB currently operates Public Service Concessions with four bailiff companies for parking debt – Swift, JBW, Chandlers and Phoenix. All four are due to terminate on 31 March 2014. .
- 6.2 Public Concessions occur when a local authority grants a private entity a right to provide an asset or service but rather than pay for providing the asset or service, the contracting authority transfers the opportunity to exploit the market to the private entity, along with the demand risk (the risk that there will be little or no market to exploit). Revenue from fees paid by third party users (normally the general public) to the private entity are then used to meet the costs incurred and to make a profit.
- 6.3 Public Service Concessions agreements are not regulated by the Public Contracts Regulations 2006 but if they are likely to be of interest to service providers in other EU member states must comply with the EU Treaty Principles of mutual recognition, proportionality, transparency, non-discrimination and equal treatment .
- 6.4 Option 1 - If LBB decides to appoint a bailiff by undertaking a full tendering process it will still need to consider whether or not the agreements will be likely to attract interest from other member state, There are no formal rules governing whether a contract will attract cross-border interest however the Commission states that the following factors will be significant:
- The subject matter of the procurement.
 - The estimated value of the procurement.
 - The place of performance or delivery.
 - The size and structure of the relevant service market.
- 6.5 The Commission also states that it will be down to individual contracting authorities to apply these factors themselves on a case-by-case basis. In the event that a contracting authority concludes that there is no cross border interest, a full consideration of the factors above should be documented. The fact that a contract is beneath the relevant threshold will not be enough of a reason for there to be no cross border interest.

- 6.6 Even if the Treaty Principles do not apply, LBB will need to apply the relevant provisions of the Council's CPRs and any other applicable requirements relating to value for money when carrying out a procurement
- 6.7 Local Authorities also have an overarching obligation to conduct a transparent procurement process even where the contract is a concession and they must not use any system which discriminates (directly or as a result of a practical effect) between potential providers .
- 6.8 The second option, which is to join LB Bexley's Parking Services Bailiff Service Level Agreement through the Shared Service arrangement, is not possible as the Bexley contract has no provision within it permitting participation by partner organisations.
- 6.9 The third option of using the current contract between Liberata for the provision of bailiff services is not a cost effective option as LBB will be reliant on Liberata providing management services in addition to the services that it will obtain directly from the bailiff companies.
- 6.10 If option 4 (entering into a direct contract with JBW or Phoenix) is to be used, LB Bromley will have to comply with the overarching obligations of transparency. This means that if there is a likelihood that the contract could attract interest from other member states it would need to be advertised despite being a services concession.
- 6.11 In two recent cases (Belgacom and Comune di Ancona) The Court of Justice of the European Union reminded contracting authorities not to award concessions directly without any prior notification of the opportunity. In both cases the CJEU reiterated that the award of such contracts is subject to overarching principles of European law ie the procurement process must be fair, transparent and non-discriminatory. This law has been enforced in the UK courts – see Photo-Me International v Network Rail 2011.
- 6.12 In this instance, the provision of these services is unlikely to attract cross border interest due to the following factors:
- The contractor is to assume all of the operating risk.
 - There is no guarantee that the contractor will make a profit or recoup all of its operational costs
 - Provision of these services requires familiarity with the recently amended UK legislation namely Part 3 of the Tribunal Courts and Enforcement Act 2007
 - the services are for the collection of outstanding penalty charge notices issued in the UK therefore the bailiff company must be based in the UK

Non-Applicable Sections:	Personnel implications
Background Documents: (Access via Contact Officer)	Report ES11109 – Parking Bailiff & Debt Collection Services: Gateway Report Report ES13009 – Parking Bailiff and Debt Collections Service