

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

DECISION OF:

Cabinet Member for the Environment and Director of Environment and Operational Services

Agenda – Part:	KD Number: 4688
Subject: Setting of the level of Fixed Penalty Notices for littering	
Wards: All	

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1. EXECUTIVE SUMMARY

- 1.1 On 1 April 2018 an amendment of the Environmental Protection Act 1990, (The Environmental Offences (Fixed Penalties) (England) Regulations 2017) (“the Regulations” hereafter) provided for an increase in the charge for the fixed penalty notice for littering.
- 1.2 The Regulations allows Local Authorities to issue a fixed penalty notice and to determine the penalty charge amount, which can be no less than £50 (and no less than £65 from 1 April 2019), and not more than £150.
- 1.3 If the Council does not specify the fixed penalty notice charge, the default charge is £100.

2. RECOMMENDATIONS

- 2.1 To agree the increase in charge to £150 for a fixed penalty notice for littering offences as allowed for by the Regulations.
- 2.2 Agree to continue the current arrangements for litter notices issued by Enfield Council to not have any early payment discount

3. BACKGROUND

3.1.1 The Enfield Council (Litter Authority under the Regulations) level of fixed penalty notice for littering is currently set at £80. The Regulations now allow for the Principal Litter Authority to issue fixed penalty notices for littering ranging from £50 to £150. The Regulations also provide that if the Litter Authority does not set a level, it will default to £100.

3.1.2 The DEFRA code of practise outlines that dumped waste, up to the size of a single residential bag, should be considered litter.

3.1.3 The borough is currently subjected to high levels of daily littering on public land and previous litter fines have not deterred this type of anti-social behaviour.

3.2 Setting the Fixed Penalty Notice Levels

3.2.1 The Regulations permits Litter Authorities to issue fixed penalty notices and to determine the amount up to a maximum of £150. They may also specify a second, lower amount for early payment within 10 days of the offence, but are not required to do so. Currently litter notices issued by Enfield Council do not have any early payment discount.

3.2.2 The Regulations do not specify what must be taken into account when setting the level of a penalty charge; only setting the maximum amount of £150 and the minimum charge at £50. Therefore, in determining the amount, it is not unreasonable to consider the following;

- a) Any justifiable costs or expected costs incurred or to be incurred in connection with the administration of the provisions of the legislation, and as a minimum cover officer time and costs, preparation and service of a Fixed Penalty Notice;
- b) Cost or expected cost, of enforcing the provisions of the legislation, including the recovery of the cost of the removal of the unauthorised litter.
- c) Littering continues to be an issue across the borough and therefore the current charge levels are not seen as a satisfactory deterrent.
- d) This increase is to tackle this anti-social behaviour.

3.2.3 If the Local Authority does not specify the fixed penalty charge, the default charge is fixed at £100.

4. ALTERNATIVE OPTIONS CONSIDERED

There is the option of not determining a high FPN and issue £100 fixed penalty notices for incidences of littering. However, this would effectively

maintain the current position and other authorities in London are opting to issue the maximum fines.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The borough is subject to a high level of littering. The majority of these incidences are in relation to residential littering within the street scene.
- 5.2 The Waste Enforcement Unit look to implement strong penalties against the parties found to be responsible for littering. By implementing the maximum fixed penalty notice amount, it would be a greater deterrent to prevent littering.
- 5.3 The recommended amount for the fixed penalty notice is considered justifiable and proportionate.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

This report seeks to agree the increase in charge to £150 for a fixed penalty notice for littering offences as allowed for by the Environmental Protection Act regulation and agree to continue the current arrangements for litter notices issued by Enfield Council to not have any early payment discount

The borough is subject to a high level of littering. The majority of these incidences are in relation to residential littering within the street scene, which cost the Council to clear the Waste. The Waste Enforcement Unit look to implement strong penalties against the parties found to be responsible for littering. By implementing the maximum fixed penalty notice amount, it would be a greater deterrent to prevent littering and clearing cost implications to the Council.

6.2 Legal Implications

- 6.2.1 Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their duties.
- 6.2.2 The Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.
- 6.2.3 Regulations 4 and 5 of the EPA cover two transitional periods of between 1 April 2018 and 31 March 2019, and then from 1 April 2019 onwards,

for the minimum level of the FPN that should be set. The maximum level is £150.

6.2.4 Regulation 4 covers the period 1 April 2018 to 31 March 2019 and states that minimum level of the FPN must not be lower than £50. Regulation 5 says that from 1 April 2019, the minimum level of the FPN must not be lower than £65. Neither of these Regulations impact this report as the proposal is to set the FPN to the maximum of £150.

6.2.5 The Regulations also increase the current default fine from £75 to £100, if no amount is specified by the Council.

6.3 Property Implications

None

7. KEY RISKS

No significant risks have been identified. There is no appeal process attached to the fixed penalty notice and a failure to pay the fixed penalty notice will result in the matter being resolved by prosecution proceedings.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

Regulatory Services have been consulted on this report and support the recommendations.

9. IMPACT ON COUNCIL PRIORITIES

9.1 Fairness for All

There will be positive impacts for residents and other people visiting the borough in terms of a visual improvement to the landscape due to reduced amounts of littering.

9.2 Growth and Sustainability

Application of this legislation will contribute towards creating a cleaner environment for both residents and business

9.3 Strong Communities

Application of the maximum amount for the fixed penalty notice will contribute towards creating cleaner and improved street scene across the borough and a reduction of pressure put upon the Street Cleaning team.

10. EQUALITY IMPACT IMPLICATIONS

The provision of general enforcement services has already been considered as part of the Regulatory Service's retrospective Equalities

Impact Assessment. The Council's approach to enforcement is detailed in the Enforcement Policy adopted by Cabinet.

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report to agree the increase charge to £150 for a fixed penalty notice for littering offences.

11. PERFORMANCE MANAGEMENT IMPLICATIONS

None

12. HEALTH AND SAFETY IMPLICATIONS

None

13. PUBLIC HEALTH IMPLICATIONS

Fixed Penalty Notices are a means of discouraging illegal and antisocial behaviour which impacts upon the general impression and upkeep of the borough. Discouraging such behaviour is useful and necessary.

Background Papers

MUNICIPAL YEAR 2017/18 REPORT NO.

**ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY**

PORTFOLIO DECISION OF:
Cabinet Member Environment

REPORT OF:
Director of Environment &
Operational Services

Agenda – Part: 1	KD Num: KD4681
Subject: Delivery of Cemeteries Grounds Maintenance by the in-house Parks Team	
Wards: All	

Contact officer and telephone number:

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1. EXECUTIVE SUMMARY

- 1.1 Grounds maintenance and grave digging in LBE cemeteries is currently provided by an external contractor, with the current 7 (5 plus 2) year contract due to expire in September 2018. The annual contract cost is £450k.
- 1.2 The expiry of this contract offered the opportunity to consider the potential of the in-house Parks service to effectively deliver the work in future.
- 1.3 Having considered the required service standards and specification and developed a service delivery proposal, the Parks Service can deliver at least an equivalent standard of service to the existing contractor with a comparable estimated price.
- 1.4 There are some key risks, particularly around the provision of grave digging services and following officer exploration, it is considered that service delivery proposals that incorporate the wider parks team adequately mitigate and manage these risks ensuring effective business continuity plans

2. RECOMMENDATIONS

- 2.1 To approve the commencement of Cemetery grounds maintenance including grave digging by the Parks Team, commencing 1 October 2018 in line with the proposals outlined in this report.
- 2.2 To agree to initiate and deliver the TUPE transfer of relevant staff within the establishment of new posts and to recruit to 1 x Sc 6 post and 5 x sc 4 posts as staff required plus agency cover of 3.5 FTE and the purchase of capital equipment in line with the costed service delivery proposal to deliver all Cemetery operations.
- 2.3 To delegate authority to the Director of Operational Services to approve minor alterations to the specification and delivery arrangements.

- 3.2 The scope of the works covers 5 cemeteries within the borough. This includes approximately 550 burial interments and the maintenance of approximately 95 acres of cemetery grounds
- 3.3 Cemetery operations by the current contractor are resourced by 9-12 staff including Team leaders, gravediggers and grounds maintenance operatives with associated vehicles & equipment.
- 3.4 There is a scheduled programme of works for the grounds maintenance activities including grass cutting and strimming around memorials, shrub, hedge and bed maintenance, path sweeping, bin emptying, gate locking and unlocking, ditches, etc.
- 3.5 Grave digging and related interment works are dependent on demand and paid in accordance with a schedule of rates.
- 3.6 Other unplanned works including weed control, leaf clearance, seeing in of funerals, etc. and any other works that may be required from time to time paid in accordance with the contract schedule of rates.
- 3.7 In considering future delivery options, and in preparation for a potential external tender, the in-house Parks Team provided an estimate for delivery that could be compared against the current contract cost.
- 3.8 In-house delivery of this service was considered to be preferential under the following circumstances:
- The price (to the Bereavement Service) and cost (to Parks Team) of service provision was comparable with the current contract (used as a market benchmark);
 - The quality of the service was at least comparable with the current service;
 - Sufficient risk management and mitigation was in place to ensure service continuity, particularly in respect of the key risks relating to grave digging and achieved through links to the wider parks team staff, plant and vehicles.
- 3.9 A detailed mobilisation plan has been produced and is being jointly implemented by the Parks Service and Bereavement Service. This is to ensure that the contract can be seamlessly transferred from the current contractor to the Parks Service on 1 October 2018. The mobilisation plan covers all key areas, including: procurement of capital equipment, recruitment and transfer of staff, delivery of training (including customer care), and the development and implementation of robust health and safety systems.

- 3.10 Current information suggests that only three staff are likely to be transferred from the current contractor in compliance with TUPE legislation. The existing contractor has provided their current staffing information to inform this judgement. This anticipated transfer of staff will help to ensure service continuity.
- 3.11 The Council's Human Resources team will assist and help with recruitment of new staff to ensure this process can be completed in the available timescale.
- 3.12 Given the additional staffing requirements this report requests the authority to create 1 x sc6 and 5 x sc 4 posts with approximately 3.5 FTE agency cover across the year.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Formal procurement of a new supplier of grounds maintenance and grave digging services. This option also involving a new contractor & team was discounted due to a favourable in-house submission with a known track record including delivery of Green Flag parks which is a measure of the standard of service required within a Cemetery Operation.
- 4.2 Extension of the current contract through to March 2019 to enable a full procurement to be conducted. This option was considered to be a fall-back position in the event that a procurement exercise or a new arrangement for service provision could not be implemented before the end of the existing contract. The service implementation plan confirms that resources can be in place ahead of the 1st October start date.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Following development of this internal provision proposal it is considered that the quoted price is comparable with the existing contractual arrangement subject to clarification of TUPE costs. This would be improved in the event of burial volumes exceeding those experienced under the current contract.
- 5.2 The specified service quality is good and has been improved from the current contract. The provision of an in-house arrangement removes the risk associated with market pressures and contractor takeovers from external suppliers.
- 5.3 There are clear plans to manage and mitigate risk in the recommended proposal of an in-house service. Across all areas of risk, the Parks Service will ensure service continuity and meet the required service standards.

- 5.4. Provides career progression opportunities for existing operational staff enabling the retention of skills and staff for the Council.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 Following development of this internal provision proposal it is considered that the quoted price is comparable with the existing contractual arrangement subject to clarification of TUPE costs. This would be improved in the event of burial volumes exceeding those experienced under the current contract.

6.1.2 The parks service provided an estimated price against a new improved specification which shows a similar price to the current contract. The in-house service enables additional works to be contained within the core staff allocation and provide an opportunity to save if work demands increase.

	Ground Control (current rates)	Parks
Scheduled work	225063.57	£229,591
Burials & SORs	166333.45	£206,903
Extra works	50000	£0
Total	£441,397	£436,494

Parks Operations Annual Costing Summary	
Labour (including Senior Gardner)	£284,301
Vehicles & Machinery	£58,813
Materials	£8,000
Unscheduled Works	£85,380
Grand Total	£436,494

6.1.3 Although the price for the improved specification has not been tested externally and is currently unknown, the in-house option supports Bereavement Services' ambitions for on-going development and improvement at no additional cost. This continues to allow Bereavement Services to compete in the marketplace and be commercially viable.

6.2 Legal Implications

6.2.1 The Council is a burial authority by virtue of section 214 of the Local Government Act 1972, and has the power to provide and maintain

cemeteries inside or outside its area. Section 3 of the Local Authorities Cemeteries Order 1977/204 (Cemeteries Order) gives a burial authority the general powers of management, to do all such things as they consider necessary or desirable for the proper management, regulation and control of a cemetery. Section 4 of the Cemeteries Order also gives the burial authority the power to embellish and improve their cemeteries from time to time in a manner as they see fit.

6.2.2 By virtue of s.111 of the Local Government Act 1972, the Council has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. In addition, section 1 of the Localism Act 2011 further empowers the Council to do anything that individuals generally may do provided it is not prohibited by legislation and subject to public law principles.

6.2.3 The recommendations within this Report are in accordance with the above powers.

6.2.4 Any procurement undertaken in connection with the arrangements recommended in this Report should comply with the Council's Contract Procedure Rules and the Public Contract Regulations 2015 where applicable.

6.4 As staff are likely to transfer under the arrangements, the Council must comply with its obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as amended, including the obligation to consult. Officers from the Council's HR and Pensions teams should be involved at an early stage.

6.5 The Council must comply with its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act (1999).

6.6 The Council must ensure that there is adequate cover in place under its current insurance policies:

6.3 Property Implications

None.

6.4 HR Implications

6.4.1 The above proposal would constitute a service provision change under the Transfer of Undertakings (TUPE) 2006 regulations. It is currently expected that 3 staff currently directly employed by the Contractor and assigned to the provision of these services would be entitled to transfer to the Council.

- 6.4.2 The TUPE regulations require consultation to take place with the relevant trade unions and staff, directly or indirectly impacted by the transfer, at the earliest opportunity. The Council would wish to work closely with the Contractor to ensure full consultation takes place.
- 6.4.3 The Council will need to notify the contractor of any intended "measures" proposed to take as a result of the transfer and will where possible work with the contractor to support and engage in the consultation process with staff and trade unions. The Council will seek additional staff information from the contractor to enable the Council to notify the contractor of the 'measures' as soon as possible.
- 6.4.4 Under the TUPE regulations staff who transfer have their terms and conditions of employment protected and it should be noted that these can only be changed in very limited circumstances.

7. KEY RISKS

- 7.1 Financial risk – delivery of the new service provision arrangements (to the level of the existing contract) is not cheaper than the existing arrangements and costs LBE more than the existing arrangement. Mitigated by constructive dialogue between Bereavement Service and Parks Service but potential future budget pressure for the Parks Service.
- 7.2 Financial risk – staff terms and conditions, inherited via TUPE, are more costly than existing LBE terms and conditions, eroding the contract saving and create a potential future budget pressure. This can be offset through maximisation of the in-house team's resources compared to "variation orders" being claimed via external contractors.
- 7.3 Reputational risk –unable to adequately resource the contract periods of high demand or during periods of staff sickness or unavailability, leading to serious service failure. Key mitigations are achieved by staff training and prioritisation of service delivery within the wider parks and street scene team.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The objective of the proposal is to ensure that all residents have the option of using a high quality and responsive bereavement service.

8.2 Growth and Sustainability

The proposed arrangements are designed to ensure service equality and enable potential service growth and income generation.

8.3 Strong Communities

Burials are a requirement for some family, community, ethnic or religious groups. Providing high quality burial space demonstrates council commitment to minority groups.

9. EQUALITY IMPACT IMPLICATIONS

Corporate advice has been sought in regards to equalities and it would be recommended to undertake a Predictive and a HR Equalities Impact Assessment before implementation of the new structure. Local authorities have a responsibility to meet the Public Sector Duty of the Equality Act 2010. The Act gives people the right not to be treated less favourably because of any of the protected characteristics. We need to ensure that our staff are not unduly or disproportionately affected by any changes to organisational structures or working conditions or environments.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The service specification outlines the performance levels which must be achieved in the delivery of this contract. Additional to this, meetings have been held between Commercial Services and the Parks Service in order to gain clarity on essential elements of service delivery, including key risk areas. The results of these clarification meetings form a documented agreement and are a guide for future service managers. Key elements of them are included in this report. Client contractor meetings will be held on a regular basis and performance reported on a monthly basis, as is the case with any commissioned service.

11. HEALTH AND SAFETY IMPLICATIONS

There are a number of health and safety issues specific to operations within cemeteries and relating to both grounds maintenance and grave digging. The Parks Service are currently developing the relevant risk assessments which will inform operational policies, procedures, training programmes and manuals, including safe systems of work (SSoW).

12. PUBLIC HEALTH IMPLICATIONS

None

Background Papers

None.

