



Cabinet
11 April 2016

**Report of Strategic Director,
Regeneration and Environment**

Wards Affected:
ALL

**The Provision of Civil Enforcement Agents for the
Recovery of Parking and Traffic Debt**

1.0 Summary

- 1.1 This report considers options open to the council in respect of the recovery of parking and traffic Penalty Charge Notice debt.
- 1.2 The council currently have contracts with four Civil Enforcement Agents (formerly known as certificated bailiffs), which all expire on 30th June 2016.
- 1.3 Cabinet is recommended to extend the contracts of two of the four existing contractors by one year, following a competitive process, and to delegate to officers the subsequent decision on a further one year extension. This will provide the council with sufficient flexibility to consider the potential for a consolidated approach to debt recovery.

2 Recommendations

That Cabinet:

- 2.1 Authorises the extension of the contracts of two of the four incumbent Civil Enforcement Agents by one year, noting the rationale for doing so set out in the background to this report;
- 2.2 Delegates authority to the Strategic Director, Regeneration and Environment, in consultation with the Lead Member for Environment, to select which two Civil Enforcement Agent providers should have their contracts extended and varied;

- 2.3 Delegates authority to the Strategic Director, Regeneration and Environment to decide whether to extend the contracts of the two successful Agents by an additional year in 2017, aligning the contracts with the council's main Parking Management and Enforcement Contract as explained in 3.20;
- 2.4 Endorses the method proposed for selecting which two of the four existing contracts to extend, as set out in paragraph 3.21;
- 2.5 Agrees to the proposed variation of the contracts with two Civil Enforcement Agents to include the matters detailed in paragraphs 3.19 to 3.24; and
- 2.6 Agrees to the implementation of a new process and dedicated resource for the early write-off of unrecoverable debt following a determination of the likelihood of collection, as set out in paragraphs 3.13 and 3.29; and

3 Background

- 3.1 The council issues Penalty Charge Notices (PCNs) for a variety of parking and traffic infringements. There are four categories of PCNs:
 - CEO-issued PCNs: PCNs fixed to the windscreen of a vehicle or handed to the driver for parking contraventions, served under the provisions of the Traffic Management Act 2004.
 - CCTV Parking PCNs: PCNs served by post for parking contraventions, where the contravention has been captured by a CCTV camera, served under the provisions of the Traffic Management Act 2004 and limited by the Deregulation Act 2015.
 - CCTV Moving Traffic PCNs: PCNs served by post for moving traffic contraventions (e.g. stopping in a yellow box junction, turning left or right where the manoeuvre is prohibited), served under the provisions of the Transport for London and London Local Authorities Act 2003.
 - CCTV Bus Lane PCNs: PCNs served by post for Bus Lane infringements, served under the provisions of the London Local Authorities Act 1996.
- 3.2 The relevant statutes prescribe different timescales for increasing the charge (should prompt payment not be received), for serving subsequent notices, and for permitting challenges, representations and appeals.
- 3.3 Ultimately, non-payment of a PCN will result in the council formally registering the PCN as a debt at Northampton County Court as a precursor to issuing an external agent with a warrant to collect the outstanding debt on the council's behalf.

- 3.4 Typically, local authorities recover debt and close about 70% of all PCNs issued. The remainder are either cancelled following an upheld challenge, representation or appeal; or are deemed unrecoverable if the debtor cannot be traced. Unlike other debts raised by the council, with notices served to properties rather than individuals, the registered keeper of the vehicle is liable for parking and traffic Penalty Charge Notices. This means that the council are reliant upon name and address information provided by the DVLA for the service of statutory notices by post. Occasionally the information returned by the DVLA is inaccurate as a result of the registered keeper not notifying the DVLA of changes of address; and sometimes due to deliberate fraud. In addition, a significant number of vehicles are registered to out-borough addresses either in the U.K. or abroad.
- 3.5 In the 2015 calendar year, the council referred 22,728 cases to its Civil Enforcement Agent contractors. 3,460 of those warrants were returned to the council as 'paid in full', with the majority of the remaining warrants still live and pending recovery action. Warrants are valid for a full year from their date of issue.
- 3.6 Currently, all warrants are issued to the Primary Bailiff in the first instance. The Primary Bailiff then has 10 days to review the cases and assess the likelihood of collection. Should the Primary Bailiff determine that they are unlikely to collect the debt they must return the warrant to the council in order that it may be re-allocated to one of the three Secondary Bailiffs. In theory, the Secondary Bailiffs are then measured against one another, with the winner taking over as the new Primary Bailiff. In practice, this is a complex and client time-heavy process to manage. A warrant may stay live for up to a year so it can be difficult to assess performance over the short-term.
- 3.7 For those warrants issued to the Primary Bailiff which are retained, but not collected, the Primary Bailiff is contractually obliged to return the £7 debt registration fee to the council.
- 3.8 On the 6th April 2014 the *Taking Control of Goods Regulations* were introduced nationally as a means to standardise bailiff fees and practices. Fees which bailiffs may apply to debtors, in addition to the debt owed to the council, are now as follows:
- Compliance Fee: £75. Covers issuing a letter to the debtor, advising them of the outstanding debt, fees, how to pay, and the consequences should payment not be received.
 - Enforcement Fee: £235. Covers visiting the debtor's premises, and is fixed regardless of the number of occasions the bailiffs need to attend the property, the fee applicable remains the same.

- Sale / Disposal Fee: £110. Imposed should the bailiff need to transport goods, or incur administrative fees relating to the disposal of goods recovered.
- 3.9 In the 2015 calendar year, the councils' Civil Enforcement Agents earned £820k in fees paid by debtors. It should be noted that there are significant costs associated with debt collection. The profit earned by bailiffs on some cases may be marginal or non-existent depending on how many visits the bailiff has to make to recover the debt.
 - 3.10 In the 2015 calendar year, the council's primary bailiff declared that of the 22,728 warrants issued, only 6,242 were determined to be uncollectable within the 10 day period. These warrants were duly returned to the council and subsequently re-allocated to the secondary bailiffs.
 - 3.11 Generally, once warrants have reached the end of their life, the council would expect to see recovery rates (i.e. warrants returned as paid) of 20-25%. This level of success is typical for the U.K. The council is therefore incurring unnecessary expenditure on debt registration and processing costs for the remaining 75-80% of debts where the likelihood of collection is low or non-existent. Aside from the £7 debt registration fee, there are also costs associated with the processes for progressing debt, and also administrative costs for printing and posting a variety of pre-debt registration notices.
 - 3.12 Cleansing debt at an earlier stage in the Penalty Charge Notice's progression may reduce the council's avoidable expenditure. Most bailiff companies use external referencing agencies to determine the likelihood of collection. There is no reason why the council could not use the same approach at an earlier stage in the life of the PCN. Where there is no chance of collecting the PCN it may be prudent to write-off the charge earlier and save on unnecessary expenditure.
 - 3.13 Carrying out simple debt recovery processes may also help the council recover aged debt. With an expectation that bailiffs will recover 20-25% of warrants they are issued with, there are still opportunities for the council to consider in respect of the remaining 75-80%. It is not uncommon for councils to review aged debt up to six years old, and instruct contractors to carry out a large scale debt recovery exercise. Improved information on debtors may surface as years pass; for example debtors may register for new commercial or public services and then re-appear on tracing databases. Whilst the council will be unable to obtain a new warrant, a debt recovery process may be as simple as writing the debtor a letter to make them aware that the matter has not yet been resolved. Such a debt recovery exercise could be carried out on a commission only basis, with the debt collector offering the service in exchange for a percentage of the debt recovered.

Alternative Options Considered.

- 3.14 ***Extend all four contracts, retaining the current format.*** The council could opt to extend all contracts and retain the current method of working. However to do so would forego the opportunity to simplify the current process. As it stands, only the existing Primary Bailiff offers the council services over and above basic debt recovery; it is not commercially viable for secondary bailiffs to offer additional services as there is not a sufficient return for them in recoverable fees.
- 3.15 ***Framework agreement.*** The council's procurement team has carried out a search for relevant frameworks, but have not been able to find a suitable agreement.
- 3.16 ***Re-tender the service.*** It is not clear whether or not this option would attract any value over and above what may be achieved through extending contracts, working to a revised format as detailed in paragraph 3.18. The council would be unable to consider potential expenditure savings; the contract value is based upon applicable statutory fees which the bailiff may apply to cover the cost of recovering debt. The tender exercise would simply consider the qualitative aspects of debt collection and the incumbent providers are all reputable and well established firms with substantial experience of recovering parking and traffic debt for several local authorities.
- 3.17 ***Extend two contracts, working to a revised format.*** It is therefore proposed to extend two of the contracts, and implement a new method of working. Whilst the work under the contracts would largely remain the same, Officers would specify additional minimum value-added tasks for the bailiffs to complete as a minimum requirement. The existing providers would therefore be asked whether they agree to the potential extension of their contract on the basis that there are only two bailiff firms. The current contracts do allow for the Primary Bailiff to become the Secondary Bailiff and vice versa and therefore as well as not guaranteeing work, the contracts do provide for changes to the status of bailiffs during the term of the contract. Whilst the selection of two bailiff firms may benefit these firms, officers consider the changes will primarily benefit the council. Also, the contracts do allow each party to the contract to propose changes therefore providers would be asked whether they are willing to put forward additional proposals to improve current recovery methods. This option is recommended and is considered in further detail below.
- 3.18 The council is currently considering options for a more consolidated approach to debt recovery. This could include an option to bring some or all of its bailiff services in-house. However, detailed feasibility assessment is at an early stage and a timetable for decision making around this option has not yet been determined; in addition sufficient time

would need to be allowed to establish a service if this option were to be agreed. In order to provide flexibility around this option, it is proposed to extend the parking contracts by just one year initially. If the option to establish an in-house bailiff service is not taken forward then the two selected contracts would be extended by a further year to align with the expiry date of the council's main parking contract. It should be noted that the offer of just a single year extension may limit the opportunity to seek the potential benefits set out in paragraphs 3.22 to 3.26 below.

- 3.19 The council's main parking contract expires on the 3rd July 2018. Extending contracts relating to debt recovery to expire at the same time will allow the council to re-tender all parking contracts as one exercise. There is an intrinsic relationship between parking enforcement, parking IT, parking notice processing and parking debt recovery, and therefore some advantages to tendering all services simultaneously. The risks associated with managing the relationships and interactions between these key functions of parking management will be reduced through a reduction in stakeholders.

Preferred Option and Method of selection.

- 3.20 Subject to the incumbent bailiff firms indicating that they would be interested in their contract being extended on the basis that there are only two bailiff firms for the remaining term, officers would seek proposals from the interested forms as to methods in which existing recovery methods could be improved upon or augmented to add value over and above the recovery of debt. Officers would specifically seek variation proposals in relation to the matters detailed in paragraphs 3.22 to 3.26 inclusive below. Officers would fully review proposals for improved services and recommended the extension and variation of two of the contracts to the Strategic Director Environment and Regeneration.
- 3.21 *Social Value*: Much bailiff activity is focused on residents who may be unable or unwilling to manage finances effectively. The council will invite proposals to vary the contract whereby bailiffs re-invest some of their profits in the local community, particularly around themes which help vulnerable residents to manage their personal finances effectively. It should be noted that many debtors are residents of the borough.
- 3.22 *Debt Recovery processes under the 'Taking of Goods Regulations'*: Officers would ask for proposals to vary the contract whereby bailiffs would be specific about their recovery processes, including how they propose to interact with debtors. The council's objective would be for the bailiff to adopt a firm but fair approach, and exercise a degree of flexibility with customers who are genuinely making efforts to pay.
- 3.23 *Other Debt Recovery processes*. Officers would ask for proposals to vary the contract whereby bailiffs would propose additional debt recovery

measures for the council to consider. A recent soft market testing exercise indicated that all of the incumbent providers had ideas regarding additional debt recovery processes. For example, historical debt (up to six years old) could potentially be re-visited as information on debtors improves.

- 3.24 *Implementing processes which may reduce the council's expenditure.* There is no cost to the council for using the services of bailiffs, but there are costs associated with managing debtors. Direct costs include the formal registration of the charge as a debt at Northampton County Court (Traffic Enforcement Centre). The Parking service also incurs some costs associated with the administration processes for registering debts, and issuing instructions to bailiffs. Officers would ask for proposals to vary the contract whereby bailiffs would propose methods for reducing the council's expenditure
- 3.25 *Assisting the council in the preparation of debt:* Officers would ask for proposals to vary the contract whereby bailiffs would be asked to suggest ways to assist the council in the preparation of debt cases. The council's speed in processing debt may improve the chance of collection.

Feedback from incumbent providers.

- 3.26 Officers have already approached the incumbent providers to gauge what may be achieved through added value, and all have returned broadly comparable answers. Many of these relates to the themes that officers will request formal variation proposals for assessment.
- 3.27 It was evident in their responses that all providers were interested in offering a significant amount of value over and above basic debt collection. However, bailiffs would only be inclined to offer additional services on the basis of being the sole Primary Bailiff (using the existing recovery method), or being one of two Bailiffs directly receiving warrants from the council. It would not be a commercially viable proposition to offer additional services simply on the basis of receiving warrants in the capacity of just a Secondary Bailiff. It is also considered that having fewer bailiffs will assist Officers in more effectively operating the contracts.
- 3.28 The council also received some feedback on issues relating to client activity, specifically relating to potential improvements in the flow of accurate information to and from the bailiffs. This has a direct consequence on the ability of the bailiffs to recover debt.
- 3.29 To address this, the council could consider creating a new post within the Parking and Lighting Service for the specific purpose of managing debt recovery processes, including the debt cleansing activity outlined in paragraph 3.13. This approach has been followed successfully other London authorities. A business case would be prepared to demonstrate

that the additional debt recovered would more than cover the cost of an additional dedicated post.

4 Financial Implications

- 4.1 The council received income of £0.65m from bailiffs in the 2015 calendar year, specifically relating to the recovery of unpaid Penalty Charge Notices. This service is vital in ensuring that budgeted income forecast from the issue of Penalty Charge Notices is recovered.
- 4.2 The council forecasts income received from Penalty Charge Notices on a yield basis, using data relating to historical receipts to determine a likely recoverable value over an 18 month period. This method has proven to have a high degree of accuracy, but is reliant on the service continuing to follow the current practice of collection, including the issue of warrants to bailiffs.
- 4.3 A small provision has been retained within the parking revenue budget for bad debt provision (£0.32m). This would in future only be required if the estimated yield fell. Current receipts indicate that the yield is fairly static. Any fundamental legislative changes made, which impact on the price points of Penalty Charge Notices would need to be managed and reviewed as a cost pressure.
- 4.4 It is prudent to retain a small provision for variances in recovery in parking revenue. An adjustment is proposed for the 2016/2017 year to reduce the bad debt provision to £0.1m.

5 Legal Implications

- 5.1 Officers' preferred option is to extend two of the current contracts and to agree variations to these contracts to alter the way in which the contracts are operated. Relevant provisions exist to extend any or all of the current contracts by up to two years and the contracts include provision allowing for the parties to agree variations to the contracts.
- 5.2 Contracts for bailiff services are regarded as service concession contracts. Such contracts do not fall within the Public Contracts Regulations 2015 but will fall under the draft Concession Regulations 2016 (the draft Regulations") which are not yet in force but must be implemented by the UK Government by mid-April 2016. The threshold for application of the draft Regulations is £4,104,394 and therefore the current bailiff contracts will not be subject to the full requirements of the draft Regulations.
- 5.3 Given the draft Regulations will not apply to the proposed variation of current bailiff contracts, it is relevant to look at case law to establish whether a variation is permitted. For an amendment to be permitted it must not be a material amendment to the contract, namely one that

introduces conditions which would have allowed for the admission or acceptance of a different tender, or extends the scope of the contract considerably; or changes the economic balance of the contract in favour of the contractor. Members are referred to the body of the report, in particular paragraph 3.18, for further information.

- 5.4 The annual value of the bailiff contracts is such that the contracts are likely to be classed as High Value Contracts under the Council's Contract Standing Orders. As a result, if the option to re-procure was taken (rather than extension and variation of the existing contracts), they would have to be procured by way of tender process. Depending on the duration of the proposed contract and therefore its value, any procurement may also have to comply with the draft Regulations when these are enacted.
- 5.5 Under Section 55 of the Road Traffic Regulation Act 1984 (as amended, and hereafter referred to as "the 1984 Act"), enforcement authorities must keep account of their income and expenditure in respect of on-street parking places. The 1984 Act requires that any surplus must be applied towards specific purposes as set out under Section 55(4).

6 Diversity Implications

- 6.1 This report proposed to extend the provision of an existing service, and therefore there are no new diversity implications arising from this report.
- 6.2 Parking and Traffic Penalty Charge Notices are served to the registered keepers of vehicles as a consequence of parking or traffic infringements. At the time of service, it is not possible to distinguish individual characteristics of the recipients of this service. Debt recovery processes are an inherent part of the service.

7 Staffing Implications

- 7.1 Growth in the staffing budget would fund the provision of an additional dedicated debt recovery officer within the Parking and Lighting Service. A job description and person specification will be produced, and formally evaluated prior to recruitment.

8 Public Services (Social Value) Act 2012

- 8.1 The method of selecting which bailiff contracts to extend will take into account proposals to vary from contractors in respect of social value commitments.

Background Papers

- Executive Report, November 2013. Appointment of Certified Bailiffs for the collection of Penalty Charge Notice Debts.

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