



Executive
27th May 2008

**Report from the Director of
Environment and Culture.**

Wards Affected:
ALL

Authority to tender for Parking Service Bailiff Contracts

Forward Plan Ref: E&C-07/08-020

1.0 Summary

- 1.1 This report concerns the enforcement and collection of unpaid penalty charge notices (PCNs). The report requests approval from the Executive for the Director of Environment & Culture to invite tenders and evaluate them in respect of Enforcement and Collection of PCN's, contracts to commence on 1 April 2009, as required by Contract Standing Orders 88 and 89.
- 1.2 At present the borough's unpaid PCNs are collected by two bailiff firms, Collect Services and Rundle and Co. The services are not currently commissioned on a tendered basis. This report sets out proposals for tendering and formalising the service.

2.0 Recommendations

- 2.1 The Executive to give approval to the pre-tender considerations and the criteria to be used to evaluate tenders as set out in paragraph 3.17 of the report.
- 2.2 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved evaluation criteria referred to in 2.1 above.

3.0 Details

- 3.1 This Report concerns a service for pursuing unpaid debts resulting from the issue of Parking Penalty Charge Notices (PCNs) beyond the point that the

Council has exhausted its own processes. Under the Road Traffic Act 1991 (as amended) if the recipient of a PCN fails to pay or make valid representations resulting in cancellation of the case, it will proceed to a stage where the Council obtains a "Warrant of Execution" by application to the Traffic Enforcement Centre. Once a warrant has been issued, the Council has the legal authority to refer the case to a bailiff company for the purposes of pursuing the said debt.

- 3.2 The service for which approval is being sought is commonly known as the 'Bailiff Service' and is intended to recover debt due to the Council as well as recovering the bailiff's own costs.
- 3.3 This is a legal process whereby certificated bailiffs can, after firstly attempting to seek payment, take possessions of the debtor for sale at an auction and use any proceeds from the sale towards settlement of the bill. During 2006-07, 19,000 warrants were passed to the Council's two existing bailiffs.
- 3.4 At the moment the work is divided equally between the two bailiff firms, Collect Services and Rundle and Co as far as possible. To maintain an even workload between them the work is allocated on a top-up basis to each firm, depending how many cases are still outstanding. The arrangement is working well. The current service arrangement will come to an end with the award of the new contracts. Both firms are aware and will be notified in writing before the tender goes out. Both firms are also expected to tender for the new contracts.
- 3.5 Under parking legislation a PCN is normally issued by attaching it to the vehicle or handing it to the motorist. The motorist can pay the PCN at a discounted rate of fifty per cent within 14 days or challenge it. If a challenge is received and rejected the motorist is given further 14 days to pay at the discounted rate. If the PCN is still not paid after 28 days, a Notice to Owner appeal form is sent which allows the motorist a second opportunity to make a formal representation to the Council. If the representation is not successful, the motorist can appeal further to an Independent Adjudicator against the Council's decision. The Independent Adjudicator's decision is binding on the motorist and the Council
- 3.6 Even if the motorist takes no action a Notice to Owner is sent out after 28 days for the motorist to make a representation and a further 28 days are allowed for this to happen.
- 3.7 Finally, if a motorist still does not pay the PCN the debt is registered with the Traffic Enforcement Centre at Northampton County Court. Only then and if it is still not paid a warrant is issued and the Council instructs a bailiff company to execute the warrant to collect the outstanding charge together with the bailiff's own costs. The bailiff's costs are agreed and regulated by the Lord Chancellor's Office.
- 3.8 Bailiffs are used at this stage because non-paying customers tend to avoid making contact with the Council, ruling out any alternative options.
- 3.9 As a first step the bailiffs write to the debtor after verification of details asking for the debt to be paid. Failing that the bailiffs are allowed a maximum of 3

visits for statutory charges can be made. Bailiffs may make more visits if required to make contact with the debtor. On contact a levy may have to be imposed on goods though, currently, only in two or three per cent of the cases result in goods actually removed.

- 3.10 Legislation requires that only certificated bailiffs are used. Bailiff firms are required to act within the Code of Practice of the Certified Bailiffs Association of England and Wales. They will also be required to act according to a code of conduct imposed by the Council.
- 3.11 It is proposed to continue to use two firms to share the workload and to encourage competition. Two is considered to be the optimum number of firms to provide scope for firms to earn the level of fees that would attract them to bid, given the volume of Brent referrals. There is also a risk that if more firms were involved in the delivery of the service, their attention and quality of service after contract may deteriorate if the earning potential is lowered by spreading the work too thinly.
- 3.12 It is proposed to enter into a two-year contract with each firm starting on 1 April, 2009, with an option to extend each contract for up to a further two years.
- 3.13 The fees that bailiff firms can charge are controlled by legislation. The annual total value of the bailiff fees based on collection rates is estimated to be £300k.
- 3.14 Officers have explored the possibilities of combining the collection of unpaid PCNs and unpaid Council Tax through one single arrangement / contract. However, there is difficulty in the fact that there is already a contract in place for Council Tax and it was considered not timely to retender a larger package to include unpaid PCNs. It was also noted that the existing provider for Council Tax debt recovery would be able to apply anyway for the PCN work.
- 3.15 Officers have also considered whether there may be compelling arguments to enter into a shared service arrangement with another London Borough. At present most Boroughs have contractual arrangements in place, with some (such as Camden and Westminster) likely to procure future contracts through the Partnerships in Parking (PiP) network, of which Brent is not a member.
- 3.16 Given that the Council will not be paying the successful bailiffs (their income is derived from fees and charges that are fixed by legislation), there is no potential cost saving from a shared service. In addition, there are no apparent reasons to assume that collection rates through a shared service would be higher than under an individual contract.

Performance Measures

- 3.17 The quality and performance of the Contracts will be used to measure the achievement of the bailiff companies appointed through this procurement process.

3.18 The Contract Specification will be drawn up so as to address issues such as:

- ✓ the recording of evidence and 'proof of posting' for all letters sent to debtors
- ✓ the requirement to prove that a visit to the debtors' premises has actually been made, including retrospective evidence that each recorded visit has been made
- ✓ the compliance with the Scale of Fees & Charges laid down by the Lord Chancellors' Office
- ✓ the percentage of warrants on which full or part payment is received (excluding the bailiff's statutory fees) in relation to the number of instructions from the Council to execute warrants
- ✓ the percentage of monies recovered and paid to the Council in relation to the total amount of debt passed to the bailiffs by way of instruction to execute warrants
- ✓ the percentage of charges levied and recovered by the bailiffs in respect of associated warrants
- ✓ the time taken to recover debt owed to the Council
- ✓ the number, type and severity of service complaints
- ✓ environmental performance
- ✓ equalities & diversity performance
- ✓ health & safety performance

3.19 In accordance with Contract Standing Orders 88 and 89, the procedure and timetable to be followed has been set out below.

Ref.	Requirement	Response	
(i)	The nature of the service	Enforcing warrants to collect unpaid PCNs	
(ii)	The estimated value	Over a total of potentially 4 years, £1.2 million.	
(iii)	The contract term	2 years and an option to extend for up to 2 years.	
(iv)	The tender procedure to be adopted	Two stage procedure (shortlist and invitation to tender).	
(v)	The procurement timetable (dates are indicative)	Adverts placed	June 2008
		Expressions of interest returned (pre-qualification questionnaire PQQ)	mid July 2008
		Evaluate PQQ's and shortlist firms(Stage 1: including Technical,	mid August 2008

		Health & Safety, Environmental and Financial)	
		Invite to tender	Sept 2008
		Deadline for return of Tenders	mid October 2008
		Undertake clarification interviews	October 2008
		Evaluate tenders	November 2008
		Recommendations to the Executive for the award of the contracts	January 2009
		Award Contracts	January 2008
		Contracts start	1st April 2009
(vi)	The evaluation criteria and process	<p>Shortlists are to be drawn up in accordance with the Council's Contract Management Guidelines and thereby meeting the Council's financial standing, and technical expertise requirements. Tenders will be evaluated and the contract awarded using the following criteria:</p> <ul style="list-style-type: none"> • Quality (100% weighting) covering: <ul style="list-style-type: none"> - <i>Proven ability to meet the requirements of the service specification</i> - <i>Approach to the delivery of the service</i> - <i>Approach to ensuring standards are maintained</i> - <i>The ability to fulfil the Council's customer relation requirements</i> - <i>The ability to meet and exceed the Council's performance measures</i> - <i>Track record elsewhere in achieving good collection rates</i> <p>The relative weighting given to each individual evaluation criteria will be stated in the tender documentation.</p>	
(vii)	Any business risks associated with entering the contract	The contractors will not be paid by the council. The contractor's income will come from fees charged to the defaulters. The	

		<p>contractor will be expected to cover the council against any liability.</p> <p>However, poor performance by the contractor could (1) be detrimental to the reputation of the Council and (2) result in unrecovered debts that will adversely affect the Parking Account and the effective enforcement of parking restrictions.</p>
viii)	The Council's Best Value duties	The competitive tender for the Bailiff Services (Collection of unpaid PCN's) will ensure future compliance with specified standards.
(ix)	Any staffing implications, including TUPE and pensions	No implications for Council staff.
(x)	The relevant financial, legal and other considerations	See sections 4.0 and 5.0 below.

3.20 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 88.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive and/or General Purposes Committee for approval to invite tenders and in respect of other matters identified in Standing Order 89.

4.2 The total value of the enforcement and collection of PCN's will be above the £500k threshold.

4.3 The approximate value of the contracts is £600k in total (i.e. under both proposed contracts) for the initial contract period of 2 years rising to £1.2M for a contract period of 4 years.

4.4 The Council will not be paying the bailiff firms. Bailiffs will collect their fees from the defaulters and not from the Council. The competitive tendering process will ensure that the service is provided by the most capable firms as measured by the criteria of selection.

4.5 Effective collection of monies owed to the Council maximises income receipts and minimises debt write-offs.

- 4.6 Pursuance of defaulters ensures that it is understood that if a PCN is not paid the Council will take action to recover it.
- 4.7 Full financial implications will be reported when the Executive consider the award of the tender.

5.0 Legal implications

- 5.1 Legal powers to enforce debts against offenders in this manner are provided for in the Road Traffic Regulation Act 1984 and the Road Traffic Act 1991 (both as amended) and a brief explanation of the process is given at section 3 above.
- 5.2 The estimated value of the proposed contracts over their lifetime exceeds the EU threshold for services contracts. However, the contracts are categorised as services concession contracts under the Public Contracts Regulations 2006 (“the EU Regulations”) and accordingly are not subject to the full application of the EU Regulations. The procurement process is still subject to overriding EU principles of equality of treatment, fairness and transparency.
- 5.3 In addition, as the estimated total value of the proposed contracts over their lifetime is in excess of £500,000 the procurement and award of the contracts are subject to the Council’s Contract Standing Orders and Financial Regulations in respect of High Value Contracts.
- 5.4 Once the tendering process has been concluded Officers will report back to the Executive in accordance with Contract Standing Orders explaining the process undertaken in tendering and recommending award of contracts.

6.0 Diversity implications

- 6.1 An initial equalities impact assessment highlights a number of areas in which Officers will be asking tendering companies to outline proposals for managing potential impacts. These are:
 - 6.1.1 treating all customer groups with respect, especially those who due to age may be more vulnerable;
 - 6.1.2 potential difficulties in undertaking bailiff activities on days of religious observance for different faith groups;
 - 6.1.3 accessing customers who live in flats, where entry is covered by a door entry security system owned by the managing agent;
 - 6.1.4 ensuring blue badge holders are given ample opportunity to prove their status;
 - 6.1.5 ensuring goods seized from customers registered disabled are not items that help them manage their disabilities; and
 - 6.1.6 identifying alternative arrangements for non-paying customers on low incomes

7.0 Environmental implications

7.1 Tenderers will be required to show how they meet the Council's Environmental Policy through the pre-qualification questionnaire.

7.2 Significant environmental issues within the scope of Bailiff activities are expected around:

- Storage of seized goods in lieu of payments, and associated energy use for storage facilities;
- Disposal of goods, and following good waste management practice for electrical and electronic equipment, re-use and recycling; and
- Travel activities and associated greenhouse gas emissions from transport planning and transport modes.

8.0 Staffing / accommodation implications

8.1 The bailiff companies will be external contractors and in the event there are no implications for Council staff arising from tendering the service.

8.2 There are no TUPE implications associated with the recommendations contained in this report.

Background Papers:

None

Contact Officer:

Any person wishing to inspect the above papers should contact Subhash Radia, Parking Control, StreetCare Unit, Pyramid House, Fourth Way, Wembley, HA9 0LJ

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