



Executive
11th November 2013

**Report from the Strategic Director of
Environment and Neighbourhoods**

For Action

Wards Affected: ALL

**Appointment of Certified Bailiffs for the collection of Penalty Charge
Notice debts**

1.0 SUMMARY

- 1.1 This report seeks approval of the Executive to award contracts for the provision of certified bailiff services for the collection of unpaid debts in relation to parking and traffic Penalty Charge Notices as required by Standing Order 88. This report summarises the procurement approach followed by the London Borough of Ealing in collaboration with the London Borough of Brent and seeks approval to an exemption from the usual tendering requirements of Contract Standing Orders for the direct award of these service concession contracts.
- 1.2 The report also outlines why this approach to selecting certified bailiff services represents good value for the Local Authorities involved in the process on the basis that the method of allocating warrants attracts added value commitments from the Primary Bailiff.

2.0 RECOMMENDATIONS

- 2.1 That the Executive approve the award of a contract for the recovery of parking debts, to Collect Services Limited (who will initially act as Primary Bailiffs) subject to satisfactory performance, for a period of 3 years with the option of extending the contract for a further 2 years.
- 2.2 That the Executive approve the award of contracts for the recovery of parking debts, to Newlyn PLC, Task Enforcement Limited, and J.B.W. Group Limited (who will initially act as Secondary Bailiffs) for a period of 3 years with the option of extending the contracts for a further 2 years.
- 2.3 That the Executive note the process proposed for changing the appointment of Primary Bailiffs described in paragraph 3.9 and delegate future decisions around this process to the Director of Environment and Neighbourhoods.

- 2.4 That the Executive approve an exemption from the usual tendering requirements of Contract Standing Orders in respect of the direct award of contracts as detailed in Recommendations 2.1 and 2.2 for the good financial and/or operational reasons set out in paragraphs 3.7 and 3.8 of the report.

3.0 DETAILS

Background

- 3.1 Certificated Bailiffs play an important role in the recovery of unpaid debts in relation to Parking Penalty Charge Notices issued under the Traffic Management Act 2004, The London Local Authorities Act 1996, and the Transport for London and London Local Authorities Act 2003.
- 3.2 Each debt-type whether issued for parking, bus lane, or moving traffic contraventions, follows a slightly different statutory progression inclusive of a series of notices served by hand, fixed to vehicles, or served by post, designed to prompt payment of outstanding debt, or to encourage prompt discharge of liability.
- 3.3 Should debtors fail to discharge liability or settle outstanding debts, the Council follows a process of registering outstanding debt at County Court in advance of issuing warrants to Certified Bailiffs in order to collect debts on the Council's behalf.
- 3.4 Bailiffs recover debt by following a process regulated under The Enforcement of Road Traffic Debts (Certificated Bailiffs) (Amendment) Regulations 2003 in which a schedule of fees is applicable depending on the level of enforcement action undertaken by the Bailiff to recover the outstanding debt (actions may range from, initially sending a letter to a debtor to levying distress - each process has an associated cost). Should the bailiff successfully recover the outstanding debt, he/she will return the monies owed to the local authority and retain fees recovered in relation to the cost of providing the service.
- 3.5 The Council's last contracts with Bailiffs, Newlyn PLC and Task Enforcement, expired at the close of the last fiscal year, and Officers are keen to commence a new service in order to release a backlog of warrants.

Collaborative borough working

- 3.6 Further to the collaborative procurement of a Parking Services contract by Brent, Ealing and Hounslow, discussions have subsequently explored scope for further collaboration on bailiff arrangements. Brent and Ealing agreed to collaborate further.
- 3.7 Officers at both Ealing and Brent considered it would be appropriate to approach selected market leading certificated bailiff firms with a view to establishing whether any additional value could be obtained by the authorities. This approach, as opposed to a full tender exercise, was deemed appropriate for a number of reasons. The fees charged by bailiffs are regulated and therefore standard for all firms. Bailiff firms would not therefore be able to bid competitively on this aspect. There was concern therefore about entering into an expensive tender exercise when there would be little financial benefit to the council. Also, there were difficulties in valuing the contract as there is no guarantee as to the numbers of cases to be passed to bailiffs, particularly at the current time following the letting of the Parking Services contract to Serco. Officers anticipate a higher level of recovery at an earlier stage in the Penalty Charge Notice cycle which will significantly reduce the volume of debt being registered at County Court and thus pursued by bailiffs. The level of evidence

recovered and accuracy of modern traffic enforcement systems that have been in use since mid-2013, mean that the authority is likely encourage settlement of more debts prior to the Bailiff stage.

- 3.8 It was also considered that the offering from certificated bailiff firms would be broadly comparable; with each of the firms having an established place in the market with sufficient experience of recovering local authority parking and traffic debt. It was felt that what would set firms apart from one another would be the “added value” elements that they were prepared to provide to the authorities and offers from bailiff firms could be obtained on this aspect without tendering.
- 3.9 A specification was produced with the intention of producing additional value to the local authorities. This was to be achieved through the creation of a primary bailiff and three secondary bailiffs. The Primary Bailiff would be offered first refusal on all warrants on the basis that they maintain appropriate levels of performance. Warrants declined by the Primary Bailiff or returned to the Council as unrecoverable will be reallocated (equally apportioned) to the Secondary Bailiffs. Should the Primary Bailiff fail to meet agreed levels of performance, the best performing Secondary Bailiff would become the Primary Bailiff.
- 3.10 Ealing approached six of the leading bailiff firms (including both Ealing and Brent’s then incumbent bailiffs) regarding Ealing and Brent’s predicted requirements. The outcome of this was that Collect Services Limited was considered to have offered the best “added value” elements (3.12.1 – 3.12.3) and should be awarded the contract as Primary Bailiff. Collect Services Ltd was Ealing’s then incumbent bailiff. The three secondary bailiffs selected to be recommended for award were Newlyn PLC (Brent’s joint incumbent until 31.3.13), Task Enforcement Limited (Brent’s joint incumbent until 31.3.13), and J.B.W. Group Limited.
- 3.11 It should be noted that all Bailiff’s firms approached as part of this exercise are of high repute and are already engaged in similar activities for other London local authorities. All companies employ the services of Certificated Bailiffs, which are not to be confused with less regulated Debt Collectors. Bailiffs are required to be certificated every two years by a County Court, deeming that they meet certain conditions (and are a fit and proper person for the work); if they do not act properly they risk losing their certificate. The Conditions of Contract require participating firms to adhere to the Civil Enforcement Association’s Code of Conduct and Good Practice guide. Council officers will investigate any allegation of misconduct using the Council’s normal complaints procedure.

Contract method

- 3.12 The Primary Bailiff will be allocated every warrant, in consideration of the following requirements:
- 3.12.1 The Primary Bailiff is required to declare all debts they believe to be recoverable, and will be required to achieve a recovery rate (the number of warrants closed as recovered / the number of warrants issued) of at least 50%, should they wish to retain their Primary Bailiff status. This level of performance has not been achieved by Brent or Ealing bailiffs in the past and is seen as an ambitious recovery rate.

- 3.12.2 The Primary Bailiff also agrees that for those warrants they cannot collect, they will pay for the costs incurred for registering the debt at the Court; the fee for which currently stands at £7 per registration. (Where a Penalty Charge Notice is not paid or contested and the Council registers the debt at County Court; a £7 fee is incurred by the Council which is added to the debt payable. Where bailiffs successfully recover the debt, the court registration fee is recovered from the customer at the same time. This proposed arrangement means that whereas currently this fee is always lost when the bailiff does not make a recovery, in future, the fee will be reimbursed by the Primary Bailiff if they accept the debt and then are not successful in collecting it. It should also be noted that this arrangement does not apply to debts allocated to Secondary bailiffs.
- 3.12.3 The Primary Bailiff also now agrees to deal with customer contact about cases whilst the case is being handled by the Bailiff. Currently such correspondence is processed by the Council's Appeals Team, during which period, enforcement action is placed on hold. The new arrangement has the advantage that correspondence outside the statutory process will not delay bailiff enforcement, as currently is sometimes the case.
- 3.13 Warrants declined by the Primary Bailiff or returned to the Council as unrecoverable will be reallocated (equally apportioned) to the Secondary Bailiffs. At the close of the first year of the Contract, should the Primary Bailiff fail in its bid to attain a recovery rate of 50%, the highest performing secondary bailiff shall be offered the opportunity to become the Primary Bailiff for year two of the Contract. Performance of the Primary Bailiff will be reviewed each year and failure to attain the stipulated recovery rate will lead to replacement of the Primary Bailiff. Officers representing the participating boroughs shall review performance in collaboration.
- 3.14 The benefits of working in this way are twofold:
- 3.14.1 The performance of the Contract is self-regulating on the basis that the Primary Bailiff will always strive to achieve a high level of performance to retain their position; whereas the secondary bailiffs will benchmark performance levels against one another in the anticipation that they may become the Primary Bailiff in year 2.
- 3.14.2 The potential to realise a high volume of work means that Bailiff Firms are prepared to offer commitments to the local authorities (those commitments identified and applicable to the Primary Bailiff in 3.11, above) at their own risk.

4.0 FINANCIAL IMPLICATIONS

- 4.1 It is difficult to estimate the value of the Contracts, although estimates based on historic debt recovery imply that should a single contract be awarded, the value to the Primary Bailiff may be in the region of £500,000 per annum for Brent. Assuming that the Primary Bailiff will receive 50% of the work, and the other participating contractors 16.7% each, the annual value of the contracts may be approximately £750,000 to the Primary Bailiff and £250,000 to each of the Secondary Bailiffs over the initial 3 year term.

- 4.2 In the worst case, the implication of Contract Award will mean that the Council's revenue profile will remain steady, on the basis that this concession is being re-let rather than as a new service. Revenues returned to the Council in relation to debts recovered by bailiffs for the last two fiscal years were £391k in 2011/12 and £726k in 2012/13.
- 4.3 In the best case scenario, the new performance mechanism will pay dividends, encouraging a higher recovery rate to the Council based upon improved levels of performance. The return of debt registration fees to the Council (see 3.11.2) are also desirable as a new means to net off unnecessary expenditure. Of the 17,983 warrants issued in 2012/2013, 13,877 were not recovered. As the current fee for registering debts is £7 per warrant, £97,139 was spent on chasing debts without any return to the council. This highlights the potential added value to the Council through allocating warrants to a Primary Bailiff.
- 4.4 Further to the return of registration fees described at 3.12.2 above, better reporting and cleansing routines (through the Council's new parking IT system), means that the Council are able to avoid expenditure arising from registration of debts unnecessarily. Prior to registering debts at County Court, the Council may undertake a cleansing exercise, referencing debt against historical collection attempts. If the Council, or another local authority, have made unsuccessful attempts to collect from a debtor in the past; assessing the likelihood of the collection of live debt against a historical profile will enable the Council to determine whether or not to proceed (and incur the cost of registering debt at the County Court). Alternatively, should one vehicle have multiple debts, it makes good business sense to register one debt and hold all others until outcome of the first debt is known. Cleansing debt in this manner will also mean that the volume of warrants issued to contractors declines over the contract term (hence the difficulty in guaranteeing a volume of work or precisely determining the financial value of this service).
- 4.5 The award of these contracts will not present the Council with any net cost, the fees are deducted from additional revenue collected from registered keepers.
- 4.6 The Bailiff must charge fees strictly in accordance with the Schedule set out in The Enforcement of Road Traffic Debts (Certificated Bailiffs) Regulations 1993 (as amended 1998) and/or other current Regulations issued by the Lord Chancellor and as prescribed by Traffic Management Act 2004. Should existing fee structures and regulations be superseded by new regulations, the new regulations will take precedence. All warrants held by the Bailiff in respect of the debtor will ordinarily be dealt with as one execution to minimise inconvenience, distress and cost to the debtor.
- 4.7 The significant differences in approach recommended in this report, mean it is not possible to model the expected differences in PCN recovery and costs. Not least because we cannot predict the proportion of Warrants that the Primary bailiff accept or reject. Nevertheless, the new arrangements are intended to both improve the collection rate from debts that reach the Warrant stage, and to reduce the level of non-productive Debt Registrations. Thus it is expected that the recommended changes will increase revenue and reduce expenditure.

5.0 LEGAL IMPLICATIONS

- 5.1 Legal powers to enforce debts are provided for primarily in the Traffic Management Act 2004 and the Civil Enforcement of Parking Contraventions General Regulations 2007 (as amended).

- 5.2 These contracts are service concession contracts under the Public Contracts Regulations 2006 (“the EU Regulations”). As such this procurement process is not subject to the EU Regulations. This is because there is a specific exemption in the EU Regulations for service concession contracts. Service concession contracts are defined within the EU Regulations as a contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract. This is the case for bailiffs because they get paid by the debtor only when a successful recovery of debt is made.
- 5.3 The estimated total value of the Primary Bailiff contract over its lifetime is in excess of £250k and thus is classified as a High Value Contract under the Council’s Contract Standing Orders and Financial Regulations. If the contractor initially named as the Primary Bailiff fails to perform in accordance with contractual requirements as set out at paragraph 3.12, the role of Primary Bailiff will pass to one of the other three firms recommended for appointment as bailiffs. As such there is a potential for the total value for all three contracts with the reserve bailiffs to be in excess of £250k and thus all are classified as High Value Contracts.
- 5.4 As these contracts will be High Value contracts under the Council’s Contract Standing Orders, Executive approval to the award of the contracts is required.
- 5.5 As this procurement process is not subject to the EU Regulations there is no requirement that a standstill period be observed before contracts are awarded.
- 5.6 This report also requests approval for an exemption from the usual tendering requirements of Contract Standing Order 84 (f) for High Value Contracts, in order to allow a direct award of contracts to the four bailiff firms. The Executive has the power to do this by virtue of Contract Standing Order 84(a), provided that Members are satisfied that there are good operational and/or financial reasons for doing so. Members are referred to paragraphs 3.7 and 3.8 and should be satisfied that these provide good operational and/or financial reasons.
- 5.7 In addition, Members may only grant an exemption from tendering where there is no breach of domestic or European legislation. As the contracts are service concessions, they are exempt from the full tendering requirements of the EU Regulations. Most importantly, there is no strict requirement to advertise in accordance with EU Regulations. However award of service concession contracts is subject to over-riding obligations of non-discrimination, fairness and transparency and there is certainly EU case law to suggest that service concessions should be subject to some form of advertised process. However this is subject to an analysis of the nature of the service and whether there is likely to be cross-border interest. Given the requirement for the bailiff to be a Certified Bailiff, it is considered that there is likely to be limited cross-border interest and so the risk of successful challenge to award is considered limited

6.0 DIVERSITY IMPLICATIONS

- 6.1 The service is a by-product of earlier enforcement activities, a service which applies indiscriminate enforcement of parking and traffic regulations. There is no aspect which is intended to impact on any group other than drivers that do not comply with the law. However, it may well be possible that one or more groups with Protected Characteristics may drive or park inappropriately, or find themselves more likely subject to Bailiff action because perhaps they are less likely to understand written notices.

- 6.2 The existing Bailiff arrangement has not collected equalities data, which would allow the Council to better understand whether any groups receive disproportionately different treatment. The new contractors will be required to develop arrangements for monitoring the equalities characteristics of customers at key stages of its service, for future analysis by the Council. Bailiffs are also contractually obliged to adopt a policy to comply with the requirements of all equal opportunities legislation and shall not treat any individual or a group of people less favourably than others because of colour, race, nationality, ethnic origin, religion, faith or belief, sex, sexual orientation, disability or age and, further, shall seek to promote equality among its personnel and generally.
- 6.3 Further, the Bailiff Code of Conduct governs the actions for vulnerable sections of the community and additionally the Bailiff is required to refer any contentious issues or vulnerable cases back to the Council for the Council to decide whether to continue enforcing the debt.

7.0 STAFFING / ACCOMMODATION IMPLICATIONS (IF APPROPRIATE)

- 7.1 This service is currently provided by external contractors and there are no implications for Council staff arising from the tendering of the services.

BACKGROUND PAPERS

There are no applicable background papers.

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