

REPORT TITLE: Civil Parking, Social Care and Commercial Council Debt Enforcement Services Contract

Cabinet Date	22nd November 2023
Cabinet Member	Cllr Dom Morris – Cabinet Member for Highways and Flooding
Key Decision	Yes
Purpose of Report	To seek Cabinet Member approval to procure and award a four-year Civil Parking and social care and commercial Council Debt Enforcement Services Contract to replace the current contract for such services when it expires at the end of April 2024.
Recommendations	<p>That Cabinet delegates authority to the Executive Director of Economy, Environment & Infrastructure, in consultation with the Cabinet Member for Highways and Flooding to:</p> <ol style="list-style-type: none"> 1. Conduct a competitive procurement process in respect of a contract for the supply of Enforcement Agent Services for parking related, social care and commercial council debt recovery services. The proposed contract shall continue for a period of four years; and 2. Award such contract to the preferred tenderer.
Reasons for Recommendations	<p>The council's current enforcement agent services contract arrangements have been in operation since 2020 and expire in April 2024; hence a replacement contract is required to ensure that the council will have a civil parking debt recovery agent in place from this date.</p> <p>The enforcement agent services that will be provided under the proposed new contract shall include:</p> <ol style="list-style-type: none"> (a) Parking related debt recovery services (b) Social care and commercial council debt recovery services. <p>Social care and commercial debt recovery services are to be included in the new contract to provide alternative debt recovery options for the wider Council.</p>

<p>Resource Implications</p>	<p>There is no cost to the council when enforcement agents recover costs debts under a Traffic Enforcement Centre Warrant or County Court Judgement, as enforcement agents are permitted to charge statutory rates against such debtors to cover their costs.</p> <p>In 2022/23 enforcement agents appointed by the council under its current enforcement agent services contract recovered and paid £171k of unpaid parking and bus lane fines from debtors to the council.</p> <p>It is estimated that £690k in unpaid Penalty Charge Notice (PCN) revenue will be paid to the council under the proposed contract over its four-year term.</p> <p>The proposed new contract arrangements would also allow for social care and commercial debt to be pursued where appropriate and where internal GCC processes have failed to achieve payment of outstanding amounts.</p>
<p>Background Documents</p>	<ul style="list-style-type: none"> • The Traffic Management Act 2004 • The Civil Enforcement of Parking Contraventions (England) General Regulation 2007 • The Tribunals Courts and Enforcement Act 2017 • The Criminal Justice & Courts Act 2015 • The Taking of Goods Regulations 2014 • The Human Rights Act 1998 • The Equalities Act 2010 • The Debt Respite Scheme Regulations 2020 • The Care Act 2014 • The Companies Act 2006 • The Wages Act 1986
<p>Statutory Authority</p>	<p>The Traffic Management Act 2004</p>
<p>Divisional Councillor(s)</p>	<p>All</p>
<p>Officer</p>	<p>Name: Andrew Burford Tel. no: 01452 425452 Email: Andrew.burford@gloucestershire.gov.uk</p>
<p>Timeline</p>	<p>November 2023 - Cabinet approval Invitation to tender documents issued to market – December 2023 Tender Documents returned from market – January 2024</p>

	Evaluation completed – February 2024 Contract awarded – February 2024 Contract commences – May 2024
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Background

1. Currently, GCC has an enforcement agent services contract with Marston Holdings that was awarded in 2020, via a mini competition process, under the Yorkshire Purchasing Organisation Enforcement Agent Framework Agreement. The contract is a concession contract (i.e., there is no cost to the council for the services provided) and delivers GCC around £171k per annum in additional parking revenue, which would otherwise be very difficult to recover. This arrangement expires on 30th April 2024.
2. Parking restrictions are critical to the smooth operation of the highway network and encourages better traffic flow. To ensure that parking, bus lane or moving traffic restrictions are adhered to there is a requirement to enforce them. Without enforcement it is likely that many restrictions would be ignored by motorists. Similarly, the ability to ultimately recover any fines and debts associated with the enforcement is critical in ensuring compliance with traffic and parking regulations.
3. It should be noted that the authority has several obligations regarding traffic management and flow under the Traffic Management Act, 2004 and subsequent revisions. The authority can discharge many of these duties by the enforcement of parking, bus lanes and moving traffic regulation orders.
4. Enforcement of parking restrictions takes place by utilising Civil Enforcement Officers (CEOs) who issue Penalty Charge Notices (PCNs) if any contraventions are identified. Automatic Number Plate Recognition Cameras (ANPR) are used to enforce bus lanes and moving traffic contraventions, with a CEO reviewing the footage and manually issuing a PCN, if required.
5. To ensure that any unpaid parking fines are settled the authority refers non-payers to the Traffic Enforcement Centre (TEC) at Northampton (essentially a bulk handling civil court). This body processes unpaid traffic fines and can issue warrants that enable enforcement agents to chase payment. This often takes the form of a direct payment or payment plan but can result in goods owned by a debtor being seized and sold.
6. Enforcement agents are heavily regulated, for understandable reasons. The regulations publish clear processes, regulations and professional standards that must be adhered to by enforcement agents and their use nationally and within Gloucestershire is well established best practice in any holistic approach to parking enforcement and compliance.
7. As parking enforcement is a civil matter an enforcement agent is not permitted to use force to break into the home of a debtor; however, they can access a property via an open door or gate. The agent would normally come to arrangement with the individual such as full payment of the debt, creation of a payment plan or can seize and sell goods to the value of the debt.

8. In 2020 the government introduced the Debt Respite Scheme Regulations, also known as Breathing Space. The regulations require creditors to put debt on hold should a Breathing Space request be received from a debt support charity (such as the Citizen's Advice Bureau). This is to ensure that vulnerable debtors are given space to try to resolve their debt challenges or manage a serious mental health condition.
9. Enforcement agents' operations are funded by charging debtors a statutory rate for their recovery services depending on the stage of the process. GCC does not pay any direct amount to the enforcement agents in relation to the recovery of outstanding amounts from debtors. All enforcement agent charges are covered by the statutory rates levied against the debtor. It is estimated that the supplier accrues around £185k per annum in fees from the current contract.
10. Current statutory rates enforcement agents can charge are:

Stage of process	Fixed fee	Percentage extra for amounts over £1,500
Write a letter regarding the debt	£75	Nil
Enforcement visit to home address	£235	7.5%
Taking and selling belongings	£110	7.5%

11. It should be noted that at least one council has attempted to have enforcement agents pay the authority an element of the statutory fees above by specifying the requirement in a tender. This attempt resulted in High Court action by enforcement companies and the tender was terminated.
12. Charges are made at the start of each stage, the charge is levied for each individual letter or visit. It should be noted that the enforcement agents can also charge for further out of pocket expenses (consequential losses) such as storage of goods prior to sale or any additional court fees. These are applied on a case by case basis.
13. Once the enforcement agents have obtained payment from the debtor, this includes their fees, they pay GCC for the outstanding balance for the PCN the debt relates to. It should be noted that the enforcement agents take their fees first, prior to GCC obtaining payment for the outstanding debt.
14. Should a debtor refuse to engage with the enforcement agents and fail to agree a payment or payment plan then a number of options are available to the agent, including peaceful entry to the property to seize goods under the Traffic Enforcement Centre (TEC) warrant.
15. The majority of PCN's issued by GCC are paid within the statutory 28 day period (60%), with around 14% of recipients appealing their tickets. In 2022/23 a total of around 9% of PCNs remained unpaid and were referred to TEC at Northampton.

16. In 2022/23 6,231 cases were referred to TEC, of these 27% were recovered by the enforcement agent service. Any cases where recovery has not taken place are returned to the Council as unrecovered. The total amount recovered from the enforcement agent to GCC for 2022/23 is £171,161.
17. It should be noted that the collection rates are unlikely to exceed 30% due to a considerable number of cases being returned due to client vulnerabilities or persistent evaders. The parking team are working with the current enforcement agent to reduce the number of persistent evaders committing contraventions. Performance monitoring of the enforcement agent, is built into the contract specification and covers aspects such as recovery rates, number of complaints, number of payment agreements made etc.
18. Consultation with other authorities has identified that Gloucestershire recovery rates are average for parking related debt at a County Council, although those that use a debt recovery service after a warrant has expired see an increase in recovery rates of around 5%.
19. This contract will include a debt recovery option, to enable the debt to be continued to be pursued after the initial court warrant has expired. The proposed route to market allows this service to be included.

Other commercial debt

20. This contract will include a commercial and social care debt recovery option, to provide alternative debt recovery options for the wider Council.
21. Internal council discussions have identified that there is demand from within the council's finance team to have the ability to pursue unpaid debts, with both commercial organisations and individuals receiving social care.
22. Any commercial or social care debt would only be passed to the enforcement agents after a case review which has been approved by the senior management team within the relevant department. A County Court Judgement must be in place prior to enforcement, after being through the internal legal process.
23. It is proposed that provision is made within the contract to incorporate commercial and social care council debt, to enable this approach to be used by the council. The proposed route to market allows for this service to be included within the contract.

Options

Option 1: Cease Enforcement Agent Activity

24. The lack of any enforcement agency solution would be unacceptable. Without the deterrent of enforcement agent action, it is likely that very few people would pay their parking fines and would therefore ignore parking restrictions. This would lead to serious issues with the highways network reducing safety, increasing congestion and pollution, reduced economic activity and breaching the council's statutory obligations (the Traffic Management Act).

25. GCC are not aware of any authority that has ceased the use of enforcement agents to collect parking fines.
26. It would be a fair assumption that withdrawal of enforcement agents would over time result in restrictions being ignored in Gloucestershire. In view of this the option has been discounted.

Option 2: Collaborate with some or all District Councils (and have a single shared contract or framework across Gloucestershire)

27. Each district council has its own political steer, policies and agenda. The Council has some previous experience of sharing contracts with the districts and whilst there can be some advantages in economies of scale, differing operational requirements, particularly where sensitive issues such as debt recovery are concerned, mean that the contract would still need to be managed with a relatively bespoke approach. Lead in times for this contract also create some additional challenges in reaching cross authority agreement.
28. In view of the above this option is discounted.

Option 3: Create an 'In House' Enforcement Agent

29. Enforcement agents are highly regulated and certified for obvious reasons. The cost to the council of setting up a standalone enforcement agent, with the relevant licensing and certification is estimated to be around £250k. This is also not a core business area that the Council has experience in. For these reasons this option has been discounted.

Option 4: Procure a new contract from the Market (Recommended Option)

30. The strongest option moving forward for GCC is to outsource its parking enforcement agent requirements to a well-established and socially aware enforcement agent.
31. In order to improve collection rates, it is proposed to include a civil debt recovery element within the contract. This would enable the council to continue to chase the debtor after the expiry of the TEC Warrant. Other authorities such as Herefordshire have increased their collection rates, reported to be 5%, using the debt recovery process.
32. Provision shall be made within the contract to include the ability for the council to pass social care and commercial debt to the enforcement agents following the granting of a County Court Judgement to enable to debt to be recovered.

Risks

33. TUPE: The current staff that work for the enforcement agents are protected by TUPE and GCC has received clarification from the existing supplier stating that they do not believe that their employees meet the requirements to transfer to a new provider under the regulations. This is because the supplier has stated that in their view, there is no organised grouping of employees that has, as its principal purpose, the carrying out of debt recovery services on behalf of this council.

34. Costs: It should be noted that enforcement agent operations are cost neutral, e.g. the enforcement agents do not charge GCC a fee given that the agent will instead receive its fee by charging the debtor a statutory charge.
35. Procurement - Risk of challenge from a supplier: It is understood that this market is particularly astute when it comes to challenging local government procurement. Additional care needs to be taken during the upcoming procurement to ensure that challenges are avoided as much as is possible. The procurement strategy will ensure that the process is compliant with legislation and guidance.
36. As the contract is cost neutral, the assessment of tenders is based on the quality of their submissions, including their experience in this market, their customer management arrangements, their demonstrated recovery performance on other contracts and their support of social value.
37. Failure to find a suitable supplier: Several suppliers are in the marketplace and pre-tender discussions have identified that these providers are keen to bid for this contract.
38. Failure to include all the necessary elements of service in the contract: It is imperative that all elements of GCC's enforcement agent requirements are covered off in the procurement. The Assistant Director of Traffic & Transport will sign off the final draft invitation to tender to ensure that all elements are covered off in the Invitation to Tender.
39. Impact on vulnerable clients: As with any debt recovery process the vulnerability of clients is an important consideration. The contract will include specific clauses to protect vulnerable debtors in the debt recovery process.

Financial implications

40. The proposal to outsource the enforcement agent activities does not cost the council any direct costs as the enforcement agents generate their turnover by charging statutory costs to the debtor.
41. In 2022/23 the enforcement agents received 6,231 cases and returned around £171k of debtor costs, 1,682 cases, back to GCC. This is due to the debtor being unable to be traced because they were identified as being unable to pay due to their vulnerability.
42. The cost of introducing an in-house enforcement agent would be prohibitive and it is estimated that introducing such a service would cost GCC £250k in initial set up costs while not delivering any additional savings to GCC as enforcement agents make their turnover from statutory charges rather than rates paid by the council.

Climate change implications

43. The enforcement of parking and other highway restrictions ensures that traffic can flow freely, resulting in a reduction of congestion and pollution.
44. Consideration will be given in the procurement process to encourage the use of low carbon vehicles used by Enforcement Agents while undertaking their duties.

Ecological implications

- 45. Not completed

Equality implications

- 46. Cabinet Members should read and consider the Equalities Impact Assessment to satisfy themselves as decision makers that due regard has been given.
- 47. The Equalities Impact Assessment has highlighted several areas to be included within the tender specification, particularly around vulnerability and ensuring those with disabilities are catered for appropriately.

Data Protection Impact Assessment (DPIA) implications

- 48. A DPIA has been completed, the recommendations of which shall be included in the upcoming contract terms and conditions of contract.

Social value implications

- 49. A social value question shall be included within the contract procurement, this will focus on how the supplier can offer guidance and support with local debt management organisations and charities.

Consultation feedback

- 50. Feedback has been sought from the market that has highlighted a number of different routes to market and a healthy marketplace of suppliers.
- 51. The council has reached out to the local Citizen's Advice Bureau and the debt charity Step Change, to obtain ideas on how to better support debtors in the process and how they could support any social value benefits from the contract. Where appropriate these will be included in the contract requirements.

Officer recommendations

- 52. Options are outlined in the paragraphs above (at paragraphs 27 to 35). Officers recommend **Option 4: Procure a New Contract from the Market**, as this is felt to be the strongest option moving forward for GCC, to outsource its parking enforcement agent requirements to a well-established and socially aware enforcement agent.

Performance management/follow-up

- 53. Contract performance, against a range of financial and quality indicators, will be monitored on a monthly basis to ensure adequate supplier performance including due regard to vulnerable debtors and equalities matters.