

REPORT AUDIT TRAIL**CONSULTATION**

*This is important as it shows that consultation has been undertaken in the preparation of the report and provides a quick reference point for specific comments, whilst the report will not be publishable if these areas have not been completed by the named persons below. **You must liaise with and receive sign off from the relevant Cabinet Member(s).***

Name/Position	Portfolio/Ward/ Directorate	Date Sent	Date Received	Comments in para:
Councillor (<i>Select Cabinet Member Name</i>)	Cabinet Member for (<i>Select Cabinet Portfolio</i>)	Click here to enter a date.	Click here to enter a date.	
<i>Name of Strategic Director</i>	Assistant Chief Executive/ Strategic Director for (<i>relevant directorate</i>)	Click here to enter a date.	Click here to enter a date.	
<i>Jon Baggaley</i> , Finance	Finance and Customer Services	20/04/23	Click here to enter a date.	See paragraph 6
<i>Michelle Scales</i> , Legal Services	Legal Services	05/04/23	18/04/23	See Paragraph 7 for comments.
<i>John Crutchley</i> , Human Resources	Assistant Chief Executive's Office	20/04/23	Click here to enter a date.	See paragraph 8
<i>Name</i> , Procurement	Finance and Customer Services	Click here to enter a date.	Click here to enter a date.	
<i>equalities@rotherham.gov.uk</i> , Equalities	Assistant Chief Executive's Office	20/04/23	24/04/23	See Appendix 1
<i>climate@rotherham.gov.uk</i>		20/04/23	21/04/23	See Appendix 2 (Tracking number CIA065)

<u>REPORT APPROVAL TRACKING</u>			
Equalities Your report will not be authorised for submission to Cabinet by your Strategic Director if you have not undertaken and included an initial equalities screening. All equalities analysis documents should be included as appendices	Initial Screening completed and included with report	YES (delete as appropriate)	20 th April 2023
	Full Assessment completed and included with report	NO (delete as appropriate)	20 th April 2023
Carbon Impact Assessments Carbon Impact Assessments are to be appended to the associated cabinet reports. Carbon Impact Assessments should be sent to climate@rotherham.gov.uk for feedback prior to your report being sent to your Strategic Director for approval.	Carbon Impact Assessment completed and included with report.	YES (delete as appropriate)	20 th April 2023
Background information MANDATORY: Insert headings for a few main public documents you have used or referenced to write this report. This is a legal requirement. For Cabinet reports, <u>insert hyperlinks</u> . Do not list private documents.	Cabinet and Commissioners' Decision Making Meeting on 11th December 2017 Service Level Agreement between Rotherham MBC and Doncaster MBC 1 st August 2018		
Appendices If appendices are essential to the understanding of the report, list titles here. Ensure that appendices have proper titles. List any appendices relevant to the decision being taken first with the Equality Analysis documents coming next and the Carbon Impact Assessment being listed as the last Appendix for all reports.	Appendix 1 <i>Equalities Screening Assessment</i> Appendix 2 <i>Carbon Impact Assessment</i>		
Cabinet Member Approval You should retain an email confirming the Cabinet Member approval for your records. Strategic Directors should not authorise reports unless Cabinet Members have given sign off	NO (delete as appropriate)	Click here to enter a date.	
Report Authorised by Strategic Director	YES/NO (delete as appropriate)	Click here to enter a date.	
Report Authorised for publication by Chief Executive	YES/NO (delete as appropriate)	Click here to enter a date.	

Committee Name and Date of Committee Meeting

Delegated Officer Decision – 02 May 2023

Report Title

Delegation of Powers to City of Doncaster Council

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

Lewis Coates, Service Manager Regulation and Enforcement
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Ward(s) Affected

Borough-Wide

Report Summary

The current Service Level Agreement with City of Doncaster Council to provide environmental crime and parking enforcement, together with the related delegated powers to City of Doncaster Council are due to cease on 31st July 2023. This coincides with the expiry of City of Doncaster Council's current contract with their service provider.

City of Doncaster Council will begin a tendering process in May/June 2023 to explore the market for a service provider. To take advantage of these future arrangements, the Council needs to again delegate relevant powers to the City of Doncaster Council ahead of the start of the tendering process.

The executive functions to be delegated to the City of Doncaster Council relate to littering, dog fouling, Public Spaces Protection Order and parking enforcement functions set out in the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Anti-Social Behaviour, Crime and Policing Act 2014, Clean Neighbourhoods and Environment Act 2005; Anti-Social Behaviour, Crime and Policing Act 2014 and Health Act 2006.

Concurrently with the tendering process, negotiations will take place to develop a new Service Level Agreement to set the terms and conditions of the joint arrangements, together with performance and revenue share.

Recommendations

1. To authorise entering into a further shared service arrangement with City of Doncaster Council, which delivers on the spot enforcement for a range of offences.
2. To delegate the exercise of the functions detailed within this report in paragraph 7.8 to City of Doncaster Council.

List of Appendices Included

Appendix 1 Equalities Screening Assessment
Appendix 2 Carbon Impact Assessment

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Delegation of Powers to City of Doncaster Council

1. Background

- 1.1 At the Cabinet and Commissioners' Decision-Making Meeting on 11th December 2017, executive functions were delegated to the then Doncaster Metropolitan Borough Council in relation to specific enforcement powers contained within Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006.
- 1.2 Subsequently, Rotherham Metropolitan Borough Council entered into a Service Level Agreement with the then Doncaster Metropolitan Borough Council, to provide enhanced enviro-crime enforcement service provision, from 1st August 2018.
- 1.3 Under the terms of the current Service Level Agreement the Council's joint arrangements are with Doncaster Council: in turn Doncaster sought a service provider from the market through a tendering process. The successful company, currently LA Support Services Ltd., subsequently provide service provision in Doncaster and Rotherham through this provider.
- 1.4 Current service provision provides the delivery of litter, dog fouling and parking enforcement, with litter enforcement being the priority.
- 1.5 The arrangements are at no cost to the Council but provide an income. Service provision is funded through fines issued and then those fines being distributed between the service provider, Doncaster and Rotherham. Rotherham Council no longer have capacity to deliver this form of enforcement.
- 1.6 The Service Level Agreement was for a period of 3 years, plus 1, plus 1. Consequently, this Service Level Agreement will cease on 31st July 2023. At the same time the delegation of powers will end and consequently the service delivery will cease.

2. Key Issues

- 2.1 City of Doncaster Council will be undertaking a tendering process to ensure the continuity of service provision once current arrangements cease. Doncaster have outlined a timeline with work commencing on the tendering process on 23rd January 2023 with an expectation to go out to tender in late May or early June 2023.
- 2.2 Doncaster will be going out to the market, seeking interest from suppliers on the basis of seven day per week delivery of enviro-crime, littering, Public Spaces Protection Order (PSPO) and parking related enforcement work for Doncaster Council and other named authorities including Rotherham Council, if Rotherham so chooses.

- 2.3 In order to give clarity to any prospective bidders for the contract and attract the best service provider for the scope of enforcement work, Doncaster require a formal decision from other Local Authorities who are interested in entering into a Service Level Agreement with Doncaster for service provision, by 2nd May 2023. Consequently, a new delegation of powers to the City of Doncaster Council is required before 2nd May 2023.
- 2.4 This new delegation of powers will also include PSPO enforcement powers contained within the Anti-Social Behaviour, Crime and Policing Act 2014. This is in addition to the executive functions previously delegated in relation to relevant enforcement powers contained within the Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Clean Neighbourhoods and Environment Act 2005, and Health Act 2006.
- 2.5 If Rotherham are unable to provide a formal decision to delegate powers to Doncaster by 2nd May 2023, then the current provisions of the Service Level Agreement will continue until expiry in July 2023, thereafter Rotherham will be unable to take advantage of the new provisions that Doncaster put in place following the tendering process, albeit there may be an extension available until the time that Doncaster's new service provider are fully mobilised.
- 2.6 Rotherham are not delegating powers to officers of the service provider, but rather to the City of Doncaster Council. In turn, Doncaster will delegate those powers to the officers of the service provider. The mechanism for the delegation of executive functions to another Local Authority is established within the Council's Constitution.
- 2.7 The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 enable arrangements to be made for the discharge of functions, which are the responsibility of a local authority executive, by another local authority or an executive of another local authority. Rotherham Council's Constitution makes provision for delegating powers to other Local Authorities in Article 12 (Joint Arrangements), which states:

Joint arrangements with other Councils

12.2 The Council may establish joint arrangements with one or more councils or their executives (or both) to exercise non-executive functions in any of the participating authorities, or advise the Council.

12.3 The Cabinet may establish joint arrangements with one or more councils, or their executives, or both to exercise functions that are executive functions.

- 2.8 At Section 4C of Appendix 9: Responsibility for Functions, of the Constitution, it states:

1 This officer delegation scheme sets out the executive functions delegated to officers by the Leader under his/her Executive

Arrangements (The executive functions delegated by the Leader should be construed in a broad and inclusive fashion to include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of those functions. They should not however be understood to include any Council function)

8. Delegations set out in this scheme will be read in conjunction with all provisions of the Council's Constitution, and decisions taken by officers in accordance with this scheme will be taken in accordance with all relevant rules and protocols.

2.9 Appendix 9 continues, at Section 4C6, stating:

The Strategic Director of Regeneration and Environment is authorised to discharge executive functions for:-

1. Community Safety and Street Scene

- (a) Community Safety, Resilience and Emergency Planning
- (b) Highways and Network Management
- (c) Regulation and Enforcement
- (d) Waste and Street Scene

2.10 The Constitution continues at the Sub Scheme of Delegation Strategic Director of Regeneration of Environment at page 1, to state:

The Strategic Director has chosen to sub-delegate some or all of those functions to officers of suitable experience and seniority in his/her own directorate or in another directorate

2.11 Once relevant powers have been delegated, negotiations between the two Councils will be undertaken to develop a new Service Level Agreement whilst the tendering process is underway, with the anticipation that the new Service Level Agreement will be in place prior to mobilisation of the new contract between Doncaster and the successful bidder.

3. Options considered and recommended proposal

3.1 Option 1: A decision may be made to no longer engage in service provision via agreement with the City of Doncaster Council. The Council no longer has the capacity to deliver these enforcement functions, and this option would require additional investment in in-house service provision to fulfil these duties.

3.2 Option 2: Relevant powers should be delegated to the City of Doncaster Council to ensure the Council are in a position to engage in the future arrangements for new service provision.

4. Consultation on proposal

4.1 Consultation is not required

5. Timetable and Accountability for Implementing this Decision

- 5.1 The delegation of powers to City of Doncaster Council needs to be confirmed, and Doncaster advised of the decision, before 2nd May 2023.
- 5.2 Accountable officers are Sam Barstow, Assistant Director Community Safety and Street Scene, and Emma Ellis, Head of Service Community Safety and Regulatory Services

6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)

- 6.1 There are no financial implications arising from the delegation of powers. However there will be implications in the future from the procurement process being undertaken by City of Doncaster Council which will be dealt with through a future Service Level Agreement.

7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)

- 7.1 The Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 enable arrangements to be made for the discharge of functions, which are the responsibility of a local authority executive, by another local authority or an executive of another local authority. Any arrangements made under the Regulations are not to prevent the Authority which made the arrangements from exercising the functions to which they relate and are to be made with the other relevant authority concerned.
- 7.2 The relevant points to be taken from the constitution have been referenced within the body of the report, however for the purpose of completeness they will be repeated as part of the legal implications as it is vital that all decisions made are in compliance with the constitution. Article 7.16 of the Constitution makes it clear that 'the Leader may discharge any executive functions himself and may arrange for them to be discharged by the Cabinet collectively, another member of the Cabinet, a committee of the Cabinet, an Officer or by joint arrangements with another authority or authorities.
- 7.3 Article 12.2 of the Constitution has already been referenced at paragraph 2.7 and refers to joint arrangements with other Councils. Article 12.11 of the Constitution provides the authority for the Cabinet to delegate executive functions to another Council or, in certain circumstances, the executive of another Council. As pointed out at Paragraph 2.6 *Rotherham are not delegating powers to officers of the service provider, but rather to the City of Doncaster Council. In turn, Doncaster will delegate those powers to the officers of the service provider.*
- 7.4 Section 4A of Appendix 9 to the Constitution states that all executive functions will be discharged by the Executive as a whole, save to the extent

that such functions are delegated to joint committees or officers. Permission has been given for the decision regarding this matter to be delegated by the Executive to Officers.

7.5 Section 4c of Appendix 9 is also relevant in that it addresses the Officer delegation scheme in respect of Executive functions. The Officer delegations scheme sets out the executive functions delegated to Officers by the Leader under his Executive arrangements. The fact that a functions has been delegated to an Officer under the scheme does not require the Officer to give the matter his personal attention as the Officer may arrange for such delegation to be exercised by an Officer of suitable experience and seniority. Delegations must be read in conjunction with the provisions of the Council's constitution.

7.6 When making decisions in relation to the Executive functions Officers must ensure that they take appropriate advice in relation to legal considerations, this has clearly been done by way of the legal implications of this report. They must also make appropriate arrangements for assessing the impact of the decision in respect of equalities.

7.7 Paragraph 2.9 of this report refers to the Executive functions the Strategic Director of Regeneration and Environment is authorised to discharge, this includes Regulation and Enforcement and Waste and Street Scene. A sub-scheme of delegation is in place in that the Strategic Director has chosen to sub-delegate some or all of those functions to Officers of suitable experience and seniority in his own directorate or another directorate.

7.8 It therefore follows that the decision to delegate executive functions to the executive of another local authority for the purposes of the new proposed arrangements with City of Doncaster Council can be made by way of an Officer decision. The executive functions relating to enforcement are set out in the Anti-Social Behaviour, Crime and Policing Act 2014, Environmental Protection Act 1990, Traffic Management Act 2004, Road Traffic Regulation Act 1984, Road Traffic Act 1991, Clean Neighbourhoods and Environment Act 2005 and Health Act 2006.

7.9 Option 2 as the preferred option will allow for the continued delivery of the enforcement functions referred to and will also minimise the risk of any legal challenge in light of the fact that the Council does not currently have the resources to deliver these enforcement functions on an in-house basis.

8. Human Resources Advice and Implications

8.1 There are no direct human resource implications arising from the recommendations within this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 No implications are anticipated

10. Equalities and Human Rights Advice and Implications

10.1 There are no anticipated implications. A screening assessment is attached at Appendix 1

11. Implications for CO2 Emissions and Climate Change

11.1 There are no anticipated implications. A screening assessment is attached at Appendix 2

12. Implications for Partners

12.1. The delegation of powers will facilitate City of Doncaster Council's progression of their procurement process to include Rotherham within the specification for service delivery.

13. Risks and Mitigation

13.1 Should powers not be delegated to City of Doncaster Council, Rotherham will be unable to take advantage of any future contractual arrangements with a service provider

13.2 Should Rotherham be unable to engage in service provision through Doncaster, then there will be no capacity in Rotherham to enforce littering or dog fouling offences.

14. Accountable Officers

Sam Barstow, Assistant Director Community Safety and Street Scene
Emma Ellis, Head of Service Community Safety and Regulatory Services

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp	Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	Click here to enter a date.

Head of Legal Services (Monitoring Officer)	Phil Horsfield	Click here to enter a date.
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