

Committee Name and Date of Committee Meeting

Cabinet – 16 September 2024

Report Title

Commercial Waste Update

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

Yes

Strategic Director Approving Submission of the Report

Andrew Bramidge, Strategic Director Regeneration and Environment

Report Author(s)

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Ward(s) Affected.

Borough-Wide – Business Waste Customers

Report Summary

This report provides an update on the Business Waste Service. This includes an update on legislative changes, which will require the Council to consider the implementation of food waste collection options for Business Customers, alongside a range of options as to how the Council could achieve this. The report also details the current and future scheme of delegation for setting the prices for the service.

Recommendations

That Cabinet:

1. Approve the procurement of a contractor for the provision of containers, collection, and disposal of food waste, with consideration given to working in partnership with neighbouring authorities.
2. Delegate authority to the Assistant Director of Community Safety and Street Scene in conjunction with the relevant Cabinet member and with the S151 Finance Officer to set fees, charges and vary prices.

List of Appendices Included

Appendix 1 Charges (Exempt from publication)

Appendix 2 Food waste collection costs

Appendix 3 Scheme of delegation

Appendix 4 Equality Assessment

Appendix 5 Carbon Impact Assessment

Background Papers

- [Environment Act 2021 - Environment Act 2021](#)
- [Waste and Resource Strategy England - Our waste, our resources: a strategy for England \(publishing.service.gov.uk\)](#)
- [Simpler Recycling - Government response - GOV.uk](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

Yes

Appendix 1 to the report is exempt by reason of Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A of the Local Government Act 1972. Appendix 1 contains Commercially sensitive information which relates to the operation of the commercial waste service and its customers.

It is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information because it will ensure the Council's commercial offer can remain competitive within the market and to protect information relating to the charges applied to any customers of the Council.

Commercial Waste Update

1. Background

- 1.1 The Environmental Protection Act 1990 requires authorities to arrange for the collection of commercial waste in their area if requested (s45 (1)(b), and a reasonable charge may be made for its collection and subsequent disposal, (s.45(4))” i.e., should a request be made by a business to collect commercial waste, the statutory waste collection authority must make the necessary arrangements and the charge it levies should cover all related costs. The Government’s Resource and Waste Strategy 2018 and the Environment Act 2021 placed further obligations on businesses to minimise the amount of waste they generate and to separate out their waste streams. On the 21 October 2023 the Government announced a new simpler approach to recycling meaning that people across England will be able to recycle the same materials, whether at home, work or school, putting an end to confusion over what can and can’t be recycled in different parts of the Country.
- 1.2 Differential charging is permitted, so local authorities can use the power to bring in income from those whom it believes are in the best position to pay, whilst providing services at a lower cost or no cost to people who need the services but are not so well placed to pay for them. To provide a commercial service Councils will also be required to comply with new Carrier, Broker, and Dealer requirements. The changes proposed aim to increase the competence of operators and increase background checks required to move or trade waste and make it easier for regulators to act against non-compliant operators. Councils operating services on a commercial basis will be required to apply for the relevant standard rules permit. There is currently no information detailing when the permit must be in place, however, when this becomes clear it will be delivered through existing resource.
- 1.3 For the Business Waste Service in Rotherham to compete with the private sector, the service should provide their customers with advice on waste minimisation and offer a collection of paper, card, plastics, metals, glass and food waste (for companies with more than 10 employees) by 31 March 2025. The introduction of recycling to a service requires engagement and communication to ensure that the material is of good quality to maximise the income generated.
- 1.4 In order to respond to the changing needs both locally and nationally, the Business Waste Service has been undergoing a process of redesign, which will be further detailed below. The final stage of this current work will be to introduce a food waste recycling service to the organisations that have more than 10 employees by 31 March 2025. Initial analysis would indicate that would be to 18% of the customer base. There are options to consider in relation to food waste collection and these are outlined in Section 4 below.

2. Key Issues

2.1 Baseline service

Prior to 2022 the business waste service was administered using several systems that did not interlink and relied on manual entry of information. Contracts, along with duty of care information, were posted out to customers.

2.2 The customers were then required to sign and return the contracts and duty of care information. This process was time consuming and costly and did not fit with the Council's Customer or digital aims.

2.3 The information provided to customers in their contracts related to bin hire with limited information on the type of waste that was to be collected. Customers could only have a residual waste collection and there was limited information provided to the business on their legal responsibilities.

2.4 When the information in the business waste systems was analysed, a number of issues were identified including the quality of the information, charging information not always aligning with contracts and a number of damaged receptacles held by customers.

2.5 The pricing structure for the business waste was complex and it was cheaper for businesses to have a 1100 litre bin than a 240-litre bin. This was contrary to the waste hierarchy which requires that waste is reduced, reused, or recycled in preference to disposal.

3. Service Improvement

3.1 In 2022 a members working group was established and the Head of Environmental Services, along with officers from the Waste Management Service, started on a four-phase project to improve the business waste offering.

3.2 Staff resources were limited and a recruitment process for a new commercial officer was undertaken with the successful candidate commencing in the new role in April 2023.

3.3 Following that appointment, the new charging system has been implemented, following an Officer Delegated Decision, and work is underway to digitise the whole of the business waste process. This will mean a much more efficient streamlined process for customers and better reporting and monitoring of the Service.

3.4 As well as providing a residual waste service, a paper and card recycling service has been introduced since October 2023. This was rolled out to the Council's existing customer base in 4 phases over a 10-week period. Each customer received a bin equal in size to their general business waste bin. This was provided initially free of charge, up to 31st March 2024. Since the introduction of paper and card there has been on average a 15.6% decrease in

general waste collected from business. The quality of the paper and card recycling that has been collected by the crew is of impeccable quality, with most loads being completely contamination free. Around 90% of our pre-existing customer base have now permanently adopted the paper and card recycling bin and reduced the capacity of their general waste bin. The other 10% of customers don't feel they generate enough paper and card recycling to warrant a separate bin or do not have the space to store a second bin. The aim of the business waste service moving forward is to look at small capacity options for these types of businesses.

- 3.5 In line with the simpler recycling reforms, the business waste service is working towards introducing a dry mixed recycling (glass, cans and plastic) collection service for businesses by the deadline date given by DEFRA of March 31st, 2025. The next stage of the process for business waste collection is the provision of a food waste collection service.

4. Options considered and recommended proposal.

4.1 Food Waste Collections:

Four options have been considered for the provision of a food waste collection service to businesses.

- 4.2 **Option 1 – do nothing;** do not provide food waste containers or collect food waste separately from businesses with over 10 employees. Rotherham along with Barnsley and Doncaster Councils have received transitional relief from rolling out a food waste collection service to households until 2040. There is however no exemption for businesses above 10 employees in relation to having to separate out food waste for collection. This option will mean that the business will need to source a separate provider for their food waste and would result in loss of business if the Council were to not offer a service as it is assumed that customers would likely prefer one waste collection supplier. There would be no capital costs related to this option but there may be a loss of revenue that is hard to quantify. This option is not recommended.

- 4.3 **Option 2 – Collect the food waste with the residual waste;** provide the current businesses with over 10 employees with containers and collect these at the same time as the residual waste in the same vehicle with both streams being mixed in the vehicle. This would allow the business to comply with its obligations. Residual waste and food waste would then be delivered to the facility at Manvers where the food would be subject to drying and some, if not all, of the resultant organic material would be processed through the on-site anaerobic digestion plant. This option would require investment in containers and the cost of these would need to be factored into the charges to businesses.

Containers for food waste will vary in size and cost depending on the amount of food waste that is collected.

- 4.4 **Option 3 – Recommended** - Procure a contractor for the provision of containers, collection, and disposal of food waste with consideration given to working in partnership with neighbouring authorities.

The current Council business waste service has conducted analysis with all its current customers and only 18% of the customers would have to contract a food business waste service, since the legislation is specific to businesses that have 10 or more employees.

If the Council had to collect its own food waste from just 18% of its customers, a disproportionate amount of investment in both revenue and capital would be required (see option 4). This would include a specialist vehicle, which could only be utilised for food waste collections and, with the limited demand that is expected, would have significant periods of time where it was not in use. Similarly, a driver and loader would also be required in addition to the existing workforce which again would not be fully utilised solely via the collection of food waste for businesses, along with purchasing new receptacles to collect the food waste.

A new procurement exercise would also have to be performed for food waste disposal which would add cost and logistical issues as there are currently no recycling centres for food waste treatment in the borough.

With this taken into consideration, the pricing model would have to be changed across the other business waste streams to balance out the cost of a food waste collection service, due to so few anticipated customers, and factoring in the required revenue and capital investments. If the costs were distributed for food waste collection and disposal across the other business waste streams, there is a significant concern that the Council may lose customers due to price increases and would no longer be competitive within the marketplace.

Given the time frame for implementation, and the uncertainty of tonnages that will be collected, it is recommended to procure a provider for a short-term contract of 3 years, plus a potential 2-year extension, to allow gathering of data to better inform the scoping of the business food waste collection service. This will then allow the service to produce a report for Cabinet to consider next steps and potentially alternative delivery models.

- 4.5 **Option 4 - provide the containers, collection, and disposal of food waste as an addition to the current Council collection service;** This would require capital investment of around £113,000. This includes a specialist vehicle and cost of the initial container roll out for those customers that are required to separate out food waste collection. As stated previously, this is anticipated to be approximately 18% of the current customer base, which at this time is very low, as the Council's main customers are SMEs. This would also require an annual revenue spend, subject to inflation, of approximately £111,900, this includes staffing, vehicle running and maintenance costs. It would also require a disposal route for food waste which would come at extra cost (Appendix 2). Given the timeframe for implementation, and lead times for the purchase of

vehicles and containers, this option would require significant investment of both finance and resource and would not be commercially viable.

5. Scheme of delegation – Fees and Charges

5.1 A key area of decision-making in the Business Waste Service is the setting of fees and charges, making variations to fees and charges, allowing discount offers to be introduced and negotiating individual contracts (within a certain percentage of set fees). This allows the service to remain competitive within its long-term goal of financial stability. The proposed fees and charges are set out in Exempt Appendix 1. These fees and charges are considered commercially sensitive due to the following reasons:

- Publishing the full scale of charges available to the Customer may reduce the Council's ability to negotiate within that scale.
- Publishing the full scale of charges available would give the Council's competitors in the market an advantage and allow for the service to be undercut, therefore risking existing and future customer base

5.2 In addition to the above, it should be acknowledged that the price of delivering the services can routinely fluctuate. There are a number of drivers for this, the most volatile of which is the market for recycled material, which routinely fluctuates in terms of price. In addition to the fluctuating price of recycling, the levels of contamination, which leads to reduce income, can also vary. Whilst less volatile, the cost of disposal for residual waste can also fluctuate and finally, there is a tipping point in relation to the number of customers, which means over a certain amount would require an additional crew and vehicle, which would require price management to ensure the service is sustainable.

5.3 These decisions were authorised at Cabinet in 2017 to be the responsibility of the Assistant Director of Community Safety and Street Scene in consultation with the Cabinet Member.

5.4 As the decision was made 7 years ago, it is proposed that this authority is continued to be granted to the Assistant Director (AD) of Community Safety and Street Scene so the business waste service can remain flexible, agile, and competitive in an ever-changing market for the next two years, with decisions to be taken on or around April 2025 and April 2026, before a further report and update is provided to Cabinet in the summer of 2026.

5.5 The fees and charges have been developed with service officers and finance colleagues and it sets out to ensure that the prices cover all operational, asset and disposal costs for the service. This report is seeking delegated authority to the Assistant Director of Community Safety and Street Scene in conjunction with the relevant Cabinet member and with the S151 Finance Officer to set fees, charges and vary prices. Any variation to the prices offered to customers must be in line with the price ranges formally agreed and deviation from the norm would require approval by the Head of Environmental Services.

6. Consultation on proposal

- 6.1 The members working group has been updated on the progress of the business waste service.

Significant engagement has also taken place with businesses throughout the program.

7. Timetable and Accountability for Implementing this Decision

- 7.1 DEFRA has set a deadline for businesses to implement the simpler recycling reforms, whereby they are required to have their food waste separated out for collection, by 31 March 2025.

- 7.2 Procurement timeline options for the recommended Food Waste contract 4.3, the dates below relate to 2024/2025. The first dates would be applicable should the Council utilise an existing framework or alternatively, the second table shows the timelines associated with an open procurement process.

Framework Timeline



Milestone	Date
Tender issued	September
Tender return date	October
Evaluation	October
Notification of award	November
Voluntary Standstill period	November
Contract commencement	January



Open Procurement Timeline

Milestone	Date
Contract Notice Issued	September
Tender issued	September
Tender return date	October
Evaluation	November
Notification of award	December
Standstill period	December
Contract commencement	March

- 7.3 Businesses are required to recycle; therefore, the Council is expected to offer a recycling service to businesses that mirrors the domestic service by the 31 March 2025. Paper and card recycling has already been successfully implemented which will now be followed by food waste. Glass, cans, and plastic recycling collections to follow ahead of 2025, as referred to in section 1.3 of this report however this will not require further procurement activity as the Council already offers these services to residential customers.

8. Financial and Procurement Advice and Implications

- 8.1 The full cost of the commercial waste service should be recovered through fees and charges to those who use the service. There may be variations in pricing across the customer base for operational and commercial reasons, but the overall principle underpinning the setting of the fees and charges is that the overall service is not at a net cost to the Council. This will be monitored to ensure pricing decisions are made that maintain the overall full cost recovery position. The charging proposals in Appendix 1 also align internal and external charges therefore there will be a financial impact on Council services that use the Council's commercial waste service as charges will increase. However, this will be offset by an increase in income for the commercial waste service, so overall there is no impact on Council revenue budgets as a result of this change.
- 8.2 The procurement activity detailed with the recommended option detailed in this report must be procured in compliance with relevant procurement legislation (Public Contracts Regulations 2015 or the Procurement Act 2023) as well as the Council's own Financial and Procurement Procedure Rules.

9. Legal Advice and Implications

- 9.1 The relevant legislation is referenced within the body of the report. Section 45 of the Environmental Protection Act 1990 [EPA 1990] deals with the duties imposed upon a waste collection authority in respect of the collection of controlled waste. Section 45(1)(a) imposes a duty upon a waste collection authority where a request has been made by an occupier of premises in its area to collect any commercial waste from the premises, to arrange for the collection of waste.
- 9.2 Section 45(4) EPA 1990 sets out that a person at whose request waste is collected shall be liable to pay a reasonable charge for the collection and disposal of the waste to the authority which arranged the collection. It is the duty of that authority to recover the charge unless the authority considers it inappropriate to do so, in the case of a charge in respect of commercial waste. This is the only basis for discretion in respect of the recovery of the charge.
- 9.3 On the 21 October 2023 the Government announced a new Simpler Recycling Reform.
- 9.4 The Environment Act 2021 introduced new sections 45AZA and 45AZB into the EPA 1990 in respect of separate collection of household waste from relevant non-domestic premises and separate collection of industrial or commercial waste respectively. These provisions came into force on the 17 May 2024 via the Environment Act 2021 (Commencement No.9 and Transitional Provisions) Regulations 2024.
- 9.5 Transitional requirements are in place which means that the requirements do not need to be met until 31st March 2025, in addition Regulation 5(a)(i) of The Separation of Waste (England) Regulations 2024 does not come into force until

the 31 March 2025, this is in respect of business waste. Regulation 5(a)(ii) and (b) comes into force on the 31 March 2026 in respect of household waste. The Regulations place requirements on waste collection authorities in England to meet conditions relating to the separate collection of recyclable household waste and recyclable relevant waste. This means that the Authority will need to be in a position to provide a compliant waste collection service for business waste by the implementation date.

- 9.6 Micro-firms will be required to comply with the reforms by the 31 March 2027, these are businesses with fewer than 10 full time employees.
- 9.7 Should the Council choose to continue to provide waste collections to those businesses impacted by the reforms they need to ensure that the waste collection service is capable of providing the service in compliance with the legal requirements set out. There is a relatively short time frame to ensure that the Authority is prepared for implementation.
- 9.8 In respect of the recommended option of procuring a contract for the Services with Doncaster and Barnsley Councils, any joint procurement exercise would require the involvement of Legal Services in order to progress. The Constitution at Section 12 permits the Council to enter into joint arrangements with other Councils.
- 9.9 Cabinet is able to further delegate as recommended in respect of the setting of fees. Section 4C of Appendix 9 to the Council's constitution states that Cabinet can arrange further delegations on specific matters. In taking decisions Officers must ensure that they: -
- a) take appropriate advice in relation to legal and financial considerations.
 - b) make appropriate arrangements for assessing the impact of the decision in relation to equalities; and
 - c) undertake appropriate consultation, including Cabinet Members and Ward Members (where appropriate).

10. Human Resources Advice and Implications

- 10.1 A contracted-out service may have TUPE implications if the service is subsequently taken in house.
- 10.2 There are no HR Implications.

11. Implications for Children and Young People and Vulnerable Adults

- 11.1 No implications.

12. Equalities and Human Rights Advice and Implications

12.1 All information provided to businesses would be available in the appropriate format in line with the Councils Equality policy.

13. Implications for CO2 Emissions and Climate Change

13.1 Vehicles for collecting food waste would be low carbon however separate collection of food would marginally increase the CO2 emissions from collecting waste.

13.2 Currently food waste in residual waste collected from business customers is processed through a Mechanical Biological Treatment with Anaerobic Digestion facility so there would be limited difference from the separate processing of this waste.

14. Implications for Partners

14.1 Rotherham Council will be the lead on procurement for the food waste contract if this is supported. This will also rely on any partners involved in the procurement business case process.

15. Risks and Mitigation

15.1 The timeline for delivery of the food waste options is unachievable in house. The mitigation is to procure a contract jointly with partners to ensure the services are ready to meet the needs of its business waste customers with 10+ employees.

16. Accountable Officers

16.1 Barry Connolly – Head of Environmental Services
Sam Barstow – Assistant Director, Community Safety and Street Scene

Approvals obtained on behalf of Statutory Officers: -

	Named Officer	Date
Chief Executive	Sharon Kemp OBE	02/09/2024
Strategic Director of Finance & Customer Services (S.151 Officer)	Rob Mahon (in Judith's absence)	27/08/2024
Assistant Director of Legal Services (Monitoring Officer)	Phil Horsfield	22/08/2024

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This report is published on the Council's [website](#).