

The Corruption of Punishment 2022

The dangers of ‘Fining for Profit’

A Manifesto Club Report

23 August 2022

By Josie Appleton

Executive summary

- Incentivised enforcement has been in existence for over a decade and has led to widely recognised abuses. In response, Defra published guidance in September 2019, which stated that ‘in no circumstances should enforcement be considered a means to raise revenue’.¹ Yet this report finds that the local authority enforcement market is now more commercialised than ever. 66 councils currently employ a private company to issue fixed-penalty notices (FPNs) for criminal offences in England and Wales. The most common arrangement is that companies receive a percentage of FPN income, meaning that officers are directly incentivised to issue as many penalties as possible. There are currently at least 10 companies in the enforcement market, and council enforcement contracts are often subject to bidding between several companies, competing to offer councils the best FPN rates. Enforcement agreements generally involve ‘projected income’ targets based on the numbers of FPNs that will be issued. With budget pressures, many councils are becoming dependent on fining as a source of income for funding core services, departmental salaries, or special projects. Some councils include estimated fines income in budgets for the year ahead.
- Enforcement companies are moving further into taking responsibility for all the stages of enforcement, including taking payments, keeping data and accounts, considering appeals and complaints, sending reminder notices, preparing court documents, and even prosecuting court cases. Some councils were unable to tell us how many FPNs had been issued in their name, saying that they were still waiting for the information, or even suggesting that we contact the company directly. The council’s role can be limited to receiving a monthly or quarterly payment from the company. This means that the punishment regime is becoming

¹ Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A - Effective enforcement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf)

separated from public authorities, and placed in the hands of third parties that have no interest in the public welfare.

- Enforcement companies are also moving into punishing more offences and performing a semi-policing role. We found that enforcement contracts can include up to 26 offences, including not only littering but also ASB offences, smoke-free offences, and offences such as repairing a vehicle on a public highway. 48 councils employ private companies to enforce Public Spaces Protection Orders (PSPOs), which included anti-social behaviour offences such as drinking alcohol in public, loitering near a cash machine, and spitting.
- Many councils justified their contracting of a private company in order to gain cleaner streets, but no council had evidence that this had actually happened. Instead, the number of FPNs issued became the most common means of evaluating the 'success' or 'performance' of a contract. In two cases documented in this report (Dartford and Canterbury) councils were willing to tolerate serious mistakes by the company because FPN receipts were positive and leading to a source of income.
- Defra guidance requires that councils publish figures on FPNs issued, payments received, and councils' contracts with private companies; the last of these is additionally required by the Local Government Transparency Code 2015.² However, we found that arrangements with private companies often occurred in the realm of commercial secrecy, away from public view and accountability. Many councils refused our requests to see contracts, or they provided documents with financial data blacked out. Some refused to state the nature of their financial arrangement with the company, arguing that non-disclosure was in the public interest - showing how the 'public interest' is identified with income to the council, or even income to an enforcement company, rather than with transparency, justice or accountability. Several councils told us that they were withholding information about FPN income at the company's request. In addition, some councils did not formally scrutinise the decision to employ a

² Guidance, Local government transparency code 2015: <https://www.gov.uk/government/publications/local-government-transparency-code-2015>

private company, initiating it on a trial basis or delegating the decision to a single council officer.

- Councils appear to be aware of the dangers of incentives, but they have responded largely by seeing this as a PR issue - for example, specifying that officers must be smart and polite, or requiring the company to carry out school visits or produce leaflets about littering. Perversely, the addition of free 'charitable' elements to a payment-per-fine model merely increases the pressure on officers to issue a greater number of fines in the time available - and therefore, can lead to an even greater corruption of punishment.
- Fining for profit distorts the enforcement system, which is guided not by justice or proportionality, or the aim of clean streets, but by a desire to issue as many penalties as possible. This leads to the harassment and intimidation of members of the public by enforcement officers, as well as the punishment of trivial or non-existent offences. Such practices bring the enforcement system into disrepute and widen the gap between the public and public authorities. This report shows that Defra enforcement guidance preventing fining for profit is currently being widely ignored. We urge the government to pursue plans to place the Defra guidance on a statutory footing, with the greatest urgency, in order to protect the public from incentive-driven punishment and the ensuing risk of being unfairly fined.

Introduction

Over the past decade, there has been an explosion of private companies issuing fixed-penalty notices (FPNs) for criminal offences on behalf of local authorities, and being paid per fine issued. The 'concession contract' means that the company gains the right to extract penalties within a given area, in exchange for a portion (or all) of the income received. This arrangement means that the companies have an overt financial incentive to issue as many fines as possible. They are obliged to issue a certain number of fines in order to break even, and by further increasing the volume of fines are able to increase their profits. This financial incentive distorts the punishment infrastructure, meaning that the goal is not proportionate punishment but rather merely to issue as many penalties as possible.

Since fining for profit began around 15 years ago, it has been associated with reports of unjust practices. In 2017, Welsh Authority member Janet Finch Saunders noted that residents were 'falling foul of over-zealous enforcement officers on generous bonus schemes. I've had a number of complaints from Conwy residents and it's vital that we remember that the aim of the legislation was to cut instances of dog fouling, littering and graffiti - not to generate stockpiles of cash'.³ Such were the concerns in her area that a local citizens group - North Wales Against Kingdom Security - was formed to publicise injustices and help people who had been unfairly fined.

Cases of unfair fines include: where people had dropped an item by accident (such as a dropped tissue)⁴, placed an item temporarily on the ground when loading shopping into the car⁵, or indeed people who had not dropped anything at all, such

³ 'This part of Wales dishes out the most fines for littering, fly-tipping and dog fouling', Wales Online, 28 May 2017: <https://www.walesonline.co.uk/news/politics/part-wales-dishes-out-most-13105442>

⁴ Woman, 82, slapped with £75 fine after dropping a piece of tissue on pavement <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/woman-82-slapped-75-fine-19336728>

⁵ 'Pendle's litter enforcement officers accused of 'bullying tactics'', Burnley Express, 25 April 2019: <https://www.burnleyexpress.net/news/people/pendles-litter-enforcement-officers-accused-of-bullying-tactics-981450>

as non-smokers fined for dropping cigarette butts,⁶ or dog owners fined when their dogs had not fouled.⁷ One man was fined for spitting when choking on a piece of bacon⁸, and several members of the public were fined for feeding crumbs to the birds.⁹ Residents reported practices such as officers watching smokers to see if they would drop a cigarette butt, following people or hiding in bushes, or pretending to call the police in order to pressure someone to accept a penalty. Whistleblowers said that wardens received bonus payments per fine and were set daily targets.¹⁰ One north Wales councillor commented: 'We have never had anything like this in my lifetime, where security groups revert to what is effectively stalking - it is disgusting, people living here are scared.'¹¹

The issue was given a higher profile by the 2017 Panorama programme *Inside the Litter Police*, which used undercover reporting to reveal that officers were indeed paid a bonus for every fine issued over their daily target.¹² The programme also highlighted a number of cases of people who had been unfairly fined.¹³

⁶ Rhyl: Non-smoker fined for 'dropping cigarette' in street <https://www.dailypost.co.uk/news/north-wales-news/rhyl-non-smoking-mum-fined-throwing-7060346>

⁷ Extract from 'Inside the Litter Police', Panorama, 27 May 2017: https://archive.org/details/BBCNEWS_20170517_023000_Inside_the_Litter_Police_-_Panorama/start/60/end/120

⁸ 'Thanet council to review contract with Kingdom enforcement in light of complaints and 'bacongate' case', Thanet News, 13 February 2019: <https://theisleofthanetnews.com/2019/02/13/thanet-council-to-review-contract-with-kingdom-enforcement-in-light-of-complaints/>

⁹ 'Wildlife lover is fined £50 for 'littering' after a warden spotted him throwing 'tiny pieces' of a McDonald's McMuffin to seagulls from his car', Daily Mail, 26 March 2019: <https://www.dailymail.co.uk/news/article-6851173/Wildlife-lover-fined-50-littering-throwing-tiny-pieces-McMuffin-birds.html>

¹⁰ One former Kingdom Security officer said: 'We had to give out four tickets a day and for any over that we would receive £5-a-ticket bonus.' Source: 'Torfaen and Blaenau Gwent litter-fines firm goes into administration, South Wales Argus, 20 March 2013

¹¹ 'Public to stand up against Kingdom Security "stalking and bullying" tactics', North Wales Pioneer, 7 September 2017: <https://www.northwalespioneer.co.uk/news/15750333.public-to-stand-up-against-kingdom-security-stalking-and-bullying-tactics/>

¹² 'Litter police' get bonuses to target public, Panorama finds, BBC News, 15 May 2017

¹³ 'Litter police' get bonuses to target public, Panorama finds', BBC News, 15 May 2017: <https://www.bbc.com/news/uk-39882434>

In response to these concerns, in 2019 Defra published new guidance on the use of enforcement powers by local authorities that sought to ensure that fines were issued in the public interest and not for profit motives.¹⁴ The guidance stated that ‘in no circumstances should enforcement be considered a means to raise revenue’, and that ‘private firms should not be able to receive greater revenue or profits just from increasing the volume of penalties’.¹⁵

Some councils have responded to negative publicity and public protests, and have dropped private enforcement contracts. Several Kent councils dropped contracts with Kingdom Security in the wake of the *Panorama* programme. North Wales councils also dropped private enforcement officers after an active local campaign led by Conwy guest-house owner Peter Rourke, who coordinated a 10,000-strong Facebook group.¹⁶ After numerous cases of overzealous enforcement, Brighton and Hove Council dropped its contract with the company 3GS, as did Bath and North-East Somerset Council.

However, despite public opposition, the Defra guidance, and a fall in penalties during the covid pandemic, fining for profit is again on the rise, with 188,895 fines issued in the year 2021-2. This is the second highest level of fines ever issued by private companies, only slightly lower than the 214,648 penalties issued in 2018, and significantly higher than the 141,125 FPNs issued in 2016.¹⁷

This report is based on FOI requests to 94 authorities who had previously said that they employed private contractors for issuing FPNs.¹⁸ We asked councils about the number of fines issued, the financial arrangement, contracts, income received, and

¹⁴Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf

¹⁵Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf

¹⁶ ‘Readers and councillors react to Kingdom Security quitting Conwy’, North Wales Pioneer, 25 July 2018: <https://www.northwalespioneer.co.uk/news/16375976.readers-councillors-react-kingdom-security-quitting-conwy/>

¹⁷ Manifesto Club report, 19 August 2019: <https://manifestoclub.info/corruption-of-punishment-over-200000-litter-fines-issued-by-private-security-guards-in-2018/>

¹⁸ The full FOI data is available here: <http://manifestoclub.info/wp-content/uploads/2022/08/Private-enforcement-data.pdf>

their reasons for employing the company. This report finds that the fining for profit market is more competitive than ever, with a larger number of private companies competing for the right to hand out fines.

Defra minister Jo Churchill recently wrote to councils, reminding them that enforcement activity should not be considered a means to raise revenue, and that authorities should not 'set a future budget which assumed income from fines'.¹⁹ Unfortunately, Defra guidance is being routinely violated by private enforcement contracts, which are geared towards generating the largest income possible. YouTube videos show that enforcement officer supervisors either do not know about the Defra guidance, or they say that it is 'not the law' and therefore does not have to be followed.²⁰ Defra stated in the letter to councils that it plans to make its guidance legally binding: 'New powers under the Environment Act 2021 will allow us to...place this enforcement guidance on a firm statutory footing, giving those to which it applies a clear and explicit duty to have regard to it when exercising their enforcement functions.'²¹ Such an action would resolve most of problems described in this report.

¹⁹ Daily Telegraph, 15 June 2022: <https://www.telegraph.co.uk/news/2022/06/15/stop-using-rogue-rubbish-police-boost-coffers-councils-told/>

²⁰ FritzMedia video on YouTube: <https://www.youtube.com/watch?v=okJQ3j0lp8s> The first 3GS supervisor said that he did not know about the Defra guidance; the second said that it was 'not the law'.

²¹ Daily Telegraph, 15 June 2022: <https://www.telegraph.co.uk/news/2022/06/15/stop-using-rogue-rubbish-police-boost-coffers-councils-told/>

1. The growth of fining for profit

The enforcement 'market'

Fining for profit began when a single enforcement company, XFor, offered to issue litter fines on behalf of councils. The agreement was generally that the company would receive a payment (around £40 or £45) per £75 fine issued. By 2016, there were four companies in the market - Kingdom Security (which purchased XFor), NSL, 3GS, and ACPOA - and by 2018 these were joined by another company, EH Commercial Services.²² Today, there are at least 10 companies employed in the field,²³ and tenders for council contracts often involve multiple bids. For example, Dudley Council received six expressions of interest for its contract, and two submissions from private companies²⁴, while Harrow received 13 expressions of interest and four applications,²⁵ and Waltham Forest received bids from 3GS, District Enforcement and Kingdom Security.²⁶ The largest company is still Kingdom Security, which is now also known as Local Authority Support, and works in 31 councils.

Therefore, since the production of the Defra guidance, enforcement has become even more of a 'market', with companies bidding for the rights to issue fines on behalf of local authorities. Punishment is becoming a highly competitive enterprise, in which councils and companies are jostling to obtain the greatest possible enforcement revenue.

Several councils described private enforcement as a 'competitive market' and a 'commercial activity'. Greenwich Council told us that it was unable to state its financial arrangement with LA Support, because 'it is a very competitive market

²² The Corruption of Punishment (2017), Manifesto Club briefing, 16 May 2017: <https://manifestoclub.info/the-corruption-of-punishment-2016/>

²³ This includes 8 councils employing 3GS, 2 APCOA, 9 District Enforcement, 2 EH Commercial Services, 1 Enfortis, 31 Kingdom/LAS, 5 NSL, 2 National Enforcement Solutions, 1 Parkguard, and 5 WISE

²⁴ Procurement Authorisation Report, Dudley Council, 19 September 2019

²⁵ Environmental Enforcement, Report for Cabinet, Harrow Council, 15 November 2018

²⁶ Cabinet Report, 3 December 20202, Waltham Forest Council

and the Council's ability to participate competitively in this commercial activity will be affected'.

Councils are forming into regional consortia in order to achieve 'economies of scale', signing a joint contract with a private company in order to obtain a better deal (for example, a greater proportion of FPN income), as well as to share legal and administrative services. A west London group of Ealing, Hounslow, Harrow and Barnet councils are in a contract with Kingdom/LA Support, while several northern councils subcontract LA Support through Doncaster Council. Greater Manchester Councils are currently in discussion about signing a regional contract with 3GS.²⁷

We asked councils to provide policy documents justifying their decision to employ a private company for enforcement. These documents show that the decision is largely made on a financial basis. In evaluating bids, Dudley Council gave a 60% weighting to the percentage split of FPN income that would be received by the council, and awarded the contract to LA Support because it offered the highest rate.²⁸ Harrow Council awarded the contract to 'the most economically advantageous tender', even though this bidder had scored lower on 'quality'.²⁹ A company that promises to yield more money to the local authority is given a higher weighting and is more likely to get the contract. Ealing Council's report said that 'analysis shows that compared to an in-house option there would be a higher net financial benefit of 0.051m additional net income to the Council from outsourcing the service'.³⁰

Enforcement contracts are described as a source of income for the local authority, and contracts are accompanied by estimated income targets. Leeds Council described the contract as a 'key service and an income source' that offered 'value

²⁷ Conditions of Contract, Trafford Council (and 3GS)

²⁸ 'The Tender demonstrating the highest overall income to the Council was automatically awarded full weighting in the Economic section of the Evaluation Criteria (60%). The Council was asking for a percentage received from paid fixed penalty notices and this will be evaluated at a ratio of 60:40, the highest % income to the Council generated the full 60 marks'. Procurement Authorisation Report, Dudley Council, 19 September 2019

²⁹ Appendix 1 - Cabinet Report November 2018, Harrow Council

³⁰ Ealing Council, report to Cabinet on pilot contract for environmental enforcement, 12 September 2017

for money'.³¹ Dacorum Council said that contracting a private company would 'generate an annual revenue of £216,330'³², while Newark Council said that 'The contract will bring in extra revenue to the council' (an estimated £10,020).³³ Waltham Forest presented the 'business case' for outsourcing, deciding it was the best option because it represented 'zero cost and zero financial risk' while sharing 'surplus revenue'.³⁴ This shows that enforcement is increasingly seen as a business decision, evaluated in terms of the income it will yield, rather than a matter of justice or public benefit.

Payment models

Defra guidance states that 'private firms should not be able to receive greater revenue or profits just from increasing the volume of penalties, since this creates a contrary incentive to the overall aim of reducing the number of offences committed'.³⁵ Yet, contrary to this, 'payment per fine' has become the general arrangement in private enforcement contracts. The agreement is now generally that the private company receives a percentage of paid FPNs. This means that the company must issue a certain volume of FPNs to even break, and a larger number if they want to make a profit.

Out of 53 councils that stated the financial arrangement with the enforcement company, 37 contracted the company on the basis of payment per issued or paid FPN, with the company receiving a portion up to 100% of FPN income. A further five councils had a cost-recovery model, whereby the company retained all FPN income to an agreed cost-covering level, after which the council and the company split any further income. Three councils employed a fixed fee per issued or paid

³¹ Delegated Decision Notice, Chief Officer Env Services, Leeds Council, 5 April 2021

³² Littering and PSPO enforcement, Dacorum Council: <https://democracy.dacorum.gov.uk/ieDecisionDetails.aspx?ID=1379>

³³ 'Enviro Crime - Strengthening our enforcement activity', Newark Council, Policy and Finance Committee, 23 September 2021

³⁴ Cabinet, 3 December 2020, Waltham Forest Council: <https://democracy.walthamforest.gov.uk/documents/s76169/Award%20of%20Contract%20for%20Environmental%20Enforcement%20Service%20Cabinet%20report%20v11.pdf>

³⁵ Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf

FPN, and two councils employed a mix of hourly payments along with FPN income share. (One council (East Hampshire) even set up a private company to issue litter fines on its behalf, and it pays this company, which it owns entirely, per FPN issued.) Only six councils paid the enforcement company an hourly rate, which removes this direct financial incentive.

Indeed, there is evidence of councils shifting to the 'payment per paid FPN' model in the past year or two. For example, Enfield Council recently moved from paying an hourly rate to payment per FPN: this was advised by consultants on the basis that it was a 'newer business model', which 'removes all risk to the council' and also has 'the potential to receive increased FPN receipts'.³⁶ Dartford Council also recently made the shift to percentage of paid FPNs, while Canterbury Council described it as the 'working model'.³⁷ Ealing Council described a percentage per paid FPN as the model that was typically associated with environmental enforcement contracts, while Dacorum Council said that 'increasingly local authorities nationwide are turning to this model of enforcement to manage their PSPOs'.³⁸

The main attraction of this model for councils appears to be that it is guaranteed to be 'zero risk' or 'zero cost', while freeing up staff and resources and ideally also providing a steady income stream. Even if the company takes 100% of FPN income, then at least the council does not have to invest resources and there is no chance that it will make a loss. (By comparison, a payment per issued FPN agreement could lead to losses if FPN payment rates were very low.) The attraction of this model for companies is that there are no limits to the income that can be generated.

This payment model drives a 'zero tolerance' approach by enforcement officers, which means issuing an FPN immediately at every possible opportunity, and not giving a warning before issuing the penalty (and often not considering the circumstances before issuing the penalty, such as whether littering was accidental). In an interview with Pembrokeshire Council, a District Enforcement

³⁶ Municipal Year 2019/2020 Report, 'Award a further extension and variation to the litter enforcement contract', Enfield Council

³⁷ Canterbury Council, Interim Evaluation of the Services of Kingdom LA Support Pilot Project

³⁸ PH-002-21 Littering and PSPO Enforcement, Dacorum Council

representative was asked whether he would have accepted the contract if officers had been required to give a warning before issuing a FPN, and he replied: 'If the specification said that we had to give a warning, and payment was on an hourly rate, yes would have bid for the contract... If the specification said that we had to give a warning, but we were paid per fixed penalty notice, then no, we would not have bid for the contract.'³⁹ This shows that the payment-per-FPN model is incompatible with balanced and proportionate enforcement.

The use of targets

Even in the handful of councils where payment is an hourly rate, there are still targets for the numbers of FPNs that must be issued, which means that punishment can still be incentivised. Councils considering employing a private company generally use targets or estimated FPNs when agreeing a contract. For example, the contract between Wolverhampton Council and Kingdom Services stated that 'It is envisaged that the total number of FPN's to be issued per month shall be within the range of 650 to 750'.⁴⁰ Newark Council said that the enforcement company WISE forecast that its officers would issue 74 FPNs per week.⁴¹ Companies often provide precise estimates of the number of fines to be issued for different offences. In bidding for the Dartford contract, Kingdom provided a 'projected income' spreadsheet, detailing how many FPNs it would expect to issue, including 3500 for littering, 1000 for violating PSPOs, 100 for A-boards, and 100 for the offence of 'selling and repairing vehicles on the highway'.⁴² The company has an incentive to meet or exceed agreed targets, since these are used by councils to assess the success of the contract and to decide whether it should be renewed. Many councils include the number of FPNs issued as a Key Performance Indicator (KPI), and some even specify that failure to meet KPIs

³⁹ Interview, John Dunne, Pembrokeshire Council, 2hr06min : https://pembrokeshire.public-i.tv/core/portal/webcast_interactive/385313?fbclid=IwAR2PpTeQECwzE3IHMX1GxOGFVAT3apjsC9wZ13zStLmhgKmMPoK0Gz_Sbmg

⁴⁰ Wolverhampton Council and Kingdom Services Group, Services Agreement

⁴¹ 'Enviro Crime - Strengthening our enforcement activity', Newark Council, Policy and Finance Committee, 23 September 2021

⁴² 'Kingdom Projected Income', Dartford Council: <http://committeedmz.dartford.gov.uk/documents/s67047/Appendix%20A%20-%20LA%20Support%20-%20Kingdom%20Projected%20Income%20Cabinet%20report%20October%202019.pdf>

would lead to some remedial measure. Birmingham Council includes ‘number of fixed penalty notices paid or referred to prosecution’ as a KPI.⁴³ Meanwhile, Wolverhampton Council specified in its contract that failure to meet KPIs ‘may have a material adverse impact on the business and operations of the Authority and that it shall entitle the authority to the rights set out in the provisions schedule 3’.⁴⁴

Therefore, regardless of the particular contractual arrangement, there is a direct financial pressure on enforcement companies to issue as many penalties as possible - either for the company to make a profit directly, or for the local authority to consider the contract a success and to extend it.

Profitability becomes measure of ‘success’

Councils often make decisions about penalty levels not on the basis of proportionality, but rather seeking the ‘optimum’ level to encourage the highest overall receipts. Pendle Council recommended an early payment rate for FPNs because it increases payment levels, while Bexley Council refused early payment because it would mean that ‘the service would operate at a loss’.⁴⁵ When Wolverhampton Council signed Kingdom Security, it increased the level of FPNs in order to ‘generate additional revenue to support the delivery of this service’.⁴⁶ Some councils increase FPN levels to the maximum level of £150 for littering, in order to make the most per fine, but others judge that this reduces payment rates and is counterproductive.

Projected FPN targets also include a projected payment rate, and if this falls then the contract could become unprofitable, as Thurrock Council outlined:

‘The current payment rate at 64% is resulting in a positive financial position. If the payment rate dropped below 40%, this would mean the contract was making a loss.’⁴⁷

⁴³ Birmingham City Council, Report to: Director, Neighbourhoods, 25 February 2021

⁴⁴ Wolverhampton Council and Kingdom Services Group, Services Agreement

⁴⁵ Report to cabinet member for community safety, 15 July 2016

⁴⁶ Alternative Environmental Enforcement Trial, Wolverhampton City Council, Cabinet, 30 June 2015

⁴⁷ Contract Renewal for Litter Enforcement, Overview and Scrutiny Committee, Thurrock Council, 4 February 2021

In order to encourage high levels of FPN payments, councils commit to prosecute large numbers of non-payers, and to publicise their cases. Thurrock Council stated: 'To prevent a drop in payments this Council is committed to prosecuting non payers and publicising those cases that result in a successful prosecution against offenders.' Here, legal cases are not taken in the interests of justice, but principally to shore up FPN payment rates.

The profitability of a contract - and the number of FPNs issued - becomes the main measure of its success, rather than a tangible public good such as cleaner streets. Southampton Council is one of the few councils to include littering levels as a key performance indicator to assess the success of the contract. Hull Council noted that it was 'very difficult to assess' whether the pilot had led to a reduction in littering.⁴⁸ Dartford Council could only say that the contract had made 'some inroads' into the reduction of litter 'within the day-time economy', suggesting that it had done little for the night-time.⁴⁹

Indeed, some councils appear to be willing to tolerate major mistakes on behalf of the company, so long as the contract is a success in terms of income and high FPN rates. Dartford Council's report to cabinet assessing the Kingdom Security trial, for example, included a damning series of mistakes and problems, including:

- three corporate complaints about officer conduct, with two officers receiving a written warning and additional training;
- high levels of staff turnover ('staff retention and continuity appears to be an area for some concern');
- inaccurate reporting of figures ('all three of the monthly summary reports from Kingdom were found to be inaccurate. Performance information relating to FPNs issued and revenue £'s, appeared not to match that within the live...fixed penalty notice database, and also invoices for payment sent to DBC. To date, all invoices received have been challenged by the Enforcement Manager around inaccurate recording of numbers and payment request').

Yet the council's cabinet approved an extension of the contract on the basis that it is 'currently delivering against "expected outcomes"' in terms of 'its contribution toward the funding of the scheme, with the income comfortable covering the

⁴⁸ Report to Cabinet, Hull Council, 26 July 2021 ([link](#))

⁴⁹ Dartford Council, Litter Enforcement (Pilot) Scheme, report to Cabinet

overall running costs' and generating an 'income surplus of £11,421'. The cabinet report noted that the council had a 'favourable deal' per FPN issued, as well as a favourable payment rate of FPNs. It is largely on this financial basis that report concluded that the scheme 'appears to be a success'.⁵⁰

Similarly, Canterbury Council's internal report documented a series of problems, including a high turnover of security staff, officers providing the public incorrect information about dog control zones and issuing fines for areas that were not no-dog zones, and public complaints that the officers were watching smokers 'to see if they go on to discard a cigarette end'. And yet, the council judged the contract a success on the basis that 'Just short of 300 FPNs have been issued in the 9-week period under review', a figure 'far in excess of that which could be achieved by CCC staff'.⁵¹

Enforcement dependency within council budgets

Councils often justified the employment of a private contractor in the context of a shortfall in resources or staff time. For example, Ealing Council stated that, 'faced with a further period of unprecedented financial contraction, efficiency alone will not get the Council where it needs to be'.⁵² Some councils are relying upon FPNs as an income source, to finance core budgets, particular projects or staff salaries. Wolverhampton Council noted a 'current budget deficit' for regulatory services, and said that the 'estimated minimum figure from fixed penalty receipts over a twelve-month period' with the private contractor would be 'sufficient to meet the income target'.⁵³

We asked councils about their use of private enforcement income. In some cases, FPN income was placed into general council funds. This was the case with Richmond and also Leeds. In other cases, FPN income supported posts in the departments responsible for contracting the private company, such as environmental or public protection departments. Dacorum Council said that the income 'is placed in the environmental and community protection general budget

⁵⁰ Dartford Council, Litter Enforcement (Pilot) Scheme, report to Cabinet

⁵¹ Canterbury Council, Interim Evaluation of the Services of Kingdom LA Support Pilot Project

⁵² Environmental Enforcement Services Contract Procurement, Ealing Council

⁵³ Alternative Environmental Enforcement Trial, Wolverhampton City Council, 30 June 2015

account', while West Northamptonshire Council said that the income 'is used to relieve service pressures within the environmental crime team'. Enfield Council put the money in 'waste enforcement expenditure (salaries)', while Wyre Council used it to contribute to the salary of the Cleaner, Greener Project Officer. In Newark, the income 'notionally reduces the general fund cost of the neighbourhood wardens service', and Greenwich FPN receipts were 'reinvested in the Safer Spaces Service'. Torbay Council said that income was 'used to support core council services within the department, due to reduced central funding from government'.

FPN income estimates are often included in council budgets, and therefore are relied upon. For example, Hull Council told us:

'Income from FPNs is ringfenced to environmental services and will predominantly be used to fund the Love Your Street project moving forward. Based on an estimate of 5,000 FPNs per year with all FPNs paid at the discounted rate of £80 and a payment rate of 75%, this would equate to £60,000 income per year.'

Several councils used the funds to pay for the 'management of the contract', including legal services and project managers to supervise the work of the private company. Manchester Council stated:

'The receipts received by Manchester City Council from paid Fixed Penalty Notices issued by 3GS (UK) Ltd. are utilised to fund the required infrastructure for the running of this contract. This includes costs associated with contract management/monitoring, legal costs (including the funding of 2 x dedicated FTE posts) and administration. Any funds in excess of this are deployed centrally and are utilised for environmental works/improvements across the city.'

This shows just how these contracts can in some cases be used, not for meeting budget deficits, but rather for growing an 'enforcement bureaucracy' that monitors the private contract and prosecutes non-payers. This enforcement bureaucracy has a vested financial interest in continuing with the contract.

When council departments are relying upon predicted enforcement income for budgets, they have a perverse vested interest in littering continuing at predicted levels. Indeed, enforcement companies see the possibility of declining offending not as a goal but as a 'risk' they have to manage, as 3GS stated in its bid to Trafford Council:

'3GS will produce and manage the risk register...One such risk is the reduction of offences available for our officers to issue against and we will have contingency plans in place for this potential eventuality.'⁵⁴

Since companies and councils are relying upon FPN income, the 'contingency plans' must include an ability to generate FPN income from other sources, such as fining for new offences or else issuing penalties over a larger area.

2021 FPNs in perspective

We submitted FOI questions to 94 councils, requesting information about their employment of private companies for environmental and ASB enforcement in the financial year April 2021-March 2022. This list was obtained from a Manifesto Club all-council FOI in 2021, which asked councils whether they had ever employed a private company for issuing FPNs. We also obtained more recent new contracts through analysis of the blogs and twitter accounts of the main private security companies, where new contracts are reported.

In total, 65 councils said that they had employed a private company for the issuing of environmental and ASB FPNs in the financial year 2020-21. (One council had begun the contract after March 2022.) The 65 councils together issued 188,895 penalties, the majority of these for litter but a growing number for other offences, such as PSPOs, CPNs, and smoke-free offences.

In historical perspective, this is the second highest number of FPNs issued by private companies, just below the 214,648 fines issued in 2018. It is significantly larger than the 141,125 FPNs issued for environmental offences by private companies in 2016.⁵⁵ There has been a slight reduction in the number of councils employing private enforcement companies, down from 73 councils in 2018.⁵⁶

We also asked councils about the income received by the council and by the company. The 35 councils willing to state the income to the company declared £5,026,174, with the highest income (£659,077) obtained by Kingdom/LA Support

⁵⁴ Conditions of Contract, Trafford Council, Environmental Enforcement

⁵⁵ The Corruption of Punishment (2017), 16 May 2017, Manifesto Club: <http://manifestoclub.info/the-corruption-of-punishment-2016/>

⁵⁶Corruption of Punishment: Over 200,000 litter fines issued by private security guards in 2018, Manifesto Club: <https://manifestoclub.info/corruption-of-punishment-over-200000-litter-fines-issued-by-private-security-guards-in-2018/>

in Ealing Council, and the second highest (£639,000) obtained by 3GS in Manchester. The 44 councils that stated the income received by the council, declared £4,148,887, with the highest amount (£702,632) received by Merton Council, and the second highest (£611,598) obtained in Enfield.

Having analysed the practice of private enforcement for the past decade, our impression is that the 'easy pickings' (largely cigarette butt) fines have dropped off somewhat since 2018. At the same time, the appearance of several new enforcement companies has made the 'fining for profit' market more competitive. Companies have responded to market pressure by moving into fining for a greater number of offences, as well as offering a more 'end-to-end' approach to enforcement, as discussed in Section 2 below. The result is a more complete contracting out of the enforcement process, such that public authorities are in effect selling off the right to issue fines on their behalf, with a consequently greater disconnect between the public and the council. Therefore, although the enforcement market is somewhat smaller than 2018, it is more established as a competitive market where the rights to extract penalties are sold to the highest bidder, who then retains an unprecedented control over the enforcement process.

2. The growing role of private companies

‘End to end’ enforcement

Over the past few years, companies have moved into taking more responsibility for the entirety of the enforcement process, offering what Thurrock Council describes as an ‘End to end process for all enforcement actions’.⁵⁷ This includes the company taking FPN payments and passing on a portion to the council each quarter, whereas in the past the council would take the payment and pass on a portion to the company. Enfield Council recently shifted payment from the council to the contractor.⁵⁸

No doubt the motivation for this shift is, in part, councils seeking to reduce their costs and to relieve pressure on staff time/systems. However, ‘end to end enforcement’ means a more complete signing over of responsibility for enforcement to a private body. Some council officers appear to closely monitor the contract - examining FPNs issued, complaints, and invoices - which is how Dartford Council was able to identify errors in Kingdom Security invoices. Many contracts require the regular provision of FPN figures and other data, or the provision of ‘read only’ access to the company’s databases and files, including access to real-time body cameras and complaints documentation. But some councils do not appear to even know how many FPNs are being issued or the income taken, which means that the company in effect has sole responsibility for managing the contract. This weakens the scrutiny and accountability of the system to the council and therefore to the public.

Several of our FOI responses were delayed for weeks because of the slow response of companies responding to council requests for data. In some cases, the council did not appear to hold the data on FPNs issued and had to petition the company to

⁵⁷ Contract Renewal for Litter Enforcement, Overview and Scrutiny Committee, Thurrock Council, 4 February 2021

⁵⁸ Municipal Year 2019/2020 Report, ‘Award a further extension and variation to the litter enforcement contract’, Enfield Council

obtain it. For example, we asked North Somerset Council about the income received by the private company and received the response: 'This information is not held by the Council. We have asked Kingdom Local Authority Support Services Ltd but at the time of this response we have not heard back from them.' Bexley Council sent a holding response several weeks after the FOI deadline: 'I am writing to inform you that we have searched our records and some of the information you requested is not yet held by the London Borough of Bexley. We are currently waiting for the balance of the information to be made available to us.' Meanwhile, Torbay Council told us to contact the private company directly in order to obtain information on the numbers of FPNs issued and the income received:

'Under section 21 of the Freedom of Information Act (FoIA), we are not required to provide information in response to a request if it is already reasonably accessible to you. Contact National Enforcement Solutions directly, Email - nationalenforcementsolutions.co.uk.'

Only when we appealed this response via an internal review did the council first obtain, and then supply, the information on the number of FPNs issued.

Private companies generally have full access to public databases for the purposes of verifying identities. LA Support has access to council tax databases in Wolverhampton, to assist 'enforcement staff in the tracing of offenders'.⁵⁹ Indeed, a Birmingham Council document suggests that private companies have better systems for checking ID than do public officers, saying that 'The companies in this marketplace have intelligence/digital systems for identifying offenders on the street', since they have 'access to multiple public databases' and a 'dedicated backroom team to be called to undertake the checks during the encounter with the alleged offender. The council does not have similar facilities for its officers'.⁶⁰

This shows that the enforcement process is being removed from the scrutiny and accountability of the public authority; in some cases, the council merely receives its cut at the end of the month or quarter. This obviously creates a potential for fraud or errors. In a recent whistleblowing case, a former Kingdom team manager

⁵⁹ Cabinet (Resources) Panel Minutes, 30 June 2015

⁶⁰ Appendix 1, Report to Director, Neighbourhoods, Delegated Procurement Strategy Report, Birmingham City Council, 25 February 2021

claimed that he was told to bill one council for FPNs issued in another area.⁶¹ The danger is heightened when councils form into consortia or subcontracting relationships, whereby the financial arrangement is through a third party and accountability becomes even more difficult.

Another worrying shift has been towards companies considering FPN appeals, or considering complaints against their own officers. Defra guidance encourages local authorities to offer an informal challenge process, with the grounds for appeals laid out clearly and published. The guidance explicitly states that councils be responsible for appeals: 'Enforcing authorities remain responsible for the whole enforcement process (including considering disputes of liability for the alleged offence), whether they contract out part of it or not.'⁶²

However, of the 63 councils able to provide this information, only 10 councils (16%) said that they alone considered appeals. 26 councils said that the company alone considered appeals, while 13 provided for the company to consider appeals in the first instance, with the council team providing a second level of appeal. Four councils said they did not have any provision for informal appeals. 10 councils said that the company and the council jointly considered appeals.

In addition, many companies are also in charge of the complaints process relating to officer conduct (for example, Kingdom offers a 'complaints protocol process'). Some contracts specify that there must be a vigorous system for considering complaints. Yet in practice, because the company has no inclination or resources to create legal processes that could cancel FPNs, this 'process' is often inadequate. For example, a shopkeeper in Torbay was fined £400 for fly-tipping, despite following the council's instructions for recycling (there had been a delay in council rubbish collections, so residents were told to leave their rubbish out to await

⁶¹Litter enforcement officers were told to target ethnic minorities, Daily Mail, 5 January 2022: <https://www.dailymail.co.uk/news/article-10372757/Litter-enforcement-officers-told-target-ethnic-minorities-tribunal-hears.html>

⁶²Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf

collection). He contacted the company, National Enforcement Solutions, but had his appeal turned down.⁶³

Similarly, a Bath pensioner was fined for leaving recycled rubbish out on the morning, because council collection did not take place until the afternoon. When she tried to appeal she was waved away:

‘The woman at the (3GS) BANES payment telephone number told me they have photographic evidence of a document with my name and address on it from the litter warden. The woman at BANES would not accept my verbal objection, and said it is my responsibility to dispose of my rubbish properly. How do I know when the Council trucks will come? Do I stand guard over my rubbish and wait until the trucks come?’⁶⁴

In practice, such an ‘appeal system’ can just be a telephone number staffed by a person who does not have legal training, or engage in the specifics of the case, but merely repeats statements in an effort to get the person to pay the penalty. Even when a local newspaper took up the lady’s case, it merely received a standardised statement in reply.

Private companies have also moved into the role of preparing files for prosecution of unpaid FPNs. In a ‘payment per paid FPN’ contract, they do this free of charge, and must also sometimes attend court free of charge. This means that they are also taking responsibility for a large part of the prosecution process. Indeed, in one case (Bournemouth, Christchurch and Poole Council) the company even brings legal proceedings on behalf of the council and will keep any awarded costs:

‘From the recovered fines, the provider will pay their operational and staffing costs and undertake prosecutions against perpetrators who have not paid, keeping any costs awarded at Court. The Council will receive 5% of the total recovered

⁶³Man fined £400 by private litter police for leaving cardboard out as instructed, Birmingham Mail, 26 April 2022: <https://www.birminghammail.co.uk/news/uk-news/man-fined-400-private-litter-23794438>

⁶⁴Resident who claims she's ‘tidiest person on earth’ charged by ‘litter police’, Somerset Live, 21 March 2020: <https://www.somersetlive.co.uk/news/somerset-news/bath-resident-who-claims-shes-3968712>

payments, which at the projected rate will be £6,595, based on the assumptions outlined. This will support the management of the pilot by Council officers.’⁶⁵

Here, the company has become the issuing, moderating and prosecuting authority, which means that it is able to arrange matters to serve its own interests. In effect, enforcement has been sold to the highest bidder - it is no longer owned by a public authority.

It must be recognised, however, that ‘end-to-end’ enforcement also places a greater financial burden upon the company, which must now provide a whole administrative enforcement structure, yet its only source of income comes from paid FPNs. Companies are providing many more services for the same FPN income, which means that the administrative structure is likely to be low quality and aim primarily at getting FPNs paid.

‘End to end’ enforcement means a greater streamlining and automation of enforcement processes. Birmingham Council describes the enforcement market as ‘highly competitive financially with contractors striving to keep on top with the latest technological developments’.⁶⁶ The 3GS pitch to Trafford Council described its ‘Environmental Enforcement Management System’:

‘(This) electronic service that utilises the latest innovative hand-held green technology to streamline the enforcement process from initial on-the-spot street issue of the FPN, through processing/reporting and management, to ultimate prosecution. The use of hand-held mobile FPN (EDA) devices will record all data and instantly print out the FPN on the spot to the alleged offender whilst immediately, updating “real time” back to our secure servers. Our back-office systems automatically process the FPN information and updates it with payments received. It also generates reminder letters for non-payment and ultimately prepares the court-ready prosecution file.’⁶⁷

Part of this ‘electronic service’ is the use of body cameras as a matter of routine. These are generally placed on the operative’s chest, facing the person they are

⁶⁵ Fly tipping and Enforcement Pilot, BCP Council, <https://democracy.bcpccouncil.gov.uk/documents/s25419/Fly-tipping%20and%20Fly-posting%20Enforcement%20Pilot.pdf>

⁶⁶ Appendix 1, Report to Director, Neighbourhoods, Delegated Procurement Strategy Report, Birmingham City Council, 25 February 2021

⁶⁷ Conditions of Contract, Trafford Council (and 3GS)

talking to. This is often specified in the council pitch, or in contracts, and is offered by companies as part of a standard package. The cameras are justified as a way of preventing ‘abuse’ of operatives, or for evidence in court, but can also be used as a means of intimidation of the person receiving the fine, as described in the case of the Torbay man above issued with a fly-tipping fine:

‘It was harrowing. This guy wearing a bodycam turned up. He just said “This is the fine” while videoing me. That was almost the worst part. There is nothing quite like someone videoing you whilst issuing you with a fine but refusing to answer any of your questions at the same time.’⁶⁸

This is a technology of extraction, designed not in the interests of justice but for the efficient issuing and claiming of penalties in the shortest time possible.

The growth of FPN offences

Another shift has been the move of private companies into fining for a greater range of offences, which is a way to increase the number of FPNs issued. Dartford Council said that ‘senior managers’ at Kingdom were proposing ‘an enforcement model of a much wider range of Environmental Crime offences which can be enforced’.⁶⁹ Walsall Council said that the signing of the enforcement contract presented an ‘opportunity to extend the range of offences included within the scope of the services’.⁷⁰ Often council contracts with private companies are drafted to be ‘flexible’, and to allow them to increase the number of offences for which the private company can issue fines.

Until recently, private companies generally only issued FPNs for litter, and in some cases for dog offences such as dog fouling and dog control. Now, companies are contracted for other environmental offences, such a fly-tipping, fly-posting, graffiti, waste receptacle offences, unauthorised leafleting, checking environmental documents and licences, as well as for smoke-free offences, and offences such as mending a car on a public highway. Most worryingly, many councils now contract

⁶⁸ Man fined £400 by private litter police for leaving cardboard out as instructed, Birmingham Mail, 26 April 2022: <https://www.birminghammail.co.uk/news/uk-news/man-fined-400-private-litter-23794438>

⁶⁹ Cabinet report on LA Support, 31 October 2019: <http://committeedmz.dartford.gov.uk/documents/s67090/REVISED%20Cabinet%20Paper%20Kingdom%20Services%20Group%20LA%20Support%20Environinmental%20enfocement%20contract%20extensi.pdf>

⁷⁰ Contract for Environmental Enforcement Services, 18 December 2019, Walsall Council Cabinet

private companies for issuing penalties for anti-social behaviour offences, such as Public Spaces Protection Orders (PSPOs) and Community Protection Notices (CPNs). Boston Council told us that it had subcontracted private officers to issue penalties for 17 offences, while Hillingdon has subcontracted penalties for 27 offences.

Councils' PSPOs frequently include vague new offences, such as loitering, public drinking, or even sleeping outside, which creates the risk of penalising homeless and other vulnerable people. In total, 48 councils told us that they contracted the private company to enforce PSPOs. Hillingdon - which has one of the broadest PSPOs, banning activities including standing in a group of two or more, and using noisy remote-control cars⁷¹ - issued 900 penalties for PSPO violations. Officers in Hillingdon also issued 331 penalties for obstruction of the highway, 319 for painting/inscribing/affixing on a tree/structure, and 235 for displaying advertisements.

Private contractors in Ealing issued two fines for the 'wilful obstruction of the public highway', and those in Greenwich issued 423 for ASB and alcohol, and 46 for loitering near a cash machine. Some of these penalties are likely to have been issued to homeless people. Greenwich officers also issued five 'return to area' penalties, on the basis of a PSPO that gives local authority officers power to bar people from a public space for 48 hours. Greenwich officers also issued 48 FPNs for 'ASB' and one for ASB in car parks, while Redbridge issued 667 penalties to people for drinking alcohol in public.

Richmond's PSPO - which was challenged in the High Court by the Kennel Club, who claimed it was overly broad - is now being enforced by Parkguard. The company issued one penalty for feeding animals, six for bicycles chained to trees/structures, one for consumption of alcohol, 42 for injury to animals/damage to land (which according to the PSPO text could include 'displacing stones'), 26 for nuisance to other park users, 32 for obstruction of authorised officers, and 33 for the planting of trees/other installations.

Enforcement officers in Lambeth issued 8 penalties for unauthorised leafleting, and three for lack of correct documentation. Private officers in North East Lincolnshire

⁷¹<https://metro.co.uk/2016/02/29/london-council-bans-standing-in-pairs-in-town-centre-unless-youre-at-a-bus-stop-5725461/>

issued 458 FPNs for dogs on the beach, while officers in Harrow issued 12 FPNs for amplification and two for the offence of putting up tables.

Large numbers of fines were issued for spitting, with spitting either questionably categorised as a litter offence in some councils, or else specifically banned by a PSPO. Enforcement officers in Walsall issued 58 fines for spitting, while those in Greenwich issued 812 FPNs for spitting and 2 for paan (Indian chewing tobacco) spitting, while Redbridge issued 1446 for 'PSPO spitting' and 8 for paan spitting, and 243 for 'spitting' (a total of 1697).

Five councils have even contracted private officers for enforcing CPNs, which are personal legal orders that restrict individual conduct. CPNs are complex and personal legal documents that require judgement to enforce proportionately. It is therefore very concerning that private officers in Greenwich issued 161 FPNs for CPN violations.

CPNs and PSPOs are overly broad legal orders, lacking sufficient checks - problems that are amplified when they are punished by private security guards working on commission. Profit-driven enforcement adds another layer of distortion to already problematic powers.

Since private officers seem unaware of Defra guidance on littering, it is highly unlikely that they will be observing the Home Office statutory guidance on PSPO and CPN enforcement⁷², which specifies that penalties should not be issued to vulnerable groups such as the homeless. In general, the more offences covered by minimally trained private enforcement officers, the less likely it is that they will observe guidance and legal provisions for any particular offence.

A parallel law

The withdrawal of public authorities from supervising private companies means that litter enforcement becomes a law unto itself. Companies in effect write their own guidance on how and in what circumstances penalties should be issued.

'Zero tolerance' is now the standard approach to issuing FPNs by private companies, whereby penalties are issued immediately without a warning (and often without establishing the facts of the case). This means an inherent tendency to

⁷²Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers, Statutory guidance for frontline professionals, Revised June 2022: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088750/2022_Updated_ASB_Statutory_Guidance- FINAL.pdf

punish accidental littering, as well as a lack of public education. It also means focusing on the issuing of penalties rather than the goal of clean streets, since the person being fined generally does not pick up the litter and may even be prevented from doing so. This runs directly counter to Defra guidance, which states:

‘Enforcing authorities are expected to combine enforcement with education in order to change behaviour. Given the quasi-judicial nature of the enforcement process, enforcing authorities will need to balance the need for consistency with an approach which remains targeted and proportionate. A blanket “zero-tolerance” approach when issuing penalties is unlikely to achieve this. In particular, enforcement action should not be taken if it would be disproportionate to the offence, for example against accidental littering.’⁷³

The more that councils contract out the enforcement process, the more that enforcement becomes a self-governing realm, impervious to central government guidance.

⁷³ Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf

3. Commercial secrecy and public scrutiny

Lack of transparency

Defra enforcement guidance requires that councils publish details about their arrangements with enforcement companies, including contracts. It states:

‘Where external contractors are used, the full text of such contracts/legal agreements, should be placed in the public domain by the council – to provide additional scrutiny and reassurance that such contracts are not being used as a revenue raiser. The Local Government Transparency Code⁷⁴ already requires that councils falling under the Code publish contracts over £5,000 and discourages the use of commercial confidentiality clauses to prevent such publication. As good practice, the Government would also encourage an annual breakdown of fines and revenue, which could be done through an annual scrutiny review.’⁷⁵

However, nine councils refused to state the nature of their financial arrangement with the company (ie, whether the company was paid an hourly rate, or per FPN). 31 councils refused to state the income received by the private company, and 15 councils refused to state the amount received by the council. Two councils (Manchester and Hull) carried out a public interest test to see if the FOI should be answered at all.

We appealed 11 of these refusals with an internal review. Of the six internal review responses received to date, three were successful and provided the information, one was partly successful, and two refused to provide the information.

Even after some successful internal reviews, 46 councils are still refusing to provide the contract with the private company. Only 13 councils provided the full

⁷⁴ Guidance, Local government transparency code 2015: <https://www.gov.uk/government/publications/local-government-transparency-code-2015>

⁷⁵ Part 1A - Effective enforcement Code of practice for litter and refuse, Defra, September 2019: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054015/Part_1A_-_Effective_enforcement.pdf

unredacted contract; 7 provided the contract but with significant financial information redacted.

We asked councils to provide the council report that scrutinised or justified their employment of a private company. Most (43) councils did provide this document, however financial information was often redacted or missing. Some council reports were provided without the appendices that included financial data. Salford and Camden sent council documents with costs and figures blacked out, even though the Salford document was available in unredacted form on the council website. Six councils said that there was no council scrutiny or discussion document available, and the remainder didn't provide it.

Councils' justifications for not providing financial information revealed the extent to which enforcement has become marketised, with companies and councils seeking to gain the best price from the marketplace. For example, Greenwich told us:

'This is a very competitive market and the Council's ability to participate competitively in this commercial activity will be affected. LA Kingdom Support Ltd has advised that the release of this data would disadvantage their organisation as the data would give competitors an advantage to undercut their prices during the next round of commissioning. It is not in the public interest to disclose information which would be likely to put the Council at a commercial disadvantage in a very competitive market.'

Similarly, Camden Council stated that disclosure of financial arrangements would cause harm, because 'for Kingdom Services, rival companies would have awareness of their pricing structure which would allow rivals to undercut them and reduce their chances of successfully tendering, and for the council, that disclosure of the current amounts paid, and prices would reduce the chance of a wide selection of contractors bidding for the work.'

Here, the 'public interest' is increasingly identified with the commercial interests of councils and private companies - with the council seeking to gain the best possible FPN 'rate', and companies seeking to out-manoeuvre their competitors.

Even when councils were reminded about their obligations under Defra guidance and the Transparency Code, some councils decided that the commercial interests of the council and company took priority. Bedford Council stated:

‘The operator is a commercial body and it is clear to the Council that disclosure would adversely affect the operator’s economic interests.... The Council has considered whether, irrespective of the confidential sensitivities involved, it should disclose the information in the public interest; it understands the need for public bodies to be accountable for the financial arrangements it makes with third parties and noted the Transparency Code in that context but, in this particular case, the loss of commercial advantage that would inevitably result appears to the Council to weigh heavily against non-disclosure.’

Enfield Council stated that, notwithstanding the obligation to openness and transparency, ‘in this instance, we consider that there is a greater public interest in protecting the confidentiality of commercially sensitive information, which could, if disclosed, damage companies’ interests’.

Here, we can see how enforcement has become a matter of buying and selling the rights to punish, and the ‘bottom line’ of the percentage payment per FPN has become a commercial secret that companies and councils seek to protect. Windsor and Maidenhead Council told us that disclosure would ‘undermine the competitive process’ of procurement: it would limit District Enforcement’s ‘ability to enter into competitive bids in the future’, and ‘hinder the council’s ability to conduct future competitive tenders’.

In some cases, the private company specifically asked the council for financial information to be kept secret. Pendle Council stated: ‘The private company has objected to the disclosure of financial agreements under this contract based on the exemption listed under sections 39 and 43(2) of the FOIA.’ East Hampshire Commercial Services - a company wholly owned by East Hampshire Council - also refused to state how much it was being paid per FPN: ‘The council has consulted with EH Commercial Services Ltd who have advised that disclosure of the figure would cause commercial damage to the company as it would provide competitors with an unfair competitive advantage when bidding for contracts.’

Lack of scrutiny within councils

Most councils passed the decision to appoint a private contractor through an internal organ such as a cabinet or scrutiny board. However, six councils did not undergo any formal consideration and could not provide a council report discussing the decision to appoint the contractor. For example, Burnley Council delegated the decision to employ the private contractor to the head of street scene,

and the decision was made without discussion, with a statement that this was the most economically advantageous policy, at a meeting attended only by the secretary and the street scene officer.⁷⁶ Merton and Kingston councils also signed a contract with a private company as a delegated decision, without any formal scrutiny. Some councils (including Rushcliffe) employed private companies on a trial basis, which did not require scrutiny or debate.

Once a private company is employed, contracts can be changed or updated without formal council scrutiny. For example, Manchester Council states:

‘No scrutiny report or report to cabinet was required to justify the decision to contract 3GS(UK) Limited to issue FPNs on behalf of the City Council. The service was previously delivered by another service provider within the terms of their contract and the Council was therefore re-tendering to source a new service provider to broadly continue with the service.’

It is particularly striking that this lack of scrutiny occurs in councils such as Merton and Manchester, which have very high levels of fining and a high level of public controversy about the contract.

⁷⁶ Executive Officer Decisions, Burnley Council, 4 June 2018: <https://burnley.moderngov.co.uk/ieListDocuments.aspx?CId=212&MId=776&Ver=4>

4. Awareness of the problem with fining for profit

Attempts to limit incentives

There has been a growing awareness of the problems with fining for profit. The decision to appoint a private contractor in Dacorum was called in by a group of councillors in 2021. One councillor wrote that ‘incentivising a private contractor to generate revenue from residents is unreasonable and disproportionate... Privatising enforcement, especially when we incentivise the enforcers, will undoubtedly lead to corruptions and falsified allegations of infringement against our residents’.⁷⁷

Indeed, in council documents discussing the decision to contract private enforcement, many councils did recognise the problems with incentives. Walsall Council mentioned the ‘risk of adverse publicity about issuing FPNs, particularly if they are issued inappropriately or to the elderly or vulnerable’.⁷⁸

Some private enforcement contracts included specifications that staff would not be subject to incentives. Rushcliffe Council’s contract specified that quotas would not be set for FPNs and that staff would be salaried.⁷⁹ Newark Council’s contract specified that staff would not be subject to incentives.⁸⁰ Yet both these councils employ the enforcement company WISE on a payment-per-paid-FPN arrangement, whereby the company receives 90-95% of FPN income. This payment structure creates an underlying incentive, even if individual officers are not subject to bonuses or targets.

Some councils’ contracts included clauses seeking to mitigate corrupting consequences of incentivised enforcement. Rushcliffe Council’s contract provided for all officer visits to be recorded live time, and the council to have access to the

⁷⁷ Dacorum Council, Decision details, PH-002-21 Littering and Enforcement, 11/01/2021

⁷⁸ Contract for Environmental Enforcement Services, 18 December 2019, Walsall Council Cabinet

⁷⁹ Contract, Rushcliffe Borough Council and WISE, 5 January 2021

⁸⁰ Contract, Newark Council and WISE, 6 January 2022

recordings. Wandsworth Council's contract included rights of inspection and random sampling by the council, and also required that the company had measures to prevent a data loss event.⁸¹ Several councils included a clause in their contracts specifying that, in the event that the local authority ombudsman found against the council as a result of actions of the company, the council could reclaim the costs of the fine from the company. Newark Council's contract included a specification that the council can request the removal of any staff member should it have concerns about their 'behaviour or attitude'.⁸² Several councils asked to see complaints about officer conduct, and included the number of complaints as a Key Performance Indicator.

Some contracts attempted to overcome the distorted nature of private enforcement. For example, Wolverhampton Council specified that not more than 95% of FPNs should be for cigarette butts, and not more than 90% should be issued in the city centre, and that there should be at least 2 FPNs for dog fouling per month.⁸³

However, these attempts to reduce the distorting effects of private enforcement will do little so long as the payment model is payment per FPN. Even if a company doesn't pay bonuses up-front, it will have some way of ensuring that its staff issue the requisite number of FPNs in order to make a profit. In the 'zero cost' arrangement, the company pays up front for staff time, equipment, IT backup, uniforms, vehicles - and it is the law of the market that these costs must be recouped one way or another. It has long been a rule of thumb that an enforcement officer must issue at least 4 FPNs per day in order to cover costs; this is still the estimate provided by many companies in bids, and it was the daily target revealed by whistleblowers (all FPNs issued over this target were paid at a bonus of £5 per FPN). Companies will have a way of communicating this situation to their employees, whether or not they use explicit bonuses or targets. An officer who issues one FPN a day will be a financial liability and will not last long in the job.

Indeed, it could be that attempts to counteract incentives while retaining payment per FPN could merely increase distortions. For example, specifying that officers must issue at least 2 dog fouling FPNs per month will create a pressure to find this

⁸¹ Contract, Wandsworth and NSL, 17 March 2020

⁸² Contract, Newark Council and WISE, 6 January 2022

⁸³ Wolverhampton Council and Kingdom Services Group, Services Agreement

hard-to-catch offence, which could lead to false allegations against dog owners, as in the case of the dog walker documented on *Panorama*.⁸⁴ The more officers are directed away from FPN ‘hot spots’ in the city centre, the greater the pressure to make up the required number of FPNs when they return to those areas.

Cosmetic approaches to cleaning up enforcement

It is notable that many councils saw the problems with fining for profit as a cosmetic or PR question. Bournemouth, Christchurch and Poole Council (which has a payment-per-paid-FPN arrangement) specifies that officers must ‘approach each case in a fair and balanced way’ and have a ‘professional, courteous and helpful manner’.⁸⁵ Rushcliffe Council (also payment-per-FPN) says that officers’ conduct must be ‘beyond reproach’.⁸⁶ Newark Council’s contract specifies ‘that all Enforcement Officers’ uniforms are clean and tidy and they present themselves to the public in a smart and professional manner and their conduct at all times is beyond reproach’.⁸⁷ Wandsworth Council stated that officers should ‘demonstrate the highest standards of customer care including being polite, helpful and courteous at all times’.⁸⁸ In these cases, councils seek to create the *appearance* of officers being impartial and free from incentives, while in *substance* the motivation remains pecuniary and incentive-driven.

Another new development is that enforcement contracts increasingly include PR initiatives that present enforcement as a charitable or public-spirited activity. North Somerset Council says that ‘mixed with enforcement’ is an ‘educational offering which will be provided to some schools and organisations’.⁸⁹ Dudley and Dacorum councils both reported that their contracted company was working on education and awareness in schools, and producing educational leaflets. Windsor and Maidenhead Council specified that the contractor would provide enforcement

⁸⁴ Extract from ‘Inside the Litter Police’, *Panorama*, 27 May 2017: https://archive.org/details/BBCNEWS_20170517_023000_Inside_the_Litter_Police_-_Panorama/start/60/end/120

⁸⁵ Fly-tipping and Fly-posting Enforcement, Operating Procedure and Complaints Process, BCP Council, Cabinet

⁸⁶ Contract, Rushcliffe Borough Council and WISE, 5 January 2021

⁸⁷ Contract, Newark Council and WISE, 6 January 2022

⁸⁸ Contract, Wandsworth and NSL, 17 March 2020

⁸⁹ North Somerset Council Decision, Director for Development and Environment, 8 April 2022

officer time in order to help local community projects or educational/awareness campaigns, and also participate in litter picking, as well as handing out 'stubbi pouches' and biodegradable dog poo bags.⁹⁰

Again, however, these PR measures merely increase the corrupting effects of incentivised enforcement. The more charity work the company is asked to do for free, the more pressure there will be for officers to issue FPNs in their 'productive' time on the beat when they are able to generate income.

⁹⁰ Schedule 1 - Specification, Environmental Enforcement Services, Windsor and Maidenhead Council

5. Conclusions and recommendations

An historical parallel for the current enforcement market can be found in the practices of 'tax farming' and the sale of public positions in the eighteenth century. Under France's *Ancien Régime*, for example, there was a market in public positions that granted rights to levy taxes. The vast state edifice was for hire, and when the state needed more money it merely created more public offices and more rights to extract taxes. Now councils under financial pressure have in effect resorted to a new version of those sordid eighteenth-century practices. Today's 'fines farming' will have a similarly corrupting effect on the state as did tax farming under the *Ancien Régime*.

The criminal justice system is not, in fact, a private resource that can be sold to the highest bidder: it is a public function to be dispatched in the public interest. For public enforcement to be fair and impartial, it must be separated from financial incentives. When the British police force was formed in the nineteenth century, authorities removed any private incentives that could distort or guide punishment. Punishment was supposed to be fair, impartial and in the public interest, and for this to happen incentives must be removed.

When done properly, punishment does not make a profit, but is generally, and rightly, a cost. It generally costs more to enforce the law than can be recouped from fairly issued penalties. It is only by separating enforcement from public interests and accountability - by putting it out to hire - that it is able to operate profitably. Trafford Council estimated that if it were to bring enforcement in-house, each officer would need to issue 6-7 FPNs per day in order merely in order to cover costs.⁹¹ Birmingham Council recognised that only private officers had the necessary zeal to extract the required level of penalties, saying that the encounters with the public 'are often confrontational and need a level of robustness and tenacity to obtain the ID of an offender', that council wardens 'were reluctant to engage' in such encounters, and that this 'leads to persons only with this skill to

⁹¹ Trafford Council, Report to Executive, 15 July 2019

undertake this work'.⁹² If enforcement wardens were properly trained and dispatched their duties in a fair and impartial way, with a robust appeals system, they would not make a profit.

It is understandable that councils, under financial pressure, are judging that they cannot afford to run a credible enforcement service and are seeking alternatives. It may be that they require more money from central government to fund enforcement, or they may have to rethink their priorities within enforcement, focusing it on offences that are of most public concern (such as fly-tipping), while dealing with low-level littering (such as cigarette butts) through other means such as public education and the provision of cigarette bins.

Whatever the current problems, fining for profit is not the answer. Although councils have sought to off-load financial risk on to the company, in fact they are loading risk on to the general public, who ultimately will provide the requisite level of FPNs in order for the company to meet its bottom line. Incentivised enforcement has no discernible effect on street cleanliness, and instead merely creates a distorted and extractive punishment system, which reduces public respect for enforcement and for public authorities.

Recommendations

1. Current Defra litter enforcement guidance should be made statutory, in order to ensure that financial incentives are separated from enforcement. If legally applied, this guidance would prohibit the current model of payment-per-FPN; it would also prohibit the use of targets that are generally given when signing enforcement contracts. Only by making this guidance statutory will it be respected and remove incentives from enforcement practices.
2. The Home Office should revise its statutory guidance for the enforcement of PSPOs and CPNs, to introduce comparable restrictions on the issuing of penalties for profit. Otherwise, incentivised punishment would continue to be allowed for anti-social behaviour offences, which would shift the enforcement market further in this direction.

⁹² Birmingham City Council, Report to: Director, Neighbourhoods, 25 February 2021

3. Officers employed to enforce offences should be properly trained in the legal basis of these offences, including familiarity with relevant guidance, and they should exercise their role in a proportionate and targeted manner. Councils should provide impartial and thorough appeal systems, to allow people to make informal representations when they believe that they have been unfairly fined. People should not be fined for accidental littering, and officers should establish the circumstances of the case before issuing a penalty.
4. Decisions about enforcement regimes should be subject to full public scrutiny and debate, including public consultation by councils, and debate among elected councillors. Private enforcement companies should not be employed on the basis of single council member decisions, even on a trial basis.
5. All enforcement regimes should be subject to maximum transparency and public accountability, including the publishing of enforcement statistics, contracts, and financial arrangements, in order to demonstrate that these arrangements do not involve incentives.
6. In terms of low-level littering, there should be more focus on public education, the provision of litter and cigarette butt bins, litter picking events, as well as asking people to pick up litter before issuing penalties. The ultimate aim of environmental enforcement should be the reduction of littering and the reduction of FPN penalties issued for litter. The goal should be clean streets, not a 'zero tolerance' issuing of the greatest number of penalties possible.
7. There should be a recognition that enforcement, when done properly, is not generally a profit-making enterprise. The actions required to yield profits are those that corrupt the enforcement system. Recognising this fact could aid councils' decisions about how to best target scarce resources in the public interest.

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