

TORBAY COUNCIL

Part 2 Specification

Contract Reference

TCOS0420

Contract Title

**Environmental Enforcement Services for
Torbay Council**

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1. Overall Scope and Nature of the Requirement

1.1 The Community Safety Business Unit is responsible for environmental enforcement. This Business Unit has a wide range of enforcement responsibility. Included in these responsibilities is enviro-crime enforcement including domestic and commercial waste offences, and other anti-social behaviour offences affecting communities in Torbay.

A table of the Fixed Penalty Notice (FPN) offences covered in this contract are included below:

Offence	Penalty
<u>Littering</u>	£80
<u>Dog control offences</u>	£80
PSPO (Dog off lead)	£100
<u>Graffiti</u>	£80
<u>Fly-posting</u>	£80
<u>Abandoning a vehicle</u>	£200
<u>Fly-tipping</u>	£400
<u>Failure to produce a waste transfer note</u>	£300
<u>Domestic waste receptacle offences</u>	£60
<u>Industrial and commercial waste receptacle offences (47 (Za))</u>	£110

Other anti-social behaviour (ASB) FPN's covered under Anti-Social Behaviour Crime and Policing Act 2014 or subsequent legislation may also be included as part of this contract.

In order to reduce anti-social behaviour, the Authority is seeking an appropriately qualified/accredited organisation to issue FPNs on its behalf, to offenders who are seen breaking the Environmental Protection Act 1990¹ and Clean Neighbourhoods

¹ Environmental Protection Act 1990

² Clean Neighbourhoods and Environment Act 2005

³ Anti-social Behaviour Crime and Policing Act 2014

and Environment Act 2005², Anti-social behaviour Crime and Policing Act 2014³ in the streets, parks, beaches and open spaces within Torbay.

Torbay Council is seeking to award a contract to a suitably experienced and qualified organisation that can provide uniformed enforcement officers and the necessary infrastructure for the delivery of dedicated enforcement of street scene issues as outlined above, in the Torbay area.

2. Minimum and Mandatory Requirements

This section sets out the Authority's minimum and mandatory requirements for this Contract.

Applicants are required to establish within any variant bid how they will meet these requirements, in order for the Authority to be able to appropriately assess their offer.

In order to achieve any threshold set in relation to award evaluation criteria Applicants are required to establish within the relevant responses how they will meet these requirements.

Within this Specification, these are identified with the inclusion of the wording '**Mandatory Requirement:**' against whole sections or individual requirements.

- 2.1 **Mandatory Requirement:** The successful Applicant must refund any monies paid for Fixed Penalty Notices (FPN's) cancelled directly to the alleged offender, due to officer errors or evidential shortfalls including but not limited to:
- Where an officer has not followed all relevant policies and procedures;
 - Inadequate case files and witness statements;
 - Where FPN's have been served on persons under eighteen (18) years old;
 - Where FPN's have been served on those who appear to the reasonable satisfaction of the enforcement officers to lack capacity to understand the offence.
- 2.2 **Mandatory Requirement:** The successful Applicant must not assign, sub-let or transfer the benefit of burden of the Contract or any part of it, except with the written consent of the Authority and such consent may be either withheld or given, subject to such conditions as the Authority may think fit.
- 2.3 **Mandatory Requirement:** The successful Applicant must ensure all staff engaged in the delivery of the Service are suitably qualified, trained and experienced in enforcement activities and associated good practice protocols. Where administrative support staff are provided, these staff must be familiar with the processes associated with this type of enforcement and capable of dealing effectively with queries and complaints from customers.
- 2.4 **Mandatory Requirement:** The successful Applicant's frontline staff must wear a suitable uniform/work-wear with a clear identity badge (verifiable by the public) bearing a photograph of the holder, together with the organisation's telephone number and wear a mobile camera, which must be capable of recording all interactions with the public. This uniform shall not resemble those worn by the Police.
- 2.5 **Mandatory Requirement:** All of the successful Applicant's frontline staff, including approved temporary staff or sub-contractors, must comply with the Disclosure and Barring Service (DBS) requirements. This shall be current and valid at all times effective from the commencement date and throughout the life of the Contract. DBS checks shall be included as part of the quality assurance

- system and shall be subject to inspection at any time, by the Council's Authorised Officer.
- 2.6 **Mandatory Requirement:** The successful Applicant must supply the Council's Authorised Officer with a list of frontline staff employed within the Service, at Contract commencement and shall update this list every time there is a change in personnel throughout the life of the Contract. This shall include permanent staff and any temporary staff engaged to cover long and/or short term absences. This information is to be provided within five (5) working days of the change occurring.
- 2.7 **Mandatory Requirement:** A resource management plan shall be in place at Contract commencement, to address medium to long term staff absence and an exit management plan must also be available at Contract commencement.
- 2.8 The Applicant will also ensure that their staff are made available and attend any training provided by the Authority, which may be required in order to comply with relevant Torbay Council Policies and Procedures (and that this attendance will be at no cost to the Authority).
- 2.9 **Mandatory Requirement:** The Applicant must provide sufficient back office support so as to carry out identity checks on those receiving FPN's and to provide relevant documents, including section 9 witness statements as part of the prosecution file. Back office support will include sending letters and compiling prosecution files and the administration and processing of all FPN's. Back office support must cover the hours 9am to 5pm Monday to Friday.
- 2.10 The Applicant shall ensure that relevant officers are available to attend court to give evidence (at no cost or additional expense to the Authority) as required, in the event of a trial for an offence they have witnessed or played an active role in (section nine (9) notice). Should cases go to court, it is likely that the council would try to arrange for a batch of prosecution files to be covered in one (1) daily court session (rather than individual case hearings), if this can be arranged, on a regular basis.
- 2.11 **Mandatory Requirement:** A weekly review of the service will take place with an authorised officer of the Authority within the first month following Contract commencement (once the Applicant commences/'goes live' with the service). This is likely to reduce to a monthly review, subject to satisfactory progress being made with implementation (during the first month of contract). All meetings must be at no cost or additional expense to the Authority.
- 2.12 **Mandatory Requirement:** Based on other similar activity, Torbay Council would expect a minimum collection rate of seventy five percent (75%) on all issued FPN's. If the number of FPN's issued generates an income below that which is acceptable by the Local Authority then the Authority would wish to exercise a

break clause in the contract at end of the first six (6) months of the contract period.

- 2.13 **Mandatory Requirement:** All full payments for FPN's will be collected centrally by the successful Applicant, and the Authority will subsequently be reimbursed on a monthly basis as per the procedure set out in this specification.
- 2.14 **Mandatory Requirement:** The successful Applicant will accept all payments of FPN's either electronically, or by telephone, or by cash.
- 2.15 **Mandatory Requirement:** Torbay Council will expect all payments for FPNs to be made direct to the successful applicant acting as agent. The successful applicant will be responsible for all accounting and invoicing for VAT, in relation to the proportion of the FPN income kept by the successful applicant for the purposes of providing the service on behalf of the Council. The Council's FPN income must then be paid by the successful applicant directly into the Council's bank account by Bacs transfer, once a month.
- 2.16 **Mandatory Requirement:** The successful Applicant will indemnify Torbay Council against all losses in relation to payments and subsequent reimbursements and costs of rectifying the situation, e.g. costs of obtaining replacement payments received.
- 2.17 **Mandatory Requirement:** All daily vehicle mileage covered by the successful Applicant's operatives in undertaking their duties within this contract, must be included within the Applicant's monthly income. The Authority will not be liable for payment of any additional mileage fees.

3. Specific Requirements

3.1 Service Delivery Requirements

- 3.1.1 The Service will operate within the Torbay local authority area and will provide cover proportionately across Brixham, Paignton and Torquay although areas of highest environmental crime and high footfall areas will be prioritised. The successful Applicant will provide a team of enforcement officers who will undertake high profile foot patrols enforcing against enviro-crime enforcement including domestic and commercial waste offences, and other anti-social behaviour offences affecting communities in Torbay
- 3.1.2 Applicants are required to provide a solution to the Authority that is cost neutral, i.e. it is entirely funded through the collection of FPN fines. The successful Applicant will only receive payment for FPN's issued appropriately at the time of the offence, or are deemed so after further investigation.
- 3.1.3 The successful Applicant shall ensure all FPNs issued are appropriate and served in accordance with legislative guidance.
- 3.1.4 The successful Applicant is required to ensure details of all FPNs issued are provided to the Authority within one (1) working day.
- 3.1.5 Applicants are required to have a process for verifying offender address information to reduce the level of non-payment through the provision of false details. In certain situations, this may require support from the local police, in verification of offender's addresses.
- 3.1.6 Applicants are required to comply with the requirements of:
- The Equality Act 2010³;
 - The Data Protection Act 1998⁴;
 - Health and Safety at Work Act 1974⁵;
 - Environmental Protection Act 1990⁶;
 - Clean Neighbourhoods and Environment Act 2005⁷;
 - Anti-social Behaviour Crime and Policing Act 2014

and should have the following policies in place:

- Data Protection;
- Equality and Diversity;

³ Equality Act 2010

⁴ Data Protection Act 1998

⁵ Health and Safety at Work etc. Act 1974

⁶ Environmental Protection Act 1990

⁷ Clean Neighbourhoods and Environment Act 2005

- Health and Safety;
- Lone Working and Risk Assessment;
- Complaints and Escalation;
- Recruitment and Selection;
- Confidentiality Policy;
- Data Sharing Protocol.

3.1.7 The Applicant shall not issue FPNs to:

- under eighteens (18s) without Torbay Council written authority to do so;
- those who appear to the reasonable satisfaction of the enforcement officers to lack capacity to understand the offence.

3.1.8 Upon expiry of the payment period the enforcement officer will prepare Witness Statements from the contemporaneous notes on the FPN and Pocket notebook to enable Torbay Council to prosecute. All case records are to be kept in accordance with national standards and best practice.

3.1.9 Applicants will be required to support the legal processes through the submission of a prosecution file, when Fixed Penalty Notices (FPN's) have not been paid, or persons issued FPN's have refused to pay. The format of which is to be agreed by Torbay Council.

As a minimum, Applicants will need to supply the following, as part of a completed prosecution file:

- Authorisation;
- Summary;
- Officer Statement and Supporting Evidence (video evidence, letters to offenders, location maps, etc);
- Copy of the issued Fixed Penalty Notice (FPN);
- Proof/confirmation of non-payment.

3.1.11 With regards to Domestic waste receptacle offences, there is an expectation that the successful Applicant will work directly with Torbay's waste collection service provider SWISCo, with regard to this particular offence. Currently, there is a process of escalation from notice given by SWISCo to the Council followed by the issue of an FPN, by the Council's Community Safety Team. New arrangements will be mutually agreed upon between the Council and the successful Applicant, following Contract Award.

3.2 **Management Information Requirements**

3.2.1 The Applicant shall make documentary returns as required by the Authority. These will include providing regular statistical data in relation to the performance of the team, financial information and written reports. Reports will highlight any potential problems, suggestions for improvement, evidential shortfalls and

complaints about the service including officer misconduct. The successful Applicant will provide relevant Management Information on a monthly basis (to coincide with monthly Contract performance meetings).

As a minimum the Applicant will provide details of:

- The number, the specific location details and time of all fixed penalty notices served;
- Details of the name and addresses of all persons on whom a fixed penalty notice is served;
- A monthly breakdown of payments made to the Local Authority for the FPNs served by the applicant.
- Details of all FPNs where there is a dispute about whether the notice was correctly served;
- Access to all camera footage whilst operatives are fulfilling the requirements of the contract;
- Copies of all FPN served and those voided for audit purposes.
- Details of FPNs unpaid.
- Details of payment rates.
- Details of prosecution cases including their current status.

3.2.2 The Applicant will reconcile all payments and search for payments on reports provided by the Authority. The Applicant will monitor and record payments and send out reminder letters for non-payments. In all cases where no payment has been received the Applicant will compile a prosecution file. This file must be of an appropriate and acceptable quality as defined by Torbay Council's legal representative.

3.2.3 All correspondence will be dealt with by the applicant. All such correspondence must be of a suitable standard to meet an evidential test and must be in a format capable of being submitted as part of a case file for court.

3.2.4 At the end of the Contract term the applicant will provide full cooperation in the handover of data including any live information and any archived material, including data, photographs, document images etc.

3.2.5 The Applicant will pay Torbay Council on a monthly basis, monies owed as part of the Contract.

3.2.6 In the event of a complaint or dispute relating to an enforcement officers behaviour or conduct it will be investigated by the Applicant and a response provided to Torbay Council in accordance with the following procedure:

- On receipt of a complaint relating to the enforcement officers behaviour or conduct Torbay Council will assist the successful Applicant in the complaint process, by providing a standard complaint response letter template. Should the complainant be unsatisfied with the initial response, the

Authority will offer guidance in accordance with Torbay Council corporate complaints procedure;

- The successful Applicant will investigate the complaint in accordance with Torbay Council's complaints procedure and provide a response to the Authority within a timeframe compatible with Torbay Council's complaints procedure;
- As part of the investigation, the successful Applicant should interview the Enforcement Officer who is subject of the complaint. This will be carried out under the direction of the Applicant's full-time Senior Management Team;
- Torbay Council and the Applicant will meet and discuss complaints to improve service delivery as part of the review meetings;
- For any Freedom of Information Act enquiries, the Applicant will need to send an appropriate response to the Authority within fourteen (14) working days (following receipt of the enquiry), to enable the Council to forward a response within twenty working days (as statutory requirement);
- During the Contract Mobilisation period, Torbay Council will forward on their official Complaint Letter template to the successful Applicant. This must be used in dealing with any complaints received during the life of this Contract.

3.2.7 The Applicant will review its staff at least quarterly and take corrective action to improve performance should it be required.

4 Contract and Performance Review Requirements

- 4.1 A weekly Performance Management review of the service will take place with an authorised officer of the Authority within the first month following Contract commencement (once the Applicant commences/'goes live' with the service). This is likely to reduce to a monthly Performance Management review, subject to satisfactory progress being made with implementation (during the first month of contract). All meetings must be at no cost or additional expense to the Authority.

4.1.1 Performance Management

During the first month of the contract there shall be weekly performance management meetings held physically at our offices or electronically which will focus on the following:

- Staffing issues – recruitment & retention of new staff, their ongoing training, uniform provision, equipment and conduct.
- IT issues such as “Smart” ticketing and back office systems functionality – Is the smart ticketing system for generating FPNs working, and are there any “back office” issues we need to be aware of?
- Breakdown of the number of FPNs (including locations) issued by each officer per week as set out in S.3.2 above.
- Breakdown of the areas patrolled by officers.
- Any specific strategical approaches to maximising effectiveness.

Thereafter, all performance management meeting shall be held physically at our offices or electronically on a monthly basis. The successful applicant shall be required to report on the following:

- Full details for all fixed penalty notices served as set out in S.3.2 above.
- Financial details of all payments received, and overall payment rate for the past month.
- A monthly breakdown of payments made to the Local Authority for the FPNs served by the applicant.
- Details regarding number of unpaid FPNs, and reminder letters sent.
- Details of all FPNs where there is a dispute about whether the notice was correctly served, and the outcome.
- Details of number of unpaid FPNs going forward for prosecution, and their current status. (Note: preparation and submission of court files to Legal services will be the responsibility of the successful applicant and must be to an appropriate and acceptable quality as defined by Torbay Council’s legal representative).
- Feedback from prosecution cases (fines and impediments imposed by the courts).

- Details of the number of tickets “voided” and the reasons for doing so for audit purposes.
- Staffing issues – details of complaints regarding staff conduct/behaviour and actions taken to address any such concerns. Absence issues, and staff retention issues and steps taken to address any concerns.
- Actions and focus for the following month. Locations to be patrolled, areas of work which may require additional attention or strategic approach.
- Identification of risks going forward and any issues the L.A. should be made aware of in relation to the contract.

5 Staffing

5.1 Safer Recruitment

3.2.1 To ensure the Service creates a safer recruitment culture for clients and staff, **the following are all *Mandatory Requirements*:**

- At least one member of each interview panel must have undertaken safer recruitment training;
- The Provider must have effective procedures in place, that are regularly updated and communicated to staff;
- The Provider must set a code for acceptable standards of behaviour for all staff and ensure this is effectively communicated to staff;
- The Provider must take seriously all concerns that are raised;
- The Provider must, on an ongoing basis, increase awareness and commitment to safeguarding across its organisation.
- The Provider must ensure that staff are fully aware of their obligations with regard to Health & Safety requirements

6 Data Protection, Information Sharing and Information Security

- 6.1 The provider will be the Data Controller for any information they process for the purposes of issuing fixed penalty notices under this agreement.

The provider will be a joint data controller with the local authority for any personal data processed for the purpose of undertaking a prosecution.

The provider will be able to demonstrate that the processing of personal data and special category data will be processed in accordance with the requirements under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

It is expected that the provider will operate a fully operational and robust electronic record keeping system that ensures that the rights and freedoms of data subjects are safeguarded.

An information sharing agreement will be agreed under this contract to ensure that personal data can flow between the local authority and provider.

The provider will ensure that all staff are appropriately trained to use the systems they have access to and are aware of their responsibilities under data protection legislation.

7 Health & Safety

- 7.1 **Mandatory Requirement:** The successful applicant will be expected to comply with the Health and Safety at Work Act 1974, and all other relevant Health and Safety legislation. Their organisation should have a Health and Safety Policy and risk assessments for all relevant activities including lone working.

8 Payments Processing

- 8.1 **Mandatory Requirement:** The successful Applicant must make all payments to Torbay Council on a monthly basis.
- 8.2 **Mandatory Requirement:** All FPN payments received by the applicant by the 10th day of a given month must result in the council's share being paid by the 1st day of the following month.
- 8.3 **Mandatory Requirement:** Any missed payment(s) due to reasonable error will need to be investigated by the applicant and reasoning explained to Torbay Council. The missed payment(s) must be made to Torbay Council immediately upon realisation and no later than 2 months after the FPN payment being received by the applicant.
- 8.4 Payments to Torbay Council are to be made in the following way;
- 8.4.1 Via Bacs transfer to;
- BANK NAME: NAT WEST;
 - BANK BRANCH: CASTLE CIRCUS;
 - BANK SORT CODE: 55-70-01
 - BANK ACCOUNT NAME: TORBAY COUNCIL
 - BANK ACCOUNT NUMBER: 06040411
- 8.4.2 Payments must be accompanied by an appropriate cost code / reference, which the Council will provide to the successful Applicant following Contract Award.

9 Added Value

9.1 Further Services Offered

The Applicant will be expected to suggest as part of its response to the Evaluation Questions any additional products or services that they may be able to offer as part of this Contract or any other added value that their offer might be able to bring to the Authority. Applicants are expected to build any such offers into their submissions regardless of whether specific questions are asked along these lines or not.

9.2 Social Value, Sustainability, Environmental Considerations

9.2.1 The Authority is seeking a Provider who will add value to the Contract by providing additional community benefits which support the Council's ambitions for a prosperous and healthy Torbay, as identified in Torbay Council's Community and Corporate Plan 2019-2023:

<http://www.torbay.gov.uk/council/policies/corporate/corporate-plan/>

9.2.2 In formulating their response Applicants should take into account how they will raise awareness of and support community engagement in relation to protecting and improving our environment, for example:

- (a) beach cleaning;
- (b) waste and recycling;
- (c) littering.

10 Scope and Nature of Possible Modifications or Options

10.1 Future Contract modifications or options may occur where the Change is of the following scope and nature:

- (a) Involves an amendment to the tendered list of offences covered under the contract, either relating to the removal of individual offences or the addition of new offences for which FPNs will be issued for.
- (b) Relates to the operation of the Contract in order to ensure a more efficient and effective service is provided.
- (c) Involves the successful Applicant operating across other areas of Torbay other than those specifically stated in these tender documents, either or on a short or long term basis, to address specific and targeted issues.
- (d) Involves an amendment to contractual working arrangements between Torbay Council and SWISCo (SWISCo is a private limited company wholly owned by, and delivering services on behalf of, Torbay Council, and was launched on 1st July 2020. SWISCo are and are the new provider for local services in Torbay including refuse and recycling collection, street and beaches cleansing, flower beds, street-lighting and traffic signals, etc.)
- (e) Is due to changes in legislation.
- (f) Is in relation to changing needs of Service Users.
- (g) The need to provide services from a site not already in place.
- (h) Is in relation to new systems, processes or technology.
- (i) Is to ensure the continued efficiency and effectiveness of service provision.

11 Awarding the Contract on Behalf of Other Contracting Authorities

11.1 The Authority is not purchasing on behalf of other contracting authorities. However, this is subject to 10.1(d) above, in relation to SWISCo.