



**HYNDBURN**  
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## URGENT CABINET DECISION

### B16 EXECUTIVE URGENCY PROCEDURE

- (a) Urgent executive decisions which cannot be delayed until the next meeting of the executive or executive committee (as the case may be) may be taken by the relevant Chief Officer after consultation with the following:
- Leader
  - a Deputy Leader
  - Relevant portfolio holder (if any) or any other Cabinet member if there is no relevant portfolio holder in respect of the decision in question
  - The Mayor, pursuant to Rule C15 of the Overview and Scrutiny Procedure Rules [i.e. to agree that it is exempt from call-in].
  - Plus one of the following:
    - the Chief Executive; or
    - the Executive Director (Resources) (in the absence of the Chief Executive, or if the Chief Executive is the decision taker); or
    - the Monitoring Officer (in the absence of the Chief Executive or Executive Director (Resources), or if one is absent and the other is the decision taker).
- (b) In the absence of the Leader, Deputy Leader or portfolio holder (if any) the consent of another Cabinet member will be required.
- (c) The urgent decision, the reason for it and the reason for the use of the urgency procedure must be reported to the next meeting of the executive or executive committee (as the case may be).

HBC Constitution, Executive Procedure Rules

**Subject:** LA Support (Litter and Dog Fouling Enforcement)

**Report Author:** Steve Riley – Executive Director (Environment)

#### **Background:**

At its meeting on the 6<sup>th</sup> November 2019 Cabinet approved the continued use of external enforcement services to tackle littering and dog fouling offenders and agreed to waive the Council's contract procedures rules and approve an extension to the existing pilot 12 month service level agreement with LA Services up to 31st March 2020 and requested the Executive Director (Environment) to undertake a tendering exercise and delegated authority to him, following consultation with the Portfolio Holder, to agree terms with and appoint a suitably experienced external enforcement contractor as set out in paragraphs 3.12 and 3.13 of that report. However due to the issues surrounding Covid-19, the Council was not able to complete the tender exercise as planned.

On the 24th March, the Council received an email from LA Support stating that due to the continued National Crisis linked to Covid-19, together with the latest Directive issued by the Prime Minister on the 23rd March, LA Support Ltd had taken the decision to suspend all Environmental Enforcement Activity on behalf of the Council with effect from 19:00 that day.

On the 26th March, the Council received a further email from LA Support, clarifying their position as follows;

*"You may have become aware that on 20 March 2020 Central Government has published a Procurement Policy Note - Supplier relief due to COVID-19, which sets out guidance for the interim payment of government suppliers in order to ensure service continuity during and after the current coronavirus, COVID-19, outbreak. This has been advised to be implemented with immediate effect.*

*We are writing to inform you that as a result of current situation in the country due to mentioned impact of COVID - 19, LA Support Ltd. as your current supplier of Environmental Enforcement Services, has suffered extreme "Covid Related Hardship". We are looking to propose to you a change to the payment terms which will be drafted under Interim Payment Proposal to last until 30 June 2020 as per Government's advice".*

The Policy Note says public bodies should identify those suppliers who are 'at risk', although 'at risk' is not defined. The Council could perhaps interpret it as at risk of insolvency or perhaps as at risk because they do not qualify for any of the Government's business support measures.

Where a public body identifies at risk suppliers, the Policy Note says they should continue to pay them as normal until the end of June even if the service is disrupted or suspended. Where payment is made by results then it is recommended that payment should be based on the average monthly payment over the last 3 months.

There are a range of conditions that attach to payment (and these would need to be documented), such as:

- Suppliers agreeing to operate on an 'open book' basis
- Suppliers making their cost data available to us
- Suppliers not being paid a 'profit' element if services are suspended
- Suppliers continuing to pay their employees and any subcontractors

The Policy Note is best practice only, not law and there appears to be no legal sanction if the Council fails to follow it, though the Council could be "named and shamed" by the Cabinet Office Public Procurement Review Service if it failed to do so. There is no way to identify the likelihood of this happening.

The Council has therefore been asked both to extend the agreement with LA Support for a further period and to provide ongoing payments to LA Support in accordance with the Policy Note. The Council may also need to agree a temporary variation of its agreement with LA Support to provide for different payment arrangements and for the secondment of LA Support's staff to carry out alternative duties for the Council. Any such variation will be recorded in writing between the parties.

Normally, the extension of the agreement would be caught by the EU procurement rules, as the total payments to LA Support over the life of the agreement exceed the threshold levels. However, an exception applies in cases of extreme urgency brought about by events unforeseeable by the Council and that normal procurement procedures cannot be followed. The Council could not have foreseen the pandemic and its response to the pandemic prevents time being spent on a procurement exercise at the moment. Moreover, failure to extend the agreement with LA Support could lead to a total loss of provision once lockdown ends. The extension therefore appears to be permitted under EU procurement rules.

**Reason for Urgency:**

Failure to do anything would also potentially fracture the relationship with LA Support, including perhaps the loss of their services altogether. Following Cabinet approval to the continued use of external enforcement services to tackle littering and dog fouling offenders, Members will want the service to resume once the epidemic is over and the Policy Note is intended to promote business continuity.

Due to the ongoing pandemic Cabinet meetings have been temporarily suspended. A decision on this matter is needed urgently and cannot wait until the next Cabinet meeting takes place.

**Recommendation:**

That due to the exceptional circumstances, the Council approves a further extension to the current service level agreement with LA Services up to 31st March 2021.

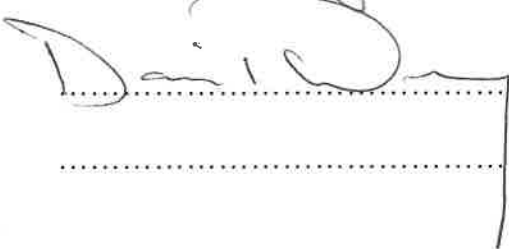
That authorisation be given to the Executive Director (Environment), in conjunction with the Executive Director (Legal and Democratic Services) and following consultation with the Portfolio Holder for Environmental Services, to agree a temporary variation to the agreement with LA Support , including payment arrangements and staff re-deployment onto litter and dog fouling enforcement duties.

(The Council's current position is that it does not wish to see any litter or dog fouling enforcement work at present and this work would only recommence when the Executive Director (Environment) agrees, following consultation with the Leader and Portfolio Holder. In the meantime, officers in Waste Services have identified a number of additional litter picking rounds or any other suitable takes the Council feels LA Support staff can be deployed to).

**Date of Decision (when finally approved):**

5/5/2020

**Signatures of Members and Officers:**

Chief Officer	Steve Riley .....	Approve
Leader	Received by email .....	Approve / <del>Do not approve</del>
Deputy Leader	Received by email .....	Approve / <del>Do not approve</del>
Portfolio Holder	.....	Approve / Do not approve
Mayor *	Received by email .....	Approve / <del>Do not approve</del>
* to exempt from call-in		
Chief Executive, <u>or</u>	 .....	Approve / <del>Do not approve</del>
Executive Director (Resources), <u>or</u>	.....	Approve / Do not approve
Monitoring Officer	.....	Approve / Do not approve

