

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Executive Member for Economy, Transport and Environment
Date:	21 January 2014
Title:	Removal of Flyposting on the Highway
Reference:	5509
Report From:	Director of Economy, Transport and Environment

Contact name: Chris Lait

Tel: 01962 794718

Email: chris.lait@hants.gov.uk

1. Executive Summary

1.1. The purpose of this paper is to seek approval of a trial agency arrangement for the removal of fly posting with Havant Borough Council and East Hampshire District Council for a period of two years; and, subject to a successful operation within the first year, to offer the opportunity of agency arrangements for the removal of fly posting on the highway to other districts.

1.2. This paper seeks to

- set out the background to the proposal;
- consider the financial implications;
- detail the benefits to the County Council;
- look at key issues; and
- briefly consider the next steps.

2. Contextual information

2.1. Flyposting is an increasing problem on the highway and is becoming more difficult to deal with in a timely manner, due to the increasing pressures on highway staff. Havant Borough Council has approached the County Council with a view to assisting in the removal of fly posting. Currently, it employs environmental wardens who are looking after the street scene but they do not have the powers to remove flyposting. Many other districts employ similar staff.

2.2. The Highway Authority does have the powers to remove flyposting although this function is exercised with discretion and with increasing workloads in highways is often not a priority. As such, there is a general increase in the visibility of this unauthorised signing.

- 2.3. Havant Borough Council has requested to be given the powers under an agency arrangement to assist in the removal of flyposting and facilitate an improvement in the street scene.
- 2.4. District Councils do have powers to deal with flyposting under the Town and Country Planning Act 1991 and the Clean Neighbourhoods and Environment Act 2005, but these powers do not enable the removal of flyposting in a timely manner, often requiring referral to the Magistrates' Court.
- 2.5. The Highway Authority has powers under Section 132 of the Highways Act 1980 which makes it an offence for anyone to place unauthorised signs on or in the highway and enables the County Council to prosecute the offenders and, whether or not prosecution is pursued, enables the Highway Authority to remove unauthorised signs from the highway.
- 2.6. It is possible to enable a District Council to act on our behalf through an agency agreement, similar to the traffic management agency. This agency agreement specifies the powers with which we are enabling them to act on our behalf and the terms and conditions of the arrangement. A draft agreement is attached in Appendix 1.
- 2.7. As part of the trial it will be necessary to agree a formal protocol. Draft guidelines have been discussed and it is necessary to determine how these work in practice. Whilst all unauthorised signs can be removed, the County Council currently exercises discretion with respect to charity or community events providing a reasonable approach is taken by the organisers. Commercial advertising is the main source of undesirable flyposting and it is these signs which are the primary focus of removal.
- 2.8. 'A' boards within shopping streets by individual traders are not included within this arrangement.
- 2.9. As this is a trial, it is intended to have a stand alone agency agreement for two years with regular reviews as to the effectiveness of the guidelines. As Havant and East Hampshire are now closely aligned, it is proposed to enter into an agreement with both authorities which will enable both urban and rural areas to be covered.
- 2.10. Subject to the successful operation of the agreement within the first year, agency arrangements could be offered to other districts for the removal of flyposting together with the arrangements with Havant and East Hampshire being extended in terms agreed by the Director of Economy, Transport and Environment.

3. Finance

- 3.1. As the agreement is seen to be in the interest of both parties there will be no fees or charges associated with the agreement. Both sides will bear their own legal costs.

- 3.2. Any claims which arise will be managed through the county's highway claim process, similar to all other agency arrangements.

4 Benefits

- 4.1 With the increasing demand on customer focussed services the highway staff are under an increasing pressure of workload, with the removal of flyposting, except where it causes a safety concern, of a lower priority.
- 4.2 District Councils already employ staff who regularly inspect the streets and enabling them to remove flyposting ensures that the work is carried out in the most efficient manner at no additional cost to the County Council.

5 Other key issues

- 5.1 As this will be a small element of individuals' roles no TUPE liabilities will accrue on termination of the agreement.
- 5.2 All the relevant provisos with respect to insurance, liabilities, and claims are covered in the agreement.

6 Future direction

- 6.1 Whilst the trial is in operation, a formalised protocol will be established to ensure the efficient running of the function.
- 6.2 When this is agreed, and subject to the successful undertaking of the function from both the district and county viewpoint, further districts will be invited to enter into a similar arrangement together with extending the arrangements with Havant and East Hampshire.

7 Recommendations

- 7.1 That a trial Agency Agreement for the removal of fly posting on the highway with Havant Borough Council and East Hampshire District Council for a period of two years be approved.
- 7.2 That the final terms of the Agency Agreement be approved by the Director of Economy, Transport and Environment.
- 7.3 That, if the trial proves to be successful within the two year period, the opportunity of Agency arrangements for the removal of fly posting on the highway be offered to other districts, and that the trials in Havant and East Hampshire be reviewed to this end after the first year.
- 7.4 That, subject to review, agency arrangements be renewed with all interested districts for the removal of flyposting with terms agreed by the Director of Economy, Transport and Environment.

Rpt/5509/CL

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	no
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	yes
Corporate Improvement plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

- 1.1 The proposals in this report have been developed with due regard to the requirements of the Equality Act 2010, including the Public Sector Equality Duty and the Council's equality objectives. The website contains a summary [assessment of the impacts](#) on Safe and Well Managed Highways in Hampshire
- 1.2 It is considered that the issues covered by this report will not have impacts requiring further specific actions by the Council above those already established in its existing policies and working procedures.

2 Impact on Crime and Disorder:

- 2.1 The proposals will assist in removing unauthorised signs and may discourage the future erection of such signs.

3 Climate Change:

- 3.1 How does what is being proposed impact on our carbon footprint / energy consumption

By combining this role with other district street scene roles this will minimise travel and reduce carbon footprint.

- 3.2 How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The proposal has no impact on adaptation to climate change.

DATED

2013

HAMPSHIRE COUNTY COUNCIL

- and -

HAVANT BOROUGH COUNCIL / EAST HAMPSHIRE DISTRICT COUNCIL

AGENCY AGREEMENT
FLY POSTING ON THE PUBLIC HIGHWAY

Kevin Gardner LLB Solicitor
Head of Legal Services
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

PT31V/170/AC

THIS AGREEMENT is made the day of 2013
BETWEEN HAMPSHIRE COUNTY COUNCIL (hereinafter called “the County Council”) of the one part, and THE BOROUGH COUNCIL OF HAVANT of Hampshire (hereinafter called “the Borough Council”) / THE DISTRICT COUNCIL OF EAST HAMPSHIRE (hereinafter called “the District Council”) of the second part.

WHEREAS

- (1) The County Council and the Borough/District Council are local authorities constituted by the Local Government Act 1972
- (2) For the purposes of the Highways Act 1980 the County Council is the local authority for highways (other than trunk roads) situated in the County of Hampshire
- (3) By virtue of Section 19 of the Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 a local authority’s executive may arrange for the discharge of any of the local authority’s executive functions by (inter alia) another local authority or its executive and by virtue of Section 1 of the Local Authorities (Goods and Services) Act 1970 a local authority and any other public body may enter into an agreement for the provision of certain services

NOW THIS AGREEMENT WITNESSETH as follows:-

1.1 In this Agreement:

“The 1970 Act” shall mean the Local Authorities (Goods and Services) Act 1970

“The 1972 Act” shall mean the Local Government Act 1972

“the 1980 Act” shall mean the Highways Act, 1980

- 1.3 This Agreement shall apply to all highways within the areas of the Borough/District Council as may be agreed by the County Council in accordance with Clause 2.1
- 1.4 (a) The Borough/District Council is hereby empowered to exercise any of the powers of the County Council as highway authority contained in the 1980 Act which are reasonably necessary for carrying out the functions referred to at Clause 2 of this Agreement to the extent that such exercise is necessary as aforesaid but subject to such limitations and restrictions as are contained in this Agreement or as may be specified in consequence thereof by or on behalf of the County Council
- (b) The authority given in this clause shall include power to enter into any agreements which may be necessary in order to discharge the authority given by the terms of this Agreement but subject to any limitations contained in this Agreement
- 1.5 (a) In exercising any functions under this Agreement the Borough/District Council shall conform to the County Council's Protocol and such policies specifications and procedures as may from time to time be reasonably laid down by the County Council (or by the Director of Economy Transport and Environment, the Chief Executive, the County Treasurer or any other duly authorised officer of the County Council) and to standards not less than those which may be so laid down and shall comply with any reasonable directions which may be given by the County Council either generally or in any particular case
- (b) Where common forms or documents have been prescribed by the County Council the Borough/District Council shall use such forms and documents unless otherwise agreed by the County Council in any particular case

- 1.6 Where any materials goods or services are required by the Borough/District Council for the performance of any function or provision of any services under this Agreement the Borough/District Council shall ensure that all such goods materials and services are procured in accordance with all relevant legislation rules procedures guidelines policies or codes of practice including but not limited to the Public Contracts Regulations 2006 and the Borough's/District Council's Contract Standing Orders
- 1.7 The County Council shall not be liable to make any payment in respect of the cost of any work carried out by the Borough/District Council in pursuance of this Agreement
- 1.8 Should the Borough/District Council decline to carry out any works or to take any action in relation to any of the functions which are the subject of this Agreement following a request in writing by the County Council or fail to do so within such reasonable period (except in the case of emergency) as may be specified in such request the County Council may itself carry out such works or take such action and can claim any additional expenditure so incurred from the Borough/District Council without prejudice to the rights and obligations of the parties under this Agreement
- 1.9 (i) The Borough/District Council shall indemnify the County Council in respect of all actions claims challenges demands expense proceedings arising out of or in connection with or incidental to this Agreement against the County Council or the Borough/District Council acting as Agents of the County Council
- (ii) Without prejudice to their liabilities under Clause 1.10(i) above to indemnify the County Council the Borough/District Council shall be insured against:-
- public liability and employers liability risks for the sum of at least TEN MILLION POUNDS (£10,000,000) in respect of one claim

- (iii) The Borough/District Council shall provide evidence of their insurances policies required pursuant to Clause 1.10(ii) above to the County Council for each Financial Year no later than 21 days after the commencement of the Financial Year

PROVIDED THAT this indemnity shall not apply where such failure act or omission is wholly or mainly attributable to a failure act or omission by the County Council

- 1.10 Any formal document issued by the Borough/District Council in connection with the discharge of any functions under this Agreement or to which the Borough/District Council is a party (other than an assurance of a right interest or estate in land) shall state that such functions are exercised by the Borough/District Council as agents on behalf of the County Council pursuant to these arrangements but no such document shall be invalid by reason only that this requirement is not complied with and no person acting in pursuance of any such document shall be concerned to see that such requirement is observed
- 1.11 This Agreement shall operate for the Term unless and until determined by any party giving two (2) months notice in writing to the other parties
- 1.12 Notwithstanding the provisions for determination contained in Clause 1.11 above the terms of this Agreement may be varied or determined at any time by agreement in writing between the parties hereto
- 1.13 Without prejudice to the foregoing or any other remedy that the County Council might have the County Council shall have the right to terminate this Agreement without notice if the Borough/District Council
 - 1.13.1 is in material breach of this Agreement; or

1.13.2 is in non performance or in neglect of its duties under this Agreement

1.14 Reference in this Agreement to any statutory provision shall be deemed to include reference to the same as amended or to any similar or corresponding provision in any subsequent enactment replacing or modifying the said provision so long as the provision as so replaced or modified is capable of forming the subject of agency arrangements

2. Control of fly posting on Highways

2.1 The Borough/District Council shall make arrangements for the Control of Flyposting on Highways in all areas of the Borough/District in accordance with the County Council's Protocol

3. Claims

3.1 (a) Claims and proceedings against the highway authority in respect of any functions exercised by the Borough/District Council pursuant to this Agreement (other than claims under contracts undertaken by the Borough/District Council) shall be handled by the County Council unless otherwise agreed in writing by the County Council

(b) Any such claims or other intimation of such proceedings received by the Borough/District Council shall be referred by the Borough/District Council to the County Council as soon as possible but in any event within 7 days of receipt of the claim together with all supporting information

(c) The Borough/District Council shall on demand promptly provide to the County Council any witnesses information evidence documents or other material which are necessary to enable the County Council

to conduct or settle any subsequent proceedings and to comply with any procedural and court protocols

4. Contract (Rights of Third Parties) Act 1999

- 4.1 None of the provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement

5. Social Responsibility

- 5.1 The Borough/District Council warrants that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment because of age culture disability gender marital status race religion or sexual orientation
- 5.2 The Borough/District Council shall in all matters arising in the performance of the Agreement comply with the provisions of all legislation relevant to Equalities and Diversity (including but not limited to the Equality Act 2010 and any extensions re-enactments or amendments made thereunder)
- 5.3 The Borough/District Council shall at all times be responsible for and take all such precautions as are necessary to protect the health and safety of all persons employed by it and shall comply with the requirements with the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of employed persons and any amendment or re-enactment thereof.

6. Data Protection Act 1998

The Borough/District Council shall at all times comply with the Data Protection Act 1998 including where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998

- 6.1 The Borough/District Council shall not disclose Personal Data to any third parties other than:
- 6.2 To employees and sub-contractors to whom such disclosure is reasonably necessary in order to discharge the functions and provisions of services as specified in the Agreement; or
- 6.3 to the extent required under a court order or by law; or
- 6.4 By any current data sharing protocol which has been signed by both the Borough/District Council and the County Council and in accordance with its terms

PROVIDED that disclosure under sub clause 6.2 is made with the approval of the County Council and subject to written terms no less stringent than the terms contained in this Clause and that the Borough/District Council shall give notice in writing to the County Council of any disclosure of Personal Data it or a sub-contractor may make under sub clause 6.2 immediately it is aware of such a requirement

- 6.5 The Borough/District Council shall indemnify and keep indemnified the County Council against all losses claims damages liabilities costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this clause by the Borough/District Council and/or any act or omission of any sub-contractor

- 6.6 The Borough/District Council is required to comply with the obligations set out in the Seventh Principle of the Data Protection Act 1998
- 6.7 In this Clause “Personal Data” means the personal data as defined in the Data Protection Act 1998 which is supplied to the Borough/District Council in the course of performing the services under this Agreement
- 6.8 The Borough/District Council shall grant to the County Council the right of reasonable access to all records of personal data and shall provide reasonable assistance at all times during the currency of this Agreement to enable the County Council to ensure the quality and security of data collected

7. Freedom of Information

- 7.1 All parties hereto recognise that they are public authorities subject to legal duties which may require the release of information under the Freedom of Information Act 2000 Environmental Information Regulations 2004 or any other applicable legislation governing access to information on request Such information may include matters the subject of this Agreement
- 7.2 All parties hereto agree to assist one another in order to enable them to comply with their obligations In the event any Party receives a request for information under the Freedom of Information Act or any other applicable legislation governing access to information and requests another party’s assistance in obtaining the information that is the subject of such a request or otherwise that other Party will respond to any such request for assistance at its own costs and in timely manner

8. Entire Agreement

- 8.1 The parties agree that this Agreement forms the entire agreement between the parties regarding the subject matter and that any future variation may

only take the form of a supplemental deed by the parties or their successors in title

- 8.2 The parties warrant one to all the others that this Agreement supersedes all earlier meetings discussions correspondence arrangements agreements of any kind and that there are no collateral or supplemental agreements at the time this Agreement is signed

9. Arbitration

- 9.1 The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement. If any dispute cannot be settled amicably through ordinary negotiations then it shall be referred to the Environment Department's Assistant Director for Highways and Transport (or successor in title) for the County Council and to the Environmental Services Manager for the Borough/District Council for discussion and resolution

- 9.2 If the dispute is not resolved through discussion between the persons identified in Clause 9.1 above the dispute will be referred to the Director of Environment for the County Council and to the equivalent post for the Borough/District Council who shall meet within 7 days (or such period as may be agreed) of the reference to attempt to resolve the dispute

- 9.3 If the dispute is not resolved at the meeting of the persons identified in Clause 9.2 above the parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure")

- 9.4 It is hereby declared and agreed between the parties hereto that nothing in this Clause 9 shall be taken to fetter the ability of the County Council to seek legal redress for any breach of the obligations entered into by the Borough/District Council in this Agreement

IN WITNESS whereof the County Council and the Borough/District Council have executed this Agreement as a Deed and delivered the same on the day and year first before written

EXECUTED as a DEED by affixing the)
COMMON SEAL of HAMPSHIRE)
COUNTY COUNCIL in the presence of:-)

Authorised Signatory

EXECUTED as a DEED by affixing the)
COMMON SEAL of HAVANT)
BOROUGH/)
EAST HAMPSHIRE)
DISTRICT COUNCIL in the presence of:-)

Authorised Signatory