

Joint Scrutiny Report



Listening Learning Leading



Report of Head of Housing and Environment

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To: CABINET

Dates: South Cabinet – 17th October, Vale Cabinet – 18th October

CONFIDENTIAL APPENDICES NOT FOR PUBLICATION

Several appendices to this report are not for publication by virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972. The public interest in maintaining this exemption outweighs the public interest in disclosing this information. *Information relating to the financial or business affairs of any particular person (including the authority holding that information).*

Future Delivery of Household Waste and Street Cleansing Services

Recommendations

That the Joint Scrutiny Committee, reviews the Cabinet report, noting the confidential appendices and asks questions, then offers comments relating to the content contained within. The report asks that Cabinet:

(a) Reviews the options available for the future household waste and street cleansing service provision from June 2026, as set out in this report

(b) Subject to this review, agrees to progress Option 1 and delegate to the Head of Housing and Environment, in consultation with the responsible cabinet members, to undertake a joint procurement exercise between South Oxfordshire District Council and Vale of White Horse District Council to let a new joint contract for Household Waste Collection and Street Cleansing Services from 29 June 2026.

Implications (further detail within the report)	Financial	Legal	Climate and Ecological	Equality and diversity
	Yes	Yes	No	No
Signing off officer	Anna Winship	Ian Chisnell	Heather Saunders	Lorne Grove & Abi Witting

Purpose of report

1. The purpose of this report is to outline the options for future provision of the household waste collection and street cleansing services after the current contract with Biffa Municipal Ltd ends on 28 June 2026; and subject to Cabinet's views, to approve the commencement of a formal procurement in line with Option 1, as set out in the report.

Corporate objectives

2. The efficient and effective provision of waste collection and street cleansing services, are statutory requirements on the council as a waste collection and litter authority and this report supports the following corporate objectives:
 - South Oxfordshire: 5. Homes and Infrastructure that meets local need and 3. Action on Climate emergency
 - Vale of White Horse: 5. Working in Partnership and 2. Tackling the Climate Emergency

Context

3. For well over a decade, since the current waste collection service was launched in South Oxfordshire and Vale of White Horse, the councils have consistently been among the very highest performers in the national recycling league table, having achieved 61.6 per cent for South, 60.9 per cent Vale giving the position of 1st and 3rd respectively in the recycling league tables, out of a total of 343 English Councils in 2022/23.
4. The councils previous decisions to provide this service via a contracted third-party provider has therefore proven to be highly successful, with more than 85 per cent of respondents to a recent resident survey saying they were satisfied or very satisfied with the service and only 6 per cent saying they were in any way dissatisfied. The services currently provided by Biffa are shown at **Appendix 5**.

Background

5. The district councils have statutory responsibilities under the [Environmental Protection Act 1990](#) (EPA) for the collection of household waste. They also have responsibility to maintain the clean nature of the districts' streets. These are amongst the highest profile services the councils provide as they affect all households and have a significant impact upon the council's climate targets. The councils provide these services through a joint arrangement. The councils have also recently agreed a Joint Waste Resources and Street Cleansing Strategy for the districts, shown [here](#) which sets out an ambitious new approach to meeting the councils statutory requirements, maintaining the excellent waste collection records, while also seeking to lead the way in tackling wider national challenges related to the excessive creation of waste.
6. Oxfordshire County Council (OCC) also has responsibilities under the EPA for the disposal of the majority of waste types collected by the district councils within the county. OCC has contracts in place with contractors for the acceptance of refuse, food waste, garden waste, bulky waste, clinical waste, street cleansing arisings, litter and fly-tipped materials.
7. Within Oxfordshire, Dry Mixed Recycling (DMR) is currently the responsibility of each district council, with each having their own arrangements in place for bulking, transfer and processing. A recent statement from OCC on this is as follows *"The county council carry the ultimate responsibility for ensuring household waste disposal arrangements are in place and that extends to the DMR collected at the kerbside. However, similarly to most other two-tier authorities there is a long history by agreement that within Oxfordshire and through the Oxfordshire Resources and Waste Partnership (ORWP), the district councils have preferred to have control of this waste stream and the county council has been happy with that arrangement."*
8. The contract for waste collection and street cleansing was tendered by the councils in 2007/08 with the requirement for the winning bidder to provide an operational vehicle depot, with waste transfer facilities and processing means for the DMR, and all of the vehicles required to complete the various aspects of the service provision.
9. Verdant was awarded the joint waste and street cleansing contract in December 2008 with a commencement date of June 2009 in South Oxfordshire and October 2010 in the Vale, with both contracts due to end in 2017. Both councils recycling rates

increased to be among the national best immediately after the introduction of the services.

10. The contracts novated to Biffa in 2010 following their acquisition of Verdant.
11. In 2013, both councils decided, in accordance with the conditions of contract, to extend the contract for a seven-year period taking it through to 2024.
12. A report was considered by the Cabinets in 2022 (**CONFIDENTIAL APPENDIX 2**) which approved the negotiation of an interim waste contract from June 2024 to allow for the implications of The Environment Act 2021 to be fully understood and to give the councils time to secure waste infrastructure to support future waste service provision.
13. How the services are currently provided was outlined in a confidential report to the Cabinets on 9 and 10 March 2023. This report also obtained permission to extend the current arrangement with Biffa again. This was enacted earlier this year through a Voluntary Ex Ante Transparency Notice (VEAT) which provides retrospective notice through the Find a Tender service process, of a decision to award a contract to a provider without competition. This extension cannot be extended further and so will conclude at the end of a two-year extension period, 28 June 2026. A new provision is therefore required from 29 June 2026.
14. The councils do not operate a commercial waste collection service and there is no proposal to change this from June 2026. Any desire to start a council-operated commercial waste service would require a full business case, but officers do not believe that the outline business case is strong. The market is competitive with a number of well-established large commercial waste collection providers operating in both districts, and the councils do not have experience or existing disposal contracts to make this viable.
15. Since the award of the original contract in 2008, in the past few years the councils have taken steps to directly control parts of the service by making a capital provision for the acquisition of a new waste vehicle depot facility and procurement of replacement waste collection and street cleansing vehicles, when the current ones reach the end of their usable life.
16. The councils, through an ICMD published on 07 May 2024, are also currently procuring a waste transfer facility contract and will procure a processing contract for the DMR which is currently bulked, transferred and processed by Biffa under the present agreement. The reason for taking these steps is to allow the widest competition in the marketplace as there is a limited market of companies who are able to bid for all elements of the current service. The added benefit of this approach is to enable the councils to contract with providers who are specialists within their own areas. All of these changes to transfer risk away from the service provider are a meaningful change to the current arrangements, and likely to impact the cost of future services.
17. The waste collections sector in England has also changed since the councils awarded the original contract in 2008, with there being fewer providers offering their services and the proportional split of contracts between those companies has also changed as shown below:

Outsourced household waste contracts

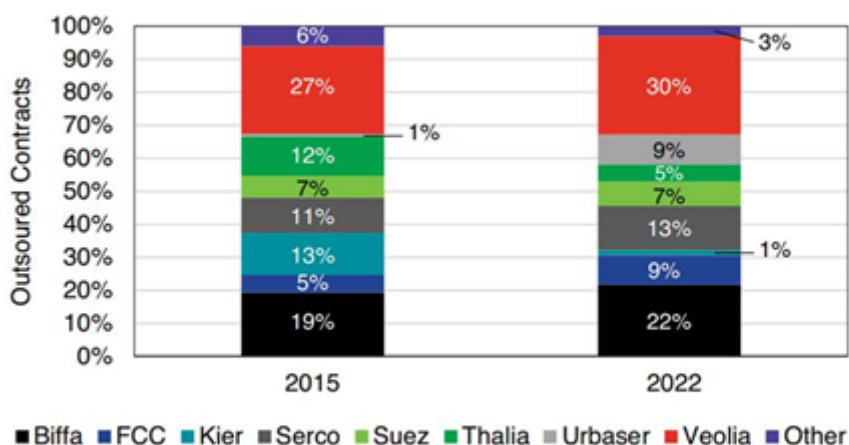


Figure 5.5: Outsourced residual household collection contractors, England
Source: Tolvik Analysis of BDS Data

Guiding Principle

18. As outlined in the waste resources and street cleansing strategy, the councils are taking the opportunity to review all options available and need to decide the best system to provide the waste collection and street cleansing services after 2026.
19. The decision made in this report is not part of the strategy. However, the emphasis on the type of provision to be developed in line with the strategy, is important and the strategy will influence the decisions taken and how the services will be operationally provided beyond June 2026.
20. With the changing landscape brought about by the Environment Act 2021, a priority for the new contract will be flexibility so that the councils and service provider can work together to respond to any mandated changes from Central Government and the Department for Environment, Food and Rural Affairs (Defra).
21. Another consideration will be the impact on local employment along with effectively managing the ongoing financial risks caused by ongoing economic uncertainty and a lack of clarity around future local government funding.
22. Choosing the right mechanism to provide the service is vital in helping the councils to achieve its aims. The four main objectives are considered to be as follows:
 - Maintain the statutory duties regarding household waste collection, management of recyclable material, street cleansing and litter collection.
 - Ensure that services are provided as effectively and efficiently as possible, so as to support the councils' financial requirements.
 - To deliver the council's corporate plan.
 - To meet the Waste Resources and Street Cleansing strategy, and related commitments.

23. It is therefore vital that the new service provider is able to support a partnership approach when working with the councils and continues to support the councils in delivering their aims.
24. An important factor for the councils is to be able to fully consider the options and complete the necessary research in order for a suitable decision to be taken by the councils in enough time, to enable the chosen option to be delivered within a tight timeframe.
25. Equally as important is the timing of decisions, and communications, as regardless of the route taken, it is important to maintain positive working relationships with Biffa until the end of the contract extension in June 2026.

Options Considered

26. Officers have considered that there are four potential options for providing the service beyond June 2026, and these are outlined as Options 1-4 in this report below. To support the councils assessing the four options, officers commissioned Eunomia Research and Consulting to review the wider waste sector along with the performance of the current contract and implications involved in joining an existing or setting up a new Local Authority Company LATCo. The technical briefing note produced by Eunomia is shown at **CONFIDENTIAL APPENDIX 1** and is confidential due to the commercially sensitive information used for the assessment and presented within. Key learning from that report has been used through the rest of the appendices and decision report to guide officers in making recommendations. In addition, an outline proposal was sought from an existing LATCo that currently provides service to local authorities in the region.
27. **Option 1** – Procure a new contract with a private sector provider, or multiple providers.

This would involve conducting a robust formal procurement exercise to test the market and award a new contract or contracts over a medium to long term length (minimum of four years) to a private contractor(s). Should the winning provider not be Biffa, the current staff and management of resources would transfer under Transfer of Undertakings, Protection of Employment Regulations 2006 (TUPE) to the new contractor. If certain staff are still currently in the Local Authority Pension Scheme (LGPS), they will also take their pension rights with them.

Option 2 – The councils to directly employ the staff and provide the service (known as ‘insourcing’).

This would bring the services in-house, with the councils directly employing the staff and taking on responsibility for managing and delivering the services. In this scenario the current Biffa staff would transfer into the councils employment, with a management structure having to be created and the necessary support services increased (Finance, HR, ICT, Customer Services, Insurance etc) to account for the increase in employees (circa 240). They would also have the right to join the LGPS.

28. **Option 3** – Join an existing Local Authority controlled company/outsourced arrangement.

Joining an existing Local Authority Trading Company (LATCo), would involve the councils having a direct stake in ownership as ‘shareholders. The current services,

including staff, would transfer under TUPE into that company. However, the councils would retain ownership of current assets that it would make available to the company for use in providing the services.

To join such an organisation, the councils would need to take a share in the company and sign a shareholder's agreement and probably make an appointment to the Board. However, the contractual arrangements would be between the councils and the Company with their own specification. Each of the participating councils along with South Oxfordshire and Vale of White Horse District Council would have partial accountability for the company and would need to ensure that there is adequate control of the company and having suitable governance arrangements in place.

It is possible that an existing LATCo could bid to undertake some of the work, and this would proceed under Option 1. LATCo's can undertake work in this way provided the work does not exceed 20 per cent of the members contracted turnover. In this case the council would not need to become a member and would also not be subject to any of the benefits or risks of this option.

29. **Option 4** – Establish a new Local Authority Trading Company (LATCo) under the Teckal exemption, 100 per cent owned by South Oxfordshire and Vale of White Horse District Councils solely or working with additional Local Authorities.

A LATCo is an independent legal entity which is wholly owned and ultimately controlled by one or more shareholding local authorities. Under Reg 12 of Teckal the Public Contracts Regulations 2015 (PCR) commonly referred to as the Teckal exemption, it needs to meet the following tests:

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;*
- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and*
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions F1... which do not exert a decisive influence on the controlled legal person.*

In relation to activities, the second part of the Teckal test is that the organisation must carry out the essential part of its activities for the council. Regulation 12 of the Public Contracts Regulations (PCR) 2015 sets out that at least 80 per cent of its activities must be carried out in the performance of tasks entrusted to it by the council.

This option would involve setting up and establishing a new Local Authority Company (LATCo), solely owned by South Oxfordshire and Vale of White Horse District Councils or including Local Authorities should there be wider interest, with the existing Biffa service delivery staff TUPE transferring into that company. A new company would be established based on the founding partner councils owning shares and then entering into a shareholder's agreement which would see them hold an equal share in the company. The Company would have model articles. Both South Oxfordshire and Vale of White Horse District Councils could have a shared contract and specifications with the company because it is the same service performed in both districts, and the

councils would have full control and accountability for the company but would also be wholly responsible for risks and costs. In this scenario, a managing director, finance director, operations director and other associated senior management team members would need to be established for the company and there would need to be commissioning and governance arrangements set out to enable the management of the company by the councils. However, it should be noted that the company is a separate legal entity from the councils and that the councils and directors would have certain responsibilities under the Company's Act 2006.

A more detailed appraisal of the four options is shown at **CONFIDENTIAL APPENDIX 3 – Assessment of Options**.

Financial Implications

30. It is officers' recommendation to pursue option 1 and undertake a joint procurement exercise as outlined below. The total cost of delivering this statutory service under a new contract is not yet known and will not be known until the procurement exercise has been completed.
31. Option 1 is deemed to be the best value option to ensure continued delivery of this statutory service within the timescales available. The current cost for delivering this service may increase but as a statutory service this cost will need to be absorbed and potentially savings may need to be made elsewhere in the Council.
32. A high-level review has been undertaken to consider the potential cost differentials between the alternative options being considered. The resourcing costs associated with staff, vehicle maintenance and fuel are likely to be comparable across all four options, but based on high-level estimates, the costs could vary up to circa £500,000 per year, depending on the option chosen, compared to the current outsourced service costs, although as noted above the outsourced service cost could itself increase following a tender process. These costs include:
- Pension costs – In house and LATCo options would include a higher contribution and therefore a higher cost.
 - Additional staffing costs – a LATCo would require a senior management structure such as Directors and other support staff and a Teckal arrangement would require additional support staff as a minimum requirement to manage the arrangements. Under an in-house option there would be expected to be an increase in back-office costs, such as an increase in staffing in the people and culture team to deal with the increased numbers of staff.
 - Insurance – insurance of vehicles is currently priced into the current contract, if taken in house these costs would be incurred by the councils and would be expected to increase.

In addition, changing the model of service delivery from an outsourced service to any of the alternative models is expected to incur greater set-up costs than a re-procurement.

33. There are base budgets in both South and Vale accounts to cover the current running costs of this service (waste collection and street cleansing) along with the depot costs and waste transfer station costs. The latter two are subject to two separate additional procurement exercises. Therefore, all three contract values will need to be accumulated to ensure that the total cost falls within the council's budget envelope.
34. The new service will be in place in financial year 2026/27, starting in June 2026. In accordance with the procurement timetable shown below, the procurement exercise should conclude in January 2026, which should allow the final budget to be updated ahead of approval for 2026/27. However, a robust estimate will need to be provided earlier in the budget process to ensure that we capture the potential full costs.

Legal Implications

35. The council's statutory powers relating to waste collection are set out in the report.

36. If option 1 is selected, it is likely that this procurement will fall within the scope of the Procurement Act 2023, which comes into effect on 28 October 2024 and applies to any procurements commenced by that date. It is a services contract and will undoubtedly be over the threshold requiring a tender process set out under that act. The route has not yet been determined. There will inevitably be TUPE implications if a new provider is selected, dealt with above in the body of the report.
37. If option 2 is selected, then there will need to be arrangements made for the transfer of vehicles currently leased by the councils to Biffa and the councils (or presumably one of them under a contractual arrangement with the other) will have to set up a vehicle management arrangement with an officer holding an Operator's Licence and depot facilities for the vehicles. Staff would transfer to a council (s) under TUPE and be entitled to join the LGPS under the Superannuation Regulations.
38. If option 2 is selected the powers to enter these arrangements is set out in as 1 and 4 of the Localism Act 2011, which provides that if a local authority enters a trading arrangement it must do so through a company. There are several considerations to bear in mind set out in the body of the report. Several of those apply also to Option 4. The councils must have a business case for entering into the company and adequate governance arrangements to manage it as shareholder. Any member or officer on the Board of the company will have to deal with conflict-of-interest situations and members in particular will be precluded from participating in certain council business which relates to company activities. It is also important that the councils have an exit strategy if they want to exit the company and the exit will probably be regulated by the shareholder agreement which we have not had sight of.
39. If option 4 is selected, the powers are the same and, as above the councils will have to consider a business case for it. The councils will have to loan money to it to set it up and consideration will have to be given to the Subsidy Control Act 2022 to avoid an unlawful subsidy. Incorporation itself is relatively straightforward but engaging the commercial relationship is not. Board members will have to be appointed and there will need to be non-executive directors. Contracts for all these will need to be agreed and effectively the councils will either have to contract to provide for the usual HR and financial services or external contractors will need to be appointed. The company must be at arm's length, or the arrangements risk being found to be a sham and the whole structure unwound.

Climate and ecological impact implications

40. There are no direct climate implications associated with this report and so the climate wheel has not been completed at this stage however, the chosen contract provider will need to support the council in delivering its climate emergency ambitions and so this will be built in and assessed as part of the formal procurement exercise.

Equalities implications

41. There are no direct equality implications associated with this report. If the council were to pursue Option 2 (in-source) there would be likely to be issues relating to Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Advice from HR is that it is very difficult with TUPE to fully assess as suppliers don't have to and are often reluctant to share general info on their workforce make up. Once we knew who may join the council we would look to see if there are particular groups who may be

negatively affected. In Option 1, 3, and 4 the chosen provider will need to support the council in delivering its equality responsibilities.

- 42. Actions being taken to mitigate any potential negative impacts include ensuring that the procurement process and contract terms specifically address equality and diversity requirements. The contractor may be required to demonstrate compliance with relevant equality legislation and show a commitment to promoting inclusive practices within their operations. The council would look to ensure any new provider is able to continue to provide support for those residents with additional needs such as assisted collections going forward.
- 43. An Equality Impact Assessment has been completed and has identified no significant implications.

Risks and Perceived Benefits

- 44. The identified risks and perceived benefits against each of the four options are shown in **CONFIDENTIAL APPENDIX 4**.
- 45. In summary, whilst there are risks with all of the four options, there are likely significant increased costs, restrictions in time, lack of capacity and experience, and further risks to the council associated with options 2, 3 and 4.

Procurement and Timetable

- 46. On 28 October 2024 the provisions of the Procurement Act 2023 was proposed to come into effect but that has now been delayed until early 2025. That Act makes substantial changes to the requirements for public bodies when procuring goods, services, and works.
- 47. Officers are currently reviewing the new requirements to assess their impact and amend the council's procurement processes accordingly. The new requirements appear to have some benefits, particularly the flexibility to design processes which best meet the organisation's need rather than being overly prescriptive. However, until these are put into practice, the reality of the new requirements is unknown.
- 48. Should the Cabinets determine to pursue option 1, with the process likely to commence after 27 October 2024, it may under those new requirements. This would inevitably increase the risk to the councils because it would be an unfamiliar process.
- 49. In addition to the time required to complete the procurement exercise, a mobilisation period would be required to transition from one provider to another. The mobilisation period is likely to be between three and six months.
- 50. The outline procurement timeline, including mobilisation is:

Date	Activity
By October 2024	Prepare Tender Pack External Legal Support Understand new Procurement Act requirements to

	ensure compliance
October 2024	Cabinet approval to go to market
November/December 2024	Commence procurement exercise
January 2026	Conclude procurement exercise
February 2026	Cabinet approval of preferred supplier; call in period
March 2026	Contract signing
March 2026	Mobilisation commences
29 June 2026	Contract commences

51. The timescales to join an existing LATCo/outsourced arrangement may possibly be shorter but it is suggested that a lead-in period of circa 18 months is required to procure/join and mobilise any new waste and street cleansing contract and this means that in order to have the necessary arrangements in place for service continuity from 29 June 2026, no-matter whether the council chooses to re-procure the contract or join an existing LATCo/outsourced arrangement, the process would need to begin by the end of this calendar year (2024).

Conclusion and recommendations

52. Since the councils let their original waste collection and street cleansing contracts in 2008, the waste landscape and wider industry has changed significantly. With the forthcoming changes being brought about by the Environment Act 2021, the effects of Brexit, the utilities crisis, recent levels of abnormally high inflation and much reduced funding to local authorities over the past 14 years, this has resulted in the number of large waste providers shrinking. However, options have come forward to deliver services directly or through local authority owned companies and there are now more options available, but each one comes with their own risks, challenges and benefits.
53. Having fully appraised the four options, both internally and externally with the support of Eunomia, it's clear that option 2 (in-house), option 3 (join a Local Authority Company - LATCo) and option 4 (establish a new LATCo) are undeliverable without significant risk and additional costs needing to be absorbed by the councils.
54. Option 1, to procure a new contract with a private sector provider, is considered to be deliverable by officers and following the assessment, is the least risk to the councils in provision of this statutory service. It is therefore recommended that Option 1 should move forwards to the next stage with the councils completing a formal procurement. A further report will be brought to the Cabinets following competition of that procurement exercise. Subject to the Cabinets approvals of this option, soft market testing would begin to highlight the procurement opportunity to bidders and understand the appetite in the market, with the formal procurement process beginning shortly afterwards. Given the lower level of complexity brought about by the councils providing the depot and vehicles, it is considered by officers and representatives from Eunomia to be sufficient

time to complete this process, report back to Cabinet to award the contract and for the new contractor (should that not be Biffa) to have the necessary mobilisation period before the end of the Biffa contract extension.

Background Papers

- Cabinet report: Delivery of waste services (confidential)
9 March (South) and 10 March (Vale) 2023

Appendices

CONFIDENTIAL APPENDIX 1 – Eunomia Market Appraisal and Service Review Briefing Note

CONFIDENTIAL APPENDIX 2 – Future Waste Services report

CONFIDENTIAL APPENDIX 3 - Assessment of Options.

CONFIDENTIAL APPENDIX 4 - Risks and Perceived Benefits.

Appendix 5 - Services provided by Biffa under existing contract.