



Gloucestershire's Incineration Costs

**An objection to the local auditor by Gloucestershire constituents under s.27
(and/or s.28) of the Local Audit and Accountability Act 2014**

**An analysis of the behaviour of Gloucestershire County Council by specific
reference to value for money, alternatives and fair competition implications of
the contract between Urbaser Balfour Beatty (UBB) and Gloucestershire
County Council (GCC or Council) to build a
waste incineration plant at Javelin Park, Haresfield**

Executive Summary and Formal Complaint

This report/complaint is written by Community R4C (for the purposes of the requirement of s.27 of the Local Audit and Accountability Act 2014 the "local government elector(s)" are the Directors of Community R4C being Tom Jarman, Sue Oppenheimer, Tricia Watson and Jon Scott¹), a not for profit Community Benefit Society registered with the FCA. Following the recent disclosure of the full contract and Information Tribunal ruling, Community R4C has commissioned two consultants not associated with R4C, and drawn on contributions from other independent experts, to provide evidence on the incinerator contract between GCC and UBB.

Specifically, the auditor is asked to consider this complaint and use its powers under s.27 (or s.28) of the Local Audit and Accountability Act 2014, and:

- make a public interest report under s.27(1)(a) (or finding of unlawful activity by GCC under s.28); or
- make a recommendation to take action (specifically to terminate the contract with UBB) under s.27(6)(a) in response to this complaint.

The principal duty on the Council relied upon in this complaint is the duty to achieve "best value" under s.3 of the Local Government Act 1999 which we say has clearly not been achieved, and we note the (effectively parallel) role of the auditor under s.20(c) of the Local Audit and Accountability Act 2014 to ensure that the authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. In this complaint we refer to these requirements by reference to a failure to achieve value for money.

Secondly, we draw specific attention to the duty to follow the 'waste hierarchy' as set out in The Waste (England and Wales) Regulations 2011 (Regulation 12). This requires that waste be treated as high up the hierarchy as technically and economically feasible. Where, as here, an equivalent or better value alternative exists higher up the 'hierarchy', that must be pursued. This of course accords with concepts of economy, efficiency and effectiveness, of the term "best value".

The public interest is enormous: this complaint concerns, by the Council's own admission, the largest contract it has entered into. It involves expenditure of over £500m and will affect local government electors both financially and in terms of other interests protected by law for over 25 years.

This report finds that the contract:

- fails to achieve value for money/'best value'/economy and efficiency as required in law
- fails to achieve economic treatment of waste as high up the waste hierarchy as economically achievable as also required in law

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- assumes insufficient improvement in recycling or waste reduction
- has a pricing structure that provides a very significant disincentive to recycle
- has termination costs that can be met by the capital already committed, and are significantly lower than was reported prior to the disclosure of the full contract
- is a form of long-term PFI contract, widely recognised as inflexible and expensive
- has hidden future costs because it is not in line with expected changes in regulation
- forecloses the opportunity for competition from new, improved technologies
- uses the inappropriate baseline of landfill as a comparator over 25 years
- over-predicts waste arisings and residual waste—more realistic lower figures will make the cost per tonne of waste in the contract much more expensive
- anticipates benefits that will only occur in ten years or more, based on projections which cannot be substantiated and therefore present high risk

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1 Introduction

1.1 Community R4C

Community R4C is a community led, not for profit Community Benefit Society registered in 2016. Our objectives are:

The protection and preservation of the environment for the public benefit by:

(a) the promotion of waste reduction, re-use, reclamation, recycling, use of recycled products and the use of surplus;

(b) advancing the education of the public about all aspects of waste generation, waste management, waste recycling and the circular economy; and

(c) the promotion of such other activities and initiatives that contribute to and stimulate the development of a local circular resource economy.

We are not allied to any political party, and our 200+ shareholder members come from all walks of life. Above all we aim to be a positive force for change, providing solutions to the waste problem, inspiring others to do the same, and creating the environment and opportunity for a circular economy to thrive. Further, and importantly for this complaint, we would note that the above furthers the achievement of legislative requirements placed on all local authorities such as GCC, including achieving 'best value' and treating waste as high as economically possible up the waste hierarchy.

1.2 The report

Community R4C commissioned external consultants to provide **independent evidence** on the incinerator contract and on the wider waste market. Their reports are included as appendices. The main report summarises and references these and Appendix 4 summarises and references other independent sources.

- The report explains the **background** to Gloucestershire's residual waste project, leading to the contract with UBB.
- It **analyses the contract**, with a particular emphasis on the lack of value for money.
- It **outlines existing alternatives** in the wider waste market that provide better value for money and use different technologies.
- It **examines projections on waste arisings**, showing that the variations since the inception of the residual waste project are already affecting the business case.
- It makes **predictions on future trends**, reflecting on how these would affect both the contract with UBB and alternatives.
- It looks at the **overall Value for Money case**, and makes recommendations to exit the contract and instead use a more financially and sustainably alternative method to deal with Gloucestershire's waste.

2 Background

The Council's Residual Waste Project has a long history going back to 2005 and beyond. A thorough and well-documented commentary can be found in GlosVAIN's Proof of Evidence to the Planning Public Inquiry in 2013[1]. A concise background is also available in the recent ruling by the First Tier Information Tribunal by Judge Shanks.[2]

The following is a key timeline of events:

- An early (private) political decision was made by the Council's ruling party in 2005 to go for waste incineration as the preferred residual waste option.²
- The reference bid, submitted by GCC to Defra in 2008 in order to secure PFI funding, was modelled using the Javelin Park site and Energy from Waste technology. The model assumed no heat off-take (going against GCC's previous options analysis of technologies, and against the objectives of the Waste Hierarchy).
- Half the Javelin Park site (5.1 ha) was bought by GCC in late 2008 for £7.4m - **more than the owners had paid a couple of years previously for the whole 11.2 ha site.** □
- By going for a 'technology neutral' procurement process, GCC shut down any public debate on waste options. The process remained secretive throughout. The OJEU notice was issued in early 2009.
- Defra withdrew PFI funding in 2010 "*on the basis that, on reasonable assumptions (the project) will no longer be needed in order to meet the 2020 landfill diversion targets set by the European Union*"³ □ GCC carried out a strategic appraisal and in March 2011, despite a 5,000 strong petition opposing the scheme, decided there was a VfM case (based on landfill as a comparator) to continue with the residual waste procurement process.⁴
- On 12 September 2012 the Council's Cabinet agreed to contract with UBB for an EfW plant at Javelin Park. The Business Case for this decision (called Annex 4) was considered to be commercially confidential and only released recently, along with the Contract, as part of the Information Tribunal decision.⁵
- The Waste Core Strategy - the planning document against which the planning application for the Javelin Park incinerator would be judged, was adopted on 21 November 2012, after the contract had been agreed.
- The contract was signed in February 2013, less than 4 weeks before consideration of the application at Planning Committee. GCC's own Planning Committee unanimously rejected the application on 21st March 2013. The matter was 'called in' by the Secretary of State.
- A 6-week planning Inquiry was held between November 2013 - January 2014. In January 2015, the Secretary of State, Eric Pickles, reversed the decision of GCC's planning Committee and granted planning permission.

² GlosVAIN proof of Evidence para 15

³ <https://www.gov.uk/government/news/changes-to-pfi-programme>

⁴ <http://www.programmeofficers.co.uk/posl/documents/Gloucester/CD12/CD12.21.pdf>

⁵ <https://drive.google.com/file/d/0B5qzJROt-jZ0ek04SmkyakIqbDdOaloyaU9fNkM0LVIIISXVR/view>

- On 18th February 2015, a petition signed by 7,600 people to terminate the contract was submitted to GCC. At an Emergency meeting, the Council debated a motion to do just that with immediate effect, but the motion was lost by 24 for and 27 against - a closely split vote. During the debate, Cllr Theodoulou told councillors that the choice was between *“The energy from waste solution (which) would provide £150 million worth of savings and the motion before members, which would incur cancellation costs up to £100 million”*⁶, but provided no data to substantiate these claims. These claims were questioned at the time, and more recently by the Judge at the Information Tribunal. **The recently released Contract indicates that the claims were incorrect.**
- Because of the significant delay, the contract, even though signed, had to be renegotiated outside of any competitive pressure as the procurement process had ended⁷. In November 2015 a *“£17 million one-off financial contribution to the residual waste project, funded from revenue reserves to mitigate the cost of delay in the annual revenue budget for the project over 25 years.”*⁸
- In March 2015, campaigners submitted a request under Freedom of Information for the full contract with UBB and the Business Case (Annex 4 of the September 2012 Cabinet report). GCC subsequently released a heavily redacted version in May 2015 and campaigners appealed to the Information Commissioner's Office for full disclosure.
- The ICO decision notice on 8th October 2015 required GCC to “Disclose the withheld information to the complainant.”⁹ GCC appealed this decision and it therefore went before a Tribunal in late 2016. **GCC spent over £200,000 defending their right to secrecy.**
- The Tribunal's decision on 10th March 2017 required that nearly all the redacted information be released because they ruled that public interest overrides commercial interest in virtually every aspect of the contract. Judge Shanks stated in para 27: *“During the hearing in September 2016 the Tribunal expressed some incredulity that it could possibly cost £100 million to cancel a contract worth some £500 million over 25 years at a stage when construction had not even started.”* And para 61 *“at the time of the requests in January to March 2015 the controversy was particularly intense and there was a danger that the whole Contract would have to be terminated at a cost, according to the Council, of up to £100 million. At that stage, in our view, the Council's obligation to act transparently was particularly strong as was the public interest in full disclosure of the exact position in relation to the compensation payable in so far as the Contract contained relevant provisions.”*
- On Tuesday 21st March, Community R4C submitted a complaint to the Competition and Markets Authority on the basis that the pricing structure in the contract, involving

⁶<http://glostext.gloucestershire.gov.uk/documents/g8062/Printed%20minutes%20Wednesday%2018-Feb-2015%2010.00%20County%20Council.pdf?T=1>

⁷ See Information Tribunal ruling para 25 “In the meantime, because of the time that had already elapsed since the contract was signed, the Council had had to request a “revised project plan” from UBB, which was the subject of negotiations between the parties in 2015”.

⁸<http://glostext.gloucestershire.gov.uk/documents/s26635/Item%207%20-%20Financial%20Monitoring%20Report%20November%202015.pdf>

⁹ ICO Decision Notice 8 October 2015 Reference: FER0579974

huge fixed costs for 25 years and unfair market pricing, has the effect of foreclosing all competition and preventing technological innovation (See Appendix 3)

- On March 22nd, Cllr Theodoulou, when asked for a further breakdown of alleged savings from the contract, maintained that "*he was not sure what public interest that would serve*"¹⁰
- Works to build the incinerator on Javelin Park site commenced in November 2016 and are still at a relatively early stage, with anticipated completion date in 2019. There is therefore a real urgency in resolving the VfM case, since termination costs as outlined in this report will only increase. Also GCC is committed to paying £ 30m on the 'readiness date' and action needs to be taken well before that date

¹⁰<http://www.gloucesterreview.co.uk/article.cfm?id=102389&headline=Hollywood%20actor%20joins%20incinerator%20protest§ionIs=news&searchyear=2017&action=validate>

3 The Contract

Summary

- A 25-year PFI-style contract with different price bands
- County pays high fee per tonne for the first 108,000 tonnes per year, then very little for any additional waste
- Price structure discourages waste reduction and recycling
- Total cost higher than previously stated
- Cancellation cost lower than previously stated

3.1 Contract Structure

Appendix I of this report provides an **independent** analysis of the Contract between GCC and UBB.

In summary, the contract provides for UBB to fund, build, own and operate an incinerator at Javelin Park in Gloucestershire to treat Gloucestershire's residual waste. The facility will also be able to process similar waste from commercial, industrial and other third parties. GCC is the Waste Disposal Authority for Gloucestershire and it commits to paying UBB to process its residual waste¹¹ for the next 25 years. It does this in the main through paying a "gate fee" for waste that it sends to the plant.

In the UBB contract the gate fee is banded. Band 1 is the primary band and carries a relatively high gate fee of £146.36 (2011¹²) per tonne, which GCC has committed to paying for a minimum 108,000 tonnes per annum (tpa), at a cost of £15,806,880, index-linked for 25 years.

The contract also includes two further bands for gate fee pricing. Band 2 is the cost that the Council will pay on the balance of its residual waste (i.e. anything above 108,000 tpa). It carries a very low gate fee of just £15 per tonne (2011), considerably less than the "recycling credit" the County Council is obliged to pay District Council's for diverting waste from disposal through recycling initiatives. (currently £56 per tonne)

The contract therefore makes it financially attractive to discontinue any separate collection or other recycling schemes that cost more than £15 per tonne (2011, indexed at RPIX) and instead send the waste to the incinerator, since the majority of the cost has already been paid through the Band 1 charge. This further works against the requirements to collect/treat waste higher up the 'waste hierarchy'.

¹¹ The waste collected by Waste Collection Authorities (the District Councils) from households in Gloucestershire that has not been source separated by the householder as recyclable material. Commonly referred to as 'black bag' waste

¹² The Band 1 gate fee has a low indexation rate applied, effectively 0.33% pa compared to an assumed RPIX of 2.5%.

3.2 Contract Cost

The County has forecast its future residual waste¹³. From these and the contract structure an average gate fee per tonne can be calculated and is plotted below

Average Gate Fee: Original as of 2013; Updated as of 2017 (See Appendix 1)



In later years residual waste has been assumed to increase by 2% per year, with no improvement in recycling or waste reduction. This would increase the proportion of waste in the cheaper price band, thereby reducing the average cost per tonne. If residual waste **reduces**, however, perhaps as a consequence of higher levels of recycling, the average gate fee will **rise** towards the £148.80 (2017) price of Band 1, or even higher if the residual waste after recycling in Gloucestershire reduces below 108,000 tpa (this is certainly possible over this timescale, see Appendix 4 Section 1) .

The County is currently paying an average gate fee to Cory (the current landfill contractor) of approximately £113¹⁴ .

The Council's historical position has been that initial high costs are justified by savings that may accrue later in the plant's lifetime. On the Council's own figures the point at which the contract cost for residual waste treatment will first become less than the equivalent cost for landfill is 2030 so the financial case for the contract is that savings from that point forward will more than compensate for the increased short term cost on a whole-life cost basis. This is analysed in more detail in section 4 of this report.

Steve Burnett, in his report included here as Appendix 1, has calculated the cost of the contract, so this can be compared to alternative costs. He has taken as his baseline the

¹³ See Appendix 4, para 4.1.1

¹⁴ This is simply calculated as the waste sent to landfill 146,706 tonnes in 2015/16 divided by the amount spent on landfill that year - £16,658,000 . The actual pricing structure will be more involved than this.

assumptions included in the GCC's own assessment of value for money done in 2012¹⁵. The table below summarises GCC's own calculated cost of the contract; Steve Burnett's modelling of the contract using the same base data (labelled Recalc), which he found produces a significantly higher result than that presented to the Council's Cabinet; and the comparable cost to landfill used by the Council at the time.

	2013 Est	2013 Recalc	Landfill Est
Unitary Charge	£410.590m	£477.958m	-
Non-PFI charges	£25.119m	£25.119m	£25.119m
Other Landfill charges	£4.553m	£4.553m	£552.558m
Capital Contribution	£10.245m	£10.245m	-
Total	£450.507m	£517.875m	£577.677m

He further shows that at today's prices, 2017, the total contract cost will be £537.604m, £87m more than originally claimed. This is once again compared to landfill costs, which have also increased, but, as will be explained later on in this report, **landfill is no longer a credible comparator** in the waste field, as it is being phased out, and alternative and cheaper processes are coming into the market.

3.3 Other Contract Issues – Electricity / Power Pricing

The contract includes a secondary mechanism which may give additional benefit to the Council. This allows GCC to purchase all the electricity generated by the plant at a market realistic price of £44.85 / MWh, indexed by RPIX. Should electricity prices go up by more than this, as many analysts predict, the Council benefits. In addition the Council will have attached significant value to certainty on forward prices. However an increasing number of commentators observe that the rise of renewables and the differential pricing that future legislation may impose (the incinerator has a very high carbon footprint compared to renewables such as solar or wind) may in fact result in this not delivering value: we simply do not know.

Steve Burnett (appendix 1) forecasts the benefit of the power purchasing agreement significantly lower than figures used in the council's 2012 justification of this contract.

NPV (2011) of Savings Over 25 Years Estimated from Purchasing Electricity from UBB¹⁶

	Contract	Market	Savings
2012 Estimate	£70.3m	£119.0m	£48.7m
Updated Estimate	£63.4m	£88.6m	£25.2m
Updated 2015 NPV	£80.3m	£112.2m	£31.9m

These projected savings are based on long term assumptions and forecasts taken over the full 25 years of the contract so are clearly speculative in their nature. Any benefits will likely

¹⁵ Officers report to the cabinet, September 2012 Annex 4

¹⁶ See appendix 1 for more detail

start relatively low with the bulk of the benefit in later years, if at all.

3.4 Contract Termination Costs

The contract has provision for termination at various stages, voluntary termination by the County is always an option. The compensation to be paid on any such termination are set out in the contract, more detail is set out in Appendix 1. It is worth noting that the fall in Sterling following the Brexit vote significantly reduces the compensation to be paid due to the benefit of a currency hedge.

**Indicative Estimate of Termination Costs at April 2017,
Based on Updated 2016 Agreement**

	Amount
Repay outstanding debt	£40m
Currency hedge (gain)	(£12m)
Interest hedge (prudent estimate)	£5m
Other (redundancy, contingency and general)	£3m
Total	£36m

The County has committed a total of £30M as a capital contribution to the project, an initial £13M committed in 2013, with a further £17M committed in November 2015. This capital would normally be paid on completion of build, so is sitting on account until this point. In addition the County paid £7.4M for the land at Javelin Park and this remains a capital asset.

If these figures are correct the **cost of termination can be covered by capital already committed to the UBB project, which would mean there is no annual expenditure budget impact of the termination payment.**

4 Value For Money

Summary

Our independent expert reports and our own market analysis show that the GCC/UBB contract can only be considered good value for money given unrealistic assumptions of waste arisings and even then only if cost of incineration is compared to landfill and no other disposal method. The long-term nature of the contract exposes the Council to uncertainties such as changes in market conditions and regulatory and policy frameworks. This section shows how changes over the next 25 years will adversely affect the value for money argument for the contract. Even without these changes, the contract remains more expensive than almost any alternative.

4.1 Whole Life Value for Money

The contract covers twenty-five years of operation, so into the 2040's. This exposes the council to a number of risks and uncertainty affecting value for money.

The table lists these main uncertainties, the assumptions that have to be made in order to find the contract good value for money and the current and likely future reality.

Uncertainty / Risk	Contract Assumption for Claimed Benefit	Commentary	Effect on the contract
Residual Waste Arisings	Erratic increase in residual waste until 2022, 2% pa increase from then	Contract justification based on unrealistic and excessive assumptions of future waste arisings, already shown to be significantly wrong. Appendix 4.1	Strongly adverse
Electricity Pricing	Prices increase by more than RPIX	Most forecasts have electricity pricing increasing by more than the rate of RPIX, although recent changes have seen downward pressure on price, and we may see penalties on relatively high carbon electricity such as that produced by the incinerator.	Favourable
Pricing of alternative treatment options	20% increase in cost of alternatives compared to the incinerator	There is a substantial increase in treatment capacity, excess capacity in a number of neighbouring European countries, and declining residual waste through moves towards a circular economy. The capital cost of new plants means marginal and future pricing will be lower. The marginal operational cost of facilities is well below current market prices. This all gives significant downward	Strongly adverse

		pressure on price. Appendix 4.4 and 4.5	
Changes in Legislation	No adverse changes	Legislative and regulatory changes are likely to favour moves towards a circular economy, this would increase costs on the incinerator contract or reduce waste below the 108,000 contract minimum. See appendix 4.3	Strongly adverse
Political / Social	No change in Council policy	There is considerable public opposition to the contract, and widespread, cross party opposition. Future administrations may take a different or fresh view in the light of fresh information, and seek to cancel the contract. Examples of other council areas where this has occurred are in Appendix 4 para 4.2.3. Cancellation is less expensive now than in the future.	Strongly adverse
New Technology and Circular Economy	Nothing better emerges for 25 years	See appendix 4.4 which shows that new technology is already here; and Appendix 4.3 which shows that moves to the circular economy will soon be implemented.	Strongly adverse

As can be seen, a number of assumptions made in favour of the contract are likely to adversely affect its value for money. This is evidenced below and in more detail in Appendix 4.

4.1.1 Waste Arisings

The supposed value-for-money of the Javelin Park incinerator contract depends heavily on the accuracy of waste projections. The pricing structure is such that less waste means higher cost per tonne. So, are the waste projections realistic?

- a) GCC has continuously over-predicted **total** household waste arisings, and these wrong predictions are then compounded year on year. Since the baseline year for the Contract, 2009/10, Municipal Solid Waste has risen by 1.4% as opposed to the predicted 6.4%, a difference of 18,775 tonnes per annum.
- b) The contract assumptions predict that **residual** waste will rise at a rate of 2% from 2030 onwards, thereby bringing down the average gate fee price. This unsubstantiated forecast is well in excess of any independent forecast (the highest we can find is 0.5% from this time, many show decreases). It would require a reduction in the level of recycling and other waste reduction measures which is counter to council, national and EU policy and the duty of the Council under UK Law¹⁷.
- c) The contract also predicts a relatively low recycling rate which if bettered would make the contract even worse VfM. Should all districts reach the performance recently achieved by Stroud District Council, total residual waste going to the incinerator would be around 70,356 tpa, well below the 108,000 tpa minimum of the contract, making the cost a very high £224 per tonne, twice current market price.

¹⁷ The Waste (England and Wales) Regulations 2011 (Regulation 12)

Predictions of waste arisings may be uncertain, but it is very likely they will be lower than GCC's predictions used to model the financial business case for the UBB contract, and the impact on VfM will be considerable. See Appendix 4.1 for detail.

4.1.2 The problem with long-term PFI-type contracts

- a) The Contract with UBB is basically a PFI contract, and as Judge Shanks commented in the recent Information Tribunal ruling, *"the PFI model is itself controversial, with legitimate concerns expressed about bad value for money, opacity and the tendency to load expenditure on future generations."*
- b) There is much evidence that PFI contracts do not offer Value for Money, including reports by the Treasury Committee: *"We have not seen evidence to suggest that this inefficient method of financing has been offset by the perceived benefits of PFI from increased risk transfer... We do not believe that PFI can be relied upon to provide good value for money without substantial reform."*
- c) The Public Accounts Committee found that *"PFI contracts typically last 25-30 years and may be inappropriate for the waste sector where technology is continually evolving and the amount of waste that will be produced in the future can be hard to predict"*
- d) Many councils have come to realise that their long-term waste contracts do not represent Value for Money, and have terminated them after just a few years. These include: Norfolk, Thurrock, Sheffield City, Greater Manchester and Peterborough. Reasons given centre on flexibility and better value for money, despite having to meet cancellation costs.
- e) The lesson for the GCC contract with UBB are clear. The risk of this contract becoming a burden in just a few years is great, and has not been properly considered when assessing VfM

See Appendix 4.2 for detail.

4.1.3 Policy and Regulatory Framework

It is very likely that Government policy and the regulatory framework will favour recycling, waste reduction and the circular economy possibly through financially linked targets or new taxation.

- a) The EU's Circular Economy Package will be EU law before Brexit happens, and commentators believe it will therefore be incorporated into UK law. Indeed Defra is preparing for just that. The Package includes strong recycling targets, requirements for extended producer responsibility schemes, and requirements on packaging amongst many other things.
- b) A recent EU Communication on Waste Incineration cautions against investment in this technology, partly because of the lack of flexibility and the impact on other waste

management technologies which will take waste higher up the waste hierarchy. It recommends bringing in incineration taxes, phasing out support for existing Energy from Waste (EfW) plants, and having a moratorium on any new ones.

- c) A new EU plastics strategy to reduce plastic use, and increase recycling and reuse will have a major impact on energy produced by EfW plants.
- d) There is good evidence that the UK will continue to follow the EU path towards the circular economy.
- e) The *Environment, Food and Rural Affairs Committee* concluded in their report on "Waste management in England"¹⁸ on the 21st October 2014 that "Valuing waste as a resource is increasingly important for the economy and environment" (conclusion 1). The MPs also called on Government to ensure that only genuinely residual waste is sent to energy-from-waste plants and to do more to encourage the use of heat outputs from such facilities to improve the overall energy efficiency of this waste management method.
Note that the Gloucestershire Incinerator does not have pre-treatment, and does not make use of the heat produced, so is at odds with this committee's findings.
- f) Long before 25 years is out, regulation will insist on removal of some components that are currently acceptable in residual waste treatment (landfill/incineration), with the usual step change of taxation likely first. Pre-treatment is inevitable as a means of enforcing the removal of these items from the waste stream. The risk to the Javelin Park incinerator and its viability is obvious – and that GCC and its constituents will inevitably pick up a large part of the extra costs.

References can be found in appendix 4.3

4.1.4 Alternatives in the Current and Future Waste Market

There are many alternatives to the Javelin Park facility which would offer financial and environmental benefits compared to proposed incinerator.

- a) Landfill is not a long-term option for waste management. Landfill is generally more expensive than alternatives, yet it was the only comparator used in the Business Case: **a fundamental error in examining the Value for Money of the contract.** Also, landfill is being phased out and will no longer be an option for residual waste within 10 years (it will still be used for inert waste) so to compare with landfill over 25 years makes no sense.
- b) Other existing Energy from Waste Plants offer better value than the contract with UBB. **Appendix 2, shows clearly that sufficient capacity is available today in existing neighbouring plants at a much cheaper rate than the Contract.**
- c) Mechanical Biological Treatment (MBT) plants have become a proven, price competitive and effective alternative for dealing with residual waste, taking waste further up the waste hierarchy than incineration. Most separate out recyclables, separate out the organic fraction for e.g. anaerobic digestion and then create Refuse Derived Fuel (RDF) (a fuel burnt efficiently in incinerators) with the rest. The median

¹⁸ <https://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvfru/241/241.pdf>

price is £85 per tonne. Defra sees advantages in MBT because “it can be configured to achieve several different aims” and is therefore inherently more flexible than incineration. Examples of operating MBT plants are shown in Appendix 4.4

- d) Improvements and innovation in waste technology are happening very fast, and Appendix 4.4 highlights a number of examples of new approaches already operating in the market.
- e) We also highlight technologies that are likely to be available within the next 5 years. These include the R4C MBHT plant, supported by Community R4C, which will improve on the MBT concept. By adding washing of waste and a heat process, the plant produces a very clean, > 90% renewable biomass fuel pellet which can be used very efficiently in bio boilers to produce heat. R4C uses a ‘community-defined, commercially delivered’ model, with a percentage of profits then reverting back to the community.
- f) It is clear that 10 years on from the inception of Gloucestershire’s Residual Waste Project, the waste market has changed dramatically and will continue to do so. Entering into short-term value-for-money contracts with today’s alternatives would allow Gloucestershire to take advantage of better technologies as they establish themselves in the market, and so take waste higher up the waste hierarchy. Flexibility will deliver lower costs and better environmental outcomes than the 25 year incinerator contract.

4.1.5 Future Pricing

There are a number of downward pressures on the medium term pricing of alternatives waste treatment options

Indexation of prices is expected to be low. Capital cost of plants do not increase with inflation (it is usually a fixed cost of depreciation and other finance costs). Once paid off there is no capital related cost significantly reducing the operational cost of a plant. Capital / finance costs typically make up more than half of the annual costs of capital intensive projects such as incinerators.

Although landfill, or more precisely Landfill Tax, has some effect on prices throughout the sector, this will cease once landfill stops taking unsorted residual waste, and other drivers affecting gate fees, including competition, are already having an impact and will drive prices down in future.

These include:

- **Low prices at older plants that have paid off their capital borrowing, for example the EfW plant in Coventry. This effect will increase as more and more established plants become debt-free.**
- **Excess capacity in Northern Europe (eg Germany, Netherlands, Sweden) with gate fees for RDF of between €30 and € 55 pt.**
- **Operational cost of alternative plants such as MBT and newer technology. The cost to run an efficient MBT plant are typically £30-£50 pt.**

- **Increase value of the recyclates and materials recovered by advanced MBT plants over time as more technical recycling / material recovery/refining options become viable (for example the plastic technology from Recycling Technologies in Swindon).**
- **Overcapacity of residual waste treatment, predicted as early as 2020.**
- **Reduced residual waste and increased recycling**

For these reasons, we believe that a prudent assumption for a base case on future pricing is that gate fees will increase from the current spot price by no more than the low indexation rate given in the UBB contract.

More likely scenarios would see long term pricing coming down to more closely reflect the costs of waste treatment as supply balances (or even exceeds) demand.

4.1.6 Social and Environmental factors

In evaluating the public benefit of proposals such as these within a sustainable procurement framework, the Duty of Best Value requires consideration of the triple bottom line, that is the **economic, environmental and social impact** of the facility.

There is substantial and ongoing public opposition to the plant (4350 planning objections for example), and significant engagement with the community in the Community R4C based in Stroud, Gloucestershire. This, not-for-profit Community Benefit Society demonstrates exactly the type of sustainable social value that can be encouraged by working with communities, rather than imposing expensive, inflexible and unwanted infrastructure on them.

Many objections on environmental grounds were raised at the planning meeting, and later in the public enquiry (of UBB's appeal of the unanimous planning decision). The inspector ruled that these could not be considered since they were outside of the scope of the stated reasons for rejection of the planning application, yet the environmental concerns are very real. They include:

- Climate change impacts
- Lack of pre-treatment
- Lack of use of heat
- Low R2 / energy efficiency figure
- Emissions
- Visual impact, harm to AONB
- Failure to deliver renewable energy / excessive cost of new electricity capacity compared to wind etc

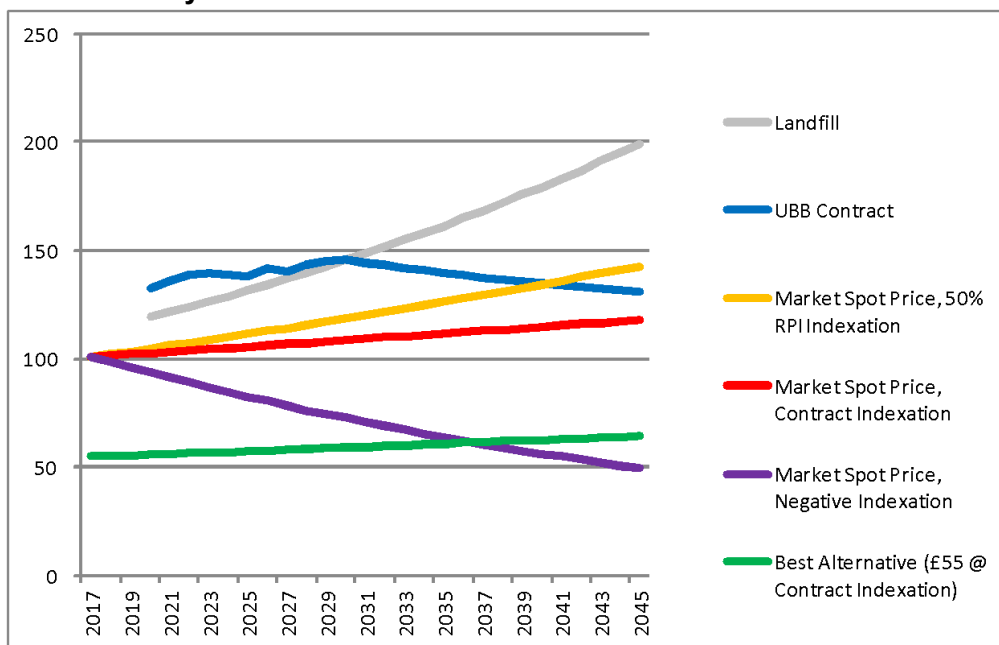
4.1.7 Effect on Contract Value for Money

The Council has historically justified the contract by comparison to landfill pricing. The contract is forecast to show savings versus landfill from 2030 on forecast volumes, but will be more costly to the Council for the next thirteen years (the first ten years of operations).

As stated earlier, **we do not think Landfill an appropriate comparator**, particularly that far into the future. Instead we have taken current market spot prices (as identified in Appendix 2) and projected these forward, with costs increasing at the rate given for band 1 in the contract (as calculated in Appendix 1) . The high capital cost of waste disposal facilities means that operational costs will increase significantly less than inflation (capital costs do not increase, and once paid off produce a significant operational cost saving) and there are many downward pressures on price. (see Appendix 4.1.5)

We have plotted the impact of possible alternative forward pricing scenarios.

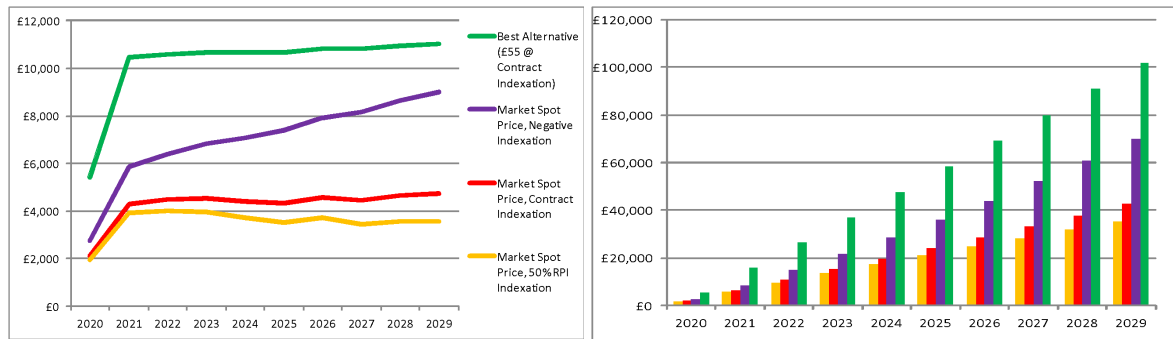
Figure: Indicative Cost per Tonne Comparison, UBB Contract vs Landfill and Out-of-County Alternatives



For the purpose of calculating the above figures, we have retained the Council's unrealistic assumption that waste will not reduce and recycling will not increase. Despite this, the cost per tonne of the contract is higher than non-landfill alternatives. Only after 2040 does it become the second most expensive. Even compared with landfill the contract is significantly more expensive until 2030 - when landfill will largely be phased out anyway.

If the contract was cancelled and alternative treatment used - even with no reduction in residual waste we would see very significant savings at Council level as illustrated below.

Figure: Likely Savings from Alternatives to Incinerator Contract, First 10 Years



(£k, annual and cumulative)

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Best Alternative (£55 @ Contract Indexation)	£5,423	£15,903	£26,497	£37,161	£47,823	£58,506	£69,329	£80,156	£91,107	£102,135
Market Spot Price, Negative Indexation	£2,751	£8,630	£15,032	£21,851	£28,930	£36,313	£44,224	£52,397	£61,039	£70,057
Market Spot Price, Contract Indexation	£2,106	£6,408	£10,889	£15,433	£19,841	£24,167	£28,753	£33,205	£37,869	£42,610
Market Spot Price, 50% RPI Indexation	£1,955	£5,880	£9,895	£13,877	£17,611	£21,153	£24,869	£28,330	£31,916	£35,476

The comparison in a simple value for money case is stark. Over ten years compared to the Contract, the Council would save £42.6M simply by buying capacity at market spot price (assuming same rate of indexation as the contract). If instead the Council pursued best local alternatives, the saving versus the contract could be over £100M over the ten years. The contract locks out these potential savings, future generations and future administrations will not have these options, if the contract is continued.

It is important to note that should residual waste arisings be less than forecast in 2012¹⁹, which we have shown to be almost inevitable, the incremental cost of the contract versus alternatives jumps significantly, particularly if residual waste in Gloucestershire drops below the 108,000 contract minimum in the next twenty-five years.

There is, as a consequence, no realistic scenario under which the contract can constitute value for money for taxpayers.

¹⁹ See appendix 4.

4.2 Immediate Value for Money in Today's Market

The analysis of the contract pricing (appendix 1) shows that in today's terms the average gate fee for GCC waste is £132 per tonne. Because of the High Band 1 price, this average price is higher if the price is recalculated based on GCC actual residual waste which is lower than was forecast in 2013.²⁰

Appendix 2 shows today's spot prices at existing facilities with spare capacity in neighbouring counties. **They are all cheaper than the Contract:**

Operator	Facility Name	Postcode	Transfer Cost	Gate Fee	Total Cost	Total Capacity	Committed Capacity	Un-Committed Capacity
Suez	Avonmouth EfW	BS35 4GG	£12.71	£97**	£110	400,000	347,000	53,000
PandaGreen	Avonmouth MBT	BS11 9FG	£12.71	NO CAPACITY	N/A	120,000	120,000	0
MES Environmental	Wolverhampton EfW	WV1 1QB	£14.44	£98	£112	115,000	105,000	10,000
Viridor	Ardely EfW	OX27 7PH	£14.44	£92	£106	300,000	270,000	30,000
MES Environmental	Dudley EfW	DY2 8JW	£14.44	£98	£112	99,000	80,000	19,000
Veolia	Tyseley EfW	B11 2BA	£14.44	£87	£101	350,000	335,000	15,000
The C&S Waste Disposal Company	Coventry EfW	CV3 4AN	£14.44	£55	£69	250,000	175,000	75,000
Hills Waste Solutions	Northacre MBT	BA13 4WD	£14.44	£107	£121	60,000	60,000	0
Viridor	Cardiff EfW	CF24 5EN	£14.44	£95	£109	350,000	91,000	259,000*
Veolia	Four Ashes EfW	WV10 7DG	£14.44	£90	£104	300,000	288,500	11,500

It is useful to compare costs to the Council that would have occurred had the contract and facility been in place in 2015/16 and compare to the alternatives then available, based on the 146,706 tonnes of residual waste which was landfilled by GCC via their contract with Cory.

Waste Treatment Option	Average Gate Fee £ / tonne	Additional Cost Of Contract %	Annual Cost to GCC	Additional Cost of UBB Contract £pa
UBB Contract	£132		£19,365,192	
Cory Landfill Contract (current)	£113.55	16.3%	£16,658,000	£2,707,192
Typical Alternative: Average local alternative plus transfer, see appendix 1	£101	32%	£14,670,600	£4,694,592
<i>For simple comparison the following have an assumed transfer cost of £12.71 pt (as per Suez, Avonmouth)</i>				
Current alternative (eg Suez): 10% discount for negotiated mid term contract vs spot price	£100.30	31%	£14,714,611	£4,605,580
WRAP average MBT (similar to average EfW) inc transfer of £12.71	£97.71	35%	£14,424,515	£4,940,677

²⁰ In 2015/16 GCC landfilled 146,706 tonnes (see appendix 4). At this rate the average contract price would be c£140

WRAP Pre-2000 EfW £58 + transfer of £12.71	£70.71	87%	£10,373,581	£8,991,610
Best Alternative – Target Price for Local R4C Type Facility. (no net transfer cost)	£55	138%	£8,068,830	£11,296,361

On a current pricing basis the contract represents a significant increase in cost to the Council which will have an immediate adverse impact on budgets. It is difficult to see why the Council would choose to increase expenditure by £2.7M pa or more, when they could instead achieve significant savings by simply negotiating with alternatives available in the current market. **We estimate that the Council could free up £4.7m per annum (31%) for other services by simply choosing a negotiated arrangement with other neighbouring facilities, rather than contracting to use the UBB facility.**

This saving should increase towards £10M pa if the Council can find ways to move towards the best value achieved in other districts, or the best local alternative as planned by R4C.

Note also that should all districts achieve the levels of recycling recently achieved by Stroud District Council the amount of residual waste in the County would approximately halve, a saving on current costs of around £8M pa. With the incinerator contract's 108,000 tonnes minimum commitment in place, the saving of this improved recycling would be relatively low (£700k), the contract price would still be £15.9M and the average cost per tonne would rise to around £224 - twice current market rates.

5 The Importance of A Competitive Market to Value for Money - Formal complaint to the CMA

A healthy local market for waste treatment and alternatives that avoid waste, is very important and has a fundamental bearing on Value for Money and the long term sustainable economy, in economic, social and environmental terms. This is because it allows more cost effective local solutions to emerge which can reduce the cost to the Council. It also facilitates new business and encourages innovation, which allows environmental and social needs to be better met - a core requirement of sustainable development. Community R4C is committed to stimulating a thriving local circular economy and this needs a fair market to work effectively.

With the aid of the Environmental Law Foundation we have commissioned independent legal work by an eminent barrister²¹ which has concluded that the incinerator contract will create abuse of local market dominance to compromise competition. This is in breach of competition law and on behalf of Community R4C the barrister has submitted a formal complaint to the Competitions and Markets Authority, CMA. This states specifically that the contract will cause

- (1) the foreclosure of competitors/alternative technologies, and*
- (2) the (concomitant) distortion/prevention of technological innovation*

1. **Length of contract** - although not itself anti-competitive, it means that any anti-competitive features in the contract last such a long time that they have a major impact.
2. **Exclusivity** - the incinerator will be the dominating facility for residual waste in the county for years to come and de facto closes down competition
3. **The pricing structure forecloses the remainder of the market.**

Band 1 (base tonnage) - priced at **£146.36** (Indexed) per tonne for a guaranteed 108,000 tonnes per annum

Band 2 - the rest of GCC waste is priced at **£15** (Indexed) per tonne - this is a “discount on price by a factor of 10” on Band 1.

“The pricing structure combines with the assured ‘base tonnage’ to ensure de facto exclusivity (now and during the life of the contract).”

4. **Punitive termination terms** have been put in place that exacerbate/guarantee exclusivity.

Our barrister, Mr Sinclair, has asked us to highlight to you the possible consequences of this complaint, should the CMA find against GCC:

²¹ Duncan Sinclair, 39 Essex Chambers

- A finding of breach of the competition rules (by the CMA or a Court) automatically lead to either the entirety (or any severable parts - though on standard principles I cannot see that the clauses we complain about, being so intrinsic to the contract, could be severed) of the contract being void ab initio
- A finding of breach by the CMA enables it to impose significant financial penalties, to order cessation of the infringement, and is evidence of fact that could be used before a court to obtain damages by any third party able to properly evidence (recoverable) losses.
- In short, the risks (financial and reputational) to the GCC look to be significant.

We have therefore asked GCC act quickly to obtain advice and take action to limit your liabilities; and that you meet urgently with UBB and call a halt to the building works at Javelin Park until this matter is resolved.

6 Conclusion, Recommendations and Next Steps

This report shows conclusively that GCC's contract with UBB offers a very bad deal for council taxpayers:

Independent **legal** review has found that the contract is not compliant with competition law. The pricing structure in the contract, involving huge fixed costs for 25 years and unfair market pricing, has the effect of foreclosing all competition and preventing technological innovation. It also prevents GCC from any future flexibility in responding to changes in the waste market through reduced waste, new technology and anticipated cheaper prices. A complaint has been made to the CMA who may declare the contract void.

The contract acts as a disincentive to waste reduction and further recycling, making it cheaper to burn waste than recycle it. It **contravenes** the statutory obligations of the waste hierarchy as set out in the Government's 2011 Waste regulations.

Modeling from an independent **financial** and market review has found that the contract will cost taxpayers at least an extra **£42.6m** in the first ten years of the contract compared to alternatives currently available.

Cancellation costs are even now only a third of those suggested to councillors in 2013 and are **affordable** through using capital funds already committed as a capital contribution to UBB, and through the sale of land at Javelin Park. Cancellation would 'reuse' committed budgets and would not impact on revenue budgets, thus the £4.69m pa savings would be available to use for GCC other priorities.

There remain serious public health and **environmental** impact concerns with the incinerator that could be entirely avoided with the alternative approach endorsed by CommunityR4C.

Recommendations and next steps:

GCC must re-examine this contract and seriously consider other avenues, before any more public money is wasted. It should call an immediate halt to work on the Javelin Park site to limit financial liability pending CMA & value ruling. It should undertake an independent re-examination of contract and alternatives to find a better, cheaper way of dealing with our waste aligned with the circular economy.

7 Appendices:

[Appendix 1 - Report by Steve Burnett](#)

Analysis of Gloucestershire County Council Payments for Waste Treatment

Stephen Burnett has over 20 years of wide-ranging practical experience as an environmental economist and project analyst. He has recently been supporting some of the UK's largest waste companies as lead financial modeler / joint project manager in their bids for PFI/PPP contracts and project updates post-award. Outside the UK, he has acted as a techno-economic analyst of waste and renewable projects across Europe for the European Investment Bank and Shell. He has also been working independently with various developers in these sectors to help finance their ventures and to establish them commercially. His particular expertise lies in technical, economic and financial appraisal of waste management and renewable energy projects, and the development of business plans for new waste management facilities / services.

[Appendix 2 - report by Vervus Waste Consultants](#)

Analysis of the current waste market

This report looks at:

The costs and capacities of alternative residual waste treatment available in the current market that could be used with immediate effect. The likely future costs and access to residual waste treatment that will/may become available in the coming years as capacity increases and new facilities come online, including predictions, and impact of, over capacity. Forecast diversion levels.

[Appendix 3 - Complaint to Competition and Markets Authority](#)

Complaint submitted on behalf of Community R4C by barrister Duncan Sinclair

[Appendix 4 - Factors Affecting Value for Money](#)

CommunityR4C's evidence to support the main report.