

NOTICE OF MEETING

Cabinet Member Signing

FRIDAY, 9TH JANUARY, 2015 at 14:30 HRS - CIVIC CENTRE, HIGH ROAD, WOOD GREEN, N22 8LE.

MEMBERS: Councillor Claire Kober , Leader of the Council

AGENDA

1. URGENT BUSINESS

The Leader/Cabinet Member will advise of any items they have decided to take as urgent business. Any new items of urgent business accepted by the Chair will be considered under Item 3 below.

2. DELEGATION TO LONDON COUNCILS TRANSPORT AND EXECUTIVE JOINT COMMITTEE FOR ENTERING INTO ARRANGEMENTS WITH THE BRITISH PARKING ASSOCIATION TO PROVIDE THE PARKING ON PRIVATE LAND APPEALS (POPLA) SERVICE (PAGES 1 - 10)

The report seeks approval for the Council to expressly delegate to London Councils Transport and Environment Joint Committee (TEC) the exercise of powers under section 1 of the Localism Act 2011 for the sole purpose of providing a parking on private land appeals (POPLA) service for the Council under contract with the British Parking Association (BPA).

3. NEW ITEMS OF URGENT BUSINESS

To consider any new items of urgent business admitted under item 1 above.

Bernie Ryan
Assistant Director – Corporate Governance
and Monitoring Officer
5th Floor
River Park House
225 High Road
Wood Green
London N22 8HQ

Philip Slawther
Principal Committee Co-ordinator
Tel: 020-8489 2957
Fax: 020-8489 2660
Email: philip.slawther2.@haringey.gov.uk



Haringey Council

Report for:	Cabinet – Leader Signing	Item Number:	
Title:	Delegation to London Councils Transport and Executive Joint Committee for entering into arrangements with the British Parking Association to provide the Parking on Private Land Appeals (POPLA) Service		
Report Authorised by:	Bernie Ryan – Assistant Director of Corporate Governance		
Lead Officer:	Michelle Williams - Corporate Senior Lawyer		
Ward(s) affected: All	Report for Key Decision		

1. Describe the issue under consideration

- 1.1 This report seeks the Leader's approval for the Council to expressly delegate to London Councils Transport and Environment Joint Committee (TEC) the exercise of powers under section 1 of the Localism Act 2011 for the sole purpose of providing a parking on private land appeals (POPLA) service for the Council under contract with the British Parking Association (BPA).

2. Cabinet Member introduction

n/a

3. Recommendations

3.1 That the Leader:

- I. Confirms that the exercise of functions delegated to London Councils TEC to enter into the arrangement with the British Parking Association to deliver the Parking on Private Land Appeals Service were and continue to be delivered pursuant to section 1 of the Localism Act 2011;



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- II. Delegates the exercise of section 1 of the 2011 Act to London Councils TEC joint committee for the sole purpose of providing an appeals service for parking on private land (POPLA) for the British Parking Association under contract; and
- III. Authorises the Assistant Director of Corporate Governance to take all relevant steps to give effect to the matters set out in (i) and (ii) above through a formal variation to the London Council TEC Governing Agreement.

4. Alternative options considered

- 4.1 The option of the Council not taking the actions recommended by London Councils has been rejected as there would remain the risk of legal challenge and, despite the fact that the arrangements were entered into in good faith, it could be found that LCTEC did not have the delegated authority to take the decision to enter into the contract with the BPA to deliver the POPLA service.

5. Background information

- 5.1 POPLA provides an independent resolution for non-statutory parking charges issued by companies to motorists for alleged unauthorised parking on private land, such as for example Council car parks. Its establishment was mandated by central government as part of the Protections of Freedoms Act 2012 and the BPA were asked to provide it.
- 5.2 On 15th March 2012 London Councils TEC agreed that it should bid to provide a POPLA service for the BPA under contract. This was on the basis that the POPLA service would complement the service provided by the Parking and Traffic Appeals Service (PaTAS), which operates an appeals service under the auspices of London Council's for parking enforcement on the highway.
- 5.3 London Councils considered that providing a POPLA service on a cost recovery basis would be in the public interest as a significant proportion of the public affected and inclined to use a POPLA service were likely to come from the Greater London area; additionally it became clear that London Councils TEC was the only interested, qualified bidder. On 14th June 2012, London Councils TEC received a report noting the BPA had agreed a contract for London Councils to provide a full cost recovery POPLA service starting on the 1st October 2012.
- 5.4 POPLA was established in October 2012 by London Councils using the delegated authority conferred upon it by all London Borough Councils under London Councils TEC Governing Agreement. Since its inception POPLA has been provided on a cost recovery basis with therefore no financial burden falling upon London Borough Council's and it is proposed that it will continue in that way until the end of the current POPLA BPA contract in October 2015.



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- 5.5 Following the commencement of the POPLA service, an objection was raised on London Councils consolidated 2012/13 accounts by an interested person claiming that London Councils TEC did not have the legal power to provide the POPLA service.
- 5.6 Price Waterhouse Coopers, the Auditors for London Councils, have obtained advice from the Audit Commission whose view is that the London Local Authorities have the power under section 1 of the Localism Act 2011 (the general power of competence) to provide the POPLA service and that the exercise of this function could be delegated to London Council's TEC. London Councils agree with this conclusion.
- 5.7 There remains however a question over whether London Councils TEC had existing delegated authority under the terms of the London Councils TEC Governing Agreement or whether each individual London Borough Council should have expressly resolved to delegate the exercise of section 1 of the 2011 Localism Act to the London Councils joint committee for the purposes of London Councils TEC's delivery of the POPLA service, with the London Councils TEC Agreement being formally varied accordingly.
- 5.8 London Councils accept that there is room for argument as to whether individual Council's had to state expressly that they agreed that the arrangement with the BPA was pursuant to exercise, by London Councils TEC, of their powers under section 1 of the Localism Act 2011 and they resolved on 11th September 2014 to write to all 33 member Councils asking them to specifically delegate those powers to them for the purpose of entering into the agreement with the BPA to run the POPLA service and to agree a formal variation to the London Councils TEC Governing Agreement. The LCTEC sub committee report of 11th September 2014 is at Appendix 1.
- 5.9 Accordingly, for the avoidance of doubt London Councils have asked the London Borough of Haringey in common with all London Borough Councils to:
 - a. formally confirm that the exercise of functions delegated to TEC to enter into the arrangement with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
 - b. formally resolve to expressly delegate the exercise of section 1 of the 2011 Act to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land under contract with the British Parking Association; and
 - c. take all relevant steps to give effect to the matters set out in (a) and (b) above through a formal variation to the TEC Governing Agreement

6. Comments of the Chief Finance Officer and financial implications



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- 6.1 The Leader's attention is drawn to the fact that an 'objection' to the Council's own Statement of Accounts for 2013/14 in relation to this issue has been raised and is currently being considered by the auditor.
- 6.2 I am of the view, however, that the objection should not influence this decision. Corporate Committee will be kept apprised of developments in this matter as they arise.

7. Comments of the Assistant Director of Corporate Governance and legal implications

- 7.1 Under section 1 of the Localism Act 2011 a local authority has the power to do anything that individuals generally may do. This is known as the general power of competence and applies to things that an individual may do even though they are in nature, extent or otherwise unlike anything the Council may do apart from subsection 1, or unlike anything that other public bodies may do.
- 7.2 There is no specific power to provide the POPLA Service hence it falls under the general power of competence.
- 7.3 Pursuant to Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012, the Council's Executive has power to delegate executive functions to a joint committee of local authorities. In this case the London Councils TEC committee is a joint committee of all London Boroughs and with all other constituent councils by authorising that joint committee to discharge its executive functions with regard to parking on private land, the joint committee can provide a pan-London parking on private land appeals service.
- 7.4 There are no immediate legal implications arising from this report, though failure to effect the delegation may open the Council up to legal challenge that the Council was operating the POPLA service unlawfully. The Council is engaging with the objector to its own accounts but is not treating it a formal objection because he is not a registered elector of Haringey as required under section 16(1) of the Audit Commission Act 1998.

8. Equalities and Community Cohesion Comments

- 8.1 This decision relates to the governance arrangements of the Parking on Private Land Appeals Service (POPLA) and therefore there are no equality implications or risks related to staff or local residents with protected characteristics. An Equality Impact Assessment is therefore not required.

9. Head of Procurement Comments

n/a

10. Policy Implications

n/a



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11. Reasons for Decision

1. This decision is taken at the request of London Councils to avoid any assertion or legal challenge that the London Councils TEC does not have delegated authority to operate the POPLA scheme on behalf of the London Borough of Haringey.
2. To enable the Council to respond to the objection to its accounts.
3. To ensure that the London Borough of Haringey is professionally and ethically maintaining its responsibilities towards the London Councils TEC Governing Agreement by ensuring that delegated decisions are made transparently, legally and are able to withstand public scrutiny.
4. To ensure that London Councils TEC are able to continue to deliver the POPLA service on a full cost recovery basis.

12. Use of Appendices

- 12.1 Item 4; London Councils Transport & Environment Sub Committee report of the 11th September 2014:

13. Local Government (Access to Information) Act 1985

n/a

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London Councils' TEC Executive Sub Committee

TEC Agreement – POPLA Amendment

Item No: 04

Report by: Nick Lester **Job title:** Corporate Director, Services
Date: 11 September 2014
Contact Officer: Nick Lester
Telephone: 0207 934 9905 **Email:** nick.lester@londoncouncils.gov.uk

Summary:

This report seeks the agreement of the TEC Executive to recommend to all councils that they each formally resolve to expressly delegate the exercise of section 1 of the Localism Act 2011 to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract, confirming for the avoidance of doubt that the existing arrangements are and have been delivered on that basis to-date, and that the TEC Governing Agreement be formally varied accordingly. The service has been provided on a cost recovery basis by London Councils since October 2012 and it is proposed that it should continue in this way until the end of the contract period in October 2015. An express delegation of the exercise of section 1 for this purpose by individual councils, and the variation of the TEC Governing Agreement to reflect this, would remove any legal doubt as to TEC's authority to deliver the service and allow London Councils' auditors, PWC, to conclude an outstanding issue in relation to an objection to the accounts.

Recommendations:

Members are recommended to:

- Recommend to all 33 London local authorities that they: formally confirm that the functions delegated to TEC to enter into the arrangement with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011; resolve to expressly delegate the exercise of section 1 of the 2011 Act to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract; and that the TEC Governing Agreement be varied to this end.

Background

On 15th March 2012 TEC agreed that London Councils should provide an appeals service for parking on private land for the British Parking Association under contract. This was on the basis that this would complement the service provided by PATAS which deals with appeals made against parking enforcement on the highway. It was considered at the time that providing the service on a cost-recovery basis would be in the public interest as: restrictions on parking within London on private land would have a direct impact upon London local authorities, their resources and residents; a significant proportion of the public affected and inclined to avail themselves of the POPLA service were likely to come from the Greater London area; and, having regard to those matters, as TEC was the only interested, qualified bidder. On 14th June 2012, TEC received a report to say that the basis for providing such a service had been accepted by the BPA and agreed that a contract should be entered into to provide the service.

The service, known as POPLA (Parking on Private Land Appeals) started on the 1st October 2012 and has since provided the appeals service to more than 25,000 motorists. The service operates on a full cost recovery basis and at no cost to the London Council Tax payer.

An objection was raised on the London Councils consolidated accounts by an interested person (residing within London) that TEC did not have the legal power to provide the service. London Councils' auditors, PWC, have, for some time, been investigating this and numerous other objections submitted by the same individual.

PWC has informed London Councils of legal advice it has had from the Audit Commission on the Commission's view on the power of London Councils to provide the POPLA service. In essence, the Audit Commission advice accepts that the London local authorities have the power under Section 1 of the Localism Act 2011 to provide the service and that the exercise of these functions could be delegated to TEC. London Councils agrees with this conclusion.

The Audit Commission advice, however, questions whether the exercise of those functions has been properly delegated to TEC. The issue turns on whether the Committee could be said: to have existing delegated authority under the terms of the TEC Governing Agreement; alternatively whether it made or confirmed such a delegation by virtue of the decisions it made to provide the service in 2012; or whether each individual authority should have expressly resolved to delegate the exercise of section 1 of the 2011 Act to the joint committee for the purposes of TEC's delivery of the POPLA service with the TEC Agreement being formally varied accordingly.

PWC has asked for London Councils' view on this advice in advance of making a formal determination about the objection. London Councils and its legal advisors remain of the view that the service is currently being delivered by TEC on a lawful basis on behalf of all the participating authorities with their consent and proper authority under the existing terms of the TEC Governing Agreement, and confirmed by the Committee resolving to provide the service in 2012 with these matters having been raised with local authorities prior to those decisions being taken in the normal way in respect of TEC business. However, it is accepted, that there is room for argument as to whether individual councils had to state expressly that they agreed that the arrangement with the BPA was pursuant to exercise by TEC of their powers under section 1 of the 2011.

Next Steps

Taking active and expedient steps to expressly clarify the authority of TEC to deliver the POPLA service is intended to satisfy London Councils' auditors and inform their determination in respect of the objection raised by the interested member of the public on the consolidated accounts for the 2012/13 year. Further, this would help PWC to sign off the TEC and the consolidated accounts for 2013/14 by the statutory deadline.

Accordingly, for the avoidance of doubt and to facilitate a conclusion to the issue with the Auditor PWC and the objector, it is recommended that all authorities be asked to:

- (a) formally confirm that the exercise of functions delegated to TEC to enter into the arrangement with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
- (b) formally resolve to expressly delegate the exercise of section 1 of the 2011 Act to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract; and
- (c) take all relevant steps to give effect to the matters set out in (a) and (b) above through a formal variation to the TEC Governing Agreement

Legal Implications for London Councils

The legal implications are set out in the body of the Report.

Financial implications for London Councils

There are no financial implications for London Councils from this recommendation

Equalities Implications for London Councils

There are no equalities implications for the boroughs or London Councils arising from this report.

