



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;



Haringey Council

- 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.



Haringey Council

- 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



Haringey Council

- 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



Haringey Council

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