

Report of:

Key Decision Report of the Executive Member for Environment		Date 10 December 2014
Delete as appropriate	Exempt	Non-exempt

Appendix 2 of this report is not for publication**SUBJECT: Delegation and Formal Variation London Councils Transport & Environment Committee Governing Agreement: Appeals service for parking on private land.****1. Synopsis**

- 1.1 This report seeks a formal delegation of specific functions concerning the appeals service for parking on private land to the London Council's Transport and Environment Committee in response to a recommendation by the Committee's Executive Sub-Committee.
- 1.2 The report also requests authority to agree associated changes to the Governing Agreement in respect to the Committee.

2. Recommendations

- 2.1 To expressly delegate the exercise of section 1 of the 2011 Act to the LCTEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract.
- 2.2 To authorise the Assistant Chief Executive, Governance and HR to take all relevant steps to give effect to the matters set out above through a formal variation to the LCTEC Governing Agreement.

3. Background

- 3.1 The council has been notified of a decision by the London Council's Transport and Environment Committee Executive Sub-Committee recommending that certain powers be formally and expressly delegated to the LCTEC to remove any legal doubt as to LCTEC's authority to deliver an appeals service for parking on private land for the British Parking Association (BPA), an accredited trade association, under contract.
- 3.2 The Parking on Private Land Appeals service (POPLA) was established by the BPA to enable providers of parking on private land affiliated to an accredited trade association to rely on new provisions in the Protection of Freedoms Act 2012 schedule 4 in respect of enforcement of

parking charges. The service has been being delivered by the LCTEC under contract to BPA since 1 October 2012. The council uses the POPLA service as the final stage in its estate parking enforcement process.

- 3.3 An objection was raised on the London Councils consolidated accounts by an interested person (residing within London) that the LCTEC did not have the legal power to provide the service. London Councils and its legal advisors remain of the view that the service is currently being delivered by LCTEC on a lawful basis under s1 Localism Act 2011 on behalf of all the participating authorities with their consent and proper authority under the existing terms of the LCTEC Governing Agreement.
- 3.4 Further details of the background to this matter are contained in the report considered and agreed by the LCTEC Executive Sub-committee on 11 September 2014.
- 3.5 As indicated in that report, there is room for legal argument as to whether individual councils had to state expressly that they agreed that the arrangement with the BPA was pursuant to exercise by LCTEC of powers under section 1 of the Localism Act 2011. London Councils have therefore asked all the London councils to expressly delegate their powers under that Act for the purpose of providing an appeals service for parking on private land for the British Parking Association under contract.
- 3.6 London Councils have also requested that each council confirms that the exercise of functions delegated to the London Council's Transport and Environment Committee (LCTEC) 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. The legal position will be unaffected by such a confirmation and so it is not proposed that this unnecessary part of the resolution be adopted.

4. Implications

4.1 Financial implications:

The recommendations within this report do not contain any financial implications.

4.2 Legal Implications:

The council has power to deliver the appeals service for parking on private land under s1 of the Localism Act 2011. As this is an executive function the Executive Leader may delegate it to the LCTEC which is a joint committee exercising executive functions.

For the reasons outlined in this report and appendix the decisions the Leader is recommended to take will clarify the authority of LCTEC to deliver the POPLA service.

Additional legal implications are contained in the report in Appendix 1.

4.3 Environmental Implications:

There are no implications arising directly from this report

4.4 Resident Impact Assessment:

There are no implications arising directly from this report.

5. Conclusion and reasons for recommendations

5.1 It is recommended that the Executive agree the recommendations in this report to remove any legal doubt as to the LCTEC's power to deliver the appeals service for parking on private land for the British Parking Association.

Appendices

Report to London Councils' Transport and Environment Committee Executive Sub-Committee

Background papers: (available online or on request)

Final report clearance:

Signed by:

Executive Member for Environment and Regeneration	Date
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Received by:

Head of Democratic Services	Date
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Report Author: Debra Norman
Tel: 020 7527 6096
Email: debra.norman@islington.gov.uk

I have today decided to take the decisions set out in paragraph 2 above for the reasons set out in paragraph 3.

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Cllr. Richard Watts, Leader of the Council

Date

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.

