

## CABINET

16 February 2015

The Chair will be asked to decide if this report can be considered at the meeting under the provisions of Section 100B(4)(b) of the Local Government Act 1972 as a matter of urgency in order to confirm arrangements for the discharge of functions by London Councils and to minimise the risk of legal challenge.

<b>Title:</b> Pan-London Parking Appeals Service on Private Land ('POPLA') – Delegation to London Councils' Transport and Environment Committee	
<b>Report of the Cabinet Member for Crime and Enforcement</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> None	<b>Key Decision:</b> No
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<b>Accountable Divisional Director:</b> Fiona Taylor, Head of Legal and Democratic Services	
<b>Accountable Director:</b> Chris Naylor, Chief Executive	
<b>Summary</b>  The Council has been notified of a decision by London Councils' Transport and Environment Committee (LCTEC) 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.  This report seeks a formal delegation of specific functions concerning the appeals service for parking on private land to LCTEC and requests authority to agree associated changes to the Governing Agreement in respect to the Committee.	
<b>Recommendation(s)</b>  The Cabinet is recommended to:  (i) Formally confirm that the functions delegated to London Councils' Transport and Environment Committee (LCTEC) to enter into the arrangements with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;  (ii) Delegate the exercise of section 1 of the Localism Act 2011 to LCTEC for the purpose of providing an appeals service for parking on private land under contract on a full cost recovery basis;  (iii) Agree the amendment of the LCTEC Governing Agreement to this end; and	

- (iv) Authorise the Head of Legal and Democratic Services to sign, execute and return the Memorandum of Participation on the Council's behalf.

### **Reason(s)**

Cabinet is requested to make the necessary delegations and decisions to allow London Councils to continue the operation of a Pan-London appeals service for parking on private land under a contract with the British Parking Association.

## **1. Introduction and Background**

- 1.1 On 15 March 2012 LCTEC agreed that London Councils should provide an appeals service for parking on private land. This was to be provided to the British Parking Association on a full cost recovery basis. London Councils regarded POPLA as complementing the service provided by PATAS (Parking and Traffic Appeals Service) which deals with appeals made against parking enforcement on the highway.
- 1.2 LCTEC tendered for the work. As the only interested and qualified bidder, a five-year contract was awarded and the service known as POPLA started on 1 October 2012 and has since provided an appeals service to over 25,000 motorists.
- 1.3 London Councils regards this as in the public interest in that a significant proportion of the public affected and likely to avail themselves of POPLA would come from the Greater London area.

## **2. Proposal and Issues**

- 2.1 An objection was raised on the London Councils' consolidated accounts by an interested person (residing within London) that LCTEC did not have the legal authority to provide the service. London Councils' auditors PWC have been investigating this and other objections submitted by the same individual.
- 2.2 PWC has received legal advice from the Audit Commission 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 LCTEC. London Councils agrees with this conclusion.
- 2.3 The Audit Commission advice however questions whether the exercise of those functions has been properly delegated to LCTEC. London Councils and its legal advisors remain of the view that the service is currently being delivered by LCTEC on a lawful basis on behalf of all participating authorities with their consent and proper authority under the existing terms of the LCTEC 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 decision being taken in the normal way in respect of LCTEC business.
- 2.4 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 LCTEC of their powers under section 1 of the Localism Act.

- 2.5 For the avoidance of doubt, LCTEC Executive Sub Committee agreed on 11 September 2014 and endorsed by the Chief Executives' London Committee on 18 September 2014 that each individual borough would be asked to take the decision to:
- formally confirm that the functions delegated to London Councils' Transport and Environment Committee (LCTEC) to enter into the arrangements with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
  - expressly delegate the exercise of section 1 of the Localism Act 2011 to LCTEC for the purpose of providing an appeals service for parking on private land under contract on a full cost recovery basis; and
  - amend the LCTEC Governing Agreement to this end;
- 2.6 This would enable the issue of the objections to the London Councils' accounts to be settled. The delegation would also put beyond doubt the legality of POPLA.

### **3. Options Appraisal**

- 3.1 Should Cabinet decide not to support the continuation of POPLA, this could put its ongoing operation across London at risk.

### **4. Consultation**

- 4.1 London Councils' has consulted with and sought the approval of all London local authorities on this matter.

### **5. Financial Implications**

Implications completed by: Jonathan Bunt, Chief Finance Officer

- 5.1 There are no financial implications for the Council. The POPLA service operates on a full cost recovery basis.

### **6. Legal Implications**

Implications completed by: Fiona Taylor, Head of Legal and Democratic Services

- 6.1 The legal implications are set out in the body of the report.

### **7. Other Implications**

- 7.1 **Risk Management** - By making the delegation the Council is minimising the risk of legal challenge and is ensuring the continuation of the Pan London service.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:** None