

	<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET</p> <p align="center">2 FEBRUARY 2015</p>
<p>DELEGATING POWERS TO LONDON COUNCILS</p>	
<p>Report of the Cabinet Member for Environment, Transport & Residents Services - Councillor Wesley Harcourt</p>	
<p>Open Report</p>	
<p>Classification: For Decision</p> <p>Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Executive Director: Nigel Pallace, Executive Director of Transport & Technical Services</p>	
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1. EXECUTIVE SUMMARY

- 1.1. This report seeks approval for the London Borough of Hammersmith & Fulham (LBHF) to delegate general wellbeing power under Section 1 of Localism Act to the London Councils Transport and Environment Committee to enable it to arrange appeal provisions under POPLA.

2. RECOMMENDATION

- 2.1. That LBHF sign the London Councils Transport and Environment Committee variation agreement attached as Appendix 1, delegating general wellbeing power under Section 1 of Localism Act 2011 to enable it to arrange appeal provisions under POPLA.

3. REASONS FOR DECISION

- 3.1. London Councils' Transport and Environment Committee agreed on 15 March 2012 that London Councils should provide the Parking on Private Land Appeals (POPLA) service under contract to the British

Parking Association (BPA) for a period of three years. London Councils are now seeking individual delegation from all individual member authorities to provide this service to enable the issue of an objection to the London Councils' accounts to be settled. London Councils' Transport and Environment Executive Sub-Committee agreed that all boroughs should provide this delegation at their meeting on 11 September 2014.

4. BACKGROUND

- 4.1. On 15 March 2012 London Councils' Transport and Environment Committee agreed that London Councils should provide an appeals service for parking on private land for the British Parking Association (BPA) under contract. This was on the basis that this would complement the service provided by the Parking and Traffic Appeals Service (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 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.

- 4.2. On 14 June 2012, London Councils' Transport and Environment Committee were informed that the basis for providing such a service had been accepted by the British Parking Association (BPA) and agreed that a contract should be entered into by London Councils' to provide the service.
- 4.3. The service, known as POPLA (Parking on Private Land Appeals) started on the 1 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 Councils' Tax payer. POPLA started at the same time as the Protection of Freedoms Act 2012 came into force, which prohibited the immobilisation and clamping of vehicles on private land without lawful authority.
- 4.4. An objection was raised on the London Councils consolidated accounts by an interested person (residing within London) that London Councils did not have the legal power to provide the service. London Councils' auditors have been investigating this and numerous other objections submitted by the same individual.
- 4.5. London Councils' auditors 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 London Councils' Transport and Environment Committee. London Councils agrees with this conclusion.

- 4.6. The Audit Commission advice, however, questions whether the exercise of those functions has been properly delegated to London Councils. The issue rests on whether the Committee could be said to have existing delegated authority under the terms of the London Councils' Transport and Environment Committee Governing Agreement; or 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 London Councils' delivery of the POPLA service with the London Councils Transport and Environment Committee Agreement being formally varied accordingly.
- 4.7. London Councils' auditors have asked London Councils' for their 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 London Councils on a lawful basis on behalf of all the participating authorities with their consent and proper authority under the existing terms of the London Councils Transport and Environment Committee 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 London Councils Transport and Environment Committee business. However, London Councils accepts that there is room for argument as to whether individual councils had to state expressly that they agreed that the arrangement with the British Parking Association (BPA) was pursuant to exercise by London Councils Transport and Environment Committee of their powers under Section 1 of the Localism Act 2011.
- 4.8. On 11 September 2014 London Councils' Transport and Environment Executive Sub-Committee agreed that all boroughs should:
 - (a) formally confirm that the exercise of functions delegated to London Councils' Transport and Environment Committee 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 Localism Act 2011 to London Councils' Transport and Environment Committee for the sole purpose of providing an

appeals service for parking on private land for the British Parking Association under contract.

5. PROPOSAL

- 5.1. It is proposed that LBHF sign the London Councils Transport and Environment Committee variation agreement attached as Appendix 1 which will:
- (a) formally resolve to expressly delegate the exercise of section 1 of the Localism Act 2011 to London Councils' Transport and Environment Committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract.
 - (b) formally confirm that the exercise of functions delegated to London Councils' Transport and Environment Committee 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;

6. OPTIONS AND ANALYSIS

- 6.1. The options are:

- (I) To delegate powers to London Councils as outlined in Section 5**
- (II) To not delegate powers to London Councils as outlined in Section 5**

7. LEGAL IMPLICATIONS

- 7.1. The Council has powers under Section 1 of the Localism Act 2011 to permit it for arranging appeal under POPLA for welfare of the residents using private parking facilities and such power can be delegated by the Council to the Environmental and Technical Transport Committee as is being recommend.
- 7.2. The Bi-Borough Director of Law, Tasnim Shawkat (tel. 0208 753 2700), accordingly endorses the recommendation.

8. FINANCIAL AND RESOURCES IMPLICATIONS

8.1. There are no financial implications for LBHF arising from this report.

9. EQUALITY IMPLICATIONS

9.1. Not applicable

10. RISK MANAGEMENT

10.1. There are no identified risks to LBHF.

11. PROCUREMENT AND IT STRATEGY IMPLICATIONS

11.1. There are no procurement or IT strategy implications for LBHF.

LOCAL GOVERNMENT ACT 2000 **LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	<p>London Councils Transport and Environment Committee Report (15 March 2012): Item 10 - Proposed Appeals Service in relation to Parking on Private Land http://www.londoncouncils.gov.uk/committees/agenda.htm?pk_agenda_items=4811</p> <p>London Councils Transport and Environment Committee Report (14 June 2012): Item 20 - Independent Appeals Service for Parking on Private Land http://www.londoncouncils.gov.uk/committees/agenda.htm?pk_agenda_items=4922</p> <p>London Councils Transport and Environment Executive Sub-Committee Report (11 September 2014): Item 4 -</p>	<p>Naveed Ahmed/ x1418/ Available online</p>	<p>TTS/ available online</p>

	TEC Agreement - POPLA Amendment http://www.londoncouncils.gov.uk/committees/agenda.htm? pk_agenda_items=5722		
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