



City of Westminster Cabinet Member Report

Meeting or Decision Maker:	<i>Cabinet Member for Sustainability & Parking</i>
Date:	<i>20th December 2016</i>
Classification:	<i>For General Release except for Appendix C of the report which is exempt.</i>
Title:	<i>Parking Services' Delegated Authority Functions</i>
Wards Affected:	<i>All</i>
Key Decision:	<i>Non-key. An entry was included in the Forward Plan of Key Decisions on 05/05/2016, enabling a decision to be made from 03/06/2016</i>
Financial Summary:	<i>This contractual agreement potential will generate new income of £289,094 from 9th January 2017 to December 2019.</i>
Report of:	<i>Stuart Love – Executive Director for City Management and Communities</i>

1. Executive Summary

- 1.1. The London Borough (LB) of Waltham Forest is looking to outsource their Penalty Charge Notice (PCN)-related back office functions. This step is being taken to reduce costs as their service is currently delivered in-house. Through a contract change the LB of Waltham Forest is looking to move its back office functions to NSL, who also currently manage the borough's enforcement contract.
- 1.2. Statutory Guidance for The Traffic Management Act (TMA) 2004 stipulates that the decision-making elements of formal representations should not be contracted out to private companies but should be made by Enforcement Authorities. To comply with this stipulation, the LB of Waltham Forest wishes the decision-making element for formal representations and appeals to still be made

by council officers, specifically by Westminster City Council (WCC) Officers under delegated powers. In Westminster, whilst WCC's Parking back office is contracted out to NSL, the decision-making elements for formal representations and appeals have been retained by WCC and are carried out by WCC Officers who work alongside NSL on-site in their offices in Dingwall, Scotland.

- 1.3. On providing options to LB of Waltham Forest, NSL offered a shared service proposal for outsourcing. In October 2015 the LB of Waltham Forest approached WCC to understand how the WCC model works. It was subsequently agreed that through an intra-authority agreement, WCC Officers could make decisions on formal representations and appeals on behalf of the LB of Waltham Forest.
- 1.4. Whilst NSL will deliver the LB of Waltham Forest's back office function from their Dingwall site, the intra-authority agreement between LB of Waltham Forest and WCC will allow WCC Officers based in Dingwall to make decisions regarding formal representations and appeals, thus satisfying the legal requirements of the decision-making processes and allowing NSL to complete all the other PCN-related back office functions that the legislation allows to be contracted out to private companies.

2. Recommendations

- 2.1. That the Cabinet Member for Sustainability and Parking approves the contract between the LB of Waltham Forest and WCC whereby an inter-authority agreement would delegate the executive decision-making function for formal representations and appeals against LB of Waltham Forest PCNs from LB of Waltham Forest to WCC.

3. Reasons for Decision

- 3.1. Expanding the Westminster model of having a council-employed team based on-site within the contractor's back-office to carry out work on behalf of other London boroughs helps support WCC's medium-term savings plan. It also helps WCC potentially sell on this model further to other interested London boroughs.
- 3.2. Waltham Forest use SiDem as their PCN processing IT system. Through joint working there is opportunity for future WCC cost savings on system improvement and enhancement.

4. Background, including Policy Context

- 4.1. As a result of TMA 2004 requirements, WCC has a Delivery Team of dedicated council officers onsite in Dingwall, co-located with WCC's Parking back office providers NSL. The WCC Delivery Team completes the statutory decision-making functions for formal representations and appeals. The team also completes numerous other tasks with the aim of improving the customer experience, saving costs and building supplier relationships.
- 4.2. In October 2015, the LB of Waltham Forest approached WCC to better understand how WCC's Delivery Team operated. As part of Waltham Forest's work to outsource their back office functions to NSL, a proposal had been suggested that they mirror the model used by WCC. Upon discussion, the possibility of the WCC team carrying out the work on behalf of the LB of Waltham Forest under delegated authority was then investigated and pursued to the point where Counsel advice was sought and a legally compliant operating model was agreed.
- 4.3. Legal advice instructed that this arrangement can be achieved by the LB of Waltham Forest entering into an Inter-Authority Agreement (IAA) with WCC to formalise the delegation, as well as by varying their existing NSL Parking contract
- 4.4. The TMA legislation for processing challenges to PCNs requires the decision-making element for a formal representation or appeal to be made by an Enforcement Authority. Whilst this prohibits the functionality being contracted out to a private company, it does not preclude it from being carried out under delegated authority by a separate enforcement authority to that which issued the PCN.

5. Proposed Working Arrangements

- 5.1. The WCC Delivery Team in Dingwall will make a decision on the LB of Waltham Forest's formal representations and appeals, under delegated authority.
- 5.2. As part of their role, the WCC Delivery Team will also manage the operational relationship with NSL for the subsequent processing activity, effectively as a contract manager.
- 5.3. The WCC Delivery Team Manager will specifically:
 - 5.3.1. Line manage the Westminster officers completing the delegated work for the LB of Waltham Forest.
 - 5.3.2. Be accountable for Service Level Agreement (SLA) delivery of WCC officers.

- 5.3.3. Provide feedback to NSL/LB of Waltham Forest regarding quality and issues captured by officers.
 - 5.3.4. Liaise with the LB of Waltham Forest to resolve queries or escalate complaints etc.
 - 5.3.5. Day-to-day operational management of the contract including Key Performance Indicators / SLAs.
 - 5.3.6. Analyse data and trends to drive innovation and cost savings.
 - 5.3.7. Work with NSL to meet LB of Waltham Forest's requirements.
- 5.4. The residual Waltham Forest team (still based in the borough) would exercise the overall client function of both Westminster and NSL, including monitoring overall levels of quality and ensuring that both parties are delivering the service as agreed.
 - 5.5. The complaints function would be retained by the Waltham Forest team based in the borough as part of that quality control function. WCC would work closely with the team to understand where improvements could be made.
 - 5.6. The LB of Waltham Forest formal representation and appeal work will be managed by the WCC team alongside WCC's own work.
 - 5.7. In addition, the arrangement would be subject to periodic formal review as part of robust client management, with appropriate break/exit points.

6. Financial Implications

6.1. The LB of Waltham Forest has provided volumes for both formal representations and appeals that would be required to be worked by WCC officers under the delegated authority (see table below).

Formal Rep Volume	Appeal Volume	WCC Council Officer Band 2 (Scotland)	WCC Council Officer Band 3 - Team Manager (Scotland)
29,579	1,545	£23,531.04	£31,224.96
Officer FTE Required	Officer FTE Costs	0.75 TM Cost	Total Cost of 4.8 Officers and 0.75 Team Manager
3.1	£72,946.22	£23,418.72	£96,364.94

6.2. There are new Controlled Parking Zones being proposed for delivery by the LB of Waltham Forest which could increase PCN volumes. This PCN increase; has been built into figures where possible and future forecast provided.

6.3. The contract includes a volumetric reviews which will allow any increases (or decreases) to support FTE changes to be funded. Cost increases will be applied retrospectively.

6.4. There may be a requirement for further recruitment in line with FTE changes. Any extra recruited FTE will be funded by the LB of Waltham Forest.

6.5. Based on given volumes the FTE required to support the LB of Waltham Forest workload is 3.1 officers (band 2) and 0.75 team manager (band 3)

6.6. A blended solution will enable the 3.1 officers (FTE) and 0.75 Team Manager to be delivered from the existing WCC Delivery Team in Dingwall. Some work currently undertaken by Officers in Dingwall may move to other Parking Services officers as a result of the agreement.

6.7. Recruitment has taken place into a new Band 3 role (from an existing band 2 post) to fulfil the Team Manager position.

- 6.8. The vacant band 2 position will be not be recruited into at this time and the post will be left vacant. Recruitment into this post may take place at a future date subject to performance and volumetric reviews.
- 6.9. This approach will enable WCC to fully understand options for future service delivery models and/or shared service arrangements.
- 6.10. The decision to extend the NSL enforcement contract for two years, from December 2017 to December 2019, was made by the LB of Waltham Forest Cabinet on 8 November 2016, subject to agreement of commercial terms. The terms are to be agreed by the Executive Director of Neighbourhoods, in consultation with Cllr Loakes, at a public decision meeting in the near future.
- 6.11. The WCC Business Processing and Technology back office contract ends in November 2018 with an option to extend up until November 2020. It has been agreed that Westminster will support the LB of Waltham Forest until the end of the December 2019 from the Dingwall site regardless of the Business Processing and Technology re-let and a letter from the Executive Director of City Management & Communities has been sent to Waltham Forest confirming this.
- 6.12. This will generate additional WCC income of £289,094 from 9th January 2017 to end December 2019.

7. Legal Implications

- 7.1. Parking enforcement and associated functions are carried out by enforcement authorities under the TMA 2004 and associated regulations including the Civil Enforcement of Parking Contraventions (England) General Regulations 2007 and the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007.
- 7.2. Paragraph 10.13 of The Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions under The TMA 2004 states that "Enforcement authorities should not contract out the consideration of formal representations".
- 7.3. The LB of Waltham Forest has the power to delegate its functions to another local authority under section 9EA of the Local Government Act 2000, the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 (in respect of executive functions) and section 101 of the Local Government Act 1972. The Intra Authority Agreement is attached as appendix B.

7.4. These legal implications have been prepared by the report author based on advice of external solicitors and the opinion of Mr Edward Capwell counsel of 11 KBW which can be found at appendix C. A Jaskowiak, Senior Solicitor Shared Legal Services.

8. Consultation

8.1. No consultation is required on WCC's part as a result of this proposal.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Cathryn Scott (Contract Manager), cscott1@westminster.gov.uk

BACKGROUND PAPERS:

List background papers here. Appendices to be included with the report as Appendix B, C, D etc. Background papers available elsewhere (e.g. on WCC website) can just be listed.

NB: For individual Cabinet Member reports only

For completion by the **Cabinet Member for Sustainability and Parking**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled *Parking Services' Delegated Authority Functions* and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Sustainability and Parking

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A

Other Implications

1. Resources Implications - None
2. Business Plan Implications - None
3. Risk Management Implications – There may be a reputational risk to WCC should a challenge be brought against the LB of Waltham Forest delegated authority. This has been mitigated through the counsel advice.
4. Health and Wellbeing Impact Assessment including Health and Safety Implications - None
5. Crime and Disorder Implications - None
6. Impact on the Environment - None
7. Equalities Implications - None
8. Staffing Implications – None
9. Human Rights Implications - None
10. Energy Measure Implications - None
11. Communications Implications – There will be a requirement for WCC to inform impacted parties, such as London Tribunals.

Appendix B

Intra Authority Agreement

Appendix C

Counsel's legal advice (exempt)