



HYNDBURN
 The place to be
 an excellent council

URGENT CABINET DECISION

B16 EXECUTIVE URGENCY PROCEDURE

- (a) Urgent executive decisions which cannot be delayed until the next meeting of the executive or executive committee (as the case may be) may be taken by the relevant Chief Officer after consultation with the following:
- Leader
 - a Deputy Leader
 - Relevant portfolio holder (if any) or any other Cabinet member if there is no relevant portfolio holder in respect of the decision in question
 - The Mayor, pursuant to Rule C15 of the Overview and Scrutiny Procedure Rules [i.e. to agree that it is exempt from call-in].
 - Plus one of the following:
 - the Chief Executive; or
 - the Executive Director (Resources) (in the absence of the Chief Executive, or if the Chief Executive is the decision taker); or
 - the Monitoring Officer (in the absence of the Chief Executive or Executive Director (Resources), or if one is absent and the other is the decision taker).
- (b) In the absence of the Leader, Deputy Leader or portfolio holder (if any) the consent of another Cabinet member will be required.
- (c) The urgent decision, the reason for it and the reason for the use of the urgency procedure must be reported to the next meeting of the executive or executive committee (as the case may be).

HBC Constitution, Executive Procedure Rules

Subject: Truck Cartel - Potential Compensation Claim

Report Author: Steve Riley – Executive Director (Environment)

Background:

In July 2016, the European Commission found that a number of truck makers had colluded on truck pricing and on passing the costs of compliance with stricter emissions rules on to their customers. This could have amounted to an additional €14,000 per vehicle.

Following this, the Local Government Association (LGA) was approached by a number of litigator funders who are interested in funding a claim on behalf of councils subject to merit and quantum. Anyone affected by anti-competitive behaviour may seek damages and the LGA were happy to support Councils in exploring the merit, viability and funding by litigation funders.

In April 2017 the LGA asked councils to declare an interest in the LGA exploring the possibility of a 'waste and potentially other large vehicle collective action' on their behalf. Following consultation with the Portfolio Holder, the Council subsequently gave notice they wished to take part in exploring the possibility of a collective action.

In May 2017, the LGA informed councils that they had expanded the scope of this initial investigative exercise to include all vehicles, (not simply refuse collection vehicles) which fit into the following criteria;

- Purchased or leased between 1997 and 2011;
- Use 'medium to heavy trucks' (weighing over 6 tonnes) as a component element where;
- These trucks are manufactured by MAN, Volvo Group (comprising Volvo Trucks and Renault Trucks), Daimler, Iveco and Daf.

Concerns were raised by a number of council around that lack of detailed information that they could provide and how this would affect their claim and any financial liability.

The LGA has been at pains to reassured councils that a lack of information now should not deter an authority from participating in the initial stages of the claim given that it is fully funded and that a response from the lawyers confirmed;

"We do not foresee it being a problem. Many councils have some information and we will undoubtedly be able to obtain more, whether from them, Freedom of Information responses, third parties with whom they have dealt and/or the defendants. Any shortcoming in a Council's data is likely to go much more to the amount of damages they are able to recover than to the outright viability of their claim. I think it most unlikely that we will get to a point where we just don't think we can sustain their claim at all. If, however, that looked likely by the time we came to serve the claim then we would release them from the group without liability at that point".

The Council has received lots of advice about costs, with the LGA considering the financial risks to Council's as low and that Hyndburn will just have to pay the VAT element of the claim but this can be reclaimed. However;

- that once the Council has signed up we have little ability to withdraw from the litigation without incurring penalty costs.
- that the Council will have a chance to withdraw without incurring a penalty before litigation is issued in that the LGA and the legal advisor assess the Council's prospects of success maybe low e.g. due to limited evidence.
- that the litigation is being funded externally by a finance company and that the solicitor is acting on a 'no win no fee' basis, so part of our damages will go to paying the solicitor and for the finance provided, but the amount we have to pay is capped at the amount of compensation we receive. So the Council could win and get nothing, although this is very unlikely.

Reason for Urgency:

The Council has to indicate to the LGA that it still wishing to proceed before the end of April 2020.

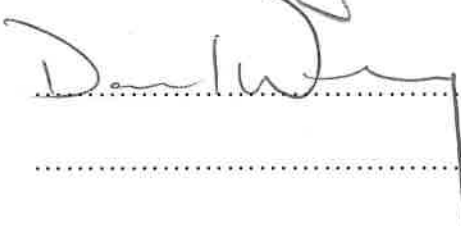
Recommendation:

To authorise the Executive Director (Environment) to have conduct of the truck cartel litigation, following consultation with the Executive Director (Legal & Democratic Services), including power to agree the issue and settlement of legal proceedings.

Date of Decision (when finally approved):

5/5/2020

Signatures of Members and Officers:

Chief Officer	Steve Riley	Approve
Leader	Received by email	Approve / Do not approve
Deputy Leader	Received by email	Approve / Do not approve
Portfolio Holder	Approve / Do not approve
Mayor * * to exempt from call-in	Received by email	Approve / Do not approve
Chief Executive, <u>or</u>		Approve / Do not approve
Executive Director (Resources), <u>or</u>	Approve / Do not approve
Monitoring Officer	Approve / Do not approve

