

NOTICE OF MEETING

CABINET MEMBER SIGNING

Thursday, 7th May, 2020, 11.45 am

Member: Councillor Joseph Ejiofor – Leader of the Council

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

2. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

- (i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
- (ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct

3. PROCUREMENT OF CONTINGENCY PPE (PAGES 1 - 14)

The Chair of Overview and Scrutiny has further agreed that the call-in procedure shall not apply to this urgent decision. This is because the decision is urgent and any delay in implementation caused by the call-in procedure would seriously prejudice the Council's or the public's interests due to the COVID-19 pandemic, there is a high and increasing demand for PPE and it is of vital importance that the Council access supply routes to ensure that the health, safety and wellbeing of Haringey staff, care providers and our residents. This is in accordance with Part 4, Section H, and Paragraph 18 (a) and (b) of the Council Constitution.

4. NON KEY - ATTENDANCE AT MEETINGS OF AN AUTHORITY BY A MEMBER (PAGES 15 - 18)

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Tuesday, 28 April 2020

Report for Leader of the Council

Title: Procurement of Contingency PPE

Report authorised by Beverley Tarka, Director of Adults and Health

Lead Officer: Will Maimaris, Director of Public Health
Joe McBride, Transformation Manager

Ward(s) affected: n/a

**Report for Key/
Non-Key Decision:** Key

1. Describe the issue under consideration

- 1.1 As we face the current global pandemic of Covid-19 the demand for Personal Protective Equipment (PPE) has never been greater. There is a clear need to ensure that those on the frontline in responding to Covid-19 are provided with the critical PPE they need to do their job safely.
- 1.2 To date, the Council has been procuring stocks of PPE through our existing suppliers as well as a range of new suppliers to meet the additional demand. With high demand globally, and the expectation of a prolonged crisis, it is essential that we seek additional procurement methods.
- 1.3 Boroughs across London have been working closely together to respond to the current crisis. Through these existing relationships, we want to take advantage of our shared buying power to procure a significant volume off contingency PPE directly from suppliers to ensure our frontline staff are protected in the short-to-medium term.
- 1.4 The London Borough of Ealing (LBE) has established a framework for PPE supplies that can be accessed by all London Boroughs, including Haringey Council, through signing a Memorandum of Agreement (MoA). The Council's Contract Standing Orders (CSO) 7.01 b) make provision for the Council to procure goods, works or services via a framework.
- 1.5 The LBE framework requires PPE orders to be processed via a sub-regional 'hub' borough. The hub borough in North Central London (NCL) is London Borough of Camden (LBC) for Haringey related orders. LBC will process payments on behalf of the Haringey, which the Council will reimburse back to LBC.

2. Recommendations

- 2.1 For the Council to enter into the pan-London MoA (a draft of which is attached as Appendix 1) with the London Borough of Ealing and other London Boroughs to access and procure contingency supplies of PPE through a supply framework.
- 2.2 For delegated authority to be granted to the Director of Adults and Health to implement the arrangement for the pan-London MoA including approving any further amendments and entering into and signing off the MoA and any other agreement between the Council and the participating London Boroughs.
- 2.3 For the allocation of £350,000 from the General Fund Emergency Response Contingency to cover the estimated costs of procuring contingency PPE for the period to end of June 2020.

3. Reasons for decision

- 3.1 We have a responsibility to ensure that staff who need PPE have access to the right equipment to enable them to do their jobs safely. It is imperative that we continue to prioritise those who are most in need of PPE supply, particularly our partners across the community care system and our own staff who require PPE to carry out their critical activities.
- 3.2 Our existing supply lines, however strained, supported by emergency deliveries of PPE from central government, have thus far been sufficient to cope with our levels of demand. The emergency stock is limited and intended for use by all London Resilience Forum (LRF) partners including local authorities, social care and primary care providers. The list of organisations able to access the emergency continues to grow.
- 3.3 The following steps are set out for ordering of PPE based on the latest guidance we have received from government:
 1. Please continue to try and secure PPE supplies through your usual supply routes. We know stocks are being delivered through everyday orders and this should continue in the first instance.
 2. Make contact with other Borough or partner colleagues and support each other through mutual aid if this is possible
 3. Only order through the emergency supply route if you determine that your need is urgent (less than 3-days PPE supply remaining) and having exhausted all other options.
 4. If there is no emergency supply available then each of the five Sustainability and Transformation Partnerships (STP) across London have an escalation process for emergency supplies of PPE and have been distributing stock to local authorities and care providers over the past few weeks. There is a sub-regional local authority representative working in partnership with each STP; please make contact with them if you have not already done so.

- 3.4 The pan-London approach offers us an additional route to secure the vital PPE we need for ourselves and for our social care providers.
- 3.5 As boroughs, our role has changed during this crisis and we find ourselves sourcing, distributing, and using our own stock of PPE to support care providers. It is essential we continue to source PPE ourselves as resourcefully as possible until the national supply of PPE is able to meet demand.
- 3.5 By ordering together with other London Boroughs, we stand to benefit from significant economies of scale by purchasing stock in bulk. This stock is intended to act as a contingency for local authorities and providers who cannot access stock through business as usual supply chains.
- 3.6 The need to progress this alternative route of pan-London PPE stock is clear and growing daily. The first order of stock is due for submission to the supplier on 29th April 2020 and is intended to provide sufficient resilience for a six-week period. The procurement route would remain open to boroughs for future orders should there be an ongoing shortfall and emergency need.
- 3.7 West London Alliance (WLA) has previously been successful in utilising this model on a sub-regional basis and have taken delivery of quality and cost-effective PPE from the supplier. Our intention now is to scale this existing model up to a regional level.
- 3.8 The MoA has been drafted by Haringey and our legal advisers and circulated to all London boroughs. It provides confidence to LBE, who will be acting as the commissioning organisation, that they bear no financial risk or liability for orders placed by other London boroughs. The agreement also confirms that all orders and payment will be coordinated on a sub-regional basis using existing partnerships with one borough, or 'hub', allocated as a PPE lead for that area.
- 3.9 There is a clear need to take an evidence-based approach to the responsible procurement of PPE at this time of critical need. We are tracking our daily PPE usage and to provide sufficient contingency of equipment, and reassurance to our providers, we have scaled this usage to a six-week level.
- 3.10 Current daily stock usage is listed below with numbers scaled up for future emergency provision over six weeks (42 days):

Service Type	Client Numbers	Estimated Number of PPE item per day per clients	Usage per day	10%	20%	35%
Residential care	503	8	4024	402.4	804.8	1408.4

Nursing home	188	8	1504	150.4	300.8	526.4
Extra care	122	3	366	36.6	73.2	128.1
Home care	1021	3	3063	306.3	612.6	1072.05
Supported living	485	1	485	48.5	97	169.75
DP	587	1	587	58.7	117.4	205.45
Total numbers	2906		10029	1002.9	2005.8	3510.15
42 days				42121.8	84243.6	147426.3
Surgical masks						147426.3
FFP3 masks						6000
Aprons						147426.3
Gloves						147426.3
Goggles						6000
Full gowns						691
Hand sanitiser (small)						6000
Waste sacks						6000

3.11 Funding of £350k will be sufficient to meet the immediate six-week contingency need for PPE and will allow us to draw down on any future pan-London orders should there be disruption to our existing supply routes.

3.12 The PPE is for is for high need organisations outside of the NHS supply chain who have the highest need clinically, including:

- Those who currently have close, unavoidable contact with confirmed or suspected Covid-19 cases, including highly vulnerable groups. For example, adult social care (including care homes and home care), hospices and local authority adult social care services for Covid-19 vulnerable groups.
- Other services that would have a high priority need for PPE include General Practitioners, children's homes, secure children's homes, children's social care services in local authorities, prison officers, police and funeral directors.

3.13 Boroughs across London will be required to support their social care providers in the current climate of unprecedented demand for PPE. By securing this pan-London contingency stock we are making a clear commitment to our social care staff and residents that we are committed to ensuring the safest provision of care to all our providers during this period of uncertainty.

4. Alternative options considered

4.1 Not to take part in the pan-London procurement scheme. This was not considered, as our current supply lines are under increasing strain and a contingency baseline is needed to provide ongoing support to partners.

- 4.2 Continue with business as usual supply chains. With the global demand for PPE resulting in acute shortages of equipment it was considered prudent to take part in the pan-London scheme via LBE and their existing supply chain who have a more robust and cost-effective route to market.

5. Background information

- 5.1 On 31 December 2019, the World Health Organization (WHO) was informed of a cluster of cases of pneumonia of unknown cause detected in Wuhan City, Hubei Province, China.
- 5.2 On 12 January 2020 it was announced that a novel coronavirus had been identified in samples obtained from cases and that initial analysis of virus genetic sequences suggested that this was the cause of the outbreak. This virus is referred to as SARS-CoV-2, and the associated disease as COVID-19.
- 5.3 As of 19 April 2020, more than 2 million cases have been diagnosed globally, with over 159,000 fatalities. In the 14 days to 19 April, over 1.1 million cases were reported European Centre for Disease Prevention and Control.
- 5.4 COVID-19 has presented fast-moving and evolving challenges to the NHS, care providers and Local Authorities throughout the country. As with any new strain of virus, the guidance for healthcare workers and health and social care services is being developed and updated frequently. This reflects the need to take a view of the global situation as well as the situation across the UK.
- 5.5 The supply and quality of PPE for healthcare workers has been the focus of national media attention. It is essential that we seek to protect all our frontline workers so that they can provide the best care possible to anyone suffering from, or showing symptoms of, the disease.
- 5.6 To address our urgent needs, we have been working to secure an interim provision of PPE, on a pan-London basis, to provide boroughs with contingency supplies of equipment for a six-week period while Government's e-commerce system 'Clipper' is mobilised.
- 5.7 West London Alliance (WLA) has been successful in the procurement of cost efficient and effective PPE for their sub-regional hub. Their supply chain has additional capacity that can be utilised by can accommodate the PPE requirements of all London Boroughs for the six-week period agreed. London Borough of Ealing (LBE) as the lead supplier has offered to act as a conduit to facilitate the PPE supply for all London Boroughs.

- 5.8 A Memorandum of Agreement (MOA) has been drafted for all participating boroughs setting out the terms to secure PPE via this new supply route. Boroughs are asked to submit requests for PPE via LBE on a sub-regional basis in accordance with their existing Strategic Transformation Partnership (STP) relationships. Designated PPE leads or 'hubs' within each sub-region (Camden, Sutton, Hammersmith & Fulham, Ealing and Southwark) will coordinate requests for their sub-regional partners, arrange payment and the collection or delivery of stock based on existing local relationships.
- 5.9 This new route is entirely voluntary and if the designated sub-regional leads choose not to participate in the scheme, another Borough can act as the lead sub-regional partner to secure PPE via this pan-London route. The need for boroughs to take part on a partnership basis, sub-regional or otherwise, is based on the reduce the burden on the supply chain of payments with all individual boroughs. WLA have used this model previously and are keen to do so for future supplies.

6. Contribution to strategic outcomes

- 6.1 The Borough Plan sets out overarching priorities and advocates for the development of strong communities where people look out and care for one another. As such, this report aligns most closely to the 'People' theme.
- 6.2 The proposal also specifically assists our stated aim to ensure that carers are supported and valued. The sourcing of appropriate PPE to allow carers to fulfil their duties is a fundamental process of support.

7. Statutory Officers comments (Chief Finance Officer, Head of Procurement), Assistant Director of Corporate Governance, Equalities)

7.1 Finance

- 7.1.1 The Government's Budget of 11 March 2020 announced £1.6bn un-ringfenced emergency funding to Local Authorities. This was followed by an announcement of a further £1.6bn on 18 April 2020. To date the government has notified the Council that it will receive £8.094m of this funding and the COVID-19 Financial Intervention and Measures Report of 6th April 2020 agreed that this be placed in an Emergency Response Contingency in the Council's General Fund budget.
- 7.1.2 It is recommended that £350,000 cost of the PPE set out in this report be met from this contingency. Any further requirements above this value will need to be subject to a further report.
- 7.1.3 It was also noted in the COVID-19 Financial Intervention and Measures Report of 6th April 2020 that, based on our forecasts, this grant funded contingency will not as it stands be adequate to cover all the Covid19 funding implications on the

Council. The report described the expectations of this Council and the local authority sector regarding further grant awards.

7.2 Procurement

7.2.1. The Head of Procurement has been consulted in drafting the LB Ealing Pan-London PPE Memorandum of Agreement (MoA).

7.2.2. Strategic Procurement can confirm procuring PPE via the LB Ealing Framework will be in accordance with CSO 7.01 b).

7.2.3. LB Ealing have established a PPE framework under Regulation 32 of the Public Contract Regulations. Entering the MoA provides the relevant authority for LB Ealing to place orders on behalf of the Hub Boroughs and their subsequent individual boroughs within the region (i.e. Haringey).

7.2.4. Strategic Procurement confirms the procurement of these goods straddles several of the Public Contract Regulations:

- The use of Regulation 33 where LB Ealing have established a framework that Haringey can commission PPE from in accordance with the 'call off' terms; in this case, the call off terms are stated within the MoA.
- The use of Regulation 32(2)c allowing the use of negotiated procedure without publication for matters of extreme urgency and in compliance with Procurement Policy Note (PPN) 01_20.
- The use of Regulation 12.7 allowing two or more contracts to be established or co-operation between two or more contracting authorities.

The initial order being placed by the Council does not exceed the current regulatory procurement threshold of goods (circa £189k); therefore, the Council is not required under the Regulations to follow one of the defined procurement processes; however, should subsequent orders take the aggregated value above the goods threshold, the above provisions in the Regulations can be relied upon to ensure the Council has undertaken a compliant process.

7.2.5 Strategic Procurement can confirm the terms of the MoA require orders and payment of orders, to be processed via a hub borough (being Camden),

7.3 Legal

7.3.1 The Assistant Director of Corporate Governance has been consulted in the drafting of the MoA and in the preparation of this report.

7.3.2 Pursuant to the general power of competence under section 1 of the Localism Act 2011 the Council has the power to enter into the MoA.

7.3.3 As stated in section 8.2.4 above the initial order being placed by the Council does not exceed the relevant procurement threshold for the supply of goods (currently £189,330). Therefore, the Council is not required to follow one of the procurement procedures set out in the Public Contract Regulations 2015 (as amended) (the “Regulations”). Should the value of subsequent orders exceed the procurement threshold the Council can rely on Regulation 33 and Regulation 32(2)(c) of the Regulations as described in section 8.2.4 above.

7.3.4 The Assistant Director of Corporate Governance sees no legal reasons preventing the Leader from approving the recommendations in the report.

7.4 Equality

7.4.1 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

7.4.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status apply to the first part of the duty

7.4.3 The proposed decision is to approve the funding for the procurement and provision of PPE to front-line workers and social care staff. Those affected by this decision will be Haringey Council staff, care workers and care home residents. A disproportionate number of care workers are women and there are significant number of individuals – both patients and care home residents - of older age, those who have underlying health conditions or disabilities.

8. Use of Appendices

Appendix 1

9. Local Government (Access to Information) Act 1985

Not Applicable.

**MEMORANDUM OF AGREEMENT
RELATING TO SOURCING OF PPE**

1 Introduction

1.1 This Memorandum of Agreement (**MoA**) describes the arrangements that have been agreed between the following local authorities in relation to the sourcing of personal protective equipment (**PPE**) in response to the COVID-19 pandemic:-

The Council of the London Borough of Ealing (**LBE**);

London Borough of [] (the **Hub Borough**); and

London Boroughs of [] (each a **Participating Borough**),

and references in this MoA to any "**Hub Party**" means the Hub Borough and each of the Participating Boroughs.

1.2 Pursuant to regulation 32 of the Public Contracts Regulations 2015, LBE has entered into or will be entering into one or more contracts to source certain items of PPE which are required by local authorities as part of their response to the COVID-19 pandemic. In this MoA, references to a "**Supply Contract**" mean any such contract as is actually entered into by LBE and references to the "**Supplier**" means the relevant supplier counterparty to any Supply Contract.

1.3 It is intended by LBE that each Supply Contract will operate effectively as a short term, single supplier framework agreement which can be utilised for the sourcing of certain items of PPE by all London local authorities via LBE and each respective "Hub" authority, including the Hub Borough.

1.4 LBE, the Hub Borough and each of the Participating Boroughs have agreed that the sourcing of any PPE which the Hub Borough and/or any of the Participating Boroughs wish to source via LBE and one or more of the Supply Contracts will be governed by the arrangements set out in this MoA. In particular, the agreed intention, as part of these arrangements and as further described below, is that any orders for PPE which a particular Hub Party wishes to place with a Supplier during the short term period in which the relevant Supply Contract is in place will be placed via LBE.

2 Ordering Process

2.1 On being requested to do so by the Hub Borough, LBE will provide details of the following to each Hub Party:-

2.1.1 a catalogue of PPE (with specifications) that are potentially available under one or more of the Supply Contracts, including information about then current stock availability/lead times and pricing;

2.1.2 the contractual terms and conditions of supply that apply under each Supply Contract.

2.2 If at any time prior to submission of an order by the Hub Borough LBE becomes aware of any material changes to information previously provided under paragraph 2.1, including material changes to the availability or pricing of particular items of PPE, LBE will update the Hub Borough as soon as reasonably practicable.

2.3 Based on the latest information provided by LBE, the Hub Borough will liaise with each of the Participating Boroughs to collate details of all items of PPE which the Hub Borough and each of the Participating Boroughs wish to source (and as a matter of the relevant Supply Contract(s) are capable of being sourced) via LBE and one or more of the Supply Contracts. These details will be captured by the Hub Borough in a single draft order form which identifies amongst other matters the following information:-

- 2.3.1 the specific types and quantities of PPE required by each Hub Party;
- 2.3.2 the single location to which the relevant quantities of PPE are to be delivered for the purposes of being received by the Hub Borough prior to onward distribution to other locations.
- 2.4 As part of the process described in paragraph 2.3 above, each of the Participating Boroughs will also confirm to the Hub Borough the extent of the Hub Borough's authority to proceed with the relevant order in response to any updated information in respect of relevant supply terms, including changes to stock availability/lead times and increases in prices.
- 2.5 The Hub Borough will be responsible for submitting, on behalf of itself and each of the Participating Boroughs, the relevant draft order form to LBE and then liaising with LBE to confirm the latest position in respect of the supply terms applicable to the items of PPE set out in the draft order form, including:-
 - 2.5.1 changes to stock availability/lead times and/or pricing compared to information previously provided by LBE; and
 - 2.5.2 the particular Supply Contract under which the whole of the relevant PPE requirement can be sourced or (as applicable) the particular Supply Contracts under which different parts of the overall requirement can be sourced.
- 2.6 Based on this latest information, and taking into account the authority given to the Hub Borough under paragraph 2.4, the Hub Borough will (if necessary having liaised further with any Participating Borough to confirm how it wishes to proceed) confirm to LBE the details which are to be included in the relevant order form and the particular Supply Contract or (as applicable) Supply Contracts under which the relevant PPE requirement is to be sourced.
- 2.7 LBE will then be responsible for sourcing the relevant PPE requirement (as per the confirmed order from the Hub Borough) under the relevant Supply Contract or (as applicable) Supply Contracts. For these purposes, LBE will submit a suitable order to the relevant Supplier or (as applicable) Suppliers in accordance with the relevant Supply Contract terms and on the basis that LBE does so as the agent of the Hub Borough, with the intention that on acceptance of the relevant order by the relevant Supplier a call off contract for the supply of the relevant PPE on the terms of the relevant Supply Contract and the relevant order (the **Order**) will be formed directly between the relevant Supplier and the Hub Borough.
- 2.8 As between the Hub Borough and each of the Participating Boroughs, at the point at which a contract is formed with the Supplier on the basis of a particular Order:-
 - 2.8.1 the Hub Borough will be committing to on-supply to each Participating Borough the relevant quantities of PPE (up to the relevant maximum requirements for that Participating Borough, as referable to the relevant confirmed order by the Hub Borough which LBE then used for the purposes of submitting the Order). The specific arrangements for physical distribution of these quantities of PPE will be those which are separately agreed between the Hub Parties, outside of this MoA, for these purposes;
 - 2.8.2 each Participating Borough will be committing to reimburse the Hub Borough, in accordance with the arrangements described in paragraph 3 below, for relevant amounts due to the Supplier in respect of these quantities of PPE (such reimbursement to operate, for the avoidance of doubt, on a straight cost pass through basis and without any margin being applied by the Hub Borough);
 - 2.8.3 the Hub Borough will not be treated as having given any warranties or other assurances to each Participating Borough in respect of these quantities of PPE and will not be accepting any liability to any Participating Borough in relation to the on-supply of any PPE, including as regards those matters referred to in paragraph 4.4 below.

3 Payment Terms

- 3.1 Consistent with paragraph 2.7 above, for each Order, the relevant Supplier will be requested to issue to the Hub Borough (not LBE) all invoices applicable to that Order.
- 3.2 For each successful delivery of PPE in respect of which payment is required in accordance with the terms of the relevant Supply Contract, the relevant Order and the relevant invoice submitted to the Hub Borough, the Hub Borough will be responsible (as between LBE, the Hub Borough and the relevant Supplier) for paying the relevant Supplier within 24 hours of delivery or within such other timescales as may be applicable under the terms of the relevant Supply Contract.
- 3.3 For that proportion of each payment due from the Hub Borough which relates to PPE required by a Participating Borough rather than the Hub Borough itself, that Participating Borough will be responsible for reimbursing the Hub Borough within 5 (five) days of being provided with a copy of the relevant invoice from the Supplier and (if necessary) any separate VAT invoice issued by the Hub Borough.
- 3.4 For the purposes of paragraphs 3.2 and 3.3 above:-
 - 3.4.1 the Hub Borough will, to the extent reasonably practicable, seek to ascertain whether PPE delivered to the Hub Borough has been supplied in accordance with the terms of the relevant Supply Contract and whether, by reference to the terms of the relevant Supply Contract, there is a requirement for payment to be made to the relevant Supplier in respect of the relevant delivery. For these purposes, the Hub Borough will, to the extent reasonably practicable, seek through the governance arrangements referred to in paragraph 5 to liaise with other Hub Parties prior to making a payment to the relevant Supplier. However, it will ultimately be for the Hub Borough to determine, at its discretion, whether there is a requirement for payment to be made to the relevant Supplier in respect of the relevant delivery;
 - 3.4.2 to the extent that the Hub Borough, exercising this discretion, does pay the relevant Supplier in respect of the relevant delivery, each Participating Borough will be responsible for reimbursing the Hub Borough in accordance with paragraph 3.3, regardless of any issues that Participating Borough may have in respect of that delivery. In these circumstances, any relevant issues (including issues relating to defective PPE) will fall to be resolved in accordance with paragraph 4 below after payment has been made by the Participating Borough.

4 PPE Delivery Issues

- 4.1 If there is any shortfall in the quantity of PPE actually delivered, or capable of being delivered, or any delay in the delivery to the Hub Borough relative to the quantity and delivery timescales set out in the relevant Order, the Hub Borough, the Participating Boroughs and LBE will communicate the relevant details to each other and work together to see what can reasonably be done to mitigate any shortfall or delay. In addition, in these circumstances the Hub Borough, the Participating Boroughs and LBE will co-operate with one another in good faith with a view to ensuring that:-
 - 4.1.1 where appropriate, quantities of any particular item of PPE actually received by any particular Hub Party (or, as the case may be, due to be distributed to a particular Hub Party following delivery by the relevant Supplier) are adjusted pro rata to the required quantities originally ordered for that Hub Party, including if necessary by way of one or more of the Hub Parties arranging for particular stocks of PPE to be re-distributed to one or more of the other Hub Parties;
 - 4.1.2 any relevant contractual remedies which may be available against the relevant Supplier in respect of the shortfall or delay are pursued in a co-ordinated manner

that has been mutually agreed between LBE, the Hub Borough and the Participating Boroughs.

- 4.2 If any Hub Party considers that any PPE delivered by a Supplier is defective or otherwise not in conformity with the terms of the relevant Supply Contract and/or the relevant Order, the Hub Borough, the Participating Boroughs and LBE will co-operate with one another in good faith with a view to ensuring that any relevant contractual remedies which may be available against that Supplier in respect of the relevant defects or other issues are pursued in a co-ordinated manner that has been mutually agreed between LBE, the Hub Borough and the Participating Boroughs.
- 4.3 For the purposes of paragraphs 4.1 and 4.2 and the pursuit of any relevant contractual remedies which may be available against the relevant Supplier in the circumstances described in those paragraphs, LBE and each of the Hub Parties acknowledge and agree that:-
- 4.3.1 given the intention that orders for PPE will be placed via the Hub Borough and LBE, it may be the case that where a particular Hub Party is adversely affected by any of these circumstances, it will not benefit from contractual rights which it is able to enforce directly against the relevant Supplier;
- 4.3.2 if it is the case that only LBE and/or the Hub Borough is able to enforce relevant contractual rights against the relevant Supplier, LBE and/or the Hub Borough (as applicable) will after consultation with the affected Hub Party, and subject to the objective set out in paragraphs 4.1 and 4.2 that any remedies be pursued in a co-ordinated manner, use its reasonable endeavours to enforce the relevant rights for the benefit of the affected Hub Party.
- 4.4 For the avoidance of doubt, LBE will not have any liability to any of the Hub Parties, and the Hub Borough will not have any liability to any of the other Hub Parties, for any of the following:-
- 4.4.1 any non-availability or reduced availability of items of PPE under any Supply Contract and/or any increases in lead times or prices applicable to items of PPE which remain available under any Supply Contract;
- 4.4.2 any non-acceptance by a Supplier of an order for PPE;
- 4.4.3 any non-delivery or under delivery of PPE by a Supplier;
- 4.4.4 any PPE delivered by a Supplier being defective or otherwise not in conformity with the terms of the relevant Supply Contract and/or the relevant Order; and/or
- 4.4.5 any act or omission of a Supplier or any of its sub-contractors or other personnel.

5 Governance

- 5.1 For an appropriate period of time agreed between LBE and each of the Hub Parties for these purposes, LBE and each of the Hub Parties will ensure that any matters arising for discussion or agreement in relation to the arrangements envisaged by this MoA are dealt with as part of the following wider governance activities relating to the pan-London response to the COVID-19 pandemic:-
- 5.1.1 daily telephone calls involving participants in the "London PPE Supply and Procurement Chain" group; and/or (as appropriate, according to the nature of the matter)
- 5.1.2 daily telephone calls involving participants in the "Strategic Command Group", including relevant chief executives and sub-regional leads.

6 Dispute Resolution

- 6.1 In the event of any dispute arising between any of the parties to this MoA in relation to the arrangements envisaged by this MoA and, for whatever reason, it is not appropriate for that dispute to be dealt with through the "Strategic Command Group" discussions referred to in paragraph 5.1.2 above, the dispute will be referred to the chief executives of the relevant disputing parties for separate discussion and resolution.

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Report for: Leader's Decision

Title: Attendance at meetings of an authority by a Member

Report authorised by: Zina Etheridge, Chief Executive

Lead Officer: Ayshe Simsek, Acting Democratic Services & Scrutiny Manager
Ayshe.Simsek@haringey.gov.uk, 020 8489 2929

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

- 1.1 To seek approval of Councillor Hinchcliffe's ill health as a reason for failing to attend Council meetings. He would otherwise automatically cease to be a member after 6 months, i.e. after 9th June 2020. This report proposes to extend that period for 3 months, to 8th September 2020.
- 1.2 On 19th March 2020, in accordance with the Council's Constitution, Full Council approved the reason. However, although it is the long-established practice of most local authorities to treat this as a non-executive function, it now appears that it is a decision for the executive. Therefore, a 'belts and braces' approach is considered necessary to avoid any difficulties on this issue and so the approval of the executive is also being sought.

2. Cabinet Member Introduction

N/A

3. Recommendations

That the Leader in the exercise of executive functions

- 3.1 Note that Councillor Justin Hinchcliffe has been unable to attend Council meetings due to ill health, and the last meeting he attended was 10th December 2019.
- 3.2 Approve Councillor Hinchcliffe's continued ill health as a reason for not attending Council meetings, such that:
 - a. He will continue to be a Member of this Council until 8th September 2020 even if he does not attend a meeting of the authority (as defined in section 85(2) Local Government Act 1972) due to ill health; and

- b. If he does not attend a meeting of the authority (as defined in section 85(2) Local Government Act 1972 by 8th September 2020, he will cease to be a member after that date.

4. Reasons for decision

- 4.1 The Leader is requested to approve the above recommendations to allow Councillor Hinchcliffe the opportunity to recover from a period of ill health and retain his membership on the Council.
- 4.2 If the reason for Councillor Hinchcliffe's failure to attend meetings is not approved before the expiry of 6 months from his last attendance (i.e. by 9th June 2020), he will automatically cease to be a member of the Council, as a result of section 85(1) Local Government Act 1972.
- 4.3 The extension of 3 months is thought to be appropriate given Councillor Hinchcliffe's ill health.
- 4.4 Due to the COVID-19 pandemic, there are currently no scheduled meetings for Councillor Hinchcliffe to attend in person. However, there are arrangements being made for virtual meetings. If his condition improves, he may be able to attend a virtual meeting where his attendance will be recorded and meet the attendance requirements.

5. Alternative options considered

- 5.1 The Leader could do nothing. However, Councillor Hinchcliffe continues to be unable to attend meetings and, if his extension is not approved, he will automatically cease to be a member of the Council after 6 months.

6. Background information

- 6.1 The Acting Democratic Services & Scrutiny Manager was notified that due to ill health Councillor Justin Hinchcliffe in his role as a Councillor had not been able to attend any meetings of the authority since 10th of December 2019. The Chief Executive and Monitoring Officer were subsequently notified. He has been in regular contact with the Party Whip, Councillor Cawley-Harrison, since this time.
- 6.2 The Constitution at Part 6 Member's Allowance Scheme Paragraph 11.19 provides that a Member who is sick will continue to receive the basic allowance as long as they remain a Councillor. They will also continue to receive any Special Responsibility Allowance (SRA) for a six-month period. Extension of this period of leave will require prior 2 months' written notice to be given to the Political Leader of the respective political group. If the extended leave is agreed by that Political Leader, a report will be compiled to seek approval from Full Council, before the point of the 6 months' leave expiry, for the extension of this leave.
- 6.3 The reason for Councillor Hinchcliffe's absence was approved as above by Full Council on the 19th March 2020, in accordance with the Council's Constitution. However, although it is the long-established practice of most local authorities to treat this as a non-executive function, it now appears that it is a decision for the

executive. Therefore, a 'belts and braces' approach is considered necessary to avoid any difficulties on this issue and the approval of the executive is also being sought. The Leader and a majority of Cabinet were present at the Full Council meeting on the 19th of March which took the decision to approve the extension. There has not since been any change in the circumstances of Councillor Hinchcliffe.

7. Statutory Officers comments

Finance

- 7.1 Councillor Hinchcliffe would continue to receive his Member Allowance payment, which is provided for in the current budget and would have no further budgetary impact.

Legal

- 7.2 Section 85 Local Government Act 1972 (*Vacation of office by failure to attend meetings*) provides that a member of a local authority will cease to be a member if he fails to attend any meeting of the authority throughout a period of six consecutive months from his last attendance, unless the failure is due to a reason approved by the authority before the expiry of that period.
- 7.3 Section 85(2) Local Government Act 1972 defines what is meant by a meeting of the authority. This includes Full Council and all committees and subcommittees.
- 7.4 Under section 9D Local Government Act 2000 all functions of a local authority are executive functions unless the contrary is specified in The Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Those regulations do not refer to section 85 Local Government Act 1972 and so this report treats it as an executive function.

8. Use of Appendices

N/A

9. Local Government (Access to Information) Act 1985

- 9.1 The following papers have been used in the preparation of this report:
- Report to Full Council on 19th March 2020
 - The Council's Constitution

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