



**Chief Executive**  
3 September 2020

**Report from the Operational  
Director, Environmental Services**

**Access to Emergency Pan-London Mortuary Capacity due to Covid-19**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt - Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
<b>No. of Appendices:</b>	Appendix 1 - EXEMPT
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Chris Whyte Operational Director, Environmental Services 020 8937 5342 Chris.Whyte@brent.gov.uk

**1.0 Purpose of the Report**

- 1.1. Any second wave of the COVID-19 pandemic would create an escalated demand for body storage space that significantly exceeds current capacity. This report seeks urgent approval for Brent to access a pan-London arrangement that is intended to provide new mortuary capacity on a regional basis.

**2.0 Recommendations**

That the Chief Executive:

- 2.1 Notes the rationale for seeking this emergency provision of new mortuary capacity on a regional basis at this time.
- 2.2 Approves entry into the pan-London mortuary arrangement with other London councils and for payment of £599,303,00 into a sinking fund to be administered by the London Borough of Camden in respect of such mortuary provision.

### **3.0 The Need**

- 3.1 All models predict the overwhelming of the death management process during a recurrence of the Covid-19 pandemic. Increasing body storage capacity is the most certain and effective measure in response.
- 3.2 As we have now seen, body storage is a part of the death management process most likely to face significant pressures during a pandemic. Local areas should seek to identify arrangements in line with regional and national guidance.
- 3.3 Our planners must ensure we are prepared to respond from day one of any recurrence. The various drivers for an excess deaths event and the variability of peaks with pandemic outbreaks requires these preparations to be agreed early.
- 3.4 As we have seen, providing adequate capacity in the Death Management process by deploying an enhanced Body Storage capability will prevent the other more technical and legal processes from becoming overwhelmed. In order to mitigate the impact of excess deaths on the death management process during any Wave 2, it is recommended that storage facilities are identified now as part of enhanced regional business continuity arrangements. This is because the challenges and complexities of deploying such storage in a densely populated urban setting are a particular consideration and are well served by a coordinated city-wide response.
- 3.5 It is imperative that Brent and the other boroughs with response roles still strive to deliver on the death management processes at a local level using business continuity measures. However, we must also seek to secure the benefits derived from any mutual aid and regional coordination that becomes available.
- 3.6 Excess Deaths planning has previously suffered from a lack of central commitment to resourcing and the message over the last decade at least has been that boroughs should make their own arrangements under “business continuity planning” and not rely on assistance from the ‘centre’ until things become unmanageable.
- 3.7 This revised approach accounts for the pressures experienced by London boroughs during the initial outbreak of Covid-19, and is to be welcomed. It relieves Brent of the burden of having to make its own arrangements and of having to re-deploy staff from other critical areas during any emergency response.
- 3.8 Westminster and Camden have agreed to oversee these pan-London arrangements on behalf of all London boroughs. It must remain a shared responsibility, however, and the participation and commitment of all boroughs is vital if we are to meet our responsibilities both individually and collectively.

- 3.9 Modelling assumptions for a second surge of COVID-19 deaths have been agreed by central government. This modelling estimates excess death levels and what temporary mortuary capacity is needed. It is on the basis that the pan-London cost has been calculated and apportioned per capita, per local authority.
- 3.10 The cost to London local authorities is currently estimated to be £16,150,000. This covers the period through to March 2021. The data on which costs have been calculated is based on the government's realistic worst-case scenario for a second surge of COVID-19 in London.
- 3.11 The cost to Brent is £599,303
- 3.12 An inter-authority legal agreement commits Brent and all London local authorities to fund this temporary mortuary provision through to March 2021 with the possibility of an extension subject to an increase in the death rates. This agreement also sets out the governance arrangements going forward which are intended to ensure transparency and accountability of decision-making and expenditure amongst the participating local authorities .
- 3.13 All London local authorities are requested to sign and return the inter-authority legal agreement to Westminster City Council and deposit their proportion of mortality management costs, in full, into London Borough of Camden's sinking fund by close of business on Friday, 4 September 2020.

## **5.0 Financial Implications**

- 5.1 The proposal is for Westminster City Council to hold the contractual arrangement with the temporary mortuary service provider and manage the cost of other ancillary service providers (e.g. logistics) on behalf of London Government and for Camden Council to act as "banker".
- 5.2 Westminster has estimated the cost of the second phase to be in the region of £16.1m. The costs will be allocated to the London boroughs on a per capita basis with Brent's contribution being £599k.
- 5.3 Westminster will only draw down funds on a monthly basis on production of a report on the spend incurred to date. Reporting will be produced monthly and shared with all boroughs. Any unspent funds at the end of the project once all supplier costs have been settled will be returned to boroughs in the same ratio. There is also provision for further extension of arrangements and contributions to the sinking fund should the need for the facilities extend beyond March 2021, or expansion of capacity be required.
- 5.4 Currently, there is no additional government funding to cover these costs directly. Therefore, these additional costs will be added to the costs of COVID 19 and will increase the overall gap between Government funded support and the actual costs to Brent.

## **6.0 Legal Implications**

6.1 Section 198 of the Public Health Act 1936, places a duty on local authorities to provide mortuary and post-mortem facilities for H.M. Coroner. Approval is sought to enter into a pan London inter-authority agreement with other London councils, with the London Borough of Westminster as the Lead Authority. The Council may rely on the general power of competence set out in the Localism Act 2011 to enter into such inter authority agreement and to make payment of sums into a sinking fund.

6.2 Regulation 12(7) of the Public Contracts Regulations 2015 (PCR 2015) provides that an agreement concluded between two or more contracting authorities shall not be deemed to be a public contract (and thus subject to procurement) where all of the following apply:

- (i) There must be 'cooperation', meaning some meaningful mutuality of contribution or pooling of resources,
- (ii) The cooperation must relate to public services, in respect of which all of the participating authorities have functions,
- (iii) The aim must be to ensure the delivery of the functions or common objectives,
- (iv) The arrangement must be solely governed by public interest considerations,
- (v) Less than 20% of the activities must be conducted on an open market.

From the information detailed in the report, the conditions outlined above are met, enabling the Council to enter into an inter-authority agreement with London Borough of Westminster and other London council's pursuant to Regulation 12(7).

6.3 Contract Standing Order 85 sets out certain requirements for the entry into a partnership agreement and for collaborative procurements with other public bodies. These are summarised as follows:

- (a) No partnership arrangement can be entered into unless approved by the Director of Finance and a formal agreement is covering the arrangements signed by the parties.
- (b) Any partnership arrangement of collaborative procurement which includes delegation of powers shall be approved by the Cabinet (or where relevant, Full Council).
- (c) Any collaborative procurement shall comply with council Standing Orders and Financial Regulations unless:
  - (i) agreed otherwise in writing by the Director of Finance and the Director of Legal, HR, Audit and Investigations; or
  - (ii) in the case of a High Value Contract, the agreement of the Cabinet is obtained under Standing Order 84(a).
- (d) Any agreement between the council and one or more other body which includes any payment by the council in respect of the costs of carrying

out a collaborative procurement shall comply with Standing Orders unless otherwise agreed in writing by the Director of Finance and the Director of Legal, HR, Audit and Investigations.

From the information detailed in the report, relevant conditions outlined above are met.

- 6.4 In order to be a party to the Inter-authority agreement, the Council must pay £599,303.00 into a sinking fund which will be administered by the London Borough of Camden. The contract conditions stipulates that the deadline for the receipt of this payment by the Council is 4 September 2020.
- 6.5 The inter-authority agreement provides that the Lead Authority will procure the required works and services for the expected increase in mortuary service provision on behalf of the participating authorities. It is intended that contracts will be awarded by LB of Westminster under Regulation 32 (2) (c) of the PCR 2015 on the basis of extreme urgency. The use of this provision is permissible where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the normal time limits under the regulations cannot be met. The terms of the inter-authority agreement require participating authorities to indemnify the LB Westminster in the event of claims being brought against it under the PCR 2015.

## **7.0 Equality Implications**

- 7.1 The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 7.2 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 7.3 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary. Due to the urgency of the situation, formal assessments have not been undertaken in relation to the proposal to enter into the inter authority agreement but Officers believe there are no adverse equalities implications. Such formal assessments are not a requirement of the duty.

**8.0 Consultation with Ward Members and Stakeholders**

8.1 None.

**9.0 Human Resources/Property Implications (if appropriate)**

9.1 London-wide arrangements for new mortuary capacity, will spare Brent from having to create its own emergency facility and to re-deploy staff from other critical areas in the way that was necessary during the first pandemic wave.

**Report sign off:**

**Chris Whyte**

Operational Director, Environmental Services