

	Officer Key Decision
	Report to the Chief Executive
AUTHORITY TO AWARD A CONTRACT FOR THE SET UP AND MANAGEMENT OF COVID-19 LATERAL FLOW TESTING ON BEHALF OF THE DHSC THROUGH A DIRECT AWARD	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	0
Background Papers:	0
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Thomas Cattermole, Director of Customer Access Email: Thomas.cattermole@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report seeks approval to award a contract for the set up and management of Covid-19 Lateral Flow Testing on behalf of the DHSC as required by Contract Standing Order 88.

2.0 Recommendation(s)

That the Chief Executive exercising urgency powers pursuant to paragraph 9.3.2 of Part 3 of the Constitution:

- 2.1 Approves the direct award of the contract for the set up and management of Covid-19 Lateral Flow Testing on behalf of the DHSC for the period 1 February 2021 to 31 March 2021 to Number 8 Events Ltd.

3.0 Background

- 3.1 Brent was significantly impacted in the first and subsequent waves of COVID 19: death rates outside care homes have been high and the authority's more deprived communities have been particularly affected. All wards are affected with household clustering meaning that ward attack rates vary week to week i.e. there are no specific geographic hotspots. Brent's highest rates are in those aged 16 – 64 years. There also appears to be an over-representation of those of Other and South Asian ethnicity.
- 3.2 Due to rising infection rates within the borough, Brent was asked by DHSC to urgently mobilise testing throughout the Borough: reflecting both the geographical distribution and low car ownership meaning residents are unlikely to travel far for testing. Offers therefore urgently put in place a contract with Number 8 Events Ltd which commenced on 21 December for a period of 6 weeks.

4.0 Detail

- 4.1 Brent set up of Covid-19 Lateral Flow testing in nine locations within the Borough in December 2020. The Lateral Flow Tests provide a rapid result within 30 - 45 minutes and are less intrusive than the swabs for the current PCR (Polymerase Chain Reaction) tests. Initially the Council undertook approximately 852 tests per day but this has increased to 1300 per day currently.
- 4.2 Covid-19 rates remain high in Brent and the widespread testing of Brent residents, key workers and those unable to work from home is seen as essential in the fight against Covid-19. Testing identifies those suffering from Covid-19 including those who are asymptomatic, and in doing so is able to identify those that need to self-isolate, thereby helping to reduce the spread of the disease.
- 4.3 The efficacy of testing in helping to limit the spread of Covid-19 is seen as essential by the Department of Health and Social Care (DHSC). On 19 December 2020, London moved in to tier 4 and subsequently England entered lockdown on 20 December 2020.

In line with these restrictions, the focus on testing changed from Mass Community Testing to Key Workers and those unable to work from home. The DHSC on 14 January 2021 announced that it wanted testing across the country to continue beyond its current funding end date of 31 January 2021 and has announced funding will now continue until 31 March 2021. The rate at which rates of Covid-19 infection are increasing and the success of the Covid-19 Lateral Flow testing to date means that there is genuine urgency in the need to continue widespread testing across the borough.

- 4.4 Given the requirement on local authorities to continue a Lateral Flow

Testing service to limit the spread of Covid, it is not considered that the Council has time to undertake a tender process to select an alternative provider. It is impossible to comply with the usual timescales in the Public Contracts Regulations 2015. There is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation; there is no time to place a call off contract under an existing commercial agreement such as a framework or dynamic purchasing system. Officers therefore seek approval to direct award of a contract for a Lateral Flow Testing service on the basis of extreme urgency. The intention is to award a contract for the period 1 February to 31 March 2021 to address the immediate danger to the public. Further the fact that the current contractor has set up the current test sites means that it would not be possible to use another contractor to deliver Lateral Testing services from the same sites without substantial upheaval, causing significant inconvenience and disruption to testing within the borough. It is recommended therefore to award a further contract to Number 8 Events Ltd.

5.0 Financial Implications

- 5.1 The value of the contract will depend on the number of individuals tested. The estimated value of this contract is approximately £1.5 million.
- 5.2 It is anticipated that the cost of this contract will be funded from monies made available by the DHSC specifically for lateral testing.

6.0 Legal Implications

- 6.1 Officers are proposing the direct award of a contract. Direct award of a contract is permitted under Contract Standing Order 86 f (ii), "in cases of extreme urgency where there is an immediate danger to life or limb or property and only to the extent necessary to procure services, supplies or works necessary to deal with the immediate urgent situation provided that advice is sought from the Director of Legal, HR, Audit & Investigations for reasons of extreme urgency". Officers have set out in paragraphs 4.3 and 4.4 the reasons why it is considered that there are grounds for extreme urgency and the Director of Legal, HR, Audit and Investigations has confirmed that CSO 86f(ii) may be relied on.
- 6.2 The value of the proposed contract is such that its award is subject to full application of the Public Contract Regulation 2015 (PCR 2015). Direct award of contracts is permitted under Regulation 32(2)(c) of the PCR 2015 which is designed to deal with urgent requirements such as the urgent public health risks requirements arising from current COVID 19 pandemic. Regulation 32(2) of the PCR 2015 sets out the following:

The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: ...

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

... the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

6.3 Therefore, in responding to COVID-19 pandemic, Brent Council may enter into a contract without competing or advertising the requirement so long as it is able to demonstrate the following tests have all been met:

- 1) There are genuine reasons for extreme urgency.
- 2) The events that have led to the need for extreme urgency were unforeseeable.
- 3) It is impossible to comply with the usual timescales in the PCRs.
- 4) The situation is not attributable to the contracting authority.

The Chief Executive is referred to paragraphs 4.3 and 4.4 in particular with regard to satisfying the above tests.

6.4 The decisions, which are the subject of this report, are consistent with the Council's duties as a Category 1 responder under the Civil Contingencies Act 2004. The Chief Executive is authorised pursuant to Paragraph 9.3.2 of Part 3 of the Constitution to exercise either executive or non-executive functions where the matter is urgent unless this is prohibited by law. The decisions, which are the subject of this report, are not prohibited by law and she may therefore exercise such powers if she is of the view that proposals are urgent.

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 a requirement to consider how the proposed direct award of the contract for the set up and management of Covid-19 Lateral Flow Testing on behalf of the DHSC impacts those with characteristics protected under the Equality Act 2010. 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.
- 7.4 Due to the urgency of the situation, formal assessments have not been undertaken in respect of the decisions which are the subject of this report. Such formal assessments are not a requirement of the duty. An underlying purpose of the recommended decisions is to have regard to the protection of those with protected characteristics. In the circumstances, Officers do not consider that there are any adverse equalities impacts.

8.0 Consultation with Ward Members and Stakeholders

- 8.1 It is not considered in the circumstances that non-statutory public consultation is a viable or reasonable option for the Council in taking the decision that is the subject of this report, even if at other times it would have considered consultation with the public and / or stakeholders affected by the decision.

9.0 Human Resources/Property Implications (if appropriate)

- 9.1 It is not considered at this time that there are any Human Resources/Property/Environmental Sustainability Implications arising from the decision which is the subject of this report.

Report sign off:

PETER GADSDON
Strategic Director of Customer &
Digital Services