



20 April 2020

**Report from Director of Legal, HR,
Audit & Investigations**

Critical Services and Decision-Making

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	2 Appendix 1 List of critical services Appendix 2 Schedule of Service Changes
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Debra Norman Director of Legal, HR, Audit & Investigation 02089371578

1.0 Purpose of the Report

- 1.1 This report identifies the council services assessed as critical and essential to deliver the Council's response to COVID-19. It provides for decisions in respect of service changes and sets out the governance safeguards in place in respect of urgent decision-making.

2.0 Recommendation(s)

- 2.1 That the Chief Executive agree the assessment of critical council services contained in Appendix 1 and note that services not categorized as critical or essential may be subject to service change to maintain provision of critical and essential services.
- 2.2 That the Chief Executive note and agree the decisions specified in Appendix 2.

3.0 Detail

- 3.1 Through the business continuity planning process departments have assessed all Council services to identify how critical they are to the delivery of the Council's duties based on the facts and threats arising from COVID-19.

Critical Services

- 3.2 The list of critical and essential services identified to respond to COVID-19 is at **Appendix 1**. These represent the core services the Council must operate to

maintain service delivery and minimise risk to vulnerable groups and to maintain the general welfare and health of communities in Brent. The prioritisation takes into account the Council's legal obligations and its resources as well as the impact of services on residents and other stakeholders.

- 3.3 Category 1 "Critical" services are the highest priority and departments have assessed that it would be unacceptable to accept any risk of failure of these services. Crucially, this means that in taking steps to maintain the delivery of these services, resources currently allocated to non-critical services will be diverted to Critical services if necessary. These are largely front line services but also include some "back office" services such as legal advice to children's social care teams and emergency planning.
- 3.4 Category 2 and 3 services have been identified as Essential or Important services. The Council considers that it would be unacceptable to accept any risk of failure of these services, except where it was necessary to protect the delivery of services in a higher category. Therefore, in almost all circumstances during the current crisis as currently envisaged these services will be delivered, although there may be modifications to them.
- 3.5 In the case of all other services, these will continue to be provided (largely by officers working from home) but:
 - 3.5.1 Resources may be diverted to higher priority services, including staff
 - 3.5.2 Services may be significantly reduced or stopped in whole or part
 - 3.5.3 Services may be delivered in a different way in whole or part, e.g. remotely,
- 3.6 Any such changes will be temporary as part of the response to the COVID-19 outbreak.
- 3.7 The Chief Executive is asked to agree the prioritization of services set out in **Appendix 1**.
- 3.8 This framework of categorisation will provide the underpinning rationale for the Council's future decisions on service provision in respect of COVID-19, although each service decision will be made on its own facts, taking into account relevant matters such as compliance with Government and Public Health England directions and guidance on the provision of services including, for example, the Health Protection (COVID-19, Business Closure) (England) Regulations 2020.

Urgent Decision-making

- 3.9 The urgency of the current situation has required decisions to be taken at speed and sometimes without the degree of consultation and debate that is usually considered desirable, because it is not currently practicable. The following arrangements are in place for this decision-making to urgently protect critical and essential services, comply with the government and PHE guidance or to implement Government schemes and provisions of the Coronavirus Act 2020 and other new legislation.
- 3.10 Exceptionally, the Chief Executive is authorised under the Constitution to exercise any executive or non-executive functions where the matter is urgent, unless this is prohibited by law. The current situation in respect of the COVID-

19 is an exceptional circumstance. This process applies to decisions that would in other circumstances have been made by the Cabinet or another member body.

- 3.11 Where this power is used by the Chief Executive, she must notify (this may be after the event) the Leader, or Deputy Leader, the Lead Member and the Leader of the Opposition Group. In practice, all decisions made pursuant to this power since the current exceptional circumstances arose have been formally published so they are notified to all members and the public. Where the decisions taken have been key decisions the processes in place for taking urgent key decisions have been followed. In view of the urgency of the decisions taken, call-in provisions have been disapplied in accordance with the council's procedures.
- 3.12 Other urgent decisions are being taken by officers using their usual delegated powers and where possible following the usual processes for key and recordable officer decisions. These processes include publication of decisions taken, in the case of "recordable decisions" after they have been made.
- 3.13 In order to ensure transparency and good governance, decisions not taken through these processes and being made urgently are being captured in order that they can also be reported, and can later be subject to internal and external scrutiny along with decisions taken through the processes already described.
- 3.14 Decisions identified as falling into this category so far are set out in **Appendix 2**. Based on the contents of this report and its appendices, the Chief Executive is asked to confirm these decisions. A number of these have already been considered at meetings of the council's Strategic Gold Group, which is leading on the coordination of the council's response to the COVID-19 Pandemic.
- 3.15 Separately a log is being kept of additional expenditure incurred due to COVID-19 and the budget implications.
- 3.16 The Chief Executive has also provisionally agreed the Municipal Calendar so to facilitate planning of meetings. Subject to final consultation with both Political Groups it is intended that this be put to full council for confirmation at its meeting in July.

4.0 Financial Implications

- 4.1 As a result of these extraordinary circumstances, it is expected that departments will experience expenditure pressures over and above that which their current budgets are based upon, which were agreed by Council in February 2020. The magnitude of these expenditure pressures will depend on the severity of the pandemic and how long the pandemic lasts
- 4.2 A tracker has been created to record these additional pressures, which includes additional expenditure pressures, loss of income, impact on savings and capital programmes and treasury management issues.
- 4.3 In addition a detailed review of the councils overall 2020/21 budget is being carried out. This review will assess the impact on the councils planned savings plans, potential mitigations and funding options.

5.0 Legal Implications

- 5.1 This report sets out the Council's rationale for its business continuity planning in response to the COVID-19 outbreak and as such demonstrates its compliance with its duties under the Civil Contingencies Act 2004. Where relevant, plans will take into account the provisions of the Coronavirus Act 2020, in particular those local authorities' statutory duties that have been temporarily amended and reduced.
- 5.2 The Chief Executive is asked to confirm the urgent changes to services delivered in respect of a number of statutory powers and duties, see **Appendix 2**. These decisions have been made by officers in response to the rapid spread of the outbreak and the equally rapidly changing government and Public Health England direction/guidance.
- 5.3 It is considered that these decisions were lawful on the grounds there were:
- necessary and urgent responses to an emergency situation taken to protect the health of service users, staff and the public and to limit the spread of infection;
 - made in accordance with PHE and government guidance;
 - taken with a view to protecting vulnerable groups, particular the elderly and those with underlying health conditions;
 - taken to protect the delivery of services identified as critical services.
- 5.4 In a limited number of cases the Council might normally have undertaken consultation with the public or a section of it, before making the decision. However, in the current exceptional circumstances, this would have undermined the purpose of the decisions, namely the immediate protection of public health and the support of the council's response to COVID-19. In many case the services are discretionary, and the decisions are temporary suspensions or reductions of services rather than the removal of service provision.
- 5.5 Section 11 of the Children Act 2004 requires the Council to make arrangements for ensuring that its functions are discharged having regard to the need to safeguard and promote the welfare of children. This report recommends that some services for children are de-prioritised and some have been ceased, in particular libraries and parks. However it is considered that the recommendations in this report are consistent safeguarding and promoting the welfare of children since they are aimed at focussing the Council's resources on the aim of protecting public health in a serious crisis, which is of course extremely important for children's welfare.
- 5.6 Paragraph 9.3.2 of Part 3 of the Council's Constitution states the following regarding the exercise of the Chief Executive's urgency powers:
- "Exceptionally, (including at any time when the Chief Executive is acting as "Gold" on behalf of the London local authorities following the convening of the Strategic Co-Ordinating Group ("Gold Command")) notwithstanding anything in this Constitution, the Chief Executive shall be authorised to exercise either executive or non-executive functions where the matter is urgent unless this is prohibited by law."

- 5.7 Pursuant to paragraph 9.3.3 of Part 3 of the Council's Constitution, if the Chief Executive exercises her urgency powers pursuant to paragraph 9.3.2 (as referred to in the previous paragraph), she is required to notify, as appropriate, the Leader or Deputy Leader of the Council, the Lead Member with portfolio responsibility for the matter to which the decision relates and the Leader of the Principal Opposition Group of any such action.
- 5.8 The requirements which must be followed regarding making a key decision which has not been published in the Forward Plan at least 28 days before the date of the decision are set out in paragraph 38 of the Access to Information Rules in Part 2 of the Council's Constitution.

6.0 Equality Implications

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 Due to the urgency of the situation, formal assessments were not undertaken, in respect of the decisions in Appendix 2. Such formal assessments are not a requirement of the duty. Importantly, an underlying purpose of the decisions was regard to the protection of those with protected characteristics, i.e. those over 70 and those with underlying health issues by restricting the potential spread of the virus.
- 6.5 It is clear that the suspension of certain services, and deprioritisation of others, will affect other protected groups, e.g. the closure of playgrounds will disproportionately impact on children and young people. However, the Council's primary consideration of protecting vulnerable groups (based on public health advice and guidance and government directions and guidance) were and are considered to outweigh any other adverse impacts on other protected groups.
- 6.6 Where possible services have identified actions to mitigate the impact of the decisions, e.g. moving to an online service where possible. The equalities impact of the decisions will be kept under review.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 There may conceivably be exceptional cases where public consultation becomes possible notwithstanding the COVID-19 crisis. However, it is not considered in the circumstances that non-statutory public consultation is a viable or reasonable option for the Council in taking the decisions which are 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
- 7.2 The Council will make reasonable efforts to communicate with and take on board the views of service users affected by decisions and informing residents and stakeholders about decisions as quickly as possible about any changes to service provision. Where appropriate and reasonably practicable, changes to the Council's decisions will be made following responses from service users and others.

Report sign off:

DEBRA NORMAN

Director of Legal, HR, Audit & Investigations