

Notice of NON KEY Executive Decision

Subject Heading:	Enabling adult social care providers to purchase personal protective equipment (PPE) the Council has procured
Cabinet Member:	Councillor Jason Frost, Cabinet Member for Health and Adult Care Services
SLT Lead:	Barbara Nicholls, Director for Adults Social Care and Health
Report Author and contact details:	Amy Reed, Senior Commissioner & Projects Manager Amy.Reed@havering.gov.uk
Policy context:	The Council's commissioning duties under the Care Act 2014
Financial summary:	To enable providers to purchase Council-procured PPE at cost price in suitable situations where any returned income offsets against Council expenditure of approx. £1.4m on PPE items.
Relevant OSC:	Individuals
Is this decision exempt from being called-in?	Yes, it is a non-key decision by a member of staff

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

In recognition of the issues with trying to acquire PPE for clinical environments as detailed in this report and to ensure the Council supports local providers the Senior Leadership Team Director with responsibility for Adult Social Care is asked to approve:

1. Making PPE items purchased by the Council available to providers of social care services to re-purchase from the Council, subject to availability.
2. The cost of PPE offered to providers to be based on the average cost of that PPE to the Local authority

AUTHORITY UNDER WHICH DECISION IS MADE

Havering Council's Constitution:

Part 3: Responsibility for Functions, Article 3.3 Powers of Members of the Senior Leadership Team.

Members of the Senior Leadership Team (SLT) have delegated authority to act as follows within the assigned service service/portfolio of responsibilities, subject to the general provisions and limitations set out in section 3.1 above.

General powers

(a) To take any steps necessary for proper management and administration of allocated portfolios.

(b) To exercise all the powers delegated to them personally and those powers delegated to Second Tier Managers and other staff members in their directorate where circumstances require and so far as legally permissible. Exercise of such powers should be recorded where appropriate. Where possible, a SLT member should give notice to a relevant staff member that he or she intends to exercise a specified power that is delegated to that staff member.

Financial responsibilities

(a) To incur expenditure within the revenue and capital budgets for their allocated portfolio as approved by the Council, or as otherwise approved, subject to any variation permitted by the Council's contract and financial procedure rules.

STATEMENT OF THE REASONS FOR THE DECISION

COVID-19

1. COVID-19 is the illness seen in people infected with a new strain of coronavirus not previously seen in humans. On 31st December 2019, Chinese authorities notified the World Health Organisation (WHO) of an outbreak of pneumonia in Wuhan City, which was later classified as a new disease: COVID-19
2. The illness has since spread across the world and has infected people in the UK. Currently there is no specific treatment for coronavirus. The UK government have advised the general population to avoid unnecessary social contact and remain inside their own homes.
3. The UK government have advised of the following requirements regarding self-isolation:
 - If you have symptoms of coronavirus, you'll need to stay at home for 7 days
 - If you live with someone who has symptoms, you'll need to stay at home for 14 days from the day the first person in the home started having symptoms
 - If you live with someone who is 70 or over, has a long-term condition, is pregnant or has a weakened immune system, try to find somewhere else for them to stay for 14 days as they are of classed as high risk

The current situation

4. The Council commissions providers to deliver care and support to thousands of service users in Havering across a range of provisions, including homecare, residential care, nursing care, supported living, extra care and live-in care packages.
5. Previous and current government advice about protecting the most vulnerable has increased the critical importance of our commissioned providers to continue to deliver care and support to Havering's most vulnerable adults.
6. The coronavirus has increased the financial strain on providers in Havering as they have battled and in many instances continue to battle with staff sickness, staff isolation, cash flow and increased need and costs for Personal Protective Equipment (PPE) to enable them to continue to deliver care and support to adults in Havering. PPE includes equipment such as face masks, medical gloves, hand sanitiser, aprons, coveralls, goggles, face shields and cleaning products.
7. At the start of the pandemic, providers signalled they were facing COVID-19 related price increases and financial pressures. Through ongoing communication with providers, it was signalled that increased cost pressures were continuing, particularly with significant hikes in the costs of PPE equipment combined with the need to purchase PPE in greater quantities.

8. Globally, there was significant disruption in the PPE supplier market, with providers facing substantial challenges in obtaining the necessary PPE equipment required in a timely fashion to meet the increasing and varying demand. Through communication channels, providers reported disruptions to their usual supply chains, leading providers to approach the Council in a state of emergency in need of PPE in order to meet the Public Health England guidelines and deliver safe services to residents.
9. Initially, the Council received a limited supply of donated PPE from various sources, including the London Resilience Forum, which was distributed to those providers who approached the Council in a state of defined emergency. Since then, the Council has been able to purchase PPE in larger quantities from retailers in the market. Before Corporate Procurement purchased PPE supplies, the item specifications were reviewed and quality assured by the Council's Public Health team.
10. During early conversations with the care market, providers suggested the Council could make this stock available for providers to re-purchase at cost price. When PPE prices were at their highest price a number of providers signalled that, if the Council obtained a good rate for PPE and made this offer available, this would alleviate some of the cost pressures where they had seen unreasonable hikes in prices and achieve a reliable source of stock.
11. As of 29-Jun-2020, a total of 188 requests for emergency PPE supplies were received by the Council mainly from social care providers who reported disruption to their usual supply chain. Overall, the Council has seen a demand for emergency and planned PPE supplies from various sources, including schools, social care providers and internal staff.

12. Table 1: PPE distribution at 29-Jun-2020

Area	Orders	Average cost of order <small>*includes orders from harvested supplies</small>
Schools	29	£ 163.51
Internal	54	£ 1,042.31
Social care providers	188	£ 792.47
Total	271	

13. To ensure capacity for appropriate redelivery across all distribution routes, the Council is seeking to retain approximately 10 weeks supply in its stocks.

Ordering and distribution process

14. This model will enable the Council the capacity to re-sell procured stock to social care providers, however as the pandemic progresses and the disruption in the PPE market continues to stabilise, provider orders and subsequent distribution will be subject to providers choosing to purchase via the Council as opposed to their usual supply routes.

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15. The distribution and delivery of items will not be included in the resale costs at the time of this decision, unless expressly approved at the relevant Bronze group. Distribution and delivery will instead be managed through the on-going additional capacity available at the distribution centre.
16. To mitigate the risks of over-ordering and unfair distribution, a maximum quantity per item may be introduced on orders placed within a certain time period in line with the provider size, should the need arise.
17. If any PPE is resold to social care providers, the distribution of items will be tracked and managed via a Power BI dashboard and regular stock takes.
18. As part of the Civil Contingency Act 2004 planning as Category 1 Responder, a limited supply of quality-assured 'free' PPE items remains in the Council stock. This stock is stored separately and it is intended that this stock will continue to be utilised in defined emergency circumstances for providers who meet select criteria, which could include where they are providing COVID-19 'hot work' on behalf of the Council. This stock will not be subject to re-charge.

Financial considerations

19. It is intended for any PPE resold to social care providers that this is made available at the average cost price the Council paid per item across the different PPE suppliers, unless expressly approved otherwise at the relevant Bronze group. It is intended that the average cost will be subject to change, as adjustments will be made in accordance with supply chain cost increases and/or decreases.
20. For the initial period, the re-charges will be available as demonstrated in table 2.
21. Table 2: Costs per item identified as of 24-Jun-2020

Item code	Description	Average unit cost per total orders	
1.1	Facemasks type II for adults	£	1.10
1.2	FRSM Type II R	£	0.72
1.3	FFP2/KN95 Type IIR	£	3.83
1.4	FFP3/N99 Type II R	£	-
1.5	Children facemask	£	0.79
2.1	Gloves – size large	£	0.07
2.2	Gloves – size medium	£	0.08
2.3	Gloves – size small	£	0.07
2.4	Gloves – No Size Indicated	£	0.01
3.1	Aprons (sleeveless)	£	0.18
3.2	Apron with sleeves/ Thin gown	£	1.94
3.3	Gown (thick fluid repellent)	£	-
3.4	Coverall (AGP, body handling) L, XL, XXL, XXXL	£	17.51

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4	Shoe covers	£	0.04
5.1	Face shields	£	2.70
5.2	Goggles	£	2.98
6.1	Hand sanitiser, L (500ml)	£	12.00
6.2	Hand Sanitiser, M (100-250ml)	£	3.87
6.3	Hand Sanitiser, S (<100ml)	£	4.09
6.4	Hand Sanitiser, XXL (5000ml)	£	-
7.1	Bin bags	£	0.05
7.2	Thermometer strip	£	1.11
7.3	IR Thermometer	£	-
7.4	Surface wipes	£	4.25
7.5	Disinfectants	£	-
7.6	Other misc	£	-

22. Any payments to the Council for PPE re-sold will be processed either through deducting monies owed from regular invoices made to providers, as per Council policy, or via raising invoices where the former is not possible.

23. It is the intention that sales will be cost neutral to the Council for any PPE sold to providers, excluding overheads i.e. delivery and administration. Charges may alter as market prices and conditions change.

VAT

24. Due to new guidelines published by HMRC on 6-May-20, any PPE re-sold by the Council between the period of 1-May to 31-Jul 20 will be exempt from being charged VAT. Unless an extension is agreed to this timeframe, the Council will need to charge providers VAT where it has been paid by the Council and operate in accordance with the VAT guidelines.

Audit

25. We want to ensure all expected income from providers is received. The Council may undertake a light touch audit to ensure that all income has been received or deducted from payments as necessary.

OTHER OPTIONS CONSIDERED AND REJECTED

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1. Distribute Council-purchased PPE items free of charge to adult social care providers who meet certain criteria
2. Combine the PPE distribution with single payments made to adult social care providers to support COVID-19 related cost pressures
3. Introduce an 'voucher' scheme to enable providers to receive PPE from the Council free of charge up to an agreed limit
4. Do nothing and continue to distribute PPE free to providers in emergency circumstances and direct providers to continue to purchase PPE individually from the supply chain
5. Reduce the price to below what the Council paid in order to re-sell items at a competitive price

PRE-DECISION CONSULTATION

Providers in Havering have been in contact with the Joint Commissioning Unit following the outbreak of COVID-19 to express their concerns regarding their financial stability and to report issues relating to PPE and the supply chain, in terms of costs and availability, at varying periods during the pandemic.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: John Green

Designation: Head of Commissioning



Signature:

Date: 22-05-2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Council has the general power of competence under s1 Localism Act 2011 to do anything an individual may generally do, together with the power contained under s111 Local Government Act 1972 to do anything ancillary to or which facilitates any of its functions. The Council undertakes a number of functions which will require PPE. These include those for which the Council has a duty to undertake, including those relating to safeguarding. Under Care Act 2014 ss18 and 19, the Council, by default, has a duty to ensure that those who fall within the criterion and within its locality etc are having their care support and needs met. If a care provider cannot provide homecare or residential care to residents in the borough due to its lack of PPE, then the Council may be required to step in and ensure that the care needs are being met.

By way of adapting to respond to the Cabinet Office PPN notices 02/20 relating to sustaining suppliers in the market during the Covid 19 outbreak, in the instance of care providers lacking PPE to safely deliver the care provision in the community which has the impact of that provision having to stop. It would be a proportionate response for the Council to use its purchasing powers and logistics in an attempt to mitigate against those risks.

The Council as a public sector body must adhere to ensuring it does not provide unlawful state aid as per Art 107 of the Treaty on the Functioning of the European Union 1957. These rules continue to apply where the UK remains in the transition period relating to Brexit under the European Union (Withdrawal Act) 2018. Aid is deemed unlawful where it is aid granted from public resources and which confers an advantage to a recipient, is selective, favouring an undertaking or production of certain goods or services, it has the effect of distorting or threatening competition and can affect or has potential to affect trade between member states. It is noted that the Council has various statutory duties and is invested in ensuring that the supply of PPE means that those functions can be undertaken to support its residents. As such the provision of PPE to local suppliers for provision within London Borough of Havering cannot be deemed to be unlawful state aid especially if the Council is recharging for the provision.

s93 Local Government Act 2003 permits the Council to charge on a cost recovery basis for any of its goods or services by agreement with the person/organisation the charge is made to, as long as those charges are not prohibited or restricted by statute. Should the Council intend to do this on a commercial basis (charge more than cost recovery) then there are a number of legislative constraints and hurdles it must adhere to. Commercial activity is outside of the scope of this activity.

Whilst there is a temporary change to VAT as identified in the body of the report. Should these measures revert then the Council will be charging VAT on usual basis for supply of goods.

FINANCIAL IMPLICATIONS AND RISKS

This process will allow providers to purchase required PPE resources from the Council at cost price to assist with prompt purchasing and delivery, and to assist where Social Care providers are facing problems with existing supply chains.

There will be no additional administrative cost of this process as recharges for any PPE purchases made by providers will be deducted as part of normal care provision payments. The Council will simply be passing on the cost of any PPE requests, which providers wish to purchase via Council resources.

As per HMRC guidance, PPE purchases and supplies are currently VAT exempt. If this guidance changes, then we will pass on VAT charges onto providers at that time.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

No direct HR implications.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

An EqHIA (Equality and Health Impact Assessment) is usually carried out when a current or planned service/policy/activity is likely to affect staff, service users, or other residents. It is acknowledged that in emergency or urgent situations it will not always be possible to carry out an EqHIA in advance of a relevant activity, however, managers will undertake the required EqHIAs at the earliest opportunity. Where managers are already clear that protected groups/users will be impacted negatively by

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the intended activity, then this will be noted in the next paragraph and/or put into EqHIAs. Where the negative impact of the intended activity can be mitigated, this too should be set out in this report and/or the EqHIA.

In all situations, urgent or not, the Council will seek to ensure equality, inclusion, and dignity for all.

BACKGROUND PAPERS

None

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed

Name:

CMT Member title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____