

## Notice of Non-key Executive Decision

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contain(s) or relate(s) to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it *refers* to financial or business affairs of any particular person, and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

<b>Subject Heading:</b>	Waiver of the Contract Procedure Rules to award a contract for Mortuary Services
<b>Decision Maker:</b>	Councillor Barry Mugglestone, Cabinet Member for Environment
<b>Cabinet Member:</b>	Councillor Barry Mugglestone, Cabinet Member for Environment
<b>SLT Lead:</b>	Helen Oakerbee Director of Planning & Public Protection, Planning Service
<b>Report Author and contact details:</b>	Tina Nelan, Senior Public Protection Officer  tina.nelan@havering.gov.uk
<b>Policy context:</b>	It is a statutory requirement for the Council to provide a mortuary service under the Public Health Act 1936 s198)
<b>Financial summary:</b>	The current budget for mortuary provision is £0.094m held under A26240. A corporate provision

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	c£0.060m has been identified to fund the likely increase in mortuary costs.
<b>Relevant Overview &amp; Scrutiny Sub Committee:</b>	Places
<b>Is this decision exempt from being called-in?</b>	The decision will be exempt from call in as it is a Non key Decision

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

People - Things that matter for residents

X Place - A great place to live, work and enjoy

Resources - A well run Council that delivers for People and Place.

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### Part A – Report seeking decision

#### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

This report seeks approval to:

1. waive Contract Procedure Rule (CPR) 9.8, which requires an officer to obtain at least 3 comparable written quotations using the e-tendering suite Request for Quotation procedure for a procurement valued between £25,000 and £99,999.99: and
2. subject to 1 above being approved, award a contract to Barking, Havering and Redbridge NHS University Trust (BHR) for a period of 12 months commencing on 1 September 2023 at an estimated cost of £99,000.

#### **AUTHORITY UNDER WHICH DECISION IS MADE**

Part 3.2 [Executive Functions] of the Council's Constitution

Para 2.5 The following Functions may be delegated to individual Cabinet members by the Leader.

Each individual Cabinet member, as appropriate, may be delegated one or more of the following functions, within the portfolio allocated to him or her by the Leader. If a Cabinet member is unable to act, the Leader may act on his or her behalf, or may authorise another Cabinet member to do so. Matters delegated to individual Cabinet members under this section give them individual decision making powers. Where any paragraph refers to 'in conjunction with' or 'in consultation with' the decision remains that of the individual Cabinet member

(g) To approve an exception to the Contracts Procedure Rules set out in Part 4 of this constitution, in accordance with Rule 14(1) of those Rules.

#### **STATEMENT OF THE REASONS FOR THE DECISION**

All Local Authorities pay for storage of deceased residents when their deaths are being investigated by the coroner. This provision in councils tends to sit with Environmental Health or Public Health. There is a statutory requirement on the Council to provide a mortuary service. In Havering, this rests within Environmental Health.

This mortuary service paid for by LBH is solely for patients who are deceased on arrival (DOA) or who pass away in the Emergency Department (ED) at Queens Hospital. There are a number of outcomes for these deceased patients and some will require post-mortems when death is unexplained and requested by the Coroner.

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The provision is restricted to the storage of deceased persons and their organs (if removed), within the mortuaries at Queens Hospital and King George Hospital. Normal mortuary service for patients who pass away while receiving treatment is part of NHS storage arrangements for deceased and not charged to the Council.

London Borough of Havering (LBH) has a contract with Barking Havering and Redbridge (BHR) NHS University trust for mortuary storage at Queens Hospital, Romford and King George Hospital in Ilford. King George is rarely used but included in case a Havering resident is presented there and for overflow.

BHR was awarded a contract under standard Council contract conditions between 1 September 2017 until 31 March 2020, which also allowed for a one year extension until 31 March 2021. Due to the impact of the Covid Pandemic on both the Council and BHR services, this extension was not enacted until November 2020.

There is currently a contract in place that was awarded to Queens Hospital for one year, via a waiver which is due to expire on 31st August 2023. The service has not been able to progress the re-procurement process as hoped due to a lack of resources, service pressure, experience and continuity.

A waiver is required to make a direct award for up to 12 months to BHR NHS University Trust while we put in place a compliant procurement process. It is in the best interests of the Council to continue with this service, and we have a statutory duty to provide a mortuary and post-mortem storage facility.

The cost for 12 months will be in the region of £0.099m based on charges provided by BHRUT for the 1 year contract and average bodies stored. This value is subject to change dependent on the number of bodies stored and the length of storage. A termination clause of 8 weeks will be included in the contract which can be activated at any time if the new contract is procured earlier than anticipated.

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**OTHER OPTIONS CONSIDERED AND REJECTED**

Option 1

Implement a direct award to BHR NHS Trust for a longer period. This is not recommended as a tender process is being initiated to ensure best value for the Council.

Option 2

Cease the service – not an option as this is a statutory service that the Council is required to provide.

Option 3

Bring the service in-house, however LBH would need to build their own mortuary for this to happen. There would be significant resource and asset costs to do this. Also, this would take time, and interim arrangements would be required.

**PRE-DECISION CONSULTATION**

N/A

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

Name: Tina Nelan

Designation: Senior Public Protection Officer

Signature:



Date: 26/07/23

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### Part B - Assessment of implications and risks

#### LEGAL IMPLICATIONS AND RISKS

S198 of the Public Health Act 1936 places a duty on local authorities to provide a mortuary service where required by the Minister.

The Council also has a general power of competence contained in section 1 of the Localism Act 2011 which allows the Council to do anything that an individual may do subject to any statutory constraints on the Council's powers.

The total value of the proposed contract along with the value of the existing one year contract (1 September 2022 – 31 August 2024) is below the threshold for light touch contracts as contained in the Public Contract Regulations (as amended) 2015 (PCR) and thus is not subject to the full rigours of the PCR. However, officers must still comply with the Council's Contract Procedure Rules (CPR).

Officers have undertaken thorough market engagement, however as a formal tender exercise or request for quotes was not pursued as required by the CPR, a waiver is being requested under CPR 14.3. The body of this report sets out why this contract award is in the best interest of the Council. Subject to the waiver being approved, the contract can be awarded to BHR as set out in this report.

#### FINANCIAL IMPLICATIONS AND RISKS

There is a statutory requirement to provide mortuary storage and the anticipated costs following a benchmarking exercise is within the region of c£0.099m.

In the period of Sept 22 - Aug 23, the costs have been as follows:

Date (FY)	No of Months	Average cost per month	Total cost *	Cost of overstays	Cost for FY
Sept'22-March 23	7	£8,306.90	£58,148	£1,100	£59,248
April 23-Aug 23	5	£7,718	£38,588.20	£700	£39,288
Cost			£96,737	£1,800	
<b>Total Cost</b>					<b>£98,537</b>

\* Sept 22 - March 23 are actual costs. April 23 - Aug 23 estimated costs as awaiting invoices.

Public Protection are currently in the process of retendering the mortuary contract for which a further decision paper will be required.

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Queens Hospital have agreed to continue to provide the Council with the current mortuary service until 31 August 2024, there is a 5% increase in storage costs from September 2023 – August 2024, as shown in the table below.

Date (FY)	No of Months	Average /month	Total cost	Cost of overstay**
Sept'23-March 24	7	£8,103.52	£56,725	£1,029
April 24-Aug 24	5	£8,104	£40,518	£735
Cost			£97,242	£1,764
<b>Total Cost</b>				<b>£99,006</b>

\*from benchmark

\*\* Average £147/month from previous contract.

The 2023/24 budget for the mortuary service is £0.094m, based on the benchmarking exercise undertaken in 2022, there is a possibility that following the procurement there may be a short fall in funding of approximately £0.060m, which has been identified Corporately.

The Council is required to meet its statutory duties regarding the provision of a mortuary service, without the waiver in place to extend the current services provided by Queens Hospital, the Council will be at risk of higher costs with an emergency short-term contract in place until the tender process is completed.

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

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce as services provided by Queens hospital.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

This will be considered on a case-by-case basis and whatever the Coroner report suggests regarding equality and diversity considerations.

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;

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(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 socioeconomics and health determinants.

EQ IA not required.

**ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

None

**BACKGROUND PAPERS**

None

**APPENDICIES**

Appendix A – Benchmarking exercise

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**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

*Delete as applicable*

**Details of decision maker**

Signed

*Barry Mugglestone*

Name: Barry Mugglestone

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date: 21/08/2023

**Lodging this notice**

The signed decision notice must be delivered to Committee Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_