



Report to Leader (Sports & Leisure portfolio)

Decision Date: 23 July 2020

Reference number: L09.20

Title: Leisure Services Recovery

Relevant Councillor(s): Cllr Clive Harriss, Cabinet Member for Sports & Leisure

Author and/or contact officer: Sophie Payne, Service Director Culture, Sport & Leisure

Ward(s) affected: all

Recommendations:

That the Leader:

1. **Considers the available options summarised in this report.**
2. **Agrees Option 1 to meet the anticipated increased net costs for the Council's leisure facility services from August 2020 to the end of March 2021, to ensure the reopening of leisure facilities, to protect the Council's assets and to promote financial viability.**
3. **Agrees to review the position again in early 2021 to determine any amendments to the contractual arrangements to promote long-term financial sustainability.**
4. **Notes the plans to progress a long-term leisure strategy which will seek to ensure accessible provision for residents and financial sustainability in the long term.**
5. **Delegates to the Service Director of Culture Sport & Leisure, s151 and Monitoring Officers authority to finalise and implement the necessary legal and financial documentation to bring into effect the arrangements and resultant payments set out in the recommendations above.**

There is a confidential appendix to this report which is exempt by virtue of Paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972 because it contains information relating to the financial or business affairs of any particular person (including the authority holding that information)

Reason for decision: To maintain provision of leisure facilities and protect the Council's assets, to promote financial recovery of the Council's leisure services including the net income generating management fee to the Council, to minimise redundancies for staff working within the facilities and to support and promote the health and wellbeing of local residents.

1 Executive Summary

- 1.1 Under the contractual obligations for the leisure facility provision, the Council carries the financial risk of any 'Relevant Event' which includes a 'Change in Law' (i.e. the government's COVID-19 legislation requiring centres to close/operate with restrictions). This means the leisure operators can make contractual claims to the Council for financial relief/adjustments commensurate with the pressures being faced.
- 1.2 This paper sets out the contractual position and a range of potential options for consideration.
- 1.3 It is recommended that a decision on the preferred option should take account of:
- The Council's financial position which is clearly under significant pressure
 - Ensuring consistency with the approach being taken in other Council service areas
 - Protecting the Council's assets and promoting long term financial sustainability
 - The impact on residents and users. This is a high-profile service, attracting over 3 million visits per annum including significant use by sports clubs and schools
 - Potential redundancies. Operators have already needed to plan some redundancies from November 2020 and the services currently employ over 800 staff
 - Impacts on wider prevention/early intervention agenda and health inequalities including the potential loss of social prescribing facilities (e.g. exercise referrals by GPs; mental health etc)
 - The potential reputational impact.
- 1.4 As part of the year 1 unitary commitments, the Council had planned to develop a leisure facilities strategy in 2020/21 and it is proposed that this work continues. It will take a place-based approach and review the sports facility provision in the public, private, voluntary and education sectors and seek to meet the future demands for the county whilst also promoting financial sustainability. The strategy would seek to identify areas of deficiency/under provision and opportunities for consolidation of the portfolio which could include realising some assets for development.
- 1.5 The Government announced on 9 July that leisure centres and swimming pools can start to reopen from Saturday 25 July. It is therefore important that the Council agrees an approach as soon as possible to enable mobilisation arrangements to be implemented and confirm to residents when facilities will re-open (or not). It will take

2-3 weeks to mobilise and reopen facilities. This is to allow for un-furloughing and training staff on revised operational procedures, making changes to buildings, equipment and signage in line with the government guidance; bringing pool temperatures back up, safety checks etc and communications to customers to provide clarity and confidence in the arrangements.

Background

2. The Council's Sports and Leisure Facilities Service

- 2.1 The Council owns 12 sports and leisure facilities; this paper considers options for 10 of the facilities which are delivered through contracts with three leisure operators (Everyone Active, GLL and Places Leisure).
- 2.2 The confidential papers appended to this report set out the historic financial performance and previous management fee income to the Council as well as the contractual position for each operator.
- 2.3 Under the existing contractual arrangements, the leisure operators take responsibility for all aspects of operational management, including staffing, along with the risk on achieving income (with the exception of force majeure circumstances or a change of law) against the agreed business plan as part of the tender process and the award of contract. The Council takes responsibility for the long-term capital investment, the agreement of strategy and policy and core 'landlord responsibilities' around the maintenance of the structural fabric of the buildings. An agreed management fee is paid for each year as part of the contract and in the event the net financial performance by the operator exceeds the agreed business plan position, any surplus is shared between the parties.
- 2.4 The pre-COVID position in respect of the Council's sports and leisure facility provision was as follows:
 - **Three million** customer visits annually across 10 leisure centres and over **15,000 active customer memberships**
 - **£14m** turnover generated across the 10 facilities in 2019/20
 - **£1.8m management fee income** paid to the Council per annum.
 - A **£36m** capital investment programme is underway for centres in Amersham, Chalfont and Chesham; **£2.95m** was invested in 2019/20 to improve Risborough Springs and Court Garden Marlow, plus £400k repairs to the Wycombe Leisure Centre car park
 - **834** people are employed across the Council's leisure centres (309 full and part-time and 525 regular casual staff) and approximately 90% of these are Buckinghamshire residents.

3. The Impact of COVID on the Council's Sports & Leisure Services

- 3.1 Following the national shutdown of all sport and leisure facilities on 20 March, local authority leisure services faced an immediate loss of income; urgent cash flow issues to meet payroll in advance of the government's furlough scheme going live; and significant ongoing costs for essential maintenance to keep buildings safe and in a position to reopen in time.
- 3.2 Whilst all of the Council's leisure operators have accessed the government's furlough scheme, they are not as yet eligible for other sources of financial support.
- 3.3 The Government has now confirmed that gyms and swimming pools can reopen on 25 July. Officers continue to work closely with all operators to review their plans for the range of measures required by the Government around social distancing, hygiene and cleanliness etc - drawing upon emerging advice from industry bodies such as UK Active, Sport England and each Governing Body of Sport - to ensure that where facilities reopen, they will provide as safe an environment for users and staff as possible.
- 3.4 There are various unknowns which will significantly affect demand and capacity, particularly the level of consumer confidence. Up to 90% of operators' existing gym/swim customers have frozen their direct debit memberships and the timing for recommencing swimming lessons is unconfirmed etc.
- 3.5 The uncertainties above mean that it is extremely challenging to accurately forecast income over the short and medium term.
- 3.6 Within this context of uncertainty, further reviews will be required to obtain a clear understanding of the effects of any operational changes to usage and capacity, and the resulting impact on both the cost of running each leisure centre and the predicted level of income that each site is capable of generating.

4. Government Guidance and Financial Support

- 4.1 **Appendix 2** summarises the recommended roadmap to recovery for local authority leisure services, to provide a managed exit of financial relief for suppliers and return contracts to their pre-COVID position as quickly as possible, while balancing financial risk between the Council and the leisure operators. This is in line with the Government Procurement's Policy Notes which summarise the approach that should be taken in supporting suppliers of council services and advises that contracting authorities need to plan an exit strategy from the relief to suppliers which is sustainable to both the supplier and the Council.
- 4.2 The Council's approach to date has been consistent with Government guidance.
- 4.3 On 2 July 2020, the Government announced additional funding support which would be made available to local authorities to offset some of the costs and losses of income

arising from COVID. The announcement included £500m un-ringfenced funding nationally to respond to spending pressures and a new scheme to reimburse lost income, specifically recognising difficulties COVID has created from the loss of revenue from car parks and leisure centres. Where losses are more than 5% of a council's planned income from sales and fees and charges, it was confirmed that the government will cover 75p in every pound lost. The Council was allocated £3.5m of the £500m national funding however specific details of how the separate income reimbursement scheme will operate for leisure services income are yet to be confirmed.

- 4.4 All funding from Central Government is being held centrally and being un-ringfenced, will not be allocated out to individual Services at this time.

5. Measures taken to reduce budget pressures

- 5.1 Discussions have progressed with all operators to review all potential options to reduce costs and protect income streams. Independent and expert advice has been procured, part-funded by a grant from Sport England, as part of a national offer to councils to ensure best practice advice is taken and that the projections by the operators are fully scrutinised. The Council's auditors will undertake additional work to confirm that operators are exhausting all funding directly from central Government.

6. Options Available

Option 1 - meet the anticipated increased net costs for the Council's leisure facility services.

- 6.1 The anticipated financial position for all contracts has been assessed on the basis of implementation by the operators of the above-mentioned options to reduce costs and maximise income. These projections have been scrutinised and are felt to represent a reasonable forecast in the context of the uncertain climate.
- 6.2 **Chalfont and Chesham leisure facilities.** As part of the existing contractual arrangements for the Chiltern area contract, the Council is funding a programme of capital improvement works for the Chalfont and Chesham facilities to improve their quality and secure the achievement of the agreed business plan income (e.g. by increasing visits to the facility, health and fitness memberships etc). Works include new group exercise/multi-use studios, larger fitness suites, immersive cycling studios, general modernisation of facilities including refreshed entrance area and changing accommodation, and new gym equipment. The impact of these improvement works will increase capacity at these sites and is expected to increase levels of participation by 25% at Chalfont and 50% at Chesham.
- 6.3 The design work for these improvements has been completed and works were originally planned to take place in the Autumn so that the facilities could re-open in February 2021. Given the centres are already closed, it is proposed that these works are accelerated and commence in late July 2020 to enable reopening in December. These

costs are included in the existing capital budget for the Chilterns Lifestyle Centre project.

- 6.4 In addition to the above planned capital works, urgent repairs are needed for the Chalfont swimming pool following the recent discovery of significant leaks and a failed pool structure. The cost of these works is estimated at £440k (cost to be confirmed upon receipt of detailed technical specifications); these repairs will reduce the future risk of major plant failure and consequent loss of income through any future enforced closure of the pool. This figure includes a £50k contingency sum. These costs are to be funded through the corporate contingency of the capital programme (as approved under a separate key decision), as they form part of the Council's responsibilities.
- 6.5 An alternative option would be to close the Chalfont centre. This option is not recommended from a value for money perspective (the estimated financial implications are detailed in the confidential appendix, and include one-off contract termination costs, abortive costs associated with the improvement works for this centre outlined at paragraph 6.2, ongoing essential maintenance costs and future loss of management fee income to the Council). It would also displace the Chalfont Otters swimming club plus current members of this leisure centre.
- 6.6 **Financial relief** Given the level of uncertainty at this stage as to how quickly the contracts may return to the pre-COVID position, it is recommended that the Council agrees to providing further financial relief to the end of March, with ongoing monitoring and a further review in early 2021. This review would reconsider the forecast full year financial position, taking account of actual capacity and usage after reopening (including swim lessons and club sports potentially returning), the impact of the ending of furlough payments from the government, and the wider public health context. It would also consider whether amendments to contractual arrangements are required.
- 6.7 It is hoped that the net impact will reduce further due to the recently announced Government scheme to partially reimburse councils for lost revenue, as described at paragraph 4.3; as noted, full details for that scheme are yet to be confirmed.

Option 2 - a partial reopening of centres

- 6.8 A more radical approach to reducing the cost of the Council's leisure provision would be only reopening some leisure centres and mothballing or permanently closing the remainder (draining the pools and undertaking a full closedown of the buildings etc).
- 6.9 As outlined in the legal implications, this would result in a termination scenario and the operators would be entitled to claim the associated costs. The Council would also need to maintain the buildings until a longer-term arrangement was implemented.
- 6.10 The following sites are considered as strategic sites based on usage and utilisation levels, income generated and/or the management fee income to the Council, which would be recommended to reopen:

Centre	Rationale
Wycombe	Flagship centre with 50m pool, agreement with Wycombe District Swimming Club, large numbers of casual and club users
Chiltern Pools Amersham	Large pool, capacity for clubs and users displaced from Chesham and Chalfont during temporary closures.
Chalfont (Dec 2020 reopening, following improvements and repair)	Previous financials show this is a profit-making site and improvement and repair works will deliver increased capacity and income; used by local swimming club
Chesham (Dec 2020 reopening, following improvements)	PE/sports facility for Chesham Grammar School; also used by local swimming club. As above, will deliver additional capacity and income as a result of improvement works
Swan Pool and Leisure Centre Buckingham	No alternative public provision north of Aylesbury; users would have to travel to Milton Keynes, Bicester etc
Risborough Springs	Key site for swimming lessons including users from Thame and further afield. Also used by Wycombe Swimming Club
Aylesbury	Major pool for Aylesbury; also used by Aylesbury & District Swimming Club

6.11 A number of sites were considered for closure. However, analysis showed that for these centres, the effect of redundancy costs, membership refunds and the residual ongoing costs to the Council would not deliver any significant reduction to the current contract costs. Partial closures would also attract termination costs (described in more detail under Option 3 – these are difficult to disaggregate for individual centres) as well as reductions in the budgeted management fee income paid to the council. Further detail is provided in the confidential appendices to this paper.

6.12 It is noted that a full and robust assessment of the evidence base for individual centres across the county would be required should consideration be given to closing sites. To avoid legal challenge on decision making, a full equality impact assessment would need to be undertaken.

Option 3 - a permanent closure of all sports and leisure facilities

6.13 If the Council was unable to provide any financial support and unable to secure an alternative means of continuing the leisure provision, all contracts would be terminated and all centres would be closed.

6.14 Again, under this scenario, operators would be entitled to termination payments and the Council would be responsible for the maintenance and security of the buildings until a long-term arrangement was implemented. Further detail is provided in the confidential appendices to this paper.

7. Financial implications

- 7.1 Given the financial impacts of reopening with social distancing measures, all the main operators are requesting further financial support to ensure the contracts remain economically viable in line with the agreed contractual position.
- 7.2 The operators have maintained strong positive dialogue with the Council and have, using the best information currently available, estimated the cost of running the facilities for the rest of this financial year, the likely levels of income that could be achieved and the impact of any loss of income on the contract. The operators have shared their detailed assumptions around capacity, take-up of activities etc and provided a full month-by-month breakdown of expected expenditure and income for 2020/21. This has been assessed and scrutinised in detail by Officers and the industry expert advisors engaged through Sport England.
- 7.3 Provision has already been made within the Council's 'COVID tracker' for the cost of financial relief to leisure operators for 2020/21 i.e. Option 1 above is not an additional request; the full year support is broadly in line with these original projections. However, since agreeing this position it is now clear that the council has a significant number of competing pressures for this funding and faces considerable financial pressures across statutory and non-statutory services.
- 7.4 As noted earlier in this paper, on 2 July 2020, the Government announced additional funding support to be made available to local authorities to offset some of the costs and losses of income arising from COVID. The announcement included £500m un-ringfenced funding nationally to respond to spending pressures (the Council was allocated £3.5m) and a new scheme to reimburse lost income, specifically recognising difficulties COVID has created from the loss of revenue from car parks and leisure centres. Where losses are more than 5% of a council's planned income from sales and fees and charges, it was confirmed that the government will cover 75p in every pound lost. Specific details of how this reimbursement scheme will operate for leisure services income are yet to be confirmed.
- 7.5 All funding from Central Government is being held centrally and being un-ringfenced, will not be allocated out to individual Services at this time.
- 7.6 The recommended approach seeks to minimise the financial risk to the Council and protect the Council's assets, incentivise operators to maximise income and expedited return to their pre-COVID position and to restore management fee income to the Council as quickly as possible.

Legal Implications

- 8.1 Legal Services have undertaken a comprehensive review of the contracts and confirmed that the Council carries the financial risk of any 'Relevant Event' that occurs under the contracts. One such Relevant Event is a 'Change in Law' which includes the

government's COVID-19 legislation requiring centres to close / operate with restrictions. This means the leisure operators can make contractual claims to the Council for financial relief/adjustments.

- 8.2 The Council is well protected in all the contracts from a breach of contract by the operators which includes any non-payment of previous financial support. The Council can seek to use Default or Warning Notices under the contracts to remedy breaches of contract by the operator or terminate the contracts if the breach cannot be remedied.
- 8.3 There is a duty on the Council to obtain value for money in accordance with Part 1 of the Local Government Act 1999. The Council also has a duty to promote economic, social and environmental wellbeing under Part 1 of the Local Government Act 2000. The Council also has a reputation as a good contracting authority to maintain and this would need to be weighed into any decision by the Council moving forward.
- 8.4 Within the context of the contractual requirements, there are several potential scenarios which are summarised below.

Scenario A: Support is provided by the Council

- 8.5 If the Council agrees to provide financial support to the operators from 1 August to 31 March 2021, a legal agreement with each operator will be required to capture that this support is in the form of a loan and not a grant. Such loans will need to be repaid by the operators in the fullness of time when they reach a profitable position in their contracts with the Council to review on an open book basis every three months when repayment is due.
- 8.6 These legal agreements will be in the form of either a notice of change pursuant to the contract or a binding side letter. Some operators would prefer to enter into a Deed of Variation to their contracts at this point in time, but it is legally advised that this is not appropriate yet for the Council as the situation with COVID-19 still needs to be monitored further i.e. when leisure centres will reopen, what re-opening measures will need to be put in place and the national and local position, policies and legislation in relation to recovery from COVID-19. A Deed of Variation would be a permanent change to the operators' contracts and it cannot be definitively determined yet whether such Deeds would constitute value for money for the Council.
- 8.7 In the best interests of the Council, an interim measure of entering into notices of change and binding side letters with the operators is suggested until 31 October 2020. This interim measure would assist with the current pending issue of provision of financial support to the operators and would not rule out the possibility of entering into Deeds of Variation with the operators in late 2020 subject to delegated authority being granted by Cabinet to Service Director of Culture Sport & Leisure to finalise and agree these legal agreements.

Scenario B: Decision not to provide financial support/relief by the Council

8.8 If no further financial support is provided, the operators can seek termination of the contract and thereby be due a payment of termination. This is highly likely, and all operators have confirmed they will be unable to continue the services if financial support is not provided. An offer of partial financial support/relief to operators for COVID-19 will also not go far enough to avoid termination of contracts by the operators.

8.9 There are a number of implications arising from the termination of contracts:

- The Council would be liable for termination payments to the operators which would cover items such as redundancy costs, repayment of any income taken in advance, demobilisation of the facilities, early termination of supplier contracts etc. This list is not exhaustive and are only examples as each operator contract is different and sets out different items of compensation upon termination.
- The Council will have to maintain the leisure centres and meet all the associated costs of maintenance while determining the future approach.
- A decision would then be needed on either re-tendering of contracts, running the leisure centres in-house, creation of a leisure trust, privatisation of the centres or redevelopment or disposal of the centres.
- Re-tendering or bringing in-house are both likely to result in a significantly worse position financially. The Council would either be re-procuring in difficult market conditions with operators being much more risk averse; and the Council having already broken relationships with three of the biggest operators in the marketplace. In-housing would mean loss of business rates and VAT relief which is available to the current operators (as charitable entities) along with lost opportunities around economies of scale which the operators can achieve through their national presence and as they operate hundreds of leisure centres. Developing and launching an in-house service would also attract significant start-up costs.

8.10 An Equalities Impact Assessment will be required for the Council to meet its Public Sector Equality Duty under Section 149 of the Equality Act 2010 should it decide to not to provide further financial support/relief or partial financial support/relief.

Scenario C: Operators become insolvent/breach the contracts

8.11 As mentioned above, the Council is well protected for breaches of contracts by operators. This includes insolvency. The Council has the power to issue Default or Warning notices under the contract to remedy breaches or to terminate where a breach is not remedied. Where insolvency is concerned, the Council is able to terminate a leisure contract where an operator becomes insolvent. Termination of the contracts will still raise long-term issues for the Council as identified in this report

in relation to retendering contracts, running the centres in-house or privatization and/or redevelopment/disposal of the centres.

Corporate implications

- 9.1 The recommendations are designed to ensure continuing access to services for residents therefore there are no equalities impacts.
- 9.2 There are no data protection implications.

Consultation and Communication

- 10.1 A communications plan has been developed to provide clarity to residents, local Councillors and town and parish Councils about the arrangements for reopening. This will be complemented by comprehensive marketing and communications from the leisure operators to their existing and potential customers, explaining how the changes will apply for each site, booking arrangements, visiting safely etc.
- 10.2 Consultation on the recommendations has taken place at the Council's Corporate Management Team and Informal Cabinet.

Next steps and review

- Draw up legal agreements for each contract
- Engagement and communications with members, residents etc
- Continuing work to review detail of financial projections and recommend any contractual amendments that may be required
- Submission to Government to access the new funding available to reclaim lost income.

Background papers

None.



Appendix 2: Recommended roadmap to recovery



