

<b>Item No.</b> 22.	<b>Classification:</b> Open	<b>Date:</b> 14 July 2020	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Leisure Management Contract – Post COVID Review and Management Arrangements	
<b>Wards or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Rebecca Lury, Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities	

**FOREWORD – COUNCILLOR REBECCA LURY, DEPUTY LEADER AND CABINET MEMBER FOR CULTURE, LEISURE, EQUALITIES AND COMMUNITIES**

Providing exemplary leisure centre services for our residents has always been a priority in Southwark. It is why we looked for a provider who could help us to achieve our ambitions around free swim and gym in 2014, and then who could support us as we looked to make free swim and gym more flexible, and to introduce free swimming lessons for our residents.

However, much has changed in the leisure market since we entered our contract with Sports and Leisure Management Ltd (SLM) – and the impact of these changes has only been amplified by the COVID-19 pandemic.

As the COVID-19 pandemic saw our leisure services close, with no idea of re-opening dates, we became acutely aware of the need to support those who work in our leisure centres, and committed to financial support for SLM alongside the Government’s furlough scheme to protect these workers.

We are now coming to the time when leisure centres are once again allowed to open, and it seemed like the best time to reconsider the whole of our leisure services provision.

This is not a discussion that we have entered lightly, and is one that has been achieved thanks to the ongoing conversations between officers and SLM that are always aiming to achieve the best outcomes for our residents.

It has not been an easy decision to reach this point, and there is much more work that will need to be done to ensure the smooth transition to a new, and hopefully post COVID-19 way of operating. But this report and the recommendations contained within are the beginning of the journey to ensure that our leisure services continue to serve our residents in the way that they want, whilst we as a local authority, lead the way in what exemplary leisure services look like.

## **RECOMMENDATIONS**

### **Recommendations for the cabinet**

That cabinet:

1. Approves that a medium term financial support arrangement be agreed with the council's leisure management contractor, Sports and Leisure Management Ltd (SLM), by contract variation, in order for the leisure centres to re open as soon as possible (subject to government restrictions being lifted) and to continue to operate until at least March 2021 whilst the council considers its options.
2. Notes that officers are in the process of a full review and evaluation of the options for the future management of the council's leisure centres in light of the COVID-19 pandemic and officers will report on the results of the evaluation to cabinet in September.
3. Notes that this report constitutes a Gateway 0 report in respect of the proposed options review, and a Gateway 3 report in respect of the proposed contract variation, for the purposes of the council's contract standing orders.

### **Recommendations for the Leader of the Council**

That the Leader:

4. Delegates final approval of the detail of the contract variation and medium term financial support arrangement to the strategic director of environment and leisure, in consultation with the strategic director of finance and governance, the deputy leader and cabinet member for culture, leisure, equalities and communities and the cabinet member for finance, performance and Brexit.
5. Asks the strategic director of finance and governance to note that resource provision will be required for the value of the contract variation, the development of the management options and also the implementation of any chosen option.

## **BACKGROUND INFORMATION**

6. On 21 June 2016 the council entered into a seven year contract with an option to extend for a period or periods of up to a further seven years at the council's discretion with Sport & Leisure Management Limited (SLM) for the management of the council's eight leisure facilities and for the operation of the sports booking service. SLM operate under the name of Everyone Active (EA).
7. SLM are required to operate the centres in line with the terms and conditions of the contract. Leases at a peppercorn rent are granted to them subject to them fulfilling these terms. A management fee is payable to the council under the contract.
8. Before the COVID-19 pandemic began the leisure contract was performing well operationally but was not achieving the income levels anticipated in line with the contract. The council and SLM were in discussion at that time about the best way to address this.

9. On Friday 20 March 2020 the government instructed that all public leisure centres should close the following day for public health reasons in relation to the Coronavirus pandemic.
10. Government policy on public procurement advised authorities to work collaboratively to support existing contractors.
11. The council entered into discussions with SLM in order to explore how the council could work with SLM during this period of extreme uncertainty to support the immediate needs of staff, buildings and the working relationship between the two organisations as best it could.
12. Both parties agreed that the closure order from the government constituted a force majeure event (as detailed in the contract) and the council has agreed a support package for SLM for the period March to 30 June 2020. Officers are monitoring the usage of the support package which included:
  - A payment to make up the shortfall on sums received from government for staff on the furlough scheme, so that staff received 100% of their salary
  - 100% of the salaries of a skeleton group of staff to maintain the sites and plant equipment
  - Utilities, maintenance and incidental costs
  - A waiver of the management fee for the period 21 March to 30 June 2020
  - The net financial impact of the initial support package is up to £1.292m.
13. As the leisure industry emerges from lockdown it enters a period of crisis and uncertainty. The sector is in a very difficult financial position due to COVID and will require financial support if leisure centres are to re open; this is a UK wide issue.
14. On 9 July 2020 the government announced that all gyms, indoor swimming pools and sport facilities could open from 25 July 2020. The previous support package covered up until the end of June and a further financial support package is being negotiated for the month of July. With preparation required so that the centres could reopen safely, the earliest the centres would be open to the public would be August. The support costs for July will be subject to separate approval and decision by the Strategic Director of Environment and Leisure, and any income received during the month will be recovered by way of set-off or separate invoicing.
15. Should any of these sums not be required the council will be reimbursed the remaining sum (as per previous months). SLM's income and expenditure will be closely scrutinised for the whole support period including July, so that any sums due can be identified and recovered as agreed.
16. As the country slowly moves out of lockdown there is still huge uncertainty around the performance of the leisure market moving forward and the estimated timeframes the industry will take to recover from the pandemic. Generally it is anticipated that the industry will recover within 12 to 18 months from the point of reopening, however, these estimations come with a number of caveats. The council will have to work closely with SLM in the coming months to monitor the market and seek to put the service on a sustainable footing.

## KEY ISSUES FOR CONSIDERATION

Review of options to date: interim period to end of March 2021

17. The options for the continuation of leisure centre provision for the short-medium term in the borough are limited and officers have briefed members in order to develop options and gain a clear steer on their preferences.
18. The questions that were explored were as follows:
- Is there a desire to open centres once government guidance changes to allow opening?
  - What are the options in the event of opening or remaining closed?
  - What will the options cost?

**Table 1 – Options explored**

Option	Conclusion
Terminate contract and keep centres closed temporarily	<ul style="list-style-type: none"> <li>- Highest cost option but with few benefits.</li> <li>- Staff and assets would transfer to the council, with the expectation of service recommencement</li> <li>- No income coming in to off set the costs.</li> </ul>
Terminate contract and keep centres closed indefinitely	<ul style="list-style-type: none"> <li>- Lowest cost option but is very unappealing because of the obvious risks – i.e. mass redundancies of SLM staff and lack of service to residents into the future.</li> </ul>
Open with SLM	<ul style="list-style-type: none"> <li>- Enables income to be earned to offset costs.</li> <li>- SLM will require a financial support package.</li> <li>- Concern about financial exposure because of uncertainty around income levels once opening is possible. However they could open as soon as possible and provide all pre-COVID services including Free Swim and Gym albeit at lower occupancy levels.</li> </ul>
Open with another provider	<ul style="list-style-type: none"> <li>- An emergency procurement would be possible but could take some time leading to a period of closure.</li> <li>- Limited number of operators as all currently in similar positions.</li> <li>- Likely to be even more costly due to all operators suffering losses and they may look to recoup these through such a scenario.</li> </ul>
Open with an in house service	<ul style="list-style-type: none"> <li>- Officers undertook considerable work to find out how long it would take and how much it would cost to bring the service in house.</li> <li>- They have determined that earliest possible is 1 April 21 and optimum period to bring in house would be slightly longer.</li> <li>- It requires a period of closure unless an interim arrangement is in place.</li> <li>- There are additional one off costs relating to the work to bring the service in house plus ongoing extra costs.</li> </ul>

19. Officers' conclusion was that the best and least costly way forward would be to re-open the leisure centres and to work with SLM and support them to do so. This will enable officers to continue the detailed work on the options for the longer term future of the service, looking at the detailed financial and other

implications. In the meantime it is hoped that this will ensure the best outcome for residents and most feasible financial way forward in a post COVID time. This would enable the following:

- Leisure centres can open COVID safe as soon as they can
- Income being earned to offset costs of staff and buildings
- Continued delivery of the Free Swim & Gym scheme
- Continued delivery of the Free Swimming Lessons scheme
- Continued delivery of public health programmes such as the GP exercise referral scheme
- Avoid losing market share in gym memberships.

20. It is worth noting the following considerations in light of the recommendation to work with SLM in the interim period:

- SLM have already expressed their willingness to work with the council in an open and transparent way as the council moves through this process
- The council will not receive a management fee for the medium term and this has a significant impact on the council's income
- The council will be paying for a proportion of the staff, and all the maintenance / operation of the centres, one way or another, unless it decides now to discontinue leisure provision, and in which case redundancy provisions apply
- Other commercial providers are unlikely to deliver a better outcome in the medium term so there is no point carrying out an emergency tender
- It is extremely difficult for anyone to predict how the centres will perform going forward and this represents financial risk in any scenario.

21. Officers have been in regular communication with SLM who have submitted a forecast of estimated costs of them continuing to deliver the contract. The proposal to support SLM in the interim is in light of the following:

- The recent Government announcement that the centres can re open from 25 July 2020 onwards, albeit they will reopen with significantly reduced capacity
- SLM have advised that they are not in a position to open any centres without additional financial support.

22. Subject to approval of this report the council will negotiate a capped financial package until March 2021, and then a monthly payment thereafter should that be necessary. Any income will be to the benefit of the council in its entirety. The council will also ensure that any sector support funding from the government would come to the council and not SLM.

23. The progress of this agreement will be monitored quarterly using a robust open book process and monthly management information to ensure that actual costs incurred are covered by the council (subject to the agreed cap) and the income and any grants are recouped to offset costs.

24. In view of the strategic impact of the decision officers consider that it requires Cabinet consideration and this report therefore constitutes a Gateway 3 report for the purposes of the contract standing orders.

Full options review

25. Officers have been asked to report to Cabinet in September 2020 on options for the longer term management of the service. In the time available it is unlikely to be possible to identify and fully develop all possible options. This report constitutes a Gateway 0 report which sets out the options identified at this stage and how those options will be addressed in more detail over the coming weeks.
26. The options planned to be evaluated in detail for the September report are:
  - In-sourcing the service as soon as practicable, and
  - Continuing with SLM until the contract ends in June 2023.
27. The analysis on in-sourcing will include the pros and cons of establishing a charitable trust to run the service as opposed to direct delivery by the council, as this can have some financial benefits.
28. Officers will not be in a position to produce a full plan for the 'commercial re-procurement' option in September, as this would require a period of soft market testing and analysis, which will be very difficult in the current period of uncertainty.
29. Officers will seek advice from specialist leisure industry and financial consultants on what the shape and likely value of such a re-procured contract would be likely to be, assuming it commenced in the spring of 2021, for the purposes of comparison. However this will be heavily caveated.
30. The value of continuing with SLM can be established with more certainty, following dialogue with SLM over the summer, within the current contractual framework.
31. Officers will also update cabinet on discussions with neighbouring boroughs on the possibility of a shared service model. Again it may not be possible to deal with this to the same level of detail as in-sourcing and continuation of the current contract, particularly around the financial implications, but officers will include as much information as possible to enable a useful comparison.

**Table 2 – Outline of broad evaluation criteria**

Cost	One off costs and ongoing, ability to generate income
Quality	Ability to deliver high quality service to local residents, impact on Free Swim and Gym and Swimming Lessons
Contribution to renewal agenda	Ability to be flexible and responsive to new and emerging public health and community needs
Delivery of key service requirements	Health and safety, other KPIs
Accountability and governance	To include the scope for scrutiny and review
Ability to innovate and deliver operational efficiencies	Consider industry wide developments post COVID and ability to respond to changing leisure market

Delivery of local employment and contribution to local economy	Consideration of terms and conditions of staff and creation of jobs for local people
Experience of delivery and understanding current opportunities and market mechanisms	Consider industry wide developments post COVID and ability to respond to changing leisure market
Equalities impact	Consider the impact on vulnerable or key groups, protected characteristics and inclusion priorities

32. The detail of the criteria, weighting and evaluation mechanism will be worked up and agreed with the cabinet member for culture, leisure, equalities and communities in the course of July and early August. In addition officers will continue to brief the cabinet member on industry developments which may have a bearing on the viability of the options identified.
33. The following assumptions will be made for the purposes of comparison:
- All centres will be open
  - All services will be resumed albeit subject to any social distancing measures required
  - Free Swim & Gym will be provided
  - Free swimming lessons scheme will be provided
  - The options will be assessed over the period to June 2023, when the contract with SLM is due to expire.

#### Contract termination

34. Given the current economic climate and uncertainty regarding the future officers have also been scenario planning around the very short term should the circumstances arise whereby the council needs to urgently take direct control of the leisure centres.
35. It is anticipated that this option would only need to be exercised if:
- Forces beyond the control of both the council and SLM were to come in to effect. The risk of this scenario is mitigated by putting in place the medium term support package with SLM outlined above.
  - The council decides not to work with SLM in the short term and provide financial support.
36. In an emergency, in broad terms the council would take the following steps with a view to re-opening as soon as practicable:

**Table 3**

<b>Issue</b>	<b>Activity</b>
ICT / Data	Transfer customer data, arrange data hosting Source leisure management software Design, build, test and launch new part of council website to host booking system Ensure all new systems integrate with each other and with existing architecture

<b>Issue</b>	<b>Activity</b>
Staff	Request and analyse TUPE Employee Liability information : Ascertain eligible transferring employees Review and Analyse terms and conditions Review and Analyse pre-transfer liabilities Prepare consultation documents Undertake appropriate consultation and liaison with unions Pensions briefings for transferring staff Identify and provide appropriate support as required e.g OH/equalities and inclusion support Design and create organizational structures / job descriptions Analyse additional staff needs Undertake recruitment process Induction/training plan including log-on to systems etc.
Facility/asset management	Survey buildings Correct defects Equipment inventory Purchase equipment as needed Obtain statutory compliance documents Obtain O&M documents Review H&S position Arrange repairs and maintenance
Finance	Financial reconciliation with SLM Assess book debts Recover any outstanding debts from SLM Arrangements for VAT and NNDR Funding for defects rectification, ongoing repairs and maintenance Pension liabilities assuming staff admitted to LGPS
Public health	Review contracts Review public health obligations Arrange alternative provision
Marketing / sales / complaints	Marketing drive in preparation for re-opening Customer response / complaints capability

#### Project resources and governance

37. The project will be led by officers in the leisure directorate but will necessarily involve IT, HR, communications, finance, legal and corporate facilities management to name some. There will be a requirement for external support by the way of finance, legal and industry experts.
38. The development of options will be managed on a day to day basis by the director of leisure reporting to the strategic directors of environment and leisure and finance and governance.
39. The lead cabinet member will be regularly briefed.

#### **Table 4 - Risks**

<b>Risk</b>	<b>Mitigation</b>	<b>Risk level</b>
Uncertainty around costs payable to SLM	Costs cap agreed in deed of variation	Medium

<b>Risk</b>	<b>Mitigation</b>	<b>Risk level</b>
COVID security of centres	Maintain funding for statutory maintenance programme	Low
Impact of lower capacity on income and FSG	Close working with SLM to ensure maximum income generated Support with public health messaging	High
SLM is unable to continue delivery during the interim period (the company folds or they terminate the agreement)	Contingency plan Close working with other boroughs working with SLM Open and transparent dialogue	Low-medium
Challenge to support package on grounds of unlawful state aid / breach of public procurement rules	Focus on commercial / financial considerations Exercise of process in contract for response to change in law	Low

### **Policy implications**

40. The reopening of the leisure centres as soon as the government lifts its closure order is directly linked to the council's commitment to a 'Fairer future for all' particularly in the area of:

- A healthy borough where your background doesn't determine your life chances.

41. The Council Plan 2018-19 – 2021-22 sets out a series of commitments across eight themes:

- A place to call home
- A place to belong
- A greener borough
- A full employment borough
- A healthier life
- A great start in life
- A safer community
- A vibrant Southwark.

42. The improvement of residents' health and wellbeing through physical activity and sport flows clearly through a number of the themes in the council plan through specific commitments set out below related to the leisure centres. Leisure centres play a significant part in the delivery of physical activity opportunities for residents and failure to reopen the leisure centres when it is possible to do so will negatively impact on the programmes below and their impact on the health and wellbeing of our residents.

- Make free swim and gym more flexible with more choice about when you go
- Make swimming lessons free for all residents.

### **Community impact statement**

43. As set out under the Equality Act 2010 and the Public Sector Equality duty (PSED) an equalities impact assessment will be carried out as part of the proposed review and evaluation of the options for the future management of the council's leisure centres in light of the COVID-19 pandemic.

44. The proposal to work with SLM to re open the centres as soon as it is practical to do so has no clear detrimental impact to any group or protected characteristic as outlined in the Equalities Act or the PSED.

### **Resource implications**

45. Funding will be required for the development of the management options and for any subsequent decision to be implemented.
46. The amount of funding required long term is entirely dependent on the option chosen and the resource implication for that will be clarified in the September report.
47. Any other costs connected with the delivery of this project will be contained within existing departmental revenue budgets.

### **Legal implications**

#### Contractual position

48. The contract between the council and SLM is due to end in June 2023 unless it is extended or terminated early. Following the government's order on 21 March 2020 that all leisure centres should close (given in the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020) (the 'Regulations'), the council and SLM agreed that this constituted a force majeure event under the contract. The Regulations were repealed shortly afterwards by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, and subsequently the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations (the 'New Regulations') both of which also contained closure requirements in relation to leisure centres.
49. The contract provides that, if a force majeure event is continuing six months later, and is still having a material adverse effect on SLM's performance of its obligations, the contract may be terminated by either party. This appears unlikely to be satisfied as the Regulations have been repealed and the New Regulations will no longer prohibit SLM from trading from the leisure centres, with effect from 25 July 2020.
50. Alternatively another date could be chosen for early termination, if that is decided upon by the cabinet in September 2020, and agreed by SLM.
51. The contract contains a series of provisions dealing with the effects of early termination. In broad terms, the leases of the centres would terminate; SLM would no longer have any right or obligation to occupy, run or maintain the centres; information, manuals and membership data would be transferred to the council; the equipment which does not belong to the council would be offered to it at net book value; and SLM would be required to make good any defects in repairs and maintenance, or reimburse the council for the costs of doing so. SLM is required to provide reasonable co-operation in the handover.
52. The employees working solely or primarily at the Southwark centres would transfer to the council automatically under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The council would be liable for ongoing salary / redundancy costs, but SLM would remain liable for sums owed to employees which

arose before the transfer. The transferring employees would be eligible for admission to the Local Government Pension Scheme.

53. The management fee would no longer be payable from the date of termination, provided that the termination was permitted by the contract (for example the conditions around force majeure were satisfied) or the contract was terminated by agreement.

#### Proposed interim support package

54. The Regulations constituted a 'qualifying change in law' for the purposes of the contract. This requires the parties to act reasonably in agreeing how the change should be implemented, necessary mitigation measures, and any adjustments to the management fee, using the structure and pricing in the original pricing schedules as a base. This can (with the council's agreement) result in a capital payment being made by the council to SLM.
55. Within this framework officers have negotiated the broad terms of a financial support package, to enable SLM to continue to operate the centres until the spring of 2021, subject to cabinet approval and finalisation of the detailed terms.
56. It is not thought that SLM will make any profit from trading during this period. The detailed terms of the support package have not yet been finalised but key conditions will be that the council will make good the shortfall between SLM's trading costs and income subject to a cap; the parties will work closely together to control costs and maximise income; and the management fee due to the council will be waived for this period.
57. This is consistent with the guidance from government in its public procurement policy notes in response to the pandemic. PPN 02/20 encouraged local authorities to work on an open-book basis to support their suppliers, with a view to avoiding widespread insolvency and redundancies. PPN 04/20 requires that local authorities and suppliers work up individual transition plans to allow service delivery to resume on a sustainable basis.

#### Governance

58. As the report outlines, decisions have already been taken by the strategic director of environment and leisure and the strategic director of finance and governance to approve short term financial support for March – June 2020, and an extension is being negotiated to the end of July, which is also a chief officer decision.
59. The proposed package of further support will require a contract variation which would constitute a strategic procurement, and therefore reserved to cabinet under the council's contract standing orders. This report serves as a 'Gateway 3' report for the purposes of the council's contract standing orders.
60. The leader is asked to delegate the finer details of the package to the strategic director of environment and leisure in consultation with the strategic director for finance and governance, the deputy leader and cabinet member for culture, leisure, equalities and communities, and the cabinet member for finance, performance and Brexit, in order that those terms can be finalised by the end of this month.
61. This is a key decision as the value exceeds £500k and it has significant cross-

borough impact. As it was not practicable to give 28 days' notice via the forward plan, a general exception notice has been published five clear days in advance of the July cabinet meeting, in accordance with the council's access to information rules.

62. A pre-procurement assessment (Gateway 0 report) is required for all services contracts with an estimated value of £10 million or more, to be considered by the relevant cabinet member. The report notes that the outlook for the leisure industry is very uncertain at present. This report constitutes a Gateway 0 with the benefit of the information currently available, and notes that the lead cabinet member will be briefed regularly as matters develop.
63. A decision at September cabinet, to in-source the service, enter into a shared service arrangement, establish a trust to run the service, or to carry out a market procurement, would be a strategic procurement decision reserved to cabinet. The paper presented to cabinet in September will be a 'Gateway 1' paper explaining the options appraisal undertaken, and seeking approval of the recommended procurement strategy, in accordance with the council's contract standing orders.
64. In parallel the decision to terminate the contract with SLM, if pursued, would be reserved to the strategic director of environment and leisure, in consultation with the monitoring officer and the strategic director of finance and governance under the council's contract standing orders.
65. Operational decisions required to implement cabinet's decision in September would be taken by chief officers or officers in their departments pursuant to their scheme of management.

### **Financial implications**

66. The financial support package agreed for the period March to June 2020 included the top up salary costs for furloughed staff, together with the costs for key staff, maintenance, utilities, incidental costs and loss of management fee amounted to £1.2m.
67. A further financial support package request from SLM for July 2020 relating to the costs of keeping the centres closed, together with the loss of management fee is currently being reviewed and negotiated between officers and SLM.
68. SLM have submitted a revised forecast of expenditure and income for the period August 2020 to March 2021 with the assumption that the centres will open from August 2020. The forecast indicates a significant financial commitment from the council in funding SLM's expenditure to operate the leisure centres for the period. The overall cost implications to the council will be mitigated to some extent from the income estimated to be generated during this period.
69. The forecasted income and expenditure figures from SLM will be subject to detailed negotiation between SLM and the strategic director of environment & leisure in consultation with the strategic director of finance and governance to minimise the costs implications to the council. Once confirmed, the terms of the financial support package will be incorporated within the contract variation.
70. It is expected that SLM will maintain a separate account of all expenditure and income for the support period to facilitate open book accounting and ensure that

supporting detail is retained and available for inspection as necessary.

71. The cost implications from this proposal will be closely monitored and reported as part of the revenue budget arrangement for the department and the council.
72. Staffing and any other costs connected with this report will be contained within existing departmental revenue budget.

### **Consultation**

73. In evaluating the options for the delivery of the leisure management services officers will consult with other local authorities to seek out best practice and knowledge of the different types of delivery model.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

74. This report seeks the approval of cabinet around the operation of the council's leisure centres following the challenges brought about following the COVID-19 pandemic. The report seeks approval for the medium term financial support arrangements with the incumbent contractor, Sports and Leisure Management Ltd (SLM) to be executed as a contract variation, in order to allow leisure centres to re-open and operate until at least March 2021.
75. The details of the variation to contract will be confirmed as set out in paragraphs 22 and 23, with the approval of these, being delegated by cabinet to Strategic Director of Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities and the Cabinet Member for Finance, Performance and Brexit.
76. Given the current challenging circumstances that are outlined, a more detailed review around the options for the future operation of the council's leisure centres is to be undertaken, with the scope detailed in paragraph 26. A report showing this assessment is to be brought back to cabinet in September 2020. For the purposes of the council's contract standing orders, the current report is confirmed to act as a gateway 0 report.

### **Director of Law and Democracy**

77. The 'legal implications' section describes the contractual and governance position accurately.
78. In the exercise of all its functions, the council must have due regard to the public sector equality duty in Section 149 of the Equality Act 2010. Specifically to have due regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant protected characteristics for this purpose are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
79. These issues must be considered at each stage of the decision-making process

described above, along with a consideration of whether a public consultation on the proposals is necessary or desired.

80. The Public Contracts Regulations reg. 72(1) provides that contracts may be modified during their term where the modifications have been provided for in the initial procurement documents is clear, precise and unequivocal review clauses which state the scope and nature of possible modifications as well as the conditions under which they may be used, and do not provide for modifications that would also alter the overall nature of the contract. The Qualifying Change in Law contractual provisions referred to in the Legal Implications section satisfy these requirements and may be engaged to deliver the proposed support package.
81. As noted in the report the Qualifying Change in Law provisions in the contract require the council to negotiate reasonably with SLM on the agreed management fee, taking into account the impact on the centres' operation and SLM's financial position; such negotiations would not constitute a 'selective advantage' so as to render the proposed support package unlawful State Aid. Further the council has focused on the commercial and financial risks surrounding the leisure contract and proposes to proceed in a way which a rational private market operator would also have adopted.

#### **Strategic Director of Finance and Governance (FC20/004)**

82. The report is requesting cabinet to agree an interim financial support arrangement with SLM for the period up to March 2021 and for the Leader to delegate final approval of the contract variation to the Strategic Director of Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities and the Cabinet Member for Finance, Performance and Brexit. Full details and background are contained within the main body of the report
83. This report is also asking cabinet to note that officers are in the process a full review and evaluation of the options for the future management of the council's leisure centres in light of the COVID-19 pandemic and officers will report on the results of the evaluation to cabinet in September.
84. The Strategic Director of Finance and Governance notes that the interim financial package up to the period March 2020 will require significant funding from the council in operating the leisure centres but the extent of this funding will be mitigated to some extent from the income expected to be generated during this period.
85. It is also noted that the financial proposals from SLM for both income and expenditure will be subject to detailed negotiation between SLM and the Strategic Director of Environment & Leisure in consultation with the Strategic Director of Finance and Governance to minimise the costs implications to the council. The terms of the financial support package, once confirmed will be incorporated within the contract variation.
86. The financial implications from these proposals will be monitored and reported as part of the overall monitoring of the financial impact of COVID-19 pandemic situation and revenue budgeting arrangements on council services and resources.
87. The financial implications of this report together with the impact on all services

across the council from the COVID-19 pandemic situation will be reviewed against council resources and any additional funding available from government.

#### **REASONS FOR URGENCY**

88. Urgent consideration of this item is necessary to enable SLM to prepare in advance for the reintroduction of the council's leisure services as soon as the government closure order is lifted resulting in restored services for residents to access.

89. The exceptional circumstances are:

- The next Forward Plan to be published will be the September 2020 Forward Plan. The previous financial support packages only cover the period 23 March to 30 June 2020.
- To ensure the council can move forward measures that minimise the negative financial impact of COVID-19 on the council's resources

and

- Failure to re open the leisure centre alongside competitors will result in SLM and the council losing market share to competitors.

#### **REASONS FOR LATENESS**

90. It has not been possible to circulate this report five clear days in advance of cabinet meeting because up until this point the uncertainty and swiftly changing environment of the COVID-19 pandemic made it difficult to plan in advance.

#### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
None		

#### **APPENDICES**

<b>No.</b>	<b>Title</b>
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Rebecca Lury, Deputy Leader and Cabinet Member for Culture, Leisure, Equalities and Communities	
<b>Lead Officer</b>	Rebecca Towers, Director of Leisure	
<b>Report Author</b>	Tara Quinn, Head of Parks and Leisure	
<b>Version</b>	Final	
<b>Dated</b>	13 July 2020	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		13 July 2020