

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF FULL COUNCIL ON 15 JULY 2020

SUBJECT: FINANCIAL SUPPORT TO LEISURE OPERATING CONTRACT

REPORT AUTHOR: Robin Wickham, Group Head of Community Wellbeing

DATE: July 2020

EXTN: 37835

PORTFOLIO AREA: Community Wellbeing

EXECUTIVE SUMMARY:

Freedom Leisure is in receipt of a Council support package in response to the Government directive to close the Council's leisure centres due to the COVID-19 pandemic. This report sets out the current situation and options to maintain the future viability of the leisure operating contract.

RECOMMENDATIONS:

Full Council approves the following measures:

- a) extend the Letter of Variation (Supplier Relief due to COVID-19) to defer the net monthly payment obligations (£66,000) for the remainder of the financial year (to March 2021) and extend the contract expiry date by a further six months to 31 March 2027;
- b) a supplementary estimate for a sum up to £270,000 (Band D equivalent of £4.38) is made available to support the Council's leisure operating contract for an initial three months and the impact is reported to Cabinet in September;
- c) a supplementary estimate for a sum of £136,300 (Band D equivalent of £2.19) to regularise the s138 notice reported to Cabinet on 29 April 2020 to reimburse £45,436 per month to Freedom Leisure, subject to open book accounting, to cover the costs associated with the upkeep of the buildings during the period of closure; and
- d) authority is given to the Group Head of Wellbeing to apply for and receive support funding that may from time to time become available to support leisure and cultural services affected by COVID-19.

1. BACKGROUND:

1.1 On 21 March 2020 Freedom Leisure responded to the Government direction and closed Arun's leisure centres with a consequential and significant impact on their income. The closure threatened the future viability of the Council's leisure operating contract.

- 1.2 On 16 April 2020 the Chief Executive, in consultation with the S151 Officer, exercised his delegated authority to defer Freedom Leisure's payment of contractual fees and provide financial support to maintain the upkeep of leisure facilities whilst they remained closed. This decision was made under Part 4, Section 2 of the Officer Scheme of Delegation of the Council's Constitution:
- paragraph 2.22 to authorise settlement of any potential dispute to safeguard the Council's interests; and
 - paragraph 2.11 that the expenditure met the purposes of the Local Government Act 1972, S.138 in connection with peacetime emergencies and disasters.
- 1.3 The decision was based on advice by the Cabinet Office in "Procurement Policy Note – Supplier Relief due to Covid-19" (March 2020), but also in recognition of the importance of working with Freedom Leisure to ensure the leisure operating contract could continue post the pandemic to meet the medium/long term welfare and social needs of the community.
- 1.4 The decision allowed Freedom Leisure:
- a) to defer payment of the management fees of £64,000 per month for three months applicable under the terms of their contract during the Covid 19 pandemic and agree an alternative payment plan to repay these fees;
 - b) To be reimbursed £45,436 subject to open book accounting (as per Policy Procurement advice 02/20 issued by the Cabinet Office); and
 - c) to be paid an interest free loan of £180,800 to cover 80% of the furloughed employee costs whilst the Job Retention Scheme is in operation; to be repaid when Freedom Leisure is in receipt of payments from Government
- 1.5 In the event Freedom Leisure accepted points a) and b). It did not take up c) the interest free loan.
- 1.6 The payment plan is subject to ongoing review should the Government's direction and guidance continue for the longer term. The terms of decision have been stated in a Letter of Variation to the Leisure Operating Contract (see background papers). The essence of the Variation is to give relief to Freedom Leisure in accordance with PPN 02/20 to ensure the leisure operating contract remains viable until the COVID-19 restrictions are lifted. Freedom Leisure has agreed to open book accounting and quarterly reconciliation.
- 1.7 The Council has received £4,980 partnership funding from Sport England to provide advice for contractual matters and assistance with the reconciliation of relief payments as a result of COVID-19.
- 1.8 On 2 July 2020 the Local Government Secretary announced a support package to reimburse lost income to Councils during the pandemic. The Ministry of Housing, Communities and Local Government stated, 'Where losses are more than 5% of a Council's planned income from sales, fees and charges, the Government will cover 75p in every pound lost.' At the time of writing this report the details of the scheme had not been published but this scheme may provide a partial reimbursement of fees due to the Council relating to the leisure operating contract.
- 1.9 A separate scheme to support Council leisure facilities and in recognition of the vital role they play in the health and wellbeing of the nation, has been championed by the Local Government Association and UK Active, a professional body for the leisure

industry. Together they have lobbied central Government and the Treasury to set up a specific fund to support Council contracts with leisure operators and in-house operations. A decision on this fund is awaited and if agreed it will provide further support for the leisure operating contract.

- 1.10A timetable for reopening of indoor leisure facilities is expected in the week commencing 6 July 2020.
- 1.11 Before opening, the facilities will be required to comply with strict control measures for the safety of customers and staff. Freedom Leisure is already working on plans to make the buildings COVID secure. It will also ensure the activity programmes in each facility comply with industry specific guidance. This will enable each facility to open as soon as the guidance is met and business need permits. It is envisaged that the Council's two leisure centres will open as soon as practicably possible and will remain open unless required to close.
- 1.12 To permit adequate social distancing Freedom Leisure will apply COVID secure guidelines to make the buildings safe, applying measures such as one-way systems; restrictions on changing facilities; enhanced cleaning regimes; and reducing numbers attending the most popular activities. It has also proposed other initiatives such as extending the use of booking systems to manage numbers visiting the centres.
- 1.13 The application of the guidance will inevitably reduce the capacity of the centres. Demand is also anticipated to be lower than before the centres closed. Initially therefore, Freedom Leisure is proposing reduced opening hours and offer fewer classes/activities to keep costs down, but it will scale up the programme and the operation as demand grows.
- 1.14 Freedom Leisure recognises the need to build the public's confidence. Some customer groups will be wary of returning to the centres after weeks of lockdown. For this reason, it also proposes incentives which may include lower charges for memberships whilst the capacity of the centres and activity programmes are reduced. The Council will assist with the marketing of the facilities and promotion of activities.
- 1.15 There is clear recognition that activity is essential to the health and wellbeing of our community. Medical evidence indicates that those with obesity (a BMI of 40 or above) and diabetes are at a higher risk following a diagnosis of COVID-19. Those who live in deprived areas also have poorer outcomes. Many children have been unable to attend school and need the opportunity to be active; social isolation has impacted on the mental health of many; and lockdown has resulted in some taking little or no physical exercise. There is a clear need to ensure that our leisure centres are open, and the Council is working with Freedom Leisure to ensure a range of activities are provided both inside and outside of our facilities to engage, encourage and enthuse our community to exercise.
- 1.16 The loss of income caused by COVID-19 has a temporary, but significant impact on the leisure operating contract. Whilst the opening of the leisure centres will be an important milestone, Freedom Leisure will require ongoing support to run the Council's facilities until restrictions are fully lifted and the income builds to its previous level. Additional costs have already accrued in June as staff initially mobilised for an anticipated July opening date before being put back into furlough. It is clear that expenditure will be greater than income for some time to come.

- 1.17 Freedom Leisure has forecast the net cost of operating the facilities over a six-month period under the current and improving trading conditions; this totals some £500,000. Factors considered include a growing public confidence over time, a gradual increase in the programme to meet demand, staffing levels commensurate with the demand and other seasonal factors such as utility costs. The estimated net cost for three months is £270,000.
- 1.18 The risk of a second wave of the virus should not be understated and any financial support for the contract needs to be sustainable in the event that the facilities are required to close.
- 1.19 The response of other authorities to support their leisure operating contracts has largely depended on individual circumstances and contract arrangements. In regard to the nineteen authorities who have contracts with Freedom Leisure, all have either continued to pay a management fee or have waived or deferred rents and fees. All have also met the cost of keeping buildings secure and plant maintained during the period of closure. At the time of writing this report four Councils had confirmed that continued support in the recovery phase and the others were in the process of reporting to their Members.
- 1.20 In conclusion, the opening of our leisure centres will demonstrate the Council's commitment to supporting and improving the health and wellbeing of the community. Working with Freedom Leisure the associated costs will be managed to ensure that capacity can grow in step with demand, within the constraints of the Government's guidance. The Council has received Sport England funding to help monitor and manage the costs to achieve value for money. These measures will ensure that our leisure contract has the best prospect of recovering quickly as restrictions are lifted and provide our community with the opportunity to enjoy healthy active lifestyles in first class facilities.

2. PROPOSAL(S):

It is proposed that Full Council approves the following measures:

- a) extend the letter of Variation (Supplier Relief due to COVID-19) to defer the net monthly payment obligations for the remainder of the financial year (to March 2021) and extend the contract expiry date by a further six months to 31 March 2027;
- b) a supplementary estimate for a sum up to £270,000 (Band D equivalent of £4.38) is made available to support the Council's leisure operating contract for an initial three months and the impact is reported to Cabinet in September;
- c) a supplementary estimate for a sum of £136,300 to regularise the s138 notice reported to Cabinet on 29 April 2020 to reimburse £45,436 per month to Freedom Leisure, subject to open book accounting, to cover the costs associated with the upkeep of the buildings during the period of closure; and
- d) authority is given to the Group Head of Wellbeing to apply for and receive support funding that may from time to time become available to support leisure and cultural services affected by COVID-19.

3. OPTIONS:
 3.1 Not to support the recommendations.

4. CONSULTATION:
 4.1 This report has been prepared in consultation with the Section 151 Officer.
 4.2 Legal advice has been obtained from Walker Morris LLP in respect of contractual and procurement matters.

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		✓
Relevant District Ward Councillors		✓
Other groups/persons (please specify)		✓

5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial	✓	
Legal	✓	
Human Rights/Equality Impact Assessment		✓
Community Safety including Section 17 of Crime & Disorder Act		✓
Sustainability		✓
Asset Management/Property/Land		✓
Technology		✓
Other (please explain)		✓

6. IMPLICATIONS:

Financial: Whilst the reopening of the Leisure Centres would undoubtedly be welcomed it has to viewed it in the context of the financial situation the Council finds itself in and the effect on the Council's overall financial strategy. Any decision, inevitably, involves an element of risk and we must ask contractors to share this business risk and assume responsibility for an element of the financial burden. Freedom Leisure's reserves are obviously finite but that also applies to the Council's reserves which also have to support a wide range of essential services. There are too many uncertainties to accurately predict the Council's deficit for this year, but it will certainly be significant and considerably larger than the level of support currently provided by central government and we have a responsibility to mitigate this as much as possible. The negative effect on the Council's financial strategy is further exacerbated by the recommendation to defer the monthly management fee of £66k per month. Whilst we are expecting Freedom Leisure to ultimately repay this accumulated debt, there must be a risk that they will be unable to do so as the level of debt increases. The Council must also be alert to other risks and one of the most severe would be a second wave of the virus which could cause the leisure facilities to close again. If this were the case, the issues outlined above would be exacerbated and we

would have to consider whether the situation is sustainable and if the Council would be in the position to offer the same level of financial support.

The loss of fees payable to the Council and unexpected unbudgeted expenditure jeopardises the leisure operating contract, but also puts additional stress on the Council's finances. In mitigation, if the contract were retendered in the current climate the Council may receive less favourable terms and it is recommended therefore to support the contract during this setback whilst the trading position recovers.

Legal: Extending the Letter of Variation will protect both the Council and Freedom Leisure.

7. REASON FOR THE DECISION:

To safeguard the Council's leisure operating contract.

To serve the health and wellbeing needs of the community

8. BACKGROUND PAPERS:

- Decision Taken under Officer Scheme of Delegation – Financial Support to Freedom Leisure (16 April 2020) - <https://www.arun.gov.uk/download.cfm?doc=docm93jjjm4n15597.pdf&ver=16031>
- Contract Variation (Supplier Relief due to COVID-19) <https://www.arun.gov.uk/download.cfm?doc=docm93jjjm4n15596.pdf&ver=16030>

