

Notice of NON KEY Executive Decision containing exempt information

This report is part exempt under the Access to Information Procedure Rules set out in the Constitution pursuant to Schedule 12A Local Government Act 1972, as amended. The exemption sought is by virtue of:

Paragraph 3 - Information relating to the financial or business affairs of any particular person including the authority holding that information; and

Paragraph 5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings; and

It is in the public interest to withhold the information as the public interest in maintaining the exemption outweighs the public interest in disclosing the information as disclosing the information could prejudice the Council's position and this is not in the public interest.

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| Subject Heading: | Support for SLM – Coronavirus Pandemic |
| Cabinet Member: | Councillor Damian White, Councillor Roger Ramsey, Councillor Viddy Persaud |
| SLT Lead: | Jane West, Chief Operating Officer |
| Report Author and contact details: | Guy Selfe, Health and Wellbeing Manager, 01708 433866, guy.selfe@havering.gov.uk |
| Policy context: | Places – Havering has excellent leisure facilities and award winning parks |
| Financial summary: | SLM are requesting further financial support, through waiving in part the management fee, for July to |

Non Key Executive Decision – Part Exempt Report

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| | September 2021 as detailed in the financial implications. |
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The subject matter of this report deals with the following Council Objectives

- Communities making Havering
- Places making Havering
- Opportunities making Havering
- Connections making Havering

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

To agree to:

1. Note the actual financial performance and payments with SLM for the period April to June 2021.
2. Waive in part the management fee payable by SLM to the Council under the contract for leisure services for the period July to September 2021 as set out in this report.
3. Note the success during the school summer holidays of the free swimming offer that SLM agreed to deliver.

Background

1. Cabinet agreed the recommendations for financial support to SLM in five previous Key Executive Decisions for the financial year 2020/2021 and the first quarter of 2021/2022. Due to the Government decision to close such facilities as leisure centres for the period April to late July 2020, and the subsequent re-opening of the centres following Covid secure guidelines from 25 July 2020, followed by a further 'lockdown' in November 2020, December 2020 and January to 12 April 2021, the ability for SLM to generate income has been severely restricted either almost totally with centres being closed, or partially restricted with numbers able to use the centres limited due to social distancing.
2. The Government announced that restrictions would be lifted on 19 July 2021 and that venues were to risk assess facilities to limit the further spread of coronavirus. SLM have undertaken risk assessments and have maintained some elements of the Covid restrictions, but relaxed others. These are:

Key control measures that were removed from the 19th July 2021

- One way systems
- Distance floor markers
- Maximum occupancy restrictions in the gyms and group ex classes
- Booking system for the gym to be removed
- Restrictions on spectators to be removed
- All showers, lockers, hair dryers back in action
- 5 min prior to activity booking restriction to be replaced with 15 minute before (as before Covid)
- Requirement for 1 person per 100 square feet of space has been removed from the guidance

Key control measures that remained from the 19th July 2021:

- Sneeze screens

Non Key Executive Decision – Part Exempt Report

- Sanitizer and cleaning stations
 - High frequency touch point cleaning
 - Booking system for swimming
 - Mask policy (masks to be worn when not undertaking an activity)
 - Test Track and Trace signage
 - Café test track and trace
 - All colleagues will still be required to distance
 - Customers will be encouraged to distance (new signage will be in place)
 - Mass events (Hockey, galas) to be risk assessed individually and will only return when NGB guidance permits.
3. Cabinet agreed to provide financial support to SLM for the period April 2020 to June 2021 to ensure SLM were able to continue managing the Council's leisure centres. This funding was to support the operating deficit and to waive the management fee that was due to be paid to the Council by SLM.
4. The Council continued to claim funding from The Local Government Income Compensation Scheme for Lost Sales, Fees and Charges for the income lost from the Management Fee that SLM should be paying to the Council. The scheme will involve a 5% deductible rate, whereby authorities will absorb losses up to 5% of their planned 2021/22 sales, fees and charges income, with government compensating them for 75p in every pound of relevant loss thereafter. This scheme was open for applications up until the end of June 2021.

Current Situation

5. Discussions with SLM have been ongoing throughout the current Covid-19 pandemic. SLM have advised that they will still require financial support for the period July to September 2021. Given the uncertainties that continue to exist with the pandemic, for example the numbers that will return to the centres, financial forecasts have been reviewed and updated by SLM.
6. The effect of 'Freedom Day' on 19th July 2021 where by the Government lifted restrictions, such as social distancing, has not been fully understood by leisure operators, such as SLM at the current time. Moving Communities has been established to monitor the National Leisure Recovery funding and tracks participation at public leisure facilities and provides new evidence of the sector's performance, sustainability and social value.
7. Moving Communities most recent data shows that while the public leisure sector has shown a steady rate of recovery since reopening in March 2021, there are former participants still choosing not to return to facilities, with recovery rates settling at around 72% (2021 attendances compared to same weeks/months in 2019). While mandatory capacity restrictions have been removed, there appear to be factors holding back the final tranche of customers and limiting overall recovery.
8. With recent recovery rates holding steady above or around 70% Moving Communities have evaluated the potential reasons for the lack of continued

Non Key Executive Decision – Part Exempt Report

growth. One factor is likely to be the ongoing presence of COVID-19 across England and the effect that this has on consumer confidence in centres as the safest places for them to exercise and therefore willingness to return to leisure facilities. Wave 191 data (23rd to 26th July 2021) from Savanta ComRes identified that 61% of respondents stated that they were worried about exercising close to other people, which is 4 percentage points higher than the previous set of results. Additionally, 83% of respondents who participated in indoor gym/fitness in the previous week agreed that COVID-19 safety measures should continue at facilities, demonstrating their importance to consumers and their continued role in supporting further recovery.

9. SLM reported a large number of leisure centre members leaving during the national lockdowns and they are working hard to bring the number of memberships back to a level equal or better than before the pandemic. This continues to impact their income and therefore their ability to pay the Council the full contract management fee.
10. SLM has confirmed to the Council that it has lodged a claim for losses associated with the pandemic via its business interruption insurance. The issue of whether such losses qualify in principle was litigated as a test case and has recently been decided in the insureds' favour by the Supreme Court. Notwithstanding establishment of the principle, each claim will turn on the wording of the relevant policy. In the event that SLM are able ultimately to claim, SLM has confirmed that it will pass the payment on to the Council on a pro rata basis related to the support given.
11. SLM have delivered on behalf of the Council successful free swimming sessions for young people during the school summer holidays. The table below shows attendances each week.

| Week Commencing | Number of Free Swims (maximum 3,900 per week) | Percentage Occupancy |
|------------------------|--|---|
| 26 July | 3,685 | 94.5% |
| 2 August | 3,542 | 90% |
| 9 August | 2,706 | 69% |
| 16 August | 2,408 | 62% |
| 23 August | 2,211 | 57% |
| 30 August | 1,750 | 45% |
| | | |
| Total | 16,302 | 70% (of total free swims available during 6 weeks holidays) |

12. As previously reported, SLM have agreed to provide concessionary memberships for looked after children, foster carers and care leavers. This initiative is a clear example of corporate social responsibility and a critical contribution to the borough's most vulnerable children and young people. To date, 85 membership cards have been issued to care leavers for membership of the leisure centres.

Non Key Executive Decision – Part Exempt Report

Recommendations

To agree to:

1. Note the actual financial performance and payments with SLM for the period April to June 2021.
2. Waive in part the management fee payable by SLM to the Council under the contract for leisure services for the period July to September 2021 as set out in this report.
3. Note the success over the first weeks of the school summer holidays of the free swimming offer that SLM agreed to deliver.

AUTHORITY UNDER WHICH DECISION IS MADE

Part 3 Responsibility for Functions, 3.3 Powers of Members of the Senior Leadership Team, Financial responsibilities

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

STATEMENT OF THE REASONS FOR THE DECISION

This decision is required as SLM need to know if the Council are going to provide financial assistance at a time of an unprecedented emergency caused by the Coronavirus pandemic. The Leisure centres were able to re-open on 25 July 2020 following a period of closure during the first lockdown. Due to operating the leisure centres in a Covid secure way, the numbers of attendances have had to be reduced with resultant reduced income. The announcement of a four week England wide lockdown commencing on 5 November and a further closure period from 20 December to date will provide further periods where SLM will be unable to generate income. SLM continue to request financial support, through waiving part of the management fee, to enable them to remain operating Havering's leisure centres. Without this financial support, SLM would not be in a position to continue operating Havering's leisure centres.

OTHER OPTIONS CONSIDERED AND REJECTED

1. Do nothing – without supporting SLM financially during the required period of July to September 2021, they will cease to operate the leisure management

Non Key Executive Decision – Part Exempt Report

contract that still has over 15 years left to run. This would then require the Council to take on the management of the leisure centres whilst deciding whether to re-tender or operate in-house. The Council does not have the expertise or experience to operate the leisure centres in the same way as SLM that would result in the same positive financial arrangement enjoyed through the existing contract with SLM. Therefore, doing nothing is not an option in the current situation.

2. Provide a level of financial support to SLM, but not at the requested level. There is a risk with this approach that SLM will cease to operate the Council's leisure centres and withdraw from the contract as it would not be a viable business.
3. Re-tender the Leisure Management Contract – when the contract was re-tendered to start in October 2016, the tendering process commenced in 2013. It is considered prudent to allow at least two years for a re-tendering process for such a significant contract. This leaves a period of two years whereby the Council would either need to return the management and operation of the leisure centres 'in house' or seek a temporary situation with another operator stepping in for a time limited period until the re-tendering was complete. There are significant dis-benefits to this; the levels of income to the Council for the remainder of the contract with SLM are not expected to be anywhere near the levels under the current contract if re-tendered. The pandemic has changed the commercial landscape for leisure centre operators with contract management fee payments possibly dropping anywhere up to 50% of the sums SLM will pay once the pandemic is over. This option would also require SLM's agreement to early exit from the contract.

This will result in already budgeted for savings, some £1.1m per year during the contract, will not be achieved. There will be a reduction in the amounts available to pay for the capital investments funded through the contract such as the new build Harrow Lodge Leisure Centre and the Central Park Leisure Centre extension that are budgeted for. There is an as yet unallocated £8m that the contract will provide from 2027 to the end of the contract that will reduce.

PRE-DECISION CONSULTATION

None

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

Name: Guy Selfe

Non Key Executive Decision – Part Exempt Report

Designation: Health & Wellbeing Manager

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The predicted reduction in footfall which inform the proposed waiving of part of the management fee for SLM is as a result of measures introduced under the Coronavirus Act 2020 and The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020, together with the effect of implementation of Government “Guidance on coronavirus (COVID-19) measures for grassroots sport participants, providers and facility operators”. The Act, Regulations and Guidance constitute a Qualifying Change of Law for the purposes of the contract for leisure services between SLM and the Council (the Contract).

The Contract provides that adjustments in SLM's costs of providing the leisure services which are attributable to a Qualifying Change of Law must be paid by the Council. Costs must be net and SLM must act wherever possible to mitigate the costs. The payments, in this instance waiving part of the management fee, are therefore contractual payments which the Council is required to make following a period of negotiation between the parties, appropriately mitigated where available.

As the payments are required under the terms of the contract, such adjustment in price is compliant with the requirements of the Public Contracts Regulations 2015 and is lawful.

The Council's legal team can assist with drawing up and finalising legal documentation relating to agreed payments.

FINANCIAL IMPLICATIONS AND RISKS

The Financial Implications and Risks are at Exempt Appendix A

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

Should the recommendation to provide financial assistance to SLM for July to September 2021 as requested, there will be no human resource implications as SLM staff are not Council employees.

If the funding is not agreed and the Council wishes to continue to provide Leisure Centre services to the community, there may be a need to consider a TUPE transfer of SLM employees to Council employment.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

Non Key Executive Decision – Part Exempt Report

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

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

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

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

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

Should the recommendation to provide financial assistance to SLM as requested during the period of July to September 2021, there will be no equalities and social inclusion implications and risks. The leisure centres are available to everyone when open, although not all of the facilities and activities will be available due to social distancing requirements.

If the recommendation to provide financial support to SLM is not agreed, there would be significant implications and risks as the centres would not remain open.

BACKGROUND PAPERS

None

APPENDICIES

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|-------------------|----------------------------------|--------|
| Appendix A | Financial Implications and Risks | Exempt |
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Non Key Executive Decision – Part Exempt Report

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

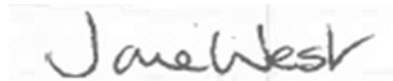
Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed



Name: Jane West

CMT Member title: Chief Operating Officer

Date: 23.12.21

Lodging this notice

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

For use by Committee Administration

This notice was lodged with me on _____

Signed _____