



Notice of 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.

Subject Heading:	Support for SLM – Coronavirus Pandemic
Decision Maker:	Councillor Ray Morgon, Councillor Paul Middleton
Cabinet Member:	Councillor Paul Middleton
SLT Lead:	Gareth Nicholson, Director, Partnerships & Organisational Development
Report Author and contact details:	Guy Selfe, Assistant Director, Culture and Customer Services, 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

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	management fee, for October 2021 to March 2022 and for financial years 2022/23 and 2023/24 as detailed in the report. The amount being requested to be waived by SLM over the period October 2021 to March 2024 is as indicated within the report.
Reason decision is Key	Indicate grounds for decision being Key: (a) Expenditure or saving (including anticipated income) of £500,000 or more
Date notice given of intended decision:	7 March 2022
Relevant OSC:	Towns & Communities Overview & Scrutiny Sub- Committee
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

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

Communities making Havering	<input type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

<p style="text-align: center;">DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION</p> <p>To agree to:</p> <ol style="list-style-type: none">1. Note the actual financial performance and payments with SLM for the period October 2021 to March 2022.2. Waive in part the management fee payable by SLM to the Council under the contract for leisure services for the period October 2021 to March 2022 as set out in this report.
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3. Adjust the management fee payable by SLM to the Council under the contract for leisure services for the financial years 2022/2023 and 2023/2024 as set out in this report.
4. Note the success during the school 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. A further Non-Key Executive Decision agreed the recommendations to waive part of the management fee from SLM for July to October 2021. 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. The arrival of the Omicron variant in December 2021 also impacted the numbers of visits to the leisure centres.
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
- 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

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- 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. The following control measures are still in place, with the remainder from the list in point 2 above being discontinued in line with Government guidance. Still in place now:
- Sneeze screens
 - Sanitizer and cleaning stations
 - High frequency touch point cleaning
 - Booking system for swimming
 - Mass events are still assessed individually
4. 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. A further Non-Key Executive Decision was agreed supporting SLM for July to October 2021. 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. SLM have been required to provide 'open book' accounts on a monthly basis to demonstrate the actual financial position. The maximum financial risk exposure for the Council has been provided in advance by way of a forecast from SLM. Where the actual performance is better than the forecast, the Council has only paid the actual position.
5. The Council claimed 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 involved 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.
6. The National Leisure Recovery Fund application submitted by the Council was successful with an award of £587,761 to support the re-opening of the Council's leisure centres following the lockdown closures. The conditions attached to the funding restrict the amount of the grant that could be allocated to the 2020/2021 financial year to 30%, with 70% allocated to the financial year 2021/2022. The total grant allocated in 2021/2022 financial year, £411,432, was projected to be used by SLM across the full twelve months of 2021/2022.

Current Situation

7. Discussions with SLM have been ongoing throughout the Covid-19 pandemic. SLM have advised that they will still require financial support for the period October 2021 to March 2022. Also, SLM have requested that support is

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ongoing for the next two financial years, 2022/2023 and 2023/2024, due to the ongoing impact of the Coronavirus pandemic.

8. The period October 2021 to March 2022 has seen the leisure centres operating with the reduced restrictions outlined above. However, the ongoing situation with the pandemic has affected attendances and therefore income. The Omicron variant of the Coronavirus saw a rapid increase in infections both locally and nationally. This resulted in centre users staying away from the leisure centres.
9. The period October 2021 to March 2022 has seen a monthly payment included through the National Leisure Recovery Fund. This funding ended in March 2022.
10. The effect of the pandemic has been seen through the last two years in SLM's 'open book' accounts for the period. Whilst the numbers returning to use the leisure centres has been improving, the business development has been effectively on hold for two years. The business development that would have taken place during these two years has not been possible. For example, Harrow Lodge Leisure Centre was delayed due to Covid and when it did open, there were still restrictions in place for the first few months of opening. Sapphire Ice and Leisure has seen a significant change during the last two years. The daytime usage from people working in Romford has changed as a result of people working from home and as businesses change their working arrangements to include more working from home.
11. 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. One of the measures SLM introduced to encourage memberships was to reduce the prices. This has been successful, but whilst a larger percentage of users have returned than the national average, they are now paying less than pre-pandemic memberships.
12. Due to the numerous restrictions, closures and reduced consumer confidence during the two year period SLM has been unable to sustain the required growth in footfall and income levels during the two year period since the start of the pandemic. SLM has seen some excellent footfall and income generation from the new Harrow Lodge Leisure Centre but the site is yet to hit the normal three year maturity, however Central Park Leisure Centre and Sapphire Ice and Leisure are yet to achieve pre pandemic member and swim lesson numbers sitting at around 90% of previous levels.
13. As a result of the pandemic and as set out above, SLM originally requested that the Council reduce the management fee contractual payments for the next two financial years. Their proposal was that the contract sum for 2020/2021 be paid in 2022/2023, and the contract sum for 2021/2022 be paid in 2023/2024. After further discussion with SLM, a new request, based on the general principle of

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rolling the contract two years has been received. This improves the sum the Council would be guaranteed to receive by £193k over the two year period.

14. A more recent meeting between the Leader, Lead Member for Corporate, Culture and Leisure Services and SLM has resulted in a further improved position with an additional £156k guaranteed to be paid to the Council over the two year period i.e. 2022/23 and 2023/24.
15. In line with the contract, SLM will guarantee the revised management fee as minimum payments taking the risk if income is not achieved to the level to meet these payments. The revised (reduced) fees are derived by SLM from projected cost and income figures for delivery of the Leisure services during a 2 year recovery period. To mitigate the loss to the Council, SLM have waived profit within their costs calculations for this period.
16. The Council's contract with SLM allows SLM to keep 100% of profit up to a specified amount year on year (allowed profit). Excess annual profit (annual profit above what SLM is contractually allowed to retain) is apportioned between the parties on a 50:50 share basis. A mitigation measure previously agreed relating to the Council's Covid based support to SLM was to forgo entitlement to allowed profit to nil whilst support was being provided and to adjust the excess profit apportionment 75:25 in the Council's favour indefinitely until the Covid support payments had been repaid.
17. SLM's proposal for profit share for the period covered by this report is as follows:
 - a. Period October 2021 – March 2022: SLM allowed profit nil, Council:SLM profit share 75:25 (reflecting previous agreement)
 - b. 2 year adjustment period from 1 April 2022 : SLM allowed profit nil, Council:SLM profit share 75:25
18. SLM have confirmed that on the assumption restrictions will continue to ease and no further restrictive measures are imposed, the 2 year adjusted management fee is their final request for support. The contract amount is then proposed to return to its correct year from 2024/25. Allowed profit will also return to existing contractual levels. As set out above, the 75:25 profit split will endure until (and if) previous support is repaid.
19. Should SLM reach a position where their open book accounts show they are able to pay the full contract amount over a period of three consecutive months, Officers will negotiate with SLM with the aim to end the ongoing support before the end of the two year period.
20. 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

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claim, SLM has confirmed that it will pass the payment on to the Council on a pro rata basis related to the support given.

21. 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%
26 October	2,121	54%
Christmas Holiday 2021	2,135	55%
14 February 2022	2,588	66%
4 April 2022	2,197	69%
11 April 2022	1,977	62%
18 April 2022 (1 day)	482	75%
30 May 2022	2,284	71%
Total	28,186	59.3% (of total free swims available during holidays)

22. SLM have previously 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, 164 membership cards have been issued to looked after children (of which 102 have been activated/used), 70 membership cards for children in foster care and 32 membership cards for care leavers for membership of the leisure centres.

23. Should the recommendation be agreed to continue to support SLM by adjusting the management fee for 2022/23 and 2023/24, SLM agree to offer the free school holiday swimming offer for the remainder of the contract, i.e. up to September 2036. If this was delivered, it would offer over 800,000 free swims for the remainder of the contract. This would not be at a cost to the Council, and is valued at approximately £2.9m.

Recommendations

To agree to:

1. Note the actual financial performance and payments with SLM for the period October 2021 to March 2022.

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2. Waive in part the management fee payable by SLM to the Council under the contract for leisure services for the period October to March 2022 as set out in this report.
3. Adjust the management fee payable by SLM to the Council under the contract for leisure services for the financial years 2022/2023 and 2023/2024 as set out in this report.
4. Note the success during the school holidays of the free swimming offer that SLM agreed to deliver.

AUTHORITY UNDER WHICH DECISION IS MADE

Decision of Cabinet

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 following a time of an unprecedented emergency caused by the Coronavirus pandemic. Whilst the leisure centres are now open to the public and remaining Covid related restrictions have been lifted, SLM continue to request financial support, through adjustment of the contract payments for the next two years, to enable them to remain operating Havering's leisure centres. Without this financial support, SLM have stated they 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 October 2021 to March 2022 and adjusting the contract sum for the next two years, they may cease to operate the leisure management contract that still has over 14 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

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business. As with the do nothing option, it is also possible that this option might place the Council and SLM in legal dispute.

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. Unless agreement could be reached with SLM for them to continue to manage the contract during the procurement period, 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 and after financial year 2023/2024. This option would also require SLM’s agreement to early exit from the contract. The contract with SLM, with the adjusted management fee for the next two years, still offers some £40m income to the Council.

Not agreeing to reduce the management fee for two years will have the result that 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. In effect, it is believed the option not to fund the request from SLM for October 2021 to March 2022 and the rollback for the next two years will cost the Council far more, potentially in the region of £20m, than agreeing to the request.

PRE-DECISION CONSULTATION

None

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

Name: Guy Selfe

Designation: Assistant Director Culture and Customer Services

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The reduction in footfall and increase in operating costs which led to the recommended proposals for the management fee for October 2021 to March 2022 result from 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 proposed waiver and adjustment are viewed as Qualifying Change of Law adjustments which the Council is required to make following a period of negotiation between the parties. The Change of Law costs must be appropriately mitigated by SLM where available. SLM seeks to mitigate by reducing its allowed profit element to nil during the adjustment This mitigation is in line with SLM’s contractual obligations (as was the previous 75:25 profit share apportionment adjustment).

As set out above the proposed support for October 2021 to March 2022 is provided for in the contract. It is therefore compliant with the requirements of the Public Contracts Regulations 2015 and may be made.

The 2 year support package proposed to commence from 1 April (the 2 year support) falls outside the contractual provisions relating to Change of Law. The Council has power to make the payments under the general power of competence contained in section 1 of the Localism Act 2011 which allows the Council to do anything that an individual may do subject to any statutory constraints on the Council’s powers. None of the constraints on the Council’s s.1 power are engaged by this decision. Also, under s111 Local Government Act 1972 which allows the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

The Council must consider whether the proposed 2 year support may constitute an illegal subsidy for the purposes of subsidy control regime. If as a matter of policy judgement the Council considers that provision of further financial support to SLM offers Best Value and makes commercial sense, it is considered that such support is will not be caught by the subsidy control regime as the Market Economy Operator Principle will apply¹.

¹ As further set out in confidential Appendix A

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For the reasons set out above, the Council may if so minded provide the 2 year support.

The Council's legal team can assist with drawing up and finalising legal documentation relating to the adjustment, which can be effected by way of variation to the financial schedules and profit share provisions.

FINANCIAL IMPLICATIONS AND RISKS

The Financial Implications and Risks are contained within Exempt Appendix B of this report.

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

Should the recommendation to provide financial assistance to SLM for October 2021 to March 2022 and to adjust contract payments for the next two years (2022/23 and 2023/24), 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

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.

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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 October 2021 to March 2022 and to 'roll back' two years the contract payments for the next two years, 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.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

Havering council is committed to improving the health and wellbeing of all residents including through the provision of leisure services to keep residents active and healthy. The purpose of this decision is to agree the provision of further financial assistance to SLM to enable it to keep operating as the coronavirus pandemic resulted in closure of leisure services and thereby restricted SLM's income generation during the lockdown period.

If the recommendation to provide financial support to SLM is not agreed, there would be significant implications and risks for the public health and wellbeing of residents. There are almost 2 million visits to the Council's leisure centres annually for the purpose of keeping fit and healthy. This has both physical and mental wellbeing benefits. It is highly likely that if SLM were not to continue operating the leisure centres, the period required to open, if the Council were to manage the facilities initially, would involve a period of the centres being closed to the public and this will potentially impact negatively on health and well-being of residents. Additionally, this may result in loss of jobs for those employed by SLM with further impact on their health and well-being. This decision is therefore supported.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

Leisure Centres are large consumers of energy and can contribute as much as 40% of a Council's direct carbon emissions. However, with new leisure centres over the last 4 years, steps have been taken to reduce these emissions. An example is the new leisure centre currently being built in Rainham.

The new Rainham Leisure Centre is proposed to provide a 70% reduction in CO2 emissions from baseline Building Regulations 2013 requirements as detailed in the energy statement that was included in the planning submission.

The reduction in CO2 emissions is proposed to be achieved via a combination of improvements to thermal properties of the building, use of efficient technologies such

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as LED lighting, heat recovery, controls to minimise energy consumption and also incorporation of low and zero carbon (renewable) technologies such as air source heat pumps to produce domestic hot water and heat parts of the building.

Whilst the building is proposed to achieve 70% reduction in CO2 emissions, there is a shortfall in achieving 100% reduction (i.e. zero carbon) therefore there will be a financial contribution to a carbon offset fund of £60 per tonne of carbon produced by the building as calculated over a 30 year period. The financial offset is £38,571 which will offset 642.9 tonnes of CO2 over the 30 year period.

BACKGROUND PAPERS

None

APPENDICIES

Appendix A	Confidential Legal Appendix	Exempt
Appendix B	Financial Implications	Exempt

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

Lodging this notice

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

For use by Committee Administration

This notice was lodged with me on _____

Signed _____