

BRISTOL CITY COUNCIL

DECISION



DECISION OF: **MIKE JACKSON (CHIEF EXECUTIVE)**

WITH ADVICE FROM: EXECUTIVE DIRECTOR OF PEOPLE, DIRECTOR OF PUBLIC HEALTH AND OTHER RELEVANT PROFESSIONAL ADVISORS

DIRECTORATE: **PEOPLE**

DECISION NO: 006

(2020/21 COVID-19 Emergency)

SUBJECT: REOPENING OF SLM LEISURE FACILITIES IN BRISTOL

KEY DECISION: **YES**

REASON

In putting the health and wellbeing of our citizens foremost, the allocation of funding from the Public Health reserve to enable the phased re-opening of SLM Leisure Facilities in Bristol from 1st August 2020 is approved.

Bristol City Council has agreed to make a payment to SLM Leisure Facilities under an agreed contract change, following the temporary closure announced by the government on 20 March 2020 as part of its COVID-19 response to stop the spread of infection and subsequently the planned phased reopening of safe and covid-19 secure centres. The payment will cover the period April to the end of October 2020 and will be capped at £499,996.

SLM will have the flexibility to determine which leisure facilities are to reopen; the opening times of each facility and what sports provision will be available.

The additional cost to the Council for keeping the facilities closed is capped at £29,500 for April, May, June and July, totalling £118,000 and the phased reopening of leisure facilities in August, September and October totalling £381,996. The total costs will not exceed £499,996 and income/expenditure will be monitored via an open book arrangement with SLM.

SLM leisure facilities is scheduled to commence phased re-opening on 1st August and as such a decision is required in line with the scheme of delegations as amended and approved by Cabinet on 28th April 2020 to deal with emergency Covid 19 related decisions from the Chief Executive (Head of Paid Service or S151 officer (Chief Finance Officer) in consultation with Cabinet Member for Finance and the Mayor.

The Mayor and Cabinet are keen to ensure leisure facilities in Bristol are able to reopen safely. The services they provide play an important role in ensuring the mental and physical wellbeing and social connectedness of local communities. Public Health England reports that regular physical activity can reduce the risk of many chronic conditions, including coronary heart disease, stroke, type 2 diabetes, cancer, obesity, mental health problems and musculoskeletal conditions. Engagement in leisure activities also contributes strongly to mental wellbeing, by allowing people to be active and to connect with others. For this reason the Council has agreed to make an agreed contract change to leisure providers that have a pre-existing contractual relationship with the Council, providing leisure and sport facilities on behalf of the Council to enable leisure and sport facilities such as gyms and swimming pools to be able to re-open to the public from 25th July 2020.

The Council recognises that leisure centres have a positive impact on efforts to improve the population's health, by contributing to healthier lifestyles, mental wellbeing and reducing health inequalities, obesity rates and physical inactivity, which could have a detrimental impact of the

health and wellbeing of Bristol's citizens.

The Council recognises that COVID secure measures are likely to be required beyond October and will proactively work with SLM to explore alternative long term sustainable options for the recovery of the business.

BACKGROUND

1. **The Council owns nine leisure centres and swimming pools located across the city.** Sport and Leisure facilities are provided within Bristol's Sport and Recreation Facility Strategy and are designed to serve Bristol's most deprived areas, with the purpose of improving health through participation in activity and through the employment of local people. Future proofing the integrity of the Council's sport and leisure strategy and continuity planning is inextricably bound up with the viability and resilience of the current operator. In total across all leisure centres there is a workforce of over 500 local people who are currently on furlough; of which there are 348 across the SLM contract.
2. In 2006 Bristol City Council entered into a 10 plus 5 year leisure management contract with Sport and Leisure Management Limited (SLM) to provide leisure services at six facilities: Horfield Leisure centre, Easton LC, St Pauls Community Sports Academy, Kingsdown LC, Henbury LC and Bristol South Pool.
3. Up until 2017 the Council paid a management fee of £1.3 m /annum including costs for utilities to provide services to an agreed performance standard. In 2017 a 5 year contract extension was agreed with SLM until April 2022 in return for a zero subsidy position delivering savings to the Council. With the exception of Bristol South Pool, SLM is responsible for full repairs and maintenance of the facilities and the associated lifecycle risk.
4. In March 2020 SLM request that the Council underwrite deficits resulting from their facility closures and forecasted deficits upon reopening. The Council approved (much lower than forecast) closure costs of £29,500/month at request of SLM but only for three month period April, May, and June.
5. SLM has request that it can reopen some facilities before others with a phased restarting of activities. This would be Horfield, Easton, St Pauls and Henbury whilst delaying Bristol South Pool and Kingsdown Leisure Centre will remain closed. This would reduce expenditure to some extent and provide a reasonable geographical coverage of provision. SLM have requested financial support from the Council to do this. This approach would allow SLM and the Council to monitor the uptake of attendances before bringing other facilities back on line. On 16th July 2020 Council Officers met with officials from SLM to start negotiations to reopen SLM Leisure facilities in Bristol. Through the course of these negotiations, SLM have agreed in principle to a short term funding arrangement, which would support the phased reopening of facilities. SLM would enter into an 'Open Book' arrangement with the City Council and share its end of month trading accounts.
6. SLM have requested short term contract change to facilitate this in the period from April to October this year ("**Support Period**"). This approach would allow SLM and the Council to monitor the uptake of attendances before bringing other facilities back on line. Further financial assistance is likely to be required after the Support Period and the Council will work proactively with SLM to seek alternative sources to sustain the centres. Sources such as a loan at commercial rates over a 3 year extended contract period could be an option, however no details have been provided or supported in this regard and any such decision would be dependent on the Council's own financial position, viable business plan and subject to Cabinet approval.
7. SLM proposed two options in relation to the period July to October 2020:

Option 1 (preferred option) –Bristol City Council to agree contract changes to a value capped at £499,996 to support closure and reopening cost of SLM Leisure Facilities from April to the end of October 2020. Where in relation to the months of August to October the actual costs are lower than projected capped costs for each month the Council and SLM would share the difference at a ratio of 50:50 respectively.

Option 2 – is the same as Option 1, but with swimming starting from September 1st, which results in a total capped cost of £621,343. This figure is based on further projected forecast costs for August, Sept and October of £503,343. Although the second option forecast provides a £5,953 saving in August, there is a significant deficit in October of an additional £47,000 which is when SLM need to refund their swimming lesson direct debits that are currently in credit.

Option 1 is the preferred approach and the decision to agree contract changes is a temporary short term arrangement made without prejudice as the Council and SLM consider the options for the future sustainability of the centres.

DECISION

1. To authorise the allocation of funding from the Public Health reserve to make a payment to SLM Leisure Facilities capped at £499,996, under an agreed contract change to enable the phased re-opening of Leisure Facilities in Bristol from 1st August 2020.
2. Notes that the situation will be kept under review and further updates will be provided if needed to Cabinet.

REASONS

Leisure services delivered by third parties and local supplier relationship are not currently covered by the government funding provided for response or potential funding for income loss (hence the strong lobbying by many authorities in this regard), and therefore if an early decision is made to support SLM prior to government confirmation being received, alternative funding will need to be identified.

In the course of considering any further post-October assistance, the Council will have the benefit of seeing how the market responds, and whether further restrictions could apply,

OTHER OPTIONS CONSIDERED

1. Mutually agree to terminate the contract and transfer the services from SLM. This option is not considered cost effective for the council, because the services will either need to be brought in-house at great expense (TUPE and LGPS costs etc.), or alternatively a replacement provider would need to 'step in', with similar financial issues remaining. This will present operational, technical and reputational risks.

FINANCIAL IMPLICATIONS

Additional costs and loss of income related to leisure services delivered by third parties and local supplier relationship are not currently covered by the government funding provided for response or potential funding for income loss. The Council continues to lobby Government to provide additional support for the leisure sector; however this decision is being made prior to any confirmation of additional Government funding. As this decision is primarily to address public health concerns in

the absence of sport and leisure facilities in the City if new funding is not available to the extent to which payments are agreed the costs will be funded from the Public Health Reserve.

The Council has considered all other possible budgets from within the general fund to meet the costs, however it is recognised that with the Council's own financial position over the medium term, in the absence of any current government assistance to support the reopening of leisure facilities, this request could not be met. Should a short term funding arrangement not be put in place this would risk provider failure and could impact significantly on Public Health, The Director for Public Health has considered the position, risk to public health if facilities are not opened at the earliest possible opportunity and agreed to utilise the Public Health ring fenced reserve to meet these costs.

Given the necessity of this payment and the significance of leisure centres and services in terms of improving health and reducing health inequality, both directly and indirectly through local employment and economy, the Director for Public Health has authorised this one off payment from the PH ring fenced reserve of no more than £499,996k. This is conditional upon the council replenishing the Public Health ring fenced reserve should the financial situation improve in the longer term.

LEGAL POWERS AND IMPLICATIONS

The Council has a statutory duty for public health, which includes improving the population's health, by contributing to healthier lifestyles, mental wellbeing and reducing health inequalities, obesity rates and physical inactivity.

The financial support is unlikely to constitute state aid for the purposes of the EU state aid rules because: (1) it is very unlikely that such support would distort or threaten to distort competition in the relevant market; and (2) such support would only have a local impact.

In relation to point (1), the SLM provided leisure services are provided in a market comprising other private or BCC contracted out leisure services. The support will not result in reductions to the end user prices and/or changes to service offerings that could threaten such undertakings or otherwise 'un-level' the existing playfield in favour of SLM. In relation to point (2), the relevant services are provided to a limited area within the UK and are highly unlikely to attract and are not specifically marketed to customers in other Member States. It is also not foreseeable that such financial support would have any, or more than a marginal, effect on the decisions of competitors in other Member States in relation to investing in the Bristol leisure market or establishing a presence in Bristol.

While the support is unlikely to be deemed state aid, it is noted that the current level of support would fall within the level of aid permitted under the EU Temporary Framework (introduced on 19 March, and subsequently amended on 3 April, 8 May and 29 June 2020), and the Commission approved a UK-wide Umbrella scheme to support economic recovery that is compatible with the Temporary Framework.

The arrangements are also considered to be permitted (and low risk) under the applicable EU/UK public procurement rules concerning variations of concession contracts, in so far as the support will be captured in a short term fixed duration contract variation.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

None.

CONSULTATION

Not applicable.

RISK MANAGEMENT

1. Litigation; In the event the Council does not provide financial support, there is a potential risk of challenge under the SLM contract. Government Guidance (in the form of Practice Notes) in relation to Covid-19 and the difficulties faced by contractors, encourages parties to be pragmatic and work together to find solutions and so avoid litigation.
2. The cost to the Council of not financially supporting SLM will be significantly higher if SLM fail and are no longer able to operate the Bristol contract. This is because services will either need to be brought in-house at great expense, or alternatively 'step in' arrangements identified, through which the same financial issues will remain. This will present operational, technical and reputational risks and possible litigation.

EQUALITY IMPLICATIONS

Employment and Economy

1. Across the six leisure centres and swimming pools, which SLM operate, located across some of the most deprived areas of the city, there are over 350 local staff employed and c.2 million annual visits; as such the provision of which has a significant impact on both local employment opportunities and the local economy

Impacts on Children young people and families

2. The Council is the largest single provider of pool water space, which the majority of Bristol's primary schools access for school swimming (as part of their key stage 2 requirements). There are approx. 4500 children in SLM learn to swim programmes learning a life skill.
3. As part of the Council's Exceptional People in Care (EPIC) offer, all BCC foster carers, children in care and care leavers can access free membership and other activities across BCC leisure facilities.

Inequality impacts

4. Through its concessionary pricing scheme, the Council's leisure centres provide affordable and accessible opportunities for residents to be physically active, compared to the costs of other private provision which can be prohibitive and discourage people on low incomes from accessing.
5. Due to the location and catchment of a Bristol's leisure centres and in the event leisure operators are not supported and unable to continue delivering services, there will be a greater impact on Bristol's most deprived communities, resulting in a widening of social and health inequalities.
6. Evidence shows that regular physical activity can reduce the risk of many chronic conditions, including coronary heart disease, stroke, type 2 diabetes, cancer, obesity, mental health problems and musculoskeletal conditions. These conditions are significantly higher within Bristol's most deprived areas.

Public Health Impacts

7. The Council has a statutory duty for public health, which includes improving the population's health, by contributing to healthier lifestyles, mental wellbeing and reducing health inequalities, obesity rates and physical inactivity.

8. Bristol's leisure centres play a key role by providing a wide and varied programme of activities, exercise referral schemes for residents who have been suffering with serious conditions including cancer, cardiac problems, respiratory conditions, Parkinson's disease and MS, plus through their broader contribution to the health of the community.
9. Leisure centres impact on a range of public health and adult social care outcomes such as:
 - a. reducing the levels of obesity in adults and children
 - b. reducing social and health inequalities, and increasing healthy life expectancy
 - c. reducing the number of falls and injuries in over 65's
 - d. and reducing early death from cardiovascular diseases, cancer and respiratory diseases.

Wider impacts

10. If leisure operators are not supported the re-mobilisation of Bristol's leisure centres will be significantly affected.
11. Facilities will be unable to open and clubs and voluntary organisations unable to re-start activities for communities, until such time new delivery mechanisms are established.
12. There will be a significant impact on the social and health benefits to Bristol's communities at a time when these will be most needed.

CORPORATE IMPLICATIONS

1. Wellbeing: is one of four themes in the corporate strategy and based upon creating healthier and more resilient communities where life expectancy is not determined by wealth or background.
2. One of the Mayor's seven key commitments in the corporate plan is that Bristol will be a leading cultural city, making culture and sport accessible to all.
3. Embed health in all our policies to improve physical & mental health and wellbeing and reduce health inequalities reducing future demand pressures on health and social care services and helping to reduce costs.
4. Supporting preventative interventions and opportunities for physical activity amongst children and adults and creating a resilient, sustainable, clean and healthy city.
5. Promoting opportunity, attracting funding and protecting investment in culture while also facilitating others.
6. Continue to offer good quality services which attract visitors.

APPENDICES

BACKGROUND PAPERS

None

This decision is being taken under the urgency/emergency powers provided in the officer scheme of delegations in the Constitution.

To take emergency action on behalf of the Council on any matter in cases of urgency or emergency with, wherever possible, prior consultation with the Head of Paid Service and / or Director of Finance in consultation with the Mayor and Executive Member for Finance.

SIGNATORIES:

DECISION MAKER:

Signed: 

Note: If electronic signature used email from Director confirming decision and allowing use of electronic signature must be attached

Title: **Chief Executive Officer and Head of Paid Service**

Date: 31 July 2020

CONSULTEES:

Title: **Director of Finance and s151 Officer**

Signed: 