



Decision Pathway – Report

PURPOSE: Key decision

MEETING: Cabinet

DATE: 22 June 2021

TITLE	SLM Leisure Contract and Financial Assistance
Ward(s)	Citywide
Author: Guy Fishbourne	Job title: Sport & Physical Activity Manager
Cabinet lead: Mayor	Executive Director lead: Hugh Evans
Proposal origin: BCC Staff	
Decision maker: Mayor	
Decision forum: Cabinet	
Purpose of Report:	
1. Following the completion of financial due diligence, this report highlights the council's financial liability under its adopted contractual position compared to a non-contractual approach proposed by SLM which adopts a 'break even' methodology (foregoing profits). Overall, for commercial and financial reasons a non-contractual approach is cheaper and the best option.	
2. To advise a forecast net pressure liability for 1 st April 2021 – 31 st March 2022 will be c.£486,876	
3. This report describes in full forecasted financial adjustments for the period 1 st April 2021 – 31 st March 2022 based on the non-contractual approach of a total of c.£981,035 are required, of which c.£494,159 will be funded by the National Leisure Recovery Fund (NLRF) leaving c.£486,876 to be paid by the council (Appendix A).	
4. A decision is also required to conclude the contract variation necessary to achieve this as part of the Change of Law provisions.	
5. To seek authority to take all steps necessary to prepare for a future leisure procurement exercise with a view to consultation and Cabinet decision and to negotiate and approve any contract extension reasonably necessary to facilitate this and achieve best value.	
Evidence Base:	
1. Following the Government's announcement on 20/03/2020, all of Bristol's sport and leisure centres and swimming pools were closed to the public. Subsequently there have been re-openings subject to social distancing requirements in between further closures. The council owns nine leisure centres and swimming pools located across the city. SLM operate six of these sites and their current contract expires on 31 st March 2022. In preparation for new management arrangements to be in place officers are preparing a procurement exercise.	

2. Under the terms of the SLM contract the council has accepted that there has been a number of COVID-19 related Change of Laws, and that SLM has a legitimate claim for financial adjustments to cover the loss of net income and a narrow band of costs related directly to COVID legislation. This is like all other councils where facility closures and loss of income have resulted in significant costs needing to be met by local authorities and hence creating a national issue across the leisure sector.
3. An Emergency Decision was taken at April's cabinet to provide financial assistance for the period 1st November 2020 – 31st March 2021. This was made on the basis that previous work undertaken by Finance, Legal, Procurement and Public Health officers indicated a non-contractual methodology for calculating compensation appeared to be the best approach (including for ease of administration and agreement with SLM).
4. Work undertaken by finance officers illustrates that forecasted compensation payable using the non-contractual break-even approach would be c.£981,035 for 1st April 2021 – March 31st 2022. Compensation payable applying the council's contractual methodology to determine financial liability over the same period would be c.£1,085,474. A difference of c.£104,439 over this period. For sensitivity analysis see (**Appendix I**). The non-contractual approach is therefore cheaper and recommended as the best option for the council.

Financial position 1st April 2020 – March 2021

5. To date, covering the period from 1st April 2020- October 31st 2020 financial adjustments of £458,996 have been approved as too have further payments of £285,465 for November 2020, £49,839 for December 2020, £214,982 for January 2021, and a forecasted £138,000 for both February and March 2021 (**Appendix A**).
6. The council has received a ring-fenced £677,000 from the National Leisure Recovery Fund (NLRF) plus a discretionary £70,098 towards the SLM deficits of which a total of c.£252,939 has been allocated towards those incurred between 1st December 20 – 31st March 2021.

Forecasted financial position 1st April 2021 – March 2022

7. From the 1st April 2021 – 31st March 2022 SLM forecast deficits of c.£981,035 using the proposed 'break even' methodology (zero deficits and foregoing profits) compared to the calculated c.£1,085,474 using the council's estimate based on the contractual methodology.
8. Assuming the remainder of the NLRF fund is c.£494,159 (after December, January, February, March allocations) this will be used to offset deficits over this period (as noted above facilities re-opened on the 12th April), creating a forecast net pressure of c.£486,876 which need to be identified in year from either COVID or other Council funding which might include use of reserves, for 1st April 2021 – 31st March 2022 which is the end of the contract period. (**Appendix A**).

Future requirements for the leisure services contract which expires in March 2022

9. On the 3rd March 2020 cabinet approved the management option of competitive procurement of leisure services for new management arrangements to be in place commencing 1st April 2022. Due to COVID-

19 original plans to advance a formal retender from Summer / Autumn 2020 have been significantly disrupted and where the current contract arrangement ends on 31 March 2022 – there is no contractual right to extend beyond this date. Officers are now in the process of developing the council's leisure investment strategy (as noted in March 2021 cabinet report) to bring back to Cabinet for approval. This will include public consultation and preparation of tender documentation to support a procurement process. The exact timing of this is to be determined. In the meantime, the existing leisure contracts may require a short term extension in order to facilitate service continuity and best value

Risks / Impacts:

10. By adopting a non-contractual zero deficit methodology it is calculated the council achieves a more favourable financial position than if it were to apply a contractual methodology (the interpretation of which would need to be agreed with SLM).
11. There is the risk of unplanned capital costs / expenditure / maintenance during this period. This will be mitigated and managed under the Deed of Variation and an approval process for any such expenditure above an agreed amount.
12. The current SLM forecast is pessimistic. Work undertaken by Finance officers indicates that if the forecast was more optimistic, this would not only result in lower compensation payments, but it would also further increase the benefit to the council of using the deficit method.
13. Due to an uncertain market there are financial risks associated with the cost of running leisure services. Officers are in the process of preparing for a forthcoming procurement exercise. It is likely that any new contract arrangements in the short term would retain an open book arrangement (as with current negotiations and payments around the Deed of Variation) with the Council picking up liabilities of any deficits due to market uncertainty brought about by COVID 19.

Cabinet Recommendations:

That Cabinet:

1. Subject to approval of the claimed costs by the Chief Finance Officer, agrees to provide financial assistance to meet the forecast net pressure of c.£486,876 i.e. the forecast deficit of c.£981,035 for the period 1st April 2021 – 31st March 2022, offset by c.£494,159 of National Leisure Recovery Fund grant money.
2. Subject to approval of the claimed costs by the Chief Finance Officer, agrees to provide financial assistance of c.£494,159 from the National Leisure Recovery Fund money.
3. Authorises the Executive Director People in consultation with the Executive Member for Finance and the Chief Finance Officer to negotiate and approve the relevant financial adjustments required under the non-contractual zero deficit methodology and the conclusion of the contract variation necessary to achieve this as part of the Change of Law provisions.
4. Notes that the Executive Director People in consultation with the Executive Member for Finance will develop

- the leisure investment strategy for approval by Cabinet and prepare for a future leisure procurement exercise.
5. Authorises the Executive Director People in consultation with the Executive Member for Finance to negotiate and approve any contract extension reasonably necessary to facilitate this and achieve best value.

Corporate Strategy alignment:

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. Supporting preventative interventions and opportunities for physical activity amongst children and adults and creating a resilient, sustainable, clean and healthy city.
4. Promoting opportunity, attracting funding and protecting investment in culture while also facilitating others
5. Continue to offer good quality services which attract visitors.

City Benefits:

1. The intended outcome will be continued service provision that is operated as cost effectively and efficiently as possible, whilst providing for the needs of the local community and contributing towards the city's strategic outcomes.
2. The Council will work to mitigate the impact of COVID-19 and continue to work in partnership to increase participation and realise maximum health and social benefits for local residents: increased family and community connectedness, improved community networks and social capital, reduced sense of isolation and loneliness, enhanced social skills and self-esteem.
3. Supporting people to be more physically active will impact on a range of public health and adult social care outcomes such as:
 - Obesity levels in adults and children
 - Social and health inequalities, increased healthy life expectancy
 - The number of falls and injuries in over 65s
 - Early death from cardiovascular diseases, cancer and respiratory diseases.

Consultation Details: NA

Background Documents: Bristol: Sport and Physical Activity Strategy 2020-2025

<https://www.bristolactivecity.org.uk/wp-content/uploads/2020/01/BD12440-Bristol-Sports-Strategy-2020-25-1.pdf>

Revenue Cost	c.£981,035 April 21-March 22	Source of Revenue Funding	c.£486,876 (Unallocated COVID response funding)
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			c.£494,159(NLRF)
Capital Cost	Na	Source of Capital Funding	Na
One off cost <input checked="" type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

Finance Advice:

This report seeks approval to provide financial assistance of £981,035 to SLM for the period 1st April 2021 to 31 March 2022. This follows the Council's acknowledgement of a Change in Law and that SLM have a claim.

Financial modelling and sensitivity analysis have been carried out (Appendix A and exempt Appendix I refers). The £981,035 would be part funded by National Leisure Recovery Funding £494,159 and £486,876 would be covered by unallocated Covid response funding carried forward from 2020/21.

Finance Business Partner: Denise Hunt, 11 May 2021

Legal Advice: 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 for the period 1st April 2021 – 31st March 2022 do not pose a risk in relation to EU state aid or the UK subsidy control rules.

While the contract variation for the non-contractual Change in Law mechanism shifts operational risk in favour of the Contractor in relation to the effects of COVID-19, such variation is considered to be permitted and at a low risk of challenge under the applicable public procurement rules concerning variations of concession contracts.

Further legal advice will be required in relation to the terms of any extension of the existing contract (if such extension is required), but a reasonable and proportionate extension should be possible without breaching the public procurement rules.

Legal Team Leader: Richard Bakewell/Husinara Jones, 10 May 2021

3. Implications on IT: I can see no IT implications evident in this report

IT Team Leader: Simon Oliver 24 April 2021

4. HR Advice: There are no HR implications evident in this report

HR Partner: Celia Williams 26 April 2021

EDM Sign-off	Hugh Evans	29 April 2021
Cabinet Member sign-off	Cllr Craig Cheney	24 th May 2021
For Key Decisions - Mayor's Office sign-off	Mayor's Office	24 th May 2021

Appendix A: Forecast SLM Support Payments & NLRF Offset	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	NO

Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	YES
Sensitivity Analysis	
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO