

**Urgent Key Decision Report of: Corporate Director of Environment and Regeneration**

<b>Officer Key Decision</b>	<b>Date:</b>	<b>Ward(s):</b>
<b>Corporate Director of Environment and Regeneration</b>	<b>19th May 2020</b>	<b>All</b>

<b>Delete as appropriate</b>	Exempt	Non-exempt
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**THE APPENDIX TO THIS REPORT IS EXEMPT FROM PUBLICATION**
**REASON FOR URGENCY**

This report is urgent and will be considered in accordance with paragraph 93 of part 4 of the Council's Constitution.

This decision is urgent and cannot wait for a meeting of the Executive to be convened because it is necessary to mitigate the impact of the Coronavirus emergency on GLL, the Council's Leisure provider, as quickly as possible, to prevent the failure of the organisation. On the 20<sup>th</sup> March 2020 at 5pm the government issued an instruction as part of the lockdown procedures that all Leisure Centres had to close with immediate effect and the Council issued a formal instruction for GLL to close all 8 of Islington's Leisure Centres. All membership was suspended and the organisation, which was already struggling from reduced income from lower usage due to the impacts of the Coronavirus immediately ceased to have any income. Without the Council's urgent intervention, the Council's Leisure provider is likely to fail.

**SUBJECT: GLL Financial Support Proposal in response to Covid-19 Leisure Centre Lockdown**
**1. Synopsis**

- 1.1 Following the government instruction to lockdown Leisure facilities on the 20<sup>th</sup> March the Council's Leisure provider GLL, who are the largest Leisure provider in the country with 50 contracts nationwide, has had zero customer income. GLL has closed all 8 of the Leisure Centres and all memberships have

been suspended. In order to ensure that they are able to survive as an organisation and continue to provide Leisure services for the Council, GLL require a level of financial support to see them through the 'lockdown' and the period beyond whilst they re-grow the business alongside likely longer term restrictions due to the need for continued social distancing.

- 1.2 This report sets out the recommendations for an emergency support package for GLL, which they have formally requested from us, to enable them to survive this period and be able to continue to provide services when restrictions are lifted. The initial period of support is for the 20<sup>th</sup> March to the end of June 2020 that the recommendations in this report cover. However, GLL have stated that they will require further support for the period following the re-opening of the Leisure centres, probably for the following 12 months while they try to build back up the business.
- 1.3 GLL have requested that the Council suspend the rental payments for this period, continue to pay our management fee, to support them by paying the residual costs of managing and maintaining our assets and that we top up the remaining 20% of the staff's salary during their furlough period. GLL have taken measures to reduce their costs as much as possible. They have furloughed the majority of their 200 Islington staff, they have turned off what plant they can and shut down the centres. They have retained a small core staff to be able to carry out building and maintenance checks on the centres and there are still utility and standing costs to keep the remaining plant running for the swimming pools and ice rink. It is proposed that the Council would use an open book accounting process to agree the actual costs incurred, but would make an initial advance payment to support GLL with cash flow and reconcile that payment once we have the actual accounts for each month. There would then be an adjustment payment for the difference, either from us to GLL or from GLL to us. GLL have committed to paying all of their staff in full to the end of April. After that, they will be on the 80% salary level with the cap at £2,500 per month.
- 1.4 It is not proposed to recommend covering the costs to top up the remaining 20% of salary costs beyond the 80% covered by the government's coronavirus job retention scheme. This would represent a significant additional cost to the Council that would not be recoverable from the government and would need to be borne by the Council. It would have significant financial implications for other council contracts where suppliers are or may seek similar support to top up wages. This approach is consistent with the agreed principles with many other London boroughs. Although the Council welcomes GLL's decision to pay their staff in full to the end of April there is no obligation on the Council to top up the salaries under an open book approach.

## **2. Recommendations**

- 2.1 To use an Open Book process to agree a financial package of support to GLL rather than invoking the 'change in law' provisions of the contract and to incorporate the agreed support measures in a deed of variation to the leisure contract.
- 2.2 To support GLL with the deferral of their rental payments (£1.274 million) in line with the Policy Procurement Note 02/20 guidance and pay them the cost of their legitimate and actual costs to maintain the assets as set out in the exempt appendix for the period from the 20<sup>th</sup> March to the end of June 2020
- 2.3 Not to top up the additional 20% of salaries for the furloughed GLL staff.
- 2.4 To pay the contractual management fee (£0.195m) for the first quarter to the end of June 2020 immediately rather than in arrears in order to support with GLL's cash flow and to reconcile any difference through the open book account process.

- 2.5 To obtain external commercial and legal advice to support the process of assisting GLL through the period of COVID impact whilst protecting the council's interests and to explore options for the future leisure provision post COVID.
- 2.6 To authorise the Corporate Director of Environment & Regeneration in conjunction with the Corporate Director of Resources and acting Director of Law and Governance to negotiate and agree the terms of the financial support to be provided to GLL and the deed of variation to the contract to give effect thereto, including the extension of arrangements between the Council and GLL for up to three months (until the end of September 2020).

**Date the decision is to be taken: 19<sup>th</sup> May 2020**

**3. Background**

- 3.1 On the 20<sup>th</sup> March 2020 at 5pm the government issued an instruction as part of the lockdown procedures that all Leisure Centres had to close with immediate effect. The Council issued a formal instruction for GLL to close all 8 of Islington's Leisure Centres. All customer memberships were then suspended and the organisation that was already struggling from the trading impacts of the Coronavirus in early March and reduced usage and membership uptake went overnight to a zero income position. The closures are a qualifying change of law event under the contract and one that without intervention could see the failure of GLL as a Leisure provider.
- 3.2 GLL is proposing to deal with the impact of the closures by reaching a mutually agreed position with the council using the open book process, which is recorded in a variation to the contract, and not by invoking the qualifying change in law provisions of the contract. It is not considered to be in the best interests of either party to use those provisions which are primarily intended for dealing with changes in law which affect cost and income in operating the leisure centres rather than complete closure and non-provision of the services.
- 3.3 There are 9 years remaining on the 15-year contract which runs to March 2029. It is a concession contract and yields the Council a significant revenue contribution.
- 3.4 The Council receives an annual rent payment from GLL for the profitable centres and pays a management fee for the one unprofitable centre and additional services; this is a vat efficient payment system so there are two transactions per annum that yield the net income to the Council.
- 3.5 The Government has issued a Procurement Policy Note (PPN) to provide guidance to Councils on how to support suppliers during this crisis, which GLL are seeking to use as the principle basis of working together to manage the financial impact.
- Procurement Policy Note 02/20: Supplier relief due to COVID-19
  - Guidance notes on model interim payment terms: Procurement Policy Note 02/20
- 3.6 The basis upon which it is proposed to proceed on is that we would agree to pay the funding gap now based on the budget estimate and then use the 'open book' process to review the actual costs against the management accounts each month when they're complete and to review evidence of spend. The Council would then adjust the figure based upon those open book accounts. If the expenditure were greater, the Council would increase its support, if it were less GLL would refund the Council. This is in order to support GLL's cash flow.
- 3.7 GLL are of the view there will 3 separate periods in terms of financial impact, outlined below. The immediate focus being Period 1.
- Period 1 – Covid-19 period - From March until services are fully reopened
  - Period 2 – Business rebuild period – Estimated 12 months
  - Period 3 – Steady state operation

3.8 There are costs that cannot be eliminated even when the centres are closed. In order for GLL to manage and maintain our assets and to look after the remaining customers there are costs that will be incurred. Buildings and plant still need to be checked and serviced for example.

A summary of their key remaining costs for this period are:

- Maintenance & service costs
- Utilities
- Continuing staffing costs for staff not furloughed

3.9 The details of the financial support required are set out within the exempt appendix. This also sets out the financial context of the contract and its performance. This has been placed in the exempt appendix, as the information is commercially sensitive.

3.10 If the closure period continues beyond the end of June or only restricted reopening is permitted then clearly the duration of this level of support would also need to extend. GLL have also been clear that even when the Leisure Centres are permitted to re-open and operate without restriction then there would need to be a period of re-building of the business. There would therefore need to be a further period of support to GLL whilst they endeavour to get the business on track. Further details of these costs are contained in the exempt appendix.

3.11 A phased approach to the re-opening of the leisure centres may need to be considered. We may only open certain centres or at the least health and fitness parts of centres, to help drive up the membership base again and to ensure that income levels cover the full operational costs before we start to incur the full 100% of costs.

3.12 GLL is a national organisation operating over 270 leisure centres and any decision we take to support them should be done in collaboration with other local authorities. There have been discussions between those London boroughs with GLL leisure contracts and senior GLL management to agree a collaborative approach. The principles that have been agreed between the Boroughs are:

1. GLL should maximise Government support, bear a reasonable proportion of the financial risk themselves and minimise demands on Local Government;
2. GLL should be treated like a private sector organisation and as far as furloughing staff are concerned Local Authorities should not fund the additional 20% above the job retention scheme funding;
3. Funding from Local Authorities should be limited in first instance to the 3 month lockdown period where costs are known, but retaining the option to review as time goes by;
4. Where funding provided by London Boroughs is other than an interest bearing loan it should be recoverable from GLL through a clawback mechanism. Attempts should also be made for this to be recovered from Central Government as a cost of Covid-19;
5. If not recoverable from Central Government then recovery of funds should be over the remaining period of the contract where possible;
6. Boroughs should look to work with GLL to explore changes to the leisure offer to best meet community needs and mitigate the financial impact of Lockdown;
7. Boroughs should rely on their contract documents as well as PPN 02/20 in reaching local settlements based around these principles.

3.13 It is clear from the PPN02/20 Guidance note that authorities are being advised to provide a level of support to 'at risk' suppliers including GLL with the amount of support being determined through consideration of each individual contract. There is a risk of supporting GLL financially only for them to fail anyway. It is considered that it is in the Council's interest to see GLL continue to operate if the council are to have any chance of protecting the long-term revenue position and service provision that the current contract provides.

3.14 In line with the principles that have been agreed with GLL in the pan-London discussions the Council would seek to try and recover any of the costs incurred from the government as part of its direct support for the Covid-19 response. Where this is not possible (which is the likely position) in the case of rent payments to the Council) the Council will look to use the surplus profit share mechanism within the contract to clawback any of the deferred rental payments and additional support costs. This mechanism provides for any surplus profits generated to be shared between the Council, GLL and reinvestment in the centres. However, the mechanism currently allows GLL to offset any losses in previous years against the surplus profit before the sharing arrangement takes effect. Given the level of losses that GLL have incurred to date on the contract this would make it extremely unlikely that the Council would be in a position to recover the deferred rent payments and additional financial support as any surplus profits would be extinguished by GLL's losses. As part of our negotiations with GLL for this support package, we would seek to agree an adjustment to the surplus share mechanism to ensure that should the contract move into a surplus position that the first call on that profit should be the recovery of these costs and the deferred rent and not the previous contract losses.

## **4. Implications**

### **4.1 Financial implications:**

In the immediate term, to cover the period from notice of closure on 21 March to the end of June in is proposed that guidance issued under PPN2/20 is followed with regards to public sector contracts. During this initial period, rental payments from GLL under the contract will be deferred and support to cover costs will be offered utilising the open book accounting principle to ensure the position of the contractor is no better nor worse off during this period. It is estimated that support of around £0.5m per month will be required whilst the centres remain closed.

During the period post June 2020 it is likely that the leisure sector could either remain closed or be subject to partial closure as a result of 'social distancing' advice. It is also almost certain that GLL will have lost some of its customer base and will take a considerable amount of time to rebuild to the pre-Covid-19 levels as people have adopted different fitness regimes away from the gym and leisure centre environment. This is likely to have a substantial impact of GLL's trading position that will require additional support from the council in the medium term under change in law provisions within the contract.

### **4.2 Legal Implications:**

The council has power to modify the leisure contract to provide support to GLL as an 'at risk' supplier to ensure that it remains viable and therefore able to resume delivery of the leisure services for the council and its residents when the leisure centres are permitted to reopen.

The detailed legal implications are set out in the exempt appendix to this report including the relevant considerations that the decision maker will need to take into account when deciding whether to approve the recommendations.

### **4.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:**

The lock down of the Leisure Centres has obviously led to reduced energy consumption from this period. There are no environmental implications arising from the decisions to be made in this report.

### **4.4 Resident Impact Assessment:**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good

relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

The 8 Leisure centres attract an average of 181,750 user visits on a monthly basis, this is made up of residents, and our transient community, this service offer forms an important role in much wider context than just the health and wellbeing of our residents. The leisure centres act as community hubs social gathering clubs networks and regular contact places to meet and connect with friend's social inclusion and the list goes on.

The Leisure Contract provides access to all sectors of our community and this balance of usage is a positive reflection of Islington. This service not only provides a valuable contribution to the health and well-being of our community it also generates the Council a net financial benefit which in turn supports the financial ability of the Council to contribute to wider services.

The significant concessions that are available means that the Leisure offer provided by GLL is particularly important to young people, older people and people with disabilities in being able to maintain their physical and mental health and well-being. The current lockdown and future restrictions on use are likely to have a disproportionate impact on these particular groups.

## **5. Reasons for the decision:**

- 5.1 GLL are a key strategic partner for the delivery of the Council's Leisure provision contributing significantly to corporate priorities in supporting the physical and mental health of our residents and contributing significantly to the Council's financial position.
- 5.2 The PPN 02/20 guidance sets out clear guidance that the Council should seek to support its suppliers through this period. GLL were subject to a clear change of law event that required the forced close down of the Leisure Centres leaving GLL with zero income.
- 5.3 It is clearly in the long-term interests of the Council to support GLL to get through this period as there would be even more significant long term financial impacts to the Council if they do not and we have to bring the service in-house.
- 5.4 Whilst we have every sympathy for GLL and its staff during this difficult time we do not believe that the Council is financially in a position to support GLL with the top up of the remaining 20% of furloughed staff salaries. We welcome GLL's commitment to pay their staff in full for March and April but employee payments and contracts are in our view entirely a matter for GLL.

## **6. Record of the decision:**

- 6.1 I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

**Signed by:**



19 May 2020

Corporate Director Environment and Regeneration    Date

**Appendices:** Exempt Appendix

**Background papers:** None

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