



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for Resident Participation, Consultation Reform and Leisure Cabinet Member for Finance and Council Reform
Date:	09 August 2023
Classification:	Part Exempt Part B – Private is currently exempt from disclosure on the grounds that: (i) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 3 of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
Title:	Leisure Contract Variation Feb 2023 to June 2026
Wards Affected:	All
Key Decision:	Yes
Financial Summary:	The Council has negotiated a profit share variation to the original leisure contract. This will provide the Council with a share of profits generated by the leisure operator in delivering the Council's leisure service.
Report of:	Gerald Almeroth – Executive Director of Finance and Resources and Pedro Wrobel – Executive Director of Innovation and Change

1. Executive Summary

- 1.1. Westminster has a significant leisure portfolio, with nine sites operating across the City.
- 1.2. Since June 2016 the Council's leisure sites have been operated by Sports and Leisure Management (SLM) who are trading as Everyone Active. The Council's contract with SLM is a concession contract which was originally operated under a management fee model. This meant the Council were one of the only local authorities in the country to receive an income from a leisure operator.
- 1.3. However, the impact of the pandemic was significant on the leisure sector. This resulted in SLM approaching the Council for financial assistance. The subsequent negotiations led to two variations to the original contract:
 - Deed of Variation (DoV) executed for the period April 2020 to June 2021
 - DoV executed for the period June 2021 to January 2023
- 1.4. Over the last year the Council has been in negotiations with SLM to agree a new DoV that will take the contract up to the original expiry date of June 2026.
- 1.5. This report sets out the proposal for a new DoV to commence from February 2023 to June 2026.

2. Recommendations

- 2.1. That the Cabinet Member for Finance and Council Reform and the Cabinet Member for Resident Participation, Consultation Reform and Leisure approve the contract variation under the terms of the Deed of Variation included as Appendix A including the surrender of SLM's existing lease of Seymour Leisure Centre and replacement with a new lease expiring on 29 February 2024, noting the variation from 01 February 2023 to 09 August 2023 and;
- 2.2. delegate authority to the Executive Director of Finance and Resources to approve the Council entering into any necessary legal documents required to facilitate the recommendations in this report and gain vacant possession of the Seymour Leisure Centre.

3. Reason for Decision

- 3.1. It is of key strategic importance to the Council to have an operational leisure service that provides benefits to Westminster's residents. The Deed of Variation is of significant financial value and decisions to vary the contract is delegated to Cabinet Members.

4. Background

Pre-Covid

- 4.1. Westminster has a strong portfolio of active places, allowing residents and visitors ample opportunity to be active. This offer includes nine leisure centres across the City.
- 4.2. Sites are owned by Westminster, but the operation of these sites has historically been outsourced to a third-party leisure specialist. Westminster's incumbent provider is SLM who are one of the largest leisure providers in the UK, with a number of contracts with other local authorities.
- 4.3. The last competitive procurement was run in 2015 to find a long-term provider for Leisure services. SLM were appointed for the period of 1 July 2016 to 30 June 2026 with the provision to extend for a further 5 years. The contract is a concession contract with the original terms of contract anticipating income generated by the concessionaire.
- 4.4. Due to the geographical presence and quality of services, the Westminster concession was one of the few Leisure contracts in the UK to be revenue earning, with initial payments to the Council of £2.2m per year raising to circa £5m per year by 2020 (as well as indexation increases).

The Pandemic

- 4.5. Pre-covid, sites performed well. Both parties invested in facilities and services and membership continued to grow. However, the Leisure industry was one of the worst affected by the pandemic forcing sites to close indefinitely overnight. All income generating opportunities were removed from the contractor leaving it with costs to pay regarding staff and facilities maintenance, as well as the concession fees.
- 4.6. SLM therefore approached Westminster (and all other contracts) for support and a removal of concession fees. An initial temporary variation under emergency Covid regulations was put in place removing the need for payment of management fee and for sharing additional costs.
- 4.7. Further conversations and negotiations were needed as the longer-term impacts of Covid became known. After an initial attempt to conclude conversations and negotiations it was clear that parties had differing opinions on a fair settlement, but more importantly, disagreed on the interpretation of certain terms of the contract and related points of law. Proceedings were therefore heard by a court of law around definitions of concession/management fee.
- 4.8. The court decision was despite SLM's financial difficulties due to the pandemic, they were not entitled to be paid a 'reverse management fee' by the Council. The court's conclusion was at best the annual management fee SLM was due to pay the Council could be waived. The court encouraged parties to have further discussions to reach an agreement. Discussions with SLM led to agreement to settle the balance of payments for the period of Covid restrictions to June 2021, agree a mechanism for profit sharing moving forward (moving away from fixed

payments) and also agree a managed exit arrangements of the contract by 2023 with the following terms:

- Waiver of management fee
- WCC to contribute 50% of SLM loss, subject to capped contribution of £500k
- SLM to contribute towards WCC leisure related overheads, subject to cap of £416k
- SLM not entitled to contractor profit
- Any surplus achieved by SLM to be split 75% WCC:25% SLM
- Impact to WCC equal to foregone management fee plus net £84k on overheads
- If the position of the Contractor shows a surplus of £300,000 or greater as at 30 September 2022, the Contractor will remit 75% of the excess above £300,000 to the Authority on a monthly basis.

4.9. All of the above was formalised in April 2021 under an executed Deed of Variation to the original contract.

Post Pandemic

4.10. After the settlement and variation, thoughts moved to the future delivery of services post the 2023 contract end date. Initial member preference (under the previous administration) was for an in-house delivery model from January 2023. But as time passed and internal appetite has changed it has become clear that a continuation of the existing arrangement remains the most economically advantageous approach for the Council, at least in the short term.

4.11. It is unrealistic to be able to return to the original commercial terms of the contract, but the two parties have negotiated a position for a profit-sharing agreement through to June 2026 which was the original term of the contract with SLM.

4.12. As the WCC leisure contract with SLM was due to end in January 2023, a decision in August 2021 was made to pursue with the current arrangement. Any alternative option, for example an alternative provider or in-house delivery model would not have been possible, due to the lead in time needed for a tender of this size.

4.13. The market for Leisure Services providers in the UK is relatively small with only a handful of major players. When the Council considered a market engagement exercise following contractual negotiations with SLM previously, we only received one response, from our previous contractor GLL. GLL have also suffered from the pandemic and have also seen complaints and financial issues across other contracts. This led to the Council taking the decision to negotiate with SLM as the best option in the short to medium term.

Post Pandemic – From 2023

- 4.14. As part of this review of the contract terms, we have also formalised under the new DoV setting out the Council's expectations around delivering social value outcomes, including community outreach programmes. A summary of the terms of the DoV are included in the confidential financial appendix.

5. Seymour Leisure Centre

- 5.1. The council plans to redevelop Seymour Leisure Centre in order to improve various elements of the building including the leisure offering at the centre.
- 5.2. In order to gain Vacant Possession of the leisure centre it was necessary for the council to add a clause into the Deed of Variation, effectively giving notice to SLM of the intention to take possession of Seymour on 29 February 2024, when redevelopment works are scheduled to begin. SLM's existing lease of Seymour Leisure Centre will also be surrendered and replaced with a new lease expiring on 29 February 2024 in conjunction with completion of the DoV.

6. Financial Implications

- 6.1. The financial implications are set out in in the confidential appendix.

7. Legal Implications

- 7.1. The legal implications are set out in the confidential appendix.

8. Carbon Implications

- 8.1. SLM have stated that they will work with the Council to mitigate the carbon impact on our leisure sites where it is feasible to do so.
- 8.2. They have also stated an on-going commitment to work with the council on our climate emergency programme.

9. Equalities Impact

- 9.1. The leisure contract will work towards supporting those most at need have equal opportunity to access the facilities and other community benefits. Annex 1 details the community offer and social value deliverables, which aims to enhance opportunities for Westminster residents, those with underlying health conditions, children and young people, disabled people, older people, women and girls, Global Majority, vulnerable people, those who study and work in Westminster

and those on universal credit. The leisure facilities membership and activities fees and charges also provide significant discounts to these groups, including free memberships for Looked After Children, Care Leavers, Young Offenders, Integrated Gangs Unit, Supported Housing, Homelessness and special offers to those in crisis i.e., Ukrainian nationals who have come to the UK. In addition, two new leisure facilities have been added to the leisure facility portfolio, that is Church Street Community Leisure Centre and Jubilee Community Leisure Centre, both sites are in areas that have been identified as low-socio economic areas and a direct benefit to these communities.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact: Coreen Brown

Background Papers

Appendices

Appendix A: Deed of Variation (Exempt from publication)

For completion by the Cabinet Member for Resident Participation, Consultation Reform and Leisure

Declaration of Interest

I have no interest to declare in respect of this report

Signed: Cara Sanquest Date: 09 August 2023

NAME: Councillor Cara Sanquest

State nature of interest if any

.....
(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled **Leisure Contract Variation** and reject any alternative options which are referred to but not recommended.

Signed Cara Sanquest

Councillor Cara Sanquest, Cabinet Member for Resident Participation, Consultation Reform and Leisure

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

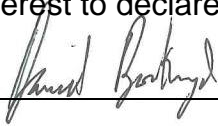
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy & Scrutiny Committee to decide whether it wishes to call the matter in.

For completion by the Cabinet Member for Finance and Council Reform

Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 09 August 2023

NAME: Councillor David Boothroyd

State nature of interest if any

.....
(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

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Signed 

Councillor David Boothroyd, Cabinet Member for Finance and Council Reform

Date

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