

Report for: **Cabinet**

Date of Meeting:	13 October 2022
Subject:	Leisure Management Contract Extension
Key Decision:	Yes – it affects all wards in the Borough and the value of the contract exceeds £500,000
Responsible Officer:	Dipti Patel, Corporate Director – Place; Mark Billington Director Inclusive Economy, Leisure & Culture
Portfolio Holder:	Councillor Jean Lammiman - Portfolio Holder for Community and Culture Councillor David Ashton - Portfolio Holder for Finance and Human Resources
Exempt:	No, except for Appendices 2, 3 and 4 which are exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 because they contain information relating to the financial and business affairs of the council and Everyone Active.
Decision subject to Call-in:	Yes
Wards affected:	All
Enclosures:	Appendix 1: Equalities Impact Assessment Exempt Appendix 2: Leisure Contract Financial Forecast 2023-24 Exempt Appendix 3: Financial support provided to Everyone Active during the pandemic Exempt Appendix 4: The Sport, Leisure and Culture Consultancy Report

Section 1 – Summary and Recommendations

This report sets out the options for the future delivery of leisure services from September 2023 and seeks approval to extend the Council's current Tri-Borough leisure contract (with the London Boroughs of Brent and Ealing) with Everyone Active (SLM Ltd) (EA), for 1 year until 31st August 2024.

Recommendations:

Cabinet is requested to:

1. Agree to the extension of the Council's current Tri-borough leisure contract (with the London Boroughs of Brent and Ealing) with Everyone Active (Sports and Leisure Management) (SLM) Ltd (EA) for 1 year until 31st August 2024.
2. Delegate authority to the Corporate Director of Place and the Director of Finance, following consultation with the Portfolio Holder for Community and Culture and the Portfolio Holder for Finance and Human Resources, to complete all the required actions to extend the Council's current Tri-Borough leisure contract (with the London Boroughs of Brent and Ealing) with Everyone Active (SLM) Ltd (EA) for 1 year until 31st August 2024. The responsible officer for the completion of this task will be the Head of Service – Culture and Leisure.
3. Agree that officers will bring a report back to Cabinet with an update on the review of the Council's future leisure service provision to deliver a procurement process which secures the optimal long-term arrangement for the Council, which may include a further recommendation to extend the contract for a further one-year period.

Reason: (for recommendations)

The tri-borough contract is due to end 31st August 2023. The leisure services market is currently in a state of uncertainty. An extension of the contract will allow the leisure market to recover further from the impact of the Covid-19 pandemic, and for a strategic review of future leisure service provision. That review would include an investment strategy and appraisal of management options to be completed. That review was delayed by the Covid-19 pandemic. A Cabinet decision is required because the value of the contract exceeds £500,000 and affects more than one ward.

Section 2 – Report

1. Introduction

1.1 The Council's current leisure management contract with Everyone Active (SLM Ltd) (EA) ends on the 31 August 2023. This report outlines the options for the future delivery of the Council's three leisure facilities (Harrow Leisure Centre, Hatch End Swimming Pool, and Bannister Sports Centre) from the 1 September 2023. The approval to extend the current leisure contract is recommended for the following reasons.

- a. The leisure services market is currently in a state of uncertainty. That uncertainty was initially caused by the return of leisure centre users after Covid 19 restrictions ended.
- b. The uncertainty has increased with the rising cost of living and particularly energy prices. The latter has had a big impact on the costs of running leisure centres, particularly in Harrow which has older centres. The impact of inflation also makes it difficult to anticipate the spending habits of current leisure centre users.
- c. An extension would provide the time to undertake a strategic review of future leisure service provision. That review would include an investment strategy and appraisal of management options to be completed. Please note that review was delayed by the Covid-19 pandemic.
- d. The recommendations in section 3 of this report are from 'The State of the Market Survey (APSE), Moving Communities in Focus' (Moving Communities), Review of Future Options (Sports and Leisure Consultancy) all support the rationale for the recommendations set out in section 1 of this cabinet report.

1.2 The decision sought will support the Council priority of 'Addressing Health Inequality by providing all residents with affordable access to a range of sport and physical exercise activities from the Council's three leisure facilities.

2. Background

2.1 The Council entered into a leisure management contract with EA in September 2013 to manage its three leisure centres – Harrow Leisure Centre, Hatch End Swimming Pool, and Bannister Sports Centre. The centres provide a very wide range of leisure services with key performance indicators in place to monitor performance. The contract with EA is a 10-year contract which ends on the 31 August 2023.

2.2 Under the terms of the contract EA pays the Council an annual management fee for Harrow Leisure Centre, and the Council pays EA contract costs for Hatch End Swimming Pool and for Bannister Sports Centre. Until the pandemic, the contract with SLM had generated a net annual income to the Council of £750k.

2.3 Prior to the Covid-19 pandemic the performance of the contract to date had been good with annual increases in visits and the number of members achieved since the contract started in September 2013. In 2019-20 up until the centres closed on the 21 March 2020 there were a total of 1,692,602 visits to the three leisure centres, and over 6,700 fitness members at Harrow Leisure Centre.

3. Current Situation

3.1 Despite EA taking steps to mitigate their losses, due to the impact of the Covid-19 pandemic the Council provided a financial subsidy in 2020-21, 2021-22 and 2022-23 respectively. The table set out in exempt Appendix 3 summarises the subsidy and the funding sources for each year.

3.2 Officers worked closely with Everyone Active to implement plans to maximise the number of people using leisure facilities. This includes tight contract management including weekly site visits to all the leisure centres, and monthly financial scrutiny and analysis of income and expenditure on an open book budget line by line basis. The result of this work has reduced Everyone Active's originally forecast trading deficit for the period April 2021 to March 2022 by 51%, which in turn reduced the financial strain on the Council's 2021/22 outturn position.

3.3 Due to the ongoing impact of the pandemic on leisure centre usage and income a further Deed of Variation to the leisure contract with EA was agreed for 2022-23 with the Council receiving a minimum management fee of around 1/3 of the normal net management fee, with the Council receiving 100% of any additional profit generated up to a maximum of the normal net management fee. The normal contractual profit share for any profit generated above this amount remained in operation.

3.4 EA has produced a financial forecast for 2023-24 that would result in a reduced annual management fee to the council as detailed in Appendix 2. The reduction in management fee is due a number of factors. The Covid-19 pandemic has had a significant impact on fitness memberships and. EA are forecasting that this will still be the case in April 2023. Expenditure costs have also increased with the current inflation rate meaning that there would be increased expenditure costs in all areas, in particularly significant increases in energy costs and maintenance and repair costs with ageing facilities that will not have been refurbished by the time of the contract extension. This will result in generating additional running and maintenance costs. A planned Investment Strategy which either relates to refurbishment or reprovion would make a new tender more attractive to leisure operators. The management fees for Brent and Ealing will also be reduced significantly compared to the pre-pandemic contractual fees. Brent's management fee would be reduced by a similar percentage to Harrow. Ealing's management fee would be reduced by a smaller

percentage than Harrow as they have facilities that are newer than Harrow's facilities.

3.5 There has been a gradual increase in usage across the 3 leisure facilities as well as improved financial performance as Covid-19 restrictions have been relaxed. The total number of visits has increased from 25,694 in April 2021 to 98,720 in June 2022. The number of members has increased from 3,811 in April 2021 to 4,775 in June 2022. This is still, however, significantly less than the level of usage prior to the pandemic – there was a total number of visits in June 2019 of 123,165, and a total number of members of 6,933. The usage of Hatch End Swimming has been particularly impacted as the pool was closed for over 12 months during the pandemic. This was because social distancing made the use of the changing rooms difficult and there was a further closure following storm Eunice. It will take time to further restore usage levels following the pandemic as customers will have started to use alternative facilities whilst the pool was closed. It had taken 6 years from the start of the leisure contract with EA to build up usage levels prior to the pandemic.

3.6 The Association of Public Service Excellence (APSE)'s State of the Market Survey 2021 concluded that Covid-19 has had a significant impact on the finances of leisure services. The sector remains significantly below break-even, and that a prolonged recovery period will be required with a review of provision.

3.7 Moving Communities were commissioned by Sport England to undertake monitoring of local authority leisure contracts' performance as part of the National Leisure Recovery Fund (NLRF). In their report 'Moving Communities in Focus' reviewed performance for April 2021 to January 2022. It identified that the recovery in participation had been steady but has yet to return to levels recorded before the pandemic. Recovery in participation levels has been faster in more modern facilities with a rate of 70% for facilities built within the last 10 years compared to a recovery rate of 62% for facilities that were built 20/30 years ago. Harrow's 3 leisure centres are all older facilities. The report states that lower participation rates, alongside increases in utility costs and ageing stock will cause challenges for the long-term sustainability of the sector. There has been a 35% reduction in participants for the period April 2021 to January 2022 compared to 2019-20. The report also identifies that towards the end of the Covid-19 restrictions period income generated by the sector was only covering 83% of operational expenditure. It is also highlighted that increases in utility costs will impact the sector moving forward particularly if participation recovery rates remain at 65%.

3.8 With the existing leisure contract with EA ending on the 31st August 2023, SLC (The Sport, Leisure and Culture Consultancy), a specialist public leisure sector consultancy, were commissioned by the Tri-Borough in May 2022 as an independent critical friend to support and provide a review of the future options for the delivery of leisure services, and to provide support in shaping and refining an emerging

optimal approach. SLC has completed a focused scoping exercise to identify the current state of readiness of the authorities, any gaps in key data, and insight and future workstreams required to support the Tri-borough partnership

3.9 The report (see Appendix 4) produced by SLC recommends that the existing Tri-borough leisure contract is extended in order to enable the 3 authorities to undertake the following which has been delayed by the Covid-19 pandemic:

- Enable the leisure market to further recover from the Covid-19 pandemic including uncertainty of the ability of the leisure market to respond to a tender opportunity
- Identifying the condition and 'whole life' costs of its assets
- Establishing the scope of services and any service redesign linked to its strategic priorities
- Developing a strategy for investment into assets to meet future need and/or provide a more financially sustainable service
- Establishing a clear position on future affordability based upon the scope of services and investment plans
- Identifying the optimal management model for future delivery of the services
- Exploring if a Tri-Borough approach remains the best option for each Council
- Developing a procurement strategy (in the event an external operator is the preferred delivery model) and delivering a procurement process which secures the optimal long-term arrangement for Councils

3.10 SLC consulted with the Council's Adult, Children's, and Public Health Teams as part of their commission. This consultation identified an opportunity for:

- Co-production of multi-generational opportunities – sports and physical activity opportunities for older people
- Providing services for disabled adults and children and residents with different levels of fitness and/or ability.
- Activities delivered in more community settings where people already go and feel comfortable
- Delivering activities and opportunities in schools and children's services.

3.11 There would be insufficient time to complete all the tasks detailed in the Report by the end of the existing contract in August 2023 resulting in a lack of strategic clarity on the provision of leisure services and the best management model for the delivery of future services.

3.12 A 1-year extension to the contract should enable all the required tasks identified in section 3.4 to be completed. Identifying strategic

outcomes and objectives for the service will be informed by the Council's new Health and Wellbeing Strategy and Indoor and Outdoor Sports Facility Strategy due to be completed by the end of December 2022. Engagement with other Council Services including Adult Social Care, Children's Services, and Public Health will also be required

4. Options considered

4.1 Option A: The extension of the Council's current Tri-borough leisure contract (with the London Boroughs of Brent and Ealing) with EA for 1 year. This will enable the leisure market to recover further from the impact of the Covid-19 pandemic, and for a strategic review of future leisure service provision including an investment strategy and appraisal of management options to be completed and provide sufficient time to complete all the tasks required to put in place the new management arrangements at the end of the existing contract. All these workstreams have been delayed by the Covid-19 pandemic

This option is recommended

4.2 Option B: Commence a re-tendering of the management of the leisure facilities in order to commence a new contract from the 1st September 2023 as part of a Tri-Borough contract with the London Boroughs of Brent and Ealing. This will not provide sufficient time to enable the leisure market to recover further from the impact of the Covid-19 pandemic including uncertainty of the ability of the leisure market to respond to a tender opportunity. It would also not be possible to progress all the necessary steps to undertake a procurement process including soft market testing and the work required to develop a specification. The specification would also not be informed by a strategic review of future leisure service provision including an investment strategy which has been delayed by the Covid-19 pandemic

This option is not recommended

4.3 Option C: Bring the management of the leisure facilities back in-house at the end of the current leisure contract with EA. There would be insufficient time available to bring the service in-house within the available timescale with a high risk of the service to customers being impacted by the migration. To provide the current service provision would result in significant additional staffing costs to the Council due to the increase in staff on-costs for those staff that would be transferring to the Council under TUPE. Contractors such as EA who manage a high number of leisure contracts nationally also benefit from the resulting economies of scale. The Council also does not currently have the resource to directly manage a large additional service area.

This option is not recommended

4.4 Commence a re-tendering of the management of leisure facilities in order to commence a new contract from the 1st September 2023 for

Harrow only The contract management and administration costs would be higher for a supplier for this option. This will not provide sufficient time to enable the leisure market to recover further from the impact of the Covid-19 pandemic including uncertainty of the ability of the leisure market to respond to a tender opportunity. It would also not be possible to progress all the necessary steps to undertake a procurement process including soft market testing and the work required to develop a specification. The specification would also not be informed by a strategic review of future leisure service provision including an investment strategy which has been delayed by the Covid-19 pandemic

5. Ward Councillors' comments

N/A the recommendations in this report would affect all wards.

6. Performance Issues

6.1 The council can specify the performance measures in the contract. These could include annual targets for direct debits, visits, profit /surplus generated

7. Risk Management Implications

7.1 Risks included on corporate or directorate risk register? **No**

7.2 Separate risk register in place? **Yes**

7.3 The relevant risks contained in the register are attached/summarised below. **Yes**

7.4 The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
1. If the leisure contract extension is not agreed an earlier procurement would not be successful and/or unable to meet the needs of the Council	<ul style="list-style-type: none"> ▪ Cabinet approval sought for a 1-year contract extension, with a further update report to be brought back to Cabinet which may include a recommendation to extend the contract for a further period 	Green
2. There is a challenge from other leisure management contractors about the extension of the Council's current leisure contract with EA	<ul style="list-style-type: none"> ▪ Legal advice is that the extension is permitted under public procurement rules, and the contract will only be extended for the minimum period 	Amber

Risk Description	Mitigations	RAG Status
<p>as the contract does not include an option to extend the contract beyond the existing contract period of 10 years.</p>	<p>necessary to reduce the risk of challenge</p> <ul style="list-style-type: none"> ▪ Analysis of the leisure market indicates that it is still recovering from the impact of the Covid-19 pandemic with very few leisure operators considered likely to want to bid for Harrow's leisure contract commencing in September 2023 for 1 year only ▪ All the main leisure operators have been extending local authority leisure contracts due to the impact of the Covid-19 pandemic 	
<p>3. A reduced management fee is payable to the Council from EA for the contract extension period resulting in a financial pressure</p>	<ul style="list-style-type: none"> ▪ Any profit over that figure would be shared with the council. ▪ In the Council's approved MTFS, there is a growth budget of £0.983m profiled in 2023/24 to reflect some permanent losses of income following COVID-19 pandemic. The management fee income from the leisure provider has been identified as one of the areas likely to result in a permanent loss of income. 	Amber
<p>4. The management fee agreed with EA for the contract extension period has to be reduced due to unforeseen costs and/or reduced income</p>	<ul style="list-style-type: none"> ▪ An annual minimum management fee has been agreed with Everyone Active for the contract extension period ▪ A review mechanism to be included in the contract extension agreement that stipulates what changes to the commercial agreement will be made in the event 	Green

Risk Description	Mitigations	RAG Status
	<ul style="list-style-type: none"> of higher than forecast utility costs. ▪ 	
<p>5. The new management arrangements for the Council's leisure facilities are not implemented at the end of the contract extension period due to unforeseen delays</p>	<ul style="list-style-type: none"> ▪ The Tri-Borough authorities (Brent, Ealing, and Harrow) have engaged a leisure consultancy to complete a scoping exercise to identify the next steps required for each authority to enable new management arrangements to be put in place at the end of the leisure contract extension period. To include a strategic review of future leisure service provision including an investment strategy and appraisal of management options ▪ A Leisure Services Project Board will be set up to oversee the works required to ensure that the new management arrangements can be implemented at the end of the extension period. 	Green
<p>6. There is a reduction in the performance of the contract during the new contract period with EA</p>	<ul style="list-style-type: none"> ▪ The contract includes Key Performance Indicators (KPIs). The KPIs will be regularly monitored at monthly Tri-Borough Contract Meetings and at half yearly Tri-borough Leisure Partnership Board Meetings. The performance of the contract to date has been good with EA meeting their KPI annual target prior to the Covid-19 pandemic 	Green

8. Procurement Implications

The existing leisure contract with EA does not include an option to extend the contract. For public contracts, however, Regulations 72 (1) (b) and (c) of the public Contracts Regulations 2015 permit an extension of a contract where necessary to accommodate additional services from the original contractor, which were not included in the initial procurement, where a change of contractor would cause significant inconvenience or substantial duplication of costs for the Council, and the need for an extension arises in circumstances which could not have been foreseen. The Head of Procurement is of the view that the recommendation set out in section 1 are permissible under the Public Contract Regulations 2015.

Procurement have been fully engaged in bringing forward the recommendations set out in section 1 of this report and are of the view that the extension of the contract by 1 year is justified for multiple reasons; from a commercial perspective to allow the leisure market further time to recover from the effects of the pandemic comprehensively; from a council perspective to review our strategy for the future provision of leisure services and to work collaboratively with the partner boroughs on this contract.

We will continue to support the Head of Service – Culture and Leisure develop a procurement plan and strategy for the leisure services should the council decide this is the preferred model for the service.

9. Legal Implications

- 9.1 Regulation 72(1)(b) of the Public Contracts Regulations 2015 (PCR 2015) permits the extension of an existing contract where the extension is necessary to accommodate additional services by EA, which have become necessary because a change of contractor cannot be made for economic reasons and would cause significant inconvenience and costs for the Council. Any increase in price must also not exceed 50% of the value of the original contract (subject to indexation).
- 9.2 Regulation 72(1)(c) of the PCR 2015 permits an extension of the contract where the need for the extension arises from circumstances which we could not have foreseen. The change must not alter the overall nature of the contract, and any increase in price must not exceed 50% of the value of the original contract.
- 9.3 This report sets out the reasons why the extension is necessary, including due to the ongoing impact of Covid 19 which has prevented the Council from properly planning and letting a new contract by August 2023. The Council needs the additional time to properly prepare and go out to market for a new contracts. The period of extension should be no longer than reasonably necessary to allow the councils to prepare properly go out to procurement for new contracts in compliance with the PCR.

- 9.4 When relying on these grounds to extend the contract, the Council must publish a modification notice to Find a Tender (Regulation 72(3) and (4) of the PCR 2015). The PCR 2015 do not expressly stipulate a timeframe for publication of a modification notice. Given the need for transparency, the notice should be published as soon as reasonably practicable after the decision to extend is made.
- 9.5 Legal Services should be instructed to agree the terms of the contract extension.

10. Financial Implications

- 10.1 Under the current 10-year contract with Everyone Active, there is a net management fee of £0.75m per annum due to the Council. The budget has been set up to reflect this in leisure services.
- 10.2 The COVID-19 pandemic has had a significant adverse impact on leisure income over the last two years. Not only was Everyone Active not able to pay the management fee but also resulted in a trading deficit. In 2020/21 and 2021/22, the Council agreed a financial subsidy package as detailed in exempt Appendix 3. This included waiving the annual management fee and funding their forecast trading deficit. In 2022/23, the Council agreed to waive some of the annual management fee.
- 10.3 As part of the contract extension proposal, Everyone Active has prepared a financial forecast for the period from September 2023 to August 2024. They offer an annual management fee as detailed in exempt Appendix 2. The reasons for this are primarily due to reduced fitness membership and increased operating costs due to inflationary pressures. Should Everyone Active perform better than their forecast, there would be a profit-sharing mechanism to provide the Council a further income.
- 10.4 In the 2021/22 MTFs, a growth budget was included to reflect the losses of income due to the COVID-19 pandemic in Place Directorate. It was initially for £5m in 2021/22, reducing to £2.482m in 2022/23 and £0.983m in 2023/24. The phasing of this budget took into consideration of the time it would take to recover the income to the pre-pandemic level and recognised that some of the income budgets would no longer be achievable. At the time of preparing the MTFs, the reduction in leisure income was assumed to be 50% in 2023/24 and to be met from the growth budget of £0.983m.
- 10.5 The financial forecast represents a pressure against the existing income budget. This is detailed in exempt Appendix 2 and can be funded from the MTFs as detailed above and/or any additional income from the profit-share arrangement.
- 10.6 A one-off funding of £15k from Capital Feasibilities Reserve is made available to fund a condition survey of leisure facilities. The service will

explore external funding opportunities to support the workstreams identified by SLC Consultancy as detailed in Section 3.9. Any investment plans on the leisure facilities will be subject to a wider Assets Review and the Capital MTFs process.

11. Equalities implications / Public Sector Equality Duty

11.1 An Equalities Impact Assessment (EqIA) has been conducted (Appendix 1). The EqIA identified that the recommended option would not have an adverse impact on any of the protected characteristics. The extension of the current leisure contract with EA for 1 year would mean that the same range of sport and leisure activities will be available as has been available under the current leisure contract.

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Man

Signed on behalf of the Chief Financial Officer

Date: 16th August 2022

Statutory Officer: Stephen Dorrian

Signed on behalf of the Monitoring Officer

Date: 15th August 2022

Chief Officer: Dipti Patel

Signed off by the Corporate Director

Date: 30th August 2022

Head of Procurement: Nimesh Mehta

Signed by the Head of Procurement

Date: 17 August 2022

Head of Internal Audit: Susan Dixon

Signed by the Head of Internal Audit

Date: 1st September 2022

Mandatory Checks

Ward Councillors notified: NO - impacts on all Wards

EqIA carried out: YES

EqIA cleared by: Jennifer Rock

Section 4 - Contact Details and Background Papers

Contact: Tim Bryan – Head of Service, Culture and Leisure. Tel: 07917076800. Email: tim.bryan@harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee - NO