

## FREEDOM LEISURE

### 1. RECOMMENDATIONS

- 1.1 That Cabinet recommend to Council the proposal set out in this report to finalise the negotiated resolution related to the Transition Year deficit, in accordance with the procedure set out in the Council's contract.

### 2. INTRODUCTION

- 2.1 This report sets out a proposal to deal with the resolution of a matter relating to the deficit during the Transition Year (i.e. the first year of trading) of Freedom's contract with the Council, in accordance with the provisions set out in the contract.

### 3. BACKGROUND

- 3.1 On 18 June 2021, the Council entered into a contract with Freedom Leisure to run the Council's five Health and Leisure facilities commencing on 1 July 2021, for a term of 11 years (with an optional four-year extension).
- 3.2 Freedom Leisure is one of the UK's leading charitable and not-for-profit leisure trusts. They manage leisure and cultural services on behalf of over 25 local authority partners and operate more than 100 leisure and cultural venues across the country.
- 3.3 The commencement of the contract so close to the COVID-19 pandemic left significant uncertainty as to how well the Leisure sector (nationally, as well as locally) would recover. In recognition of this, Year 1 of the contract (running from 1 July 2021 to 30 June 2022) was established as a 'Transition Year', with the Council and Freedom Leisure establishing an 'Open book' basis for financial performance oversight.
- 3.4 The Contract provides for the Council to cover any Transition Period deficit, up to a cap of £1.23M ('the Cap'). The Contract further provides that any deficit incurred during the Transition Period above the £1.23M Cap will be dealt with in accordance with the dispute resolution mechanism set out on the contract. This is a formal mechanism within the contract to enable the parties to come together to try and resolve issues without the need for formal legal escalation.
- 3.5 Year 1 of the contract was particularly difficult for Freedom Leisure financially, with a slower than expected post Covid recovery. Russia's invasion of Ukraine in February 2022 also caused a significant and unforeseen spike in the cost of utilities, adding significant expenditure pressures to income recovery pressures. The sector is still finding it extremely challenging to cover the huge energy cost increases, whilst still operating in the context of a post pandemic recovery and a cost of living crisis. Freedom Leisure, like many others in the industry, are experiencing these same challenges.

- 3.6 Freedom Leisure formally triggered the dispute resolution procedure in November 2022 relating to the Transition Year Cap. Under the terms of the contract, the Council and Freedom are required to '*use all reasonable endeavours to reach a negotiated resolution*'. Officers have been in discussions with Freedom with a view to resolving the issue and Section 4 below sets out the proposals in this regard.
- 3.7 Officers have taken expert legal advice on the matter and Appendix 1 to the report contains a confidential summary of the legal advice received from the Council's legal experts, which is exempt information by virtue of Paragraph 5 of Schedule 12A of the Local Government Act 1972 (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings). The public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### **4. PROPOSAL**

- 4.1 The deficit that Freedom incurred in the Transition Year was £1,866,650. The Contract provides for the Council to cover any Transition Period deficit, up to a cap of £1.23M ('the Cap'). The Contract further provides that any deficit incurred during the Transition Period above the £1.23M Cap will be dealt with in accordance with the Dispute Resolution mechanism set out on the contract.
- 4.2 The provisions of the Contract envisage that an increase in a payment over £1.23M may be required and indeed permits the Council to increase its payment to Freedom Leisure beyond the £1.23M where the actual deficit is in fact in excess of this Cap.
- 4.3 In discussions with Freedom Leisure, Officers have proposed an increase in the Management Fee from £1.23M to £1.5M, which Officers consider is a reasonable figure taking into account the bid parameters of the original tender process.
- 4.4 Freedom have accepted this proposal, and would consider the Dispute Resolution position closed, subject to this being the final agreed outcome.

#### **5. FINANCIAL IMPLICATIONS OF RECOMMENDATIONS**

- 5.1 The payment of £270,000, being the difference in the £1.23M already paid and the £1.5M proposed, will be financed from the Council's Budget Equalisation reserve.

#### **6. CRIME & DISORDER IMPLICATIONS**

- 6.1 There are none directly associated with this report.

#### **7. ENVIRONMENTAL IMPLICATIONS**

- 7.1 There are none directly associated with this report.

## **8. EQUALITY AND DIVERSITY IMPLICATIONS**

- 8.1 There are positive equality and diversity implications for the community in the provision of leisure facilities across the District. The services provided improve the health and wellbeing of residents, take into account those with particular characteristics and play an important contribution to the District's social wellbeing.

## **9. PORTFOLIO HOLDER COMMENTS**

- 9.1 I believe the report sets out a satisfactory conclusion to the matter.

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### **Background Papers:**

**Public documents**

**Exempt information (legal advice)**