

# Options for councils in supporting leisure providers through COVID-19

Guidance

**Note:** this guidance is correct as of 29 April 2020

# Purpose

## Introduction

On 20 March 2020, the Government announced the temporary closure of all gyms and leisure centres (along with pubs, clubs, restaurants, cafes) as part of its COVID-19 response to stop the spread of infection. These leisure facilities provide vital health, leisure and wellbeing services to local communities and will be a key re-engagement service for those communities post the COVID-19 pandemic. Leisure providers, who are charitable trusts or private operators are now at crisis point as a result of loss of income and limited cash reserves.

This advice note aims to update councils on the impact the COVID-19 pandemic is having on leisure providers operating services and facilities owned and delivered on behalf of councils. It includes options as well as examples of how councils are providing practical support to providers and ensuring facilities are in a position to reopen when social distancing measures are relaxed.

Leisure providers are currently falling between the cracks of most announced support packages. Leisure trusts are most at risk because they are charities, societies or community interest companies (with a public benefit asset lock) and as such do not distribute profits. Currently leisure providers are exempt from most COVID-19 emergency support funding, because:

- the Procurement Policy Notes 02/20<sup>1</sup> (PPN 02/20) on supplier relief do not account for the income arrangements between councils and providers
- leisure providers are unable to secure loan finance, either through the government backed scheme or commercially, due to judgement of viability being assessed and judged on historical profitable financial records rather than on future financial projections, tight contractual and operating margins and, for trusts, their reinvestment of surpluses into the community model
- the majority have a rateable value above £51 000 so are not eligible to receive the retail, hospitality and leisure grants
- they are not eligible for Sport England's emergency response funds which are targeted at grassroots community organisations and are unable to be used to address financial impact on council service provision
- trusts are not eligible for the Government's £750 million for frontline charities, as they are not deemed 'small' nor 'delivering frontline services'
- closure has been required and that some are interpreting this as a 'change of law' event from central government – specifically closing gym and leisure facilities.

This note focuses on advice that is applicable to trusts and private operators.

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<sup>1</sup> <https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

# Background

## Why are leisure providers important?

Leisure providers operate a range of services and facilities on behalf of councils. They may be private operators or trusts (registered charities, societies or community interest companies). Many of the sites they operate are leisure centres and swimming pools, but in some localities they also operate libraries, theatres, museums, pitches, golf courses, ice arenas, beach fronts, parks and heritage buildings.

The services they provide play an important role in ensuring the mental and physical wellbeing and social connectedness of local communities. Public Health England reports that regular physical activity can reduce the risk of many chronic conditions, including coronary heart disease, stroke, type 2 diabetes, cancer, obesity, mental health problems and musculoskeletal conditions. Engagement in leisure activities also contributes strongly to mental wellbeing, by allowing people to be active and to connect with others.

Although public buildings have been temporarily closed during the coronavirus crisis, some leisure facilities have been repurposed to support the COVID-19 response and some provider websites have begun to deliver streamed workout videos and community information online. The services provided by leisure providers will be even more important as we move towards thinking about recovery and supporting communities to return to fitness, activity and mental wellbeing.

If the leisure sector is not sustained through this crisis, the re-mobilisation of public leisure provision will be significantly affected, with facilities unable to open and clubs and voluntary organisations unable to re-start activities for communities. There will be additional costs to the public purse through re-procurement, TUPEing staff, or establishing new delivery mechanisms whilst facilities remain closed for longer periods. There will be an impact on the social and health benefits to communities at a time when these will be most needed.

## What are the features of leisure operators?

The delivery model for operators does vary, but the main features are as follows:

- Due to contractual requirements to invest profits back into council services, margins are extremely low (usually between 1 per cent – 5 per cent of income relative to contracts).
- They are wholly reliant on income from customers and/or management fees to operate.
- Reserves are low as a result of a necessity to reinvest into facilities and communities;
- Management fees paid to and from leisure operators are just a balance figure between income and expenditure. Therefore with no income a significant financial gap is created.
- There is an ongoing net subsidy requirement even when facilities are closed and mitigations are in place, as the average monthly cost of utility, non-furloughed staff, loans, repayments and standing charges etc is around £60,000 per site per month.
- Operators cannot access cash from equity issues or other financial models available to commercial entities.
- Councils benefit from the trust and private operator model allowing reductions in the cost of running facilities.

In addition to the above, leisure (and culture) trusts or community interest companies are different from many other services undertaken by councils, in that:

- leisure trusts are registered charities, societies or community interest companies (with a public benefit asset lock) and reinvest all surpluses into their facilities and services
- they are independent of any controlling group structure
- reserves are low and in line with their Reserves Policy following Charity Commission guidelines.

### **What challenges are they facing?**

Leisure operators face particular challenges in accessing Government support during the COVID-19 pandemic:

- critically, while they benefit from the job retention scheme, they are largely ineligible for the retail, hospitality and leisure grants or rate relief
- they are also not in a position to take out loan finance – due to the risk – because of the nature of their business model and the low margins, which are in any case reinvested in the community
- they are not eligible for the Sport England emergency response package announced, which is aimed at grassroots organisations, and it is not yet clear whether or not they will be able to access any of the £750 million package of support for charities announced by the Chancellor.

Operators are also facing serious financial challenges as a result of lost income and high standing costs associated with running a facility. In some, they will be able to take out loan finance, but in others their position will closely mirror that of leisure trusts.

### **What are the risks if a leisure operator fails?**

When a leisure operator running services on behalf of a council begin to fail, the council faces a difficult choice. It can either allow the operator to fail, potentially bringing any facilities owned by the council back in-house as a means of keeping them open, or it can choose to support the operator.

Either approach is likely to involve significant costs to the council. The cost of supporting a trust will vary according to the particular local circumstances and the approach of the council. But bringing a facility back in-house also involves a wide range of costs including:

- maintaining the facility
- TUPEing staff and potentially ‘topping up’ the salaries of those currently on furlough;
- loss of income while the facilities are closed under the current restrictions (and following them being lifted because councils will potentially need to recruit and secure expertise before they can reopen facilities)
- re-tendering the services at a later date if applicable
- potentially replacing the facility in the long term since recent research shows that nearly two thirds of leisure centres are outdated and in need of urgent new investment<sup>2</sup>

There is also a significant cost to the community, as the services are likely to remain closed until arrangements can be put in place to reopen, at a time when councils will have many other demands on their time and finances and statutory services will have to take priority.

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<sup>2</sup> <https://www.local.gov.uk/nearly-two-thirds-leisure-centres-need-urgent-investment>

There are specific risks to wider council-led priorities and delivery of statutory duties which are reliant on leisure facilities. For example, upper tier and unitary councils have a statutory duty for public health. This includes the improvement of the local population's health by contributing to healthier lifestyles and mental wellbeing and reducing health inequalities, obesity rates and physical inactivity. Leisure services play a key role in this agenda through direct initiatives such as exercise referral schemes and through their broader contribution to the health of the community. Although not statutory, councils play a strategic role in determining and driving local economic priorities to increase economic growth, job creation and make local areas attractive places to live and work. Repurposing town centres to bring a better balance between housing, leisure, public services and cultural hubs and retail is one example of how councils are doing this. Thus, in the longer term the absence of a leisure infrastructure will have an adverse effect on the council's progress for its public health and local economic priorities.

### **What can my council do to support our leisure partner?**

We recognise that there will be many calls on council resources at this time. The following list is provided to help councils identify their options to support their local leisure trust. Not all options will be appropriate in all council areas and will depend on local contracts. However, we encourage you to work with your leisure provider as a partner, rather than simply a contractual provider, to identify what will work best for them and, in the long-term, your communities in support of your council's public health and economic strategies. While the details will differ, our ambition is for a partnership-focused approach to be adopted across all councils and leisure providers.

The following actions will support a partnership approach between councils and their providers:

- Adopting the recommendations and approach recommended in PPN 02/20.
- Supporting the net subsidy position utilising the Open Book approach recommended in the current PPN 02/20 run from service closure on 20 March to the date at which 'full normal service and income levels have been achieved' to ensure fairness and transparency. Leisure providers will be under an obligation to mitigate costs as much as possible.
- Holding regular review meetings with the operator to monitor and manage the joint response to the crisis.
- Understanding that organisations have had to furlough most of their staff resource, so reconciliation under the Open Book specific to the contract should be quarterly to minimise resource impact.
- Understanding that leisure operators including trusts, are not eligible for the vast majority of Government-backed support schemes, nor those of Sport England.
- Taking steps to understand the potential costs to their council in present and future budgets should their leisure partner be unable to continue.
- Noting that under 'Change In Law provisions' (where applicable) the council is fully responsible for all the costs of hibernation and supporting the ramp back up to normal working.
- Agreeing hibernation costs with the operator (where relevant), including security, plant checks etc.

Councils may also consider:

- funding the operator to pay staff their normal contracted remuneration, while also ensuring that the operator is maximising the value of the Government's job retention scheme<sup>3</sup>
- agreeing payments to the operator to ensure that the operator's cash flow position is protected.

It should be noted that leisure operators are supporting a large number of community resilience plans across the country and this collaborative approach is providing immediate benefits to many councils and their communities, the continuation of this support is encouraged.

### **Forms of support**

Where possible, councils are doing their best to help by introducing a range of emergency measures including relaxing monitoring and outcomes requirements, advance payments, waiving management fees and in some cases offering direct financial support.

Specific examples of support offered by councils to leisure providers (trusts and private operators) include the following.

- waiving the sum contracted to be paid to the council by the leisure provider on a monthly basis
- offering their leisure contractors an interest free loan or a grant to cover the months of closure and concession on future measures when allowed to re-open
- deferring any rental costs for the sites they operate on
- paying approximately one third of this year's operating subsidy, as an advanced payment in April, covering the period April – June 2020
- offering to fund all staff related costs that are required to attend the centres to perform building checks, therefore complying with building checks and contractual obligations
- proposing to pay the anticipated costs of maintenance, utilities, cleaning, finance charges, professional fees, irrecoverable VAT and a proportion of central overheads, subject to an open book reconciliation being undertaken to determine the actual cost when the centres re-open.

Councils may look at advance payments as laid out in the PPN 02/20 to ease the cash flow challenges facing leisure trusts.

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<sup>3</sup> <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>

## Summary

The health and wellbeing of the nation is at the forefront of all our minds and it is clear the services delivered by leisure providers play a vital role in this both now and in the future.

Whilst the PPN 02/20 guidance needs to provide a generic position covering a number of services, the delivery of council services by leisure trusts needs to be assessed in line with the unique circumstances required to deliver the contracts and specifications put in place by councils. Local circumstances will differ and councils are best placed to decide their own approach to these services, but we would advocate a partnership-focused approach between council and provider as the best way of securing positive outcomes for the community.

We would encourage councils to consider the long-term implications of these unprecedented times on the culture and leisure sector as a whole and consider how we can best stand together to ensure the resilience of these facilities for our residents.

## Frequently asked questions

Below are a series of questions commonly asked by councils of their providers and are intended to assist in supporting the conversation between organisations. The answers are based on previous conversations between ukactive members and their council partners.

### **Does council support constitute state aid?**

- Leisure contracts are procured via OJEU in full compliance with EU Procurement Rules and the Public Contracts Regulations (or The Concessions Contracts Regulations).
- Those contracts, at the time they were procured, included clear obligations on councils to make payments under the contract in the event of a qualifying/specific change in law.
- Councils are complying with the terms of those contracts which were tendered in accordance with EU Law.
- Compliance with the terms of the contract cannot be seen as 'distorting competition' for the purposes of the State aid rules as the contract was open to any organisation in the EU to tender for.
- Any payments made do not, therefore, fall to be treated as state aid as they do not satisfy all four tests under the state aid rules.

### **What savings can be made in relation to costs associated with repairs and renewals, cleaning and waste and utilities whilst not affecting the maintenance of the sites or plant and obligations related to compliance?**

- Savings will depend on the extent to which the council wishes to mothball sites. For example, providers will aim to reduce energy costs as much as possible whilst following Pool Water Treatment Advisory Group guidelines to ensure they maintain plant and pool circulation systems ready for remobilisation of the sites. Full mothballing comes with greater risk of plant and pool structure failure which would be significantly more expensive.

### **The stability and viability of a multi-site operator will depend on their ability to successfully vary their contractual arrangements with all the various councils to whom they provide services. If the company becomes insolvent, must all the contracting councils be notified immediately?**

- In any circumstances where the company became insolvent, all council partners would be informed immediately. It is important to note that if the closures are deemed to be a 'change of law', this has implications for the council's requirement to support.

### **Are trusts and private operators prepared to set out exactly the relief they are requesting against each contract in their portfolio?**

- Each organisation is prepared to work through each contract using the Open Book approach recommended in the current PPN 02/20 to ensure full costs are shown to the council in the spirit of a transparent approach. Financial information from other councils would be confidential.



**Could you please advise as to why the percentages assigned to central support contribution differs between different council contracts with the same provider? Can this figure be aligned?**

- The contribution is allocated to each contract on a pro rata basis based on the size of the contract in relation to all council partners. This ensures that no one council is covering a higher proportion of central running costs.

**Where there is a 'cost plus' arrangement in place, does the operator envisage this being a fixed price payment each month, or a fluctuating payment based on actual expenditure?**

- The 'cost plus' arrangement would be a fluctuating payment based on actual expenditure plus a fixed central cost contribution. Contractors will endeavour to keep the actual expenditure as low as possible but there are a number of unavoidable costs which must be incurred during the closure period. Costs may also vary depending on the duration of the closure, eg additional stock wastage in the case of an extended closure.

**Some training is legally required to take place on a regular basis (for example health and safety). Could clarity be provided as to those training costs that would be incurred during a period of site closure?**

- The main costs are for National Pool Lifeguard Training and basic food hygiene renewals prior to re-opening the centres. Expiry holidays have been granted in most cases of statutory training for the duration of the lockdown. There may be others depending on the length of closure but at this moment in time these are the key training costs.

**Can you advise whether payment holidays have been explored and discounted in regards to all relevant cost lines ie licences or equipment hire arrangements?**

- All providers are currently in talks with suppliers in relation to discounts and payment holidays. Any discounts secured will be passed through to the council as part of Open Book accounting (on the cost plus arrangement where applicable). A number of suppliers have allowed flexibility, but some stand behind contracted positions.

**Would it be correct to assume that the costs associated with 'cost of sales of goods' would reduce further after April once perishable stock has been disposed of?**

- Yes, this actual cost will reduce during the closure and can be confirmed after each month during reconciliation of accounts. It does depend on what goes out of date in each period.

With thanks to Community Leisure UK and ukactive for their support in producing this guidance note.

