

Key Decision (Officer)

Date: 24 July 2020

Exempt or confidential report

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in **Appendices 3, 4 and 5** of this report and they are therefore exempt from publication. Members and officers are advised not to disclose the contents of this report:

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Wards: All Wards

Subject: Leisure Centres Contract – Covid 19

Lead officer: Christine Parsloe, Leisure & Culture Development Manager

Lead member: Councillor Cooper-Marbiah, Cabinet Member for Commerce, Leisure and Culture

Contact officer: Christine Parsloe, Leisure & Culture Development Manager

Recommendations:

- A. To award Greenwich Leisure Limited (GLL) an additional interest free repayable grant of £200,501 to financially support them through the reopening phase of the leisure centres for the period from 1 July to 30 September and to implement this using the agreed Covid 19 - Deed of Relief and Variation (**DORV**).
 - B. Give authority to the Director of Environment and Regeneration, in consultation with the Cabinet Member for Commerce, Leisure and Culture, to finalise the template to extend such relief attached to the DORV (**Template**) and to use his delegated authority to enter into the final form of Template.
 - C. Agree that following audits of the quarterly grants, should there be any shortfalls in funding on the accounts, that GLL may make a further application to the Council to fund these shortfalls and that Council will consider these. The Council reserve the right to consider these requests on each occasion with no guarantees that such requests will be funded.
 - D. The Council note that having given due consideration to Regulation 72 Public Contract Regulations (**PCR**) safe harbour 72(1)(e) can be relied upon again by the Council in relation to this additional repayable grant.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Leisure Centres have had to close under central Government instruction due to the Covid 19 pandemic. This has placed the operators in a difficult financial position. This report seeks approval to support the operator with additional financial support during the remobilisation / re-opening period so that they are in a position to reopen the facilities and are able to commence operating the services in a Covid–secure manner until such time that the

emergency situation is considered to be over and the business has rebuilt operations so that normal services can be resumed.

2 DETAILS

- 2.1. Central Government required providers of leisure facilities to close as part of their response to the Covid 19 pandemic. This requirement is set out in secondary legislation, in force 26 March 2020, 1pm, The Health Protection (Cononavirus, Restrictions) (England) Regulation 2020 (Regulations), which provides that indoor fitness studios, gyms, swimming pools, or other indoor leisure centres “must cease to carry on that business” from 2pm on 21 March 2020. The regulations make it an offence to contravene the Regulations “without reasonable excuse” and the Regulations currently expire in 6 months’ time.
- 2.2. Merton’s operator immediately complied with this secondary legislation and closed the 3 leisure centres in the borough. They then alerted the council to the need for financial assistance on 24 March 2020. Since this request, officers have been working with GLL to consider how best to support them through the closure and in their development of re-opening plans, whilst still ensuring that they maximise the Government benefits; minimise costs, whilst keeping their previous customer base supported through such measures as ‘free’ online exercise classes, etc.
- 2.3. Throughout the discussions it has become clear that if GLL are to remain as the operator of Merton’s Leisure Centres for the foreseeable future they will require ongoing financial support and strong partnership working to assist them to a return to a more stable business position. What is not yet clear, and remains unpredictable is the amount of financial support that might be required on an ongoing basis and for how long, as this is very much dependent on the relaxing of Covid 19 rules and regulations in the future, customer behaviour, and customer affordability.
- 2.4. The Cabinet Office published Procurement Policy Note (PPN) - 02/20 Supplier relief due to Covid 19 in March 2020 (Appendix 1). The council used this advice and guidance in considering what support it needed to provide to GLL to minimise the suppliers risk and assist them to be in a position whereby they could resume normal contract delivery once the Covid 19 outbreak is over.
- 2.5. In June 2020, the Cabinet Office published Procurement Policy Note (PPN) 04/20 – Recovery and Transition from Covid 19 (Appendix 2), which updated and built on the provisions contained in PPN 02/20. This PPN encourages public bodies to work with suppliers in partnership to plan an eventual exit from such relief and transition to “a new sustainable operating model, taking into account strategic and reprioritisation needs”.
- 2.6. The result of early discussions with GLL, is that the council took a Key Decision on 2 June 2020 to financially support GLL via the payment of an interest free repayable grant of £305,555 to mitigate the losses on the Merton contract for the period from 20 March to 30 June 2020.
- 2.7. The council has also complied with the contract terms and provided GLL relief from paying the council any sums due to it during this time. This is an additional loss of income to the council of £69,153.33 (revenue) and £851.18 (Life-time fund for Morden Leisure Centre) per month. Some of this loss may

now be possible to recover through a claim to central government for loss of income.

- 2.8. The delay in the re-opening of the leisure centres along with the Covid-secure arrangements that will be required for the safe operation of our centres has resulted in GLL requesting an additional interest free repayable grant of £200,501 (Appendix 3 (Exempt)) to support them for the period of 1 July to 30 September 2020.
- 2.9. The on-going deficit support required is primarily as a result of predicted reductions in income as a result of social distancing measures which reduce the range and capacity of activities on offer and an expected customer reluctance to come back to leisure facilities immediately. Expenditure levels are being mitigated where possible (e.g. through use of the furlough scheme) but expenditure is still projected to be higher than income in the early months, whilst income levels gradually rebuild.
- 2.10. The PPN's recommend the use of an open-book arrangement between the council and operators. Merton's DORV is based on a set amount awarded as an interest free repayable grant, with Merton having the right to view and interrogate the GLL accounts and claw-back any unspent grant or grant which might have been 'wrongly' applied. This process is intended to take place quarterly and retrospectively.
- 2.11. It is intended that any additional grants would be awarded through the same DORV using the same terms and making use of the Template (Annex 4 of the DORV) for this purpose. GLL have responded to council questions on this matter (Appendix 3 (Exempt)). GLL has agreed to cap the cost the Council will incur for these 3 months based on the financial forecast. However, GLL is requesting that the Council agrees to a future reconciliation of any additional losses incurred during this period. This could be delivered through adjustments to future financial projections and open book accounting for the period beyond September or could be considered by council as a separate additional grant request under the current DORV.
- 2.12. Officers have been working with GLL on their reopening plans to determine the optimum number of sites to open, the activity mix, a rationalised pricing system, use of a GLL App for bookings with payments in advance. GLL have developed reopening plans to maximise participation (within Covid secure guidance) and income, by repurposing indoor spaces for other uses (e.g. sports hall for health and fitness activities) and expanding operations into the outdoor spaces around the centres, where such appropriate spaces exist.
- 2.13. Officers have made a first post-lockdown visit to each centre to check out the condition of the facilities and take the planned customer journey, etc. to ensure all is as expected as per the agreed re-opening plans. Subsequent visits will be undertaken as well as the collection of monitoring information to ensure that GLL are still maintaining the facilities and equipment such that the quality of service provision is not reduced, whilst at the same time being prudent with expenditure. This information will then feed into the open book review of the centre operations linking to the grant reconciliation.

3 ALTERNATIVE OPTIONS

- 3.1. Various options have been considered from retaining GLL as an operator to GLL no longer being able to survive as a social enterprise and the council having no operator for the centres once the Covid 19 pandemic is over. Other options for consideration are what the council should or should not fund in relation to the request from GLL and the Merton's contractual agreements, set in the context of the secondary legislation and associated Public Policy Note (PPN 02/20 attached at Appendix 1). Finally, options given consideration included whether the finance should be a loan or grant; recoverable or non-recoverable and whether the finance should require interest to be paid or not.
- 3.2. It is clear that should the Council (and other councils) not provide this financial support in line with Government advice and guidance then GLL would be unable to continue as a viable entity and Merton would need to consider how to operate the centres going forward.
- 3.3. GLL has taken advantage of all routes available to it from government funding including:
 - Govt Job Protection Scheme
 - Business Rates Holidays
 - Deferral of VAT payments
- 3.4. Other Government loan schemes are generally aimed at SMEs and are too small for an organisation of GLL's size.
- 3.5. GLL does have business interruption insurance in place however insurance companies are generally not paying out on Covid-19 business interruption.
- 3.6. GLL has also investigated loans but, because of existing borrowing, it states that there is little opportunity to raise more loan finance. In addition, commercial loans will not resolve the financial problems faced by GLL as it will just delay the problem for a later date as they are unlikely to generate sufficient income of the scale required in order to repay commercial loans.
- 3.7. GLL has already drawn heavily on its reserves due to the Covid-19 impact to the value of circa £1.5m per week with no income to offset this. This cannot continue for GLL as reserves will be exhausted without support from local authority partners.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Specialist financial help has been sought from FMG Consulting Ltd, whilst Blake Morgan LLP provided specialist legal advice for the Covid 19 Deed of Relief and Variation and associated legal requirements.
- 4.2. The Director of Environment & Regeneration coordinated discussions and deliberations with all London borough Directors who have GLL as their contracted leisure operator so that all could share understanding and knowledge, whilst seeking to agree a set of principles by which all could then finalise their individual agreements in line with the secondary legislation; the Public Policy Note (PPN 02/20) and the individual contractual agreements within each authority.
- 4.3. These discussions included the Chief Executive and key Directors of GLL, during the final stages, so that GLL could clearly explain and discuss the

challenges they are facing, whilst also gaining an insight into some of the wider pressures on public funds. These discussions are ongoing.

- 4.4. Consultation was also undertaken across public sector procurement officer forums, leisure client officers and London's Chief Leisure Officers Association.
- 4.5. Officers have also been in sector specific conferences and conversations on a range of different aspects of the impact of Covid 19 and the future of leisure services.
- 4.6. All of the information from all sources has been considered in determining the approach proposed in this report.

5 TIMETABLE

5.1. Table 1 Key Dates

Date	Activity
20 March	Leisure Centres last day of trading
21 March	Secondary legislation effected
24 March	GLL alert Merton to financial shortfall
02 June	Key Decision Report Agreed to Support GLL with an interest free repayable grant of £305,555 to cover the period 20 March to 30 June 2020
23 June	Deed of Relief and Variation – Covid 19 – Signed and Sealed
25 June	Grant payment made to GLL
09 July	Government announcements on reopening Leisure Centres
13 July	GLL provide costed options to Merton re: further financial shortfalls linked to reopening options for consideration
25 July	Leisure Centres Reopen
End July	First formal review of use of grant via Open Book with GLL.
July - Sept	Work with GLL to maximise activities within Covid-secure procedures; marketing and comms to encourage participation and use; etc. Respond to any increased relaxation / compliance of Covid 19 rules in order to best support the health and safety of residents through the Covid 19 pandemic, whilst also seeking to maximise income and minimise costs, whilst still seeking to deliver the best affordable leisure services.
September	Review of any further financial requests from GLL
October	Second formal review GLL financial position (end of second quarter).

5.2. GLL proposed reopening plans:

Table 2 – Summary of Restart Phases

Phase / Date	Focus of Usage
1a – Reopening Initial phase to reopen safely in a Covid-secure and compliant manner	Minimal Viable Offer
	Health & Fitness (Adult Only – over 16 years of age)
	Fitness Classes
	Swimming (if opening pools option is agreed)
	Swimming Clubs (if required and limited days)
1b - Transition Two to six weeks later	Wider Sports offer
	Family & Junior Activities
	Dates to move to Transition Phase based on learnings; viability and guidance
2 – Mature Skinny Operation Six weeks to six months later	Learning from Phase 1
	Lessons & Courses
	Schools
	Protected Categories & Healthwise
	More Activity Areas
3 – Programme 2021 January 2021	Future Programme, Hours and Offer
	Financial Viability
	Building back up to recover Jan 2020 levels

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The detail of GLL’s second ‘financial ask’ of £200,501 is included as Appendix 3 (Exempt).
- 6.2. Both the first grant made and this additional amount would be in the form of an interest free repayable grant to GLL. These grants would be expected to be repaid over the next 10 years of the contract by changes to the profit share arrangements, through the agreed Deed of Relief and Variation – Covid 19 (DORV).
- 6.3. The repayment terms mean that the Council will receive 100% of the GLL’s “Operating Surplus above Contractor Profit” each financial year until either the grants are repaid, or until the end of the contract in 2030.
- 6.4. There is also an opportunity cost to this grant, which has been calculated as being in the region of £8,270.76.
- 6.5. Pursuant to the GLL leisure contract, and as part of the relief given pursuant to the Deed of Relief and Variation, the Council will also forego otherwise guaranteed income from the GLL contract until the end of September 2020 of c£415k. This could increase should the restrictions on leisure centres remain in place. It is noted that some of this loss may now be recoverable through a claim to central government for loss of income.

- 6.6. It should also be noted that as the Council is liable for the leisure centres' electricity and gas costs, there will be an element of cost reduction in this area until they fully reopen.
- 6.7. FMG Consulting Ltd (Leisure Consultants) have provided advice and guidance on this Deed of Relief and Variation and their report is attached at Appendix 4 (Exempt). FMG Consulting Ltd advise:
- “Our view is that the projections from GLL appear to be fair and reasonable for the operation of the facilities over the period July – September. There are no extremely large expenditure items which cannot be explained, and the income projections are in line with projections made by operators across the industry.*
- Regardless, the key fact to remember is that the numbers provided are only projections and that GLL will be required to evidence all actual income and expenditure (if requested to by the Council) under the open book accounting arrangements when the actual losses for the period are reconciled to the projected losses at the end of each month / quarter”.*
- 6.8. The cost of the legal and financial advice for this DORV is c£35,000.
- 6.9. The cost of the grant and associated legal and consultancy costs will be charged against the Government's Covid-19 grant, but this may not cover all of the Council's Covid-19 costs.

7 LEGAL AND STATUTORY IMPLICATIONS

Background

- 7.1. Blake Morgan LLP have provided legal advice and guidance as well as the drafting for the Deed of Relief and Variation (**DORV**). Their reports are included at Appendix 5 (Exempt).
- 7.2. At the moment the Government requirement to close leisure centres is set out in secondary legislation, in force 26 March 2020 1pm, The Health Protection (Coronavirus, Restrictions) (England) Regulation 2020 (**Regulations**), which provides that indoor fitness studios, gyms, swimming pools or other indoor leisure centres "must cease to carry on that business" from 2pm on 21 March 2020. The Regulations make it an offence to contravene the Regulations "without reasonable excuse" and the Regulations currently expire in 6 months' time.
- 7.3. The Cabinet Office published a Procurement Policy Note (PPN) 02/20 which had encouraged authorities to maximise commercial flexibilities within their contracts, to include waiving or delaying a council's rights and remedies such as service credits or termination rights, and vary contracts, taking account of their own contract, contractor performance, and the procurement regulations that permit variations as well as state aid rules. The PPN did not specifically refer or apply to leisure provision, however, the Local Government Association (LGA), as detailed in its document 'Options for councils in supporting leisure providers through COVID-19' (Appendix 6) recognised the unique nature of leisure operator contracts, and discussed how the PPN could apply to leisure operation. The guidance encourages councils to support their operators through a number of means, to include funding costs, protecting cash-flow, waiving sums owed by the operator, offering interest free loans or grants,

deferring rental costs, paying for necessary costs to support the essential maintenance and reopening of centres and utilising open book reconciliation on a quarterly basis.

- 7.4. The DORV that was entered into on 23 June 2020 by the Council and GLL is considered to be in line with the GLL leisure contract, the PPNs (see also paragraph 7.14 below) and the LGA guidance.

Terms of Deed of Relief and Variation

- 7.5. As the Prime Minister's direction may be seen as "Guidance" and the Regulations as "Legislation" in the GLL leisure contract (**LMA**), it is likely that there has been a Change in Law with which GLL must comply. Pursuant to the LMA, and unlike many other leisure operator contracts based upon Sport England Standard Form, GLL and not the Council are responsible, pursuant to the LMA, for Change in Law, unless there is a Capital Expenditure impact. The parties to the LMA have agreed in the DORV that there is no such impact.
- 7.6. The GLL contract does not include "pandemic" as a "Force Majeure Event" (which would have entitled the parties, after a period of time to terminate the LMA). There is a reference to "biological contamination" but it will be difficult to establish COVID-19 qualifies as such an event. The relief given to GLL under the DORV was on the basis of a Relief Event (see paragraph 7.7 below), albeit GLL have accepted the relief to date whilst preserving its right to argue at a later date that a Force Majeure Event has occurred (a non-negotiable matter for GLL) and the Council's right to argue that it has not.
- 7.7. If the forced closures are treated as an embargo then subject to the terms of the LMA, they can qualify as a Relief Event. During such period, GLL would be relieved from their obligation to provide the full services and to pay the Management Fee and any under-performance payment adjustments to the Council, but would need to continue to provide essential services connected with Legislation, health and safety, essential caretaking, testing and maintenance. This is reflected in the terms of the DORV.
- 7.8. Pursuant to the DORV, GLL received an interest free repayable grant of £305,555 to settle GLL's claim for relief pursuant to the LMA for the period from 20 March to 30 June 2020, subject to a right of clawback in favour of the Council in certain circumstances, which builds upon the 02/20 Model Terms. The variation to the LMA permits a repayment of the grant through the income sharing arrangements whereby GLL profit in later years is reduced and the Council takes all surplus income above the contractual threshold rather than half. Any grant which is not re-paid through such surplus sharing at the end of the Contract Period is then waived by the Council.
- 7.9. The Council has also, in compliance with the LMA, given GLL relief from paying the Council any sums due to it during this time. The DORV signed by GLL incorporates PPN compliant measures to include open book accounting, mitigation, audit trail and reporting to the Council, and disallowing GLL to claim a profit payment.
- 7.10. The relevant provisions in the DORV dealing with Contractor prohibitions and claw-back in relation to the same are as follows:
- "2.4(c) The Contractor shall not be entitled to:

- include any profit in the Essential Operational Cost Deficit (EOCD) payment;
- include any payment to staff over and above the threshold set by the Government in its Coronavirus Job Retention Scheme (namely 80% of salary capped at £2.5K per month);
- include any payments in the EOCD payment where there is no contractual volume commitment under the Agreement;
- include any payments to the extent that the Contractor has been underperforming under the Agreement and is subject to a current improvement plan or other remedial performance measure under the Agreement; and/or
- combine the EOCD payment with any other public sector COVID19 related relief, grant, intervention or other measure which results in the Contractor receiving more than one benefit/relief for the same underlying cash-flow issue.

(e) If, in the reasonable opinion of the Authority, the Contractor:

- fails to meet any obligation set out in this deed;
- receives any payment and fails to apply it to meet any aspect of the EOCD;
- takes undue advantage of any relief;
- has a residual amount of unspent grant not required for resumption of the Services as identified through the open book accounting reconciliation process; or
- fails to act transparently and with integrity,

the Authority may at any time take all action necessary to recover any payments made to the Contractor during the relevant Covid Relief Period, including, without limitation, retaining or setting-off payment of any amount it owes to the Contractor at any time under the Agreement or any other contract, to the extent that sub-clauses 2.4(e)(i) to 2.4(e)(v) of this deed apply to such payments."

7.11. This means that concerns about how we are ensuring the Contractor is spending the right money on the right things and not running the facilities into the ground, thus driving customers away, are dealt with in the original DORV.

7.12. The DORV has a simple process to allow for an extension of relief, by completing a template email annexed to the DORV, extending the relief by an agreed amount under the same terms and conditions as the original DORV, and increasing the repayable grant and repayment provision amount in the original DORV (the **Template**).

Further relief now sought by GLL

7.13. GLL are now seeking £200,501 to be advanced to them by utilising the Template for the period July - September. There may be some adjustments made to the Template coming out of the negotiation to be had with GLL on the amount they require and the terms for such support. For this reason, authority

is sought to be given to the Director of Environment and Regeneration, in consultation with the Cabinet Member for Commerce, Leisure and Culture, to finalise the Template and to use his delegated authority to enter into the final form of the Template.

- 7.14. Since the original DORV, the Cabinet Office's PPN 04/20 is effective and of particular relevance to this report because it deals with recovery and transition from COVID-19. Effective from 1 July 2020 to October 2020, it seeks to provide information and guidance for public bodies on payment of their suppliers to ensure service continuity during the current COVID-19 outbreak.
- 7.15. PPN 04/20 continues to encourage transparent support of suppliers of critical services, whilst also looking forward at whether supported contracts are still sustainable. The focus is more on developing transition plans to exit from relief as soon as possible and consider contract variations if operational requirements have changed significantly. It is important for such arrangements to continue to deliver value for money over the medium to long term.
- 7.16. Contracting authorities are still encouraged, in line with PPN 02/20, to proactively consider relief to maintain service continuity, but income generating contracts and concessions are specifically mentioned and where payment relief is not available within existing budgets, contracting authorities should work with suppliers to identify commercial solutions that are appropriate.
- 7.17. PPN 04/20 requires authorities to work with suppliers to plan exit arrangements from relief and transition to "a new, sustainable, operating model taking into account strategic and re-prioritisation needs". These include:
 - a planned exit date for supplier relief whilst flexing if local restrictions are reintroduced;
 - a process for reconciling payments against costs (the model interim payment terms accompanying PPN 02/20);
 - an assessment of any costs in implementing Public Health England guidance specifically on contract delivery;
 - an assessment as to whether, as a result of COVID-19, the contract is still operationally relevant and viable and, if not, proposals for variation or termination.
- 7.18. In accordance with the PPNs the parties should ensure that the basic commercial assumptions underpinning the original contract, are still appropriate and consider appropriate variations or to terminate in accordance with the contract's terms where the contract is no longer relevant or viable. The PPN 04/20 acknowledges that risks exist in paying suppliers; that this should be done on an open book basis and comprehensive records should be retained of decision making by the Council.
- 7.19. Also records should be kept by the contractor in order to support transparency and future scrutiny of value for money. In this regard it is important that measures designed to maintain cashflow using public funds where the parties are working together in partnership to avoid GLL's potential insolvency remain transparent.
- 7.20. In terms of the relief given, there is no specific guidance in PPN 04/20 as to how to negotiate with a supplier in the current circumstances. There is

reference to the 'Outsourcing Playbook' v2 and associated guidance notes, which are useful for outsourcing or insourcing services efficiently, lawfully and effectively, but are not specific on how to negotiate an application for relief from a leisure operator pursuant to an existing contract in these circumstances.

- 7.21. Blake Morgan LLP the Council's legal advisor with local authority leisure specialist knowledge, has expressed the view that it will be a negotiation between the parties as to what places the operator in a neutral position, and this is likely to have a series of phases:
- (i) immediate impact;
 - (ii) phased reopening; and
 - (iii) back to 'new' normal.
- 7.22. The original DORV dealt with phase one and immediate impact. The Template is to transition into phase two, and a phased reopening. In relation to the third phase of back to 'new' normal, it may be beneficial to both parties, at this time, to seek to negotiate a longer term solution that avoids the need for ongoing relief. It is important to both parties that the operator can return to its contracted financial model and to incorporate risk management measures to assist it doing so, such as benchmarking and risk/reward sharing.
- 7.23. PPN 04/20 is clear that “suppliers should not expect to make profits on elements of a contract that are undelivered during this period and all suppliers are expected to operate with integrity” and in such cases, a right of clawback is likely to be required to recover payments made.
- 7.24. The DORV signed by GLL incorporates relevant measures disallowing profit payment and permitting the Council a right of clawback in certain circumstances which equate to the 02/20 Model Terms, and it is the intention of the Council that this will be captured in the Template to be populated by the Parties, if further relief is agreed.

Procurement and State Aid

- 7.25. Blake Morgan LLP have provided procurement advice on the variation to the LMA allowing for repayment of the grant extended, and state aid advice on the repayable grant itself.
- 7.26. In terms of procurement, two of the safe harbours under Regulation 72 Public Contract Regulations (**PCR**) appear to be met such that the original variation can be said to be permitted by PCR and will not therefore amount to a substantial change and require re-procurement. One of the two safe harbours was 72(1)(c) which requires a modification notice to be published, which was published over thirty days ago, without challenge. The other safe harbour was 72(1)(e) which does not require publication of a modification notice. This ground can be relied upon again by the Council in relation to this additional repayable grant, and a note of its consideration and decision is to be kept on file. As the Council is not seeking to rely upon regulation 72(1)(c) this time, a modification notice is not required.
- 7.27. In terms of State aid, GLL did not seek to rely upon Section 3.1 of the Covid-19 Temporary Framework due to the degree of support received across its contracts potentially breaching the E800,000 threshold for aid. The Market

Economy Operator Principle was considered to be more appropriate by GLL and Blake Morgan LLP concurred that this could be applicable (Appendix 5 (Exempt)). The Market Economy Operator Principle is considered to again apply to this further repayable grant for the same reasons.

Moving forward

- 7.28. If a further contract variation is required, particularly moving into phase three and new market 'normal', further legal support will be required in documenting how the contract is changing and ensuring the benchmarking and risk/reward sharing processes are effectively used. It is important to ensure that the relief does not continue for the whole of the contract's remaining term.
- 7.29. PPN 04/20 places a focus on working towards transition planning, and for such plans to be implemented as soon as possible **and before the end of October 2020**. Whilst the Regulations were set to expire near the end of September, we now know that the Regulations are being revoked by The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 on 4 July 2020, effective 25 July 2020. In addition, loans or other forms of relief in the immediate impact phase could be recovered in later 'good' years if there are surplus profits made, as has been the Council's adopted practice in the DORV.
- 7.30. A check and audit trail for PCR and State aid purposes is needed for each granting of relief and contract variation.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Leisure Centres are important community resources in which communities can take part in community sport and social activities. These venues offer activities and events which engage with all people of all backgrounds and they do so to generate positive community cohesion experiences.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. Leisure Centres, on the whole, are venues where activities and events take place to bring people and communities together. They are places that provide positive activities and role models and they discourage crime and disorder by offering positive alternatives.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The greatest risk for the council is that the leisure centre operator either does not survive the economic impact of the Covid 19 pandemic, or seeks to break the contract with the council, leaving the council without an operator and needing to source a new operator in a difficult economic climate, or having to take the service back in-house. This would cause increased risks from a Health and Safety perspective, since GLL have been doing daily visits to check on all facilities to ensure that all plant and machinery are continuing to tick over and are in good working order as well as the buildings being safe throughout the lockdown period and are now mobilising the centres in readiness for re-opening.
- 10.2. **Table 3 – Key Risks**

	Risk Description / Details	Likelihood	Impact	Risk	Recommended Management Strategy / Response
10.2.1.	GLL breaks the contract or becomes bankrupt	3	5	15	Financially support GLL with the minimum finances possible to operate the centres maximising income and minimising costs.
10.2.2	Health & safety risks	1	5	5	These are all contained within the leisure management agreement and are the responsibility of the operator. Should the contact with the operator fail this risk will fall to the council and become very high with immediate effect
10.2.3.	Insufficient numbers of users return to the centres	3	3	9	Work together to promote and market the centres
10.2.4.	Centres not all being opened at the same time	1	3	3	Open all centres at the same time. Most cost effective to do.
10.2.5.	GLL come back for more financial support for the next period	2	3	6	This could happen, but it will depend on the Covid 19 regulations in which the centres must be operated and the return of the users
10.2.6.	GLL's financial projections for this next period generate a net deficit and they seek retrospective top up funding from the Council	2	3	6	GLL could do this and if the council were not supportive, they could seek to break the contract, however at this time GLLs reopening plans are positive and about find solutions to return as quickly as possible to not asking for council funding
10.2.7.	GLL are forced to close again due to a second wave of COVID-19 / and or another pandemic	2	3	6	GLL have advised that if this were to happen then they would instigate deep cleansing and bring in a relief staff team as soon as possible to keep services running.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in **Appendices 3, 4 and 5** of this report and they are therefore exempt from publication. Members and officers are advised not to disclose the contents of this report:

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Appendix 1 – Public Policy Note (PPN 02/20)

Appendix 2 – Public Policy Note (PPN 04/20)

Appendix 3 – GLL’s ‘Financial Ask’ (Exempt)

Appendix 4 – FMG Report – Financial Advice (Exempt)

Appendix 5 – Blake Morgan LLP – Legal Advice (Exempt)

Appendix 6 – LGA Guidance Note - Options for councils in supporting leisure providers through COVID-19

12 BACKGROUND PAPERS

- 12.1. Files on the Leisure Contract relating to the Covid 19 pandemic