

Key Decision (Officer)

Date: 20 December 2020

Exempt or confidential report

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in **Appendices 1 and 2** 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: Francis McParland, Leisure & Culture Development Manager

Recommendations:

- A. Agree to extend 'Relief' to Greenwich Leisure Limited (GLL) from paying the council the monthly income due for the maximum period 01 October 2020 to 31 March 2021, as long as such relief is required throughout this period.
 - B. Agree to award GLL an additional interest free repayable grant of up to a maximum of £68,986 to financially support GLL through the rebuilding phase of the leisure centres offer. To note that through partnership working the previous grants have been well managed leaving a residual sum (£99,377), which is also agreed can be taken forward for use in the period 01 October 2020 to 31 March 2021. To implement this using the agreed Covid 19 - Deed of Relief and Variation (**DORV**).
 - C. 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.
 - 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 re-building period so that they are in a position to keep the facilities open and operating 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 . 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 , 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”. In the context of the second lockdown which commenced on 5/11/20, it is not clear if the Cabinet Office would necessarily advocate the provision of further relief on the basis of the Model Terms and in line with PPN 02/20 (such guidance applying until end of October 2020).
- 2.6. The result of early discussions with GLL, was 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 took a further Key Decision on 03 August 2020 to financially support GLL via the payment of an interest free repayable grant of £200,501 to mitigate

the losses on the Merton contract for the period from 01 July to 30 September 2020.

2.8. 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 is recoverable through a claim to central government for loss of income, which is offset by the reduction in utility costs incurred during this time

2.9. GLL are now requesting the council to provide on-going support through the next 6 months (01 October 2020 to 31 March 2021) as they seek to rebuild the business, through the latest Tier 4 restrictions which see the closure of gyms. This financial support is required 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 Government schemes where appropriate) but expenditure is still projected to be higher than income in the early months due to staff returning to work, redundancy costs and general expenditure to operate the services, whilst income levels gradually rebuild.

2.10. To date, 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

and GLL will continue to access any other schemes that might be available to them.

2.11. The PPNs 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 takes place quarterly and retrospectively.

2.12. 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 has agreed to cap the cost the council will incur for these 6 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. Any such request would need to be considered by council as a separate additional grant request under the current DORV at the time any request is made.

2.13. Any award of funding to meet the next six months from 01 October 2020 to 31 March 2021, should be funded as follows:

- Within two weeks of the end of each month GLL to provide accounts, clearly identifying any shortfalls / surpluses, to Merton for monitoring checks and balances. Once agreed, if there is a shortfall the first call will be on the unspent grant funds already held by GLL

- Once all the previously unspent grant funds have been fully utilised then any further monthly shortfalls would be met by a singular payment for that shortfall, providing that the amount due does not exceed the maximum award of £68,986
- This process to continue up to the final reconciliation for the end of March accounts or until the maximum sum is reached, whichever is the sooner.
- This process and period concludes following the March 2021 monitoring and the monitoring of the full six-monthly (period 3- Nov to April) financial ask
- On the matter of Relief from paying the council – if during monitoring over the six month period it is evident that the business has performed better than expected, so much so that GLL could afford to pay the monthly contract sum in full or in part then that sum should be billed to GLL.

3 ALTERNATIVE OPTIONS

3.1. A number of options are considered here:

Table 1 – Options Appraisal

	Options	Costs (£k)	Implications
A	Do Nothing – Provide No Relief and No additional grant funding	0	The council - Require GLL to revert to the original contract terms within a Covid compliant manner
			GLL – Would either try to take a legal route against the council or would only offer commercially viable products or would close the centres
			Community – Potential greater loss of leisure services available at prices they can afford
B	Part Fund – Provide Relief funding but No additional repayable grant funding.	420	The council - Loss of income to the council of £69,153.33 (revenue) and £851.18 (Life-time fund for Morden Leisure Centre) per month. The council can reclaim some of this loss through the government's income compensation scheme.
			GLL – Would adjust programming, product and centres availability to cover the shortfall so as they can trade within the budgets available
			Community – Loss of range, scope and availability of products for community benefit
C	Fully Fund – Provide Relief funding and additional repayable grant for the period 01 October 2020 to 31 March 2021	489	The council - Loss of income to the council of £69,153.33 (revenue) (Total: £414,920) and £851.18 (Total: £5,107) (Life-time fund for Morden Leisure Centre) per month. The council can reclaim some of this loss through the government's income compensation scheme.

			<p>Payment of interest free repayable grant of £68,986 and the opportunity cost to this grant of £2,846</p> <p>Detail of how this would be processed is detailed in paragraph 2.13</p> <p>GLL – Would continue to operate the centres in an economically prudent way and develop and grow the usage whilst complying with Covid-secure regulations as quickly as possible in order to return to a viable business model.</p> <p>Community – Continue to receive current leisure opportunities and able to access more as those products, programmes and services come back on stream.</p>
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3.2. GLL were asked to consider options to reduce the size of their 'Financial Ask 3' and in doing this they have managed to put some of those matters considered into this request. This included furloughing of staff, advancing products to bring forward where cost effective to do so, etc. They also considered changes to opening hours and the closing of facilities, but this was all considered by LSG on 29 June 2020, prior to the reopening of the facilities and the decision was to open all 3 centres and start to rebuild the services on offer.

3.3. On Sunday 20 December, all London boroughs were put into Tier 4, this meant immediate the closure of the Leisure Centres. The impact of Tier 4 will be considered separately.

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 2 - 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 - Aug	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.
03 August	Key Decision Report Agreed to Support GLL with an interest free repayable grant of £200,501 to cover the period 01 July to 30 September 2020 and to provide 'Relief' from paying the council under the contract terms.
21 Sept	Annex to Deed of Relief and Variation (DORV) – Covid 19 – Signed and added to the DORV
30 Sept	Grant payment made to GLL
October	Second formal review GLL financial position (end of second quarter)
October	GLL provide costed options to Merton re: further financial shortfalls linked to re-building options for consideration

December	Key Decision Report considered regarding further financial support for GLL by way of an interest free repayable grant of £68,986 to cover the period 01 October 2020 to 31 March 2021 and to provide 'Relief' from paying the council under the contract terms.
December	Govt. announces closure of gyms in Tier 4 areas

5.2. GLL proposed reopening plans:

Table 3 – Summary of Restart / Rebuild 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 Feb 2020 levels

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The detail of GLL's third 'financial ask' of £168,363 is included as Appendix 1 (Exempt).
- 6.2. However, GLL has operated the centres at a slightly lower cost than anticipated during the period since support commenced in March through to the end of September. They made a loss of £406,679 against Council grant funding of £506,056, resulting in a net carry forward surplus of £99,377. If GLL is allowed to roll this amount forward when looking at the loss projected for October to March, it will result in a net additional loss / funding requirement of **£68,986**.
- 6.3. The payment of any additional funding from the council 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).

- 6.4. 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.
- 6.5. There is also an opportunity cost to this grant of £68,986, which using the same method of calculations (paid over 10 equal annual instalment at 0.75% and the interest is calculated on a reducing balance basis) as previously on the first two grants is £2,845.67.
- 6.6. However, the council has already made two other grant awards of £305,555 and £200,501 and these combined with the new request of £68,986 would have an increased overall opportunity cost as the interest that could be gained on a figure of this combined value would be greater. On the total of all three grants it would be £31,627.31(interest rate applied for the total balance is 1% on a reducing balance basis), whilst if this calculation was solely applied to the new grant it would equate to £2,845.67.
- 6.7. It must be noted that all these calculations have been based on a 10 year repayable loan with an annual instalment plans, but these awards are by way of interest free repayable grants, with repayments being made from the profit share clauses in the DORV. Since an annual repayment plan is not in place the opportunity costs will increase over time until such payments are repaid to the council.
- 6.8. 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 guaranteed income from the GLL contract until the end of March 2021 of c£420k. It is noted that some of this loss is recoverable through a claim to central government's income compensation scheme, but this does not cover the full amount of income lost A Claim for the first 4 months was submitted and a claim for the second 4 month period is under final preparation for submission later this month. It should also be noted that the council is liable for the leisure centres' electricity and gas costs.
- 6.9. FMG Consulting Ltd (Leisure Consultants) have provided advice and guidance on this Deed of Relief and Variation and their report is attached at Appendix 2 (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 October 2020 – March 2021. 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".
- 6.10. The cost of the legal and financial advice for this DORV is c£45,000.

- 6.11. 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 been supporting the council in this matter and their legal advice is included at Appendix 2 (Exempt).

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 4 – 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 contract 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	4	3	12	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

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Appendix 1 – GLL's 'Financial Ask' (Exempt)

Appendix 2 – Blake Morgan LLP – Legal Advice (Exempt)

Appendix 3 – Options for councils in supporting Leisure Providers through
Covid-19 29 April 2020

12 BACKGROUND PAPERS

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