

## **Delegated Officer Report**

<b>Decision Maker:</b>	Rebekah Sutcliffe – Strategic Director of Reform
<b>Date of Decision:</b>	1 <sup>st</sup> August 2018
<b>Subject:</b>	OCL Contract - Change in Law Payment
<b>Report Author:</b>	Neil Consterdine – Head of Service Public Health, Youth and Leisure
<b>Ward (s):</b>	No consultation required

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**Reason for the decision:** Oldham Community Leisure (OCL) under the terms of the Leisure Management contract, change in law, have submitted a financial claim. Following negotiation with the Council and OCL this report sets out the details of the claim and the payment required.

**Summary:** As part of the leisure management contract if a qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- any necessary change to the Services; whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;
- whether relief from compliance with obligations is required, including the obligation of the Contractor to meet the Services Specification and/or the Service Delivery Proposals during the implementation of any relevant Qualifying Change in Law;
- any loss of or increase in Revenue that will result from the relevant Qualifying Change in Law; and
- any Estimated Change in Project Costs that directly result from the Qualifying Change in Law;
- any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law,

In each case giving in full detail the procedure for implementing the change in the Services. Responsibility for the costs of implementation (and any resulting variation to the Annual Payment) shall be dealt with in accordance with clauses 49.3 (Parties to Discuss) to in 49.7 (Adjustment to Annual

Payment).

OCL have written to the Council and set out Law Changes which they believe impact as a loss of or increase in revenue that will result from the relevant Qualifying Change in Law (Clause 49.2). The table below sets out the OCL request.

**Table 1 – OCL request – Change in Law**

Changes in Law	General Notes	2015/16	2016/17	2017/18
Apprenticeship Levy	0.5% of Turnover over £3m (group shared)			2,500
NI Rates	Contracted out rate for GMPF rises April 16 to "normal" rate (+3.4% from 10.4% to 13.8%)		23,738	23,738
Pension Changes & Auto Enrolment	Rate change to 2% April 18 and 3% April 19			
Coins	New £1 coin requires changes in locker mechanisms			5,600
Insurance Premium Tax	IPT rate increases from 6% in 2012/13 to 12% in 2017/18	2,250	1,547	2,339
NMW / NLW	NMW introduced at £7.20 April 2016, moving to £7.50 April 2017 and annual NMW increases		23,694	23,694
Energy Savings Opportunity Scheme (ESOS)	Mandatory accreditation valid for 3 years		5,200	
Climate Change Levy Increase	Identified Gas and Electric increases		800	1,137
Data Protection EU update	Changes due for 2018 with preparatory work prior to that			
<b>Total Changes in Law</b>		<b>2,250</b>	<b>54,979</b>	<b>59,008</b>
<b>Client Action Items re New Sites</b>	<b>General Notes</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
Solar PV FIT - Royton	Non registration of solar PV system resulting in lost annual claim		846	846
CHP Commissioning - OLC	50% of night time electric		9,492	
OLC Energy Efficiency	Lighting and Showers TBC			
<b>Total Client Action Items re New Sites</b>		<b>0</b>	<b>10,338</b>	<b>846</b>
<b>Grand Total</b>		<b>2,250</b>	<b>65,318</b>	<b>59,855</b>

Following discussion, clarifications and OCL mitigations the table below sets out a change agreed or not for each of the Changes in Law requested. Below in the financial comments is also the agreed cost associated with these changes. It was agreed that the Council would not consider any claims made before the 17/18 financial year.

**Table 2 Change in Law – Agreed or Not Agreed**

Change in Law	Agreed or Not Agreed
Apprenticeship Levy	Agreed- No charge currently expected
NI Rates	Agreed
Pension Changes and Auto Enrolment	Not Agreed
£1 coin change	Not Agreed
Insurance Premium tax	Agreed
National Minimum Wage/National Living Wage	Agreed
Energy Savings Opportunity Scheme	Judgement has been reserved until it becomes relevant.
Climate Change Levy Increase	Agreed
Data Protection EU Update	Judgement has been reserved until it becomes relevant.
Solar PV Fit – Royton	Not Agreed
CHP Commissioning – Oldham	Not Agreed
OLC Energy Efficiency	Not Agreed

Any compensation payable under this clause 49 (Change in Law) by means of an adjustment to or reduction in the Annual Payment shall be determined and made in accordance with clause 63 (Financial Adjustments). A payment will be made to OCL under clause 63 and the amounts are set out below in the financial comment.

**What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):**

Given this context, there is a limited range of options available to the Council, including:

Option 1 - Do Nothing and do not agree to the Law Changes. This option is not recommended as these Law Changes relate direct to the contract and have been subject to verification and clarification. The Council would also be open to challenge.

Option 2 – Agree that compensation is payable for Changes in Law as set out in Table 2 and the financial implications section. This is the recommended option.

**Consultation: including any conflict of interest declared by relevant Cabinet Member consulted.**

Consultation has taken place between the Council and OCL.

**Recommendation:**

The recommendation is option 2 agree that compensation is payable for the accepted Changes in Law as set out in table 2 and the financial implications section.

**What are the financial implications?**

The costs for the Change in Law claims, through to the end of the initial contract period in 2022/23 are set out in the table below, the 2017/18 charge is an agreed sum and the remainder are currently estimates

Changes in Law	2017/18 Final (£)	2018/19 ESTIMATED (£)	2019/20 ESTIMATED (£)	2020/21 ESTIMATED (£)	2021/22 ESTIMATED (£)	2022/23 ESTIMATED (£)
NI Rates	20,648	20,648	20,648	20,648	20,648	20,648
Pension Changes & Auto Enrolment		11,500	23,000	23,000	23,000	23,000
Insurance Premium Tax	2,339	2,339	2,339	2,339	2,339	2,339
NMW / NLW	23,694	23,694	23,694	23,694	23,694	23,694
NMW / NLW offset	-776	-776	-776	-776	-776	-776
Energy Savings Opportunity Scheme (ESOS)	0	0	5,200	0	0	5,200
Climate Change Levy increase	1,095	1,698	13,752	13,752	13,752	13,752
<b>Total Changes in Law</b>	<b>47,000</b>	<b>59,103</b>	<b>87,857</b>	<b>82,657</b>	<b>82,657</b>	<b>87,857</b>

It has been agreed that the costs associated with Changes in Law will be applied to reduce the OCL loan liability in relation to the Chadderton Health & Wellbeing utilities costs which are capped at a value of £130,000 plus Vat at 20%, OCL therefore owe the council £156,000 in relation to 2016-17 and a further £156,000 for 2017-18. The impact on the loan using the indicative amounts above is illustrated in the table below:

OCL Contract Year ( 10 year + 5 )	Year 4 2016-17 (£)	Year 5 2017-18 (£)	Year 6 2018-19 (£)	Year 7 2019-20 (£)	Year 8 2020-21 (£)	Year 9 2021-22 (£)
Loan For CHWB Utilities	156,000	156,000				
Legal claim payable to OCL offset		-47,000	-59,103	-87,857	-82,657	-35,382
Net movement in Loan	156,000	109,000	-59,103	-87,857	-82,657	-35,382
Loan Balance outstanding	156,000	265,000	205,897	118,039	35,382	0

The amount of the legal claim from OCL will change each year and can only be calculated accurately at the end of the financial year to which it relates. OCL will calculate this, for review by the council, each year.

If the estimations of the future cost of the legal claim are accurate, and assuming no further addition to the loan facility, the loans for Chadderton Health & Wellbeing utilities will be fully paid off in the year 2021/22, the agreed charges will then be payable directly to OCL up to the end of the initial contract period in 2022/23. The charge payable in 2018/19 of £106,103, comprising the agreed 2017/18 charge (£47,000) and an estimate for 2018/19 (£59,103) will be a charge to reserves. The cost for future years will be built into the base budget.

***What are the legal implications?***

Legal advice has been provided to the client service with regard to the interpretation of the change in law clause in the Leisure Management Contract between OCL and the Council and the validity of the claims made by OCL under the change in law provisions. The advice is reflected in the recommendation in the report to approve the agreed changes.

Rule 17.1 (a) of the Council's Contract Procedure permits modifications to the a contract if the original tendered contract contains clauses allow for such modification which deal with the scope and nature of possible modifications as well as the conditions under which they may be used and provided the modification would not alter the overall nature of the contract. The change of law clause in the Leisure Management Contract was included in the original

tendered contract and in the circumstances the contract price can be amended to reflect the additional costs. (Elizabeth Cunningham-Doyle)

**What are the procurement implications?**

Strategic Sourcing is supportive of option 2 highlighted in this report. Rule 17.1 (a) of the Council's Contract Procedure permits modifications to the a contract if the original tendered contract contains clauses allow for such modification which deal with the scope and nature of possible modifications as well as the conditions under which they may be used and provided the modification would not alter the overall nature of the contract. (Neil Clough, Sourcing & Contracts Consultant, 02.05.2018)

**What are the Human Resources implications?**

N/A

**Equality and Diversity Impact Assessment attached or not required because (please give reason)**

Not required

**What are the property implications**

None

**Risks:**

No specific risk comments as it is a requirement of the contract – (Mark Stenson)

**Co-operative agenda**

The OCL contract supports the Councils cooperative values and often goes beyond what is set in the contract including running community events, supporting the leadership of the Borough and working with the voluntary sector.

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Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?

Yes

Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget?

Yes

Are any of the recommendations within this report contrary to the Policy Framework of the Council?

No

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**There are no background papers for this report**

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<b>Report Author Sign-off:</b>	
Neil Consterdine	<i>N Consterdine</i>
<b>Date:</b>	7/08/18

In consultation with Director/Executive Director

Signed : *R. Sutcliffe* Date: 03/08/2018