

Delegated Officer Report

Decision Maker:	Rebekah Sutcliffe - Strategic Director of Communities and Reform
Date of Decision:	September 2021
Subject:	Update - Sport Development – TUPE to Oldham Community Leisure (OCL) Schools Swimming – Secondment to OCL
Report Author:	Neil Consterdine – Assistant Director Youth, Leisure and Communities
Ward (s):	N/A

Reason for the decision:	<p>Agree the TUPE transfer date of Sport Development to Oldham Community Leisure (OCL) as the 1st November 2021 with the following additional agreements:</p> <ul style="list-style-type: none">- The Council agree a no better or worse financial position in year one of the transfer. This would allow a smooth transition of Sport Development.- The Council underwrites any redundancy cost for the first 2 years of the transfer.
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Note that following full diligence OCL are not prepared to take on School Swimming as a secondment arrangement at this time and they will now be retained in the council until further work is done to look at alternative options.

Summary:	<p>A previous report in July set out the proposed change in the delivery of both the sports development and school swimming services following formal consultation.</p>
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Approval was given to fully transfer the sports development service from the Council to the Councils Leisure provider, Oldham Community Leisure (OCL). This required a TUPE transfer of staff.

Approval was also given to second the school swimming service to OCL, this being initially for a 12-month period with quarterly reviews built in as part of the contract monitoring arrangements. However, OCL, following due diligence, will not take on school swimming as a secondment arrangement. Further work on options will now need to take place.

As part of the due diligence work for Sport Development OCL, to support the financial risk, have requested:

- Any redundancies incurred for the first two years are picked up by the Council. It is not anticipated that any would take place based on the current business model.
- For the first 12 months of operation, whilst OCL embed Sport Development into their business model, a financial agreement of a no better or worse position is agreed.

A variation to the existing Leisure Management Contract to allow the TUPE of Sport Development will happen in due course and will be incorporated into the Leisure Management Extension.

A commitment that was made by the Councils Reform Directorate to achieve a saving of £24k in the 20/21 annual budget round will continue with an increase income target now being placed on the School Swimming Team.

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

Option 1: Agree the TUPE transfer date of Sport Development to Oldham Community Leisure (OCL) as the 1st November 2021 with the following agreements:

- The Council agree a no better or worse financial position in year one of the transfer. This would allow a smooth transition of Sport Development.
- The Council underwrites any redundancy cost for the first 2 years of the transfer.

Consider further options with regards the transfer school swimming service to OCL.

This would partially complete the already agreed decision to transfer Sport Development to OCL.

These changes would still achieve a saving circa £24K in total.

Option 2: Do not agree the additional agreements of the Council agreement of a no better or worse financial position in year one of the transfer and meeting any redundancy costs in the first 2 years. This option would not achieve the identified saving as OCL would not take on the service.

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

Engagement with staff and unions commenced on the 8th December 2020. Ongoing dialogue has taken place and all agreements are in place with Sport Development Staff. OCL have also been fully involved in the later stages of consultation.

Recommendation(s):

Option 1 is the recommended option given it achieves a budget efficiency but also aligns the delivery of sport and leisure in one place rather than parts of delivery in the Council and parts in the Leisure Trust.

In order to facilitate these changes a variation to the existing contract is required.

Implications:

What are the financial implications?

As part of the Council's budget setting for 2021-22, budget reduction proposals were approved for the Sports Development team to transfer to the Council's Leisure Provider OCL and second the Swimming Service team to OCL for an initial period of 12 months. The total saving of £24k was identified from a reduction in non-pay costs.

Following due diligence, the Swimming Service will be retained by the Council until other options are explored. The £11k budget reduction will be achieved through increased income. The non-pay budgets will no longer be removed.

Sports Development is set transfer to OCL on the 1st November which is later than the intended transfer date of the 6th September. The 2021-22 budget allows for an additional management fee to OCL of £71k in a full financial year. However, Sports Development have had a spending pressure of between £17k and £30k above the budgeted level for 2019/20 and 2020/21. To facilitate the transfer to OCL, it is proposed to transfer using the principles of no better no worse for 12 months. If there is request by OCL for a management fee in excess of the £71k this will be managed from within the Youth, Leisure and Communities revenue budget.

In addition, it is agreed the Council will underwrite the redundancy costs for the first 2 years post transfer. There are 15 staff in scope to TUPE to OCL with a low age profile. It is expected any redundancy costs will be relatively low, but the Council will review these on a case by case basis.

(Nicola Harrop – Finance Manager)

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

The consultation exercise conducted with staff and Unions has been adequate and appropriate and the proposals contained in the report appear to be reasonable and proportionate in order to achieve the outcomes stated in the body of the report. Subject to approval of the proposals the Leisure Management contract will need to be varied to reflect the new arrangements. It is not considered that a procurement process is required as the modification proposed to the contract as the modifications proposed are insubstantial having regard to the totality and nature of the contract and Rule 17 of the Council's Contract Procedure Rules.

(Colin Brittain)

*What are the **procurement** implications?*

The Commercial Procurement Unit supports the recommendations outlined in the report. The transfer of service delivery from the Council to Oldham Community Leisure will prompt a contract modification of which in this circumstance meet the criteria as outlined in clause 17 of the contract procedure rules. (Emily Molden)

*What are the **Human Resources** implications?*

There will be a meaningful TUPE consultation process, which will be undertaken in line with appropriate policy and procedure.

[Jen Windle – HR Advisory Team Leader]

*What are the **Children and Young People** Implications?*

None

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

Not required

*What are the **property** implications?*

None

Risks:

The main risk is the transfer process taking longer than is anticipated and logistics of the transfer of staff and any infrastructure. Work has been ongoing, and we have seen some delays. The potential additional costs to the council do need to be noted. In addition, the loss of staffing from the Council and subsequent capacity issues to cover wider work.

Co-operative agenda

The Teams are aligned to a cooperative way of working and work directly within schools to deliver sport and physical activity whilst also linking to wider community activity.

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

There are no background papers for this report

Report Author Sign-off: 	Neil Consterdine Assistant Director - Youth, Leisure and Communities
Date:	12 th October 2021

In consultation with Director/Strategic Director



Signed:

Date: 14/10/2021