

Report to CABINET (Part A)

Oldham Community Leisure (OCL) – Utility Benchmarking

Portfolio Holder: Cllr Peter Dean, Cabinet Member for Communities and Culture

Officer Contact: Rebecca Fletcher, Director of Public Health (Interim)

Report Author: Pritesh Patel, Sport Leisure & Wellbeing Service Manager

Date: 26th February 2024

Reason for Decision

Oldham Council and Oldham Community Leisure Limited (OCL) are party to a Leisure Management Contract in respect of leisure facilities in Oldham, which commenced on 28 March 2013 for an initial term expiring on 31 March 2023 (Contract) and a plus 5 year option. This was extended for a period of up to 5 years up to 31 March 2028.

Increasing utility costs for Leisure Centres has and will further have impact on the ability of OCL to be financially viable. Under clause 20 of the Contract, it states that the utility benchmarking exercises shall be carried out in accordance with Schedule 18 (Utilities Benchmarking). Utilities Benchmarking can be carried out where there are extraordinary fluctuations in the utility market. OCL have served notice on the Council invoking the Utility benchmarking clause in the Contract and the details are included in Part B of the report

Executive Summary

The Contract with OCL provides that, if, at any time prior to the next Cost Benchmarking Date (each second anniversary following the 28 March 2013 commencement date), either party believes that extraordinary fluctuations in the utility market have resulted in the requirement for a Cost Benchmarking Procedure, that party must issue a notice in writing to that effect to the other party. Both parties must meet (but with no obligation to act) within ten (10) Business Days of the date of the notice to discuss the extraordinary utility market fluctuations and the possibility of agreeing a Cost Benchmarking Procedure.

There have been ongoing discussions with OCL regarding increased energy costs for both gas and electricity in 2022/23 and now 2023/24. OCL have provided detailed figures and

the last estimate, which is based on September billing, is that the increased cost above the benchmarking threshold is included in Part B of the report.

We have also had internal discussions with Finance and Legal colleagues since 2022/23 to understand the Utility benchmarking provisions in the Contract and it has been concluded that OCL has the contractual right to undertake a benchmarking exercise due to the fluctuations in the utility costs, which they have done so. The Council could refuse to agree the Utility Benchmarking, but this could have serious consequences on the financial stability and ability of OCL to operate as a leisure provider. We have also recently secured £0.5m of external funding from Sport England to support these revenue costs.

Recommendations

Option 1

(a): The Cabinet accept the requirement for Utility Benchmarking under the terms of the contract and work with OCL to ensure they are able to afford the utility bills and continue to provide an extensive leisure offer.

(b) It is estimated that costs under the contract will increase as a result of the benchmarking exercise and the details are included in Part B of the report. The Cabinet agrees to make the payment that is payable under the terms of the contract in line with the cost figure.

Other options are presented in the main body of the report, but these are our recommendations.

Oldham Community Leisure (OCL) – Utility Benchmarking**1 Background**

1.1 Oldham Council and Oldham Community Leisure Limited (OCL) are party to a Leisure Management Contract in respect of leisure facilities in Oldham, which contract commenced on 28 March 2013 for an initial term expiring on 31 March 2023 (Contract) and a plus 5 year option. This was extended for a period of up to 5 years up to 31 March 2028.

1.2 Increasing utility costs for Leisure Centres has and will further have impact on the ability of OCL to be financially viable.

1.3 Under clause 20 of the Contract, it states that the utility benchmarking exercises shall be carried out in accordance with Schedule 18 (Utilities Benchmarking).

1.4 Under paragraph 1.3 of Schedule 18 of the Contract it states:

If, at any time prior to the next Cost Benchmarking Date, either party believes that extraordinary fluctuations in the utility market have resulted in the requirement for a Cost Benchmarking Procedure, it must issue a notice in writing to that effect to the other party. Both parties must meet (but with no obligation to act) within ten (10) Business Days of the date of the notice to discuss the extraordinary utility market fluctuations and the possibility of agreeing a Cost Benchmarking Procedure prior to the Cost Benchmarking Date at each party's discretion if the parties agree to an early Cost Benchmarking Procedure the date of that agreement is herein referred to in the Early CBP Date. For the avoidance of doubt, the Cost Benchmarking Procedure will not take place if both parties, acting reasonably, are not in agreement that it should take place prior to the next Cost Benchmarking Date.

1.5 The Cost Benchmarking Date occurs each second anniversary of the 28 March 2013 commencement date.

1.6 OCL has served notice on the Council under the above and subsequently carried out the Cost Benchmarking Procedure in accordance with the Contract for the 2022/23 financial year and now the 2023/24 financial year.

1.7 OCL have provided the results of the Cost Benchmarking Procedure to the Council and the last estimate, which is based on September billing, is included in Part B of the report. OCL have also been supporting council colleagues in bids for energy efficient funding and energy efficient measures including the Public Sector Decarbonisation Scheme and the Swimming Pool Support Fund.

1.8 The Cost Figure is defined in the Contract as follows:

means the difference between:

(a) for the first Cost Benchmarking Procedure, the Base Utility Cost and for each Cost Benchmarking Procedure thereafter, the Actual Utility Cost agreed or determined at the last Cost Benchmarking Procedure; and

(b) the Actual Utility Cost;

as may be agreed or determined by the Cost Benchmarking Procedure;

1.9 The Council is required to confirm to OCL if it accepts the Cost Benchmarking Proposal.

1.10 If the Council accepts the Cost Benchmarking Proposal, paragraph 3.1 of Schedule 18 provides that, *the Annual Payment shall be adjusted by the full amount of the Cost Figure*

and such adjustment shall be effective from the Cost Benchmarking Date or Early CBP Date (as the case may be) and, as appropriate, backdated to such date.

- 1.11 If the Council rejects the Cost Benchmarking Proposal, the Dispute Resolution procedure laid down in the Contract will apply and this could have serious consequences on the financial stability of OCL and their ability to operate as a leisure provider.
- 1.12 To mitigate the impact of the cost increases, the Council has the right, under paragraph 4 of Schedule 18, to provide to the Contractor a detailed written quotation which identifies a cheaper appropriately regulated utility supplier than that proposed by the Contractor and the Contractor shall contract with the supplier identified by the Authority (where the Contractor's existing contract with its existing supplier expires or may be cancelled without penalty). The Contractor shall have the option to contract with its own utility supplier provided that any cheaper tariff (which is available to the Contractor (whether they take it or not)) identified by the Cost Benchmarking Procedure shall be the unit cost used to calculate the Actual Utility Cost and the Cost Figure.
- 1.13 Link to Corporate Plan and Priorities:
 - 1.13.1 - Healthy, safe & well supported residents
 - 1.13.2 - A great start & skills for life
 - 1.13.3 - Better jobs and dynamic businesses

2 **Current Position**

A summary of the current position is included in Part B of the report

3 **Options/Alternatives**

- 3.1 Full option implications are outlined in a separate report that will be considered in Part B for the Cabinet Meeting on 26th February 2024.

4 **Preferred Option**

- 4.1 That Cabinet considers the detailed report in Part B of the agenda.

5 **Consultation**

- 5.1 n/a

6 **Financial Implications**

- 6.1 Full financial implications are outlined in a separate report that will be considered in Part B for the Cabinet Meeting on 26th February 2024

7 **Legal Implications**

- 7.1 Full legal implications are outlined in a separate report that will be considered in Part B for the Cabinet Meeting on 26th February 2024

8. **Co-operative Implications**

- 8.1 In terms of our Council Co-operative Charter, we work with OCL to ensure that they will deliver in line with our FORWARD values.

8.2 The company is an Oldham based company that employs local people, and also gives opportunities for local people to volunteer, have work experience and complete apprenticeships and other training.

9 **Human Resource Implications**

9.1 None – No workforce implications (Andrea Dickinson)

10 **Risk Assessments**

10.1 Full risk implications are outlined in a separate report that will be considered in Part B for the Cabinet Meeting on 26th February 2024

11 **IT Implications**

11.1 None

12 **Property Implications**

12.1 None

13 **Procurement Implications**

13.1 Full procurement implications are outlined in a separate report that will be considered in Part B for the Cabinet Meeting on 26th February 2024

14 **Environmental and Health & Safety Implications**

14.1 None

15 **Community cohesion, including crime and disorder implications in accordance with Section 17 of the Crime and Disorder Act 1998**

15.1 Continuing to ensure that activities and facilities are available for Oldham residents and communities, ensure that we continue to provide the same opportunities for people of different ages and backgrounds to interact with each other. This can have a positive impact on community cohesion.

15.2 Ensuring that we continue to provide fair and equitable access to services and facilities.

16 **Equality Impact Assessment, including implications for Children and Young People**

16.1 Yes

16.2 An Equality Impact Assessment has been completed and there are no positive or negative impacts of this recommendation on any of the characteristics, priorities or aims. The recommendation in this report should still proceed with no positive or negative impacts, as it is a legal obligation of the contract with OCL. Another Equality Impact Assessment was completed for the March (2023) Cabinet Report on the OCL Contract Extension which shows a number of positive impacts.

16.3 The full version of the impact wheel with all comments report is included as an appendix below (Appendix 20.2)

17 **Key Decision**

17.1 Yes

18 **Key Decision Reference**

18.1 EE-01-23

19 **Background Papers**

19.1 None

20 **Appendices**

20.1 Appendices are outlined in a separate report that will be considered in Part B for the Cabinet Meeting on 26th February 2024