

Report to CABINET

Oldham Community Leisure (OCL) Future Model

Portfolio Holder:

Cllr Peter Dean, Cabinet Member for Thriving Communities and Culture

Officer Contact:

Rebecca Fletcher, Director of Public Health

Report Author:

Pritesh Patel, Sport Leisure and Wellbeing Service Manager

16 December 2024

Reason for Decision

To design and bring forward options for an alternative operating model for leisure facilities located in the Oldham borough, which would be financially more efficient.

Executive Summary

With external expert support we have been exploring different options that would be financially more efficient than the current contractual model / commissioning arrangements relating to the provision of leisure facilities in the Oldham borough. This could create a significant saving for the council.

Recommendations

- i. to approve that officers, explore an alternative delivery model for the provision of leisure services, which would be an agency model under which services are delivered by the Council through an “in house” agency company owned and controlled by the Council. This would obviate the need for a new procurement exercise to be carried out to put a new contract in place. The conclusions and associated recommendations will be brought to cabinet in a report in 2025 to approve and agree the way forward.
- i. ii. To delegate to the Cabinet Member for Thriving Communities and Culture, the Director of Public Health and the Director of Finance or their nominees to agree and

enter into a Deed of Variation with OCL, as detailed in this report, provided that this course of action is supported by the Commercial Procurement Unit and Legal Services as being a viable option that accords with the Public Contracts Regulations 2015.

Oldham Community Leisure (OCL) Future Model**1 Background**

- 1.1 In December 2012 Cabinet approved the recommendation to appoint Oldham Community Leisure Limited (OCL) as the preferred bidder for a new 10 plus 5-year contract to operate and manage the Council's leisure facilities. OCL was appointed under a contract for services which commenced on 1 April 2013 ("Contract"). Prior to the expiry of the initial term of the Contract, the Council exercised the right to extend the term for an additional 5 years. This was done in line with prior Cabinet approval.
- 1.2 The term of the Contract, including the 5-year extension, will end on 31 March 2028.
- 1.3 In addition, and again, in accordance with Cabinet approval, a small number of changes to the Contract have been agreed with OCL under clause 50 of and Schedule 24 to the Contract. The Deed of Variation to formalise the changes is pending, but the effective date of the following is 1 April 2023:
- (a) Schedule 1, Part 2 to the Contract updated (Service Specification);
 - (b) Schedule 4 to the Contract replaced (Facilities)
- and the Annual Payment payable under the contract was duly adjusted, where required, to take into account the financial implications of the agreed changes.
- 1.4 OCL has responsibility for the management, operation, and development of six facilities under the Contract, which include Council owned leisure centres, swimming pools and synthetic pitches in Oldham. It also delivers a wider community offer and has a vision of "Inspiring people to live active healthy lives" and to "Create an environment in which sport, active recreation and leisure are integrated into the lifestyles of all Oldham citizens, in order that community cohesion and health benefits are continually improving."
- 1.5 The contractual relationship between the Council and OCL aligns with broader Public Health goals and social development objectives to reduce inequalities in Oldham, including working collaboratively with partners to tackle health inequalities and improve mental health through activity.
- 1.6 Beyond the requirements of the Contract, OCL deliver a lot of additional work to support our residents and the aims of the council, including reducing inequalities. Some of the programmes and initiatives delivered by OCL include:
- (a) Exercise Referral for a variety of conditions including Musculoskeletal, Mental Health, Obesity and Blood Pressure.
 - (b) REACH scheme specifically for Cardiac & Pulmonary patients.
 - (c) Falls Prevention including community classes.
 - (d) Free Swimming lessons for adult non swimmers.
 - (e) Co-location of midwifery services & social prescribing.
 - (f) Welcome to Oldham scheme, providing free access for those facing financial hardship.
 - (g) Plus 1 card for Carers, allowing free access for those providing support to those who would otherwise struggle to access services.
 - (h) Friday Club (to reduce isolation).
 - (i) Regular apprenticeships and work experience opportunities to tackle worklessness.

-
- 1.7 OCL is an Oldham organisation which employs around 280 members of staff including full time, part time and regular casuals. Over 70% of the OCL workforce are Oldham residents.
- 1.8 The Council works closely with OCL to ensure that the outputs and outcomes that OCL is obliged to deliver under the Contract are met and that continuous improvement is achieved throughout the Contract Period.
- 1.9 A performance monitoring system is in place with the aim of providing reasonable and prudent checks, while focusing on KPIs which confirm that a high quality of service is being delivered and measuring the contribution of the service to the Council's outcomes. OCL are performing well.
- 1.10 The management fee paid by the Council to OCL is low in comparison to other GM authorities and many nationally. The outcome and outputs stipulated in the Contract are also being met. In addition, memberships are good, the external inspections of the Centres are all very good or excellent, and customer feedback is also good. Overall financial performance is positive. More recently the cost of utilities has impacted on OCL's financial position, and they have instigated the utility benchmarking contract clause.
- 1.11 To support the monitoring of the performance of OCL, in addition to the contracted quarterly performance meetings, monthly monitoring meetings are in place.
- 1.12 The Contract links to Corporate Priorities, as follows:
- Healthy, safe and well supported residents
 - A great start and skills for life
 - Better job and dynamic businesses

2 Current Position

- 2.1 The Contract between Oldham Council and OCL is a 10 + 5-year contract which is due to end on 31 March 2028. Prior approval was given by Cabinet to undertake negotiations with OCL to utilise the available 5 year Contract extension and to vary the Contract to include a small number of agreed additions in terms of social value and to update the list of Facilities.
- 2.2 As mentioned above, the management fee is low in comparison to other GM authorities and nationally. The amount payable under the Contract is £494,200 per year for 2024/25 which equates to £2.04 per resident (Oldham Population of 242,100, Census 2021). Under the Contract, OCL also receives additional compensation in respect of additional costs it incurs relating to various categories including legislation changes, utility costs and pension costs for employees wholly transferred from the Council under TUPE.
- 2.3 OCL have consistently met and exceeded the requirements of the Contract and have provided above and beyond in terms of social value as well as their positive engagement in supporting the health and wellbeing of our residents, and wider council priorities.
- 2.4 Usage numbers have continued to rise year on year, and in 2023/24 we saw over 1.4 million come through the facility doors. Current year to date figures for 2024/25 exceeds the same period from the year before, meaning more and more people are accessing the facilities and activities being provided.
- 2.5 The Contract expires in March 2028. A re-procurement exercise is anticipated to take between 18 months and two years, so the Council needs to determine its preferred model going forward as soon as possible.

-
- 2.6 An increasingly popular model for the delivery of leisure services is for the leisure operator to work on an agency basis. This has the following significant advantages over the current model whereby OCL acts as a leisure operator in its own right:
- a) It better reflects the situation where the leisure operator carries out the services to residents' accordance with the Council's core objectives;
 - b) It more clearly defines the responsibilities over how the Council's assets are used and maintained;
 - c) It is more tax efficient. This follows from a ruling in June 2022 in a case between HMRC and Chelmsford City Council (the "Chelmsford Ruling").
- 2.7 Following the Chelmsford Ruling, many leisure operators will no longer consider bidding for leisure contracts that do not follow the agency model.
- 2.8 Working back, the costs associated with a procurement exercise and the time needed to re-procure mean that it would be prudent to commence a re-procurement 2-3 years prior to the expiry of the Contract, meaning the Council would have to start this process in 2025. The process of engaging consultants and legal experts for a re-procurement could cost the council circa £250k and bidders circa £500k based on the previous exercise. This money could, instead be invested in improving the Council's leisure assets by moving to a more efficient and effective delivery model.
- 2.9 Given the costs of procurement and the change in approach to leisure contracts, a re-procurement may not be in the best interests of Oldham's residents. An alternative solution would be move to the appointment of a wholly owned in-house Council company to act as the Council's agent for the delivery of leisure services. Several other Councils are moving towards this model. However, the working arrangements together with the contractual and procurement implications would need to be explored in detail to determine whether this new arrangement would be viable, procurement compliant and in the Council's best interests.
- 2.10 In addition to the potential longer-term benefits, there would be immediate benefits in considering whether it would be procurement compliant to amend the Contract so that OCL would act as the Council's agent for leisure services, as opposed to as acting as a principal operator. To this effect:
- a) Discussions have taken place with OCL whose Board has confirmed that it is supportive to moving towards such a model.
 - b) The Council has obtained professional legal and taxation advice that has confirmed what amendments would need to be made to the Contract to effect the proposed changes.
 - c) Initial discussions have been held with the Council's Head of Procurement and Legal Services has been engaged to consider whether the proposed changes would be in line with Contract Procurement Rules, incorporating procurement legislation and whether a notice must/should be published to inform the market of any changes made to the Contract.
- 2.11 The Head of the Commercial Procurement Unit has indicated that a procurement challenge at this point may not be a significant risk given limited time left on a 15-year contract and that OCL will not be significantly commercially advantaged by any new arrangement; however, this needs to be explored and considered alongside procurement rules, legislation and guidance.
-

3 Options/Alternatives

3.1 Option 1

- (a) approve that officers explore an alternative delivery model for the provision of leisure services, which would be an agency model under which services are delivered by the Council through an “in house” agency company owned and controlled by the Council. This would obviate the need for a new procurement exercise to be carried out to put a new contract in place. The conclusions and associated recommendations will be brought to cabinet in a report in 2025 to approve and agree the way forward; and
- (b) delegate to the Cabinet Member for Thriving Communities and Culture, the Director of Public Health and the Director of Finance or their nominees to agree and enter into a Deed of Variation with OCL, as detailed in this report, provided that this course of action is supported by the Commercial Procurement Unit and Legal Services as being a viable option that accords with the Public Contracts Regulations 2015.

Option 2

- (a) approve that officers explore an alternative delivery model for the provision of leisure services, which would be an agency model under which services are delivered by the Council through an “in house” agency company owned and controlled by the Council. This would obviate the need for a new procurement exercise to be carried out to put a new contract in place. The conclusions and associated recommendations will be brought to cabinet in a report in 2025 to approve and agree the way forward; and
- (b) do not explore the legalities associated with varying the Contract to an agency model for the remainder of the term.

Option 3

Do not approve that officers explore an alternative delivery model for the provision of leisure services from 1 April 2028, and, instead consider a re-procurement of leisure services under an operator model and do not do not explore the legalities associated with varying the Contract to an agency model for the remainder of the term.

4 Preferred Option

- 4.1 Option 1. This is anticipated to be the most viable and cost effective means to provide a long-term solution that provides best value for the residents of Oldham whilst at the same achieving short- term improvements and tax efficiencies in the way the contract currently operates.

5 Consultation

- 5.1 Oldham Community Leisure Limited,

6 Financial Implications

-
- 6.1 Cost of advice to date is £7,500 and it is anticipated that a similar level of expenditure would be required to amend the contract documentation to amend the contract so that OCL acts as an agent for the Council.
 - 6.2 The cost of exploring the Teckal company option is more difficult to ascertain at this point and it is suggested a budget of £50,000 is created for this purpose. Subject to their Board approval, it is proposed that this cost is shared with OCL.
 - 6.3 The above costs will be more than offset by tax efficiencies that arise from new arrangement.

Chris Kelsall – Assistant Director of Finance.

7 Legal Implications

- 7.1 This report recommends two courses of action with the first being to explore an alternative long term model of delivering leisure services in the Oldham borough following expiry of the current operator contract with OCL and the second being to explore making some modifications to the current contract with OCL to move to an agency model for the remainder of the contract term.
- 7.2 The long term arrangements will be considered and a further report will be brought back to a future Cabinet meeting. It is anticipated that the agency model through an in-house company will be a legally and procurement viable model; however, the legal position is reserved until officers have explored the preferred model and the detail has been documented.
- 7.3 The short term arrangements are subject to procurement legislation and guidance supporting the move to an agency model and to any changes being agreed with OCL. An analysis of the changes which would be need to be made to the Contract (as advised by the external legal firm, Browne Jacobson) to move to an agency model will be explored with the Head of the Commercial Procurement Unit and alongside regulation 72 of the Public Contracts Regulations 2015, which governs what modifications can be made to a contract without giving rise to the need for a new procurement process. On completion of this piece of work, the CPU and Legal Services will liaise with the lead officers for this project and a Delegated Decision Report will be produced, with detailed proposals and legal and procurement comments on such proposals.

Sarah Orrell – Commercial & Procurement Solicitor

8 Procurement Implications

- 8.1 Long Term Model: the approach to determining the most suitable and viable model and reviewing the procurement implications of that model is supported.
- 8.2 Short Term Model: In determining an alternative model under the existing contract, Regulation 72 of the Public Contracts Regulations 2015 needs to be considered in order to establish whether the change/s constitute what is substantial or, material and changes the overall nature of the contract. Whilst it has been explained that this would be adopting what is now the 'typical' model for this arrangement and this may support a supplier market understanding for the need for this change, an assessment still needs to be made on how this would have affected the market at the time of the original procurement exercise and the likely risk of challenge on that basis. It is believed that if we procured now based on the current arrangements/model, there would be no market interest. A review of the changes outlined by external legal advisors, Browne Jacobson, will be carried out by Commercial

Procurement and Legal Services upon which an aligned view of the changes and if and how Regulation 72 applies, will be provided along with recommendations.

Jasmin Banks-Lee, Head of Commercial Procurement Unit

9 **Equality Impact, including implications for Children and Young People**

9.1 Yes

10 **Key Decision**

10.1 Yes

11 **Key Decision Reference**

11.1 EE-04-24

12 **Background Papers**

12.1 None

13 **Appendices**

13.1 none