

SPECIAL POLICY & RESOURCES (RECOVERY) SUB-COMMITTEE ADDENDUM

2.00PM, MONDAY, 29 MARCH 2021

VIRTUAL

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Subject:	Covid 19 ARG Grants for Business Update		
Date of Meeting:	29th March 2021		
Report of:	Executive Director Economy, Environment and Culture		
Contact Officer:	Name:	Cheryl Finella	Tel: 01273 291095
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Ward(s) affected:	All		

FOR GENERAL RELEASE

The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the final arrangements for the allocations of the funds could not be confirmed prior to the agenda being published.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report provides an update on the Covid 19 Additional Restrictions Grant (ARG) for Business allocated to the council in relation to the second and third national lockdowns and the work that has taken place to administer the funds under the delegated powers of the Executive Director for Economy Environment and Culture which were approved by a Policy & Resources (Urgency) Sub-Committee on the 13 November 2020 and 4 February 2021.
- 1.2 This report sets out proposals for the allocation of additional top-up ARG funding that will be received from government in April 2021. Primarily this extra funding is to support the intentions of the Restart Grant being made available to eligible business rates paying businesses to provide a platform for them reopening on 12th April/ 17th May / 21st June as appropriate. However, it can be used to supplement ARG commitments for 20/21. Recognising the need to distribute vital funds to business, this report is seeking member approval for measures to provide top-up payments to any eligible businesses. As with the scheme in November, and update in February, the proposed approach is intended to enable speedy decision-making whilst also ensuring probity and appropriate diligence for public funds.

2. RECOMMENDATIONS:

- 2.1 That members note the progress being made to administer the £8.401m Additional restrictions grants, under delegated powers, relating to period from 5 November 2020 to 31 March 2021.
- 2.2 That members agree to delegate authority to the Executive Director Economy, Environment & Culture, in consultation with the Acting Chief Finance Officer, to determine the criteria and agree processes for issuing the Additional Restrictions

Grants using the top-up that government will issue in April, taking account of the need to issue the grants as quickly as possible to assist with reopening of businesses.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 When the second (November) national lockdown was declared the government announced the introduction of additional support measures for business during the lockdown period, including a number of Local Restrictions Support Grants (LRSB) and the Additional Restrictions Grant. As explained later in this report the eligibility criteria for Local Restrictions Support Grants are directed by government while the Additional Restrictions Grant offer some flexibility to local authorities.
- 3.2 The council is alive to the well-publicised concerns from businesses that have been left out of the current grant schemes and is using all the discretion allowed by government to support local business. The government has however, made clear that the grant cannot be used to support loss of income; the council must be able to evidence that payments relate to the ongoing costs that a business incurs and not as a wage subsidy.
- 3.3 In line with government guidance, the city council has used the Additional Restrictions Grant to help those businesses which, while not legally forced to close, are nonetheless severely impacted by the restrictions put in place to control the spread of COVID-19. This includes businesses which supply the retail, hospitality, and leisure sectors, or businesses in the events sector. We have also offered help to businesses outside of the business rates system, which are effectively forced to close, for example market traders.
- 3.4 The Additional Restrictions Grant is finite and, in considering how to make best use of this discretionary grant, the Council has sought to focus on the ongoing sustainability of local businesses; offering grants to businesses that intend to re-open after the pandemic.
- 3.5 The aim of the fund is to support business that have been significantly impacted by the restrictions placed on them. Brighton & Hove has one of the highest levels of micro businesses (businesses with less than 5 employees) than the national average. Many operate with the arts & culture, events & hospitality sectors. Hospitality alone accounts for over 14,000 jobs and the performing arts accounts for c£329m.
- 3.6 All the LRSB grants are only payable until 31 March 2021. The LRSB schemes are then replaced by the Restart Grant Scheme. As currently designed this scheme will result in one further payment to eligible businesses. The scheme is set to close to applications on 30 June 2021.

Grant to Businesses from November 2020

- 3.7 On the 31 October 2020 the government announced a second national lockdown. On the 4 November 2020 government issued guidance to local authorities detailing the parameters for allocating grants to businesses with a rateable value known as, Local Restrictions Support Grants (LRSB). The government also

allocated £5.818m of discretionary grant funding, to the city council known as the Additional Restrictions Grant (ARG). A further £2.584m was allocated in January 2021 as lockdown measures were extended. This discretionary grant is intended primarily to support businesses that are not eligible for the main grant fund but are significantly impacted by the Covid 19 business restrictions.

- 3.8 At the Policy & Resources Urgency Sub-Committees of 13 November 2020 and 4 February 2021 members agreed to delegate authority to the Executive Director for Economy, Environment & Culture, in consultation with the Acting Chief Finance Officer to determine the criteria, agree the processes for the allocation and award of ARG to compliment the different awards being made under LRSG.
- 3.9 Details of all these schemes available since 1 November 2020 are fully explained on our website here <https://www.brighton-hove.gov.uk/coronavirus-covid-19/businesses-and-employers> and, <https://www.brighton-hove.gov.uk/how-apply-covid-19-business-support-grant>.

Local Restrictions Support Grants (LRSG)

- 3.10 Of the six grant schemes, four; the Local Restrictions Support Grant (closed), Local Restrictions Support Grant (sector), Christmas Support Payments and Closed Business Restriction Payments are fixed schemes. Which means that the grant amounts to business are set by government. The Council is delivering these in accordance with government criteria, the subsequent guidance, and the addendums that followed. In combination these grants have provided the bulk of the financial support during the Tier 4 and lockdown periods. As at 25 March 2021 the total amount paid on these grants was £36.258m
- 3.11 The other two grants; the LRSG (open) and Additional Restriction Grant (ARG) are discretionary funds for the Council to distribute, although they too are subject to government guidance and criteria which strongly direct the Council as to their use.
- 3.12 The guidance regarding the LRSG (open) effectively directs the council to follow a suggested scheme and award levels, with only a small margin of flexibility. This direction does align with the Council priorities and the scheme that the Council has published closely resembles the suggested scheme with a couple of additional categories and top ups to ensure we spend the funding in full. This scheme only applies to the period the city was in Tier 2, from 2 December to 25 December 2020. The allocation for LRSG (open) grant has been spent in full.
- 3.13 The deadline for applying for LRSG grants for periods up until 15 February 2021 is 31 March 2021. The deadline for applying for the period 16 February to 31 March 2021 is 31 May 2021.

Restart Grant Scheme

- 3.14 The restart Grant scheme comes into effect from 1 April 2021 when it replaces all the previous LRSG schemes. The eligibility is very similar to the LRSG (closed) scheme but the level of award is dependent on the nature of the business. Non-essential retail will receive payments up to £6000 and businesses in hospitality, leisure and accommodation up to £18000. The difference in award is a reflection

on how soon businesses are likely to be fully open in accordance with the government's roadmap.

- 3.15 The Restart Grant Scheme is fixed scheme. This means that, like the the Local Restrictions Support Grant (closed), Local Restrictions Support Grant (sector), Christmas Support Payments and Closed Business Restriction Payments; the grant amounts to business are set by government. The Council will be delivering these in accordance with government criteria and the guidance. The council will work to maximise the take-up and therefore payments through this scheme to local businesses.
- 3.16 The deadline for claiming a restart grant is 30 June 2021.

Additional Restrictions Grant (ARG)

- 3.17 When the ARG discretionary scheme was first announced, the Policy & Resources Urgency Sub-Committee on 13 November 2020 approved a proposal for an initial ARG process to respond to the second lockdown period 5 November to 1 December 2020. Discretionary powers were approved for the Executive Director of Economy, Environment and Culture to enable distribution of the £5.818 million. At report to a special meeting of the Policy & Resources (Recovery) Sub-Committee on 4th February 2021 set out proposals for the allocation of an additional £2.584m of top-up ARG funding received from government on the 15 January 2021 in relation to the current lockdown period which started on 5 January 2021. That funding covered the period up until the end of March 2021.
- 3.18 The ARG discretionary scheme for the second and third lockdowns has been designed to ensure that support is provided to those groups that are eligible under the government guidance to receive it.
- 3.19 First and foremost, it has been used to support businesses that do not directly pay business rates but otherwise would be eligible for support under the LRSG schemes. Beyond that the Council has had licence to distribute it to support businesses, including those without premises, albeit subject to the specific government guidance.
- 3.20 However, although there is more flexibility within the ARG discretionary scheme, the government has been very clear that payments to businesses must be in relation to their business costs.
- 3.21 ARG cannot be used to support loss of income. This point was clarified by the Department for Business Energy & Industrial Strategy as part of their published Frequently Asked Questions. This excerpt is from that FAQ document:

Why is there a presumption that under ARG, Local Authorities should not be supporting the self-employed when so many self-employed and company directors paid dividends are excluded from SEISS & CJRS? If Local Authorities were to check that these businesses declare that the money was to go towards fixed costs would that be acceptable?

Discretionary grants, including the ARG, can be used to support the self-employed. However, the ARG must not be used as a wage supplement, rather as a support to the business that the self-employed person runs. In addition, the Local Restrictions Support Grant (Closed) is available to support self-employed people who are liable for business rates.

(Local Restrictions Support Grants and Additional Restrictions Grant – Frequently Asked Questions (FAQ) -Extended – Issue 2)

- 3.22 The ARG scheme for this period will remain open until 31st March 2021 and is projected to be spent in full. The first ARG payment was for the 27 days from 5 November to 1 December. The sum of £2,000 was awarded for businesses with high fixed costs and £500 for market traders and businesses that rented space within a larger business. In response to the city moving into Tier 4 and then into the 3rd lockdown a further award of ARG was made to those LRSG businesses who successfully applied for a grant for the second lockdown. This award is for the 52 days covering the period, 26 December 2020 to 15 February 2021, payable at two levels, £4,000 and £1,000, effectively doubling the amount paid for the previous 27- day lockdown, with then a further top up of £1,500 and £375 for the period from 16th February 2021 to 31st March 2021. The top up for this last period was set by what was left in the fund.
- 3.23 As detailed in 3.2 above, the committee approved delegated authority to the Executive Director Economy Environment & Culture to make decisions regarding further use of the fund in the face of a changing situation where rapid responses were necessary. These delegated powers were used in December 2020 when the city moved between tiers, as the levels of infection escalated.
- 3.24 In response to feedback from representative groups highlighting the pre-Christmas pressures on the Hospitality, Accommodation, Leisure and Events sectors in the city, a decision was made to award £2,000 of ARG discretionary funding in the form of top ups to business eligible for LRSG (open) grants.
- 3.25 The Policy & Resources (Recovery) Sub-Committee on 4th February 2021 approved two additional schemes to give one off ARG payments to specific sectors, previous unrecognised by the ARG criteria, but deserving of exceptional consideration.
- 3.26 An Additional Restriction Grant (ARG) – Licenced Private Hire and Hackney Carriage Drivers Scheme has been introduced to award licenced drivers £400 for the period 5 January to 31 March 2021.
- 3.27 An Additional Restriction Grant (ARG) – Early Years Wraparound Scheme has been introduced to make awards of either £500 or £3000 to providers for the period 5 January to 8 March 2021.

3.28 The deadline for claiming ARG for the period 5 November 2020 to 31 March 2021 is 31 March 2021.

3.29 The amount of ARG paid as at 24 March was £7.664m. However taking into account outstanding claims for the two specific sector schemes the full £8.402m allocation for the period up until 31 March 2021 will be spent.

Proposals for future awards of ARG

3.30 As part of the Budget statement on 3 March 2021 the government announced a series of measure to support their previously announced [Roadmap Out of Lockdown](#). The government committed to introducing the Restart Grant scheme and to make further discretionary funds available. As a consequence, the Council is due to receive an additional top-up for the ARG fund with a government imperative to distribute this fund to support local businesses in reopening as soon as possible to aid restarting the economy. As set out at section 7.1 of this report, the exact sum that will be allocated to Brighton & Hove is not known, but the best estimate is £2.0m to £2.5m. Unless there is a significant diversion from the roadmap there is no expectation of a further award of discretionary funding and it is the assumption of this report that the 30 June will represent and end date for all business grant schemes.

3.31 This latest allocation of grant funding extends beyond the current reach of the delegated authority vested in the Executive Director for Economy, Environment and Culture. This report seeks approval to make provision to further distribute these ARG funds to businesses that do not pay business rates and businesses without premises and to also recognise some key businesses that require support to reopen because of the additional restrictions required by the current lockdown measures.

3.32 The proposal is to make provision for a future discretionary payment to businesses that have received ARG payments through the second and third lockdowns as a continuation of support for the period from 1st April towards reopening as the fundamental criteria of the fund remain the same. The amounts will be determined by how much money we receive from government and the number of businesses who have successfully received ARG already. The amount should also be tiered to reflect how the Restart Grants are operating. An indicative level of the awards if we received an allocation at the top of our estimates would be;

- £450 and £1350 for non -essential retail business or businesses that would be entitled to fully open on 12 April 2021.
- £1800 and £5400 for hospitality, leisure business or businesses that would be entitled to fully open on 17 May 2021 or 21 June 2021.

However, these awards may very well need to be adjusted downwards if the government allocation is lower than £2.500m or if the expenditure on other areas are higher than currently estimated. A report will come back to a future meeting of this committee to update members on the sums paid and how the grants were distributed.

Application Process

- 3.33 The government guidance for the restart grant effectively requires a degree of re-application and this will be built into the existing portal system when it is made available in early April. This requirement will apply to both Restart Grants and ARG. Existing recipient of LRSG and the main ARG awards (not the two one-off schemes) will be invited to apply. The additional checking requirements will need a degree of officer processing and payment will not be automated.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The alternative option would be to develop a full new application process for businesses to access the grant funds. This option would entail a longer lead in time and delay vital payments to business.

5 COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Business representatives from the Brighton & Hove Economic Partnership and Community Works advised on the grant criteria and helped to promote the scheme.
- 5.2 To promote the grants, the council's Communications Team launched a campaign to raise and maintain awareness. Information has been proactively targeted to businesses to encourage them to check their eligibility and apply for a grant. Business and community organisations such as Brighton Chamber, the Brighton & Hove Economic Partnership and, Community Works in the city shared information with their members and; council teams, for example VisitBrighton, The Communities Team and the Environmental Health team, have been distributing information direct to their business and charity contacts.
- 5.3 A 'How to' applicants guide has been produced and was published on 16 November, which has been viewed by circa. 20,000 people. The guide has been translated into five of the main languages spoken by residents in the city: Arabic, Polish, Mandarin, Bengali and Farsi and publicised within local communities. Information has been shared on news and social media channels and the website is being updated regularly, with a new FAQs page published in January. The dedicated businesses and employers web page attracted 77,849 unique page views from February 2020 to 27 January 2021; and unique page views during second and third lockdown periods totalled 31,736. The business grant guide and web pages have consistently been in the top 20 most viewed pages on the council's website.
- 5.4 The Revenues and Benefits service have regularly been sending e-mails to businesses that, from the records we hold, we believe to be eligible for assistance. As well as generic mails to all these businesses there has been more tailored messaging to specific sectors such as hospitality, bars and pubs and non-essential retail.
- 5.5 The Economic Development team has contributed to the communications by distributing information to businesses and business support organisations such

as Wired Sussex and Platf9rm. The team has responded to over 3,000 enquiries to the Economic Development inbox since November 2020.

6. CONCLUSION

- 6.1 Members are asked to agree the proposed approach to dispense the discretionary grant funds, including the top-up payments, to provide for further lockdown restrictions which will help to streamline the process of payments while ensuring probity and compliance with government guidance.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The government has previously announced two tranches of discretionary funding for businesses through Additional Restrictions Grant totalling £8.402m for Brighton & Hove. A third tranche of £425m nationally was announced on 3 March 2021 for April 2021 onwards. However this allocation will be distributed on a different basis to the earlier tranches; the details of this are yet to be announced but could result in an allocation of £2.0m to £2.5m. This allocation is subject to the initial £8.402m being fully distributed by 30 June 2021 and this council is on track to achieve this shortly. Any grant received but not spent by 31 March 2022 will be recovered by government.
- 7.2 Grant payments are required to comply with the subsidy allowances set out in the Trade and Cooperation agreement that were amended on the 4 March 2021. The council is also required to implement fraud detection and prevention checks before making payments. The recommendations in this report aim to distribute the funding once known, in line with the government guidelines for the grant. The schemes proposed are demand led but will be kept within the total allocation of funding through constant monitoring of the grants paid.

Finance Officer Consulted: James Hengeveld

Date: 24/03/2021

Legal Implications:

- 7.3 Since the UK exited from the European Union on the 31 December 2020, the European State Aid regime ceased to apply to the UK. However the UK must comply with international obligations in relation to subsidy control which are set out in free trade agreements and the World Trade Organisation Agreement on Subsidies and Countervailing Measures. The UK – EU Trade & Cooperation Agreement (TCA) also contains obligations in relation to subsidy control. The TCA is incorporated into domestic legislation and the Council must therefore comply with it. If measures taken by the Council comply with the TCA, they are very likely to comply with the UK's other international obligations relating to subsidies.
- 7.4 The TCA does not apply to subsidies where the total amount granted to a single economic actor is below £325,000 over any period of three fiscal years. The grants outlined in this report will not exceed this threshold and there are therefore no subsidy control concerns.

Lawyer Consulted:

Alice Rowland

Date: 01/02/21

Equalities Implications:

- 7.5 The measures set out in this report will safeguard employment, local business and the economy. The applicants guide has been translated into the main languages spoken in Brighton & Hove and the community and third sector have assisted in raising awareness of the scheme within minority communities.

Sustainability Implications:

- 7.6 This report seeks to provide vital financial support needed by businesses at this difficult time. Access to the grant funding will contribute to business resilience and sustainability.

Brexit Implications:

- 7.7 None

Crime & Disorder Implications:

- 7.5 All applications to the fund are made through the council's MyAccount secure system which includes the necessary safeguards and evidence for audit and reduces fraud.

Risk and Opportunity Management Implications:

- 7.6 The use of the portal to access the funds reduces risk to the council. The MyAccount portal enables the necessary safeguards and evidence for audit.

Public Health Implications:

- 7.7 None

Corporate / Citywide Implications:

- 7.8 These proposals are in line with the council's Corporate Plan to support the local economy and the Economic Strategy which aims to support economic growth.

SUPPORTING DOCUMENTATION

None

Subject:	Sports Facilities Contract Extension – Freedom Leisure
Date of Meeting:	29th March 2021
Report of:	Executive Director, Economy, Environment & Culture
Contact Officer:	Name: Donna Chisholm Ian Shurrock
	Email: Donna.chisholm@brighton-hove.gov.uk ian.shurrock@brighton-hove.gov.uk
Ward(s) affected:	All

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that negotiations with the providers could not be completed prior to the publication of the agenda.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 Wealden Leisure Ltd trading as Freedom Leisure manage the council's sports facilities pursuant to two contracts with the council – both on very similar terms. The current ten-year contract with Freedom Leisure in relation to all the facilities listed in 3.1 below (except Portslade Sports Centre) expires on the 31st March 2021. An additional contract with Freedom Leisure to manage Portslade Sports Centre commenced in 2016 to run concurrently with the existing contract and also expires on 31st March 2021. These two contracts are referred to as the Sports Facilities Contract and there is provision within the contract for an extension of up to five years.
- 1.2 At a special Policy & Resources Committee on 14 August 2020 a three-year extension with an associated re-negotiated management fee was recommended and agreed. This took into account the significant impact on the Sports Facilities Contract from the initial Covid 19 lockdown period (21st March – 25th July 2020). The aim was to minimise the impact of financial pressures created by the Covid-19 pandemic by extending the contract over a three-year period.
- 1.3 Despite the Government allowing sports facilities (including gyms and swimming pools) to re-open from 25th July 2020, subsequent lockdowns and tier measures were introduced in November 2020, December 2020 and most recently from 5 January 2021 – 12 April 2021. These have had a continued negative impact on our Sports Facilities Contract with Freedom Leisure.

1.4 As well as a significant financial loss over 2020/2021 there is also an expected significant loss this year, combined with slow business recovery in terms of operating the facilities. Freedom Leisure are therefore requesting that the previously agreed financial position is reconsidered, taking into account the significant impact on the business created by successive lockdowns and the associated slow return of users over 2021/22.

2. RECOMMENDATIONS:

2.1 That the significant financial impact of the Covid-19 pandemic upon Freedom Leisure as the operator of the council's Sports Facilities and the financial support already provided be noted;

2.2 That it be noted that a high proportion of the management fee which was waived during the period 1 July 2020 to March 2021 was reclaimed by the council as lost income from central government;

2.3 That the successful application to the National Leisure Recovery Fund (NLRFF) for a grant which will be passed on to Freedom Leisure as required by the associated terms and conditions in respect of business relief and recovery be noted;

2.4 That £0.363m of Contain Outbreak Management Funds be allocated to Freedom Leisure be agreed; and

2.5 That the Executive Director Economy, Environment & Culture and Executive Lead Officer for Strategy, Governance & Law be granted delegated authority to settle the terms of the contract variations and take any steps necessary to implement the recommendations above.

3. CONTEXT/ BACKGROUND INFORMATION

Sports Facilities Contract

3.1 The sports facilities included within the Sports Facilities Contract are:

- King Alfred Leisure Centre
- Moulsecomb Community Leisure Centre
- Paddling pools (Hove Lagoon, King's Road, The Level Water Feature Saunders Park)
- Portslade Sports Centre (added from 2016)
- Prince Regent Swimming Complex
- Stanley Deason Leisure Centre
- St Luke's Swimming Pool
- Withdean Sports Complex

3.2 Freedom Leisure commenced operation of the Sports Facilities Contract on 1st April 2011 and under the terms of that contract a payment is currently made by Freedom Leisure to the council to manage the facilities.

3.3 There is provision in the existing contract for an extension of the initial term by up to five years on the existing terms and conditions. Once the council has

committed to extend the contract, the parties then have to negotiate the management fee. This negotiation takes into account previous financial performance and the expected cost of providing the service which will apply for the remainder of the contract.

Sports Facilities Investment Plan

- 3.4 The council is aware that the facilities managed under the Sports Facilities Contract are ageing and their condition is deteriorating. The most recent facility to be built was the Moulsecomb Community Leisure Centre which opened in 1991. In 2019 the council commissioned a Sports Facilities Investment Plan together with an appraisal of management options, so that the future of the sports facilities could be determined. This work included detailed condition surveys on all the facilities to inform the Investment Plan. The Sports Facilities Investment Plan is anticipated to be considered by TECC committee in June 2021.

Sports Facilities Contract – original contract extension negotiations

In order for the Sports Facilities Investment Plan to be completed to inform any re-tendering of the Sports Facilities Contract, negotiations commenced with Freedom Leisure to extend the existing contract.

- 3.5 These negotiations recognised that Freedom Leisure had not achieved the financial return they had expected as per the original bid for the contract. Therefore, it was accepted that a reduced management fee would be received for the extended contract period. After detailed negotiations, provisional agreement was reached that a management fee to be paid to the council for each year of the contract extension. Unfortunately, shortly after the negotiations were concluded the Covid-19 pandemic resulted in the closure of the facilities. Consequently, the provisional financial agreement reached for the contract extension needed renegotiation, due to the pandemic affecting the financial performance of the sports facilities.

Impact of Covid-19 Pandemic

- 3.6 Lockdown for sports facilities was introduced on Friday 21st March 2020 when everything closed. This constituted a Force Majeure Event under the terms of the Sports Facilities contract. Consequently, Freedom Leisure were excused from performing their obligations under the contract for the period during which sports facilities were not allowed by law to open.
- 3.7 The Government issued a “Procurement Policy Note – Supplier relief due to Covid-19” in which local authorities were requested to assist suppliers (such as Freedom Leisure) with their cash flows in order to support them in the initial stages of the lockdown. This applied to the end of June. Contractually Freedom Leisure are obliged to meet the operational running costs of the sports facilities (apart from landlord responsibilities) but receive the income generated to achieve financial viability. The closure of the facilities with the consequent loss of income placed Freedom Leisure in a difficult financial position.

- 3.8 In order to mitigate costs Freedom Leisure furloughed all apart from two staff of those directly employed pursuant to the Sports Facilities Contract in Brighton & Hove. The two remaining staff were overseeing the closed facilities together with members of the council's Sports Facilities Team in order to reduce costs. However, it has not been possible to avoid all costs while the facilities have been closed, such as utilities, even though they have been minimised.
- 3.9 When the Government announced that sports centres and indoor swimming pools could re-open from the 25th July 2020 a phased reopening was agreed as a variation to the original contract. This recognised the immense task and continuing financial impact of the various measures needed to re-open the facilities safely in the pandemic.
- 3.10 Unfortunately, despite re-opening the facilities as agreed and in some cases for longer hours to accommodate some key user groups, a further lockdown closed most of the sites in November 2020. This was followed by being placed in Tier 4 on 26th December 2020 and again into National Lockdown on 5th January 2021 has meant that the previously agreed position is untenable.
- 3.11 Further funding has been extremely welcome in the form of the National Leisure Recovery Fund (NLRF) being paid to the Council to be passed onto the Operator to support business recovery. However only 30% can be utilised for 'business relief' and the aim and objective of the fund is to support future recovery rather than provide funding support for the extended lockdown periods.
- 3.12 Other grants have also been provided and the extension of the Job Retention Scheme (JRS) is continuing to ensure the business remains viable. However, despite all the various streams of income and support the expenditure although minimised as much as possible, still significantly exceeds income levels.
- 3.13 To implement Covid-19 safety requirements there were and continue to be increased costs for cleaning. Social distancing also limits capacity in exercise areas. It is anticipated that it will take some considerable time for the levels of usage and hence income to increase.
- 3.14 The pandemic has caused significant uncertainty across the services of the council including the leisure sector. Therefore, spreading the cost of support over the three-year extended period is viewed to be more realistic than the originally proposed two year extension.
- 3.15 Importantly the risk of operation remains with Freedom Leisure. The council is not agreeing to a deficit funding arrangement in which the operational risk would rest with the council. We are agreeing the extended contract on different financial terms to reflect the continuing impact of the pandemic.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Negotiations have been on-going with Freedom Leisure to seek a solution to the current very difficult financial situation to enable the contract extension to be achieved and delivered for the next three years.

- 4.2 The Sports Investment Plan will include an appraisal of the options for the future operational management of the sports facilities. The outcomes of this work will be taken to the Procurement Advisory Board (PAB) and reported to committee.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Not applicable.

6. CONCLUSION

- 6.1 The granting of a three-year extension to Freedom Leisure for the Sports Facilities Contract previously had enabled a financially sustainable position to be reached between both parties.
- 6.2 However, the unforeseen and continuing financial pressures caused by the additional lockdowns due to the Covid-19 pandemic has meant this position required re-negotiation.
- 6.3 Following re-negotiation, the council and Freedom Leisure have reached a position which enables all of the council's sports facilities to open according to the government's road map and to be operated in a COVID safe manner for as long as required.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 These are included in the part 2 of this report.

Finance Officer Consulted: Jeff Coates

Date: 22nd March 2021

Legal Implications

- 7.2 The Council is entitled to extend the contract without the agreement of Freedom Leisure. However, the parties must reach agreement on the Management Fee which should reflect the cost of providing the service. The Covid-19 pandemic has had a significant impact and the reversion to the council making payments to Freedom Leisure is therefore in accordance with the terms of the contract.
- 7.3 Legal Services will continue to assist in order to put in place a deed of variation to the contract with Freedom Leisure to cover the proposed extension period to 31st March 2024 and the changes to the management fee during the extension period.
- 7.4 The proposed variations to the contract with Freedom Leisure are permitted within the scope of the original contract and are therefore contract modifications which are permitted by the Public Contracts Regulations 2015.
- 7.5 The original contracts were procured and as the original contract (in 2011) required the Council to pay a management fee to Freedom Leisure which reflected the cost of providing the service, the risk that these proposals amount to a subsidy is very low.

Lawyer Consulted:

Alice Rowland

Date: 21st March 2021

Equalities Implications:

- 7.6 The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the city. Sports facilities are fundamental to that provision.

Sustainability Implications:

- 7.7 A key focus of this report is the financial sustainability of the Sports Facilities Contract. However, there has been significant investment in the sports facilities to improve environmental sustainability such as LED lighting, inverters on pumps and more thermally efficient glazing.
- 7.8 More recently photovoltaic (PV) panels have been installed on the roof at Stanley Deason Leisure Centre and will be installed shortly at Withdean Sports Complex to provide energy for the sites and further afield.

7.9 Brexit Implications:

- 7.10 None identified

7.11 Public Health Implications:

The sports facilities are key locations in the city for regular participation in sport and physical activity. The Covid-19 pandemic has heightened the awareness of the importance of regular participation in sport and physical activity to health and well-being.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Background Documents

1. None

Document is Restricted

